

CHESTERTOWN PUBLIC ETHICS LAW OUTLINE

*Johnnie A. Jones III, Esq.
Ethics Commission Chair*

I. Title: Town of Chestertown Public Ethics Law

II. Purpose and Policy

- A. Maintenance of Impartiality and Independent Judgment of Public Official
- B. Financial Disclosure Required to Guard Against Improper Influence Or the Appearance of Improper Influence

III. Definitions

A. “Conflict of Interest” (Supplement via State Ethics Commission Mandate)*

- 1. Precludes Governor, Lieutenant Governor, Attorney General, Comptroller, Treasurer or a Member of the General Assembly from lobbying (legislative matters) for one calendar year after leaving office*
- 2. Prohibition of 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 one (1) calendar year after terminating their registrations if they previously assisted or represented another party in the matter (reverse post-employment restriction for lobbyists)*
 - a. Does not apply to uncompensated or minimally compensated (less than 25% of grade 16) board/commission members or elected officials*

B. “Interest” (Supplement via State Ethics Commission Recommendation)**

- 1. An interest does not include an interest in exchange-traded funds (ETFs)**

IV. Administration

A. Town Ethics Commission Created

1. Five resident members and two alternates
2. Commission Attorney Admitted to practice law in Maryland

B. The Commission Shall Be the Advisory Body Responsible for Interpreting and Advising Persons Subject to the Public Ethics Law

C. The Commission Shall Be Responsible for Hearing and Deciding, On Advice of the Commission Attorney, Any Complaint Filed Regarding an Alleged Violation of the Public Ethics Law

D. Complaint and Hearing Procedure

1. Written Complaint initiated by complainant

E. Investigation

1. Subpoenas and Subpoena duces tecum issued
2. Request Commission Attorney to investigate complaint and report findings
3. Refer complaint to any appropriate authorities for criminal investigation

F. Grounds for Dismissal of Complaint

1. Does not allege facts sufficient to constitute a violation
2. No jurisdiction
3. Commission has no authority to reverse or otherwise modify a prior action of the Mayor, the Mayor and Council, or a public servant of the Town
4. Complainant fails to cooperate in Commission's review and consideration of complaint
5. Complaint is defective

6. Respondent has 15 days to cure each allegation after receipt and notice of complaint
7. No violation occurred

G. Grounds for Formal Hearing

1. Complaint alleges facts sufficient to constitute a violation of the Public Ethics Law
2. Formal Hearing
 - a. Standard of proof
 - 1) Clear and convincing evidence
 - b. Commission shall issue written findings of fact, conclusions of law, and order

H. Limitations on Commission's Power

1. The Commission does not have authority to reverse or otherwise modify a prior action of the Mayor, the Mayor and Council, or a public servant of the Town
2. Commission may request reconsideration, make recommendations or refer the matter to the Town Attorney

I. The Town Clerk is Designated Custodian of the Records and Serve as Recording Secretary to the Commission

J. The Commission Shall Be Responsible for Conducting a Public Information and Education Program Regarding the Purposes and Implementation of the Public Ethics Law

K. The Commission Shall Promptly Issue Advisory Opinions Upon Request by Any Public Servant or Person Subject to the Public Ethics Law

L. The Commission Shall Certify to the State Ethics Commission On or Before October 1 of Each Year That the Town is in Compliance with the Requirements of State Government Article, Title 15, Subtitle 8, Ann. Code of Maryland

V. Rules of Procedure – Commission Meetings

A. Adoption of Written Rules

1. Commission shall adopt written rules governing procedures for holding meetings and hearings subject to approval by the Mayor and Council

VI. Prohibited Conduct and Interests

A. Non-Participation at Meetings on Any Matter that is A Conflict of Interest Or Have the Appearances of Impropriety

1. Exceptions After Disclosure

- a. Permission by Commission opinion
- b. Exercise of administrative or ministerial duty
- c. Disqualification creates less than a quorum for action
- d. Disqualification of only person required to act

B. Areas That Pose Potential Conflict of Interest

1. Business Interest

2. Employee Interest

3. Financial (Debtor/Creditor) Interest

4. Use of Prestige of Office

a. Recommended Examples**

1) Influencing the award of a State or local contract to a specific person

2) Initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm

3) Using public resources or title to solicit a political contribution regulated in accordance with the Election Law Article; employees and public officials may not use title or public resources, State officials may not use public resources

