



Montgomery County Ethics Commission Annual Report for Calendar Year 2023

I. Introduction

Section 19A-6(f) of the Montgomery County Public Ethics Law requires the Ethics Commission (the Commission) to publish an annual report. The report is to summarize the actions the Commission has taken during the preceding calendar year and describe the waivers it approved and advisory opinions it issued during the year.

The Commission's mission is to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to promote and ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. The Commission does this through the administration of myriad activities.

The year 2023 was, sadly, marked by the passing on June 10, 2023, of Bruce Romer, the Chair of the Commission. Bruce was the consummate public servant and citizen of the County, and his passing was a tremendous loss to the County and to the Commission and Commission staff. The Commission also was saddened by the passing of Marc Hansen on July 15, 2023, the former County Attorney, and the Commission recognizes Marc and his office's innumerable contributions to the ethics law and to the Commission over many years.

After Bruce Romer's passing, the County Executive appointed Kenita Barrow, a Commission veteran, to the Commission to fill the vacancy on the Commission. Additional changes to the composition of the Commission occurred later in the year as two Commissioners' terms expired, and two new Commissioners were appointed by the County Executive and confirmed by the County Council.

The Commission currently has five members which is a full complement under the Public Ethics Law. They, along with the respective dates of their terms' expiration, are:

Rahul Goel	10/2024
Kenita Barrow	10/2025
Susan Beard	10/2025
Eric Gallun	10/2027
Elizabeth Kellar	10/2027

MONTGOMERY COUNTY ETHICS COMMISSION

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Bruce Romer was Chair of the Commission until his passing in June, with Jen Collins as Vice-Chair. After Bruce Romer’s passing, Jen Collins was Acting Chair until her term expired and her open position was filled. Sue Beard became Acting Chair for the December meeting. (The elections for Chair and Vice-Chair for 2024 were held at the January 10, 2024, meeting, at which Elizabeth Kellar was elected Chair and Rahul Goel was elected Vice-Chair.)

The Commission held nine public meetings in 2023. The January, February and March meetings were held online on the Zoom platform and were recorded. At the March meeting, the Commission considered how it was going to conduct meetings going forward. It adopted a recommendation from staff to adjourn its open meetings to conduct administrative functions, with reporting of open meeting minutes conforming to requirements of Maryland law at GP Art. 3-104. At the March meeting, the Commission decided that it would no longer be recording its meetings as the recording of meetings is inconsistent with County executive branch policy and creates logistical and legal issues. For example, to comply with Open Meeting Act requirements for a recorded meeting and County accessibility requirements, substantial resources would be required to be deployed to accurately caption recorded material. The Commission also decided that it would return to in-person meetings beginning with the April 11 meeting. All subsequent 2023 Public Meetings were held in-person.

II. Status of Programs and Operations

Ethics program statistics:

Performance Measures	Actual 2021	Actual 2022	Actual 2023
Number of Issuances of Formal Opinions, Waivers, or Guidance	21	21	18
Number of Lobbyists Registered	152	184	153
Number of Lobbyist Activity Reports	250	287	251
Number of Financial Disclosure Statements for Calendar Year	1814	1872	1895
Number of Outside Employment Requests	1548	2042	1852

This annual report summarizes the work of the Commission in each of the following areas:

1. **Financial Disclosure**
2. **Outside Employment**
3. **Lobbying**
4. **Complaints, Investigations and Hearings**
5. **Advisory Opinions, Interpretation and Advice, and Waivers**
6. **Education**
7. **Legislative and Regulatory**
8. **Outreach**
9. **Administration**

1. Financial Disclosure:

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The reports detail financial holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position. The Commission prepares financial disclosure forms, makes them available electronically and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers. It also resolves all anomalous circumstances and questions associated with the filing of financial disclosure reports.

There were 1895 financial disclosure forms completed by public employees in 2023. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on the employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County human resources liaisons and managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered "public employees" for purposes of the public ethics law, are also required to file reports.

With respect to full-time County employees, there was one hundred percent compliance with the requirement to file annual financial disclosure reports. Those terminating service as full-time employees were also universally compliant, and the Commission ensures this by having, in accordance with the ethics law, the County withhold the final paycheck of employees until a final disclosure statement has been filed. There are instances where the Commission is not notified of a filing employee's departure from service, and the employee is paid without having filed a final disclosure. Due to notification and enforcement challenges associated with

obtaining these reports, on occasion Commission staff treats the last filed report by the filer as a final report. This also occurs with some terminating board, commission, and committee volunteers who terminate service without filing a disclosure report after leaving County service.

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any compensated service other than County employment. The Commission utilizes the Outside Employment Online System (OEOS) to process requests for outside employment. The system provides a vehicle for review by the employing department's management and the Ethics Commission.

The Commission's staff reviews and prepares all requests for consideration by the Commission, to include obtaining additional information from requestors and County agencies and conducting preliminary legal analysis of requests. The Commission approves requests, as appropriate, setting conditions on approval as necessary to ensure compliance with ethics requirements, and staff notifies requestors by email of the disposition of requests by the Commission. The Commission publishes approved Outside Employment information required to be made publicly available by the Public Ethics Law.

The Commission acted on 1852 requests for outside employment in calendar year 2023.

A current list of outside employment approvals is incorporated into dataMontgomery's publicly available information of all currently approved outside employment of County employees. This can be found at: <https://data.montgomerycountymd.gov/Government/Outside-Employment/j6hr-qfpx/data>. Employees are notified prior to the expiration of their approvals so that new filings can be made if an employee desires to continue the outside employment.

3. Lobbying: The Public Ethics Law requires persons meeting certain criteria and thresholds who communicate with County employees to register as lobbyists and to file semi-annual activity reports with the Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund.

Since 2013, lobbying registration and activity reporting has been implemented through an online application developed by the Commission and Technology and Enterprise Business Solutions. The system has made registration easier for registrants, allowed data to be captured electronically rather than by manual processes of Commission staff, and promoted transparency for the public in accessing the online data.

These systems have resulted in almost instantaneous availability of lobbying information on the Ethics Commission's website.

<https://www2.montgomerycountymd.gov/Lobbyist/ActivityReport.aspx>

As the system is easy to use, registering lobbyists' compliance with requirements is very high. For example, 100 percent of required semi-annual reports on lobbying activity for the last several years (including 2023) have been filed. This compliance rate is in stark contrast to the

system in place prior to 2013 where compliance was irregular and there were no systems in place to measure compliance.

