



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

6611 Kenilworth Avenue • Riverdale, Maryland 20737

April 29, 2022

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Chief Administrative Officer
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Mr. Richard S. Madaleno, Jr
Chief Administrative Officer
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Ms. Marlene Michaelson
Executive Director - Office of the County Council
Montgomery County Council
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Mr. Robert J. Williams, Jr.
Administrator
Prince George's County Council
14741 Governor Oden Bowie Drive, Room 2027
Upper Marlboro, Maryland 20772-3050

RE: Annual Conflict of Interest and Ethics Report

Dear Recipients:

The Maryland Code, Section 5-823 of the General Provisions Article, requires the Maryland-National Capital Park and Planning Commission (Commission) to report to the governing bodies of both counties regarding certain employee ethics issues and regulations. This letter constitutes our annual report and complies with the reporting requirements for the period of January 2021 to December 2021.

I. Conflict of Interest Issues.

A. Financial Disclosure.

The Commission requires designated employees to complete and file financial disclosure affidavits annually modeled after “**Form 1**” promulgated by the Maryland State Ethics Commission. The designated employees submit these affidavits subject to the penalties of perjury. For convenient reference, I have enclosed: (1) our current financial disclosure regulations, Commission Practice 5-70, Financial Disclosure, and (2) a blank Form 1.

During the reporting period, approximately 187 M-NCPPC employees were required to file financial disclosures. These employee disclosures are in addition to disclosures filed by our ten (10) Commissioners who file forms directly with the Maryland State Ethics Commission and respective County administrations. Thus, the number of people who filed represents 7.7% of the M-NCPPC’s 2021 career workforce of 2,442 employees.

B. Conflict of Interest Inquiries and Issues.

During the reporting period, M-NCPPC fielded a number of disclosures and compliance inquiries regarding potential and actual conflicts of interest that were reported by the employees involved, their managers, or others. The inquiries/disclosures include the following scenarios (in no particular order):

- An employee and the managers from the Montgomery Planning Department sought the waiver of a conflict of interest that otherwise would prohibit the employee from participating in the competitive selection of a transportation planning contractor/consultant -- as provided in Section 2-510 of the Purchasing Manual. Specifically, the employee disclosed that their spouse was employed by a firm that eventually was named/included as a specialty subcontractor by four (4) of the 18 prime vendors/contractors competing for the agency’s RFQ for On-call Transportation Planning and Engineering Services (RFQ-41-112). After reviewing management’s justification, confirming that the spouse would not participate in the procurement or project, and obtaining the employee’s written acknowledgment that they would retain the agency’s confidential information inviolate, the Office of the General Counsel approved the employee’s participation only as a non-voting member of a five-member evaluation team. Ultimately, contracts were awarded to four (4) prime vendor firms, two of which included the specialty subcontractor that employed the spouse of our employee.
- During a public hearing to consider the Adelphi Road-UMGC-UMD Purple Line Station Area Sector Plan and Proposed Sectional Map Amendment (SMA) in Prince George’s County, two community advocates expressed concern that participation of a certain contractor/consulting firm hired by the Planning Department was tainted by a conflict of interest because the firm previously had performed private consulting work within the relevant planning area. Under applicable state and local statutes, the staff and Planning Board provides the Prince George’s County Council with quasi-legislative analyses and advice to consider in the Council’s legal

enactment of these important land use plans. In response to these concerns, the consulting firm – Torti Gallas + Partners – provided documentation describing the work done for the private developer, the individuals involved, and the safeguards it has in place to address the potential conflict of interest. The concerns were addressed further in the staff’s analysis and report of public testimony that was publicly released and considered by the Board at its meeting on April 7, 2022.

