

TASK FORCE ON ETHICS AND CAMPAIGN FINANCE REFORM

FINAL REPORT AND RECOMMENDATIONS



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PRESENTED TO:

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I. INTRODUCTION

More than 100 years ago, Lincoln Steffens described Philadelphia as “corrupt and contented” in his book *Shame of the Cities*. More recently, fueled by periodic prosecutions and convictions of corrupt public officials, the City of Philadelphia has contended with a similar reputation – a place where citizens and businesses relied on corruption of City officials for access to municipal services and public contracts. That reputation, while exaggerated at times, was at other times well-deserved.

Over the last several years, Philadelphia’s voters have made it exceedingly clear that this reputation needs to change. Thus, in the wake of a vast corruption scandal that reached the highest levels of local government, the City enacted significant ethics and campaign finance laws. Philadelphia City Council passed the City’s (and the Commonwealth’s) first law limiting campaign contributions and imposing financial caps on donors seeking non-competitively bid city contracts. Philadelphia voters also approved the creation of an independent Board of Ethics to investigate and enforce the City’s ethics and campaign finance laws. All of these measures were designed to restore confidence in City government.

During the 2007 mayoral election, then-candidate Michael Nutter presented his “Plan for Ethics and Government Reform Now.” In that document, Mayor Nutter set out his vision for Philadelphia – a vision that would make “Philadelphia a model for ethics reform and improved government performance.”

After being elected, Mayor Nutter brought an ethics team directly into the Executive branch. And, the creation of this Task Force by the Mayor and City Council President Anna Verna in September 2008 sent an unequivocal message about the need to enact new ethics and campaign finance reforms and to strengthen those already in place.

No one can dispute the significance of this effort. However, the first test of the City’s campaign finance ordinance during the 2007 mayoral and City Council elections exposed areas that need to be addressed. Further, the City has various ethics rules in place, but they do not apply equally across all branches of government. In some cases, they do not exist at all.

Thus, it is clear that, despite the efforts described above, there remains significant room for improvement and that the City’s ethics rules have gaps in them that leave ethics land mines

unaddressed. Closing these gaps is essential because, sadly, we still hear about how some City officials and employees occasionally still exploit these gaps and loopholes to the detriment of the public they serve. Only by fixing them can government be assured of the public's trust. Action must be taken to instill confidence in those who live, work, and visit this great City.

Philadelphia is not alone in aggressively pursuing laws to make its government more open, honest and accountable to the citizens. During the last several years, numerous city and state governments have attempted to enact and strengthen laws to reform their ethical standards. This year, for example, the Commonwealth of Massachusetts, a state plagued by scandals involving bribery, bid-rigging, and more, and faced with enormous public pressure for action as a result of the current economic crisis, enacted a slate of ethics laws which have been lauded as "the most significant reforms in a generation." And, earlier this year, the City of Pittsburgh passed measures targeting, among other things, no-bid contracts and registration of lobbyists.

Before discussing recommendations for substantive rules changes, we note that ethics reform is not just a matter of adding or changing rules. Just as critically, reform includes strengthening the framework in which those rules operate in the following manner:

- 1) Ethics rules must apply equally to all City officials and employees, whether elected or appointed, no matter in which corner of City government they work. Citizens who pay taxes, and businesses and visitors who the City wants to attract, view all City officials and employees as the same; and indeed, these officials and employees all are paid from the same public funds. The public must know that all City officials and employees work in their best interests, particularly in difficult economic times when tax dollars are especially limited.
- 2) Data about political contributions, lobbying, and contracting must be not only disclosed, but made easily searchable. Information is of limited use if it cannot be easily accessed and understood by the public.
- 3) The City must have an independent Inspector General to investigate allegations of fraud, corruption, and misconduct. The Office of the Inspector General currently is part of the Executive branch; consequently, it lacks authority to investigate wrongdoing of elected officials other than the Mayor. For the ethics provisions to apply with equal force to all City officials and employees, the Inspector General must

be authorized to investigate allegations of fraud, corruption, and misconduct in all branches of City government.¹

4) In this report, the Task Force has suggested significant additional responsibility and further duties be delegated to the City's Board of Ethics, which, as discussed above, was created pursuant to a charter amendment overwhelmingly approved by the City's voters in May 2006. To carry out this expanded mission, the Task Force calls upon City Council and the Mayor to provide sufficient funding and staff for the Board of Ethics. While the Task Force is certainly mindful of the current financial straits of the City, this is not the time to be withdrawing support and funding from a burgeoning, independent entity that is safeguarding the interests of the City's citizens through its oversight and open public meetings, which can be attended by all citizens.²

¹ The Office of the Inspector General is only one of the City's important ethics overseers. As described below, the City of Philadelphia also has a Chief Integrity Officer, a Board of Ethics, and an independently elected City Controller, each having the following responsibilities for the oversight of ethical conduct in Philadelphia:

-- The City's Chief Integrity Officer ("CIO"), a position created by Mayor Nutter, is charged with promoting honesty, integrity, and transparency in City contracting, disposition or use of City property, and provision of City services. Specifically, the CIO, among other things, reviews and monitors advertising, consideration, and award of city contracts, disposition and use of city property, and provision of city services, and makes recommendations for reform of city processes where necessary to strengthen accountability and transparency.

-- The recently recreated independent Board of Ethics serves a crucial role in educating the City's work force and enforcing ethical rules. Its members are appointed by the Mayor with the advice and consent of City Council. The Board of Ethics' responsibilities include providing ethics training for all city employees, enforcing city campaign finance, financial disclosure, and conflict of interest laws, as well as rendering advice, investigating complaints, and issuing fines.

-- The independently elected City Controller also has a role in overseeing ethics in City government. The Controller conducts audits and special audits, oversees actions that include ethical conduct, and undertakes investigations and issues subpoenas, all under the authority of state and local law, federal auditing requirements, and codes relating to the CPA profession. These mandated duties of the Controller are broadly authorized and directed to any entity for which the City of Philadelphia provides payment by appropriation or contract and includes City offices and agencies as well as the Philadelphia School District. The Controller also serves as a Trustee of the nine-member Board of Pensions and Retirement, a Commissioner of the five-member Philadelphia Gas Commission, a Member of the Sinking Fund Commission, a Member of the Bond Committee, an auditor for PICA in evaluating the reasonableness of the assumptions and estimates in the City of Philadelphia's five-year financial plans, a consultant to the Finance Director on features of the accounting system, and an appointing authority for two of the five members of the Board of Commissioners of the Philadelphia Housing Authority.

² The Board of Ethics conducts regularly scheduled open meetings, the dates, times and locations of which should be listed prominently on its website with a reminder to the public and any interested parties that any person who wishes to address the Board of Ethics may do so at its scheduled public sessions.

Finally, and perhaps most importantly, is the matter of implementation. This Task Force was not put into place to make recommendations to be ignored or set aside for some undetermined time in the future. This Task Force has spent innumerable hours over the past 14 months working to review, improve and reform Philadelphia's ethics and campaign finance laws. This report and the recommendations made in it are the result of that work. However, this is just a first step. A report without action is worthless.

We do not expect that all of our recommendations will be enacted as a package or even immediately. To this end, we have prioritized the list of reforms deemed to be the most urgent.

- With the 2011 municipal elections approaching rapidly, and prospective candidates already lining up, the administration and City Council must pay prompt attention to improving the campaign finance ordinance.
- On the ethics side, Philadelphia must join virtually every other city of its size in adopting a lobbyist registration and disclosure law.
- As stated above, the Board of Ethics must receive full, and better, support, both financial and publicly, for its activities from all branches of City government.

After this report is concluded, this Task Force will cease to exist. However, what will not come to an end is the interest of the Task Force's individual members in the enactment of its recommendations. Each of us will be reporting back to our appointing authorities and seeking their commitment to pursue these reforms. In this way, we hope the Task Force will continue to live on in order to impact the future direction of Philadelphia.

II. CREATION AND ACCOUNT OF THE TASK FORCE

On September 24, 2008, the Honorable Mayor Michael Nutter issued Executive Order No. 12-08 creating the Task Force on Ethics and Campaign Finance Reform.³ The Task Force is comprised of nine members who were appointed by the following entities or organizations – Mayor's Office; City Council President Anna C. Verna; NAACP, Philadelphia Branch; Dean of the University of Pennsylvania Law School; League of

³ See Appendix A.

Women Voters; Committee of Seventy; Philadelphia Council, AFL-CIO; Philadelphia Bar Association; and Greater Philadelphia Chamber of Commerce.⁴

The Task Force was instructed to perform a comprehensive review of Philadelphia's campaign finance and ethics laws, hold public hearings, receive information and recommendations from the public, and ultimately provide a report to Mayor Nutter and Council President Verna setting forth recommendations regarding improvements, changes, and/or amendments to the existing campaign finance and ethics laws of the City.

Beginning on October 8, 2008, the Task Force has held regular meetings and heard presentations from numerous individuals and organizations affected by the reform the Task Force planned to undertake. For example, the Task Force met with, among others, members of the Philadelphia City Council, the City Controller, the Executive Director and members of the Philadelphia Board of Ethics, members of the City's Law Department, the City's Chief Integrity Officer, and the Inspector General of the City. Further, Task Force members interviewed and/or met with several other political entities to request information and guidance, including members of the New York City Campaign Finance Board and officials from the City of San Diego.

In fulfilling its mission, the Task Force also held two public hearings on January 10, 2009 and May 5, 2009 and solicited comments from the public.⁵ Finally, the Task Force met with individuals representing a number of community organizations, including the Committee of Seventy and the League of Women Voters.

The Task Force also issued two preliminary reports, on January 30, 2009 and April 14, 2009, and gathered ideas from the comments to these two reports.

III. AREAS OF STUDY

The Task Force formed subcommittees through which it conducted in-depth research and analysis in the areas of lobbying, campaign finance, ethics and conflicts of

⁴ See Appendix B.

⁵ See Appendices C and D.

interest, and political activity restrictions. These subcommittees of the Task Force, and then the entire Task Force, considered the following questions:

Lobbying: Time to Register and Report?

- Should Philadelphia require lobbyists/lobbying firms to register with the city?
- If so, what should reporting requirements look like?
- What, if any, exceptions should be made to registering and reporting?
- What other models might guide a Philadelphia lobbying law?

Campaign Finance Reform:

- Is Philadelphia's campaign finance ordinance (Philadelphia Code § 20-1000) working? If it is not working, why not?
- Has Philadelphia's campaign finance ordinance leveled the playing field?
- Has the Board of Ethics monitoring of current campaign finance law worked?
- How has Philadelphia's non-competitively bid contracts ordinance (Philadelphia Code § 17-1400) affected doing business with the City of Philadelphia?
- What are the pros and cons of public financing of political campaigns? How have such systems worked in other jurisdictions? Should Philadelphia consider such a system?

Ethics/Conflict of Interest Rules:

- How do Philadelphia's conflict of interest rules apply to personnel issues?
- Should Philadelphia Code § 20-607 (Conflict of Interest) be "modernized," with the description of relationships more adequately/broadly defined? What are the best practices used by other jurisdictions?
- Should the city prohibit contracts with employees' personal friends and/or family members? If so, how far should the city extend such a restriction?
- Are the existing rules concerning public disclosure of a conflict and disqualification adequate? What are the best practices used by other jurisdictions?
- Should the city adopt an anti-nepotism policy which defines relationships more clearly to avoid situations where close personal or family relationships could result in favoritism or bias (or the appearance of such), particularly when hiring, firing,

promotions, and financial decisions are involved? What anti-nepotism policies exist in other jurisdictions?

- Should gift prohibition rules apply to all branches of city government? Should the gift prohibition rules permit certain nominal gifts?
- Should the public financial disclosure forms be consolidated into one form?
- Are the existing rules concerning the use of public resources by city employees/officials adequate?
- Should city employees be permitted to have outside employment? Under what conditions, e.g. if the outside employment does not adversely affect job performance or represent a real or potential conflict of interest in carrying out official duties?
- Should city employees be allowed to hold a position in a separate governmental agency?
- What internal steps should the city implement to consider/approve a city employee's request for outside employment?
- How should outside employment be disclosed? Should a city employee file a short statement with the Board of Ethics at the time approval is sought?
- Should the same rules apply to elected officials, members of boards and commissions?

Political Activity Restrictions:

- Should the restrictions on political activity by City employees be changed? How do the restrictions imposed by other jurisdictions compare to Philadelphia?
- Is enforcement of political activity restrictions an issue? If so, what changes might we make for more consistent enforcement?
- Should there be different political activity restrictions for different types of city "employees/officials"? [Civil Service, Exempt, Elected, Board and Commission members, etc.]
- What other models of political activity restrictions might work as guidelines for Philadelphia?

IV. RECOMMENDATIONS REGARDING LOBBYING

In its review, one of the most significant gaps the Task Force identified was in respect to the City's lack of control over lobbying. In fact, Philadelphia is the largest

municipal government in the United States without any lobbyist registration and oversight. This is unacceptable. To be clear, the Task Force does not suggest that lobbying be prohibited – lobbyists often serve an important and lawful role in educating City officials about legislation and administrative decisions. However, the public has a right to know how those whose financial interests are advanced or harmed by government action – whether administrative or legislative – have spent money to influence governmental decision makers whose actions might help or harm them.

Where provisions to disclose lobbying are weak or nonexistent, those decision makers are subject to unfair influence by lobbyists whose expenditures may create an uneven playing field. Here, in Philadelphia, we have witnessed the damage that can be done when a prominent attorney and power broker, together with the City Treasurer, extorted campaign contributions, monthly retainer fees, and charitable contributions from companies seeking to do business with Philadelphia. At no time, did the public know of the money that certain companies were paying the attorney to “lobby” public officials for public contracts. And, no one knew of the harm caused to those companies which refused to pay to play and, accordingly, were shut out of the opportunity even to compete for City contracts.

To make the process of lobbying much more transparent, the Task Force recommends that the City enact a lobbying disclosure law. The following recommendations about the essential elements of such a lobbying disclosure law incorporate some of the best practices from other cities and from the Pennsylvania law enacted in 2007 that applies to lobbying of state officials.

1) Annual Registration

The City of Philadelphia must enact legislation that requires lobbyists to register annually with the City. By requiring lobbyists to register and by making the list of lobbyists available for electronic searching, the public will be able to see, for the first time, who is being paid to influence government decision makers.

2) **Who Should Register**

The Task Force recommends that lobbyists be required to register. While the Task Force reviewed some lobbying disclosure laws that required the registration of both lobbyists and their clients (Pennsylvania and New York City,⁶ most notably), the Task Force believes that by requiring the lobbyists to register and provide certain information in disclosure reports, as discussed below, the public will have access to the essential information about which lobbyists are acting on behalf of which clients on what issues. To capture relevant information about attempts to influence City officials and employees, lobbying should be defined broadly to include attempts to influence legislative and administrative actions of elected officials and non-elected employees of City Council, the Mayor's office, and the City's agencies, quasi-City agencies, boards, and commissions. The Task Force recommends that the New York City lobbying ordinance be utilized as a model because it provides particularly meaningful and unambiguous definitions.⁷

3) **Content of Reports**

Lobbying registration provides only half of the information necessary to shine light on previously unknown, and sometime improper, influence being exerted on City officials and employees. The other half of an effective lobbying disclosure law is a requirement to regularly report lobbying activities and expenses. The Task Force recommends that the City require lobbyists to report, at a minimum, the following: (a) types and amounts of expenditure; (b) names of the clients or employers on whose behalf money is expended; (c) names and titles of the public official/employee lobbied; and (d) the dates on which the lobbyist communicated with the public official/employee and the legislative/administrative matters about which the official/employee was lobbied. With this information disclosed, the public will be able to determine the amount of money being spent on a particular issue and who is attempting to influence the outcome. Reporting of these details makes the lobbying process open and transparent to all.

⁶ See 65 Pa.C.S. § 13A04 (for the Pennsylvania statute); New York City Administrative Code § 3-213(c)(1) (for the New York City statute).

⁷ See New York City Administrative Code Title 3 § 3-211; Subchapter 2 Regulation of Lobbying.

The Task Force urges that, at the very least, the City require detailed semi-annual reports from all lobbyists who have expenses of \$2,500 or more in a six month period.⁸ While lobbyists will register on an annual basis, reporting of the details of their work on a semi-annual basis (if their work involves more than relatively minor expenditures) provides the public with relevant information in a timely manner and without imposing an undue burden on the lobbyists who must report on their activities.

