

Introduced by: Councilmember Smith

First Reading: July 23, 2012
Second Reading: July 30, 2012
Effective Date: July 31, 2012

ORDINANCE NO. 2012-36

Ethics Chapter Amendments

WHEREAS, adherence to the highest ethical standards by City officials and employees is necessary for the efficient and effective operation of the City government; and

WHEREAS, the City is required, under Section 15-803 of the State Government Article of the *Annotated Code of Maryland* to enact laws governing the public ethics of its Officials; and

WHEREAS, Sections 15-803 through 15-806 of the State Government Article of the *Annotated Code of Maryland* require that the City's ethics laws be similar to the public ethics laws of the State of Maryland; and

WHEREAS, the General Assembly amended Sections 15-804 and 15-805 of the State Government Article of the *Annotated Code of Maryland* to require the City to enact conflict of interest and financial disclosure provisions for elected officials and candidates that are at least as stringent as the provisions applicable to State government officials; and

WHEREAS, the City's existing Ethics Chapter does not satisfy the requirements of the Maryland Code regarding financial disclosure for elected officials and candidates; and

WHEREAS, the City of Takoma Park Ethics Commission has discovered aspects of the Advisory Opinion and Ethics Complaint resolution procedures that can be improved upon to further promote ethical conduct by City officials and employees.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that, effective immediately, Chapter 3, Ethics, of the Takoma Park Code is hereby amended as follows:

3.04.010 Title.

This Chapter may be cited as the "City of Takoma Park Public Ethics Ordinance."

3.04.020 Purpose and policy.

A. The Council finds that:

1. Officials, employees, and representatives of the City will maintain the highest standards of political and professional responsibility and maintain the highest respect for the interests of the citizens and for the City itself.
2. Representative government depends upon the citizens having the highest trust in their public officials.
3. The trust, necessary to our system of government, is dangerously eroded not only by improper conduct by employees and officials of government but by the appearance of improper conduct, as well.
4. In order to maintain the fact and appearance of high standards of conduct, it is necessary to have clearly articulated standards of conduct, a procedure for resolving questions that may arise concerning the propriety of specific acts, and a forum for receipt and review of complaints and questions, whether raised by concerned citizens, employees or those doing business with the City.
5. The citizens have a right to expect that all decisions made in the name of the government of Takoma Park will be made for the general welfare of the citizens of Takoma Park, rather than for the private gain or personal motives of the official or employee making the decision.
6. Employees and officials of government have a right to know that the government clearly articulates the standards of conduct by which their actions will be measured.
7. Employees and officials of government have a right to expect that their personal lives, choices, associations, and those of their families will not unduly or unnecessarily be burdened because of their choice to serve the City.
8. No restriction placed upon the employees or officials of Takoma Park can be made without cost to the City, whether by discouraging otherwise qualified persons from serving government, or by discouraging vendors or other businesses from trading with the City, or by placing administrative burdens upon the City and those with which it conducts business.
9. Full and timely disclosure of information and private activities that could affect the nature of public decisions allows the public to be aware of real or actual conflicts and make its own judgments about such conflicts.

B. In order to meet these ~~found~~ needs and to articulate the balance ~~which~~ that the Council has struck between the needs and expectations of the citizens, employees, and those with whom the City does business, the Council has enacted this Ethics Chapter.

C. On behalf of the citizens of the City of Takoma Park, the Council intends that this Chapter be liberally construed, in complement with the civil and criminal statutes of the State of Maryland and of the United States, to accomplish these goals without unduly restricting the rights of the officials

and employees and their families to associate freely, speak freely, and to enjoy the other rights and benefits of citizenship in this City, state, and country.

3.04.030 Scope.

Unless expressly provided otherwise, this Chapter applies to all individuals and organizations acting on behalf of the City in any capacity and all persons required to register as lobbyists under section 3.04.090 of this Chapter.

3.04.040 Definitions.

In this Chapter, the following words have the meanings indicated:

“Business or business entity” means any corporation, general or limited partnership, limited liability company, sole proprietorship (including a private consultant operation), joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, regardless of whether or not operated for profit.

“Commission” means the City Ethics Commission established in Section 3.04.050 of this Chapter.

“Compensation” means any money or thing of value or waiver of any debt or obligation, regardless of form, received or to be received by any person covered by this Chapter for goods or services rendered. If lobbying is only a portion of a person’s employment, “compensation” means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties. For reporting purposes, a prorated amount shall be labeled as such.

“Complainant” means a person filing an ethics inquiry or complaint.

“Covered person” means any person who acts on behalf of the City by virtue of having been elected to, appointed to, or employed by the City or any City agency, board, commission, or similar entity whether or not paid in whole or in part with City funds and whether or not compensated.

