

**BOARD OF COMMISSIONERS
FOR THE
THE TOWN OF UPPER MARLBORO**

DRAFT

ORDINANCE: 2016-04

SESSION: Regular Town Meeting

INTRODUCED: November __, 2016

AN ORDINANCE OF THE TOWN OF UPPER MARLBORO TO BE ENTITLED “PUBLIC ETHICS ORDINANCE” THEREBY ADOPTING NEW PROVISIONS REGARDING THE ORDINANCE’S PURPOSE AND SCOPE; ESTABLISHING ETHICAL STANDARDS; FORBIDING CONFLICTS OF INTEREST; PREVENTING THE IMPROPER USE OF POSITION; PROHIBITING CERTAIN GIFTS AND GRATUITIES; LIMITING THE DISCLOSURE OF CONFIDENTIAL INFORMATION; PROVIDING FOR THE HANDLING OF SPECIFIC COMPLAINTS; ASSERTING A SEVERABILITY PROVISION AND ESTABLISHING CERTAIN PENALTIES AND ENFORCEMENT MEASURES; AND GENERALLY RELATING TO PUBLIC ETHICS

WHEREAS, pursuant to § 82-16(1) (General Powers) of the Town Charter, the Board of Commissioners shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the Town Charter as it may deem necessary for the good government of the Town; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein; and

WHEREAS, unless a waiver or exemption is obtained, the General Provisions Article, Title 5 of the *Annotated Code of Maryland* requires that all incorporated municipalities in Maryland have ethics laws as required by the State for their employees and public officials, and regulations issued by the State Ethics Commission contained in Title 19A, subtitle 04 of COMAR outlining the standards for compliance with these requirements; and

WHEREAS, the State Ethics Commission has granted full exemption continuation status to the Town based on the Commission’s determination made pursuant to COMAR 19A.03.03B; and

WHEREAS, notwithstanding the State exemption and lack of State mandate to have such an ordinance, the Board of Commissioners finds that an ethics ordinance is in the best interest of the Town and further finds that conflict-of-interest laws are grounded on the notion that municipal officials owe paramount loyalty to the public, and that personal or private financial considerations on the part of municipal officials should not be allowed to enter the decision-making process.

NOW, THEREFORE, the Board of Commissioners of the Town of Upper Marlboro, State of Maryland, does ordain and enact as follows:

PUBLIC ETHICS ORDINANCE

SECTION 1: PURPOSE AND SCOPE

SECTION 2: ETHICAL STANDARDS

SECTION 3: CONFLICTS OF INTEREST

SECTION 4: IMPROPER USE OF POSITION

SECTION 5: GIFTS AND GRATUITIES

SECTION 6: CONFIDENTIAL INFORMATION; DISCLOSURE PROHIBITED

SECTION 7: SPECIFIC COMPLAINTS; BOARD ACTIONS

SECTION 8: SEVERABILITY

SECTION 9: ENFORCEMENT

SECTION 1. PURPOSE AND SCOPE

The purpose of the Town of Upper Marlboro public ethics ordinance is to provide a clear statement of the minimum standards of ethical conduct expected of Town elected officials, appointees and employees and local responsibility for compliance with adopted standards, and to avoid improper influence or even the appearance of improper influence.

SECTION 2. ETHICAL STANDARDS

In order to avoid becoming involved or implicated in a conflict of interest or impropriety or, just as important, an appearance of conflict of interest or impropriety, elected officials, appointees and Town employees shall not:

- (1) Knowingly use their office or position for personal or family gain or profit;
- (2) Act officially in a matter in which the official is privately interested;
- (3) Accept transportation, lodging, food, beverages, or anything else of more than token value offered because the official holds a Town position;
- (4) Solicit or accept rewards or items or services likely to influence the official;
- (5) Offer or provide influence in exchange for campaign contributions;
- (6) Use Town-owned property or Town services for personal or family gain or profit; or

(7) Use information acquired in confidence by reason of their official position from a Town customer, supplier, lessee or contractor for other than Town purposes.

