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November 17, 2015

PRIVILEGED and CONFIDENTIAL

VIA EMAIL AND HAND DELIVERY

The Honorable Village Council of the Village of Martin's Additions
Attn: The Honorable Tiffany Cissna, Council Member
7013-B Brookville Road
Chevy Chase, Maryland 20815

Re: Legal Compliance and Ethical Conflict of Interest Review

Dear Council Members:

We have completed our review of the Charter for Martin's Additions (the "Charter"), the Code of Ordinances of the Village of Martin's Additions (the "Code"), and the resolutions and policies that were provided to us. This letter sets forth our recommended amendments and potential strategies for the Village Council to address areas of noncompliance, existing and potential conflicts of interest, and areas of general improvement and clarification with respect to the foregoing.

I. The Charter

Section 101. For purposes of clarity and consistency, we recommend moving the abbreviation for the municipal corporation to Section 301. Whichever abbreviation is desired (*i.e.*, "Martin's Additions" or "the Village") should be used consistently throughout the Charter and the Code. The abbreviation "the Village" is consistent with other municipal Charters that refer to their respective jurisdictions as "the Town" or "the City."

If the General Assembly has passed legislation abolishing the special taxing district as stated in Section 101, and the same has actually been abolished, then the last sentence of Section 101 can be deleted as outdated.

Section 201. Rather than specifically stating the boundaries of the municipality, it would be simpler to state as follows:

The courses and distances showing the exact corporate limits or boundaries of the Village shall be filed at all times with the Clerk of the Circuit Court for Montgomery County and with the Director of the Department of Legislative Reference of the Maryland General Assembly. Additionally, a copy of the courses and distances showing the exact corporate limits or boundaries of the Village and a map showing the same shall be maintained on file in the Village office and available for public inspection during normal business hours.

Not only is the foregoing language more concise, it obviates the need for a Charter Amendment Resolution in the event any land is annexed into the municipal boundaries of The Village of Martin's Additions (the "Village").

Section 301.

Certain definitions should be changed for consistency throughout the Charter. As noted above, "The Village of Martin's Additions" can be abbreviated to simply "the Village" and the term "Corporate body" should be changed to "corporate body." Also, the abbreviation of "Council" is designated for the Village Council, but the term "Village Council" is used throughout the Charter.

We also recommend deleting the definitions of "Qualified Voter" and "Resident" and adding a section to Article VI (Annual Meetings and Elections) entitled "Voters" or "Qualified Voters" and stating substantially as follows:

Every person who is a citizen of the United States, is at least 18 years of age, is a resident of Maryland that has resided continuously within the corporate limits of the Village for at least six (6) months preceding any Village election, and is registered in accordance with the provisions of this Charter shall be a qualified voter of the Village.

If the Council desires to delete the definitions of "Qualified Voter" and "Resident" as recommended, the Council may also consider simply deleting Section 301 altogether and adding a parenthetical after each term that is abbreviated in the Charter, such as the "hereinafter" parenthetical in Section 101.

Section 401. The numbers used in this Section and in some other sections do not have a parenthetical (*i.e.*, "six (6)"), though the numbers used in some other Sections do (*i.e.*, Section 301, in the definition of "Resident"). For consistency, we recommend spelling each number and then using a parenthetical or using a number for 1-10 and spelling the numbers from 11 and



thereafter throughout the Charter. Spelling the number and then using the parenthetical tends to eliminate confusion.

Section 402. This Section can be shortened to simply state, "Council members shall be qualified voters of the Village." It is redundant to state that a Council member shall continue to reside in the Village because residency is a requirement to be a qualified voter.

Section 403. The way Section 403 is currently written, the Treasurer is not specifically authorized to sign checks. In subsection (c), it is implied that if the Treasurer, Chairman, or Vice-Chairman is absent or incapacitated, then some other Council member may be authorized to sign checks. If the Council intends that the Vice-Chairman can sign only in the absence of the Chairman, then that intent should be made clear. If the Council intends that the Treasurer can sign checks, then that intent should also be made clear. Clarifying the Council's intent with respect to signing checks eliminates any confusion (including among the elected officials) as to whether a check was properly and validly issued, which is an issue we have encountered in other jurisdictions. We recommend deleting the language in Section 403 regarding signing checks and adding a new section under Article VII (Finances) that details how checks are to be signed and specifies which signatures are necessary for a check to be valid. For example:

The authorized signatories of all checks issued in payment of salaries or other municipal obligations shall be the Chairman, the Vice-Chairman and the Village Manager. All such checks must be signed by two of the three foregoing individuals in order to be valid.

