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STATE ETHICS COMMISSION

October 31, 2016

Via Email and Regular Mail
(michael.lord@maryland.gov)

Michael W. Lord, Executive Director
State Ethics Commission
45 Calvert Street, 3rd Floor
Annapolis, Maryland 21401

Re: Proposed Action on Regulations Revising
COMAR Title 19A State Ethics Commission

Dear Mr. Lord:

The City of Gaithersburg is submitting this letter to be included in the comments to the State Ethics Commission's proposed action on regulations to amend various provisions of Title 19A of the Code of Maryland Regulations as published in Volume 43, Issue 20 of the Maryland Register. The City supports the position of the Maryland Municipal League on these proposed revisions to COMAR and in the two instances cited by MML does not believe that the proposed regulations implement the vision of the State legislature in adopting the Maryland Public Ethics Law.

Specifically, the City does not believe that the legislature intended political campaign contributions to be treated differently for municipal elected officials than for state and county elected officials. The proposed "Gift" definition in 19A.01.01 does just that as it would exempt from gifts campaign contributions to state and county officials, but not to municipal elected officials. This would effectively prohibit any campaign contributions in municipal elections, stymying the local election process. The language in this definition clearly demonstrates that the State Ethics Commission does not understand the local election process and the laws applicable thereto. The City would request that this language be modified so that the second sentence end after "solicitation, acceptance, receipt, or regulation of political campaign contributions."

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The second issue of concern to Gaithersburg is the use of the “and” language in both 19A.04.02 subsections 04.A and .05.A, requiring compliance with both §§5-209 and 5-808 or 5-809 of the General Provisions Article of the Annotated Code of Maryland, respectively, in order to receive an exemption or modification under the Public Ethics Law. In addition to the unintended consequences of this change discussed in the comments from MML, we believe that this proposed revision subverts the clear language in §§5-808 and 5-809. If the Legislature had intended for the “size” requirement in §5-209 to apply to the more specific exemption and modification provisions in §§5-808 and 5-809, they would have included that language in these provisions. By making this regulatory change, the Commission is making the exact legislative change it denied it intended to do in its testimony last year to support the passage on SB 395. We urge the Commission to change this language to “or” instead of “and”.

The last issue the City would like to address is the Commission’s failure to hold a public hearing on these regulations prior to adoption. A review of the Commission’s June 16, 2016 meeting public agenda and meeting minutes makes it appear that the Commission is attempting to adopt these regulations without the transparency and public process that should be provided. The published Agenda did not mention that the proposed regulations would be considered by the Commission, but they were apparently discussed and approved under the Executive Director’s Report. As Commission Staff is well aware, the regulations are of interest to local governments and we would have encouraged outreach to the municipalities through MML to advise of this agenda item, or, at a minimum, to specifically list consideration of the regulations as an agenda item. That coupled with the Commission’s failure to hold a public hearing on the regulations makes it clear that the Commission is not seeking meaningful input on the regulations.

As you are well aware, the City of Gaithersburg has long sought the opportunity to discuss with the Commission the impact of its application of these regulations on local governments so that the Commission could fully understand the operations of local government and how conflicts of interest and potential conflicts arise in the content of municipal government. The Commission has denied these attempts at every level and instead chosen to take a formulated approach that does not truly address the prevention of conflicts of interest at the local level. The City of Gaithersburg does not believe that this approach serves the best interests of the State nor implements the vision and purpose of the Maryland Public Ethics Law.

We would respectfully request that the Commission hold a public hearing of these regulations prior to adoption to ensure an open and transparent process.

Sincerely,



N. Lynn Board,
City Attorney

cc Mayor and City Council
Senator Cheryl Kagan
Scott Hancock, Maryland Municipal League