

APPENDIX A

**TRANSITION TO ACTUAL VALUE –
“CAPS,” “SMOOTHING,” AND OTHER BUFFERS**

The purpose of the “actual value initiative” (“AVI”) is to assess properties as close to actual market value as possible. Many properties in Philadelphia are now severely under-assessed or over-assessed. The inevitable result of AVI will therefore be very large changes – both increases and decreases – in the amount of property tax many homeowners will pay. This will be true even if the property tax millage rate is adjusted so that AVI is “revenue neutral” as a whole. Many homeowners will see their share of property taxes double, triple, or more (since they are now severely under-assessed); on the other hand, many homeowners will see their share of property taxes cut in half or more, because they are now severely over-assessed.

Before AVI can be implemented, the City must decide whether measures should be enacted to soften the impact on those homeowners who would otherwise be hit with significantly higher property tax bills all at once. As summarized below, the City has already enacted a number of provisions that address this concern. As further summarized below, there are a number of additional actions the City could take if it wishes to further address this issue. The cost of any such action will depend on the final AVI numbers determined by the BRT and the specifics of the proposed measures, and can be accurately estimated once those numbers are known.

PROPERTY TAX RELIEF MEASURES NOW AVAILABLE

Low-income senior citizen tax program

- Philadelphia is authorized under state law to enact ordinances that in effect freeze property taxes for low-income senior citizens. *See* 72 P.S. §4751-21. The Act defines “low-income” as a person who is eligible for benefits under the Commonwealth’s program of pharmaceutical assistance for the elderly (PACE/PACENET).
- Philadelphia has exercised that authority by enacting Chapter 19-2900 of the Code. This Chapter applies to both City and School District real estate taxes, and protects eligible seniors (those over 65 who are PACE/PACENET eligible) from real estate tax increases resulting from either increased assessments or increased real estate tax rates.
- Chapter 19-2900 of the Code will fully protect eligible seniors from any adverse impacts of AVI, while still permitting them to benefit from any property tax decreases resulting from AVI.

Making it easier to pay real estate taxes

- Section 19-1305 of The Philadelphia Code (“Code”) authorizes installment payment agreements (for up to one, and possibly two, years) for low-income and low-income senior citizens. These payment agreements do not require payment of interest or penalties.

APPENDIX A

- Section 19-1302 of the Code authorizes Revenue to accept payment of real estate taxes on a quarterly basis, although interest and penalties do apply.
- Section 19-1307 of the Code authorizes deferrals of increases in real estate taxes greater than 15% resulting from assessment increases. The Revenue Department is authorized to determine eligibility based on need. Deferrals accrue interest at 6% annually, and are due upon sale of the property (but may be paid at any time prior to sale).

ADDITIONAL TAX RELIEF MEASURES TO CONSIDER

“Caps” and “smoothing”

- Legislation could be enacted to provide for a more gradual transition to the higher property taxes some homeowners would pay after AVI. For example, such legislation could say that no homeowner’s property tax would increase by more than a particular percentage in a given year (a “cap”). Or it might provide that property owners would be taxed based upon the average of their assessments over some period of time, the past five years, for example (“smoothing”).
- The validity of cap and smoothing provisions is not clear. The issue is whether such provisions are permitted under current state assessment law, and whether they would violate the “uniformity” requirement of the Pennsylvania Constitution.
- The Law Department has concluded that cap or smoothing provisions may be defensible, provided that such provisions phase in tax increases over a relatively short timeframe. For example, the Law Department has concluded that a 10% cap would be at the outer bounds of any possibly defensible “cap,” but a 4% cap would not be defensible.
- It is not clear if state legislation would be required before a reasonable cap or buffer provision could be enacted. Such enabling legislation would eliminate any doubt as to whether such provisions conflict with state assessment laws, but the “uniformity” issue would remain, since it is a constitutional requirement (though the courts are likely to show great deference to the determination of the General Assembly that a particular program is constitutional).
- Before caps, buffers and smoothing could apply to the 60% of the real estate tax imposed by the school district, state legislation likely would be needed to address the “Act 46” issue. Act 46 requires that as long as the School District remains under a declaration of “distress” and is run by the School Reform Commission, the City is obligated to provide certain financial support to the School District, including continuing to authorize taxes at specified levels. See 24 P.S. § 6-696(h).