“Doing business with” means:

1. Seeking, negotiating, or having a contract with the City that involves the commitment (either in a single or combination of transactions) of \$5,000.00 or more of City controlled funds, unless the contract relates to the City’s membership in an organization or the primary purpose of the contract is to facilitate a donation of money, goods, or services to the City;
2. Being the subject of or seeking or opposing specific legislative action by the City;
3. ~~Engaging in business that is~~ Being regulated by or otherwise under the authority of the City; or

4. Being registered as a lobbyist in accordance with Section 3.04.90 of this Chapter.
- ~~5. Applying for or opposing the issuance of a City permit or license or participating in a proceeding before a City agency.~~
- ~~6. Owning property that the subject of an inspection by an agent of the City.~~

“Financial interest” means:

1. Ownership of any interest as the result of which the owner has received, within the past 3 years, or is presently receiving or in the future is entitled to receive more than \$1,000.00 per year; or
2. Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3% of a business entity by a City official or employee, or the spouse of an official or employee.

“Gift” means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration. “Gift” does not include the solicitation, acceptance, receipt, or regulation of political campaign contributions regulated in accordance with the provisions of Md. Code Ann., Elec. Law Art., § 13-225 et seq., or any other provision of state or local law regulating the conduct of elections or the receipt of political campaign contributions.

“Governmental unit” means a department, agency, commission, board, council, or other body of City government established by law, including the Council.

“Immediate family” means a domestic partner, spouse, ~~mother, father, siblings, children,~~ and any dependents.

“Interest” means any legal or equitable economic interest, whether or not subject to an encumbrance or a condition, ~~which~~ that is owned or held, in whole or in part, jointly or severally, directly or indirectly. For purposes of Sections 3.04.080 and .085 of this Chapter, “interest” applies to any interests held at any time during the calendar year for which a required statement is to be filed.

“Interest” does not include:

1. An interest held in the capacity of a personal representative, agent, custodian, fiduciary or trustee, unless the holder has an equitable interest therein;
2. An interest in a time or demand deposit in a financial institution;

3. An interest in an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period; or
4. A common trust fund or a trust that 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 Sections 401 and 501 of the Internal Revenue Code.
5. A college savings plan under the Internal Revenue Code.

“Legislative action” means an official action or nonaction relating to an ordinance, resolution, appointment, report, or other matter within the jurisdiction of the City Council.

“Lobbying” means:

- ~~1. Communicating in the presence of a City official or employee with the intent to influence any official action of that official or employee; or~~
- ~~2. Engaging in activities having the express purpose of soliciting others to communicate with a City official or employee with the intent to influence any legislative action of that official or employee.~~

“Lobbyist” means a person required to register under section 3.04.090 of this Chapter.

“Person” means any individual or business entity.

“Qualified relative” means a spouse, domestic partner, parent, child, sibling, or dependent.

3.04.050 Ethics Commission.

A. There shall be a City Ethics Commission, which is composed of up to 7 members appointed by the Council. The Commission shall have the following responsibilities:

1. To devise, receive, and maintain all forms generated by this Chapter.
2. To provide at the request of any person concerning the application of this Chapter to an actual situation or one seriously contemplated, written advisory opinions. The Commission shall respond promptly to these requests, providing interpretations of this Chapter based on the facts provided or reasonably available to it. The Commission shall, to the extent practicable, publish its advisory opinions with any information that would identify the subject of the opinion deleted. The publication of advisory opinions shall include the publication of a summary of the advisory opinion in the City Newsletter and the posting of the advisory opinion on the City’s web site.

3. To investigate, hear, and decide any inquiry or complaint filed by any person regarding an alleged or potential violation of this Chapter. The Commission may obtain the advice of legal counsel to the extent it deems such advice helpful for the resolution of an inquiry or complaint. The City Manager shall procure the services of legal counsel at the request of the Commission. Legal counsel shall review all draft and final opinions of the Commission for legal sufficiency before the Commission issues an opinion to the public or a party. The Commission has the power of subpoena to require the attendance of persons and the production of documents. If any person refuses to comply with a subpoena of the Commission, the Commission may initiate a suit in equity in the Circuit Court to enforce compliance with the subpoena.

4. To conduct a public information program regarding the purposes and application of this Chapter.

5. To recommend legislative changes and improvements to this Chapter, including, such changes as are necessary to maintain compliance with the requirements of State Government Article, Title 15, Subtitle 8. of the Annotated Code of Maryland.

6. To promulgate regulations to accompany this Chapter.

7. To certify to the State Ethics Commission on or before October 1 of each year that the City is in compliance with the requirements for elected local officials of State Government Article, Title 15, Subtitle 8. of the Annotated Code of Maryland.

B. The members of the Commission are appointed to staggered 2-year terms and may only be removed by the Council for cause. "Cause" includes neglect of duty, misconduct in office, a disability rendering the member unable to discharge the powers and duties of the office or a violation of this Chapter. Initially, 3 members are appointed to one-year terms and 2 members to 2-year terms. The terms begin on October 1st and end on September 30th. Any vacancy occurring on the Commission is filled for the unexpired term in the same manner as provided for appointments to the Commission. Commission members shall not serve past the expiration date of their term.

C. Consistent with the provisions of state and City laws and ordinances, the Commission shall operate under Robert's Rules of Order or such rules as it may promulgate.

