



## AGENDA FOR THE TOWN MEETING

May 12, 2014

7:00 p.m.

### PLEDGE TO THE FLAG

### CALL TO ORDER

**Red Indicates – Action Item**  
**Green Indicates – Ordinance Introduction**  
**Blue Indicates – Link to Additional Information**

### PUBLIC HEARING

#### **ORDINANCE NO. 14-05-01**

AN ORDINANCE TO REPEAL AND RE-ENACT, WITH AMENDMENTS, TITLE 17, CHAPTER 17.48, SECTION 17.48.015 OF THE MIDDLETOWN MUNICIPAL CODE PERTAINING TO SPECIAL EXCEPTION REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES; TO AUTHORIZE THE ESTABLISHMENT OF AN ACTIVE ADULT COMMUNITY AS A RESIDENTIAL CLUSTER DEVELOPMENT ON PARCELS OF BETWEEN THIRTY AND ONE HUNDRED ACRES; TO ESTABLISH SPECIAL EXCEPTION STANDARDS AND REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES AS A RESIDENTIAL CLUSTER DEVELOPMENT.

### CONSENT AGENDA

- Town Minutes
- [April 28, 2014 – Town Meeting](#)

### PERSONAL REQUESTS FOR AGENDA:

### UNFINISHED BUSINESS:

- [New Truck Bids](#)
- [Middletown Public Ethics Ordinance 14-05-02](#)
- Update on RER Solar Project
- Budget Workshop

### REPORT OF COMMITTEES:

Water/Sewer	Commissioner Falcinelli
Public Works	Commissioner Bussard
Planning Commission Liaison	Commissioner Goodman
Parks & Recreation	Commissioner Ventre
Finance	Commissioner Dietrick
Public Information Committee	Commissioner Falcinelli

**NEW BUSINESS:**

- Discussion of Elected Official Salaries

**PUBLIC COMMENTS:**

*Please state Name and Address for the Record*

**ANNOUNCEMENTS:**

- *Monday, May 26, 2014 Town Meeting Cancelled Due to Memorial Day*
- *Monday, June 9, 2014 Town Meeting Cancelled Due to MML Conference*
- *Public Hearing – Operating Budgets Monday, June 23, 2014 at 7:00PM*

**ADJOURNMENT**

**Meetings for the month of May 2014**

- *Planning Commission Workshop*      *Wednesday, May 14, 2014*      *7:00PM*
- *Planning Commission*              *Monday, May 19, 2014*        *7:00PM*
- *Water & Sewer Committee*        *Wednesday, May 21, 2014*    *7:00PM*
- *Main Street Board*                  *Thursday, May 22, 2014*      *7:00PM*

MEMORANDUM

Date: 4/3/2014

To: Burgess and Commissioners, Middletown  
From: Cynthia K. Unangst, Middletown Staff Planner  
RE: Active adult text amendment

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**The Middletown Planning Commission on March 17, 2014 again reviewed the proposed Active Adult text amendment submitted by the Memar Corporation which would establish that parcels of land less than 100 acres could be used in their entirety for active adult communities as long as the total density remained below two units per acre. By consensus the Planning Commission recommends approval of the proposed text amendment with a modification and the inclusion of the cluster development regulations within the Active Adult Specific Standards section of the Code.**

**The staff planner disagrees with the placement of the cluster development regulations as part of the active adult regulations and feels that they should be a separate section of the Code, in line with Planned Unit Developments, in order to be able to address any potential types of cluster developments which could occur elsewhere in the future. The Town Attorney has drafted an ordinance which is attached. A public hearing should be scheduled ahead of a vote by the Town Board on the proposed ordinance.**

**ORDINANCE NO. 14-05-01**

**AN ORDINANCE TO REPEAL AND RE-ENACT, WITH AMENDMENTS, TITLE 17, CHAPTER 17.48, SECTION 17.48.015 OF THE MIDDLETOWN MUNICIPAL CODE PERTAINING TO SPECIAL EXCEPTION REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES; TO AUTHORIZE THE ESTABLISHMENT OF AN ACTIVE ADULT COMMUNITY AS A RESIDENTIAL CLUSTER DEVELOPMENT ON PARCELS OF BETWEEN THIRTY AND ONE HUNDRED ACRES; TO ESTABLISH SPECIAL EXCEPTION STANDARDS AND REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES AS A RESIDENTIAL CLUSTER DEVELOPMENT.**

**SECTION I. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of the Town of Middletown, Maryland that Title 17, Chapter 17.48, Section 17.48.015 of the Middletown Municipal Code be, and it hereby is, REPEALED.