APPENDIX A

State legislation also likely will be needed to address that portion of the School District real estate tax that is directly authorized by the State; the City has no authority to change this millage *or* to impose buffers without State authorization.

- Council has enacted or introduced various cap, buffer and smoothing provisions, but all are dependent on the enactment of state enabling legislation:
 - Section §19-1306 of the Code limits real estate tax increases to 4% in any one year. However, Section 2 of the ordinance that added §19-1306 to the Code (Bill No. 020577, approved December 5, 2002), states that it shall not be effective until “enactment of authorizing legislation by the General Assembly.”
 - Pending Bill No. 0903575 and Bill No. 090358 would enact a “five year smoothing” provision, so that property owners would be taxed based upon the current year and prior four year’s assessments.
 - The Law Department has never opined on “smoothing” (as opposed to “caps”), but it would seem that a 5-year smoothing ordinance likely would be more defensible than a restrictive “cap.”
- There are downsides to cap and smoothing provisions.
 - A cap is likely to be expensive. All those who are getting a tax cut because of AVI would continue to receive the full amount of their tax cut, while the City would not receive the full amount from those who were getting a tax increase from AVI. The lost revenue could be restored by increasing the tax rate, but that could require a very large increase, the effect of which could be to significantly slow down property tax relief for those who are now over-assessed.
 - Smoothing is likely to have less effect on City revenues than a cap, since it in effect caps both increases and decreases. That means, however, that smoothing will slow down property tax relief for those who are now over-assessed. If the cost of smoothing is offset by an increase in the tax rate, that would even further slow down property tax relief for those who are now over-assessed.

Gentrification relief

APPENDIX A

- Philadelphia is authorized under state law to defer or exempt certain real estate tax increases on the principal residence/domicile of “longtime owner-occupants.” *See* 72 P.S. §4749.1 *et seq.*
- However, state law prohibits the City from basing eligibility on either financial need or age. *See* 72 P.S. § 4749.5(c). Cities and counties of the second class *are* permitted to take financial need and/or age into account in determining eligibility.
- Gentrification relief has been considered in Philadelphia, but has never been adopted, due, perhaps, to the inability to take financial need and age into account in determining eligibility.
- State law could be changed so that Philadelphia, like cities and counties of the second class, is permitted to provide gentrification relief based on financial need or age.

Homestead exemption

- A “homestead exemption” is a provision that exempts a specified amount of the value of owner-occupied housing from property taxes. For example, the first \$10,000 of assessed value of all “homesteads” would be exempt from tax.
- The “Homestead Property Exclusion Program Act,” 53 Pa.C.S. §8581 *et seq.*, authorizes all taxing jurisdictions in the Commonwealth *except Philadelphia* to enact a homestead provision. *See* 53 Pa.C.S. §8405.
- Section 19-1301.1 of the Code sets forth a homestead exemption (with the amount of the exemption left blank), contingent on the enactment of enabling legislation.
- The homestead enabling legislation includes a provision that tax rates may not be increased to pay for the homestead exemption. However, if a homestead provision is adopted as part of a substantial package of legislation to transition to AVI, including necessary millage changes and other buffers, it is possible a revenue-neutral homestead provision could be enacted, notwithstanding the provision prohibiting an increase in tax rates to pay for it.