4) Ethics Board Oversight of Lobbying

The Task Force recommends that the Philadelphia Board of Ethics be given the authority and resources to oversee any new lobbying registration and reporting system.⁹ All registration forms and reports should be filed with the Ethics Board, and a searchable database should be created and made available online.¹⁰ The database must be easily searchable; otherwise, the lobbyist registration and reporting requirements will not serve the purpose of ensuring transparency regarding relationships between officials and private entities on legislative and administrative matters.

5) Restriction on Lobbyist Political Activities

The Task Force recommends that registered lobbyists be forbidden to serve as treasurers for political action committees (“PACs”) or candidates. Such a provision – standard in other lobbyist laws the Task Force reviewed – eliminates conflicts of interest that arise when a company seeking to do business with the City feels compelled to make political contributions through a lobbyist who also is the campaign treasurer of the public official. Oftentimes, in these situations, there is a legitimate fear of being excluded from consideration for public contracts if contributions are not made.

⁸ See San Diego Municipal Code Chapter 2, Article 7, Division 40, §27.4017 (San Diego’s lobbying ordinance requires similar information to be reported by lobbyists, but at a quarterly frequency.)

⁹ Currently, the Board of Ethics is charged with providing ethics training for all City officials and employees and enforcing the City’s campaign finance, financial disclosure, and conflict of interest laws. The Ethics Board has the authority to render advice, investigate complaints, and issue fines and other sanctions.

¹⁰ See, e.g., http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml (New York City’s Lobbying Bureau website and E-Lobbyist searchable database).

6) Definitions of Lobbyist/Lobbying

The Task Force recommends that the term “lobbyist” be clearly defined and be at least as inclusive as the Pennsylvania definition, which includes any individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal.¹¹ “Lobbyist” should exclude those who cannot be regulated by the City (*e.g.*, lawyers in their capacity as lawyers);¹² individuals acting on their own behalf; religious institutions lobbying on behalf of religious freedom; and City officials acting in their official capacity as government employees.¹³ “Lobbyists” should include employees – whether of for-profit or non-profit entities – who lobby on behalf of their employers on a routine basis. Such a provision will close a loophole that exists when companies make their lobbyists employees in an attempt to withhold from the public the amount of money that the companies are spending on lobbying activities. Pennsylvania’s lobbying law closes this loophole by including employees who spend a significant amount of their time engaged in lobbying activities.¹⁴

V. RECOMMENDATIONS REGARDING CAMPAIGN FINANCE REFORM

The role of money in politics has been subject of debate since the very beginning of the electoral process in the United States. On the one hand, the Supreme Court has held that making monetary contributions to political campaigns is the equivalent of speech protected by the First Amendment. Without money, how does a political candidate make himself or herself known to the public? On the other hand, money contributed to political candidates, especially large sums of money, has the potential to

¹¹ See 65 Pa.C.S. § 13A03(3).

¹² Lawyers who act as lobbyists should be required to register and report.

¹³ See Pittsburgh Code, Title One, Administrative, Article VII Procedures, § 161.37 (the Pittsburgh Lobbyist ordinance also excludes, among others: a newspaper, other regularly published periodical, radio or television station or network, or any individual who owns, publishes or is employed by such media, under many circumstances; a person acting without any compensation or consideration other than reimbursement or payment of reasonable travel expenses; any person whose only activity is submitting a bid on a competitively bid contract, submitting a written response to or participating in an oral interview for a request for proposals or qualifications, or negotiating the terms of a written agreement with any City agency if selected pursuant to that bid or request for proposals or qualifications.)

¹⁴ See 65 Pa.C.S. § 13A06(5).

corrupt, and in many circumstances has corrupted, the relationship between donors and public officials. Initially, attempts to balance the evils of money in politics with the necessity of money in politics focused solely on disclosure. Unfortunately, disclosure was not enough to eliminate the public's perception that public officials could be bought with significant campaign contributions. In 1974, the first federal laws were passed restricting the amount of campaign contributions. The Supreme Court, in *Buckley v. Valeo*, 424 U.S. 1 (1976), found that campaign contribution limits served a legitimate purpose to avoid the appearance of improper influence, which the Court found to be critical to maintaining public confidence in government.

It took 30 years – and a recent and appalling display of how a corrupt fundraiser extorted large political contributions in exchange for city contracting opportunities – for a municipal government in the Commonwealth of Pennsylvania to impose campaign finance limits on local elections. Prior to the imposition of these limits, millions of dollars were spent by those seeking to influence the public officials to whom they made campaign contributions. In 2004, the City of Philadelphia became the first municipality in the Commonwealth to impose sensible limits on political contributions to candidates for City offices.

As the federal campaign finance law has done since 1974, Philadelphia's campaign finance law has been a first step towards remedying problems caused by the solicitation and donation of large sums of money by those who do business with, or have other interests in government decisions by, the City of Philadelphia.

The Task Force has studied and evaluated Philadelphia's current campaign finance law, which already exists as a comprehensive scheme for regulating and governing campaign contributions.¹⁵ From the comments the Task Force received and our review of other campaign finance laws, it appears that Philadelphia's campaign finance laws generally are working as they were designed to do – that is, limit the influence that campaign money plays in City governance. Based on its investigation and public hearings, the Task Force believes that additional actions are necessary and, therefore, recommends a number of reforms to strengthen the campaign finance law and

¹⁵ See 20 PHILA. CODE 20-1000 *et seq.*

make it more understandable and easier to enforce. We again urge the City to enact the recommendations set forth below in time for the 2011 municipal elections so that all candidates for that election are governed by these improvements.¹⁶

1) Definition of Candidate

Under the current law, “candidate” is someone who files nominating papers or publicly announces his/her candidacy for City office. Thus, a person is not a “candidate” if he/she only states his/her intention to explore a run for office (without specifying whether such office is a City office). In the last mayoral election, this loophole allowed candidates to raise money in excess of the contribution limits before they filed their nominating petitions and before they formally announced that they were running for the office of Mayor – even though the public considered them to be candidates for Mayor and those who contributed to their campaigns understood that they were contributing to a mayoral campaign.

To close this loophole and to make applicable the campaign contribution limits to those campaigning for City office, the Task Force recommends that the City expand the definition of candidate currently used by the Commonwealth and stated in Pennsylvania’s Election Code.¹⁷ By adopting the definition of candidate in Pennsylvania’s Election Code, the City would address the situation in which individuals who are candidates in everything but name, will now become subject to the requirements of Philadelphia’s campaign finance law.

¹⁶ As discussed in further detail below, the Task Force also considered the issue of publicly financed campaigns. Because the Task Force lacked the resources and time required for an in depth analysis of this issue, we recommend that a Select Citizens Commission be established to further study and make recommendations on this issue.

¹⁷ Compare PHILA. CODE § 20-1001(2) (Philadelphia’s Campaign Finance Statute currently defines a “candidate” as “(a) an individual who files nomination papers or petitions for City elective office; (b) an individual who publicly announces his or her candidacy for City elective office”) with 25 P.S. 3241(a)(1) (Pennsylvania’s Election Code defines a “candidate” as: “any individual who seeks nomination or election to public office, other than a judge of elections or inspector of elections, whether or not such individual is nominated or elected. An individual is considered to be seeking nomination or election to such office if s/he has: (1) Received a contribution or made an expenditure or has given his consent for any other person or committee to receive a contribution or make an expenditure, for the purpose of influencing his/her nomination or election to such office, whether or not the individual has made known the specific office for which s/he will seek nomination or election at the time the contribution is received or the expenditure is made; or (2) Taken the action necessary under the laws of the Commonwealth of Pennsylvania to qualify himself/herself for nomination or election to such office.”).

2) Contribution Limits

The Task Force recommends that the City revise the contribution limits in the campaign finance law¹⁸ from the current per-calendar-year limits to a per-election-cycle format. Under the current law, incumbents have a significant advantage of being able to raise money each year up to the limits, beginning immediately after they are elected to office. By moving to a per-election-cycle format, both incumbents (who often start raising funds for their next campaign immediately after election) and challengers (who usually do not start raising funds until closer to the election in which they are seeking office) must raise funds according to the same campaign contribution limits. Federal campaign finance laws work in this manner, permitting contributions up to the limit during the primary cycle and then another set of additional contributions up to the limit in the general election cycle.¹⁹ The Task Force considered whether changing to an election-cycle format should affect the maximum contribution amount since, without a change on contribution limits, candidates would be able to raise only one-half of the amount of contributions for individuals than they could raise under the current law. The Task Force believes that the current contribution limits, which are modeled on the federal contribution limits, are appropriately drawn and discourage the undue influence that may occur, or may be perceived to occur, through large campaign contributions.²⁰

¹⁸ See 20 PHILA. CODE § 20-1002. Since January 2008, the limit for individual contributions is \$2,600 annually. The current limit for contributions by business organizations or PACs is \$10,600 annually. Under the current campaign finance law, these limits may be revised again in 2012.

¹⁹ See 2 U.S.C. §§ 441a(a)6 and 431(25).

²⁰ See Pittsburgh Code § 198.01 (effective January 1, 2010) (By way of example only, Pittsburgh's City Council recently adopted an amendment, Bill No. 2009-1039, to its City Code, Pittsburgh Code § 198, *et seq.*, that reduces the amount that an individual may contribute to a candidate for city elected office from \$4,600 to \$1,000, and created a separate category for citywide elected office that permits individuals to contribute \$2,000 to such candidates. Similarly, the amendment reduces the amount that a political committee may contribute to a candidate for city elected office from \$10,000 to \$2,000, and permits a political committee to contribute \$4,000 to a candidate for citywide elected office. Pittsburgh's contribution limits apply to any "covered election," which is defined as "[e]very primary, general or special election for City Elected Office.").

3) **Disclosure/Public Access**

Currently, campaign finance data is accessible through a web page of the City's Department of Records.²¹ However, the Task Force heard from countless members of the public that the campaign finance data is difficult to search and use in any meaningful way. This makes Philadelphia an outlier – other jurisdictions, such as New York City and Pittsburgh,²² have done a much better job than Philadelphia in making their campaign finance data available to the public.

The Task Force recommends that to improve existing public access and search capabilities (i) candidates be required to file campaign finance reports in an appropriate electronic format to allow for easier searching; (ii) the City implement an improved searchable electronic database for public viewing of this information; and (iii) the City make the data easily exportable into a spreadsheet or other analytic software formats. The importance of these recommendations cannot be overstated – if campaign finance information cannot be easily retrieved and analyzed, the disclosure requirements do not meaningfully allow the public to oversee compliance with the law and raise questions about the influence of money on politics.

4) **Post-candidacy Contributions**

It is not uncommon after a campaign has ended for candidates to: (i) maintain active campaign committees, (ii) receive and expend funds, and (iii) continue to fundraise to retire debt incurred during the course of the campaign. However, post-campaign fundraising and expenditures do not appear to be explicitly addressed in Philadelphia's campaign finance law, despite the fact that the same concerns that campaign

²¹ These records are accessible at www.phila.gov/Records/CampaignFinance/CampaignFinance.html.

²² New York's campaign finance disclosure is maintained by a nonpartisan, independent city agency called the New York City Campaign Finance Board. The campaign finance information is available at <http://www.nyccfb.info/>.

Pittsburgh's City Code has recently been amended to require an on-line database of all campaign contributions to candidates for city elected office and citywide elected office (as well as all contracts awarded by the City of Pittsburgh and all other applications of public dollars approved by City Council). The Pittsburgh amendment further requires the database to be searchable by "candidate, date, amount, contributor name, occupation, company name, and address." (Pittsburgh Code § 198.05 (effective January 1, 2010)). All of these tools should be made available on a new database for Philadelphia.

contributions not infect City governance apply to post-campaign contributions as well. Clear rules are needed for both candidates who must comply with them and their contributors.

Accordingly, the Task Force recommends that the City codify the recent Board of Ethics Advisory Opinions requiring that campaign committees and inaugural and/or transition committees adhere to the contribution limits set forth in the campaign finance law with respect to their fundraising, regardless of their purpose (for example, debt retirement or inaugural events) even after a campaign concludes.²³

5) Incumbency

The Task Force recommends that the City require incumbent officeholders and any political committees who contribute to them to continue to file campaign finance reports annually with the Ethics Board in non-election years. As described above, these reports also must be filed electronically in a format that is searchable for the public. Without these post-election reports, the public will not learn, in a timely manner, about contributions made after the election by those who seek to influence recently elected public officials.

6) Legal Defense Funds

The Task Force recognizes that many candidates conclude a campaign with debt. There are numerous reasons for such debt. However, one situation that causes candidates particular financial challenges involves the expenditure of funds for legal fees incurred in defense of ballot challenges, election contests, or other legal situations related to the campaign. With respect to that situation, the Task Force recommends that candidates be permitted to establish a Legal Defense Fund for pre- or post-election litigation defense expenses. Contributions to such a fund would be subject to the City's contribution limits. This fund would be used only for very specific and well-defined circumstances, such as paying for legal fees associated with challenges to nominating petitions or ballots. After each election cycle, excess contributions to a legal defense fund should be returned to

²³ See City of Philadelphia Board of Ethics Advisory Opinions nos. 2007-003 and 2007-005.

contributors on a pro rata basis. The Task Force recommends that an ordinance similar to legislation recently enacted in San Diego be used as a model.²⁴

7) Candidate Reporting

Section 10-2003 of the City's Campaign Finance Statute requires candidates for City elective office to "have no more than one political committee and one checking account for the city office being sought, into which all contributions for such office shall be made, and out of which all expenditures for that office shall be made." This provision is important so that a candidate can track contributions and expenditures. However, there is no requirement that such information be revealed to the Ethics Board; currently, the practice is for the Ethics Board to request such information from the candidate.

This information is necessary for the Board of Ethics to communicate effectively with campaigns, and will eliminate any future claims that a candidate did not know about a particular rule because communication failed.

Accordingly, the Task Force recommends that the Ethics Board enact regulations requiring a candidate to provide to the Ethics Board with all necessary information to identify the candidate's single committee and bank account at the inception of his or her candidacy. Such regulations would follow the Ethics Board's own recommendation from 2006.²⁵

8) 527 Organizations

During Philadelphia's 2007 Democratic Mayoral primary, numerous vague and indeterminate groups appeared on the scene and used questionable advertising tactics to attempt to sway the election. In one instance, a group referred to as the "Economic Justice Coalition for Truth" strongly attacked mayoral candidate Tom Knox. Although

²⁴ See San Diego's Municipal Code, §§ 27.2965 - 27.2969 (Every elected official and candidate for elective office may establish a legal defense fund provided, however, that such fund is used only to defray professional fees and costs associated with an audit of campaign contributions and expenditures, or to defray "professional fees and costs incurred in the City Official's or candidate's legal defense to one or more civil, criminal or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of a City Official's governmental activities and duties.").

²⁵ See City of Philadelphia Board of Ethics Advisory Opinion No. 2006-03.

the organizers of this group were identified during the campaign, no City official was able to identify any link between the group and any other mayoral candidate. Similarly, a local union used the guise of a political action committee to attack then-candidate Michael Nutter in that same election. Finally, a September 2009 settlement between the Board of Ethics and Tom Knox's campaign, Knox for Philly, provides a description of the shadowy connection between candidates and independent, unregulated committees.²⁶

Under federal election law, coordination between an election campaign and an organization claiming tax-exempt status under section 527 of the Internal Revenue Code (a "527 Organization") is not allowed. Because 527 Organizations cannot coordinate their work with political campaigns, and cannot expressly support or oppose specific candidates, such groups are not subject to the same regulations as groups such as registered PACs. However, the heavy spending of several 527 Organizations to attack presidential candidates in the last two federal elections has brought numerous complaints to the Federal Election Commission ("FEC") of illegal coordination between the 527 Organizations and rival political campaigns.

Similarly, advertisements by 527 Organizations are permissible only if the advertisements talk about issues without directly attacking a candidate. In the case of the Knox for Philly settlement described above, even if the advertisements at issue were really paid for by an "independent" group, without any association whatsoever to the Knox campaign, they did not fit that description.

Currently, a 527 Organization is not required to register as a political committee pursuant to Philadelphia's Campaign Finance statute.²⁷ Thus, as in the federal arena, there are no financial or disclosure controls over 527 Organizations.

²⁶ See September 14, 2009 Settlement Agreement, available at http://www.phila.gov/ethicsboard/pdfs/Knox_Philly_Settlement_Agreement_91609.pdf.

²⁷ The Task Force understands that the governance of 527 Organizations is primarily a federal issue, but at the same time recognizes that issues pertaining to 527 Organizations, including the lack of contribution limits and the secrecy of donors, continue to plague local elections, including in Philadelphia. See An Act Improving the Laws Relating to Ethics and Lobbying (Massachusetts likewise recognized the impact of such third-party actors when they passed their July 2009 ethics reform package. Massachusetts' new law requires disclosure of expenditures and sources of funding for any anonymous third-party campaign mailings or ads that support or criticize a candidate or campaign.). Further, several states have recently passed legislation that provides for better control over 527 Organizations. See, e.g., COLO. REV. STAT. § 1-45-103(14.5) (2007); FLA. STAT. § 106.0701 (2007).