D. Its members shall take an oath of office.

E. The Commission may establish 3-member review panels to investigate and adjudicate inquiries and complaints or respond to requests for advisory opinions.

F. Each year the Commission shall elect one of its members as Chair and one of its members as Vice Chair. The Chair shall preside over meetings, assign members to such review panels as may be established and carry out other duties as may be established in the Commission's rules. The Vice Chair shall act as Chair in the absence of the Chair.

G. Its members are authorized to administer oaths.

H. The City Manager shall make available to the Commission such staff assistance as may be needed and shall provide appropriate space and security for Commission records.

I. Except as prohibited in section 3.04.060(M), the City Attorney shall assist the Commission in carrying out its responsibilities at its the Commission's discretion.

3.04.060 Inquiries and complaints.

A. The Commission ~~will~~ shall receive and review any ethics inquiries or complaints concerning covered persons and lobbyists. The Commission may initiate an inquiry or complaint on its own motion. Any inquiry or complaint concerning City staff other than the City Manager or City Attorney and volunteers other than appointed members of City boards, commissions, and similar entities, shall be referred to the City Manager for appropriate disposition. The City Manager shall report to the Commission on the disposition of the inquiry or complaint. The City Manager's disposition shall be consistent with any prior written decision of the Commission. The Commission may comment on the City Manager's actions. If an inquiry or complaint is filed with the Commission that is a personnel matter and not an ethics issue, the Commission shall refer the inquiry or complaint to the City Manager for disposition without further reporting to the Commission. Should the Commission receive a complaint regarding any action that may be criminal, such allegation shall be referred to City, county, state, or federal officials as appropriate.

B. Inquiries and complaints must be under oath. Upon request of a complainant, the City shall not disclose his or her identity or knowingly disclose any information that would identify him or her. If the Commission determines that revealing such information is necessary to investigate and resolve the inquiry or complaint then it shall give the complainant written notice of its determination. The complainant shall have 3 days following such notice during which he or she may elect to withdraw the inquiry or complaint to maintain his or her confidentiality. If the complainant elects to proceed with the inquiry or complaint, the Commission immediately shall reveal the identity of the complainant to the respondent. If the Commission determines, pursuant to subsection (H) of this Section, that a hearing is necessary to resolve the inquiry or complaint and that resolution of the complaint depends on evidence given by the complainant, the identity of the complainant shall be made public.

C. The inquiry or complaint must be filed within the later of 2 years after:

1. The alleged or possible violation; or
2. The complainant learned or should have learned of facts that would lead a reasonable person to conclude that a violation occurred or may have occurred.

D. Notwithstanding paragraph (C)(2), above, an inquiry or complaint may not be filed more than 6 years after the alleged or possible violation occurred.

E. The Commission shall within 10 calendar days of the filing of an inquiry or complaint provide a copy of the inquiry or complaint to the respondent. The respondent may provide a response that shall be considered by the Commission.

F. Opportunity to Cure.

1. The Commission shall dismiss the inquiry or complaint in a signed public order if:
 - a. The respondent, within 15 calendar days after receiving the complaint, takes any action that may be available to cure each alleged violation; and
 - b. The Commission finds that dismissal is not contrary to the purposes of this Chapter.
2. If the inquiry or complaint is dismissed under this subsection, the Commission shall promptly send a copy of the order to the complainant and the respondent.

G. If the Ethics Commission determines, upon its preliminary review and investigation of the inquiry or complaint, that the inquiry or complaint does not merit further proceedings, the Commission shall:

1. Dismiss the inquiry or complaint in a signed public order; and
2. Promptly send a copy of the order to the complainant and the respondent.

H. If the Commission does not dismiss the inquiry or complaint, the Commission shall hold a hearing on the inquiry or complaint in accordance with the Commission's procedures.

I. Following a hearing, ~~There~~ shall be a final Opinion of the Commission issued. Commission members may also release separate concurring and dissenting Opinions. All Opinions are public. The Commission may, at its discretion, delete information that would identify the subject of the Opinions; such identifying information may be disclosed to the Council as confidential as the Commission deems necessary or at the request of the Council.

J. The Commission may not use as a basis for any fact or conclusion in its Opinion any information the source of which is not specifically identified; that is, information from anonymous sources cannot be used in an Opinion.

K. Should the Commission propose to issue a finding other than no conflict of interest or no basis for the inquiry or complaint, a draft Opinion containing findings of fact and conclusions of law must be presented to the respondent before it is finalized. The respondent shall have an opportunity to respond to the draft before it is issued, and his or her response shall be addressed by the Commission in its final Opinion.

L. The final Opinion is transmitted to the respondent prior to being released to the public. The Opinion shall, at a minimum, state the nature of the inquiry or complaint, the actions taken by the Commission to investigate the matter, the information received as a result of the investigation, the Commission's conclusions and the respondent's response, if any (which may be summarized). The Commission shall transmit a copy of the final Opinion to the Council with any enforcement recommendations.