DRAFT

APPENDIX A

[Note: This document scanned from original and may contain errors]

MEMORANDUM

Privileged and Confidential Advice of Counsel

TO: Honorable Anna C. Verna, President, City Council
Members of City Council
Joyce Wilkerson, Chief of Staff to the Mayor

FROM: Nelson A. Diaz, City Solicitor

DATE: September 24, 2002

SUBJECT: Real Estate Tax Assessment Bills

There are currently pending in Council and scheduled for hearing a number of tax bills about which we have received a number of informal requests for review. In accord with my Office's commitment to endeavor to share with the sponsors of any legislation, and with the Administration, any legal concerns regarding pending bills prior to consideration by the Council, I wish to advise you that, in my opinion, each of the bills that attempts to interfere with the assessment process is unlawful, particularly with respect to the current fiscal year and particularly with respect to the tax authorization of the School District. I am writing to all members of Council because each of you has sponsored one or more of the subject bills.

The process by which assessments are to be determined and upon which real estate taxes are required to be based is entirely controlled by state law. The First Class County Assessment Law, 72 P.S. §5342.1 to 5341.21, provides specific direction and detail to the Board of Revision of Taxes regarding how to determine market values and how to establish assessments for real property throughout the City, and specifically directs that the assessments for each calendar year are to be used as the basis for taxation in the immediately following calendar year. Moreover, under the First Class City Home Rule Act, the City is explicitly precluded from legislating in any manner contrary to laws of the General Assembly that either "limit[] rates [or] fix[] subjects of taxation", or "[p]rovid[e] for the assessment of real . . . property. . . for taxation purposes." 53 P.S. §13133(a)(8), (9). Therefore, Council's powers with respect to the subject of real estate assessment is extremely limited, and must conform with all relevant state laws, including in particular the First Class County Assessment Law. Council clearly has the power to set the *rate* upon which the assessed values returned by the Board are to be taxed, for City tax purposes. Council also has substantial discretion in providing for additions, penalties and interest for late payments, and in authorizing a waiver of same in appropriate circumstances. But Council cannot determine the manner in which assessments are to be calculated by the Board of Revision, nor can Council determine that real property taxes are to be imposed on anything other than the assessments returned by the Board.

DRAFT

APPENDIX A

In light of these general principles, and as more fully explained below, it is my judgment that none of the bills under consideration by Council that would effectively freeze or cap assessments at any level other than the current, actual assessments returned by the Board pursuant to state law are legal. I do recognize, however, that in 1981, the Court of Common Pleas approved a consent decree, on an equitable basis, that allowed for a gradual achievement of taxation based on actual, current assessments, and therefore an argument can be made that an ordinance that demonstrates a good faith attempt to reach a uniform, current tax system with all deliberate speed, but without imposing sharp economic hardships on property owners who may have experienced extraordinary assessment increases, may be defensible on an equitable basis.

Notwithstanding the foregoing, however, I do not believe Council has the power to enact any of the tax “freeze” or assessment “cap” bills, to the extent they materially affect City or School District revenues in the current fiscal year, which they all appear to do. Council cannot ordain a material reduction of City revenues once the fiscal year has begun, nor can Council revoke an authorization from the School District once the District has acted and relied upon that authorization. Finally, I read “Act 46” as prohibiting any tax “freeze” or assessment “cap” with respect to the School District, as we are required to maintain our tax effort for the District at current levels.

- ***Summary of the pending ordinances.***

The “freeze” or “cap” bills:

Bill Nos. 020490 and 020491 (prime sponsor: DiCicco) would impose the real estate tax due in March, 2003, for the City and the School District, upon assessments for 2001 (rather than, under current law, on the assessments for 2002), thus effectively accomplishing a “freeze” in assessments. I do not believe this bill is defensible in court.

Bill No. 020577 (prime sponsor: O’Neill) would limit the City real estate tax levy in any year on any property to 104% of the prior year’s tax levy, so long as the property is owned by the same person who owned the property the previous year, thus effectively imposing a 4% “cap” on assessment increases, but only for existing property owners; new property owners would be taxed at full value. The ordinance would not apply to School District taxes. The ordinance would become effective upon enactment of authorizing state legislation, which would be needed to make this bill defensible.