In calendar year 2023, 153 lobbyists registered. The total receipts for calendar year 2023 were \$19,708.30. This compares with \$23,896.50 in 2022 and 2021 receipts of \$18,650.72. Variances in the numbers of lobbyists required to register is beyond the Commission's control, but the variability in number that register may be correlated to community interest in land use matters before the County Council, particularly Master Plans.

The Commission approved a change to the lobbying system for implementation in the 2024 calendar year reporting requirements. Registered lobbyists will be required, for the 2024 reporting year and thereafter, to identify with specificity the matters with respect to which lobbying activity takes place in bi-annual activity reports.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations and hearings, makes findings, and imposes sanctions and penalties. During 2023, the Commission received few allegations of ethics violations constituting "informal" complaints. (A complaint that is made that does not meet the ethics law's requirements for submission of a formal complaint is treated as an "informal" complaint.)

Matters that do not raise issues within the jurisdiction of the Commission are closed or referred to a more appropriate office for disposition. Others are brought to the attention of the Commission and considered and addressed by the Commission. When appropriate, matters are coordinated with the County Attorney, the relevant County agency or the Inspector General. The Commission is authorized to conduct investigations on its own initiative and to bring complaints.

At the beginning of 2023, the Ethics Commission had no open investigatory matters. At the end of 2023, there were no open formal investigations or formal complaints pending before the Ethics Commission.

5. Advisory Opinions, Interpretation and Advice, and Waivers: The Ethics Commission is expressly authorized to interpret the Public Ethics Law and advise persons as to its application. It does this proactively or in response to or as a result of formal or informal inquiries. Commission staff receives a substantial number of informal inquiries from County employees and from members of the public. These questions relate to each of the programs operated by the Commission and with respect to the overall mandate of the Commission under the ethics law.

The Commission is authorized to publish advisory opinions and grant waivers of ethics law requirements, as appropriate. The Commission is required to publish its advisory opinions, or, in the event an opinion is not published, state the reasons for not publishing the opinion.

The Commission published four advisory opinions during calendar year 2023, the full text of which can be found at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/opinions/2023.html>

The Ethics Commission issued fourteen waivers, which are published at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2023.html>

Brief summaries of the opinions and waivers appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of any opinion or waiver to any other circumstances.

Advisory Opinions

The Ethics Commission issued 4 advisory opinions during 2023.

Advisory Opinion 23-04-009. A public employee sought advice from the Ethics Commission with respect to two activities the employee proposed to participate in as a County official. In one, the employee wanted to speak with officials of a midwestern city in connection with a former employee's firm's provision of consulting services to the city. The second activity involved a request to interview the employee on County property for a video/podcast series highlighting best practices for government technology adoption and constituent communication. The entity requesting to interview the employee was identified to be a County vendor that does business with another County agency. The interview would take place on County property that is under the control of the County employee.

The Ethics Commission opined that neither circumstance implicated a prohibition of the County's ethics law. The Commission reasoned that the employee did not have any economic stake in the matters and the activity is related to the employee's duties in conducting government business.

The Commission observed that while the circumstances did not implicate a prohibition in the ethics law, the Commission recommended that the invitations to outside speaking events arranged by consultants or accepting invitations to be interviewed (by a vendor) should, as an internal control, be reviewed by an employee's chain of command to provide assurance that an employee is not abusing the employee's position and is in fact carrying out these activities in furtherance of County government. In determining whether to authorize an employee to make an official presentation at a conference or other speaking opportunity, an agency necessarily would have to determine that it is in the Government's interest for the employee to participate and that the event is an appropriate forum for the exchange of information relevant to the programs, operations, or responsibilities of the agency. In making this determination, the employee's supervisor should consider a number of factors, including the amount of official time to be used, the cost to the government of attendance, the identity of the sponsoring entities, the risk that undue self-advancement rather than government benefit motivates involvement in the activity,

and the extent of participation by other government entities or businesses with which the County regularly interacts. With such a review, there is a substantially reduced likelihood of a misuse of the prestige of office.

Advisory Opinion 23-05-010. Employees in the County Executive’s Office inquired about the extent to which the ethics law imposes restrictions on appointees of the Sports Advisory Committee which is designed to reflect the diversity of the County in several respects, including “sports represented.” Several of the persons under consideration for appointment have contracts or grants with the County, including with the Department of Recreation, the County agency that will provide staffing to the Sports Advisory Committee.

The Commission concluded that pursuant to 19A-4(m) of the County Code, members of the Sports Advisory Committee are public employees, and subject to the requirements of the public ethics law. The Commission considered the application of three provisions of the ethics law that in theory could be implicated by members of the Sports Advisory Committee being employed by or owning and operating entities with contracts with the County: 19A-11, conflict of interest; 19A-12, prohibited outside employment and prohibited holdings; and 19A-14, misuse of prestige of office for private gain.

The prohibition of 19A-11 applies with respect to "any matter that affects, in a manner distinct from its effect on the public generally . . ." certain interests. The product of the advisory group is an annual report, which relates to sports participation and recommendations to improve the quality, quantity, and variety of sports opportunities. The Commission found that there was no benefit conferred to specific interests through the generation by the Sports Advisory Committee of recommendations to the County Council and County Executive about how County resources could be applied to promote the Committee’s general objective “to improve the quality, quantity, and variety of sports opportunities and facilities in the County”; any benefit to a specific organization would require the County Council or the County Executive to take action that advances specific interests.

The general nature of the duties of the Committee and the intervening steps between Committee recommendations and any specific legislative or executive action supports the conclusion that the Committee does not work on “matters” that affect interests “in a manner distinct from its effect on the public generally.” Recommendations of a general nature such as those recommending more facilities of a certain sort, or more after school sports, or more inclusive sports programming would not raise an issue even if a particular member’s contracts or sports interest would potentially benefit from the recommendation being executed (as being a provider of activity consistent with the general recommendation). The recommendation would not be specific to the vendor or group but to the class of entities that could in theory seek to answer to the recommendation being made. A caveat the Commission noted would be that this analysis would not apply to recommendations naming specific entities or specific contracts or allocating resources to particular vendors.