M. The Commission may obtain the advice of legal counsel to the extent it deems such advice helpful for the resolution of an inquiry or complaint. The City Manager shall procure the services of legal counsel for this purpose at the request of the Commission. The City Attorney will not advise the Commission regarding a complaint or inquiry under this section other than representing the Commission in connection with the judicial enforcement of a subpoena.

3.04.070 Prohibited conduct and interests.

A. Participation Prohibitions. A covered person may not participate in:

1. Any matter, except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to that matter, if, to his or her knowledge, he or she or his or her ~~immediate family member~~ qualified relative has an interest therein.

2. Any matter, except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to that matter, when any of the following is a party thereto:

a. Any business entity in which he or she or his or her ~~immediate family member~~ qualified relative has a direct financial interest of which he or she may reasonably be expected to know.

b. Any business entity of which he or she is an officer, director, trustee, partner, or employee, ~~unless he or she holds such a position in an ex officio capacity authorized by the Council~~, or of which he or she knows any ~~immediate family member~~ qualified relative holds such a position.

c. Any business entity with which he or she or, to his or her knowledge, any ~~immediate family member~~ qualified relative is negotiating or has any arrangement concerning prospective employment.

d. Any business entity that is a party to an existing contract with the covered person or that the covered person knows is a party to a contract with any ~~immediate family member~~ qualified relative if the contract could reasonably be expected to result in a conflict between the private interest of the covered person and his or her official duties.

e. Any business entity doing business with the City in which a direct financial interest is owned by another business entity in which the covered person has a direct financial interest, if he or she may be reasonably expected to know of both direct financial interests.

f. Any business entity that the covered person knows is his or her creditor or obligee, or that of any ~~immediate family member~~ qualified relative, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the covered person or any ~~immediate family member~~ qualified relative.

B. If a disqualification pursuant to subsection A of this Section leaves any body with less than a quorum capable of acting, or if the disqualified covered person is required by law to act or is the only person authorized to act, the disqualified person shall disclose the nature and circumstances of the conflict and may participate or act.

C. Employment or Financial Interests—General Restriction.

1. Prohibitions. Except as permitted by statute regulation or opinion of the Commission when the interest is disclosed or when such employment does not create a conflict of interest or the appearance of a conflict of interest, a covered person may not:

a. Be employed by, or have a financial interest in, any business entity subject to the authority of his or her governmental unit or any business entity which is negotiating or has entered a contract with his or her governmental unit; or

b. Hold any other employment relationship or have any financial interest that would impair the impartiality or independence of judgment of the covered person.

2. Exceptions. The prohibitions in paragraph 1 of this subsection do not apply to:

a. A covered person who is appointed to a board, commission, or task force pursuant to a provision authorizing persons subject to the jurisdiction of the board or commission or affected by the recommendations or actions of the task force to be represented in appointments to it;

b. Subject to other provisions of law, including subsection A of this Section, a member of a board, commission, or task force in regard to a financial interest or employment relationship held at the time of appointment, provided it is publicly disclosed to the appointing authority and the Ethics Commission;

c. A covered person whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest;

d. If authorized by an opinion or regulation of the Commission, a Councilmember who has only infrequent conflicts of interest or apparent conflicts of interest and who recuses him or herself from participation in any matters involving such conflicts or apparent conflicts. However, in no event shall the City contract with entities that employ a Councilmember in a position where the Councilmember is likely to receive a direct financial or professional benefit as a result of the contract with the City or entities in which a Councilmember has a financial interest.

~~3. A person who formerly held a position covered by this Chapter may not assist or represent another party other than the City for compensation in a case, contract, or other specific matter involving the City if that matter is one in which he or she significantly participated as a covered person.~~

~~3. A covered person may not assist or represent a party for contingent compensation in any matter before or involving the City.~~

D. Legislative Action.

1. General Legislation—No Disqualification. Subsection A of this Section does not disqualify a legislator from participating in legislative action that applies all members of a profession or occupation of which the legislator or the legislator's qualified relative ~~immediate family member~~ is a member or to the general public or a large class of the general public.

2. Suspension of Disqualification. Except as provided in paragraph 3 of this subsection, the disqualification from participation arising under subsection A of this Section is suspended if a legislator with a potential conflict files with the Ethics Commission a sworn statement that describes the circumstances of the potential conflict and the legislation or class of legislation to which it relates and asserts the legislator is able to vote and otherwise participate in action relating to the legislation fairly, objectively, and in the public interest. Legislators should file such statements as soon as practicable after discovering the potential conflict.

3. Direct and Personal Conflicts—Mandatory Disqualification. The disqualification from participation arising under subsection A of this Section may not be suspended if the conflict is direct and personal to the legislator, the legislator's ~~immediate family member~~ qualified relative, the legislator's employer, or the legislator's ~~immediate family member's~~ qualified relative's employer. This paragraph does not apply to a vote on the annual budget, in its entirety, or to participation in the Council's consideration of the annual budget. However, Councilmembers must disclose direct and personal conflicts relating to the budget in writing to the City Clerk and shall not propose or participate in the discussion of specific budget items with which they have such a conflict.