**SECTION II. BE IT FURTHER ORDAINED AND ENACTED** by the Burgess and Commissioners of the Town of Middletown, Maryland that the following is hereby adopted as Title 17, Chapter 17.48, Section 17.48.015 of the Middletown Municipal Code.

**TITLE 17 ZONING**

**Chapter 17.48 SPECIFIC STANDARDS FOR SPECIAL EXCEPTIONS**

**17.48.015 Active Adult Community.**

An Active Adult Community located in the R-20 residential district is subject to the requirements of that district except as modified and provided in this Section.

A. An active adult community in the R-20 district may be developed as an integral component of a larger R-20 zoned subdivision consisting of at least 100 acres in which event the active adult community portion of the development may constitute no more than fifteen (15) percent of the total acreage in the subdivision. All such active adult community developments shall be subject to the following:

1. Minimum lot area per dwelling: three thousand two hundred (3,200) square feet; minimum average lot area per dwelling, five thousand five hundred (5,500) square feet; provided that no more than twenty-five (25) percent of the total number of lots may be less than four thousand (4,000) square feet.
2. The planning commission, at its discretion, may approve reduced yards, subject to the following limitations:
  - (a) The front, rear or side yard setback from any lot fronting on a major town street (arterial or collector) shall be thirty-five (35) feet.
  - (b) Minimum setbacks for lots fronting on interior public or private subdivision streets shall be as follows:
    - (i) Front: ten (10) feet;
    - (ii) Rear: fifteen (15) feet;
    - (iii) Side: five (5) feet.
3. Any individual dead-end private drive or street may be used to serve no more than ten (10) dwelling units.
4. Pavers or other alternative materials which meet the standards approved by the town engineer may be used in the construction of private drives or streets.
5. A homeowners' association shall be established to maintain all open spaces, common areas, stormwater management facilities, and private streets and to arrange for private waste removal services, if required, and snow removal services for private streets and drives. The homeowners' association shall have the responsibility to enforce all covenants and special conditions required of residents and property owners in the active adult community. Before assuming any responsibility for lands and facilities

held or controlled by the homeowners' association, the burgess and commissioners may require that such land and facilities meet the minimum standards required of similar facilities for which the Town is generally responsible.

6. The planning commission shall approve a site development plan for the active adult community and shall have architectural review authority for the dwelling units to be constructed within the community.

7. The planning commission shall review and approve the homeowners' association declaration of covenants, articles of incorporation and by-laws prior to final approval of the site development plan for an active adult community. In the event that a homeowners' association fails, refuses or neglects for any reason to maintain, operate or improve all or part of any of the facilities, common areas, open spaces, streets, or other portions of the subdivision held or controlled by it and for which it is responsible, the Town may, but shall not be obligated to, fulfill such obligations, and upon doing so, the costs and expenses incurred by the Town shall be paid by the owners of the properties which are subject to the Homeowners' Association Declaration of Covenants. Each property shall be responsible for its' pro rata share of the expense based upon the number of properties subject to the HOA Covenants, and such charges shall be a lien upon the property and may be collected in any manner, including the collection of taxes. In no event, however, shall the Town be obligated to undertake the maintenance, operation or improvement of all or part of any of the facilities, common areas, open spaces, streets, or other portions of the subdivision for which the homeowners' association is responsible.