Bill Nos. 020537 and 020538 (prime sponsors; Nutter and Verna) would impose the real estate tax due in March, 2003, for the City and the School District, upon assessments for 2002 (as provided under current law), but only to the extent an assessment does not exceed 110% of the 2001 assessment, thus effectively imposing a 10% “cap” on assessment increases. These bills impose the 10% “cap” on into the future. I do not believe Bill No. 020538 (School District taxes) is defensible. I do not believe Bill No. 020537 (City taxes) is

DRAFT

APPENDIX A

lawful with respect to the current fiscal year, but it may be defensible in court with respect to future years on a theory of gradual, good faith efforts.

The general “deferral” bill:

Bill No. 020579 (prime sponsor: Rizzo) would authorize a “deferral” of City and School District real estate tax increases until the sale of a property. Six percent annual interest would be imposed on the deferred amount. Eligibility for the “deferral” is to be determined by the Revenue Department, upon consideration of income, expenses and available liquid assets. I believe this bill would be defensible in court, although some redrafting may be needed.

The special tax provision bills:

Bill No. 020438 (prime sponsor: Clarke; introduced June, 2002; reported favorably by Committee on Sept. 19) would provide a “deferral” of real estate tax liability to low-income owner/occupiers of certain real property in the City which experienced an increase in market value due to improvements to surrounding properties (gentrification). Section 2 of the bill states that it shall be effective upon enactment of authorizing legislation by the General Assembly.

Bill No. 020493 (prime sponsor: Clarke) would expand eligibility for the existing tax forgiveness program for low-income senior citizens who experience an increase in assessment. The bill would increase the maximum income cut-offs beyond those currently provided by state statute. Section 2 of the bill states that it shall be effective upon enactment of authorizing legislation by the General Assembly.

Because these two bills expressly require further state authorization, I have not conducted a thorough review of their provisions; some redrafting may be needed to make these bills effective.

- ***The “freeze” and “cap” bills would lower tax revenues in the middle of the fiscal year and are therefore prohibited.***

With respect to City taxes, each of the “freeze” and “cap” bills would materially reduce current revenues to the City in the current fiscal year. Having enacted a balanced budget in accordance with the Home Rule Charter based on the Mayor’s estimate of revenues for the current fiscal year, I do not believe Council is free to “unbalance” that budget after the fiscal year begins. The Charter is clear that the Mayor’s estimates of revenues are binding on Council, and Council is not free to reject them.

The Mayor’s estimate of revenues is based on a given millage rate imposed on 2002 assessments; by mandating that that millage rate be applied to an assessment base that is *lower* than the 2002 assessments, or by “capping” any tax increase notwithstanding an

APPENDIX A

increase in assessment, each of these ordinances necessarily will produce less revenue for the City. I recognize that, to the extent an assessment increase was unanticipated, the Council might determine that, in *its* view, the reduction in assessment base or the “cap” on any tax increase merely offsets the unanticipated assessment increase. In my opinion, there are numerous reasons why this is not a legal basis for a mid-year tax decrease.

For one thing, it is not *Council's* estimate of revenues that is determinative; under the Charter, only the Mayor is charged with estimating revenues. In my view, once those estimates have been issued, Council is not free to adjust tax rates or assessment bases merely because of changed economic or other conditions. In other words, Council is not free to determine that the previously enacted tax rate is no longer needed because of offsetting assessment increases. I am unaware of any data that conclusively show that any of the proposed “freezes” or “caps,” in combination with recent increases in assessments, would produce the same revenue level as estimated by the Mayor. Moreover, the Mayor’s revenue estimate takes into account numerous factors -- an *anticipated* rise in assessments, a certain number of non-payers or delinquencies, and other economic conditions. Council is not free to impose its judgment, after the fiscal year begins, regarding the amount of revenue that *it* feels is needed to balance the budget. The Charter provides that the Mayor’s estimate of revenues to be produced by the revenue measures ordained by Council at the outset of the fiscal year is binding on the Council; the Charter does not provide for mid-year adjustments of those estimates, and certainly not mid-year adjustments by Council, no matter how much circumstances might have changed. (Indeed, we cannot know with certainty now that, after appeals of the recent assessment increases, the revenue to be produced by the current City real estate tax millage will be significantly greater than that estimated by the Mayor at the outset of the year.)