4. Action by Ethics Commission.

a. Whenever a legislator files a suspension of disqualification statement, the Ethics Commission ~~may~~ shall review the statement and may issue an advisory opinion pursuant to Section 3.04.050(A)(2) concerning the propriety of the legislator's participation in the particular legislative action, with reference to the applicable ethical standards of this Chapter.

b. The Council shall, at the request of the Ethics Commission Chair, delay consideration of a matter for which a legislator has filed a suspension of disqualification statement until fourteen days after the filing of the statement to allow the Commission to issue an advisory opinion. The Council may disregard such a request from the Chair if the Council deems prompt action to be necessary to address an emergency affecting the public health, safety, ~~and~~ or welfare, or if the requested delay would render the matter moot.

c. The suspension of the disqualification by the filing of the statement is subject to further action by the Ethics Commission if the question of conflict comes before it as to the same circumstances and the same legislator.

5. Statement of Disqualification. A legislator who is disqualified from participating in legislative action or who chooses to be excused from participating in legislative action on an ordinance or class of ordinances because of the appearance or presumption of a conflict, shall file in a timely manner a statement with the Ethics Commission that describes the circumstances of the apparent or presumed conflict.

6. Public Records. All statements filed under this subsection shall be a matter of public record.

E. Use of Prestige of Office. A covered person may not intentionally use the prestige of his or her office for his or her own private gain or that of another. The performance of usual and customary constituent or citizen services, without additional compensation, does not constitute the use of the prestige of office for a covered person's private gain or that of another.

F. Solicitation or Acceptance of Gifts.

1. A covered person shall not solicit any gift, including a charitable donation, from any person that he or she knows, or has reason to know, is doing business with the City or has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the covered person's official duty.

2. An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

23. Prohibited gifts. No covered person shall knowingly accept any gift, directly or indirectly, from any person that he or she knows or has reason to know:

- a. Is doing business of any kind with the City Council, as to Councilmembers, or, as to other covered persons, with their governmental unit;
- b. Is engaged in activities that are regulated or controlled by the covered person's governmental unit; or
- c. Has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the covered person's official duty.
- d. Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

34. Permissible Gifts. Subsection (F)(23) of this Section does not apply to gifts meeting the criteria set forth in ~~this~~ paragraphs (a) through (h) of this subsection, unless any such gift would ~~might~~ tend to impair the impartiality and the independence of judgment of any reasonable and prudent covered person receiving it, or, if of significant value, would give the appearance of doing so, or a reasonable and prudent covered person should have reason to believe that it is designed to do so. Permissible gifts, which are subject to the gift reporting requirements of Sections 3.04.080 and 3.04.085(A), include the following:

- a. Meals and beverages with a value of \$50.00 or less consumed in the presence of the donor.
- b. Ceremonial gifts or awards with a value of \$50.00 or less.
- c. Unsolicited gifts with a monetary value of \$10.00 or less.
- d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee for a meeting that ~~which~~ is given in return for participation in a panel or speaking engagement at the meeting.
- e. Gifts of tickets or free admission extended by the sponsor of the event to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy extended to the office.
- f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the City and that the gift is purely personal and private in nature. Gifts that would not be

~~detrimental to the impartial conduct of the business of the City and that are purely personal and private in nature.~~

~~g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee Gifts from an immediate family member or a child, ward or other relative over whose financial affairs the covered person has legal or actual control.~~

~~h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related in any way to the official's or employee's official position.~~

~~i. Door prizes received by a covered person at an event where the covered person is attending in his or her official capacity.~~

G. Disclosure of confidential information. Other than in the discharge of his or her official duties, a covered person may not disclose or use for his or her own economic benefit or that of another party confidential information ~~which~~ that he or she has acquired by reason of his or her public position and ~~which~~ that is not available to the public.

H. Retaliation. It is unlawful for any covered person to take any retaliatory action against any person because that person has filed a request for an advisory opinion, inquiry, or complaint in good faith under this Chapter. Covered persons are subject to disciplinary action up to, and including, termination or removal from office.

I. Participation in procurement.

1. An individual or a person that employs an individual who assists a City agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

2. The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

J. Former officials and employees.

1. A former official or employee may not assist or represent any party other than the City for compensation in a case, contract, or other specific matter involving the City if that matter is one in which the former official or employee significantly participated as an official or employee.

2. Until the conclusion of the next regular Council term that begins after the elected official leaves office, a former member of the City Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

K. A covered person may not assist or represent a party for contingent compensation in any matter before or involving the City.

¶J. This Section does not prohibit the City from imposing greater restrictions on the acceptance of gifts in appropriate circumstances.

3.04.080 Financial disclosure - Elected officials and candidates.

A. This Section applies to all elected officials and all candidates to be elected officials.

B. Except as provided in subsection (D) of this Section, an elected official, or candidate to be an elected official shall file the financial disclosure statement required under this subsection:

1. On a form provided by the Commission;
2. Under oath or affirmation; and
3. With the Commission.

C. Deadlines for filing statements.

1. An incumbent elected official shall file a financial disclosure statement annually no later than April 30th of each year for the preceding calendar year.
2. A person who is appointed to fill a vacancy on the City Council and who has not already filed a financial disclosure statement under this Section shall file a statement for the preceding calendar year within 30 days after appointment.
3. An elected official who leaves office other than by reason of death, shall file a statement within 60 days after leaving the office. 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. Candidates to be elected officials.