SECTION 3. CONFLICTS OF INTEREST

(A) Elected officials, appointees and Town employees shall not knowingly engage in activities which are in conflict, or which have the potential to create conflict, with performance of official duties. No person subject to this Ordinance shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her public duties or employment.

(B) Examples of conflicts or potential conflicts of interest include, but are not necessarily limited to, circumstances where an elected official, appointee or Town employee:

(1) Influences the selection or non-selection of, or the conduct of business between the Town and any entity in which the elected official, appointee, Town employee or their spouses or domestic partners has a financial interest.

(2) Accepts any retainer, compensation, gift or anything of value that is contingent upon a specific action or nonaction by the public official, appointee or Town employee.

(3) Intentionally uses or discloses information not available to the general public and acquired by reason of his or her official position which benefits himself or herself, family, friends or others.

(4) Performs an act in other than his or her capacity as a Town elected official, appointee or employee knowing that the act without prior disclosure may later be subject, directly or indirectly to the control, regulation, supervision, inspection, review, audit, or enforcement by the official or employee, or a body in which the official is a member.

(5) Solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or any solicitation or proposal thereof.

(B) Elected officials, appointees and Town employees shall not take part in any Commission action, deliberation or vote, concerning any contract, property, or other matter of any kind, in which the public official, appointee, Town employee or his or her immediate family has a financial interest, or which otherwise creates a conflict of interest.

(C) Elected officials, appointees and Town employees shall not be deemed to violate subsection (B) of this section when they only have a remote interest in a contract or sale. Elected officials, appointees and department heads shall disclose the fact and extent of a remote interest for the official minutes of the Board of Commissioners prior to the Commission taking any action related to the interest and thereafter all action taken by the Board of Commissioners related to such interest shall be by vote sufficient for the purpose without counting the vote of the elected official or Town employee having the remote interest.

(D) Unless as permitted by statute, charter or other ordinance, and except as otherwise stated in this subsection, a Town elected official shall be prohibited from simultaneously holding multiple Town offices or appointed positions in Town government. Nothing in this subsection shall prevent the Board of Commissioners from approving the appointment of a commissioner to serve as an ex-officio member of any Town board, commission, committee or other appointed body.

(E) Members of the Town of Upper Marlboro governing body, appointees and Town staff are prohibited from being awarded contracts with the Town. Notwithstanding anything to the contrary in this subsection (E) of this section, elected officials, appointees and Town employees may have a beneficial interest in a contract with the Town under the following circumstances:

- (1) If an item of business relating to the contract comes before the elected official, appointees or town employee, the official or employee must identify the contract on the record and recuse himself or herself from acting in any way on that item. The individual shall not remain in the meeting room during the discussion of that item;
- (2) The official or employee has not lobbied the Town to enter into the contract;
- (3) The official or employee has not influenced Town policy with the primary purpose of creating the need for the contract; and
- (4) The contact cannot be made by, through or under the supervision of the official or employee, in whole or in part, or for the benefit of his or her office.

SECTION 4. IMPROPER USE OF POSITION

(A) Elected officials, appointees and Town employees shall not use the prestige of their office for their own benefit or that of another. The performance of usual and customary constituent services, without additional compensation, does not constitute the improper use of position or misuse of the prestige of office. A Town official's or employee's misuse of his or her position not only diminishes public confidence in that official or employee, but it also harms trust and confidence in the Town government as well. This prohibition means an official or employee may not use any influence he/she may have to obtain a special benefit for himself/herself or another or use Town resources for personal benefit or to benefit another.

(B) Examples of improper uses of position include, but are not necessarily limited to, circumstances where an elected official, appointee or Town employee:

- (1) Uses his or her public office and employment for personal, private or economic gain, or use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself, or others, except as provided by law.
- (2) Interferes with the ordinary course of law enforcement within the Town, or suggests or requests special favors, consideration or disposition of any law enforcement-related official, supervisor or adviser of the Town, including the President, Chief of Police, police officers, code enforcement officers, Town Attorney or administrative support staff, concerning any Town law enforcement matter including, but not limited to, parking tickets, traffic tickets, citations, municipal infractions, or the enforcement of Town ordinances.
- (3) Takes any action, or creates an appearance, that adversely affects the confidence of the public in the integrity of the Town government.