Moreover, the Charter does not speak of revenue estimates on a tax-by-tax basis; each tax cannot be looked at in isolation. Even if it were mathematically certain (which it cannot be) that a cap of, say, 10%, on assessment increases would produce the same level of real estate tax revenues as the Mayor had estimated, that still would not legally suffice to mean that the Council is ordaining sufficient revenues to balance the budget because the Mayor’s revenue estimate relates to an accumulation of *all* City taxes and fees, and increases in one tax may be necessary to offset decreases in other taxes. Thus, for example, an unanticipated economic downturn might cause a significant decrease in wage taxes; in such a scenario, an unanticipated *increase* in real estate tax revenue might be necessary to keep the budget in balance and the revenue estimates accurate, and thus a mid-year *decrease* in real estate taxes would interfere with the Mayor’s estimates. I therefore conclude that Council is not free to substitute *its* economic analysis -- particularly mid-year -- for the Mayor’s judgment issued prior to the start of the fiscal year. Council may not ordain a decrease in tax revenues for the City, after the budget has been balanced at the start of the fiscal year.

- ***Council may not lower the School District tax authorization after the start of the fiscal year, or during a period of distress.***

DRAFT

APPENDIX A

With respect to School District taxes, I believe the matter is even clearer. The Charter requires that Council provide the District with taxing authority to balance its budget prior to the start of the fiscal year. Using that authority, the District already has levied its real estate tax and has balanced its budget in reliance on that real estate tax. In my judgment, the Council cannot be free to revoke that authority, once granted and relied upon, mid-year. The School District -- an independent legal entity -- had the right to rely upon whatever revenues the existing millage rate would produce, on *current* assessments.

Moreover, under the maintenance of effort requirements of "Act 46," the City is precluded from reducing its tax authorization to the District below the level of authorization granted at any time during the period of "distress." Having authorized a particular millage rate on current assessments, the City is not free, in my opinion, to reduce either that millage rate or the assessments upon which that millage is imposed. I recognize the argument that the City is merely required, under "Act 46," to provide to the District a minimum dollar amount of tax revenue, and is not required to maintain any particular *rate* of taxation. I do not believe that is a correct reading of the statutory language or statutory intent. If assessments were to *decrease*, I believe it is quite clear that the City would not be obligated to *increase* its tax rate and tax effort to recoup any revenue losses experienced by the District. Similarly, I see no reason why Act 46 would allow the City to deprive the District of any revenue *gains* the District might experience as a result of any assessment *increase*. My understanding of Act 46 is not that the General Assembly wished to obligate the City to maintain the same precise level of tax support, but, rather, the same level of tax *effort*. To reduce the tax rate, or to reduce the assessment base upon which that rate is calculated by means of a freeze or cap on assessments, would be to reduce the City's tax effort, in violation of Act 46.

In relevant part, Act 46 provides: "All taxes authorized to be levied by a school district of the first class or for a school district of the first class by a city or county of the first class on the date of the declaration of distress shall continue to be authorized and levied in accordance with this act and shall be transmitted to the School district. * * * [T]he tax authorized by the city or county to be levied for the school district or dedicated to the school district shall be a[] . . . tax not less than the highest amount . . . authorized by the city or county to be levied for the school district or dedicated to the school district during any of the three full preceding fiscal years." 24 P.S. §6-696(h). I read the requirement to continue authorizing the same tax as had been authorized upon the date of the declaration of distress to refer not to the dollar revenue produced by the tax but to the tax rate on current assessments.