The Commission also considered any limits imposed by the outside employment prohibition and prohibited holding provision of the ethics law. 19A-12(b) provides: that unless the Commission grants a waiver . . . , a public employee must not: (1) be employed by, or own more than one percent of, any business that: (A) is regulated by the County agency with which the public employee is affiliated; or (B) negotiates or contracts with the County agency with which the public employee is affiliated; or (2) hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee. The restriction of 19A-12(b)(1)(A) and (B) extends only to entities regulated by or contracting with the agency with which the public employee is affiliated. This begs the question of what agency the Sports Advisory Board is affiliated with, if any. The Committee is provided services by the Department of Recreation, but this support does not create an affiliation required by 19A-12. ("With regard to § 19A-12(b)(1)(B), the Commission has stated that a board member is not affiliated with a County agency if that agency solely provides staffing for the board member's board." Advisory Opinion No. 03-014 (April 8, 2003).)

The Commission concluded that the Sports Advisory Committee, the primary duty of which involves reporting to the County Executive and County Council, is not affiliated with any other County agency. There is no 19A-12 prohibition on ownership of any interests of entities that are regulated by or contract with County agencies (other than the Sports Advisory Committee itself). The Commission also does not believe that there is any implication of 19A-12(b)(2) to any Sports Advisory Committee member by virtue of economic relationships with entities that contract with County agencies on matters related to recreation. The County will be receiving exactly the services it expects from appointing persons to the Sports Advisory Committee who have employment relationships with entities that provides sports related activities to the County pursuant to County contracts and grants. The Commission notes the intent of an exception (19A12(c)(1)(C)) that excludes from coverage of 19-12(b) prohibitions a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must forward a record of the disclosure to the Commission, which must keep a record of the disclosure on file. This provision reflects an understanding that there would be circumstances where board, committee, or commission members would have employment related to service as a member, but that the provisions of 19A-12 would not apply because, in effect, the relationships were open and notorious.

19A-14(a) provides: Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection. The theory here would be a member of the board could be using the presence on the board to advance the employee's private employer or business. This provision is a more general provision than the financial conflict of interest provision and therefore can cover a broader array of circumstances. The Commission does not believe that this provision reaches service on an advisory board like the Committee where the services provided are exactly what the board is supposed to be doing in terms of

making recommendations, which is very much akin to the usual and customary (constituent) services allowed under 19A-14(a).

The Commission concluded that none of the ethics prohibitions of the Public Ethics Law relate to appointments to this board, as long as the board members would not be making recommendations that name specific vendors and private entities to be advanced through the recommendations. The opinion was limited to the Sports Advisory Committee. The Commission notes that the mandates of County boards, committees and commissions are varied, so the design of each one has to be individually examined against ethics requirements.

Advisory Opinion 23-09-013. The Ethics Commission reviewed the circumstances around the possible selection of an individual to a senior agency position. The individual's spouse was identified as the supervisor of the person who would be the direct supervisor of the individual and has general responsibilities for the administration of the agency.

The Commission determined that the appointment of the selectee would create ethics issues for the spouse of the individual who would be selected. The Commission commented that the selection of the individual to the position brings with it inherent appearance problems and understands that the agency is asking the ethics question as a result of the operation of the merit selection process. Before rendering its opinion, the Commission sought, on August 23, 2023, a legal opinion from the County Attorney's office on whether the regulatory provision COMCOR 19A.14.02.2.5a could legally be read or interpreted by the Ethics Commission to bar the hiring of the individual where, arguably, the appointed position was under the supervision and control of a relative. On September 8, 2023, the County Attorney opined that COMCOR 19A.14.02.2.5a was invalid and could not be read by the Ethics Commission to bar the personnel action. The County Attorney's rationale was that the regulatory provision was inconsistent with the ethics law provision at 19A-14(d)(2).

The County's ethics law includes an anti-nepotism provision that among other things states: A relative of a public employee must not be employed in a position if the public employee: (A) would exercise jurisdiction or control over the position; *and* (B) advocates the relative's employment. [Emphasis added.] Commission regulations provide at 19A.14.01.02.4: A relative of a public employee must not be employed in a position if the public employee: a. Would exercise jurisdiction or control over the position; *or* b. Advocates the relative's employment. [Emphasis added.] The regulations track the statutory prohibitions with one exception; the regulatory prohibition on employment uses the word "or" instead of the statutory provision "and" so that under the regulation either exercising jurisdiction or control over the position or advocating a relative's employment creates a disqualifying situation in hiring. The regulation thereby expands the scope of the statutory provision requiring both exercising jurisdiction and control over a position "and" advocacy for the relative's employment.

The County Attorney opined that the regulation is broader than the ethics law provision as it substitutes "or" for "and", thereby expanding the scope of the prohibition. The County Attorney

stated: Although courts generally defer to agency expertise in regulations they promulgate, courts will not "give effect to agency regulations that are inconsistent with or conflict with the statute the regulations are intended to implement." (Citations omitted). In such circumstances the regulations "must yield to the statute." (Citations omitted). A court would interpret COMCOR § 19A.14.01.02.5 as in conflict with, and therefore yielding to, § 19A-14(d)(2). There is a material difference between prohibiting certain action when two conditions are present and prohibiting that action when only one of those two conditions is present. As noted above, COMCOR § 19A.14.01.02.5 is invalid, and it cannot legally be read or interpreted by the Ethics Commission to effectively bar [the selection of the spouse]."

The Ethics Commission concluded that it was not in a position to bar the appointment. The Commission suggested the agency should inform the selectee in making its offer that in the event the selectee accepts the offer, that the selectee's holding that position would result in consequences for the individual's spouse and activate non-participation requirements. The Commission went on to state that the non-participation limits had not been examined by the Commission with respect to the prospect of the selectee taking the position that is one level removed from the selectee's spouse. The Commission suggested that these limits could be examined pursuant to a request for an advisory opinion from the spouse.

Advisory Opinion 23-10-015. Subsequent to Advisory Opinion 23-09-013, the Commission was asked to advise with respect to issues arising from the proximity of the requesting's employee's County responsibilities with those of the employee's spouse. The employee's spouse was the selectee pursuant to a merit system appointment to a position with great proximity in the chain of command to the requesting employee. The position the spouse was selected for reports to a person who reports directly to the requesting employee.

The Commission provided the general advice on the scope of the ethics law. The Montgomery County Public Ethics Law provides that "the people have a right to public officials and employees who are impartial and use independent judgment." The ethics law seeks to accomplish this through various approaches, including requiring the filing of public financial disclosures by certain employees and through a series of prohibitions. The prohibitions of the ethics law do not extend to every action an employee might take in the performance of their County role that gives rise to an appearance of a conflict of interest. And the paths available to address circumstances that may create an appearance of a conflict of interest are not limited to the application of a prohibition in the ethics law. For example, management, can address appearance of conflicts through definition of roles and responsibilities and assuring that employees are not placed in circumstances where their ability to be impartial and use independent judgment may be questioned.