1. A candidate to be an elected official shall file a financial disclosure statement in accordance with this subsection unless the candidate has already filed a financial disclosure statement under another provision of this Section for the reporting period.
2. A candidate to be an elected official shall file a statement required under this Section on or before the Monday following the candidate's nomination, or, for a special election, on or before the Monday following the deadline for submission of the petition for inclusion on the special election ballot.
3. A candidate to be an elected official shall file the statement required under paragraph (D)(2) of this Section with the City Clerk.
4. If a candidate fails timely to file a statement required by this Section, the candidate is deemed to have withdrawn the candidacy.
5. The City Clerk may not place a candidate on the ballot unless a statement required under this Section has been filed in proper form.
6. Any write-in candidate seeking to pre-register with the City Clerk so that his or her name may be posted in the voting booth for purposes of identifying him or her as a candidate in accordance with Section 605 of the Municipal Charter of the City of Takoma Park must file the statement required by this Section with the City Clerk by 5:00 p.m. on the Friday prior to the election.
7. Within 7 days of the receipt of a statement required under this Section, the City Clerk shall forward the statement to the Commission.

E. Public record.

1. The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this Section.
2. The Commission or office designated by the Commission shall make financial disclosure statements available during normal office hours, for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.
3. If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:
 - a. The name and home address of the individual reviewing or copying the statement; and

- b. The name of the person whose financial disclosure statement was examined or copied.
- c. The date of the examination or copying.
- 4. Upon request by the individual whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official or employee with a copy of the name and home address of the person who reviewed the official's or employee's financial disclosure statement.
- F. Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.
- G. Contents of statement.
 - 1. Interests in real property.
 - a. A statement filed under this Section shall include a schedule of all interests in real property wherever located.
 - b. For each interest in real property, the schedule shall include:
 - I. The nature of the property and the location by street address, mailing address, or legal description of the property;
 - ii. The nature and extent of the interest held, including any conditions and encumbrances on the interest;
 - iii. The date when, the manner in which, and the identity of the person from whom the interest was acquired;
 - iv. The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;
 - v. If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and
 - vi. The identity of any other person with an interest in the property.
 - 2. Interests in corporations and partnerships.

a. A statement filed under this Section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the City.

b. For each interest reported under this paragraph, the schedule shall include:

I. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

ii. The nature and amount of the interest held, including any conditions and encumbrances on the interest;

iii. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest and, if known, the identity of the person to whom the interest was transferred; and

iv. With respect to any interest acquired during the reporting period:

I. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

II. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

c. An individual may satisfy the requirement to report the amount of the interest held under item (2)(b)(ii) of this paragraph by reporting, instead of a dollar amount:

I. For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

ii. For an equity interest in a partnership, the percentage of equity interest held.

3. Interests in business entities doing business with City.

- a. A statement filed under this Section shall include a schedule of all interests in any business entity that does business with the City, other than interests reported under paragraph (2) of this subsection.
- b. For each interest reported under this paragraph, the schedule shall include:
 - I. The name and address of the principal office of the business entity;
 - ii. The nature and amount of the interest held, including any conditions to and encumbrances on the interest;
 - iii. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest and, if known, the identity of the person to whom the interest was transferred; and
 - iv. With respect to any interest acquired during the reporting period:
 - I. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and
 - II. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

4. Gifts.

- a. A statement filed under this Section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the City.
- b. For each gift reported, the schedule shall include:
 - I. A description of the nature and value of the gift; and
 - ii. The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

5. Employment with or interests in entities doing business with the City.

- a. A statement filed under this Section shall include a schedule of all offices, directorships, and salaried employment by the individual and all persons related to the individual by blood or marriage and members of the household of the official or employee held at any time during the reporting period with entities doing business with the City.
- b. For each position reported under this paragraph, the schedule shall include:
 - I. The name and address of the principal office of the business entity;
 - ii. The title and nature of the office, directorship, or salaried employment held and the date it commenced; and
 - iii. The name of each City governmental unit with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in this chapter.

6. Indebtedness to entities doing business with City.

- a. A statement filed under this Section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the City owed at any time during the reporting period:
 - I. By the individual; or
 - ii. By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.
- b. For each liability reported under this paragraph, the schedule shall include:
 - I. The identity of the person to whom the liability was owed and the date the liability was incurred;
 - ii. The amount of the liability owed as of the end of the reporting period;
 - iii. The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and
 - iv. The security given, if any, for the liability.

7. Employment with the City. A statement filed under this Section shall include a schedule of all persons related to the individual by blood or marriage and all individuals related to the official or employee by blood or marriage and members of

the household of the official or employee that are employed by the City in any capacity at any time during the reporting period.