5. Solicitation or Receipt of Gifts

6. Disclosure of Confidential Information

7. Ex Parte Contact

C. Duty to Leave Meeting or Not Participate in Deliberations

D. Exemptions and Waivers

1. Commission may make recommendation to Mayor and Council to grant exemptions and waivers or make modifications if it finds the application of this section would constitute an unreasonable invasion of privacy and would significantly reduce the availability of qualified persons for public service, and the recommendation would not be contrary to the purposes of the Public Ethics Law

VII. Financial Disclosure: Elected Officials and Candidates

A. Financial Disclosure Statement Required

B. Incumbent Required to File Annually by April 30 of Each Calendar Year

C. Appointed Officials Must File for Preceding Year Within 30 Days of Appointment

D. Anyone Leaving Office Must File Within 60 Days After Leaving Office

E. Withdrawal of Candidacy

1. The candidate is deemed to have withdrawn the candidacy if candidate fails to file Financial Statement within 20 days of *Withdrawal of Candidacy*

deadline after notice given by Town Clerk or Board of Election supervisor

F. Financial Disclosure Statement is A Public Record

1. Home addresses of elected officials, candidates, employees and appointed officials shall be redacted before making it publicly available*
2. Notice of name and address given to official, upon request, whose Financial Disclosure Statement has been copied

G. Retention Requirement: Four (4) Years From Date of Receipt

H. Contents

1. Interests in real property
 2. Interests in corporations and partnerships
 3. Interests in business entities doing business with Town
 4. Gifts
 - a. Mandatory disclosure for gift that exceeds \$20.00 or series of gifts that exceed \$100 from person doing business with Town or regulated by Town
 5. Employment with or interests in business entities doing business with Town
 6. Indebtedness to business entities doing business with Town
 7. Immediate family members employed by Town
 8. Sources of earned income
 9. Schedule of additional interests
 10. Filer must disclose a regulated lobbyist spouse and the entity that has engaged the spouse on Schedule H for statement filed on or after January 1, 2019*
- I. All Financial Disclosure Statements Shall Be Reviewed by Commission Attorney for Compliance

1. Notice of non-compliance
2. Evidence of Non-Compliance referred to Commission or Mayor and Counsel

Note: Failure of an official to file the required Financial Disclosure Statement may constitute grounds for removal from office

VIII. Financial Disclosure: Employees and Appointed Officials

A. Applies to the Following Employees and Appointed Officials

1. Town Manager
2. Housing Administrator
3. Utilities Manager
4. Recreation Commission Chairman
5. Members of the Planning Commission
6. Members of the Historic District Commission
7. Members of the Board of Appeals

B. Financial Statement Shall Be Filed Annually On or Before April 30 of Each Calendar Year

C. Contents

1. Gifts Received by town contractors and anyone regulated by Town
2. Outside employment and interest that raise a conflict or potential conflict of interest in connection with a specific proposed action

D. Exemptions or Modifications

1. Available for members of Boards and Commissions for an unreasonable invasion of privacy and would significantly reduce the availability of

qualified persons for public service and it does not violate the purpose of the Section VIII.

IX. Lobbying Disclosure

A. Lobbying Registration Statement Requirement

1. Personal appearances before a Town Official or employee with intent to influence their performance of official duties
2. Expend a gift or gifts to Town Official or employee in a calendar year that is in excess of \$250 on food, entertainment or other gifts
3. Registration statement required on or before the later of January 15 of the calendar year or within 5 days after first performing the act that require registration
4. Contents of Registration Statement
 - a. Identity and Identity of any agency relationship
 - b. Disclose identity of official or employee receiving a gift or series of gifts that exceed \$250

B. Exempt Acts

1. Professional services consultation and drafting opinions as to matters proposed or pending Town Council action
2. Appearances via invitation or request by Mayor and Council
3. Actions trustee, administrator or faculty member of non-profit independent college or university in the State which are not primarily of attempting to influence legislative or executive action
4. Appearances as official duty of elected or appointed official on behalf of political subdivision, State or United States
5. Actions of a publisher or working member of Media in ordinary course of business of disseminating news or making editorial comment to general public who does not engage in further or other lobbying that would directly or

specifically benefit the business or professional interest of that person or their employer

6. Appearances by Individuals invited by a lobbyist to appear before the Mayor and Council provided no other lobbying act is undertaken and witness discloses the invitation
7. Religious Organizations protecting rights of members to practice their religious belief
8. County and municipal lobbyist
9. Principal not required to file if s/he reasonably believes agent has or will file on behalf of Principal

X. Enforcement

A. Commission May Enforce Late Fees for Financial Disclosure Statements and Lobby Registration Statement or Lobbyist Report