The Commission advised that the County's ethics law prohibits employees from taking any action that affects a relative's economic interest in property. The Montgomery County Public Ethics Law defines economic interest to include sources of income, such as a person's salaried employment. (See Mont. Co. Code Sec. 19A-4(j)).

The Commission advised that 19A-11 of the ethics law prohibits the requesting employee from participating in matters that affect the employee's spouse's economic interest. This would include matters that specifically pertain to the employee's spouse's salary, any complaint or grievance matter that concerns or is alleged to concern any action taken by the spouse, or any other personnel matter that specifically relates to the spouse's salary. Matters that generically apply to all County employees or large subsets of employees, such as all MLS employees, would not implicate the prohibition of 19A-11(a)(1)(C). As the size of the group whose economic interests are affected by a matter narrows, the likelihood of a conflict of interest increases if the group includes an employee's spouse.

The Commission recounted that when the employee assumed a position with the County, the employee had been recused from matters involving the spouse's economic interests including any matter concerning salaries for MLS employees at the spouse's agency. The requesting employee had delegated that matter to the employee's deputy. In the request, the employee proposed the continuation of that recusal to the deputy.

Counsel to the Commission had previously advised that "Having a subordinate execute responsibilities that create a conflict of interest for a superior should be avoided where possible." The Ethics Commission reaffirms that where possible, any assumption of responsibilities from a recusal of the nature contemplated should not be assigned to a subordinate. In this way, any pressure felt by a subordinate to make a decision that affects the superior's financial interests (through the superior's spouse's economic interests) is minimized.

If the requesting employee were to intentionally put pressure on a subordinate to advantage the spouse, that would quite obviously be a misuse of office for private gain pursuant to 19A-14 of the County Code. In theory, without the presence of overt misuse of the prestige of office, a recusal down the chain of command would not result in a violation of the prohibition against working on matters affecting a relative's financial interest. However, it nonetheless would create an appearance issue for the requesting employee to be rating and managing the persons who are directly responsible for the personnel matters and actions pertaining to the employee's spouse. This "appearance issue" is not specifically prohibited by the ethics law. But just because something is not prohibited does not mean that it is a good idea to engage in that conduct.

The Commission noted that while there are limits to what an ethics law can reasonably prohibit or how well a recusal system can create immunity from appearance issues, the objective of the Montgomery County Public Ethics Law is to provide the people with public officials and employees who are impartial and use independent judgment.

There are other matters that the requesting employee might be asked or expected to work on that present an appearance issue that do not implicate an express prohibition of the ethics law. To this end, the Commission noted that the requesting employee's request for an opinion indicates that general oversight responsibilities of the agency's programs and policies would be executed by two of the employee's subordinates. The employee stated that the employee's role involving the agency where the spouse would be working would concern issues that "span multiple

departments or are of significant community impact.” This was offered as another guardrail to limit conflicts of interest.

This proffer suggests that given the breadth of the employee’s responsibilities, there would be limited instances where the employee would be actively involved in matters involving the spouse’s agency except with respect to the most serious issues to the County. Given the employee’s spouse’s senior role at the agency, it would certainly be foreseeable that the employee’s job responsibilities would bring the employee into direct contact with the spouse on matters of great import to the County. Here again, there is no ethics restriction that prohibits this type of activity. Whether it presents an appearance issue to be avoided is a decision to be made by the employee’s superior. It is important that all relevant people up and down the employee’s chain of command be made aware of the limitations on the requesting employee’s work on matters where the spouse is involved. Further, with respect to the employee’s supervisor, the Commission emphasized the importance of sharing the opinion with that person so that that person can best determine how the County can avoid the appearances of conflicts of interest that could accrue as well as engage in implementing the recusals to which the employee has committed.

Waivers.

The Ethics Commission issued 14 waivers in 2023.

Nine of the 14 waivers related to outside employment activities.

A public employee is prohibited, pursuant to § 19A-12(b)(1)(B), from being employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver. Many employees are notified of the prohibition after they have submitted a request for outside employment, and it has been reviewed by management or the Ethics Commission. In general, outside employment waiver applications are granted where there is no relationship between the conduct of the employee’s County duties and the outside employer, and the duties performed in the outside position do not relate to the contract between the County and the outside employer. In short, they are approved where there is no actual conflict of interest.

The waivers issued of 19A-12(b)(1)(B) involved the following employees:

<u>W-23-01-002</u>	Imani Marcel	DHHS
<u>W-23-02-003</u>	Pauline Wilson	DHHS
<u>W-23-02-004</u>	Pauline Wilson	DHHS
<u>W-23-04-007</u>	Daniel Hill	DHHS
<u>W-23-05-011</u>	Rogger Benitez	DHHS
<u>W-23-07-012</u>	Ingrid Lizama	DHHS

W-23-10-014	Felicia Adjei	DOCR
W-23-12-016	Vincent Batteast	DHHS
W-23-12-017	Jason Davila	REC

These waivers are not discussed in detail here and can be reviewed by clicking on the individual links or at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2023.html>

The other five waivers issued involved requests for waivers of the application of other provisions of the ethics law and abridged versions of these waivers can be found below. The complete waiver documents can also be found at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2023.html>

Waiver 23-01-001. Mary Marcou Fertig was a Senior Permitting Services Specialist, Grade 26, assigned to the Water Resources Division (WR), Montgomery County Department of Permitting Services (DPS). Ms. Fertig held the same position in the County for seven years. Ms. Fertig requested a waiver in connection with her desire to enter into an agreement with Bohler Engineering (Bohler), a consulting engineering firm, for employment after she was to leave County service. In her capacity as a Senior Permitting Specialist, she significantly participated in the approval process of plans submitted by Bohler to DPS.

The post-employment prohibition in 19A-13(b) of the County's Public Ethics Law provides: For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business if the public employee significantly participated during the previous 3 years: (1) in regulating the person or business; or (2) in any procurement or other contractual activity concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

Ms. Fertig sought a waiver of the application of the prohibition of 19A-13(b) so that she could be engaged by Bohler after she terminated service to Montgomery County.