B. Cluster Development Regulations. On parcels less than 100 acres but more than 30 acres, the entire parcel may be used for an active adult community in accordance with the following cluster development concept and regulations

1. The purpose of these regulations is to permit such flexibility and provide performance criteria which can result in residential cluster developments in order to:

- (a) encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography;
- (b) protect environmentally sensitive areas of a development site and preserve on a permanent basis common open space and natural features;
- (c) decrease or minimize nonpoint source pollution impacts by reducing the amount of impervious surfaces in site development;
- (d) promote cost savings in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended or by reducing the width or length of streets;
- (e) provide opportunities for social interaction and walking and hiking in common open space areas; and
- (f) provide a more desirable environment than would be possible through the strict application of other sections of this Title. A residential cluster development shall be a separate entity with a distinct character in harmony with surrounding development. Common open space must be an essential and major element of the plan which is related to and affects the long-term value of the homes and other developments.

2. Definitions: As used in this sub-section, the following words and terms shall have the meanings specified herein:

“Buffer” means land maintained in either a natural or landscaped state and used to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

“Cluster” or “Clustering” means a site-planning technique that concentrates buildings and structures in specific areas on a lot, site, or parcel to allow the remaining land to be used for recreation, common open space, and/or preservation of features and/or structures with environmental, historical, cultural, or other significance. The techniques used to concentrate buildings may include, but shall not be limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant common open space being devoted by deed restrictions for one or more eligible uses.

“Cluster development, residential” means a land development project in which the site planning technique of clustering dwelling units is employed.

“Common open space” means the portion of the site set aside in perpetuity as open space. This area may include wetlands, floodplains or flood-hazard areas, stream corridors, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development as well as easements for public utilities.

“Eligible uses” means parkland, recreational fields, trails, community buildings or similar-type uses or as approved by the Middletown Planning Commission.

“Gross buildable area” means the total area of the site minus the areas that are not buildable, such as wetlands, floodplains, steep slopes, buffers and other environmental

features. This resulting area is used to determine the maximum number of units to be built.

“Infrastructure” means the facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

“Land development project” means a project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned unit development and/or cluster development for residential, commercial, institutional, recreational, common open space, and/or mixed uses as are provided for in the zoning ordinance.

“Street, private” means a local roadway serving only abutting lots, not publicly dedicated or maintained by the Town but meeting specific municipal improvement standards and providing access for service and emergency vehicles.

3. The development of an Active Adult Community as a Cluster Development is subject to the following requirements and regulations.

(a) A residential cluster development shall be permitted in the R-20 residential zoning district. All principal and accessory uses authorized in the R-20 district shall be allowed in the cluster development.

(b) Except as otherwise provided in this sub-section B.3., the requirements for an Adult Active Community as provided in sub-section A. shall be applicable to an Adult Active Community developed as a residential cluster development. In addition, the following provisions shall apply to any residential cluster development regardless of the general requirements of the R-20 zoning district:

(i) The minimum area of the cluster development shall be 30 acres and the maximum area shall be less than 100 acres;

(ii) Total density shall be 2 or fewer units per acre;

(iii) A minimum width of 60 feet per dwelling unit shall apply unless requested by the applicant and approved by the planning commission;

(iv) A minimum side yard setback of 5 feet shall be provided between all principal buildings and structures;

(v) A minimum yard or common open space of at least 25 feet in depth shall be provided as measured from all streets and from the side and rear lot lines at the boundaries of the entire cluster development;

(vi) The maximum height limitation shall be that established for the R-20 zoning district.

(c) The preliminary and final site development plans for a residential cluster development shall include, but shall not be limited to, the following information:

(i) The maximum number and type of dwelling units proposed;

(ii) The areas of the site on which the dwelling units are to be constructed and their building envelope size showing the general area in which the dwelling unit is to be located;

(iii) The calculations for the permitted number of dwelling units based on gross buildable area;

(iv) The areas of the site on which non-residential principal and accessory uses may be located and their size;

(v) The areas of the site designated for common open space and their size;

(vi) The areas of the site designated for parking and loading and the size of the spaces;

(vii) The location of sidewalks, trails, and bike paths;

(viii) The proposed landscaping for the development;

(ix) A phasing plan for the construction of the development.