Finally, both the "freeze", and the 10% "cap" ordinances would purport to apply the "freeze" or "cap" not only to the City-authorized portion of the School District real estate tax, but also to that portion of the School District real estate tax that is authorized directly by the General Assembly and over which Council has no legislative control. Council and the City can control the methods of collection and enforcement of this tax -- including the imposition of penalties and interest -- but Council has no authority to control the rate, or the assessment

DRAFT

APPENDIX A

base upon which that rate is imposed, to the extent a tax is authorized directly by the General Assembly. I understand that as much as 20% of the District's real estate tax levy is state- authorized and therefore, in my view, is untouchable.

- ***An outright 'freeze' on assessments would be unlawful, though a gradual increase in assessments, by means of a not-too-small "cap," might be defensible.***

In 1981, City Council enacted, over the Mayor's veto, a three-year "freeze" on property tax assessments. City Solicitor Alan Davis advised Mayor Green that such a freeze was unlawful and should not be enforced, as state law requires annual assessments. I am in agreement with Solicitor Davis's views. Indeed, I read the First Class County Assessment Law as making clear that real property taxes in Philadelphia are to be based on then-current assessments, not assessments that have been artificially frozen at some lower level based on no-longer-current values.

72 P.S. § 5341.8 states; "The assessments made by the assessors, as revised and supplemented by the board, subject to appeal therefrom as hereinafter in this act provided, shall constitute the assessed value for tax purposes of real property located in the county for *the next ensuing calendar year.*" I read this to mean that the tax rate in any given year must be imposed on the assessed value returned by the Board *for the preceding year.* Bill Nos. 020490 and 020491 would violate this statutory mandate, in that they would impose the tax on the assessed value returned by the Board *two years earlier,* contrary to the statutory mandate to keep assessments and taxes current.

I also have serious doubts about whether a legislative freeze on assessments -- even for only one year -- would pass the uniformity test. One could argue that a freeze is uniform, because everyone is uniformly taxed on *last year's* assessment, but I believe the better argument is that the constitution requires taxes to be imposed uniformly with respect to *current* assessments, otherwise the legislature would be free to tax based on historical values, perhaps decades old, institutionalizing tremendous inequities that the Uniformity Clause was designed to prevent. Interestingly, although not definitively decided, the decision in *Coleman v. Green*, 16 Phila. 26 (1983) (Takiff, J.), discussed below, strongly suggests agreement with the foregoing, as Judge Takiff explains that the requirements of the First Class County Assessment Law to insure current and uniform assessments were necessary to ensure *constitutional* uniformity.

The decision in *Coleman v. Green* is instructive for a much more important reason, though. After Council overrode Mayor Green's veto of the three year freeze, litigation ensued and a settlement was reached, wherein the City agreed to a compromise between the inequitable results of an outright freeze and the significant economic hardships perceived to be caused by an immediate implementation of the substantial assessment increases which had prompted Council to enact the freeze in the first place. The settlement provided that assessments would rise gradually over a six year period, so that, at the expiration of six years, all properties would be taxed on current, actual assessments. This principle of

APPENDIX A

“gradualism” was approved by Common Plea in *Coleman v. Green*. Judge Takiff explained that taxation based on current, actual assessments was required by statute and probably by uniformity, but the economic hardships that would ensue if the City and the BRT insisted on immediate compliance with substantial assessment increases justified a gradual implementation Of legally and constitutionally mandated taxation on actual, current assessed values.

The gradual implementation formula used in settlement of the *Coleman* litigation is too complex to discuss here, but I must note that it ensured *full* compliance with the statutory mandate of taxation based on current values within six years, whereas none of the pending bills in Council carry such assurance. For instance, a property previously assessed at \$100,000 which received a 100% increase this year would take almost ten years to achieve full taxation under the 10% assessment cap bills (assuming, of course, no further increases in value during those ten years, an unreasonable assumption). It is not at all certain that such an *extended* approach to “gradualism” would be upheld by the courts. Moreover, the gradualistic approach to statutory compliance was approved by the court as a *settlement of litigation*, not as a legislative solution. It is not at all clear that Council has the power to enact a taxing scheme that is probably in violation of statutory mandate, merely because it would be economically burdensome for some taxpayers to endure immediate statutory compliance. Nonetheless, I cannot say with certainty that such a gradualistic approach would be invalidated by the courts.