In the summer of 2022, Ms. Fertig became aware of a job listing for a Quality Control Engineer/Subject Matter Expert on the Bohler website. This position would not be responsible for matters of compliance with specific jurisdictions. The position of Quality Control Engineer performs internal reviews at established internal milestones, the most important being before the full set of land development construction plans are released to the field for construction. Bohler has 29 offices and over 800 employees. There is no office located in Montgomery County. This QC Engineer position serves seven offices that comprise Bohler's Mid-Atlantic Region (VA, DC, DE, and MD.) The position is primarily remote but would be connected to either the Bowie, Maryland or Herndon, Virginia office.

It was submitted that there is no expectation or need for contact with any agencies in any jurisdiction, Montgomery County included, because the position does not consider jurisdictional regulations, policies, codes or procedures for plan approval and permit issuance. When Ms. Fertig began conversations with Bohler in the summer of 2022, she did not have any Bohler plans before her under review. There were two Bohler projects that were subsequently assigned to Ms. Fertig after her conversations began with Bohler. With respect to these projects, Ms. Fertig contacted her manager and requested that these projects be reassigned, and she had no involvement with review of either.

Ms. Fertig submitted that the proposed terms of her employment with Bohler specifically exclude her from working on any Bohler project located in Montgomery County for one year after her separation from service, regardless of prior involvement or discipline. Based on the facts presented to the Commission, the Commission granted a waiver of 19A-13(b) on the basis that the proposed employment is not likely to create an actual conflict of interest.

The Commission cited several factors in granting the waiver. The Commission observed Ms. Fertig's attention to compliance with and avoidance of conflict of interests when she applied for a position with Bohler. Moreover, the Commission noted that the proposed employment contract observes a one-year break on Ms. Fertig's working on Montgomery County matters. That break created a buffer between Ms Fertig and her former agency for the period established by 19A-13(b). Ms. Bohler's proposed employment with Bohler also would not rely on Ms. Bohler's knowledge of Montgomery County requirements, operations or staff. The Commission also noted that the Bohler applications were a relatively small percentage of Ms. Fertig's overall County workload. While the Commission made its waiver decision on the basis that the employment with Bohler did not create an actual conflict of interest, the Commission believes that the nature of Ms. Fertig's County job involved dealing with a broad array of regional landscape design and engineering firms. In this regard, the Commission observed the importance of the County being able to hire persons with specific professional credentials who may be disinclined to join the County if as a result the person would be locally unemployable in the area of the employee's professional expertise after leaving County service.

Waiver 23-03-005. John Riehl retired from his position as Chief of the Traffic Management Division on December 31, 2022, after 34 years of County employment. He began working for the Montgomery County Department of Transportation (MCDOT) in 1988 and was part of the team of frontline innovators that developed the County's nationally recognized Advanced Transportation Management System (ATMS). This team focused on how to maximize and harness the power of the traffic signal system in Montgomery County. Mr. Riehl sought a waiver so that he could seek employment with Mead & Hunt, a national full-service architectural and engineering firm which has established contracts in the metro area concerning advanced traffic signal systems. Mead & Hunt was the MCDOT's contractor on its Engineering Services Contract numbered 1069764-1, which went into effect on February 16, 2018, and expired on February 15, 2023. Pursuant to this contract, Mead & Hunt provided consulting services to the County directly related to transportation management, including the timing of traffic signals,

coordination plans, special event traffic control review, signal design, and keeping projects regarding equipment deployment and integration moving forward.

As Chief of the Traffic Management Division, Mr. Riehl managed 50 employees. His duties included day-to-day operational and programmatic oversight over the Traffic Management Center (TMC) operations, signal shop, signal engineering, ATMS engineering, computer systems support, a stock inventory system, personnel management, and program management of four different Capital Improvement Projects.

With such a large workforce with diverse functions spread over multiple locations, the engineering, supervisors, and senior IT staff in the division performed the project management functions on the contracts and individual tasks. Mr. Riehl's functions regarding the Engineering Services contract with Mead & Hunt included supervision of the staff's day-to-day project management functions, providing second signature on any invoice over \$10,000 (for this contract, an average of 2 invoices per month), and signing off on purchase order requests (for this contract, an average of 3 per year). Mr. Riehl was advised by the counsel to the Ethics Commission that his involvement in Mead & Hunt contract matters would likely be deemed by the Ethics Commission to constitute "significant participation" in contract matters. If so, unless Mr. Riehl obtained a waiver, he would be subject to the one-year bar of 19A-13(b) on County employees entering into an employment arrangement with any person or business if the employee significantly participated during the previous three years in a procurement or other contractual activity with the person or business.

Also, were Mr. Riehl to provide any assistance to Mead & Hunt with respect to its contract with the County – or any follow-on contract deemed to be the same matter as Engineering Services Contract 1069764-1 – he would be at risk of violation of the permanent bar of 19A-13(a). This restriction prohibits a former employee from working on or assisting any party, other than a County agency, with respect to a specific matter if the employee significantly worked on the matter as a public employee. Mr. Riehl sought a waiver of the one-year bar of 19A-13(b) so that he may be employed by Mead & Hunt and work on tasks that are unrelated to Mead & Hunt's contract with the county.

Mr. Riehl submitted that he has a very specific skill set in the ATMS field. He stated that there are a limited number of people with practical experience and an even smaller number of local engineering firms specializing in the transportation management ATMS niche. As a result, employment options for him after leaving County service are limited. He stated he is unaware of other consulting firms providing similar work in the traffic signal operations and incident management field where he can use his skill sets in the metro area. Mr. Riehl submitted that he does not believe he should have to leave the Washington metropolitan area to find work. Mr. Riehl indicated that employment with Mead & Hunt would not be a quid pro quo for work he performed while he was with Montgomery County or otherwise constitute a conflict of interest or unfair advantage to him. He also asserted that Mead & Hunt would not gain any unfair advantage regarding Montgomery County and service contracts. Mr. Riehl did not leave County service to take a job with Mead & Hunt. He explained that he retired from the County because he had already maximized benefits under the County pension system. Working for the County

beyond the date of maximization of benefits is not financially incentivized under the County's Employee Retirement System for those employed before October 1, 1994.

After receiving a written request and pursuant to 19A-8(c) of the ethics law, the Commission may waive the prohibitions of Section 19A-13(b) if it finds that: (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (2) the proposed employment is not likely to create an actual conflict of interest. Ethics Commission staff contacted Chris Conklin, the MCDOT Director, as to whether he was supportive of the waiver request. Mr. Conklin indicated that he had no reason to believe that there was a conflict of interest associated with the employment opportunity. He stated that he does not believe that Mr. Riehl's employment with the firm is a cause for concern. Further, he indicated that Mr. Riehl's area of expertise is highly specialized and his continued service in the industry is likely to be beneficial to the public, generally.