(d) Review Criteria: In reviewing a residential cluster development, the planning commission shall determine whether:

(i) The site plan satisfies all requirements of sub-section B.3.(c) above;

(ii) Buildings and structures are adequately grouped so at least 25% of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designed as a single block and not divided into unconnected small parcels located in various parts of the development;

(iii) Pedestrians can easily access common open space;

(iv) The site plan establishes, where applicable, an upland buffer of vegetation of at least 50 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds;

(v) Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography;

(vi) Existing scenic views or vistas are permitted to remain unobstructed, especially from public streets;

(vii) The site plan accommodates and preserves any features of historic, cultural, or archaeological value;

(viii) Floodplains, wetlands, and areas with slopes in excess of 25% are protected from development; and

(ix) The cluster development advances the purposes of this ordinance as stated in sub-section B. 1. above.

(e) General Considerations:

(i) The planning commission may, in its opinion, apply such special conditions or stipulations to its approval of a residential cluster development as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and subdivision ordinances.

(ii) In approving a residential cluster development, the planning commission may reduce the pavement width of any public or private streets that would otherwise be required by the subdivision regulations if the town engineer is in concurrence. An applicant who wants the reduction of pavement width of public or private streets shall submit a statement of justification for the reduction along with the site plan.

(iii) Common Open Space. At least twenty-five (25%) percent of the entire tract of land to be developed in a residential cluster development must be devoted to common open space purposes. Areas that are reserved as common open space shall be shown on the plat and approved by the Planning Commission.

(iv) **Public Utilities and Facilities.** Public water and public sewer must be provided to the development. The planning commission may require the reservation of development sites for other public facilities (schools, fire or police stations, library, etc.) if the need of the development justifies the facilities.

**SECTION III. BE IT FURTHER ENACTED AND ORDAINED** that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

**INTRODUCED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014**

**PASSED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014**

**EFFECTIVE DATE: \_\_\_\_\_, 2014**

**ATTEST:**

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

\_\_\_\_\_  
Andrew J. Bowen, Town Administrator

By: \_\_\_\_\_  
John D. Miller, Burgess

# **BURGESS AND COMMISSIONERS OF MIDDLETOWN MARYLAND**

## **TOWN MEETING MINUTES**

### **REGULAR MEETING**

**April 28, 2014**

The second monthly meeting of the Burgess and Commissioners of Middletown was called to order on March 24, 2014, by Burgess Miller at 7:00 p.m. in the Middletown Municipal Center, 31 W. Main Street, Middletown, Maryland. Present were: Commissioners Larry Bussard, Jennifer Falcinelli, Richard Dietrick, Tony Ventre and Christopher Goodman.

### **CONSENT AGENDA**

*Town Minutes – April 14, 2014*

Commissioner Bussard motioned to accept the consent agenda as presented, seconded by Commissioner Falcinelli and passed unanimously.

### **PERSONAL REQUEST FOR AGENDA:**

#### **Unfinished Business:**

**Budget Workshop – Schedule Public Hearing** – The Commissioners went over the operating budget, Commissioner Dietrick found a couple errors with the year to date figures and the proposed budget figures, Drew will have our Financial Planner Lacey Gordon review. Burgess Miller brought up the Community Events and the breakdown of what each committee requested. Burgess Miller stated that he does not see the rationality to funding a county committee. Burgess Miller stated that he was overruled last year with this. Burgess Miller stated that he does not have a problem with paying for the fireworks for this event. Burgess Miller suggested that the Town enter into the contract directly with the fireworks company and pay them directly. Pam Dietrick, Chair for the Middletown Rec. Council stated that they have already had to pay the deposit of \$4,500 to the fireworks company. Burgess Miller suggested that we reimburse the Middletown Rec. Council for the deposit and then pay the remaining money owed directly to the fireworks company, then from this point forward the Town will take care of paying for the fireworks and we will enter into the contract directly with them. Mrs. Dietrick didn't understand why the Town didn't want to give the donation directly to the Rec. Council. Commissioner Bussard stated that if the Town is paying for the fireworks we would like for it to be made known that the fireworks are presented by the Town of Middletown. Mrs. Dietrick stated that all of the sponsor money/donations that she receives goes toward the entire event, not one sponsor pays directly for the fireworks. This is where Burgess Miller has an issue with giving Middletown tax payer money to a county committee that not just the Middletown residents can enjoy.

After much discussion the Commissioners agreed to think about and will need to make a decision at the Public Hearing to be held on June 23, 2014 at 7pm.