In subsection (d), the Council should consider authorizing the appointment of another Council member to serve as the custodian and undertake the Secretary's duties in the Secretary's absence or incapacitation.

Lastly, it is unclear as to when the Village's officers are selected. Typically, a new legislative body holds an organizational meeting shortly after the election to appoint the appropriate officers from among its members. The Council should consider providing for an organizational meeting at which it selects its officers in Section 403.

Section 405. The reference to "Sections 501 and 502" is redundant and can be deleted. Additionally, the Council may wish to consider increasing the expenditure threshold from \$1,000 to \$5,000 or even \$10,000.

Section 406. This Section can simply state when the Council meets, particularly if the Council does not have bylaws, in which case the reference to "bylaws" can be deleted. The reference to the Vice-Chairman is redundant because it is covered under Section 403(b).



We also recommend revising the language of this Section to state that the Council's meetings shall be open to the public unless closed by the Council in accordance with the Maryland Open Meetings Act, Md. Code Ann. Local Gov't § 3-101, et seq., as amended from time to time (or simply "in accordance with State law"). Though frequently used, the term "executive session" is misleading and does not accurately convey the purpose of meeting in closed session. It would be better to state that the Council may meet in closed or special sessions from time to time in accordance with the Maryland Open Meetings Act. Additionally, the reference to "Article 76A" should be deleted, as it is outdated and refers to an old version of the Maryland Open Meetings Act.

Section 407. This Section can be amended to state that minutes shall be open to the public in accordance with the Village's public information policy (which, in turn, should incorporate the Maryland Public Information Act, as more fully discussed herein below) and the Maryland Open Meetings Act. Except in limited cases, closed session minutes are sealed and not open to the public.

Section 408. The Council may want to consider deleting the requirement that the Election Committee provide a list of three candidates to fill a vacancy on the Council. If the Village does not have an Election Committee, this requirement would be problematic. It would be more efficient for the Council to simply select a qualified candidate.

Section IV – Other Issues. The Charter does not provide for any salary or benefits for Council members. If the Council members receive salaries or benefits, the Charter should be amended to authorize the same, though it does not need to specify the amount of the salaries or the benefits provided. The actual amount of the Council salaries and specific benefits provided can be set forth in an ordinance or resolution. If the Council members do not presently receive salaries but may wish to do so in the future, please keep in mind that, under State law, such salaries can only take effect as to the next Council elected following the passage of the Charter Amendment Resolution authorizing the same.

Section 501. The meaning of the term "regulations" is unclear. Presumably, the term does not refer to resolutions, which are separate and distinct from ordinances, in which case the language "and regulations" can be deleted. If the term actually means "resolutions," it should be changed accordingly. However, resolutions are not subject to the same legislative requirements as ordinances because they are generally operating policies and procedures for the local government and may need to be adopted quickly. Resolutions do not generally regulate or otherwise affect public conduct; therefore, the need for public notice and an opportunity to be heard prior to adoption do not apply.



Section 502. See above regarding "regulations." Additionally, the requirement that no ordinance shall be passed until 30 days following the meeting at which it was introduced is burdensome. For flexibility, we recommend amending this language to provide that, at any regular or special meeting of the Council held not less than six nor more than 60 days following introduction of an ordinance, the Council may pass, pass as amended, reject, or defer consideration to a specified future date the ordinance. Additionally, the 20-day period between the date of passage and the effective date is unnecessary if there is no right to referendum of ordinances. In the absence of any right to referendum, ordinances should be effective immediately upon passage. If the Council wishes to hold a public hearing on an ordinance prior to passage, then it is burdensome to then make the ordinance subject to referendum or publish notice of the same following passage. Post-passage requirements and delayed effective dates when there is no referendum period waste money (publication costs) and time (delay in making ordinances effective). However, if the Council does not hold a public hearing on every ordinance (unless otherwise required by State law) then it is appropriate to publish notice of passage of an ordinance following passage.