Based on the facts as presented by Mr. Riehl and taking into account the views expressed by the MCDOT Director, the Ethics Commission granted a waiver of 19A-13(b) subject to Mr. Riehl not being involved in any Montgomery County government related activity on behalf of Mead & Hunt for one year from the date of his termination from County service. Mr. Riehl has a continuing obligation under 19A-13(a) prohibiting him from working on or assisting any party, other than a County agency, with respect to a specific matter where he significantly worked on the matter as a public employee.

Waiver 23-03-006. Christine Hong was the Director of Homeless Services at Interfaith Works (IW). She was subsequently appointed by the County Executive to the position of Chief of Services to End and Prevent Homelessness (SEPH) in the Department of Health and Human Services.

The County Code at 19A-11(I) and (J) provides that unless permitted by a waiver, a public employee must not participate in any matter if the public employee knows or reasonably should know that any party to the matter is: any business or individual that in the previous 12 months employed the employee or an immediate family member of the employee; or any business in which the employee or an immediate family member of the employee was an officer, director, trustee, or partner in the previous 12 months. The prohibitions of 19A-11(I) and (J) are intended to prevent the lack of impartiality that is presumed to occur when County employees are called up to work on a matter in which their immediate past employer (somebody that compensated them in the prior 12 months) is a party to the matter. Because of the significant role of IW in homeless services and the interaction between SEPH and IW in carrying out the SEPH mission, Ms. Hong would not have been able to fulfill the duties of her position without a waiver of the prohibition in 19A-11 from the Ethics Commission pursuant to 19A-8(a) of the ethics law.

Section 19A-8 of the Montgomery County Code states that the Commission may grant to a public employee a waiver of the prohibitions of Sections 19A-11(1)(2)(I) and (J) if it finds that: the best interests of the County would be served by granting the waiver; the importance to the County of a public employee or class of employees performing official duties outweighs the

actual or potential harm of any conflict of interest; and granting the waiver would not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

Subject to several conditions, the Ethics Commission granted a waiver of 19A-11(I) and (J) pursuant to 19A-8(a).

SEPH is a division within DHHS that supports many of the most vulnerable members of the Montgomery County community. SEPH has a recommended FY24 budget of \$66,314,688 and has 137.40 full time personnel that carry out SEPH's mission of creating effective systems in our community to end homelessness. IW is one of the primary nonprofit organizations dedicated to addressing the needs of the homeless in Montgomery County and the County has contracts with IW that result in payments to IW in the millions of dollars each year.

Ms. Hong spent over 17 years working at Interfaith Works on issues related to eliminating homelessness. Interfaith Works provides emergency shelter, supportive housing, essential needs, and employment programs to over 35,000 residents of Montgomery County each year. As the Director of Homeless Services with IW, she oversaw the programs of one of the largest homeless services providers in Montgomery County. In support of Ms. Hong's submission, the CAO states that Ms. Hong "is a trusted leader in the regional efforts to end homelessness. Her in-depth knowledge of the County's homeless services landscape makes her the best candidate to lead SEPH in its duties to support the needs of the County's most vulnerable populations."

The County and IW work collaboratively on a number of programs. As the Director of Homeless Services at IW, Ms. Hong was involved in managing these collaborations with the County for IW. As Director of SEPH, Ms. Hong, subject to the conditions in this waiver, would be responsible for the execution of the County's part in these collaborations.

Ms. Hong was recruited by the County Executive for her deep knowledge base of issues related to homelessness and successful implementation of services for persons experiencing homelessness in Montgomery County. The CAO has attested to Ms. Hong being the best person for this role and has whole-heartedly given his support to Ms. Hong's request for a waiver of ethics law to carry out the work of SEPH as its new Director.

At the Council interview on March 28, Ms. Hong specifically addressed the 19A-11 conflict of interest issue before the Commission. The Council demonstrated overwhelming support of Ms. Hong for the position of SEPH director, notwithstanding the conflict-of-interest issue. In fact, some of the Councilmembers specifically referenced the source of the conflict -- her experience as Chief of Homeless Services at IW -- as also being what particularly qualifies her for the position of Director of SEPH.

The submission of Ms. Hong recognized the particular sensitivity to procurement matters involving IW. The request for a waiver submitted that "as an additional safeguard to limit the perception of conflicts of interest, all contract administration actions related to IW will be assigned to another DHHS employee for a period of 12 months." The Commission noted that

Ms. Hong also states in her submission that “as Chief of SEPH, I will be completely impartial in all matters related to IW and will give all homeless organizations equal consideration on all matters.”

There are three separate findings the Ethics Commission must make to grant a waiver under 19A-8(a). With respect to Ms. Hong’s request, the Commission made all three findings based on the support for the waiver from the CAO and the support for Ms. Hong’s appointment as reflected in the interview conducted by the County Council on March 28. The Ethics Commission found that the best interests of the County would be served by granting the waiver. Ms. Hong’s value as the leader of SEPH has been attested to by the CAO and several members of the County Council and clearly, the elected officials of the County (with the CAO speaking for the County Executive) believe the appointment is in the best interest of the County, notwithstanding the prohibition in 19A-11. Likewise, the second necessary finding is that the importance to the County of Ms. Hong performing official duties outweighs the actual or potential harm of any conflict of interest; Ms. Hong’s intimate familiarity with the challenges faced by the County in addressing the needs of its homeless is well demonstrated by her experience; her interview with the Council emphasized her particular skills and abilities and the elected officials clearly believe she would be a needed and valued leader of SEPH, regardless of potential issues associated with a lack of impartiality towards her former employer. Because Ms. Hong would no longer be affiliated with IW when she begins employment with Montgomery County, there is no risk granting the waiver will result in Ms. Hong or other County employees an unfair economic advantage over other public employees or members of the public.

In reaching the conclusion that Ms. Hong merits a waiver under the standard in 19A-8(a), the Commission conditioned the waiver on Ms. Hong recusing herself from all contract actions and decisions in which IW is a party for the period of one year from the date of Ms. Hong’s termination from employment with IW. Consequently, the waiver of the one-year prohibition does not apply to Ms. Hong’s involvement in procurement decisions or contract administration where IW is a party to the matter; such matters are still covered by the one-year prohibition of 19A-11. The Commission notes that after one year has expired from her termination of service with IW, Ms. Hong will still have a disclosure requirement in the event she is involved in a procurement matter involving IW.