It is my opinion that a four percent annual cap on assessment increases would not meet the gradualism test -- which requires a good faith effort by the City to come into statutory compliance as quickly as feasible. I believe that allowing increases of no more than ten percent is at the outer limit of what might be defensible, but I cannot say with certainty that a court would not approve a ten percent assessment “cap,” assuming the reports of mammoth assessment increases imposing substantial economic hardship are accurate.

- ***A general “deferral” bill is potentially lawful, though the pending bill contains ambiguities that would need to be fixed.***

So long as enforcement is uniform and equitable, I believe the City has substantial leeway with regard to allowing “deferral” of payments. Councilman Rizzo’s bill essentially delegates to the Revenue Department the power to determine the length of any deferral and the criteria for eligibility. (This delegation may already be implicit in current law.) The bill is unclear, however, regarding what penalties would be imposed and what would be waived. Moreover, it is not at all certain that some of the eligibility criteria suggested by the bill -- household income, and ability to pay -- would be allowed under uniformity principles. We would need to research this question further if the City were interested in granting extended deferrals. Finally, although I believe the City has substantial enforcement discretion with respect to its tax collection policies, both on behalf of itself and the School District, I must note that an argument could be made that “Act 46” precludes the City from allowing deferrals of School District taxes, to the extent such deferrals would materially reduce School

DRAFT

APPENDIX A

District receipts. I do not believe such an argument would be correct, because the City must be free not to insist on payments from taxpayers where payments would be extraordinarily burdensome or even unrealistic, but it is not impossible that the School District or the Commonwealth may make claims to the contrary.

- ***The special tax provision bills will require further study; both require authorization from the General Assembly.***

Bill No. 020438:

The First and Second Class County Property Tax Relief Act of 1988, 72 P.S. 4949.1 to 4749.6, provides for an anti-gentrification deferral program along the lines of Bill No. 020438, but only if there are no income limitations. Section 4749.5(c)(1) states explicitly: "Neither financial need nor age of the longtime owner-occupant shall be a determinant of eligibility in a county of the first class." Because Bill No. 020438 limits eligibility to low-income homeowners, the program is not authorized by state law (and, under the constitution, may not be implemented without state law authorization). (Interestingly, school districts and municipalities within a county of the second class *are* expressly authorized to use financial need and/or age to determine eligibility. §4749.5(c)(2).)

If state legislation is procured, I see a number of ambiguities in the bill (most of which stem directly from the wording of the state legislation, upon which the ordinance is directly patterned), including: (i) I do not read the deferral to apply to the School District; indeed, I do not read the state legislation to authorize deferral of School District taxes. (ii) The ordinance does not state how long the deferral is to last, nor whether the tax liability can be filed as a lien on the property during the term of the deferral. (iii) The ordinance is unclear to me as to the definition of the "eligible areas" in which the deferral is to be available. (iv) The ordinance presumes that any increase in assessment of five percent or more, not due to physical improvements on the subject property, derive from gentrification and are therefore subject to deferral; this presumption is of uncertain validity.

Bill No. 020493:

This bill would require state implementing legislation, and will need further study.

cc: Janice Davis, Secretary of Financial Oversight
Nancy Kammerdeiner, Revenue Commissioner
Caroline Brobeil, Special Assistant to the Chief of Staff

APPENDIX A

**TRANSITION TO ACTUAL VALUE
 “CAPS” AND OTHER PROPERTY TAX RELIEF MEASURES
 PROPERTY TAX RELIEF MEASURES NOW AVAILABLE**

