



Town of Berwyn Heights

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ORDINANCE 110 - ETHICS

AN ORDINANCE SETTING FORTH THE ETHICS RULES FOR ELECTED OFFICIALS AND DESIGNATED STAFF OF THE TOWN OF BERWYN HEIGHTS.

Section 1. Short title.

This Ordinance may be cited as the Town of Berwyn Heights Public Ethics Ordinance.

Section 2. Applicability.

The provisions of this Ordinance apply to all Town elected officials, employees, and appointees to boards and commissions of Town.

Section 3. Ethics Commission.

- a) There is a Berwyn Heights Ethics Commission that consists of 3 members appointed by the Mayor.
- b) The Commission shall:
 - 1) Devise, receive, and maintain all forms required by this Ordinance;
 - 2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this Ordinance regarding the applicability of the provisions of this Ordinance to them;
 - 3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this Ordinance; and
 - 4) Conduct a public information program regarding the purposes and application of this Ordinance.
- c) The Town Attorney shall advise the Commission.
- d) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the Town is in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, for elected local officials.

e) The Commission shall determine if changes to this Ordinance are required to be in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to Town Council for enactment.

f) The Commission may adopt other policies and procedures to assist in the implementation of the Commission's programs established in this Ordinance.

Section 4. Conflicts of Interest.

a) In this Ordinance, the following is defined as:

1) "Qualified Relative" means a spouse, parent, child, or sibling.

2) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration. "Gift" does not include a political campaign contribution regulated under Election Law Article, Annotated Code of Maryland, or any other provision of State or local law resulting in the conduct of elections or the receipt of political campaign contributions.

b) All Town elected officials, officials appointed to Town boards and commissions subject to this Ordinance, and employees are subject to this section.

c) Participation prohibitions. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(i) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(ii) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(iii) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment.

(iv) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or

which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(v) An entity, doing business with the Town, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(vi) A business entity that:

(A) The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

(B) As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

4) The prohibitions of paragraph 1 and 2 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

d) Employment and financial interest restrictions.

1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the Town agency, board, commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) This prohibition does not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

e) Post-employment limitations and restrictions.

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

2) A former official or employee may not lobby the Town for one calendar year after leaving office, where lobbying means assisting or representing another party for compensation in a matter that is the subject of legislative action.

f) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the Town.

g) Use of prestige of office.

1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

2) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.

h) Solicitation and acceptance of gifts.

- 1) An official or employee may not solicit any gift.
- 2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.
- 3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:
 - (i) Is doing business with or seeking to do business with the Town office, agency, board, or commission with which the official or employee is affiliated;
 - (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
 - (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
- 4) Paragraph (5) of this subsection does not apply to a gift:
 - (i) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
 - (ii) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
 - (iii) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.
- 5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
 - (i) Meals and beverages consumed in the presence of the donor or sponsoring entity;
 - (ii) Ceremonial gifts or awards that have insignificant monetary value;
 - (iii) Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;
 - (iv) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(v) Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(vi) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Town and that the gift is purely personal and private in nature;

(vii) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

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

i) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

j) Participation in procurement.

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

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

Section 5. Financial Disclosure – Local Elected Officials and Candidates-to-be Local Elected Officials.

a)

1) This section applies to all local elected officials and candidates to be local elected officials.

2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

(i) On a form provided by the Commission;

(ii) Under oath or affirmation; and

(iii) With the Commission.

3) Deadlines for filing statements.

(i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(iii)

(A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(B) The statement shall cover:

1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

2. The portion of the current calendar year during which the individual held the office.

b) Candidates to be local elected officials.

1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

2) A candidate to be an elected local official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

3) A candidate to be an elected official:

(i) May file the statement required under §5(b)(2)(i) of this Ordinance with the Town Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §5(b)(2)(ii) and (iii) with the Commission.

4) If a candidate fails to file a statement required by this section after written notice is provided by the Town Clerk or Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

5) The Town Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement has been filed in proper form.

