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City of Gaithersburg Date of Public Notice: 1/22/16

Pursuant to §5-812(a)(1) of the Maryland Public Ethics Law (Md. Code Ann., Gen Prov. Title 5 (Supp. 2015)) (“Public Ethics Law”), the State Ethics Commission advises the public and the City of Gaithersburg that the jurisdiction has not complied with and has not made good faith efforts toward compliance with the requirements of Subtitle 8 of the Public Ethics Law.

The State Ethics Commission previously reviewed and approved a draft local ethics ordinance for the City of Gaithersburg on September 12, 2013. The City of Gaithersburg then submitted a revised draft local ethics law for review, which the Commission also approved on December 12, 2013. In 2014, the City of Gaithersburg requested that the Commission grant a modification to the financial disclosure provisions for its local elected officials. The City of Gaithersburg later withdrew its modification request on February 10, 2015 in advance of the scheduled February 12, 2015 review by the Commission. The State Ethics Commission has advised the City of Gaithersburg of the listed recommended revisions to the local ethics law in writing and requested a revised draft ethics law for review and approval on November 10, 2014, December 12, 2014, May 18, 2015, June 24, 2015, October 2, 2015 and November 24, 2015.

The City of Gaithersburg did not enact the previously approved draft ethics law. The City of Gaithersburg adopted an ethics ordinance on August 17, 2015 that was different from the two prior approved drafts reviewed by the State Ethics Commission. The current enacted local ethics law was not sent to the Commission for review either before or after approval by the City. The State Ethics Commission obtained a copy of the City of Gaithersburg’s enacted local ethics law from the City’s website and reviewed the enacted local ethics law at its September 10, 2015 meeting and determined that the requirements of Subtitle 8 of the Public Ethics Law were not met in several areas. The Commission wrote to the City of Gaithersburg on October 2, 2015 and November 24, 2015 and advised that the current enacted local ethics law does not meet the requirements of Subtitle 8 of the Public Ethics Law in the following areas:

1. The enacted gift provisions include a provision that prohibits the acceptance of a gift from any business entity that is doing business with the city. The Public Ethics Law requires that provision also be extended to business entities that are seeking to do business with the City;
2. The enacted financial disclosure provisions for elected local officials and candidates for local office that restricts the disclosure of interests in real property to property located in the City or property that has some nexus to an individual or entity that does business, or has done business in the preceding five years with the City. The Public Ethics Law requires all interests in real property wherever located to be disclosed;

3. The enacted financial disclosure provisions for disclosure of business entities only requires disclosure of business entities that are regulated by the City, doing business with the City or have done business with the City in the last five years. The Public Ethics Law requires any interest in any corporation, partnership, limited liability partnership, or limited liability corporation regardless of whether it has any business relationship or nexus to the City;
4. The enacted financial disclosure provisions for disclosure of sources of earned income only requires disclosure of immediate family member's sources of earned income if the City regulates, licenses or contracts with the place of employment, or has in the preceding five years. The Public Ethics Law requires 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. 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;
5. The enacted financial disclosure provisions should include the provision providing that for the purposes of interests in real property, interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the City, and interests in business entities doing business with the City, 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; and (3) An interest held by a trust or an estate in which, at any time during the reporting period: the individual held a reversionary interest or was a beneficiary; or if a revocable trust, the individual was a settlor;
6. The enacted exemption provisions in Section 7A-7 provide that the local ethics commission may grant exemptions and modifications to the provisions of sections 7A-4 and 7A-5 if it determines that the application of those provisions would constitute an unreasonable invasion of privacy, significantly reduce the availability of qualified persons for public service and not be required to procure the purposes of the chapter. The Commission determined this enacted provision was not compliant with the State requirements. State law limits the ability to grant exemptions or modifications to the conflict of interest and financial disclosure provisions only to employees and appointed officials, not to elected officials (See §5-209 of the Maryland Public Ethics Law). Also, the approved exemption and modification provisions contained in both the Commission's Model A and Model B limit the granting of exemptions and modifications to local employees and local appointed officials. Local elected officials should be excluded from this provision as State law requires that both conflict of interest and financial disclosure provisions for local elected officials be at least equivalent to State law.

The City of Gaithersburg has not indicated to the State Ethics Commission that there is any intention to alter their ethics law to incorporate the required changes and has failed to outline a plan for a good faith effort toward compliance with the requirements of Subtitle 8 of the Maryland Public Ethics Law and COMAR 19A.04. The State Ethics Commission authorized the issuance of this Public Notice at its December 17, 2015 meeting.