Accordingly, the Task Force strongly recommends that the City provide the Board of Ethics with a mandate and sufficient support and funding to continue to aggressively investigate these groups and their activities, especially advertising. Further, the Task Force recommends that the Board of Ethics continue to closely monitor the FEC's governance of 527 Organizations and further study both the pending FEC regulations relating to 527 Organizations and states' efforts to define and monitor these organizations.

9) Penalty Provision

The current penalty provision²⁸ that applies to the Campaign Finance Statute provides for a variety of monetary sanctions; however, the applicable penalty provision also includes a “death penalty” sanction for violations of the Campaign Finance Statute.²⁹ Such a severe disqualification is atypical for similar penalty provisions and impracticable. Accordingly, the Task Force recommends the following changes to the applicable penalty provisions:

- The Task Force suggests that the Campaign Finance Statute be provided with its own penalty provision particular to the statute; currently, it refers back to the City's ethics law, which can be cumbersome to track.³⁰
- The Task Force proposes that the City establish a range of penalties for violations of the campaign finance law up to and including a ban from seeking or holding elective office or employment with the City. Without providing for a range of penalties, certain violations may not be investigated and/or enforced because of the draconian nature of the punishment that a technical violator may face.

²⁸ See 20 PHILA. CODE § 20-1008.

²⁹ The ethics law penalty provision provides that a violation of the ethics provisions will result in a civil penalty of seven hundred dollars (\$700) for each violation committed during calendar year 2005; eleven hundred dollars (\$1,100) for each violation committed during calendar year 2006; fifteen hundred dollars (\$1,500) for each violation committed during calendar year 2007; nineteen hundred dollars (\$1,900) for each violation committed during calendar year 2008; and two thousand dollars (\$2,000) for each violation committed thereafter. Except with respect to the section relating to statements of financial interests, any person in violation of this section of the Philadelphia Code is forever disqualified from holding any elected or appointed City office or employment with the City, its agencies, authorities, boards or commissions.

³⁰ See 20 PHILA. CODE § 20-612 (a violation of the Campaign Finance Statute results in a civil penalty in the amount of \$2,000 per violation).

- The Task Force recommends that, along with a sliding scale of potential penalties to meet fairly the nature of any violation, the Board of Ethics consider concepts of willfulness and lack of willfulness when deciding the appropriate penalty to impose for violations of the City’s Campaign Finance Statute.
- Finally, the Task Force recommends a per diem penalty for a candidate’s failure to timely file campaign finance reports. Such a penalty should also serve to ensure the prompt filing of reports that may otherwise be late.³¹

10) Doubling Provision

Philadelphia’s campaign finance law permits the limits on political contributions to all other candidates to be doubled if one candidate for election to the same office contributes or spends \$250,000 or more of his or her own money.³² However, the wording of this provision may be unconstitutional in light of the recent United States Supreme Court holding in *Davis v. Federal Election Commission* in which the Supreme Court overturned restrictions which limited so-called millionaires to raising money in accordance with the lower, original contribution limits.³³ To comply with the Supreme Court’s holding, all candidates must be permitted to raise money up to the doubled contribution limits, not just those candidates who did not contribute \$250,000 or more of their own money. This modification would conform the language of the so-called “Millionaire’s Amendment” to the Supreme Court’s holding in *Davis*.

In addition, the Task Force strongly recommends that the City revise the campaign finance law so that the doubling of contribution limits is limited to an election cycle. By focusing the doubling provisions on the election cycle, the City will avoid the situation where the contribution limits in a primary are raised because of a self-funded candidate who does not win the primary; in that case, the original, lower contribution limits should still apply to the general election.³⁴

³¹ See 20 PHILA. CODE § 20-1006(1).

³² See 20 PHILA. CODE § 20-1002(6).

³³ See *Davis v. Federal Election Comm’n*, 128 S. Ct. 2759, 554 U.S. ___ (2008), (this opinion is available at <http://www.supremecourtus.gov/opinions/07pdf/07-320.pdf>).

³⁴ If a self-funded candidate who contributes or spends \$250,000 or more of their own money in the primary should win that election, the Task Force recommends that, in the general election, one or more
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11) Rules Governing Non-Competitively Bid Contracts³⁵

In 2005, Philadelphia enacted Chapter 17-1400 of the Philadelphia Code, which was designed to curtail the opportunities for “pay-to-play” politics in “no-bid” contracting, that is, consideration of proposals for professional services to the City or financial assistance from the City that is not required to be awarded to the lowest bidder. The statute requires an open and public process for any non-competitively bid contract to be awarded. Any person or business responding to a contract opportunity must make mandatory disclosures of political campaign contributions by its principals, officers, directors, controlling shareholders, partners, immediate family members, affiliated entities, or consultants. Proposers whose political contributions exceed limits in the statute are ineligible to receive City contracts in excess of \$10,000 for individuals or \$25,000 for businesses. The law also requires that details about these contracts, including the applications for the contracts, become public information.

The Task Force’s review of this legislation, and discussions with City officials and vendors who operate under it, suggests that Chapter 17-1400 accomplishes much of what it was intended to do. However, the Task Force received complaints from large multi-office professional service firms that the provisions of 17-1400 that govern attribution of political contributions of the firms’ principals may be overbroad and are cumbersome without addressing the harm they were intended to prevent. To address these concerns, and at the same time try to limit the amount of money that professional services firms who seek City contracts can contribute, the Task Force recommends that section 17-405 of the Code³⁶ be amended by deleting the word “partner,” which appears to be used as a catch-all term, and inserting language that states, in effect, that contributions by any person whose title or duties include working in a senior managerial

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of the candidates would be required to contribute or spend \$250,000 or more for the doubling provision to be in effect for that election cycle.

³⁵ See 17 PHILA. CODE § 17-1400 *et seq.* (the rules for non-competitively bid contracts are codified in the Philadelphia Code here).

³⁶ See 17 PHILA. CODE § 17-1405(2)(c).

capacity for a business and/or exercising substantial discretion and oversight over the solicitation, letting, or administration of business transactions with the City, will be attributed to that person's business. We believe this language is more narrowly tailored than use of the word "partner," which in today's business world includes many people who do not have any significant management authority.

Philadelphia's experience with provisions that are designed to address "pay-to-play" politics is relatively new, as it applies only to political contributions made after January 1, 2006. The Task Force notes that other jurisdictions have addressed non-competitively bid contracts as part of legislation that provides for public funding of campaigns, and that many of these jurisdictions have enacted legislation that prohibit government contractors from making campaign contributions to those responsible for issuing the contract. As part of its recommendation for a Select Citizens Commission to study public funding of campaigns, as discussed in the next section, the Task Force urges that a comprehensive review of non-competitively bid contracts, and the operation of section 17-1400 of the Philadelphia Code, be considered.

The Task Force also recommends that the City study and consider whether the attribution rules³⁷ should be expanded to apply to bid contracts. While there is less of an opportunity for campaign contributions to affect, or be perceived to affect, the awarding of bid contracts, companies seeking to offer the City certain goods or services often have the opportunity to shape the manner in which bids are announced by the City. Currently, the attribution rules apply only to non-competitively bid contracts.

12) Public Funding of Municipal Campaigns

In efforts to further take the influence of money out of politics, several governments have enacted public funding of campaigns for public office. The Task Force heard from several individuals and organizations advocating that Philadelphia enact provisions to publicly fund campaigns for City offices. The Task Force was impressed with the testimony and written statements presented from organizations at the public hearings in January and May 2009 asking that the Task Force closely study the

³⁷ See 17 PHILA. CODE § 17-1405.

viability of using public funds to finance municipal campaigns in Philadelphia. To that end, the Task Force reviewed publicly funded campaign finance laws in numerous states and municipalities from around the country. However, no group testifying at the public hearings offered a specific model or statute that should be followed in Philadelphia. And while public funding of campaigns deserves serious consideration, we heard no compelling reason offered that the current system is so broken that such provisions for publicly funded campaigns should be instituted promptly.

Our investigation suggests that public funding of Philadelphia municipal campaigns could increase the competitiveness of elections, promote more contributions from individuals, and limit the overall cost of campaigns. These are not goals that should be frivolously disregarded. However, there are significant arguments against public funding; for example, public funding may give incumbents an added advantage in running for re-election.

In sum, the Task Force believes that a determination of whether publicly funded campaigns in Philadelphia can contribute to fairer and more democratic elections is an idea that requires further in-depth study and analysis. The resources and time required by such an in-depth analysis of these issues is beyond the limited scope of this Task Force. Thus, the Task Force recommends that the Mayor and the City Council President appoint a Select Citizens Commission to study and make recommendations for public funding of municipal campaigns in Philadelphia. The multiplicity of statutes and experiences in other jurisdictions requires the dedication of a staff person and sufficient resources to carry out the investigative and analytical work of such a Commission. In its examination, the proposed Commission should consider whether existing provisions of the Philadelphia Code limiting political contributions and addressing “pay to play” issues are adequate measures for ensuring fair elections, rather than creating a new mechanism (public funding) for financing campaigns. Finally, the Task Force recommends that any favorable proposal for publicly funded campaigns carry an effective date for the municipal elections in 2013.

VI. RECOMMENDATIONS REGARDING ETHICS AND CONFLICTS OF INTEREST

“Conflict of interest” covers several specific issues – particularly gifts, nepotism and fraternization, and outside employment. What all of these issues have in common,

however, are two fundamental principles: 1) a City official's or employee's decisions and actions should be based solely on what is in the City's best interest, and 2) those decisions and actions must not be affected by any financial or personal interest the individual official or employee, or a close friend or family member, has in those actions.

These principles apply with equal force to all City officials and employees, whether elected or appointed, legislative or administrative, white collar or blue collar, civil service or exempt, union or nonunion. Therefore, all rules governing conflicts of interest must apply consistently and evenly to all City officials and employees. To engender and sustain public trust and confidence in government, to promote integrity and good morale within the City workforce as a whole, and to protect the City and its taxpayers from potentially costly harassment and discrimination litigation, clear and unambiguous rules must be written and consistently enforced. Violations of these policies should be investigated by an independent Office of the Inspector General and enforced fairly by individual departments and offices and, where appropriate, by the City's independent Ethics Board.

A. POLICIES AND RULES REGARDING GIFTS

Allowing City officials/employees to accept gifts from vendors, contractors, business owners and others who may enjoy or hope to enjoy a financial relationship with the City, even if innocent, creates the appearance of impropriety. Unfortunately, recent history in Philadelphia shows that public officials and employees have been improperly influenced by, and criminally prosecuted for, accepting gifts ranging from cash "tips," gift cards, concert tickets, gym memberships, expensive meals, "sweetheart" loans, free use of apartments, and Super Bowl tickets.

The ethics laws on gifts are set forth in the Philadelphia Code at Section 20-604 and Executive Order No. 02-04. However, only Section 20-604 applies to all City employees and officials; the Executive Order applies only to City employees and officials in the Executive and Administrative branches. Moreover, these rules contain different terms and are conflicting. The Philadelphia Code's provision on accepting gifts contains

terms that, because of their vagueness, are difficult to apply and enforce.³⁸ For instance, the Philadelphia Code prohibits City employees and officials from accepting a gift of “substantial value,” but that phrase may be subject to individual interpretation: what may be “substantial” to one City employee/official may be insubstantial or marginal to another City employee/official. Moreover, because the Code prohibits only gifts that “might reasonably be expected to influence” a City employee/official, enforcing the prohibition requires the application of another vague standard: how big is a gift that “might reasonably be expected” to influence? No dollar value is specified in the Philadelphia Code.³⁹

By contrast, the much stricter Executive Order No. 02-04 absolutely prohibits, with few exceptions,⁴⁰ Executive and Administrative officials and employees from

³⁸ The Pennsylvania ethics code has a similarly vague prohibition of gifts which applies to many higher level City officials and employees. See 65 Pa.C.S. §§ 1101 and 13A03 (gift is defined as “Anything which is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.”).

³⁹ See 20 PHILA. CODE § 20-604 (The specific language in Section 20-604 is: “of substantial economic value that might reasonably be expected to influence one in his position in the discharge of his official duties.”).

⁴⁰ These exceptions are:

The solicitation or acceptance of something of monetary value from a friend, parent, spouse, child or other close relative when the circumstances make it clear that the motivation for the action is a personal or family relationship;

Acceptance of food and refreshment of nominal value on infrequent occasions in the ordinary course of a meeting, if served to all participants at the meeting and for the purpose of permitting work at the meeting to continue. This exception shall not apply to meals served at any restaurant, club or other establishment outside a place of business at which a meeting is held, even if the meeting continues at such restaurant, club, or other establishment.

Acceptance of food and refreshment at a public event or ceremony sponsored by a non-profit, community or civic organization, and attended by the employee or official in his/her official capacity.

The acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities, such as home mortgage loans;

A voluntary gift of nominal value or donation in a nominal amount made by a City employee or official to another City employee or official on a special occasion such as marriage, illness, or retirement; or

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soliciting or accepting “anything of value, including any gift, gratuity, favor, entertainment or loan” from a person who is seeking to obtain business from, or who has financial relations with the City, or some other interest in the City, City government or City agencies. It makes acceptance of gifts of any sort all but prohibited, regardless of the value of the gifts and regardless of the intent with which these gifts are offered or accepted.

Although Executive Order No. 002-04 attempts to eliminate the vagueness and ambiguity in the Philadelphia Code, it applies only to employees in the Executive and Administrative branches. Therefore, officials and employees outside of the Executive and Administrative branches are held to a lower, less stringent standard.

Unlike the gift prohibitions of several jurisdictions whose rules we considered, neither the Executive Order nor the Philadelphia Code explicitly permit government employees to accept nominal gifts, such as tickets to events where the presence of a public official/employee advances the interests of the City. In practice, acceptance of these invitations has been permitted as a “gift to the City” by the City’s Chief Integrity Officer where the benefit to the City significantly outweighs the benefit to the individual official or employee.

Other jurisdictions recognize that employees and officials in all branches of government must be subject to an unambiguous gift policy and a nominal gift restriction.⁴¹ For instance, New York⁴² permits a city employee to accept gifts under \$50

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A plaque, memento or gift of nominal value offered as a token of esteem or appreciation on the occasion of a public appearance, visit, speech or the like.

⁴¹ See §§ 22, 24, and 60 of the Act Improving the Laws Relating to Ethics and Lobbying (in Massachusetts’ recently passed slate of ethics reforms public officials are prohibited from accepting gifts of “substantial value” for or because of their position. Lobbyists are banned from giving gifts).

⁴² See Rules of the City of New York, Title 53, Chapter 1, §1-01.

from any one source. Los Angeles⁴³ allows city employees to accept gifts from city contractors or a person seeking a business relationship with the City up to \$100.⁴⁴

Permitting nominal gifts is not without some risks. Nominal gifts have some potential to have a corrupting influence or appearance of such. Also, there is some danger of confusing city employees and elected officials by not having a bright-line rule banning all gifts. However, after considering the possible ramifications of relaxing the ban on gifts, the Task Force believes that the benefits of a rule that permits nominal gifts up to a fixed value limit – all of which would be disclosed – outweigh the risks of a total ban which City officials and employees may unintentionally violate and which may not be practical or appropriate to apply in all circumstances.

The Task Force recommends that in order to provide for consistency among all branches of government, any gift acceptance policy apply across the board to every City official/employee, appointed or elected. Moreover, all City employees and elected officials should file the same gift disclosure form. Specifically, the Task Force proposes legislation prohibiting gifts of substantial value given because of that official's position. Following that proposal, the Task Force recommends that the City adopt legislation defining "substantial value" as permitting gifts of \$50 per year from one source or \$100 from multiple sources in the aggregate. Any City employee who receives a gift must report the gift in writing to their supervisor. Finally, a gift policy should be written into the City Code to avoid the need to rely upon a specific mayor to implement or change the policy.

B. POLICIES AND RULES REGARDING OUTSIDE EMPLOYMENT

Especially in these difficult economic times, it is not unusual for Philadelphia's employees, at all levels, to hold second jobs.⁴⁵ Many other municipal governments

⁴³ See Los Angeles Municipal Code § 49.5.2.

⁴⁴ That is, as long as the gift does not come from the business seeking a relationship, but from an individual employed by that business, and the gift is not given at the direction of the business.