**Water/Sewer budget** – The Commissioners went over the water & sewer operating budget. The budget shows a 3% increase in water & sewer rates. The Commissioners also discussed the water & sewer CIP budget. A couple of ideas were thrown out; Drew will look into and get the cost associated with and report back at the May meeting.

**Recommendations to Address Traffic Concerns on South Jefferson Street** – Commissioner Goodman stated that he has spoken to a lot of the residents on South Jefferson Street. Commissioner Goodman

recommended that the Town put up no thru traffic signs, radar enforced signs, paint the speed limit on the street, make no parking along the street from the top of the hill south and have our deputies enforce that area more heavily.

Bob Smart, 7525 Coblentz Road - asked if we could make it a no left turn from Main onto S. Jefferson Street since the majority of the traffic comes during rush hour with people trying to bypass the light. Drew stated that we would have to contact the State Highway to request this.

After some discussion, the Commissioners agreed to put up Local traffic only signs instead of no thru traffic as Commissioner Goodman suggested, paint the speed limit on the street, make no parking on both sides of the street from the top of the hill south and have the deputies enforce this area.

**Walking Trail Property Purchase – Contract of Sale** – Drew presented the Board with maps showing the outlots for sale. Drew also presented the Board with quotes of what the value of those outlots are. Drew stated that he is asking for the Boards consensus to enter initiate a contract of sale for these outlots. Drew stated that an appraisal will be done on the outlots prior to contract of sale being drafted. The Board agreed to have Drew proceed with this.

**Bid for Upstairs Security Door Installation** – Drew provided the Board with 2 quotes to have a door installed at the top of the stairs by the Burgess office. This door will prevent anyone from coming down the steps into the office areas. The bids received were from Fred W. Rudy Builders - \$11,260.00 and Broad Run Inc. - \$10,450.00.

Commissioner Goodman motioned to approve the bid from Broad Run, Inc. for \$10,450 to install the door at the top of the steps outside of the Burgess office, seconded by Commissioner Bussard. Motion carried 6-0.

**Introduction of Ethics Ordinance** – Burgess Miller stated that included in the packets is a draft copy of the proposed Ethics Ordinance. Commissioner Ventre stated that there is a few things that we need to address term limits and will we compensate the committee members? The Board agreed to make the term a 2 year term and pay the committee members \$50 per meeting. It was also noted that the Committee members must be someone who is not currently associated with the Town.

**Forest Conservation Plans Coblentz Property – Off Site Planting Plan** – Haiely Development the developers for the Coblentz Property along East Green Street would like to do some of their tree planting off site at the Remsberg Park. Drew showed a map of where the plantings would go, they would basically go around the new walking path in Remsberg Park.

Commissioner Ventre motioned to accept the off site planting plan as presented, seconded by Goodman. Motion carried 6-0.

#### **New Business:**

**Financial Advisory Engagement Letter – Davenport & Company** – Drew stated that he met last month with Davenport & Company to discuss the Town's financial options. Included in the packets is a scope of services by Davenport & Company. The Board felt this would be a good idea to enter into this agreement to see what options we have with the big ticket items we have in the upcoming years.

Motion by Ventre to enter into the contract with Davenport & Company for \$14,000, seconded by Commissioner Bussard. Motion carried 6-0.

#### **ANNOUNCEMENTS**

- *Rain Barrels Available for purchase*
- *Hazardous Household Drop Off – May 10, 2014 8am.-Noon*

- *Reminder to all residents that it is your responsibility to trim any tree limb that is protruding into the sidewalk area.*

**ADJOURNMENT**

With no further business to come before the Board, the meeting adjourned at 9:15pm.

Respectfully submitted,

Ann Griffin  
Office Manager



Burgess and Commissioners of Middletown 31 W Main St Middletown, MD 21769 Phone 301-371-6171 Fax 301-371-6474  
Bruce A. Carbaugh, P.E. Director of Operations and Construction Email: bcarbaugh@ci.middletown.md.us

## MEMORANDUM

**TO:** Burgess and Commissioners of Middletown

**FROM:** Bruce A. Carbaugh, P.E., Director of Public Works

**DATE:** April 28, 2014

**RE: 2015 Ford F550 Dump Truck**

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The Town solicited three Ford Truck Dealers and one body company (through the PA COSTARS Contract) for dump truck to replace the 1997 Chevrolet dump truck. The existing vehicle will be sold "as is where is" and is not considered useful as a spare due to its reliability.