If the Council wants to keep the post-publication passage requirement, then we recommend specifying the timeframe in which publication shall be made (*i.e.*, 20 days following passage). Of course, the timeframe will depend on newspaper publication requirements and should not be too stringent.

In subsection (d) it is unclear as to why there is a reference to written notice directed to residents at their properties. Written notice is defined to include publication. It is burdensome and costs postage to send written notice to each Village resident of every ordinance or resolution. It is unclear as to what this subsection is intended to address.

Section 602. Section 602 provides that Council members shall be elected annually between March 1 and May 15. Section 401 provides that each Council member's term starts on July 1 following the election. The Council may want to consider fixing the election date to be held in June and exclusive of the annual meeting so that the newly elected Council member(s) take office shortly after the election. If a new Council member is elected on March 1 but does not take office for four months, a lengthy (and potentially awkward or difficult) transition period is created that could potentially impair the Council's ability to conduct business. Having the new Council members take office at the meeting shortly after their election eliminates the problems that could arise from such a lengthy transition.

Section 602 should also be revised to state that the Election Committee shall operate according to those rules and procedures established by ordinance, not in by-laws. The Council will then need to pass an ordinance setting forth the rules and procedures for the Election Committee, which should be fairly brief.



Article VI – Other Issues. The Council may wish consider adding language regarding the duties of the Election Committee (to the extent not otherwise specified in the ordinance setting forth the Committee’s rules and procedures), voter qualification and registration (as previously stated), absentee ballots, special elections, vote counting, preserving ballots, and penalties for election violations.

Section 701. The sentence “No Council member shall sell supplies of any kind to Martin’s Additions or contract in any manner with the Council” could be deleted since such a transaction is addressed in the Village’s Conflict of Interest Code.

Section 701 should also be specific as to what constitutes a “professional service contract.” Professional services typically include legal, engineering, and accounting services, but this should be made clear. Additionally, there should be some basic procedures for other types of contracts in the amount of \$10,000 or less, whether set forth in Section 701 or in a procurement ordinance.

Section 702. The reference to “Sections 31-37 of Article 23A of the Annotated Code of Maryland” is outdated, as Article 23A was repealed in 2013. This reference should be changed to § 19-301, et seq. of the Local Government Article regarding the creation of public debt in municipalities.

The debt limit provision in subsection (a) is also outdated because many jurisdictions no longer have one. If the Council feels that the debt limit provision is necessary, we recommend taking a look at the real property assessable base that is actually subject to tax (e.g., not exempt) and determining what debt limit covers the outstanding general obligation debt, if any, plus general obligation anticipated in the next five years and a cushion. Also, any debt limit should be written so it is tested at the time new debt is issued so that the amount outstanding fits within whatever is determined to be the stated debt limit, not the amount issued in the aggregate.

In subsection (b), we recommend the ability to authorize general obligation debt first by a parameters ordinance specifying the maximum amount to be borrowed, identifying the purpose(s) for debt, pledging full faith and credit and unlimited taxing power to the payment of debt (although see below regarding Section 703), and stating that the details will be determined by resolution. We can provide samples if so desired. Our usual language also allows all details to be determined by ordinance when possible and delegated to the appropriate officials to finalize the details. Lastly, we recommend adding private sale authority so that the Village could sell to a bank. Given the Village’s size, it would likely never do a public sale at a competitive bid. There is also no need to refer to tax exemption of obligations because only the State has the power to grant such exemptions.



In subsection (c), we have never seen anything like the prior approval vote requirement and would be surprised if the Village has debt outstanding based thereon. Accordingly, we recommend that this requirement be deleted. If the Village does not otherwise have a referendum right on ordinances and wants to give residents change to vote down debt, it would be better to: (1) require public hearings on bond ordinances before they are passed (after publication of notice of the public hearing at least 20 days prior to the public hearing); (2) require that notice of passage of a bond ordinance be published within the referendum period; and (3) provide for a 30-day referendum period on bond ordinances (and provide bond ordinances are not effective until 30 days following their passage).