1. Late fee of \$2 per day up to \$250 for failing to timely file a financial disclosure statement
2. Late fee of \$10 per day up to \$250 for failure to timely file registration statement or lobbyist report

B. Issue Cease and Desist Order Against Person Found to Be in Violation of Public Ethics Law

C. Remedies for Violations of Public Ethics Law: Commission Action

1. Issue order of compliance for Respondent to cease and desist from violation
2. Issue reprimand
3. Recommend to appropriate authority or other appropriate discipline including censure or removal
4. Violation of Section 9 (IX)

- a. Require Respondent Lobbyist to file additional reports or information

- b. Impose fine not exceeding \$5,000 for each violation
- c. Suspend Registered Lobbyist for knowing and willful violation or if s/he has been convicted of a criminal offense arising from lobbying activities

5. Commission recommends action against Respondent

- a. Removal or suspension from office filed by Commission with Mayor and Council

D. Remedies for Violations of Public Ethics Law: Mayor and Council Action

- 1. Reprimand
- 2. Conduct Hearing

Note: Failure of official to file required financial disclosure statement may constitute grounds for removal from office

E. Formal Hearings Conducted by Mayor and Council

- 1. Due Process
 - a. 20 day notice of hearing date given to Respondent
- 2. Rules of evidence shall apply
- 3. Right to fair hearing and cross examination (Due Process)
- 4. Right to counsel and discovery of exculpatory evidence
- 5. Right to discovery
- 6. Mayor and Council shall have subpoena power
- 7. Mayor and Council may request Maryland Comptroller permission to examine income tax returns of Respondent

8. Majority vote required for action
 - a. Public admonition
 - b. Public reprimand
 - c. Suspension
 - d. Demotion
 - e. Forfeiture
 - f. Removal from office
 - g. Termination of Employment and issue cease and desist order
9. Commission or Mayor and Council may direct Commission Attorney to file petition for injunctive order of relief in Circuit Court for Kent County for requiring compliance with Public Ethics Law

F. Circuit Court Action

1. Issue order to cease and desist
2. Void an official action taken by public servant with conflict of interest
 - a. Exceptions
 - 1) Appropriation of Public funds
 - 2) Levying taxes
 - 3) Providing issuance of bonds, notes or other public activity
3. Impose a fine up to \$5,000 for any violation of the Public Ethics Law each day the violation occurs
4. Additional Sanctions
 - a. Enforce employment termination or other disciplinary action if found in violation of Public Ethics Law by Commission, Mayor and Council

and Court

G. Three (3) Year Personal Required Record Retention From Date of Filing

H. Duties of All Public Servants

1. Cooperate and respond to any inquiries by Town Attorney, the Commission or the Commission Attorney in connection with an investigation of alleged or potential violations
2. Duty to Report any ethical violation
3. Duty to comply with other laws

H. Violations of Public Ethics Law

1. Criminal convictions or violation of policies regulating political activity
2. Conviction of any felony and misdemeanors involving moral turpitude
3. Finding of guilt of violating any Federal, State or Town law prohibiting discrimination against a protected class
4. Finding of guilt for sexual harassment in any Federal, State or Town law prohibiting sexual harassment is a violation
5. Found guilty of retaliation
6. Found guilty of violating any state law governing lobbying activities
7. Found guilty of violating any Federal, State or Town laws or policies regulating political activity
8. Criminal Misdemeanor offense for any person who knowingly and wilfully violate Section 9 (IX) of the Public Ethics Law

I. Conviction and Sentence

1. \$5,000 fine, and

2. One (1) year jail (or both of the above)

J. Statute of Limitations

1. One (1) year after complaint filed
2. Six (6) months (180 days) to file complaint for violation

XI. Penalties Cumulative

- A. Penalties Shall Be Cumulative and not Exclusive of Each Other or of Any Other Penalties Which May be Imposed to Any Other Laws or Policies

XII. Liberal Construction of Ordinance and Repeal of Prior Laws

- A. Provisions of This Ordinance Are to be Construed Liberally to Protect the Public Interests and Consistent to All Applicable Federal and State Laws and Applicable Provisions of the Town Charter

XIII. Severability Clause

- A. Conflicting Provision of his Chapter Shall be Considered a Separate, Distinct and Independent Part of this Chapter and Shall Not Affect the Validity and Enforceability of this Chapter as a Whole, or Any Part Other Than the Part Declared to be Invalid

*Mandated by State Ethics Commission

**Recommended by State Ethics Commission