The bid is for a 2015 F550 Chassis Cab 4 wheel drive upfitted with 9ft stainless dump body with one fold down side. The plow is our standard Flink trip edge and the stainless spreader is manufactured by Buyers. We are eliminating the use of in bed spreaders which is a cost savings of over \$5,000.00. Purchasing the stainless dump body will save the Town in future restoration costs and the unit can be transferred to another truck in the future.

We received three responsive and complete bids; the lowest bidder is Keystone Ford in Chambersburg, PA in the amount of \$82,818.00. Other bid amounts were:

1. Hagerstown Ford \$83,659.00
2. Crouse Ford \$83,702.80

All bidding documents are available for your review and we are recommending the Town award the 2014 Ford F550 Chassis Cab and Galion Stainless Steel Dump Body with a Flink trip edge plow and Buyers Stainless Steel salt spreader to Keystone Ford in the amount of \$82,818.00.

The CIP budget line item for the purchase of the Old Municipal Hall will be used to fund the purchase (\$75,000.00). The remainder (\$7,818.00) can be funded from a projected surplus of FY 14 or a line item inserted into FY 15 CIP to cover the difference. The delivery and payment of the new truck will not occur until after July 1, 2014.

**ORDINANCE NO. 14-05-02**

**AN ORDINANCE TO ENACT PROVISIONS PERTAINING TO ETHICS FOR PUBLIC ELECTED AND APPOINTED OFFICIALS AND EMPLOYEES OF THE TOWN OF MIDDLETOWN; TO PROVIDE REQUIREMENTS RELATING TO CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE; TO ESTABLISH AN ETHICS COMMISSION AND DUTIES FOR THAT COMMISSION; TO PROVIDE FOR EXEMPTIONS FROM THE REQUIREMENTS OF THE ETHICS LAW; AND TO PROVIDE FOR THE ENFORCEMENT OF THE PROVISIONS OF THE ETHICS LAW.**

**SECTION I. BE IT RESOLVED, ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown, pursuant to State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland that the Middletown Municipal Code be, and hereby is, amended by adopting and adding thereto "Title 4 – Ethics" which is attached hereto as Exhibit "A" and incorporated by reference herein.

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED** that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

**INTRODUCED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014**

**PASSED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014**

**EFFECTIVE DATE: \_\_\_\_\_, 2014**

**ATTEST:**

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

\_\_\_\_\_  
Andrew J. Bowen, Town Administrator

By: \_\_\_\_\_  
John Miller, Burgess

## TITLE 4 — ETHICS

### Chapter 4.04 Short title.

4.04.010 This title may be cited as the Middletown Public Ethics Ordinance.

### Chapter 4.08 Applicability.

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

### Chapter 4.12. Ethics Commission.

4.12.010 There is a Middletown Ethics Commission that consists of three (3) members who are appointed by the Burgess and confirmed by the Commissioners each to serve two years or until a successor takes office. Each member of the Ethics Commission shall be a resident of the Town of Middletown at all times during their term of office. The members of the Ethics Commission may be compensated for performing their duties at such rate as may be determined from time to time by resolution of the Burgess and Board of Commissioners.

4.12.020 The Commission shall:

- (A) Devise, receive, and maintain all forms required by this title;
- (B) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this Title regarding the applicability of the provisions of this title to them;
- (C) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this title; and
- (D) Conduct a public information program regarding the purposes and application of this title.

4.12.030 The Town Attorney shall advise the Commission.

4.12.040 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.

4.12.050 The Commission shall determine if changes to this title 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 the Town Burgess and Board of Commissioners for enactment.

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

#### Chapter 4.16. Conflicts of interest.

4.16.010 In this chapter, "qualified relative" means a spouse, parent, child, or sibling.

4.16.020 All Town elected officials, officials appointed to Town boards and commissions subject to this title, and employees are subject to this chapter.