SECTION 5. GIFTS AND GRATUITIES

Elected officials, appointees and Town employees shall not, directly or indirectly, solicit any gift or accept or receive any gift, whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

- (1) It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
- (2) The gift was intended to serve as a reward for any official action on their part. Elected officials, appointees and Town employees may not accept meals or beverages from Town businesses but may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed \$100.00 in value in any 12-month period. Town officials and employees should report any gift to their immediate supervisor or the President.
- (3) This section shall not apply to gifts made to the Town as an entity. All such gifts shall be given to the President for official disposition.

SECTION 6. CONFIDENTIAL INFORMATION; DISCLOSURE PROHIBITED

Elected officials, appointees and Town employees shall not, except as required or reasonably believed to be required for the performance of his/her duties, disclose confidential information gained by reason of his/her official position or use such information for his/her own personal interest or the personal interest of another. "Confidential information" is all information, whether transmitted orally or in writing, that the official or employee has been informed, is aware, or has reason to believe is intended

to be used only for Town purposes, is not intended for public disclosure, or is otherwise of such nature that is not, at the time, a matter of public record or public knowledge. Confidential information includes, but is not limited to, personal information regarding Town officials and employees; private financial and other personal information provided by Town taxpayers, license holders, contractors, and customers; intelligence and information, including the identity of persons filing complaints; formula, designs, drawings, and research data obtained or produced by the Town, and legal opinions, and recommendations concerning Town policies and actions. Any elected or appointed official who is uncertain as to whether certain information is confidential should consult the President, or if appropriate, the Town Attorney.

SECTION 7. SPECIFIC COMPLAINTS; BOARD ACTIONS

(A) Any person may submit a written complaint to the President alleging one or more violations of this ethics ordinance by an elected official, appointee or employee. If said complaint or allegation is against the President, the complaint shall be submitted to the Town Attorney. The allegation shall set forth specific facts with precision and detail, sufficient for a determination of sufficiency. Complaints should be signed by the person or persons submitting them, include the submitter's correct name, address at which mail may be personally delivered to the submitter, and the telephone number at which the submitter may be contacted.

(B) The President or his/her designee shall inform the elected official and the Board of Commissioners of the complaint and shall submit the complaint to the Board of Commissioners for determination of sufficiency of the complaint within fifteen (15) days of its receipt. Voicemail, email or similar notification of the respondent is acceptable if actual notice is not immediately practicable. A copy of the complaint shall also be sent to the respondent by registered mail within twenty-one (21) days of receipt. A complaint cannot be sufficient unless it precisely alleges and describes unjustified acts which constitute a prima facie showing of a violation of a specified provision or provisions of this ordinance.

(C) The complainant shall have the responsibility for proving the allegations in the complaint by a preponderance of the evidence.

(D) Complaints shall be subject to a one year statute of limitations. The limitations period shall commence from the date that information on completion of the alleged misconduct was reasonably available to the public.

(E) Complaints may be amended as authorized by the decision-maker as justice requires; provided, that the time frames of the review process provide the respondent with a fair opportunity to respond.

(F) All elected officials, appointees and employees, excluding the alleged violator, shall observe strict confidentiality as to the complaint and alleged violator until the review is complete, to the extent that the information is acquired as a result of a person's status as an elected official or employee.

(G) In the event the final determination by the Board of Commissioners provides that the individual against whom the complaint has been filed has violated the ethics ordinance, the Board shall convene and render its decision within 30 days of the receipt of said determination unless an extension is requested by the respondent and granted by the Board. In the event that the Town Commissioners agree by majority vote that one or more of the violations occurred, then as to the violations, the Board may vote to take enforcement action pursuant to Section 9 of this Ordinance and/or take any of the following actions approved by a majority vote of the Board; provided, that penalties may only be based upon violations alleged in the complaint or amended complaint and not upon other violations discovered during the complaint process, unless the complainant amends his or her complaint at or prior to the time in which the Board deliberates to decide the case:

(1) Admonition. An admonition shall be a verbal nonpublic statement made by the President or designated commissioner to the subject individual.