⁴⁵ Philadelphia Civil Service Regulation 33.02 *et seq.* (available at <http://www.phila.gov/personnel/webregs/reg33.htm>).

permit their officials and employees to hold outside employment.⁴⁶ While an outright ban on outside employment for City officials and employees is neither practical nor necessary, generally applied restrictions must govern outside employment to curtail the real possibility of creating conflicts of interest, or the appearance of conflicts, especially where the employer of a City official/employee does business with the City. Improved disclosure of outside employment is a critical step towards remedying any abuse or the appearance of abuse in this area. With these principles in mind, we make the following recommendations concerning outside employment of City officials and employees:

1) Permit Some Outside Employment

The Task Force recommends that the City maintain the status quo that there not be a complete ban on outside employment. There is no evidence that outside employment has been a prime driver in either illegal or unethical activity by City employees. Many City employees have second jobs and, in fact, depend on other employment to meet their families' financial obligations.

2) Registration and Transparency

The Task Force recommends that to prevent the appearance of any conflict, all City elected officials and employees with outside employment register with the Philadelphia Board of Ethics annually. The registration should include the name of the employer and a detailed job description. If the job description changes, then the official/employee should be required to update the filing. City departments should retain discretion to decide what, if any, other criteria to impose for outside employment. The Board of Ethics should make the information on outside job registrations available to the public on the City's website, in easily searchable form.

3) Recusal

The Task Force recommends forcefully reminding all City employees and elected officials that conflicts of interest are not waived by the process of filing the disclosure. In the case of a conflict of interest (or any employment that may be perceived as a conflict),

⁴⁶ For example, municipalities such as Houston, Texas and Washington, D.C. permit outside employment of their public employees.

the City Ethics Code requires the City employee or elected official not only disclose the conflict but also recuse him/herself from the matter in which the conflict exists.⁴⁷

C. POLICIES AND RULES TO ELIMINATE CONFLICTS OF INTEREST

1) Anti-Nepotism and Anti-Fraternization Policies

Philadelphia has no policy barring its employees or elected officials from hiring, promoting, or recommending the hiring or promotion of a family member or of a person with whom the employee/official has an intimate personal relationship. In fact, the Court of Common Pleas of Philadelphia in 1989⁴⁸ enjoined the then-City Solicitor from interpreting and enforcing the Philadelphia Code⁴⁹ to ban City Council members from hiring close relatives to work on the council member's staff.

As a result of the lack of a policy, unqualified or barely qualified individuals may be hired as City employees or promoted unfairly, and may receive more favorable treatment than deserved and/or financial benefit as a result of family or romantic connections. At a minimum, the current lack of an anti-nepotism/anti-fraternization policy creates the perception that a person with a personal relationship to a City supervisor was selected, promoted, or advanced based upon his or her relationship to the City supervisor – naturally eroding public confidence in City government and its officials and employees.

Other governments and corporations have recognized the perils of nepotism and fraternization and enacted policies to address them.⁵⁰ By not having a ban against nepotism, Philadelphia opens itself up to claims of unfairness. Perceived favoritism of a relative or significant other can cause dissatisfaction among workers and lower morale. Not discouraging fraternization opens the City up to sexual harassment actions. Other

⁴⁷ See 20 PHILA. CODE § 20-608.

⁴⁸ See *Council of the City of Philadelphia v. Kurland*, May Term 1989 (unpublished opinion).

⁴⁹ See 20 PHILA. CODE § 20-607(b).

⁵⁰ For examples of such policies see Oakland California's amended ordinance no. 12908 or the San Jose California policy located in Title 12 Chapter 12.20 of the San Jose Municipal Code.

cities have addressed these issues with clear policies, and it is now time for Philadelphia to do the same.

The Task Force recommends that the City adopt a strict anti-nepotism and anti-fraternization policy that precisely defines intimate and familial relationships and would prohibit individuals from hiring, firing, promoting, and/or making supervisory decisions concerning those with whom they have such a relationship.⁵¹ Domestic partners should be included in the definition of “relative” and familial relationships. The ban should not be absolute; *e.g.*, relatives and significant others could be employed in separate departments or separate units within the same department, provided they are not directly or indirectly supervised by other relatives or significant others.

The Task Force recommends that the City policies concerning nepotism and fraternization require that covered individuals must report to their department heads (or in the case of independently elected officials, to that official) and to the Ethics Board instances where their conduct of City business or supervisory responsibility becomes entangled with a family member or significant other as defined by the anti-nepotism and anti-fraternization policy, and recuse himself or herself from any such supervision. Members of City Council should report any such activity to the City Council President and to the Ethics Board as an additional curb against favoritism. Other independently elected officials should report any such activity to the Ethics Board.

2) **Conflicts of Interest, Financial Disclosure, and Recusal**

The City has a varied mix of City employees and entities (*e.g.*, Board and Commission members, Civil Service employees, elected and appointed officials). Thus, a precise definition of covered persons and a recognition that the mechanism for disclosure and recusal in the instance of identification of a conflict must be made workable; that is, whatever mechanism for identification and recusal that is devised must not be so cumbersome or rigid as to paralyze or unreasonably alter the functions of government.

⁵¹ See, e.g., Title 9 of the City of Oakland Municipal Code Chapter 2.38 (Oakland’s new “Anti-Nepotism Policy to prevent nepotism and cronyism in hiring and administration.”).

The Task Force recommends that the Philadelphia Code⁵² be amended to provide a comprehensive definition of relationships that must be disclosed or are prohibited in terms of City business. Also, the concept of “Financial Interest” must be precisely defined in the Philadelphia Code; at present there is no definition of this often-used term.

The Task Force also recommends that financial disclosure forms be consolidated into one form applicable to all City employees except for those high-level officials required by Executive Order to complete the more comprehensive Mayor’s Financial Disclosure Form. The standard financial disclosure forms should be available on-line and accessible in person at the City Department of Records.⁵³

The Task Force recognizes that City employees should have the right to pursue opportunities beyond their City employment once that service has been concluded. To facilitate and preserve this right, and to maintain public confidence in government and protect the public’s interests, it is critical that City employees and officials recuse themselves in matters concerning potential employers or post-City employment. The Task Force recommends that the Philadelphia Code be strengthened to include a requirement that City officials and employees make known to their supervisor any potential conflict related to a potential employer, and where a supervisor deems the conflict to potentially exist, that official or employee should be made to recuse himself or herself from the matter in question.⁵⁴ Under existing law, City officials and employees

⁵² See 20 PHILA. CODE § 20-607 (The current wording refers to: “parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party.”).

⁵³ Because of the detailed information required by the Mayor’s Financial Disclosure Form about both the public employee and his/her immediate family, we do not recommend that those forms be posted on-line. In similar situations on the federal level, detailed disclosure forms filed by high level federal officials are not available on-line to protect the privacy interests of the public official/employee. The Mayor’s financial disclosure form may be viewed at <http://www.phila.gov/ethicsboard/financialdisclosure.html>.

⁵⁴ Sections 20-607 of the Philadelphia Code provide some protections here. Under this provision, no member of Council or other City officer or employee can become financially interested in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him/her in his/her official capacity, during his/her term of office or employment and until two (2) years have elapsed since the expiration of service or employment in his/her term of office.

Section 20-608 of the Philadelphia Code mandates disclosure and recusal for current financial interests in any legislation including ordinances and resolutions, award, contract, lease, case, claim,

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are forbidden to work on any business transaction at any firm involving the City if the employee participated in the subject matter of the transaction during City employment.⁵⁵

3) Whistleblower Protection

The City must take affirmative steps to protect “whistleblowers” who provide information to the appropriate City officials and/or third parties to combat unethical or illegal behavior by City officials, employees, or others involved in City government. In recent years, staff members of a public official’s office were terminated after they cooperated with federal law enforcement authorities. Such retaliation based on nothing other than truthful, good faith cooperation with law enforcement authorities cannot be permitted or condoned.

The Task Force recommends implementing rules of conduct specifically forbidding personal retaliation against whistleblowers.⁵⁶

4) Private Use of City Resources

City taxpayers justifiably expect that their tax dollars be used to benefit City taxpayers, not be misused for individual benefit – particularly in these difficult economic times. Therefore, City employees and officials should not use city property and resources

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decision, decree or judgment, but does not have clear procedures for controlling potential future employer conflicts.

⁵⁵ See 20 PHILA. CODE § 20-603(1).

In considering future employment issues involving City employees and officials, the Task Force considered public concerns about elected officials who participated in the City’s Deferred Retirement Option Plan (“DROP”), especially the ability of elected officials to participate in the payout portion of the retirement benefits while preserving their positions through a temporary retirement action. Since the Task Force raised these concerns, the City Solicitor has issued an opinion in which she determined such actions to be lawful under the terms of the DROP program. See Letter from Shelley R. Smith, Esq. re: Review of June 29, 2006 opinion letter, dated April 29, 2009 (available at <http://media.philly.com/documents/SMITH+LETTER.pdf>). The Pennsylvania legislature also specifically addressed this issue as part of its efforts relating to municipal pension reform measures throughout Pennsylvania. See Pennsylvania House Bill 1828 (approved by the Governor on September 18, 2009 and restricting future participation by elected officials in DROP programs). Given these recent developments, the Task Force does not make any specific recommendations about the DROP program.

⁵⁶ See, e.g., San Diego Municipal Code Chapter 2, Article 7, Division 35, § 27.3573; Chapter 2-152-171 of the Municipal Code of Chicago; Local Laws of the City of New York § 7-805.

for personal use.⁵⁷ Administrative Board Rule 46 directs City employees with official vehicles to refrain from misusing City vehicles for personal use and allows certain limited use; namely, travel to and from residence for the Mayor, Mayor’s Chief of Staff, cabinet officers, and elected officials.

The Task Force has learned that there is a practice of permitting “waivers” from these prohibitions, but there is no transparency, consistency or policy outline defining this practice. These waivers should be published. Furthermore, the procedure for obtaining one of these waivers should not be completely discretionary with no rules governing when a waiver is appropriate.

The Task Force recommends that legislation be enacted that, except in limited circumstances, forbids City employees and officials to use City property or resources for personal use.⁵⁸ The Task Force further recommends that, if an exception is granted, that that exception be stated in writing and made available to the public. For this process to be truly transparent, there must be full review and access to the various decisions made by the Administrative Board.

5) Penalties

The same “death penalty” provision in the Philadelphia Code, requiring permanent termination of employment for any City employee or official who violates the City’s campaign finance law, applies to violations of the Ethics Code – and is, therefore, similarly impracticable.

⁵⁷ This includes using computers, Blackberries, fax machines, or copiers to transmit political opinions or commentary or messages supporting or opposing a political candidate or party. For example, if a City worker receives a communication through City property soliciting support for a candidate, he or she may not use that City computer, blackberry, telephone, or fax to respond. Instead, if he or she wants further information about a candidate, he or she must seek information using non-City property, such as a personal computer or telephone. See also Recommendation to Prohibit Use of City Resources and Offices for Both Political Expression and Political Activity, supra p. 38.

⁵⁸ See Executive Order No. 2-08 § 3(3) (the Mayor has directed the Chief Integrity Officer to monitor such practices). Executive Order No. 4-94 authorizes the Inspector General to investigate such practices.

To ensure fair and consistent enforcement of the ethics rules, the Task Force recommends that the Philadelphia Code⁵⁹ be amended to state that the penalty for a violation of the ethics rules includes penalties “up to disqualification” for holding any elected or appointed City office or employment with the City. Also, as we recommend with respect to the City campaign finance laws, the Task Force recommends the development of a sliding scale for the imposition of penalties by the Ethics Board. This would increase the legitimacy of Ethics Board punishments and provide for transparency which would benefit board members and violators alike.

D) OFFICE OF THE INSPECTOR GENERAL

The Task Force has strongly recommended that the City establish an independent Inspector General.⁶⁰

As described above, the Office of the Inspector General (“OIG”) currently is part of the Executive branch. The Inspector General is responsible for conducting both criminal and administrative investigations and audits over all departments, agencies, commissions, and boards under the Mayor's jurisdiction, as well as in contracts with individuals or companies receiving City funds and doing business with the City. The OIG, however, serves at the pleasure of the mayor, depends upon the mayor for all investigative resources and has no authority to investigate wrongdoing by other elected officials.

Independent oversight by an office with investigative resources is absolutely necessary to show the public that past and future reform measures are real and not just window dressing. For the ethics provisions to apply with equal force to all City officials and employees, as described above, the Inspector General must be authorized to

⁵⁹ See 20 PHILA. CODE § 20-612(1) (“In addition to the penalties as presently provided by law, any person in violation of this Chapter shall be subject to a civil penalty of seven hundred dollars (\$700) for each violation committed during calendar year 2005; eleven hundred dollars (\$1,100) for each violation committed during calendar year 2006; fifteen hundred dollars (\$1,500) for each violation committed during calendar year 2007; nineteen hundred dollars (\$1,900) for each violation committed during calendar year 2008; and two thousand dollars (\$2,000) for each violation committed thereafter. Except with respect to Section 20-610, any person in violation of this Chapter is forever disqualified from holding any elected or appointed City office or employment with the City, its agencies, authorities, boards or commissions.”)

⁶⁰ See *supra* p. 2.

investigate allegations of fraud, waste, and abuse in all branches of City government. The position of Inspector General should be an independent office, similar to the Board of Ethics, and should be for a set term of office (*e.g.*, a five-year term with a second term permitted) unless there is just cause for early removal. Where appropriate, the Inspector General should report his/her findings of violations of City laws to the Ethics Board for appropriate consideration of whether penalties should be imposed. Similarly empowered Inspector General's offices exist in several of Philadelphia's peer cities (*e.g.*, New York, Miami, New Orleans, and Chicago).

VII. RECOMMENDATIONS REGARDING POLITICAL ACTIVITY RESTRICTIONS

Philadelphia's political activity restrictions, which are designed to separate partisan politics from the functions of City government, are contained in Section 107 of the Philadelphia Charter. These restrictions prohibit, among other things, use of political influence to secure a civil-service position; the solicitation of political contributions by City employees and officers; and the solicitation of political contributions by political party committee members from civil-service employees. In addition, a non-elected City officer or employee may not hold political party office or take part in managing any political party or political campaign, "except to exercise his right as a citizen privately to express his opinion and to cast his vote."⁶¹

The goal of keeping electoral politics separate from City governance remains important. The Task Force has learned, however, that some of these provisions have been applied too broadly and enforced inconsistently. For example, the Task Force believes that Section 10-107(4) has been interpreted to restrict private political expression and activities that pose little or no danger to effective and honest governance, such as not permitting City employees to wear political buttons out of the office or display lawn signs at their homes. Additionally, because the Charter applies only to City employees and officers (including members of some boards and commissions),⁶² the restrictions in Section 10-107 do not apply to individuals who work for City offices but are paid by non-

⁶¹ See 10 PHILA. CHARTER § 10-107(4).

⁶² See Philadelphia Board of Ethics Advisory Opinions 2007-004 (October 16, 2007) and 2007-06 (December 18, 2007).

City agencies or are employed by subcontractors to do City work and are the functional equivalent of City employees.

As with the conflict-of-interest rules, the purpose of the prohibitions in Section 10-107 is to ensure that City officials and employees act only in the best interest of the City of Philadelphia. The Task Force therefore offers the recommendations below:

1) Politics Must Not Infect Hiring, Firing and Performance Evaluation Decisions

The Task Force recommends that the City retain the bans on hiring or firing of City employees based on political views, coercion, threats, and quid pro quos.⁶³ Nor should these matters have any bearing on a City employee's performance evaluation.

2) Permit Limited Expression of Political Opinion on Personal Time and on Personal Property

Section 10-107(4), which generally prohibits political activity by City employees and officials, is not applied or enforced uniformly, leading to some confusion among City employees and officials about its scope and applicability. Section 10-107(4) of the Charter provides as follows:

No appointed officer or employee of the City shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

The Task Force has extensively studied the issues pertaining to political expression and activity and examined not only the current state of affairs in Philadelphia, but also how other cities and the federal government have balanced employees' freedom of political expression against the need to insulate government from partisan political influence. The Task Force recognizes that it can be difficult sometimes to find the proper balance of these goals and that, in making recommendations on how to balance these goals, the role of this Task Force is to provide guidance on reforms that will continue to instill honesty, transparency, and accountability within City government.

⁶³ See 10 PHILA. CHARTER § 10-107(2).

The Charter itself does not explain what constitutes an employee’s permissible exercise of his or her “right as a citizen privately to express” his or her opinion. Much of the confusion results from application of Section 10-107(4) not just to employees’ and officials’ political activity (that is, political campaigning or political management), but to their political expression (expression of personal opinion on political subjects), even while off the job.