- A member the Montgomery County Planning Board inquired whether secondary employment was prohibited. They were advised that non-Commission employment is not prohibited per se, but must be disclosed and reviewed for potential conflicts and applicability of any other ethics laws.
- Prior to beginning their Commission employment, an attorney assigned to support the Planning Board and staff in Prince George’s County had worked on legal matters for a non-profit foundation associated with the Mt. Vernon historical site in Virginia. Recently, the Prince George’s County Public Schools submitted a Mandatory Referral application for the construction of a new school building with potential impacts to the Mt. Vernon viewshed. After the attorney disclosed their prior engagement, the Office of the General Counsel (OGC) supervisor determined no actual conflict of interest existed – however, to avoid any appearance of a conflict, the supervisor handled the matter directly.
- The State Ethics Commission, Office of the Inspector General (OIG), and OGC received inquiries relating to the potential for conflicts of interest associated with a member of the Montgomery County Planning Board member who was running for public office and/or soliciting campaign contributions. Subsequently, the member resigned from the Planning Board and no further action was taken.
- A member of the Montgomery County Planning Staff inquired whether participating on a Maryland state environmental advisory board presented a conflict of interest. Because the participation was for personal benefit and not official business, the employee was required to disclose this membership and obtain approval in accordance with the Commission’s Practice 2-14 for outside employment; however, the participation would be permissible because the Commission’s work did not directly intersect with the advisory board and there was no evidence of any direct relationship between the two agencies.
- A Commission employee raised concerns that an employee had abused their position to steer a particular hiring decision made by the Prince George’s County Department of Parks and Recreation. The OIG found no evidence of improper influence by the named employee and confirmed compliance with applicable agency hiring rules.
- The OIG was asked to opine on allowability of the purchase of an electronic bicycle to be used by a Commissioner in lieu of an authorized take home vehicle. The OIG determined the purchase and subsequent use was in compliance with Commission procurement requirements.

- Staff members routinely make compliance inquiries about the agency's gift, conference, and nominal value rules. Guidance is routinely provided.
- The OIG received several inquiries involving potential theft or fraud that may also implicate an abuse of position in order for the subject individuals to perpetrate and/or conceal the alleged improper conduct. Those instances were:
 - ⊕ An anonymous hotline complainant alleged an employee was abusing his/her telework privileges and not working the required 8 hours per day. The OIG met with the employee's supervisor who stated the employee was completing his/her work assignments. The supervisor agreed to increase the level of managerial oversight.
 - ⊕ An employee raised concerns about possible theft at a Commission event. Per the employee, not all cash collected at the event was processed through the point-of sale system. The OIG investigated and was unable to confirm the allegations.
 - ⊕ An employee notified his/her manager that a Facility Director was using a gymnasium within a Commission owned facility for personal use. The OIG investigated and found the allegations credible. The Agency took appropriate action with regard to the employee.

Additionally, OIG and OGC provided Ethics training to Montgomery County Planning Board members in March 2021.

II. Lobbying Disclosures.

As the result of a citizen inquiry that registered in August of 2021, the Commission's Chair and Vice-Chair tasked the Office of the General Counsel with undertaking an overall review of the agency's compliance with Section 5-830(a) of the Maryland Public Ethics Law – that is, the law that generally requires the Commission to promulgate lobbying regulations that are deemed similar to the regulations that govern lobbying the State legislative and executive branches. In addition to this compliance review, the OIG responded to a separate inquiry by issuing the report attached for your convenient reference as [Exhibit A](#). On November 15, 2021, the General Counsel issued a final compliance report that is also attached for your convenient reference as [Exhibit B](#). In general, both the OIG and General Counsel reports identified compliance deficiencies and recommended that the agency revise its lobbying rules as an immediate remedy.

Against this backdrop, the agency's legal and policy teams partnered to draft major revisions to the Commission's Administrative Practice No. 5-61. The staff report dated January 19, 2022, that outlines the changes proposed by staff is attached for your convenient reference as [Exhibit C](#). After agency legal staff consulted with the legal staff from the Maryland State Ethics Commission, the Commission ultimately voted on January 19, 2022, to approve the new Practice No. 5-61 that is attached at [Exhibit D](#). The Practice was updated to ensure that lobbying the Commission or its Planning Boards for the purpose of influencing any administrative, legislative, quasi-legislative, or executive action, does not violate ethical norms or erode the trust placed by

the public in Commissioners, appointees, and employees of the Commission. The revised Practice clarified and expanded the types of lobbying that would trigger a registration requirement for the lobbyist.