Section 703. If the Council wants to make general obligation debt subject to the tax rate limit then Section 702 should make that clear. If the Council wants to be able to pledge its full faith and credit and unlimited taxing power to payment of general obligation debt, then an appropriate carve out needs to be made in this Section. Any tax limit affecting general obligation debt will make it harder for the Village to borrow.

The Council also needs to consider the appropriate tax rate limit for current and future budgets. The Maryland Truth in Taxation Act, Chapter 80 of the Laws of Maryland of 2000, which was passed after the adoption of the Charter Amendment Resolution that enacted Section 703, provided that debt limits and tax rate limits be construed as 40 percent of the stated amounts from and after effective date of that Act.

Article VII – Other Issues. The Council may also wish to add provisions regarding the chief financial officer of the Village (the Treasurer), preparation of the budget, the maintenance of an accounting system, the annual submission of a complete financial report, the designation of a fiscal year, appropriation of public money, the transfer of funds, budget amendments, over-expenditures, appropriations lapse, overdue taxes, and collection of taxes.

Section 801. The Council may wish to consider specifying the duties and responsibilities of the Village Manager or passing an Ordinance specifying the same.

Section 802. This Section can be combined with § 2-203 of the Code as stated below.

Article VIII – Other Issues. The Council may wish to consider adding provisions regarding compensation, benefits, and retirement systems for its employees.

Section 903. This Section can be deleted, especially if there are no bylaws. As discussed more fully below, the Village is exempt from having an ethics ordinance. For the good government of the Village, we recommend having an ethics ordinance (which the Village does). However, the requirement to make disclosures may be unduly burdensome and may dissuade



potential candidates from running for office, which can be problematic in a municipality of the Village's size.

Section 906. This Section can be deleted because the reference to Article 23A is outdated and this Section is otherwise unnecessary.

Article IX – Other Issues. The Council may wish to consider adding language regarding the effect of the Charter on existing ordinances stating that all ordinances or provisions of ordinances in conflict with the Charter are repealed to the extent of such conflict.

II. Code of Ordinances

Chapter 1. The abbreviated terms should be reviewed for consistency. The terms "code," "Code," and "Code of Ordinances" are used interchangeably. We recommend using the abbreviated term "Village Code" in § 1-101 and revising the rest of Chapter 1 for consistency therewith. Section 1-204(a) uses the abbreviation "Council" for the Village Council but the term "Village Council" is used throughout Chapter 1. This should be revised for consistency throughout the Code.

Chapter 2. Chapter 2 should be amended to include the rules and procedures for the Elections Committee. The language regarding the term and qualifications for the Committee members should be changed to be consistent with the language in Section 602 of the Charter.

Section 2-203 can be incorporated into Section 802 of the Charter to read substantially as follows:

The Council may employ those whom it deems necessary to execute the powers and duties provided by this Charter and other local law, and State law, subject to the availability of budgeted funds.

Section 2-501 contains the same language as Section 407 of the Charter; therefore, it is redundant and can be deleted.

Chapter 3. We recommend removing § 3-102 and incorporating it into Chapter 2, Section 5 for consistency. We also recommend deleting the penalty set forth in § 3-102(c) or, at a minimum, changing the penalty to a municipal infraction. In our experience, Maryland courts disfavor misdemeanor punishments for municipal code violations, even though they are authorized under § 6-101 of the Local Government Article of the Maryland Annotated Code.

The references to Article 23A in § 3-207 are outdated and should be changed to Title 6 of the Local Government Article. The Council may wish to consider increasing the general penalty for commission of a municipal infraction as set forth in § 3-302 and elsewhere in the Code (e.g., § 6-311(c), § 3-303) or adopting a class schedule for municipal infractions and using uniform



language in each applicable Chapter of the Code providing that a violation thereof shall constitute a municipal infraction, as follows:

A violation of this Chapter shall constitute a Class (insert class of violation) municipal infraction and shall be punishable as set forth in Chapter 3 of the Code. Each day that a violation continues shall be deemed to be a separate infraction.

Chapter 4. The State Ethics Commission exempted the Village from adopting conflict of interest, financial disclosure, and lobbying provisions in 2012. Nonetheless, we recommend having a basic conflict of interest code and the Village's is sufficient. Section 4-102(a) can be deleted since the Village is exempt from adopting a public ethics law in compliance with Title 15, Subtitle 8 of the State Government Article of the Maryland Annotated Code. If the Council is inclined to keep § 4-102(a), the reference to Article 40 should be changed to Title 15, Subtitle 8 of the State Government Article.