The Task Force has learned that Philadelphia’s laws governing political activity are some of the most restrictive in the nation. However, the restrictions contained in the Charter are nearly identical to those contained in the federal Hatch Act of 1939, which the Supreme Court found to be constitutional in *U.S. Civil Service Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548 (1973). In that decision, the Supreme Court held that the Hatch Act restrictions promoted government “without bias or favoritism for or against any political party or group. . . . Forbidding activities like these will reduce the hazards to fair and effective government.” *Id.* at 565.⁶⁴

While the Task Force recognizes and concurs with the need to keep City government from being, and being seen as, subject to partisan political influence, we also believe that the restrictions on City employees and officials should not be any broader than necessary to accomplish these goals. This issue is difficult and there is no model set of rules that Philadelphia can simply adopt and implement. The Task Force does believe, however, that Section 10-107(4) of the Charter can and should be reinterpreted to both protect employees’ personal expressions of political opinion and to eliminate confusion regarding the application of this section to those expressions.

As stated above, the Charter does not provide an explanation of what activities are covered by an employee exercising his or her “right as a citizen privately to express” his or her opinion. Philadelphia Civil Service Regulation No. 29 interprets Section 10-107(4) to prohibit not only campaigning for a political candidate or serving as a party

⁶⁴ The Supreme Court was concerned that the government work force not be used “to build a powerful, invincible, and perhaps corrupt political machine” and that “employment and advancement in the Government service not depend on political performance.” *Id.* at 565-66. The Court described many of the dangers inherent in government employees also being politically active and accepted as “fundamental” the goals of the Hatch Act. See also *Broadrick v. Oklahoma*, 413 U.S. 601 (1973) (upholding Oklahoma’s political activity restrictions).

official (committeeperson or ward leader), but also “wear[ing] on your person display badges, emblems, signs, posters and the like which are in favor of or against a political party, body or candidate.” This could be read to apply to even wearing a political button, displaying a lawn sign or affixing a bumper sticker to a personal car.⁶⁵ This restriction applies even while a City employee is not in the workplace or on the job. Interpretations by the City Solicitor, the Ethics Board, the Civil Service Commission, and the Chief Integrity Officer have relied in general on Regulation 29, without explicitly endorsing the “badges, emblems, signs” prohibition.⁶⁶

The Task Force believes that allowing personal expressions of a City official’s or employee’s political opinion, on his or her own property or person, unassociated with the workplace or with the workday, presents little danger of undue political influence – or the appearance of it – in an employee’s or official’s performance of City duties or provision of City services. To the extent that the political activity restrictions also protect City employees from being pressured to work for a particular candidate, allowing personal expression does not diminish that protection. The Task Force further believes that the current interpretation to the contrary is overbroad and is not required by the language of the Charter.

Until recently, the City Solicitor was charged with the interpretation of Section 10-107; however, that task now rests with the City’s independent Ethics Board.⁶⁷ The Task Force recommends that the Ethics Board reconsider Section 10-107(4) to allow off-the-job personal expressions of political support, such as wearing political buttons away from the workplace, and displaying political bumper stickers on private vehicles or political signs in homes or yards.⁶⁸

⁶⁵ See Philadelphia Civil Service Reg. 29; Political Activity Guide (published in 2005 by City of Philadelphia Law Department, and available at http://www.phila.gov/law/pdfs/Political_Activity_G.pdf).

⁶⁶ See, e.g., GC-2008-519 (Board of Ethics Nonpublic Advice of Counsel re Political Activity Restrictions available at <http://www.phila.gov/ethicsboard/pdfs/GC-2008-519%207808.pdf>).

⁶⁷ See City Solicitor’s opinion, dated May 30, 2008.

⁶⁸ To ensure no such influence, or appearance of influence, personal political opinions must not appear in the City workplace or, if the City official’s or employee’s work takes him away from the workplace, during working hours. Such expressions must clearly express only private opinions and not be perceived as speaking on behalf of the City.

Reconsidering restrictions on political activity, as opposed to political expression, however, presents a more complicated question not as readily resolved by a new Ethics Board interpretation of the Charter. The Task Force recognizes that many municipalities, as well as the current federal Hatch Act, allow government employees varying degrees of political activity in their personal time, outside of the workplace.⁶⁹ The Task Force also recognizes that courts have held that while public employers may constitutionally limit the political activities of public employees, those restrictions must be balanced against public employees' First Amendment rights, especially with respect to purely personal and off-the-job opinions unrelated to their public work.⁷⁰

As stated above, the Supreme Court has already affirmed the constitutionality of political activity restrictions nearly identical to those in Section 10-107, even though the Court has consistently recognized government employees' First Amendment rights in subsequent opinions concerning matters other than political activity restrictions. Further,

⁶⁹ See Hatch Act, 5 U.S.C. §§ 7321-26 (2009) (repealing pre-1993 restrictions on off-the-job political activity for most federal employees, except for fundraising and abuses of authority); Municipal Code of Chicago Ch. 2-156-140 (forbidding fundraising solicitations from city officials and employees); L.A. Municipal Code §§ 49-5-5, 49-7-8 (2008) (restricting fundraising by city employees and officials and forbidding campaign-related activities during work hours or using city facilities, equipment, supplies, or resources); N.Y. City Charter § 2604(a) (9)-(12) (2008) (forbidding public officials/employees to coerce political activity, to ask subordinates to engage in political activity, to compel payments, request quid pro quos, and forbidding all but high-level public officials/employees to make fundraising solicitations); City of San Diego Ethics Ordinance, San Diego Municipal Code §§ 27.3563-3564, 3570-3572 (2008) (forbidding political activities on the job and use of city resources, as well as certain fundraising solicitations, payment for office, or abuse of political influence); City and County of San Francisco Campaign and Governmental Conduct Code, Ordinance 102-09, § 3.230 (2009) (forbidding fundraising solicitation of other City officers or employees and political activity on the job or while in city uniform or on city time or premises); Seattle Municipal Code §§ 4.04.070(H), 4.08.140(H) (2009) (recognizing municipal employees' rights to engage in political activity). See also <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=299554&mode=2#NoOne> (explanation of the Commonwealth of Pennsylvania's "guidelines for political activity").

⁷⁰ Courts have recognized that while public employers have the right to limit the political activities of public employees, those public employees retain certain First Amendment rights, especially with respect to purely personal and off-the-job opinions unrelated to their public work. See, e.g., *Garcetti v. Ceballos*, 547 U.S. 410, 418, 420-21 (2006) (recognizing that government employees retain First Amendment rights to speak off the job as citizens, but that the government may regulate more closely their on-the-job statements as employees pursuant to their official duties); *Connick v. Myers*, 461 U.S. 138, 142 (1983); *Pickering v. Bd. of Ed. of Township High Sch. Dist. 205*, 391 U.S. 563, 568 (1968). Some examples of off-the-job personal expressions of political support include wearing political buttons, displaying political signs, writing letters to the editor or blog posts, expressing views on a social-networking website, engaging in personal discussions, and making voluntary, personal political contributions. See also *Letter Carriers*, 413 U.S. 548; *Broadrick*, 413 U.S. 601.

allowing political activity by City employees, even off the job, increases the risk of partisan politics influencing government in a way that allowing political expression does not. It also presents monitoring and enforcement challenges to ensure that political activity stays truly “off the job.” Thus, any proposal to loosen the political activity restrictions in Section 10-107(4) must be scrutinized carefully with the risks above in mind.

Moreover, reinterpretation of Section 10-107(4) to allow for political expression does not, by itself, address other problems with the political activity restrictions. It does nothing, for instance, to address the inconsistent application of political activity restrictions on some City employees. For example, some employees work within a City department but have salaries funded by another entity and therefore avoid application of the rules of the Charter. The Board of Revision of Taxes and the City Controller’s office, both of which have politically active staff who are paid by the School District, are two notable examples of this practice.⁷¹ Contract employees who work full time in City offices alongside City employees and perform the same functions as some City employees, and are, to the public, indistinguishable from City employees, are not subject to the same restrictions (because they are not subject to the Charter). The Task Force does not see a reason for these anomalies. As with all of the ethics rules, uniform application of the political activity restrictions should be a guiding principle unless there is a compelling reason otherwise.

A 1952 City Solicitor’s opinion found that a compelling reason exempted City Council staff members from the applicability of Section 10-107(4), thereby allowing Council staff to participate in political campaigning.⁷² According to the Solicitor, the

⁷¹ The Task Force understands that the Mayor has asked the City Solicitor for an opinion about whether these School District-funded workers are legally employees of the City or the School District.

Similarly, the Charter, and its political activity restrictions, do not apply to employees and officials of certain government agencies which were created by state government outside of the Charter but which perform government services within the City, including the Register of Wills, the Prothonotary and the courts. Accordingly, the Task Force recommends that the General Assembly consider the issues discussed above so that these restrictions are applicable to employees in these state-funded departments.

⁷² Formal Opinion No. 50, from Solicitor Abraham Freedman to Council President James Finnegan (Oct. 15, 1952) (the “1952 Solicitor’s Opinion”). It is important to note that the 1952 Solicitor’s Opinion exempted City Council staff only from the restrictions in Section 10-107(4), but not those in

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City Charter recognized that all Council members were necessarily and inevitably engaged in political activity, and since the Charter empowered the members of Council to select their own employees and required their employees to serve them on an individual basis rather than as a member of the civil service, it would not be possible to expect that Council members could engage in political activity while their employees would not be permitted to do so.

While there is a real-world reason explanation for this exemption (that City Council staff have a vested interest in the reelection of the Council member for whom they work), there appears to be little reason to distinguish City Council staff from other employees exempt from civil service (such as, for example, the Mayor's staff), who also have a real interest in the reelection of their boss.

3) Permit All City Employees to Make Campaign Contributions

Section 10-107(3) of the Charter prohibits members of the Philadelphia Police and Fire Departments from making voluntary political contributions.⁷³

In 2003, the United States District Court for the Eastern District of Pennsylvania ruled that the City cannot restrict the free-speech right of members of the Philadelphia Fire Department to make personal political contributions.⁷⁴ In light of this decision, the Task Force recommends that equivalent restrictions on Philadelphia Police Department officers also be removed.⁷⁵

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Section 10-107(3), which prohibits political fundraising by City officials and employees. The Task Force recognizes that distinction and believes that Section 10-107(3) should continue to apply to all appointed officials in City government.

⁷³ See 10 PHILA. CHARTER § 10-107(3).

⁷⁴ See *Phila. Fire Fighters' Union Local 22, AFL-CIO v. City of Philadelphia*, 286 F. Supp. 2d 476 (E.D. Pa. 2003) (holding that the provisions of the City home rule charter and civil service regulations that prohibited uniformed fire department employees from making voluntary political contributions violated rights of free speech and association protected under First Amendment).

⁷⁵ The City may want to consider a provision recently enacted by Pittsburgh through which employees are limited to making nominal contributions to their superior or employer (i.e., Mayor for Executive branch employees, City Council for Legislative branch employees, etc.). See Pittsburgh Code § 197.04(e) (Under the Pittsburgh Code, during any consecutive four-year period, city employees are prohibited from contributing more than \$100 to any political campaign of his or her employer (e.g., Mayor, (continued...))

4) Continue to Prohibit Use of City Resources and Offices for Both Political Expression and Political Activity

City resources, paid for and provided by taxpayers, should only be used to conduct City business. However, the current City rules and regulations concerning political activity do not explicitly ban the use of City resources, including telephones, offices, copiers, faxes, letterhead or uniforms. Such resources must not be used for personal benefit of any City officer or employee; nor should they be used in the campaign of any electoral candidate, the promotion of any partisan cause, or even the otherwise permitted personal expression of a political opinion – whether during or outside of work hours.

The Task Force therefore recommends that all City officials and employees – both elected and nonelected – be prohibited from using any City resources for any and all political activity or expression.⁷⁶ The Task Force recognizes that considerable City work is performed by contractors or quasi-governmental employees using City resources – and the prohibition on misusing City resources for political expression or political activity should apply equally to them.

Using City resources for political expression – whether on City work time or personal time – is a misuse of City resources.⁷⁷ Explicitly banning the use of any and all

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City Controller, Members of City Council and City Clerk) or to any political campaign of his or her employing authority (e.g., any city employee who supervises, oversees or directs the work of another employee.)). Such a provision would provide City employees with protection from feeling undue pressure to contribute to their employer’s campaign, while still permitting them to exercise their right to free speech in the form of campaign donations.

⁷⁶ The Task Force notes the practical reality that, in certain circumstances, an elected official or City employee may receive and open on his or her City-owned computer an e-mail to his or her personal or City e-mail account that pertains to political activity. The Task Force recommends a limited exception to cover *de minimis* and inadvertent use of the City’s computer system or other similar resources.

⁷⁷ See *Commonwealth v. Habay*, 934 A.2d 732, 738 (Pa. Super. 2007) (“a public official is “not allowed to direct state-paid employees under his authority to conduct campaign and/or fundraising-related work, during state paid time, for his personal benefit. Through his actions, [State Representative Habay] secured a private monetary advantage for himself because, by having state employees work for him on his campaign and/or fundraising tasks while they were being paid by the state, he obtained the benefit of free campaign work funded by the taxpayers.”); 5 ILCS § 430/5-15(a) (Under the Illinois State Officials and Employees Ethics Act, employees may not “intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any

(continued...)

City resources for political expression or political activity will minimize confusion about whether a City employee is expressing a permissible political opinion or engaging in permissible political activity “on” or “off” the job, and make compliance with Section 10-107(4) of the Charter easier to monitor and enforce.

5) Allow for Limited Exception to Prohibition for Some Soliciting and Fundraising for Elected Officials and Members of Advisory Boards and Commissions

Section 10-107(3) of the Charter prohibits political fundraising by all City officers and employees. It contains no provision for fundraising by elected officials – putting those officials in the position of being unable to solicit political contributions not only for other candidates, but even for their own re-elections. This restriction is overly broad and impractical.

The Task Force recognizes that elected officials often run for re-election and, to do so, must solicit political contributions to their candidate committees. Therefore, the Task Force recommends amending the Charter to allow elected officials to solicit political contributions for themselves and for others.

The Task Force also considered the issue of political fundraising by members of boards and commissions. Currently, more than 80 boards and commissions exist in the City, most staffed by volunteers who are either unpaid, or paid a nominal fee for their service. The City relies on these boards and commissions (i.e., Fair Housing Commission, Planning Commission, Board of Surveyors) to do both substantive and advisory work on the citizens’ behalf. It is in the City’s interest to attract as members of boards and commissions citizens who are interested in and engaged in the City’s civic affairs. Some of those people are, not surprisingly, also involved in political campaigns.

The Task Force recommends that the Charter’s political activity restrictions should apply to members of those boards and commissions that exercise significant power over the City (such as the Zoning Board of Adjustment, the L&I Review Board, or

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political organization,”); Illinois Executive Ethics Commission, *Prohibited Political Activity* (January 23, 2006) (provision has been interpreted to prohibit the use of state property for prohibited political activity even if the activity occurs during non-compensated (or “off-the-job”) time).

the Board of Revision of Taxes) who may be improperly compromised by political campaign considerations. However, most of the City's other boards and commissions – in fact, the vast majority – are simply advisory or exercise little of the City's authority. Application of the Charter's political activity restrictions to members of those mostly advisory boards and commissions unnecessarily risks depriving the City of the services of interested and qualified candidates whose political activity poses no real risk to ethical City governance.

The City's Ethics Board, in Opinion Nos. 2007-004 and 2007-006, and its general counsel, in GC Advice No. 2009-508, set forth reasonable standards in determining that less than two dozen of the more than 80 City boards and commissions exercised significant authority of the City and whose members were thereby subject to the Charter's political activity restrictions. The Ethics Board and its general counsel determined that the Charter's political activity restrictions did not apply to members of the remainder of those boards and commissions because they did not exercise authority of the City. The Task Force regards the Board's analysis as well-reasoned and supports its conclusions.

6) Modification of Penalties

The Task Force recommends that enforcement officials be given discretion to choose from among a range of penalties for violations of political activity restrictions. As written, the Charter currently calls for the dismissal of a City employee who violates a political activity restriction provision, no matter how egregious or trivial.⁷⁸ Taken literally, this would mean that enforcement officials would have had to fire a City employee who placed a sign on his or her lawn during the last presidential election touting either Barack Obama or John McCain for President.

Being required to impose a draconian penalty for every infraction has discouraged enforcement. If not enforced, the prohibitions become all but meaningless. Instead, the Charter should provide a range of penalties based on all factors of a particular case, including the seriousness of the breach, the intentionality or culpability of the offense,

⁷⁸ See PHILA. CHARTER § 10-109.

and the existence or absence of prior violations. These penalties could range from admonition to fines to suspension to firing to disbarment from City employment.