8. Sources of earned income.

a. A statement filed under this Section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

b. A minor child's employment or business ownership need not be disclosed if the governmental unit that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

9. A statement filed under this Section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

H. For the purposes of subsections (G)(1), (2) and (3) of this Section, the following interests are considered to be the interests of the individual making the statement:

1. An interest held by a member of the individual's qualified relative, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

2. An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

3. An interest held by a trust or an estate in which, at any time during the reporting period:

a. The individual held a reversionary interest or was a beneficiary, or

b. If a revocable trust, the individual was a settlor.

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.

J. The City Ethics Commission may take appropriate enforcement action to ensure compliance with this Section.

3.04.080 Financial disclosure:

~~A. Reporting of Gifts. This subsection applies to gifts made indirectly or on behalf of someone but does not apply to gifts received from an immediate family member.~~

~~1. Reportable Gifts. Reportable gifts include:~~

~~a. Gifts received with a value in excess of \$25.00 from a person who does business with the City, except for meals and beverages not otherwise prohibited by Section 3.04.070F.3.a.; and~~

~~b. Any series of gifts valued in excess of \$100.00 received from any one person who does business with the City within the one year reporting period.~~

~~2. Immediate Reporting of Gifts. Within 7 days of receiving a reportable gift, elected officials and City employees shall file under oath or affirmation with the City Clerk a report describing the nature of the gift, the value of the gift, and the name of the person from whom, or on behalf of whom, directly or indirectly, the gift was received. Within 10 days of receiving a report, the City Manager shall review each report to determine whether the gift is permissible under Section 3.04.050{(F)}.~~

~~3. Annual Gift Disclosure Statement. Elected officials and City employees shall file under oath or affirmation with the City Clerk annual statements disclosing all reportable gifts, or affirmatively stating that the person received no reportable gifts, during the preceding year. The statement shall describe the nature of the gift, the value of the gift, and the name of the person from whom, or on behalf of whom, directly or indirectly, the gift was received. The statement is filed by January 10th. The City Manager shall conduct an annual review of all statements filed and determine if the reported gifts are permissible under Section 3.04.070(F).~~

~~4. Volunteer Members of Boards, Commissions, or Similar Entities. Persons subject to the provisions of this Chapter solely because they are volunteer members of boards, commissions, or similar entities must file reports as described paragraph (2) of this subsection regarding reportable gifts received from any person that is a party to a proceeding before the covered person's governmental unit. Such statements are required only when reportable gifts are received within one year before the initiation of the proceeding or within one year after the conclusion of the proceeding, and must be filed within 7 days of receiving the gift or within 7 days of learning that the person giving the gift is a party to a proceeding, whichever occurs later.~~

~~5. Candidates for elective office shall file statements consistent with the requirements of paragraph (3) covering the preceding 12 months within 10 days of their nomination. If he or she fails to do so, after written notice of his or her obligation, given at least 20 days before the last day for the withdrawal of candidacy, he or she shall be deemed to have withdrawn his or her candidacy.~~

~~6. Appointees to positions covered by this Chapter who have not filed a financial disclosure statement as described in paragraph (3) shall file such a statement covering the 12 months preceding his or her appointment within 30 days after appointment.~~

~~B.—Disclosure of Potential Conflict of Interest. Covered persons shall file a financial disclosure statement when an anticipated action by the person will present a potential conflict or potential appearance of conflict with his or her personal or financial interest(s). Such a disclosure is submitted to the Commission sufficiently in advance of the action to provide adequate disclosure to the public. Such disclosure statements shall contain a full and complete statement of all facts, including a complete description of the nature and extent of the person’s financial interest(s), that present a potential conflict of interest. The requirements of this subsection do not apply to potential conflicts relating to legislative action disclosed pursuant to Section 3.04.070(D)(2) or (3).~~

~~C.—Maintenance of Financial Disclosure Statements. All statements filed pursuant to this section are maintained by the City Clerk and made available, during normal office hours, for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the City Manager may establish from time to time. The forms are retained for 3 years from the date of receipt. Any person examining or copying these statements is required to record his or her name, home address and the name of the person whose disclosure statement was examined or copied. This record, with the address redacted, is forwarded upon request to the person whose disclosure statement is so examined or copied.~~

~~D.—Forms. Except as otherwise specifically provided herein, all disclosure statements filed pursuant to this section are on a form or forms developed by the Commission.~~

~~E.—Noncompliance. Evidence of noncompliance is referred to the Commission for appropriate action.~~

~~F.—Volunteers. Except as provided in subsection (A)(3) of this section, volunteers need not submit disclosure statements if the activities for which they are volunteering involve no authority to recommend purchases or commit funds.~~

3.04.085 Financial disclosure - Employees and appointed officials.

A. This Section only applies to all appointed officials and employees.

B. A statement filed under this Section shall be filed with the Commission under oath or affirmation.

C. On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by the City, including the name of the donor of the gift and the approximate retail value at the time of receipt. If an official or employee has received no such gifts, the official or employee shall file a disclosure statement that affirmatively states that fact.