Chapter 5. Chapter 5 is generally consistent with Md. Code Ann., Local Gov't § 4-111(b)(3), which provides that legislation enacted by a county does not apply in a municipality if the legislation relates to a subject on which a public general law or the municipal Charter grants the municipality legislative authority and the municipality, by ordinance or Charter amendment, specifically exempts itself from the legislation or generally exempts itself from county legislation covered by the type of grant of authority to the municipality. Section 5-103 sets forth the specific sections of the Montgomery County Code from which the Village has exempted itself, and all of those sections fall within the scope of the Village's legislative authority under the Charter.

Chapter 6. We have no recommended changes other than with respect to the municipal infraction language set forth in § 6-311(c).

Chapter 7. Article 2 makes no reference to the Maryland Minimum Livability Code ("MMLC"), which incorporates the most recent version of the International Property Maintenance Code ("IPMC") published by the International Code Council ("ICC"). Pursuant to the Code of Maryland Regulations ("COMAR") 05.02.03.04, the MMLC, including the IPMC, shall apply to residential structures used for human habitation, except: (1) owner-occupied single family housing units; (2) housing located in a political subdivision that has adopted a local housing code containing provisions that substantially conform to the provisions of the Code; or (3) housing exempted by the Maryland Department of Housing and Community Development.

Presumably, the vast majority of property in the Village consists of residential structures used for human habitation that are owner-occupied single family housing units, in which case those structures are not subject to the MMLC or the IPMC. However, the Council should be aware of the MMLC and the IPMC and consider whether it wishes to amend Article 2 to contain provisions that substantially conform to the MMLC and the IPMC. Alternatively, the Council could simply add language to Article 2 substantially stating as follows:



The provisions of this Article shall apply to all real property within the Village. Additionally, the provisions of the Maryland Minimum Livability Code, including the most current edition of the International Property Maintenance Code, as amended from time to time, shall apply to all real property within the Village consisting of residential structures used for human habitation that are not owner-occupied single family housing units and are not exempted by the Maryland Department of Housing and Community Development. In the event of any conflict between any provision of this Article and the Maryland Minimum Livability Code or the International Property Maintenance Code, the provisions of this Article shall control.

Article 2 also lacks penalties for violations other than for unremoved snow and ice and failing to maintain any public right-of-way. Rather than having penalty provisions in separate sections, we recommend having a single penalty section applicable to the entire Article.

Article 4 makes no mention of the Maryland Building Performance Standards ("MBPS"), which incorporates the current editions of the International Building Code ("IBC"), International Residential Code for One- and Two-Family Dwellings ("IRC"), and the International Energy Conservation Code ("IECC"), with amendments. Pursuant to COMAR 05.02.07.06, the MBPS applies to all buildings and structures within the State for which a building permit application is received by a local jurisdiction. However, pursuant to COMAR 05.02.07.05, local jurisdictions may modify provisions of the MBPS to address conditions peculiar to the local jurisdiction's community, so long as such modifications do not weaken the requirements of the IECC, Chapter 13 (Energy Efficiency) of the IBC, the automatic fire sprinkler system requirements for townhouses and one- and two-family dwellings (except in limited cases) contained in the MBPS, or the wind design and windborne debris provisions contained in the MBPS.

The Village does not need to delete its residential building standards set forth in Article 4, but we recommend adopting language similar to that above regarding Article 2 substantially stating as follows:

The provisions of this Article shall apply to all buildings and structures within the Village. Additionally, the provisions of the Maryland Building Performance Standards ("MBPS"), which incorporates the current editions of the International Building Code ("IBC"), International Residential Code for One- and Two-Family Dwellings ("IRC"), and the International Energy Conservation Code ("IECC"), with amendments, as amended from time to time, shall apply to all buildings and structures within the Village for which a building permit application is received. In the event of any conflict between any provision of this Article and the Maryland Building Performance Standards, the provisions of this Article shall control.