7) Oversight

The Task Force recognizes that the Board of Ethics and the Inspector General possess the authority and resources to investigate and enforce violations of political activity restrictions.⁷⁹

⁷⁹ The Board of Ethics has the authority to impose financial penalties for political activity violations, and the Inspector General has the authority to recommend personnel action up to and including dismissal for political activity violations.

VIII. CONCLUSION

We all know that there still is much work to be done to develop, expand, and sustain robust municipal ethics and campaign finance reform in Philadelphia. We also recognize that laws alone will not eliminate all corrupt behavior by public officials and employees and by the private parties who seek to corrupt them.

However, the Task Force believes that a great deal of progress has been made over the past several years to deter and shine light on such corrupt behavior. We also believe that the City's leaders have the courage and mandate from the citizens and taxpayers to continue on the path of reform and create a framework for ethical conduct that effectively, demonstrably, and collaboratively serves the people of Philadelphia.

Transparency, accountability, and fiscal responsibility must be fundamental principles of such a system. The Task Force's proposals further these principles by recommending that ethics rules be applied equally to all City officials and employees, that information disclosed by public officials and employees be made available and easily searchable, and that an independent Inspector General is needed to investigate allegations of fraud, waste, and abuse in all branches of City government.

Even in these challenging economic times, the City must not be deterred by the costs required to implement some of these recommendations. Such costs are necessary for healthy municipal government and pay dividends through more robust competition and citizen confidence. The costs of ethics reform – which are relatively small – are not an optional luxury.

Respectfully submitted,



THE TASK FORCE ON ETHICS AND
CAMPAIGN FINANCE REFORM

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Heidi Gold, Al Mezzaroba,
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Edward Turzanski

EXECUTIVE ORDER NO. 12-08

EXECUTIVE ORDER NO. 12-08

**MAYOR'S ADVISORY TASK FORCE ON
ETHICS & CAMPAIGN FINANCE REFORM**

WHEREAS, the City's campaign finance ordinance, enacted in 2003, has now been in effect for a full municipal election cycle; and

WHEREAS, the City's campaign finance ordinance received extraordinary acclaim for its effect on reducing the perception of "pay to play" in the 2007 Mayoral and Council elections; and

WHEREAS, on February 1, 2006, the City's extensive new requirements on no-bid contracting became effective, including mandatory disclosure of campaign contributions before the award of such a contract and throughout the contract period. These new provisions on no-bid contracts provide for a more open and transparent government and further diminish the perception of "pay to play" politics; and

WHEREAS, now having had the experience of the recent election cycle, it is an opportune time to evaluate and examine the City's campaign finance restrictions in a comprehensive and coordinated manner for further refinements and revisions to strengthen and clarify the ordinance, and to explore public campaign financing; and

WHEREAS, in an effort to restore integrity and public confidence in City government, the City – with voter approval – created a new independent Board of Ethics in the spring of 2006; and

WHEREAS, the Board of Ethics has instituted annual mandatory ethics training for all City officers and employees and has rendered opinions on a variety of ethical matters, including political activity restrictions on City board or commission members; and

WHEREAS, while the ethics climate within City government has significantly improved, there is always more that can be done in an effort to restore the public's faith and confidence in its government; and

WHEREAS, as evidence of further possible reforms, at the close of the most recent Council session in 2007, there remained under consideration several ethics-related bills, addressing matters such as nepotism, outside employment, gift restrictions, and lobbyist registration; and

WHEREAS, a comprehensive review of further ethics laws, campaign finance reforms, and political activity restrictions, along with a review of best practices within these areas, will provide the Mayor and Council with guidance on additional reforms that will continue to instill honesty, transparency and accountability within City government;

NOW, THEREFORE, by the powers vested in me by the Philadelphia Home Rule Charter, it is hereby ORDERED:

Section 1. ESTABLISHMENT OF THE MAYOR'S ADVISORY TASK FORCE ON ETHICS AND CAMPAIGN FINANCE REFORM

The Mayor's Advisory Task Force On Ethics and Campaign Finance Reform is hereby established in the Office of the Mayor.

Section 2. DUTIES OF THE MAYOR'S ADVISORY TASK FORCE ON ETHICS AND CAMPAIGN FINANCE REFORM

A. The Mayor's Advisory Task Force On Ethics and Campaign Finance Reform shall perform a comprehensive review of:

1) The City's campaign finance ordinance, including its direct regulation of contributions (Chapter 20-1000 of The Philadelphia Code) and the imposition of disclosure and eligibility requirements with respect to certain City contracting (Chapter 17-1400 of the Code);

2) Public campaign financing laws in other jurisdictions;

3) Additional ethics reforms for City government, with particular focus on the subjects left pending in the most recent session of City Council, including nepotism, outside employment, gifts, lobbying and training; and

4) City Solicitor opinions and Ethics Board opinions on political activity restrictions for City elected officials, their staff members, and members of any City board or commission.

B. By no later than February 1, 2009, the Task Force shall provide a report to the Mayor and the Council President setting forth its recommendations regarding improvements, changes or amendments to the existing campaign finance and ethics laws of the City. The Task Force shall convene at least one public hearing for the purposes of receiving information and recommendations from the public. The Task Force shall conduct its business in open meetings, except where necessary to preserve confidentiality. The Mayor may extend the deadline for submission, upon request of the Task Force, as necessary. Unless the Mayor shall prescribe further duties and responsibilities for the Task Force, the Task Force shall, after submission of its report, conclude its activities and terminate its service.

Section 3. COMPOSITION OF THE TASK FORCE

A. The Mayor's Advisory Task Force On Ethics and Campaign Finance Reform shall be comprised of nine (9) members, with one member appointed by each of the following:

- 1) the Mayor;
- 2) the Council President;
- 3) the Greater Philadelphia Chamber of Commerce;
- 4) the NAACP, Philadelphia Branch;
- 5) the Dean of the Law School of the University of Pennsylvania;
- 6) the Philadelphia Bar Association;
- 7) the Philadelphia Council, AFL-CIO;
- 8) the Committee of Seventy; and
- 9) the League of Women Voters, Philadelphia Chapter.

B. The foregoing organizations shall submit their appointees to the Mayor within fourteen days of the effective date of this Executive Order. In the event any of the foregoing organizations decline to provide a representative or do not meet the required timeframe for appointments, the Mayor, at his discretion, may substitute another organization or may allow the position to remain vacant.

C. The Mayor shall designate the Chair.

D. No member shall be an elected official or a current City, State or Federal employee.

Section 4. COOPERATION.

All City employees are directed to provide such assistance and cooperation to the Task Force as the Task Force requests in furtherance of its duties. In particular, it is expected that the Task Force will work closely with the Chief Integrity Officer and the Inspector General; and the Mayor hereby requests the cooperation and assistance of the Board of Ethics.

Section 5. EFFECTIVE DATE

This Order shall be effective immediately.

9/24/08
DATE



MICHAEL A. NUTTER, MAYOR

TASK FORCE MEMBERS

Michael A. Schwartz, Esquire, Chair

Partner, Pepper Hamilton LLP

Appointed by Mayor Michael A. Nutter

Nolan N. Atkinson, Jr., Esquire

Partner, Duane Morris, LLP

Appointed by NAACP, Philadelphia Branch

Stephanos Bibas

University of Pennsylvania Law School

Appointed by Dean of the University of Pennsylvania Law School

Heidi Gold

Director of Communications, Ross Associates, Inc.

Appointed by League of Women Voters

Brian J. McCormick, Jr., Esquire

Partner, Sheller, P.C.

Appointed by Committee of Seventy

Elizabeth McElroy

Assistant to the President and Political Director, Philadelphia Council, AFL-CIO

Appointed by Philadelphia Council, AFL-CIO

Al Mezzaroba, Esquire

Appointed by City Council President Anna C. Verna

Stephanie Resnick, Esquire

Partner, Fox Rothschild LLP

Appointed by Philadelphia Bar Association

Edward Turzanski

LaSalle University

Appointed by Greater Philadelphia Chamber of Commerce

LIST OF PUBLIC HEARING PARTICIPANTS

January 10, 2009 Public Hearing

(in order of testimony, and organization)

The Honorable Michel A. Nutter, Mayor, City of Philadelphia
Joan Markman, Chief Integrity Officer, City of Philadelphia
Amy Kurland, Inspector General, City of Philadelphia
J. Shane Creamer, Jr., Executive Director, Philadelphia Board of Ethics
The Honorable William Green, Member, Philadelphia City Council
Alan Butkovitz, City Controller, City of Philadelphia
Zach Stalberg, President, Committee of Seventy
Albert D'Attilio, Director of Human Resources, City of Philadelphia
Catherine Scott
Kay McKenna, League of Women Voters
Kelly Green, League of Women Voters
Adam Lang
James Browning
The Honorable Mark B. Cohen, Pennsylvania House of Representatives, Philadelphia County
Patricia Abner
Adam Bonin
Kevin Scott
Stephanie Singer
Joseph Manco
John Morley

May 5, 2009 Public Hearing

(in order of testimony, and organization)

James Browning
The Honorable Brian J. O'Neill, Member, Philadelphia City Council
The Honorable Frank Rizzo, Member, Philadelphia City Council
Zach Stalberg, President, Committee of Seventy
Ellen Mattleman Kaplan, Policy Director, Committee of Seventy
Adam Lang
Janet Miller

LIST OF INDIVIDUALS/ORGANIZATIONS
CONTACTED BY TASK FORCE

1. The Honorable Michael Nutter, Mayor, City of Philadelphia
2. The Honorable Anna C. Verna, Member, Philadelphia City Council
3. The Honorable Jannie L. Blackwell, Member, Philadelphia City Council
4. The Honorable Darrell L. Clarke, Member, Philadelphia City Council
5. The Honorable Frank DiCicco, Member, Philadelphia City Council
6. The Honorable W. Wilson Goode, Jr., Member, Philadelphia City Council
7. The Honorable Bill Green, Member, Philadelphia City Council
8. The Honorable William K. Greenlee, Member, Philadelphia City Council
9. The Honorable Curtis Jones, Jr., Member, Philadelphia City Council
10. The Honorable Jack Kelly, Member, Philadelphia City Council
11. The Honorable James F. Kenney, Member, Philadelphia City Council
12. The Honorable Joan L. Krajewski, Member, Philadelphia City Council
13. The Honorable Donna Reed Miller, Member, Philadelphia City Council
14. The Honorable Brian O’Neill, Member, Philadelphia City Council
15. The Honorable Maria D. Quiñones-Sanchez, Member, Philadelphia City Council
16. The Honorable Blondell Reynolds Brown, Member, Philadelphia City Council
17. The Honorable Frank Rizzo, Member, Philadelphia City Council
18. The Honorable Marian Tasco, Member, Philadelphia City Council
19. The Honorable Alan Butkovitz, City Controller, City of Philadelphia
20. The Honorable Joshua D. Shapiro, Pennsylvania House of Representatives, Montgomery County
21. Brian Abernathy, Legislative Assistant, Councilman Frank DiCicco
22. Eric Auerbach, Philadelphia City Council
23. Beth Brennan, S.R. Wojdak & Associates
24. Hope Caldwell, Esquire, Deputy Solicitor, Law Department, City of Philadelphia
25. J. Shane Creamer, Jr., Executive Director, Philadelphia Board of Ethics
26. Daniel Cho, Director of Candidate Services, New York City Campaign Finance Board
27. Albert D’Attilio, Director of Human Resources, City of Philadelphia
28. Sue Ellen Dodell, Esquire, General Counsel, New York City Campaign Finance Board
29. Tom Erickson, City Council
30. Richard Feder, Esquire, Chief Deputy City Solicitor, Law Department, City of Philadelphia
31. David Force, Legislative Assistant, Councilwoman Blondell Reynolds Brown
32. Lynne P. Fox, Manager, Philadelphia Joint Board Workers United
33. Eric Friedman, Press Secretary, New York City Campaign Finance Board
34. Daniel H. Grace, Secretary-Treasurer, Teamsters Local 830
35. Stewart Graham, Chief of Staff, Councilman Frank Rizzo
36. Richard Glazer, Esquire, Chair, Philadelphia Board of Ethics
37. John Hawkins, S.R. Wojdak & Associates
38. Peri Horowitz, Director of Special Compliance & Policy Assurance, New York City Campaign Finance Board
39. Ellen Mattleman Kaplan, Policy Director, Committee of Seventy

40. Cheryl Kritz, Esquire, Special Corporate Counsel, Law Department, City of Philadelphia
41. Amy Kurland, Inspector General, City of Philadelphia
42. Amy M. Loprest, Executive Director, New York City Campaign Finance Board
43. Kenya Mann, Esquire, Board Member, Philadelphia Board of Ethics
44. Joan Markman, Chief Integrity Office, City of Philadelphia
45. Nedda Massar, Esquire, Deputy Executive Director, Philadelphia Board of Ethics
46. Pam McCormick, Greater Philadelphia Chamber of Commerce
47. Charles McPherson, Philadelphia City Council
48. Evan Meyer, Esquire, General Counsel, Philadelphia Board of Ethics
49. Tara Mohr, Office of the Director Of Finance, City of Philadelphia
50. Edward F. Mooney, International VP, Communications Workers of America, District 13
51. Lewis Rosman, Esquire, Senior Attorney, City of Philadelphia⁸⁰
52. Catherine G. Scott, President, AFSCME District Council 47
53. Shelley R. Smith, City Solicitor, City of Philadelphia
54. Zach Stalberg, President, Committee of Seventy
55. Stephanie Tipton, Office Of Director Of Finance, City of Philadelphia
56. Matthew Vahey, Chief of Staff, State Representative Joshua D. Shapiro
57. Lauren M. Vidas, Esquire, Legislative Assistant, Councilman Bill Green
58. Wendell W. Young, IV, President United Food and Commercial Workers Local 1776

⁸⁰ Effective November 30, 2009, Mr. Rossman became the legislative affairs director for Mayor Nutter.

PHILADELPHIA CODE § 17-1400 *ET SEQ.*

CHAPTER 17-1400. NON-COMPETITIVELY BID CONTRACTS; FINANCIAL ASSISTANCE ⁶⁴

§ 17-1401. Definitions.

(1) *Applicant.* A Person who has filed an application to be awarded a Non-Competitively Bid Contract.

(2) *Business.* A Person other than an individual.

(3) *Candidate.* As defined in the Pennsylvania Election Code, 25 P.S. § 3241.

(4) *Charter.* The Philadelphia Home Rule Charter.

(5) *City Agency.* Any office, department, board, commission or other agency of the City of Philadelphia.

(6) *Consultant.* Any Person used by an Applicant or Contractor to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving, payment from the Applicant or Contractor or any other Person; provided, however, that "Consultant" shall not include a full-time employee of the Applicant or Contractor.

(7) *Contractor.* A Person who has entered into a Non-Competitively Bid Contract with a City Agency.

(8) *Contribution.* As defined in the Pennsylvania Election Code, 25 P.S. § 3241.

(9) *City-Related Agency.* All authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.

(10) *Immediate Family.* As defined in § 20-601, or a Life Partner, as defined in § 9-1102.

(11) *Incumbent.* An individual who holds an elective City office.

(12) *Non-Competitively Bid Contract.* A contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

(13) *Person.* An individual, corporation, limited liability company, partnership, association, joint

venture, or any other legal entity.

(14) *Political Committee.* As defined in the Pennsylvania Election Code, 25 P.S. § 3241.

(15) *Professional Services Contract.* A contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter because it involves the rendition of professional services, including any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

(16) *Financial Assistance.* Any grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance. 65

§ 17-1402. Open and Public Process Required For Non-Competitively Bid Contracts.

(1) A Non-Competitively Bid Contract shall be awarded in compliance with the following:

(a) A City Agency that seeks to enter into a Non-Competitively Bid Contract shall so notify the Procurement Department, and shall coordinate with the Procurement Department in carrying out the requirements of this Chapter. The Procurement Commissioner shall develop procedures to ensure that such contracts are advertised and approved in a timely, efficient and coordinated manner in the best interest of the City. The Procurement Commissioner shall develop applications, disclosure forms, and procedures and guidelines to assist Applicants, Contractors and Disadvantaged Business Enterprises in complying with the provisions of this Chapter. The City Agency that seeks to enter into a Non-Competitively Bid Contract shall publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and shall award such contract only to a party that completes an application form supplied by such City Agency, which application form shall contain all disclosure forms required by subsection (1)(b) and shall include a summary of the provisions and requirements of this Chapter. The required notices shall appear on the City's official website for at least fourteen days before the time by which application forms must be filed. The Procurement Commissioner, the Finance Director and the Commerce Director shall each keep a printed copy of all required notices in a registry organized by the date application forms must be filed, and make such registry available for public inspection during regular business hours. The required notices must be available for public inspection in such registries at least fourteen days before the time by which application forms must be filed. The required notices shall set forth:

(i) The City Agency seeking to enter into the contract;

(ii) The nature of the goods or services being sought;

(iii) The requirement that no party may be awarded the contract unless it files an application form provided by the City Agency, and the manner and time by which such application forms must be filed;

(iv) The requirements of subsection (1)(b) that the Applicant disclose the names of subcontractors the Applicant intends to use on the contract, the names of Consultants used to assist in securing the contract, certain contributions made by the Applicant and such Consultants, and the continuing disclosure requirements of subsection (1)(e) concerning such contributions made during and after the term of the contract; and

(v) The criteria by which the selection will be made.