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

(A) 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.

(B) 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:

(1) 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;

(2) 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;

(3) 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.

(4) 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;

(5) 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

(6) A business entity that:

(i) 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

(ii) 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.

(C) A person who is disqualified from participating under paragraphs (A) or (B) of this section shall disclose the nature and circumstances of the conflict and may participate or act if:

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

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

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

(D) The prohibitions of paragraphs (A) and (B) of this section do not apply if participation is allowed by regulation or opinion of the Commission.

#### 4.16.040 Employment and financial interest restrictions.

(A) 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:

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

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

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

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

(B) This prohibition does not apply to:

(1) 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;

(2) 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;

(3) 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

(4) 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.

#### 4.16.050 Post-employment limitations and restrictions.

(A) 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.

(B) Until the conclusion of the next regular session that begins after the elected official leaves office, a former Burgess or former member of the Town Board of Commissioners may not assist or represent another party for compensation in a matter that is the subject of legislative action.

4.16.060 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.

#### 4.16.070 Use of prestige of office.

(A) 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.

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

4.16.080 Solicitation and acceptance of gifts.

(A) An official or employee may not solicit any gift.

(B) 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.

(C) 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:

(1) 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;

(2) 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;

(3) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(4) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(D) Paragraph (E) of this section does not apply to a gift:

(1) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(2) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(3) 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.

(E) Notwithstanding paragraph (C) of this subsection, an official or employee may accept the following:

(1) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(2) Ceremonial gifts or awards that have insignificant monetary value;

(3) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(4) 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;

(5) 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;

(6) A specific gift or class of gifts that the Commission exempts from the operation of this section 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;

(7) 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

(8) 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.

4.16.090 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.

4.16.100 Participation in procurement.

(A) 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.

(B) 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.

Chapter 4.20. Financial disclosure — local elected officials and candidates to be local elected officials.

4.20.010

(A) This chapter applies to all local elected officials and candidates to be local elected officials.

(B) Except as provided in section 4.20.020 of this chapter, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this chapter:

- (1) On a form provided by the Commission;
- (2) Under oath or affirmation; and
- (3) With the Commission.

(C) Deadlines for filing statements.

(1) 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.

(2) 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.

(3) (i) 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.

(ii) The statement shall cover:

(a) 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

(b) The portion of the current calendar year during which the individual held the office.

#### 4.20.020 Candidates to be local elected officials.

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

(B) A candidate to be an elected local official shall file a statement required under this chapter:

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

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

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

(C) A candidate to be an elected official:

(1) May file the statement required under §4.20.020(B)(1) of this section with the Town Administrator with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(2) Shall file the statements required under §4.20.020(B)(2) and (3) with the Commission.

(D) If a candidate fails to file a statement required by this chapter after written notice is provided by the Town Administrator at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(E) The Town Administrator may not accept any certificate of candidacy unless a statement has been filed in proper form.

(F) Within 30 days of the receipt of a statement required under this chapter, the Town Administrator shall forward the statement to the Commission or the office designated by the Commission.

4.20.030 Public record.

(A) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this chapter.

(B) Financial disclosure statements 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.

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

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

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

(D) 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.

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

4.20.050 Contents of statement.

(A) Interests in real property.

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

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

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

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

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

(iv) 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;

(v) 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

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

(B) Interests in corporations and partnerships.

(1) A statement filed under this chapter 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.

(2) For each interest reported under this section, the schedule shall include:

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

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

(iii) 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

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

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

(b) 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.

(3) An individual may satisfy the requirement to report the amount of the interest held under item (B)(2)(ii) of this section by reporting, instead of a dollar amount:

(i) 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

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

(C) Interests in business entities doing business with Town.

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

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

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

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

(iii) 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

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

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

(b) 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.

(D) Gifts.

(1) A statement filed under this chapter 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 or is regulated by the Town.

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

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

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

(E) Employment with or interests in entities doing business with Town.

(1) A statement filed under this chapter 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.

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

- (i) The name and address of the principal office of the business entity;
- (ii) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and
- (iii) The name of each Town agency with which the entity is involved.

(F) Indebtedness to entities doing business with Town.