Waiver 23-04-008. Heather Bruskin became the first Director of the Montgomery County Office of Food Systems Resilience (OFSR) on February 13, 2023. From July 2014 to January 2023, Ms. Bruskin worked for the Montgomery County Food Council (MCFC), initially as a contractor until 2018 and then as an employee, serving as its Executive Director. The MCFC is a 501(c)(3) non-profit organization that was founded in 2011 and incorporated in 2016 and serves as the primary connection point for County businesses, non-profits, government agencies, and residents around food system issues. The County Code at 19A-11(I) and (J) provide that unless permitted by a waiver, a public employee must not participate in any matter if the public employee knows or reasonably should know that any party to the matter is: any business or individual that in the previous 12 months employed the employee or an immediate family

member of the employee; or any business in which the employee or an immediate family member of the employee was an officer, director, trustee, or partner in the previous 12 months.

The prohibitions of 19A-11(I) and (J) are intended to prevent the lack of impartiality that is presumed to occur when County employees are called up to work on a matter in which their immediate past employer (somebody that compensated them in the prior 12 months) is a party to the matter. Because of the significant role of MCFC in the administration of County food programs, Ms. Bruskin would not have been able to fulfill the duties of her position without a waiver of the prohibition in 19A-11(I) and (J) from the Ethics Commission pursuant to 19A-8(a) of the ethics law.

The OFSR was created by the County Council, with the support of the County Executive, in July 2022 pursuant to Bill 20-22 and based on the recommendation of the Montgomery County COVID-19 Food Security Task Force. OFSR is intended to streamline and coordinate the County's efforts to address local food system challenges, in collaboration with community partner organizations, including the MCFC. Achieving the mission of the OFSR, a more resilient local food system, necessitates active partnership with nonprofits, businesses, and residents engaged in increasing local food production, expanding food distribution and processing infrastructure, implementing best practices in community food distributions, and reducing the impact of the food system on the County's natural resources.

There are over 2,000 active local and regional partners engaged in food systems initiatives in Montgomery County, including more than 120 food assistance providers and over 100 farms and food and beverage businesses. The MCFC has received funding from the County government since 2012 to serve as a convener, network manager and communicator, and capacity-building entity for this broad collective of people and organizations engaged in food systems work.

The submission of the Chief Administrative Officer (CAO) in support of the waiver lists the FY23 county contracts with MCFC and the connection the OFSR has with each. (The County has in excess of \$12 million in contracts relating to food systems initiatives overall, of which the contracts with MCFC are a subset.) In support of Ms. Bruskin's request for a waiver, the CAO stated: "I strongly believe [a waiver] is in the best interest of Montgomery County Government as Ms. Bruskin's knowledge and experience is a tremendous asset to the newly established OFSR, and to the overall mission of building a more resilient food system in Montgomery County. . . . Ms. Bruskin was recruited for her deep knowledge base of issues related to food security and successful implementation of services for persons experiencing food insecurity in Montgomery County. She is the best person for this role, and therefore I whole-heartedly support Ms. Bruskin's request for a waiver of ethics law to fully carry out the work of OFSR as its new Director."

The CAO also indicated that as an additional safeguard to limit the perception of conflicts of interest, all contract and or grant administration actions (including monitoring, oversight, or selection) related to the Montgomery County Food Council will remain in the Department of Health and Human Services (DHHS) for a period of 12 months from her date of hire (February 13, 2023).

Section 19A-8 of the Montgomery County Code states that the Commission may grant to a public employee a waiver of the prohibitions of Sections 19A-11(1)(2)(I) and (J) if it finds that: 1. the best interests of the County would be served by granting the waiver; 2. the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and 3. granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public. With respect to Ms. Bruskin's request, the Commission makes all three findings based on the support for the waiver from the CAO.

The Ethics Commission found that the best interests of the County would be served by granting a waiver. Ms. Bruskin's value as the leader of OFSR has been attested to by the CAO as the representative of the County Executive. The CAO has expressed that the appointment is in the best interest of the County, notwithstanding the prohibition in 19A-11. The second necessary finding is that the importance to the County of Ms. Bruskin performing official duties outweighs the actual or potential harm of any conflict of interest; Ms. Bruskin's intimate familiarity with the challenges faced by the County in addressing the food needs of its citizens is well demonstrated by her experience. Quantifying the risks of the conflict was considered challenging as the risk was theoretical and concerns a presumption of a public employee's lack of impartiality in matters involving a former employer the employee terminated service within the prior year. Based on the representations of the CAO, the Commission concluded that these risks were outweighed by the benefit the County will receive from Ms. Bruskin's knowledge and familiarity with the important issues she would be addressing at OFSR. Because Ms. Bruskin would no longer be affiliated with the MCFC while serving Montgomery County, there is also little risk granting the waiver would result in Ms. Bruskin having an unfair economic advantage over other public employees or members of the public.

In reaching the conclusion that Ms. Bruskin merits a waiver under the standard in 19A-8(a), the Commission conditioned the waiver on Ms. Bruskin recusing herself from all contract actions and decisions in which MCFC was a party for the period of one year from the date of her termination from employment with MCFC. Ms. Bruskin also committed to delegating decisions about funding for the MCFC contract in the OFSR to another member of the County Executive's team or to OFSR staff. Consequently, the waiver of the one-year prohibition would not apply to Ms. Bruskin's involvement in funding of MCFC contracts or to procurement decisions or contract administration where MCFC is a party to the matter which would be still covered by the one-year prohibition of 19A-11.

Waiver 23-09-013. On September 11, 2023, the Department of Environmental Protection (DEP) requested a waiver of the prohibitions in 19A-14 of the ethics law and applicable regulations for the class of County employees involved in designing or implementing the Electronic Vehicle Purchasing Co-op Program (EVPC, or EV Group Buy).