The ordinance enacting the following should state the conditions peculiar to the Village justifying the exceptions to the MBPS. One such condition is found in § 7-401(b), which states that the purpose of the Village's building standards is to encourage appropriately sized construction in keeping with lot sizes and character of the Village. Once passed, the ordinance must be sent to the Department of Housing and Community Development at least 15 days prior to the ordinance's effective date.

Lastly, we recommend that the Council consider adding a penalty section to Article 4, or simply rely on the penalty provisions set forth in the MBPS (*see, e.g.*, Chapter 1, Part 2 of the 2015 IBC).

Chapter 8. Section 8-103 provides that no regulatory traffic or parking control signs or other devices shall be erected on State highways without the approval of the State Highway Administration. Md. Code Ann., Transp. § 25-102 sets forth the powers of local authorities with respect to highways under their jurisdiction. Subsection (b) thereof provides that a local authority may not place or maintain any stop sign or traffic control signal that requires the traffic on any State highway to stop before entering or crossing any intersecting highways or place or maintain lighting along or at an intersection with a State highway. We recommend amending § 8-103 to be consistent with the foregoing State law.

Chapter 9. Chapter 9 contains several penalty sections (§§ 9-106, 9-108, 9-109, and 9-112). For purposes of clarity and consistency, the Council may want to consider consolidating these various penalty sections into one and provide that a violation of Chapter 9 shall be a municipal infraction and subject to the penalties set forth in Chapter 3 (as previously discussed). Furthermore, Md. Code Ann., Nat. Res. § 5-403(f) authorizes a county or municipality that adopts a local law or ordinance for the planting, care, and protection of roadside trees to issue a stop work order against any person that violates any provision of the local law or ordinance. Thus, the Council should consider adding the stop work provision to Chapter 9 as well.

III. Resolutions and Policies

A Resolution to Establish a Schedule of Standard Completion Bonds Pursuant to Section 6-304 of the Code of Ordinances of the Village of Martin's Additions. This Resolution has no number and was not signed. Thus, it is not clear as to whether this Resolution was ever adopted. If the Resolution was adopted, the language in the first "Whereas" clause needs to be made consistent with the language in § 6-304 and the schedule of amounts for the security required under § 6-304 needs to be included.



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Interpretative Policy No. 3-19-15. Generally, if the Council wishes clarify its intent with respect to a particular local law, it should just amend the law by ordinance to clearly state its intent. Otherwise, the argument could be made that the policy/resolution is an improper and illegal amendment to the Code. Accordingly, the interpretation of § 31-16 of the County Code would be more appropriate in an Ordinance.

Resolution No. 12-12-1. Like Interpretative Policy No. 3-19-15, it would be cleaner and safer to simply amend § 7-402(e)(5)(iii) by ordinance to apply to generators and auxiliary power units as well as air conditioners and heat pumps. The plain language of § 7-402(e)(5)(iii) specifically refers to air conditioners and heat pumps, which are separate and distinct from generators and auxiliary power units.

Resolution No. 4-10-2. The language in the policy attached to the Resolution should be added to Chapter 7 or 8 of the Code by ordinance.

Resolution No. 4-10-1. The language in the policy attached to the Resolution should be added to Chapter 7 or 8 of the Code by ordinance.

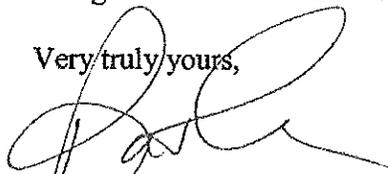
Policy No. 12-18-14. The language in this Policy should be added to Chapter 7 of the Code by ordinance.

Resolution No. 09-15-01. The Village's Public Information Act regulations are sufficient; however the Council may consider adding a provision stating that if the regulations conflict with the Maryland Public Information Act, Md. Code Ann., Gen. Prov. § 4-101, et seq., as amended, the MPIA shall control.

Overall, we believe that the Charter, the Code, and the resolutions and policies of the Village are legally sufficient, with the exceptions noted herein. Please do not hesitate to contact me with any questions or concerns regarding the foregoing or if we can be of further assistance as the Council and the Village Attorney develop a strategy for enacting any of the changes discussed herein.

We greatly appreciate the Council allowing us to assist it in this matter.

Very truly yours,



Patrick W. Thomas