At this time, the Commission's staff has implemented the annual reporting requirements embodied in the new Practice. Due to the timing of adoption of the revised Practice, calendar year 2021 was subject to the old version of the Practice which only covered the Commission's legislative and quasi-legislative activities. During 2021 two lobbying registrations were submitted.

Notwithstanding the recent revisions to Practice No. 5-61, those regulations are properly considered to be interim rules for several reasons. First, assuming there is no reason to anticipate a gubernatorial veto, the General Assembly enacted legislation this year that may require additional revisions. 2021 Maryland H.B. 1059, "Bicounty Commissions – Ethics – Certification of Compliance". Among other things, this legislation slightly modifies the standard that applies to lobbying regulations to be adopted by the Commission.

Second, and equally as important, based on guidance from the State Ethics Commission legal staff, the agency may need to make textual changes to the interim rules in order to respond or incorporate comments made by the State Ethics Commission. The Commission's legal and policy teams will begin working with the State Ethics Commission staff in the coming weeks to initiate a staff-level dialogue in anticipation of the eventual Ethics Commission review.

Third, and finally, during the process of implementing the new Practice, the Commission staff has identified several minor adjustments that are advisable to make the application and administration less complicated. Taken together, the agency's management team anticipates presenting further revisions to be considered by the Commissioners sometime during the 2022 calendar year. Updated reporting requirements are also posted on the agency's website.

III. Ethics Regulations.

Over time, the Commission has promulgated a number of regulations to govern employee conduct and establish ethical standards. Those regulations include the Financial Disclosure rules discussed above, as well as the following documents that are accessible through the links below for your files and convenient reference:

- [Commission Practice 1-31 - Organizations and Functions of the Audit Committee and Office of the Inspector General](#)
- [Commission Practice 2-14 - Non-Commission Employment and Non-Commission Business](#) and accompanying [Administrative Procedures 03-05 - Non-Commission Employment /Business](#)
- [Commission Practice 2-15 - Employee Use of Commission Property](#)
- [Commission Practice 2-24 - Ethics](#) and [Notice 06-03 Nominal Value](#)
- [Commission Practice 2-72 - Conditions for Acceptance of Awards from Outside the](#)

Commission

- [Commission Practice 2-90 - Solicitations on Commission Property](#)
- [Commission Practice 3-31 - Fraud, Waste, and Abuse](#)
- [Commission Practice 4-10 - Purchasing Policy](#)
- [Commission Practice 5-61 - Lobbying Disclosure](#)
- [Commission Practice 5-70 - Financial Disclosure](#) and accompanying [Form 1](#)
- [Commission Practice 6-10 - M-NCPPC Vehicle Use Program](#)
- [Commission Practice 6-13 - Electronic Communications Policy](#) and accompanying [Administrative Procedures 12-01 - Mobile Technology \(Acquisition, Assignment, and Authorized use\)](#)
- [Commission Practice 6-52 - Use of Commission Facilities by the Public and Staff](#)

A number of these policies have undergone review and recent updates. Others are being reviewed as part of the comprehensive review of all agency policies, including disclosure requirements to ensure they continue to reflect organizational needs. This comprehensive review of the agency's ethics policies is now underway.

IV. Conclusion.

We hope the information provided in this report is informative and welcome any comments you have. Please feel free to contact us if you have any questions or concerns.

Sincerely,



Asuntha Chiang-Smith
Executive Director

Enclosures

cc: The Maryland-National Capital Park and Planning Commission
M-NCPPC Audit Committee
Gavin Cohen, Secretary-Treasurer
Adrian R. Gardner, General Counsel
Mike Riley, Director, Montgomery County Parks Department
Bill Tyler, Director, Prince George's County Dept. of Parks and Recreation
Andree Checkley, Director, Prince George's County Planning Department
Gwen Wright, Director, Montgomery County Planning Department

Mses. and Messrs. Jackson, Madaleno, Michaelson, and Williams

Re: Ethics Report

April 27, 2022

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Renee Kenney, Inspector General

Jennifer K. Allgair, Executive Director, Maryland State Ethics Commission