Program	Authorizing legislation	Description
Low-income senior citizen tax relief program	Code, Chapter 19-2900 (based on state enabling legislation, 72 P.S. §4751-21).	Protects eligible seniors (those over 65 who are PACE/PACENET eligible) from real estate tax increases resulting from either increased assessments or increased real estate tax rates. Will apply to any increases from AVI.
Installment payments (without interest)	Code, §19-1305	Authorizes installment payment agreements without interest for up to one year, and possibly two years, for low-income and low-income senior citizens.
Installment payments (with interest)	Code, §19-1302	Authorizes payment of real estate taxes on a quarterly basis, although interest and penalties apply.
Deferral of real estate tax assessment increases	Code, §19-1307	Authorizes deferrals of increases in real estate taxes greater than 15% resulting from assessment increases. The Revenue Department is authorized to determine eligibility based on need. Deferrals accrue interest at 6% annually, and are due upon sale of the property (but may be paid at any time

APPENDIX A

TRANSITION TO ACTUAL VALUE - “CAPS” AND OTHER PROPERTY TAX RELIEF MEASURES

		prior to sale).
ADDITIONAL TAX RELIEF MEASURES TO CONSIDER		
Program	Legislation required	Issues
<p>“Cap” on tax increases</p> <p>Would provide that no taxpayer would be subject to more than a certain percentage real estate tax increase in any one year.</p>	<p>State enabling legislation might be required to authorize caps.</p> <p>State enabling legislation would be needed to address “Act 46” issue relating to School District taxes.</p> <p>A 4% cap is now set forth in the Code, §19-1306, but that is subject to state enabling legislation.</p>	<p>The Law Department believes a cap as low as 10% might be defensible against a “uniformity” challenge, but a cap of less than 10% would not be.</p> <p>Application of a cap to real estate taxes imposed by the School District would likely require state legislation amending “Act 46” requirements that City maintain taxing efforts for School District.</p> <p>A “cap” on tax increases only (and not also on tax decreases) could be expensive. Increasing the tax rate could limit the cost, but at the price of slowing down property tax relief for those who are now over-assessed.</p>
<p>“Smoothing”</p> <p>Would provide that taxes would be paid on an average of several years’ of assessment (such as the last five</p>	<p>Same as with a cap.</p> <p>Pending Bills No. 0903575 and 090358 would enact a “five year smoothing” provision, so that</p>	<p>The Law Department has not issued an opinion on “smoothing,” but smoothing is likely more defensible than a cap.</p> <p>Smoothing in effect limits both increases and</p>

APPENDIX A

TRANSITION TO ACTUAL VALUE - “CAPS” AND OTHER PROPERTY TAX RELIEF MEASURES

years), thereby “smoothing” the impact of higher assessments	property owners would be taxed based upon the current year and prior four year’s assessments.	decreases, so is likely to be less costly than a cap. Increasing the tax rate could offset the cost, but that would even further limit tax relief to those who are now over-assessed.
Program	Legislation required	Issues
<p>Gentrification relief</p> <p>Would defer or exempt certain real estate tax increases on the principal residence/domicile of “longtime owner-occupants.”</p>	<p>Authorized under 72 P.S. §4749.1 et seq. Amendments would be needed to permit City to consider financial need and age in determining eligibility.</p>	<p>State law prohibits the City from basing eligibility on either financial need or age. All other cities in Pennsylvania may take financial need and age into account in determining eligibility.</p> <p>Program may be too expensive unless eligibility can be limited based on need and age.</p>
<p>Homestead exemption</p> <p>Would exempt a specified amount of the value of owner-occupied housing from property taxes. For example, the first \$10,000 of assessed value of all “homesteads” would be exempt from tax.</p>	<p>Requires state enabling legislation. The “Homestead Property Exclusion Program Act” authorizes all taxing jurisdictions <i>except Philadelphia</i> to enact a homestead exemption. The Code (§19-1301.1) now contains a homestead exemption (with the amount left blank), contingent on enactment of enabling legislation.</p>	<p>The homestead act provides that tax rates may not be increased to pay for a homestead exemption. However, that provision is arguably not triggered if a homestead provision is adopted as part of a package of legislation to transition to AVI, including necessary millage changes and other buffers.</p>