6) Within 30 days of the receipt of a statement required under this section, the Town Clerk or Board of Election Supervisors shall forward the statement to the Commission or the office designated by the Commission.

c) Public record.

1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

2) Financial disclosure statements, except a candidate's home address, shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

d) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

e) Contents of statement.

1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

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

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the Town. This excludes exchange traded funds, a diversified collection of assets (such as a mutual fund) that trades on an exchange.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

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

(D) With respect to any interest acquired during the reporting period:

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

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

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

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

(B) For an equity interest in a partnership, the percentage of equity interest held.

3) Interests in business entities doing business with Town.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the Town, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances in the interest;

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

(D) With respect to any interest acquired during the reporting period:

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

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

4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20.00 in value or a series of gifts totaling \$100.00 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with or is regulated by Town.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

5) Employment with or interests in entities doing business with the Town.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the Town.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each Town agency with which the entity is involved.

6) Indebtedness to entities doing business with Town.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the Town owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

7) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the Town in any capacity at any time during the reporting period.

8) Sources of earned income.

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

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

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

f) For the purposes of §5(g) (1), (2), and (3) of this Ordinance, the following interests are considered to be the interests of the individual making the statement:

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

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

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

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

g)

1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

2) The Town Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

Section 6. Financial Disclosure — Employees and Appointed Officials.

a) This section only applies to the following appointed officials and employees: Town Administrator, Chief of Police, Code Compliance Director, Public Works Director, and Treasurer.

b) A statement filed under this section shall be filed with the Commission under oath or affirmation.

c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by Town, including the name of the donor of the gift and the approximate retail value at the time of receipt.

d) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

e) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §5(e) and (f) of this Ordinance.

Section 7. Exemptions and Modifications.

The Commission may grant exemptions and modifications to the provisions of §4 and §6 of this Ordinance to employees and to appointed members of the Town of Berwyn Heights Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this Ordinance, and the application of this Ordinance would:

- a) Constitute an unreasonable invasion of privacy; and
- (b) Significantly reduce the availability of qualified persons for public service.

Section 8. Enforcement.

- a) The Commission may:
 - 1) Assess a late fee of \$2.00 per day up to a maximum of \$250.00 for a failure to timely file a financial disclosure statement required under §6 **or** §7 of this Ordinance;
 - 2) Assess a late fee of \$10.00 per day up to a maximum of \$250.00 for a failure to file a timely lobbyist registration or lobbyist report required under §7 of this Ordinance; and
 - 3) Issue a cease and desist order against any person found to be in violation of this Ordinance.
- b)
 - 1) Upon a finding of a violation of any provision of this Ordinance, the Commission may:
 - (i) Issue an order of compliance directing the respondent to cease and desist from the violation;
 - (ii) Issue a reprimand; or
 - (iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal, if that discipline is authorized by law.
- c)
 - 1) Upon request by the Commission, the Town Attorney may file a petition for injunctive or other relief in the circuit court of Prince George's County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this Ordinance.
 - 2)
 - (i) The court may:
 - (A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, 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 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000.00 for any violation of the provisions of this Ordinance, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

d) In addition to any other enforcement provisions in this Ordinance, a person who the Commission or a court finds has violated this Ordinance:

1) Is subject to termination or other disciplinary action; and

2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

e) A Town official or employee found to have violated this Ordinance is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or other sanction.

g) A finding of a violation of this Ordinance by the Commission is public information.

Original Ethics Ordinance 110

Adopted: December 14, 1983

Effective: January 3, 1984

Re-enacted Ethics Ordinance 110

Adopted: September 14, 2011

Effective: October 5, 2011

Re-enacted Ethics Ordinance, Lobbying Amendment:

Adopted: January 11, 2012

Effective: January 30, 2012

Re-enacted Ethics Ordinance 110

Adopted: February 14, 2018

Effective: March 6, 2018