D. An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the

employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

- E. The Commission shall maintain all disclosure statements filed under this Section as public records available for public inspection and copying as provided in Section 3.4.080 (E) and (F).

3.04.090 Lobbying.

- A. A person shall file a lobbying registration statement with the Commission if the person:
1. Personally appears before a City official or employee with the intent to influence that person in performance of the official duties of the official or employee; and
 2. In connection with the intent to influence expends or reasonably expects to expend in a given calendar year in excess of \$100.00 on food, entertainment or other gifts for officials or employees of the City.
- B. A person shall file registration statement required under this section 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.
- C. Registration Statement
1. The registration statement shall identify:
 - a. The registrant;
 - b. Any other person on whose behalf the registrant acts; and
 - c. The subject matter on which the registrant proposes to make appearances specified in subsection (a) of this section.
 2. The registration statement shall cover a defined registration period not to exceed one calendar year.
- D. Within 30 days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:
1. The value, date, and nature of any food, entertainment or other gift provided to a City official or employee; and
 2. If a gift or series of gifts to a single official or employee exceeds \$100.00 in value, the identity of the official or employee.

- E. The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four years after receipt by the Commission.

3.04.090 Lobbying disclosure:

A. ~~Any person who engages in lobbying and who in connection with such lobbying reasonably expects to expend in a given calendar year in excess of \$100.00 on food, entertainment or other gifts for one or more covered persons shall file a registration form as a lobbyist with the City Clerk on or before the beginning of the calendar year in which the person expects to lobby or within 5 days after first performing any lobbying activity.~~

B. ~~The registration form required under this section includes complete identification of the registrant and of any other person on whose behalf the registrant acts. It also identifies the subject matter on which the registrant proposed to conduct lobbying activities. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form.~~

C. ~~Registrants under this section shall file a report within 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 gifts provided to a covered person. When a gift to a single covered person exceeds \$50.00 in value, or a series of gifts exceeds \$100.00, the registrant shall also identify the covered person.~~

D. ~~All registration forms and reports filed pursuant to this section are maintained by the City Clerk and shall be made available during normal office hours for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the City Manager may establish from time to time. The forms are retained for 3 years from the date of receipt. Any person examining or copying these statements shall be required to record his or her name, home address and the name of the person whose registration form or report was examined or copied. This record is forwarded upon request to the person whose statement is so examined or copied.~~

E. ~~All statements filed pursuant to this section are on a form developed by the City Clerk with the assistance of the City Attorney.~~

3.04.100 Enforcement—Violations and penalties.

A. Commission authority upon finding a violation.

1. Upon a finding of a violation of any provision of this chapter, the Commission may:
 - a. Issue an order of compliance directing the respondent to cease and desist from the violation;
 - b. Issue a reprimand; or
 - c. Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

2. Lobbying violations. If the Commission finds that a respondent has violated § 3.04.090 of this chapter, the Commission may:
- a. 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 3.04.090 of this chapter; and
 - b. Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated Section 3.04.090 of this chapter or has been convicted of a criminal offense arising from lobbying activities.
- B. The enforcement provisions set forth in Subsection (A) of this Section ~~above~~ are in addition to any other civil remedies or criminal penalties provided by applicable law.
- C. Upon direction of the City Council, the City Attorney may file an action for injunctive or other relief in the Circuit Court for Montgomery County or in any other court having proper jurisdiction for the purpose of requiring compliance with this Chapter. The court may take one or more of the following actions:
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 and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public, provided, however, that the court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations;
 3. Impose a fine of up to ~~\$1,000.00~~ \$5,000.00 for any violation of the provisions of this Chapter;
 4. Order the violator to make restitution; or
 5. Grant such other and further relief as is appropriate.
- D. Employees. In addition to any other enforcement provisions in this Chapter, a City employee who is found by the City Manager or a court to have violated this Chapter may be subject to appropriate disciplinary action in accordance with the City's personnel regulations.
- E. Other Officials. In addition to any other enforcement provisions in this Chapter, a covered person ~~who is subject to the provisions of this Chapter~~ who is found by the Ethics

Commission to have violated its provisions may, at the City Council's discretion, be subject to termination or other appropriate disciplinary action.

- F. Violation of Section 3.04.090, Lobbying, shall be a misdemeanor subject to a fine of up to \$10,000.00 or imprisonment of up to one year.
- G. Any person who is subject to the provisions of this Chapter shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate any reports, statements, or records required to be made pursuant to this Chapter for 3 years from the date of filing the report, statement, or record containing these items. These papers and documents are available for inspection upon request by the City after reasonable notice.
- H. A finding of a violation of this chapter by the Commission is public information.

Adopted this 30th day of July, 2012, by roll-call vote as follows:

Aye: Williams, Daniels-Cohen, Grimes, Male, Schultz, Seamens, Smith
Nay: None
Absent: None
Abstain: None

Note: Deleted text is shown with ~~strikeout~~ and new text is underlined. Changes made to the Ordinance following the first reading are shown in blue.