(b) *Mandatory Disclosures.*

(i) An Applicant must disclose, by completing and signing disclosure forms attached to the application:

(.1) The names, business addresses and phone numbers of all Consultants used by the Applicant with respect to the contract at issue within the year prior to the date the application must be filed, and the amount paid or to be paid to each such Consultant for such services, or certify that no Consultants were so used;

(.2) All contributions of money or in-kind assistance made by the Applicant or by a Consultant during the two years prior to the date the application must be filed to any candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party in the Commonwealth of Pennsylvania, and the date and amount of each such contribution, or certify that no such contributions have been made. The attribution rules of § 17-1405 shall apply to determine what contributions must be disclosed as contributions of the Applicant or of a Consultant under this subsection (1)(b);

(.3) The names, business addresses and phone numbers of all subcontractors the Applicant intends to use on the contract, and the amount or percentage to be paid to each such subcontractor;

(.4) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) given to any Person in response to any such request. The Applicant shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request;

(.5) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, directly or indirectly advised the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant that a particular Person could be used by the Applicant to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Applicant shall also disclose the date the advice was provided, and the name of such particular Person.

(ii) The City Agency awarding the contract shall forward a copy of all disclosure forms it receives to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(iii) No Non-Competitively Bid Contract shall be awarded unless all required disclosure forms are completed, signed and attached to the application for such contract and on file with the Mayor, Finance Director, Procurement Department, and the Department of Records.

(c) After the City Agency has selected the Applicant with which it intends to contract, the City Agency shall publish a notice on the City's official website setting forth the names of all Applicants, the Applicant to which the contract will be awarded, and the basis for the award, including a statement as to whether the Applicant to be awarded the contract was the lowest bidder and if not, why the applications of all lower bidders were rejected. Such notice shall appear on the City's website for at least one week before the contract is executed. No later than the date the notice first appears on the City's website, the City Agency shall file a copy of the notice with the President and Chief Clerk of Council, and the Mayor, Finance Director, Procurement Department, and Department of Records.

(d) If Council approval of a Non-Competitively Bid Contract is required under Section 2-309 or other provision of the Charter, then such contract must be specifically approved by ordinance. An ordinance approving a Non-Competitively Bid Contract shall include as exhibits:

(i) A copy of the notice required by subsection (1)(a);

(ii) A copy of the application form submitted by the Applicant to whom the contract is proposed to be awarded, together with a copy of all disclosure forms required to be submitted by such Applicant under subsection (1)(b); and

(iii) A copy of the notice required by subsection (1)(c).

(e) Every Non-Competitively Bid Contract shall include the following provisions:

(i) The Contractor shall covenant that during the term of the contract, contributions will not be made that would render the Contractor ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of § 17-1404(1). Breach of such covenant shall render the contract voidable at the City's option, and shall make the Contractor liable for liquidated damages to the City in the amount of 10% of the maximum payments to the Contractor allowed under the contract, regardless whether actually paid.

(ii) The Contractor shall, during the term of such contract and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor or any Consultant has made during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days of the contribution. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of § 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(iii) The Contractor shall, during the term of such contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing

the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days after a request was made or a payment in response to a request was made, as the case may be. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(iv) The Contractor shall, during the term of such contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days after the Contractor was so advised. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(f) Every Non-Competitively Bid Contract shall include a representation and covenant by the Contractor that the Contractor's disclosures required by subsection (1)(b) contain no material misstatements or omissions. Breach of such representation and covenant shall render the contract voidable at the City's option, and shall subject the Contractor to liquidated damages to the City in the amount of 10% of the total value of the payments to be made to the Contractor under the contract.

(g) Every Non-Competitively Bid Contract shall be approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution.

(h) No Non-Competitively Bid Contract shall be amended to increase the amount to be paid under the contract by more than twenty percent (20%) or by more than \$25,000, whichever is greater, unless such amendment is approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that such amendments to Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution. The City Agency seeking to amend the contract shall publish on the City's official website a notice identifying the contract and explaining the need for the amendment. Such notice shall appear on the City's website for at least one week prior to execution of the amendment, and no later than the day the notice first appears on the City's website, the City Agency shall send a copy of the notice to the President and Chief Clerk of Council, and to the Mayor and Department of Records.

(2) *Failure to Disclose Consultant Contributions.*

(a) It shall not be a violation of subsection (1)(b)(i)(2) if an Applicant fails to disclose a contribution made by a Consultant because the Applicant was unable to obtain such information from the Consultant, provided the Applicant demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the contract, and before the Consultant communicated with a City Agency, official or employee on behalf of the Applicant;

(ii) Including in such agreement a provision requiring the Consultant to provide the Applicant in a timely manner with all information required to be disclosed under the provisions of this Chapter, and providing, in effect, that the agreement will be terminated by the Applicant if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Applicant as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Applicant to comply with all provisions of this Chapter; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(b) The contract provision required by subsection (1)(e)(ii) shall include provisions excusing the failure to disclose a Consultant's contributions during the term of the contract under the same terms and conditions set forth in subsection (2)(a).

(3) Nothing in this Chapter shall be construed to require the award of a Non-Competitively Bid Contract to the lowest responsible bidder, nor shall this Chapter be construed in any other way to limit the discretion of a City Agency in awarding or not awarding a Non-Competitively Bid Contract if the procedures required by this Chapter have been followed.

§ 17-1403. Public Information; Reporting. 66

(1) After a Non-Competitively Bid Contract has been executed, all applications for such contract shall become public information, except that the City Agency awarding such contract may redact proprietary information or other information protected by law prior to making such applications available for public inspection, provided that the information required to be disclosed by § 17-1402(1)(b) shall never be redacted.

(2) At least thirty (30) days before the start of each fiscal year, a written report, signed by the Mayor, shall be filed by the Mayor with the President and Chief Clerk of Council, with copies sent to the Procurement Commissioner, the Finance Director, the Commerce Director, and the Department of Records and published on the City's official website, listing for each City Agency (other than Council) the number of Non-Competitively Bid Contracts the City Agency anticipates awarding in the upcoming fiscal year (to the extent known at the time the report is filed) and for each such contract:

- (a) The subject matter of the contract;
- (b) The term of the contract; and
- (c) The total dollar amount of the contract.

The report shall also include, for each City Agency (other than Council) the dollar amount of each type of Financial Assistance the City Agency anticipates awarding in the upcoming fiscal year (to the extent known at the time the report is filed). The Procurement Commissioner, Finance Director and Commerce

Director shall each make a copy of the report available for public inspection during regular business hours at the same place the registry of notices required by subsection 17-1402(1)(a) is kept.

(3) On January 31, April 30, July 31 and October 31 of each year, a written report, signed by the Mayor, shall be filed by the Mayor with the President and Chief Clerk of Council, with a copy to the Department of Records and a copy published on the City's official website, setting forth for each Non-Competitively Bid Contract (except for contracts awarded by Council) under which goods were provided or services were rendered to the City during the three month period ending one month prior to the date the report must be filed, and for each contract for which reporting is required by § 17-1406(1) (d):

(a) The parties to the contract and the subject matter of the contract;

(b) The term of the contract and the length of the term remaining;

(c) The total dollar amount of the contract and the total of all payments that have been made under such contract to date; and

(d) A copy of any disclosure forms filed in compliance with the requirement of § 17-1402(1)(e) since the date of the last report.

The report shall also detail each provision of Financial Assistance made during the reporting period, and for each provision of Financial Assistance: (i) the City Agency providing such assistance; (ii) the type of Financial Assistance awarded; (iii) the recipient of such assistance; and (iv) the dollar amount of such assistance.

(4) By September 30 of each year, the Mayor shall file an annual report with the President and Chief Clerk of Council, and the Department of Records (with a copy also published on the City's official website) summarizing the award of Non-Competitively Bid Contracts (other than contracts awarded by Council) during the prior fiscal year. Such report shall be signed by the Mayor, and shall list for each City Agency (other than Council) the number of contracts awarded by type of contract, the total dollar amount of such contracts, and the total payments made under such contracts. The report shall also include the Finance Director's analysis of the City's experience with the requirements of this Chapter during the previous fiscal year, and the Finance Director's recommendations, if any, to amend the requirements of this Chapter or otherwise to improve the procurement process to ensure efficiency, economy and productivity, including the use of innovative means of procurement that will be competitive and in the best interest of the City. The report shall also summarize the provision of Financial Assistance, detailing for each City Agency the number and dollar amount of each type of Financial Assistance the City Agency awarded during the prior fiscal year.

(5) The Council President shall sign and file the reports required by subsections (2), (3) and (4) in the same manner, form and content as required in those subsections, with respect to Non-Competitively Bid Contracts awarded or to be awarded by Council.

(6) Any document that must be filed with the Department of Records under this Chapter shall be kept on file and available for public inspection by those agencies during regular office hours.

§ 17-1404. Eligibility for Non-Competitively Bid Contracts and Financial Assistance. 67

(1) *Determining Eligibility.*

(a) If an individual makes contributions in excess of \$2,500 (as such amount is adjusted from time to time under § 17-1404(1)(c) or § 17-1404(1)(d)) in the aggregate during a calendar year to a candidate for nomination or election to any elective City office or to an Incumbent, then, during the term of office to which such candidate is elected or during the Incumbent's term of office, the individual shall not be eligible to apply for or to enter into any Non-Competitively Bid Contract in excess of \$10,000, nor shall said individual be eligible to be a sub-contractor (at any tier) of any such contract, nor shall the individual be eligible to receive Financial Assistance. 68

(b) If a Business makes a contribution in excess of \$10,000 (as such amount is adjusted from time to time under § 17-1404(1)(c) or § 17-1404(1)(d)) in the aggregate during a calendar year to a candidate for nomination or election to any elective City office or to an Incumbent, then, during the term of office to which any such candidate is elected or during the Incumbent's term of office, the Business shall not be eligible to apply for or to enter into any Non-Competitively Bid Contract in excess of \$25,000, nor shall said Business be eligible to be a sub-contractor (at any tier) of any such contract, nor shall the Business be eligible to receive Financial Assistance. 69

(c) On January 1, 2008 and on January 1 every four years thereafter, the maximum amounts set forth in § 17-1404(1)(a) and (b) shall be adjusted, as follows. On the December 15 immediately preceding the adjustment, the Finance Director shall calculate the "CPI Multiplier" by dividing the average consumer price index for Philadelphia during the then-current calendar year by the average consumer price index for Philadelphia during calendar year 2005. To determine the average consumer price index for Philadelphia, the Finance Director shall use the latest available figures for the Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as measured by the United States Department of Labor, Bureau of Labor Statistics. After calculating the CPI Multiplier, the Finance Director shall calculate the new maximum amounts, as follows:

(i) The maximum amount for purposes of § 17-1404(1)(a) shall equal \$2,500, multiplied by the CPI Multiplier, rounded to the nearest \$100.

(ii) The maximum amount for purposes of § 17-1404(1)(b) shall equal \$10,000, multiplied by the CPI Multiplier, rounded to the nearest \$100.

The Finance Director shall certify the new maximum amounts in writing to the Mayor, the Council President and Chief Clerk of Council.

(d) If a candidate (as defined in Section 20-1001, relating to political contributions and expenditures) for any City elective office contributes \$250,000 or more from his or her personal resources to his or her candidate political committee (regardless of the time period over which such contribution is made), then the maximum amounts set forth in § 17-1404(1)(a) and (b), as they may be adjusted pursuant to subsection (c), shall double with respect to contributions to candidates for that same elective office. 70

(2) The attribution rules of § 17-1405 shall apply to determine the amount of contributions made by an individual or Business for purposes of subsection (1).

(3) *Disclosure by Applicants for Financial Assistance.*

(a) A Person seeking Financial Assistance shall file with the City Agency providing such assistance all disclosure forms that Applicants seeking Non-Competitively Bid City Contracts must file under § 17-1402(1)(b).

(b) The City Agency providing the Financial Assistance shall forward a copy of all disclosure forms it receives to the Finance Director, and the Department of Records.

(c) No Financial Assistance shall be provided unless all required disclosure forms are completed, signed and filed with the City Agency providing such assistance and are on file with the Finance Director, and the Department of Records.

(d) If Council approval of the Financial Assistance is required by law, the ordinance approving such Financial Assistance must include as exhibits copies of all disclosure forms required by this subsection (3).

(e) Every recipient of Financial Assistance shall, for a period of five years after receiving such assistance, be subject to the provisions of § 17-1402(1)(e), requiring certain covenants and disclosures, as if such recipient were a Contractor executing a Non-Competitively Bid Contract. The City Agency providing the Financial Assistance shall enter into such agreements with the recipient of Financial Assistance as the City Solicitor deems necessary to carry out the purpose and intent of this subsection.

§ 17-1405. Attribution Rules.

The following attribution rules shall apply throughout this Chapter to determine what contributions shall be considered to be contributions of an Applicant, Consultant, Contractor or Person seeking Financial Assistance: 71

(1) Contributions made by a member of an individual's Immediate Family shall be considered to be contributions made by the individual, but only if such contribution exceeds the maximum amount specified in § 17-1404(1)(a). Only the amount of such contribution in excess of such maximum amount shall be attributed to the individual.

(2) The following shall be considered a contribution by a Business:

(a) A contribution made by any parent, subsidiary, or otherwise affiliated entity of a Business ("affiliate");

(b) A contribution made by any Person for which they are reimbursed by such Business or affiliate;

(c) A contribution from an officer, director, controlling shareholder or partner of such Business or affiliate, except that this provision shall not apply to not-for-profit Businesses or affiliates;

(d) A contribution by a political action committee controlled by the Business or affiliate;

(e) A contribution by a political action committee controlled by an officer, director, controlling shareholder or partner of such Business or affiliate (other than a not-for-profit Business or affiliate).

(3) A contribution to any political committee which, during the calendar year in which the contribution is made, itself makes contributions or gives financial support in excess of fifty percent of the committee's total receipts for that calendar year to a particular candidate for nomination or election to any elective City office or to a particular Incumbent, shall be considered a contribution to such candidate or Incumbent. A contribution to a political committee that has listed the names of any candidates on a registration statement filed pursuant to the Election Code (25 P.S. § 3244) shall be

considered a contribution to each such candidate.

(4) Any other contribution made not directly to a candidate for nomination or election to any elective City office or Incumbent, but with the purpose and intent that the entity to whom the contribution is made will, directly or indirectly, make such contribution available to such candidate or Incumbent, shall be considered a contribution to such candidate or Incumbent.

(5) Any contribution solicited by a Person shall be considered a contribution by such Person, and if a Person sponsors or hosts a fundraising event, then any contributions raised at such event shall be considered to be contributions by such Person. Any contribution solicited by an officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) shall be considered a contribution by such Business, and if any officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) sponsors or hosts a fund-raising event, then any contributions raised at such event shall be considered to be contributions by such Business.

(6) Any contribution for which a Person is an intermediary shall be considered as a contribution by such Person, and any contribution for which an officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) is an intermediary shall be considered a contribution by such Business. For purposes of this subsection, an "intermediary" means a Person who, other than in the regular course of business as a postal, delivery or messenger service, delivers a contribution from another Person to the recipient of such contribution.

§ 17-1406. Sole Source Contracts, Emergencies, and Other Exceptions.

(1) Any provision of this Chapter may be waived if the Finance Director certifies in writing that compliance with such provision may lead to the loss of federal, state or similar grant funds, or if the City Solicitor certifies in writing that application of such provision would violate federal or state law.