In 2022, following the completion of a short pilot phase of the EVPC, DEP requested an advisory opinion from the Commission to determine if Section 19A-14 of the County Ethics Law

applied to the administration of the EVPC. On August 16, 2022, the Commission advised in AO22-08-014 that the prohibitions of 19A-14 and implementing regulations are implicated by certain aspects of the proposed EVPC and concluded that DEP would require statutory authority or a waiver of prohibitions to proceed. In light of the Commission's advisory opinion, DEP applied for and was granted a conditional waiver (Waiver 22-10-016) by the Ethics Commission on October 4, 2022, for 12 months. Recognizing that the EVPC may need to evolve during implementation, the Ethics Commission directed DEP to reapply for a waiver if it intended to continue the program after October 4, 2023, and to seek approval from the Chief Administrative Officer (CAO) for any program changes in the meantime. DEP reapplied for a waiver representing that the EVPC continues to operate as described in the original ethics waiver. The DEP does not expect any changes to program requirements or implementation to be made.

In the original application for a waiver, DEP defined program requirements and processes that address any perceived or actual circumstances covered by Section 19A-14. These elements remain unchanged. DEP submitted that the EVPC program continued to meet the waiver standard described in Section 19A-8.

DEP submitted that electric vehicles are a major potential source of emissions reductions in the County's Climate Action Plan. The EV Purchasing Co-op and Electrified Dealers Program aims to reduce the up-front costs of EVs and encourage more residents to transition to EVs sooner. With over 1,000 residents pledging to make their next vehicle electric, this program is tapping into a well of demand from the community for affordable EVs. The program is intended to reduce costs for residents who want to purchase an EV, encourage them to act or act sooner to buy an EV, and result in fewer emissions of greenhouse gases and particulate matter, which will significantly benefit the general public.

Following the granting of the ethics waiver in October 2022, DEP sent official communications from the Acting Director to dealerships to announce the launch of a new phase of the EVPC and describe requirements to participate in the Electrified Dealer program and promote dealership incentives. To date, 24 dealership locations representing nine ownership groups are participating in the Electrified Dealer Program. Six dealerships have listed incentives or special offers on the EV Purchasing Co-op Dealership Incentive website.

In pertinent part, 19A-14 provides:

- a. Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.
- b. Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.
- c. A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is: 1. generally available to the public; or 2. authorized by a County law, regulation, or administrative procedure.

The Ethics Commission regulations at COMCOR 19A.14.01 provide:

An employee must not use or permit the use of his or her Government position or title or any authority associated with his or her public office to endorse any product, service or enterprise except: a. In furtherance of statutory authority to promote products, services or enterprises; or b. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

There are three requirements to be met in order for the Ethics Commission to issue a waiver pursuant to 19A-8 of the ethics law: 1. the best interests of the County would be served by granting the waiver; 2. the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and 3. granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

The Ethics Commission granted the requested waiver to the class of persons working on the EVPC, subject to certain conditions, detailed further below. The Commission believed the request from the Director of the Department of Environmental Protection, as supported by the Chief Administrative Officer, demonstrated that the EVPC is in the best interest of the County. The information provided in the request supports that determination, and the Commission concludes based on the request and the concurrence of the Chief Administrative Officer that the best interest of the County would be served by granting the waiver. The request for a waiver outlined perceived ethics risks associated with the EVPC and then detailed the mitigating approach to each risk. In this regard, the EVPC administrators will ensure that all of the dealers will be offered the same opportunities. To ensure that the public will not perceive that the County favors particular dealers or their incentives, the EVPC administrators will make clear that the County does not endorse or guarantee any dealer representations or offers. As for the risk of personal benefit to County employees administering the EVPC, the waiver request stipulates that staff may not accept discounts not available to members of the public or, when personally purchasing a vehicle, identify themselves to dealers as being associated with the EVPC. The EVPC administrators must attest, if transacting business with dealerships doing business in the County, that no benefit unavailable to the public or due to EVPC administration was advanced to the employee. With these measures in place, and with the additional conditions of the Commission below, the Commission concludes that the importance of County employees working on the EVPC program outweighs any actual or potential harm.

As the EVPC design is not for the benefit of County employees but for County residents and the environment, there is minimal risk of potential conflicts of interest. With the stipulations, conditions, and attestations with respect to purchases by EVPC administrators described in the waiver, the Commission was satisfied that steps have been taken to assure that no public employee or class of employee will receive an unfair economic advantage over other public employees or members of the public. Of course, it would be a misuse of the prestige of office if an employee were to leverage their County position to seek for themselves or others a price or benefit in purchasing a vehicle not generally available to program participants.

The request states: “as the program proceeds it may be necessary to adjust some of [the] elements in response to feedback from participating dealers and the public.” Noting this, the Commission imposed the following conditions on the issuance of the waiver: 1. Any material change to the EVPC design must be approved by the Chief Administrative Officer, and 2. Changes to the program are not covered by the waiver.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. Commission staff routinely provides individual instruction on filling out and review of financial disclosure forms, outside employment requests and lobbying reports, and other matters falling within its jurisdiction.

Ethics training is provided through several vehicles. New County employees receive a brief ethics video, are required to sign an acknowledgement form regarding ethics obligations and are required to attend a one-hour training session conducted by Ethics Commission staff. The one-hour trainings are held every four weeks. Also, all persons who are required to file a public financial disclosure are required to take training once every three years. In 2023, this training was held on 15 different dates. Other individualized training sessions for Fire and Rescue and Police recruits were held as well as individualized training for certain agencies, such as the Housing Opportunities Commission.

The new employee training and the training for public financial disclosure filers is conducted using the Microsoft Teams platform. This allows for online presentation by Commission staff, along with appropriate PowerPoints. Further, it allows through its chat feature for Commission staff to monitor both technical problems of attendees in participation and substantive ethics questions so that the primary presenter can present without unnecessary distraction.

The Office of Human Resources Training and Organizational Development Division and the Application Management group at the Technology and Enterprise Business Solutions agency have provided support in the implementation of these training and compliance initiatives.

During 2023, Commission staff developed a new employee training video to act as a backup to the live online new employee training that new employees are required to take. New employees are automatically enrolled to take new employee ethics training. If a new employee twice fails to take the class the new employee is automatically enrolled in, the employee is notified of the requirement to access the new employee ethics training video.

Board, Committee and Commission members are also required to take training, which is administered through a one hour recorded training session. This video was developed in 2022 and new BCC members are notified of the requirement to take the training (along with other required training for BCC members.)

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations.

The Commission submitted no requests for legislative change in 2023.

8. Outreach and Other Activities: The Staff also serves as the principal public resource on the County's ethics laws, to include managing a website that reflects Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, lobbying data, and waivers and opinions.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office management areas.

Respectfully Submitted,



2/29/2024

Elizabeth Kellar, Chair