(2) Reprimand. A reprimand shall be administered to the individual by letter. The letter shall be approved by the Board of Commissioners and shall be signed by the President or designee. If the individual objects to the content of such letter, he or she may file a request for review of the letter of reprimand with the Board. The Board shall review the letter of reprimand in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the Board of Commissioners shall be final and not subject to further review.

(3) Censure. A censure shall be a written statement administered personally to the subject individual or respondent. The individual shall appear at a time and place directed by the Board of Commissioners to receive the censure. Notice shall be given at least five (5) days before the scheduled appearance at which time a copy of the proposed censure shall be provided to the individual. Prior to the scheduled appearance, the individual may file a request for review of the content of the censure along with any statement of justification. The Board of Commissioners shall review the proposed censure in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the Board of Commissioners shall be final and not subject to further review. If no such request is received, the censure shall be administered at the time and place set. It may be given publicly, and the individual shall not make any statement in support of or in opposition thereto or in mitigation thereof. A censure shall be deemed administered at the time it is scheduled whether or not the individual appears as required.

(4) Removal. In the event the individual against whom the complaint has been filed is a member of a Town board, commission, committee, or other multi-member body appointed by the President with the approval of Board of Commissioners, the Board of Commissioners may, by a majority vote, remove the individual from such board, commission or committee; provided, however, that nothing in this section authorizes the Board of Commissioners to remove an elected official from his or her office.

(H) Action by the Board of Commissioners shall be by majority vote. If the proceeding involves a member of the Board of Commissioners, the member does not vote on any matter involving the member. Deliberation by the Board of Commissioners may be in executive session; however, upon request of the person complained against, the meeting shall be open to the public. A complaint cannot be sufficient unless it specifically alleges and describes unjustified acts, which constitute a prima facie showing of a violation of a specified provision or provisions of this ordinance.

(I) Specific Complaint Against a Town Employee. In the event the individual against whom the complaint has been filed is a Town employee, the Town shall follow the appropriate discipline, through the employee's supervisor and/or department head, and procedures as outlined in the employee handbook, and/or standard operating procedures. A violation of this ordinance by an employee shall be considered grounds for disciplinary action including termination.

SECTION 8. SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance.

SECTION 9. ENFORCEMENT.

(A) Upon direction from the Board of Commissioners, the Town Attorney may file a petition for injunctive or other relief in the Circuit Court for the County, or any other court having proper venue for the purpose of requiring compliance with the provisions of this Ordinance. The Town Attorney may seek:

(1) To have the court issue an order to cease and desist from the violation; and

(2) To have the court void an official action taken by an official or employee with a conflict of interest prohibited by this Ordinance when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 365 days of the occurrence of the official action, if the court deems voiding the action to be in the best interests of the public; provided, however, that the court may not void any official action appropriating public funds, levying taxes, or providing of the issuance of bonds, notes or other evidence of public obligation.

(B) In addition to any other action described in this Ordinance, the Board of Commissioners may vote to declare that a specific violation of this Ordinance shall be prosecuted as a municipal infraction subject to the maximum penalty permitted by the Town Charter as awarded by the court in its discretion. Each violation of this Ordinance shall be pursued as a separate municipal infraction.

(C) Town employees found to be in violation of this Ordinance may, in addition to or in lieu of a civil infraction, be further subject to personnel disciplinary actions, including but not limited to suspension or dismissal.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed repealed and superseded by the provisions of this Ordinance, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall become effective at the expiration of twenty (20) calendar days following approval by the Board of Commissioners.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.

Adopted this _____ day of _____, 2016.

THE TOWN OF UPPER MARLBORO,
BOARD OF COMMISSIONERS

Nancy C. Clagett, Commissioner

Linda Pennoyer, Commissioner

Attest:

Clerk

James Storey, President