

Changes to local ethics laws or ordinances required
as a result of HB 363 (2021) and HB 1058 (2021)

Changes (italicized language below) that **must** be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04:

1. Definition for “Quasi-governmental entity”. (Md. Code Ann., Gen’l. Prov. Art § 5-101(gg-1)).

Where to add: In definition section of ethics law or ordinance.

Practitioner’s Tip: If you include definitions in either the instructions to your financial disclosure statement or on the form itself, you will need to include this definition (See No. 8).

Model Language: Model A, Section 3, Definitions, (p). Model B, Section 2, Applicability and Definitions, (e).

“Quasi-governmental entity” means an entity that is created by State statute, that performs a public function, and that is supported in whole or in part by the State but is managed privately.

2. Prohibit gift acceptance from associations engaged in representing counties or municipal or corporations. (Md. Code Ann., Gen’l. Prov. Art § 5-505(b)(2)(v)).

Where to add: In the prohibited donor portion of the gift section of conflicts of interest of ethics law or ordinance.

Practitioner’s Tip: Primarily this will affect advice you give regarding gifts given by or on behalf of the Maryland Association of Counties (MACo) or the Maryland Municipal League (MML). This requires that gifts from those entities meet some exception in your law or for some other reason be acceptable.

Model Language: Model A, Section 5, Conflicts of Interest, (f)(3)(v). Model B, Section 4, Conflicts of Interest, (h)(3)(v)

An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

...

Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

3. Prohibit disclosure of confidential information by former official or employee. (Md. Code Ann., Gen'l. Prov. Art § 5-507).

Where to add: In the confidential information portion of conflicts of interest of ethics law or ordinance.

Practitioner's Tip: Advice and enforcement matters relating to confidential information now include former officials and employees.

Model Language: Model A, Section 5, Conflicts of Interest, (g). Model B, Section 4, Applicability and Definitions, (i)

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

4. Prohibit retaliation against individual for reporting ethics violation or participating in ethics investigation. (Md. Code Ann., Gen'l. Prov. Art § 5-509).

Where to add: The end of the conflicts of interests section of ethics law or ordinance.

Practitioner's Tip: Creates a new conflict of interest provision related to retaliation. You may wish to add this to your complaint form or instructions.

Model Language: Model A, Section 5, Conflicts of Interest, (h). Model B, Section 4, Applicability and Definitions, (j).

An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.

5. Prohibit disclosure of amount of consideration received from: UMMS, State or local governmental entities and quasi-governmental entities. (Md. Code Ann., Gen'l. Prov. Art § 5-606(a)(3)(ii)).

Where to add: Financial Disclosure as public record portion of ethics of law or ordinance.

Practitioner's Tip: You will need to make certain when providing copies of financial disclosure statements to redact the consideration related to these entities (See No. 8).

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (e)(6). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (c)(6).

The Commission or office designated by the Commission shall not provide public access to information related to consideration received from:

(i) The University of Maryland Medical System;

(ii) A governmental entity of the State or a local government in the State; or

(iii) A quasi-governmental entity of the State or local government in the State.

6. Disclosure of name business trades as or does business under. (Md. Code Ann., Gen'l. Prov. Art § 5-507(a-1)).

Where to add: Financial Disclosure prior to contents of statement in ethics law or ordinance.

Practitioner's Tip: Include this in your financial disclosure instructions or on the form itself. This provision covers all of the financial disclosure schedules. While it is in the beginning of the State's version of the law, some entities have found it easier to add it into their ordinance at the end of the financial disclosure section to avoid renumbering all financial disclosure provisions.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (g). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (e).

An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

7. Disclosure of gifts from association engaged in only representing counties or municipal corporations. (Md. Code Ann., Gen'l. Prov. Art § 5-509).

Where to add: Financial Disclosure gifts to be disclosed portion of ethics law or ordinance.

Practitioner's Tip: You will need to update your instructions to the financial disclosure form and the form itself. Gifts from MACo and MML that reach the thresholds described in the law will need to be disclosed.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (h)(4)(i). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (f)(4)(i).

*A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the *County, City, or Town* or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.*

8. Disclosure of relationships with UMMS, State or local government or quasi-governmental entity. (Md. Code Ann., Gen'l. Prov. Art § 5-607(j)(1-2)).

Where to add: Financial Disclosure contents following sources of earned income to be disclosed portion of ethics law or ordinance.

Practitioner's Tip: You will need to update the instructions to your financial disclosure statement and the form itself. I am also willing to provide a copy of the State Ethics Commission's version of the statement upon request.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (h)(9)(i-ii). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (f)(9)(i-ii).

Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.

(i) An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

(A) The University of Maryland Medical System;

(B) A governmental entity of the State or a local government in the State; or

(C) A quasi-governmental entity of the State or local government in the State.

(ii) For each financial or contractual relationship reported, the schedule shall include:

(A) A description of the relationship;

(B) The subject matter of the relationship; and

(C) The consideration.

9. Attributable interests in business entities that must be disclosed. (Md. Code Ann., Gen'l. Prov. Art § 5-608(a)(2)(i-iv)).

Where to add: Financial Disclosure portion defining interests that are attributable to filer.

Practitioner's Tip: You will need to update the instructions to your financial disclosure statement and the form itself.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (i)(2)(i-iv). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (g)(2)(i-iv).

For the purposes of . . . of this chapter, 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, at any time during the applicable period, by:

(i) A business entity in which the individual held a (10)% or greater interest;

(ii) A business entity described in section (i) of this subsection in which the business entity held a 25% or greater interest;

(iii) A business entity described in section (ii) of this subsection in which the business entity held a 50% or greater interest; and

(iv) A business entity in which the individual directly or indirectly, through an interest in one or a combination of other business entities, holds a 10% or greater interest.

(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.