(1) A statement filed under this chapter 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:

- (i) By the individual; or
- (ii) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

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

- (i) The identity of the person to whom the liability was owed and the date the liability was incurred;
- (ii) The amount of the liability owed as of the end of the reporting period;
- (iii) 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
- (iv) The security given, if any, for the liability.

(G) A statement filed under this chapter 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.

(H) Sources of earned income.

(1) A statement filed under this chapter 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.

(2) 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.

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

4.20.060 For the purposes of §4.20.050(e)(A), (B), and (C) of this title, the following interests are considered to be the interests of the individual making the statement:

(A) 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.

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

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

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

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

4.20.070

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

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

Chapter 4.24. Financial disclosure — employees and appointed officials.

4.24.010 This chapter only applies to the following appointed officials and employees:

- Planning Commission Members
- Board of Appeals Members
- Zoning Administrator
- Town Administrator
- Director of Public Works

4.24.020 A statement filed under this chapter shall be filed with the Commission under oath or affirmation.

4.24.030 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 or receipt.

4.24.040 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.

4.24.050 The Commission shall maintain all disclosure statements filed under this chapter as public records available for public inspection and copying as provided in §§4.20.030 and 4.20.040 of this title.

#### Chapter 4.28. Exemptions and modifications.

The Commission may grant exemptions and modifications to the provisions of chapters 4.16 and 4.24 of this title to employees and to appointed members of Town Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this title, and the application of this title would:

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

#### Chapter 4.32. Enforcement.

4.32.010 The Commission may:

(A) Assess a late fee of \$2 per day up to a maximum of \$250 for a failure to timely file a financial disclosure statement required under chapters 4.20 and 4.24 of this title; and

(B) Issue a cease and desist order against any person found to be in violation of this title.

4.32.020 Upon a finding of a violation of any provision of this title, the Commission may:

(A) Issue an order of compliance directing the respondent to cease and desist from the violation;

(B) Issue a reprimand; or

(C) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

4.32.030

(A) Upon request of by the Commission, the Town Attorney may file a petition for injunctive or other relief in the circuit court of Frederick County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this title.

(B) The court may:

(i) Issue an order to cease and desist from the violation;

(ii) Except as provided in paragraph (C) of this section, void an official action taken by an official or employee with a conflict of interest prohibited by this title 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

(iii) Impose a fine of up to \$5,000 for any violation of the provisions of this title, with each day upon which the violation occurs constituting a separate offense.

(C) 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.

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

(A) Is subject to termination or other disciplinary action; and

(B) 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.

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

4.32.060 A finding of a violation of this title by the Commission is public information.

## Proposed Salary Enhancement for Burgess and Commissioners

### History:

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The last salary increase for the Burgess and Commissioners took effect in 1996

- That enhancement took salaries from \$100 to \$200 per month for Commissioners
- It enhanced the Burgess salary from \$350 to \$500 per month

Beginning in February, 2009 we added an additional meeting date to our monthly calendar

Most Commissioners are now attending at least 3 meetings per month in addition to a committee meeting.

### Proposal:

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<i>Existing Burgess Salary</i>	<i>\$500/month = \$6,000 yearly</i>	
Proposed Burgess Enhancement	\$850/month = \$10,200 yearly	An increase of \$4,200

<i>Existing Commissioner Salary</i>	<i>\$200/month = \$2,400 yearly x 5 Commissioners = \$12,000</i>
Proposed Commissioner Enhancement	\$350/month = \$4,200 yearly x 5 Commissioners = \$21,000

A proposed \$9,000 increase for all 5 Commissioners

### Budget Implications:

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None for this fiscal year

\$7,800 increase in FY '16 budget ( April, May and June 2016 payments)

\$13,200 yearly increase in General Fund for salaries for Burgess and Commissioners in FY'17 budget

This increase represents less than .5% of general fund budget.

General Fund budgets have averaged a surplus of \$341,223 from FY '09 through '13

Current General Fund budget is expected to have a surplus exceeding \$500,000

### Effective Date:

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Ordinance would take effect following the April, 2016 election and would apply to only those officials facing election.

Other elected officials would receive a salary increase following the April, 2018 election.