(2) The provisions of § 17-1402(1)(a), (1)(c) and (1)(e)(i), and the provisions of § 17-1404, shall not apply with respect to contracts the Finance Director certifies in writing are for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, provided that this exception shall not apply to Professional Services Contracts. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(3) The provisions of § 17-1402(1)(a) and (1)(c) shall not apply to a Non-Competitively Bid Contract if the Finance Director certifies in writing that delay in the award of such contract would cause a material threat to public health or safety. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(4) The provisions of § 17-1402(1)(a), (1)(c) and (1)(g) shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies in writing that such contract must be awarded immediately to avoid material damage to the legal interests of the City. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(5) The provisions of § 17-1402(1)(a) and (1)(c) shall not apply to Non-Competitively Bid Contracts in an amount less than that set forth in Section 8-200(2) of the Home Rule Charter, as such

amount is adjusted from time to time, provided that such contracts are awarded only after the contracting agency conducts a competitive process designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(6) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract with a governmental agency or with a not-for-profit corporation established by the City, or to Financial Assistance provided to such agencies or corporations, except that all such contracts and provisions of Financial Assistance shall be included in the reports required by § 17-1403. 72

(7) All written certifications required under this Section shall set forth the basis for such certification, and shall be filed with the Department of Records.

(8) The provisions of § 17-1402(1)(a) and (1)(c) shall not apply to contracts with not-for-profit entities awarded by the Office of Housing and Community Development, the Department of Human Services, the Health Department, the Recreation Department, the Office of Emergency Shelter and Services, the Office of Behavioral Health and Mental Retardation, the Office of Adult Services, the Mayor's Office of Community Services, the Philadelphia Prisons, the Commission on Disabilities, the Commission on Aging, or the Office of the District Attorney. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

§ 17-1407. Prohibited Conduct; Penalties; Remedies.

(1) A contract made in violation of § 17-1404 shall be voidable at the City's option.

(2) No Applicant shall make a material misstatement or omission in the disclosures required by § 17-1402(1)(b); and no Contractor shall make a material misstatement or omission in the disclosures required by § 17-1402(1)(e); and no Person seeking Financial Assistance shall make a material misstatement or omission in the disclosures required by § 17-1404(3)(a). If an Applicant makes material misstatements or omissions in the disclosures required by § 17-1402(1)(b), or if a Contractor makes material misstatements or omissions in the disclosures required by § 17-1402(1)(e), such Applicant or Contractor shall be prohibited from entering into any Non-Competitively Bid Contract for a period of from one to three years, and such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. If a Person seeking Financial Assistance makes material misstatements or omissions in the disclosures required by § 17-1404(3)(a), such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. For purposes of this subsection (2), the "Maximum Fine Amount" shall be seven hundred dollars (\$700) for violations committed during calendar year 2005; eleven hundred dollars (\$1,100) for violations committed during calendar year 2006; fifteen hundred dollars (\$1,500) for violations committed during calendar year 2007; nineteen hundred dollars (\$1,900) for violations committed during calendar year 2008; and two thousand dollars (\$2,000) for violations committed thereafter. 73

(3) The Finance Director shall provide a process by which a final written determination may be made as to whether an Applicant or Contractor has made a material misstatement or omission and is therefore debarred and subject to an action seeking the imposition of fines under subsection (2), which process shall include written notice to the Applicant or Contractor and an opportunity for the Applicant or Contractor to be heard prior to any final determination. In making such determination, the Finance Director shall not find that an Applicant or Contractor has made a material misstatement or omission in

a disclosure required by this Chapter if such disclosure is attested to by a duly authorized agent who has made reasonable inquiry to determine all facts that must be disclosed, who has fully and accurately disclosed all facts revealed by such reasonable inquiry, and who has no actual knowledge of the misstatement or omission. A copy of every such written notice and final written determination shall be filed with the Department of Records. Upon receiving a final written determination, the Department of Records shall publish, in the same manner that notices are published under § 17-1402(1)(a), a summary of such written determination, including the name of the applicant, the contract for which the applicant had applied, the findings as to material misstatement or omission set forth in the final determination, and the penalties to which the Applicant or Contractor is subject.

§ 17-1408. City-Related Agencies.

(1) Any contract, lease, grant or other agreement ("City agreement") entered into by the City with any City-related Agency shall contain a provision requiring that the City-related Agency abide by the provisions of this Chapter in awarding any contracts pursuant to its City agreement, as though such contracts were directly subject to the provisions of this Chapter, except that the exception set forth in § 17-1406(8) shall apply to such City-related Agency as if such City-related agency were listed in that subsection. Each City agreement shall also include a provision detailing how the City-related Agency is to carry out its duties under this Section, including, but not limited to, specifying who at the City-related Agency is responsible for carrying out duties that this Chapter assigns to City officers and employees.

Notes

- 64 Added, Bill No. 040772-AA (approved June 9, 2005). Enrolled bill added Chapter 17-1200, which Chapter already existed; Section headings and internal cross-references renumbered by Code editor. Section 2 of Bill No. 040772-AA provides: "Effective Date; Applicability. (a) This Ordinance shall take effect February 1, 2006, but only if the amendment to Section 8-200 of the Philadelphia Home Rule Charter proposed by Resolution No. 050428 is approved by the voters, and only with respect to contracts executed on and after February 1, 2006 for which the City had not issued a request for proposals prior to February 1, 2006. [Editor's note: The Charter was so amended, effective November 28, 2005.] "(b) The provisions of [§ 17-1404] of The Philadelphia Code added by Section 1 of this Ordinance prohibiting the award of non- competitively bid contracts to persons who made certain contributions to candidates and incumbents, shall apply only with respect to contributions made on and after January 1, 2006. However, contributions made prior to January 1, 2006 shall be subject to the disclosure requirements of [§§ 17-1402(1)(b), 17-1402(1)(e)(ii) and 17-1404(3)(a)] of The Philadelphia Code added by Section 1 of this Ordinance. "(c) The provisions of [§ 17-1403(3)] of The Philadelphia Code added by Section 1 of this Ordinance, requiring the filing of a quarterly report concerning certain contracts, shall apply to contracts in existence at the time this Ordinance takes effect." Caption amended, Bill No. 050613 (approved December 15, 2005). Enrolled bill amended Chapter 17-1200; renumbered as amendments to Chapter 17-1400 by Code editor. Section 2 of Bill No. 050613 provides: "Effective Date; Applicability. (a) This Ordinance shall take effect July 1, 2006. "(b) The amendment to [§ 17-1404(1)] of The Philadelphia Code in Section 1 of this Ordinance prohibiting the provision of financial assistance to persons who made certain contributions to candidates and incumbents, shall apply only with respect to contributions made on and after January 1, 2006. However, contributions made prior to January 1, 2006 shall be subject to the disclosure requirements of [§ 17-1404(3)] of The Philadelphia Code added by Section 1 of this Ordinance."
- 65 Added, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.
- 66 Amended, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.
- 67 Amended, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.
- 68 Amended, Bill No. 060854 (approved December 26, 2006). Pursuant to § 17-1404(1)(c)(i), the Director of Finance on December 12, 2007, certified a new contribution limit of \$2,600.
- 69 Amended, Bill No. 060854 (approved December 26, 2006). Pursuant to § 17-1404(1)(c)(ii), the Director of Finance on December 12, 2007, certified a new contribution limit of \$10,600.
- 70 Added, Bill No. 060854 (approved December 26, 2006). Section 2 of Bill No. 060854 provides: "Section 2. Effective Date Provision. This Ordinance shall take effect immediately. Contributions from an individual's personal resources to the individual's candidate political committee made before the effective date of this Ordinance shall count toward the \$250,000 threshold that

triggers the doubling provision of subsection 17-1404(d) of The Philadelphia Code."

71 Amended, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.

72 Amended, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.

73 Amended, Bill No. 050613 (approved December 15, 2005). For effective date provisions of Bill No. 050613, see note 64.

PHILADELPHIA CODE § 20-600 ET SEQ.

CHAPTER 20-600. STANDARDS OF CONDUCT AND ETHICS ²⁵**§ 20-601. Definitions.**

(1) *Board.* Board of Ethics.

(2) *Officer or Employee.* Any person who is elected or appointed to a position in any branch of the government of the City and/or County of Philadelphia or to any elected or appointed position which serves the City and/or County of Philadelphia including, but not limited to, members of agencies, authorities, boards and commissions however elected or appointed; persons serving full-time or intermittently; persons serving with or without compensation.

(3) *Part-time Service.* Service rendered by any City officer or employee who is not employed by the City on a full-time basis in any capacity. This shall include members of agencies, authorities, boards and commissions who are paid on the basis of each meeting attended.

(4) *Transactions Involving the City.* Any proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions or other particular matter which the member of City Council, City officer or employee in question believes, or has reason to believe (a) is or will be the subject of City action; or (b) is one to which the City is or will be a party; or (c) is one in which the City has a direct proprietary interest. This shall not include routine applications or requests for routine information or other matters which are of a ministerial nature and do not require the exercise of discretion on the part of any member of City Council, City officer or employee.

(5) *Annual Salary.* Payment for services pursuant to Section 20-303, 20-304 and 20-305 of this Chapter except in those instances in which the rate of compensation is based upon the number of meetings attended or days worked. ²⁶

(6) *Business.* Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or legal entity organized for profit. ²⁷

(7) *Commodity.* Any movable or tangible thing that is produced or used as the subject of barter or sale. ²⁸

(8) *Gift.* A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the individual's immediate family or from a relative within the third degree of consanguinity of the individual or of the individual's spouse or from the spouse of any such relative. ²⁹

(9) *Immediate Family.* A spouse residing in the individual's household and minor dependent children. ³⁰

(10) *Income.* Any money or thing or value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain or any other form of recompense or any combination thereof. 31

(11) *Indirect Interest in Real Estate.* Any business entity the assets of which are 80 percent or more in real property. 32

(12) *Person.* A business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons. 33

(13) *Security.* Any contract, transaction or scheme whereby a person invests his money in a common enterprise and there is an expectation of profit solely through the efforts of a third party. The term security shall include, but not be limited to, any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, warrant or right to subscribe to or purchase, any of the foregoing. 34

§ 20-602. Representation by City Officers, Employees and Members of Council.

(1) (a) No member of the Council nor other City officer or employee shall assist another person by representing him directly or indirectly as his agent or attorney, whether or not for compensation, in any transaction involving the City. This Section shall not apply to any assistance rendered by any member of Council or other City officer or employee in the course of or incident to his official duties, or to any person who holds any City office or position who is not compensated for his service by the City. Subject to Section 20-602(4).

(b) No member of Council or other City officer or employee shall accept any fee from anyone for referring any matter to another person where the member of Council or other City officer or employee would be barred from assisting or representing them under this ordinance.

(2) An uncompensated City officer or employee or a compensated City officer or employee whose service is part-time (excluding members of City Council or other City officers or employees who are paid on an annual basis) is subject to the foregoing paragraph only in relation to a particular matter (a) in which he has at any time participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (b) which is pending in the department, agency, authority, board or commission of the City in which he is serving.

(3) A member of Council or other City officer or employee may take uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, or other personnel administration proceedings with respect to those proceedings.

(4) A member of the Council or any other City officer or employee may act, with or without compensation, on his own behalf or as agent or attorney for, or otherwise aiding or assisting, his parents, spouse, child, brother, sister or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally as a member of Council, City officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official

responsibility.

(5) No member or employee of a partnership, firm, corporation, or other business organization or professional association organized for profit of which a member of the Council or other City officer or employee is a member shall represent any person directly or indirectly as agent or attorney in any matter in which such member of the Council or other City officer or employee has the responsibility for decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise determining such matters, unless such member of the Council or other City officer or employee shall disclose such fact and disqualify himself from such responsibility in the manner set forth in Section 20-608.

§ 20-603. Post-Employment Representation.

(1) No person who has served for compensation as a member of Council, City officer or employee shall assist, at any time subsequent to his City service or employment, another person, with or without compensation, in any transaction involving the City in which he at any time participated during his City service or employment.

§ 20-604. Gifts, Loans and Favors to City Personnel.

(1) No member of Council or other City officer or employee, shall solicit, accept or receive any gift, loan, gratuity, favor or service of substantial economic value that might reasonably be expected to influence one in his position in the discharge of his official duties, from any person, firm, corporation or other business or professional organization.

(2) No person, firm, corporation or other business or professional organization shall offer, make or render any gift, loan, gratuity, favor or service of substantial economic value to any member of Council or other City officer or employee which might reasonably be expected to influence such officer or employee in the discharge of his official duties.

§ 20-605. Exparte Communication.

No person shall, directly or indirectly, communicate in any way with any member of any board, agency, authority or commission of the City as to any adjudicative matter which is, or which may reasonably be, expected to be pending before such board, agency, authority or commission for the purpose of influencing said member of such board, agency, authority or commission, unless a full disclosure of such communication is simultaneously made available to the other party or parties in interest with respect to such matter. This shall not apply to any communication by a member of Council or by any other City officer or employee in the performance of his official duties.

§ 20-606. Board of Ethics. 35

(1) *Powers and Duties.*

(a) *Rules and Regulations.* The Board shall promulgate rules and regulations as are necessary to implement and interpret the provisions of this Chapter consistent with the goal of providing clear guidance regarding standards of conduct and ethics.

(b) *Mandatory Training and Education.*

(i) The Board shall have the responsibility of training and educating all City officers and employees regarding the standards of conduct and ethics. In fulfilling this responsibility, the Board shall prepare and disseminate educational materials regarding the provisions contained within this Chapter and related interpretive regulations, including a Code of Ethics Manual, and shall develop and conduct routine and mandatory educational and training programs for all City officers and employees. The Board shall consult with City departments and agencies in developing and conducting routine and mandatory educational and training programs for all City employees. Failure to attend a mandatory ethics program shall be deemed a violation of this Chapter.

(ii) Within sixty (60) days of the effective date of the Ordinance adding this provision to The Philadelphia Code, each head of a City department shall provide a copy of this Chapter to all employees under his or her direction. Thereafter, on or before the tenth day after an individual becomes a City officer or employee, each head of a City department shall provide a copy of this Chapter to all such new officers or employees. Upon receipt of a copy of this Chapter, the City officer or employee shall sign a written statement that such officer or employee has read and shall conform with the provisions of this Chapter, and this statement shall be placed in the City officer's or employee's personnel file. Failure of a City officer or employee to receive a copy of this Chapter, failure to receive and sign such written statement, or failure to maintain the written statement on file shall have no effect on the duty of the City officer or employee to be in compliance with this Chapter.

(iii) Within one year of the effective date of the Ordinance adding this provision to The Philadelphia Code and annually thereafter, all elected City officers, all cabinet members, all City department heads, and all board and commission members, and their respective staff members as determined by the Board based on staff position, shall participate in an educational and training program conducted by the Board. Failure to attend the mandatory ethics program shall be deemed a violation of this Chapter.

(iv) The Board shall develop procedures for all City officers and employees to obtain informal guidance and assistance in understanding and maintaining compliance with the standards of conduct and ethics.

(c) *Ethics Training and Education for Businesses.* The Board shall develop, in conjunction with the Procurement Commissioner, a code of business ethics manual and conduct education and training programs for use by all businesses who may conduct business with the City.

(d) *Advisory Opinions.*

(i) The Board shall render advisory opinions with respect to all matters pertaining to the standards of conduct and ethics. An advisory opinion shall be rendered on the request of a City officer or employee or a supervisor of such City officer or employee and shall apply only to such City officer or employee. The request shall be in such form as the Board may require and shall be signed by the person making the request. The opinion of the Board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

(ii) Advisory opinions shall be issued only with respect to proposed future conduct or action by a City officer or employee. A City officer or employee whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions under this Chapter by virtue of acting or failing to act due to a reasonable reliance on such opinion, unless material facts were omitted or

misstated in the request for the opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the City officer or employee that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the City officer or employee.

(iii) The Board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any City officer or employee or other involved party in accordance with regulations promulgated by the Board.

(e) *Financial Disclosure.*

(i) All Statements of Financial Interest required pursuant to Section 20-610 shall be filed with the Board.

(ii) The Board shall issue rules and regulations concerning the filing of Statements of Financial Interest for the purpose of ensuring compliance by all City officers and employees with the applicable provisions of financial disclosure law. The Board shall investigate any instances of non-compliance and take appropriate action.

(f) *Complaints.*

(i) The Board shall receive written complaints alleging violations of this Chapter. All such complaints must be signed by the complainant and the Board shall preserve the confidentiality of the complainant and keep information, records and proceedings relating to an investigation confidential at all times.

(ii) Whenever a written complaint is received by the Board, it shall:

(.1) Dismiss the complaint if it determines that no further action is required by the Board;

(.2) Investigate internally;

(.3) Make an initial determination as to whether there is probable cause to believe that a City officer or employee has violated a provision of this Chapter and, if so, proceed to adjudicate the matter in accordance with the regulations promulgated under paragraph (g) of this Section; or

(.4) Refer the alleged violation of this Chapter to the head of the City agency in which the City officer or employee serves if the Board deems the violation to be minor or if related disciplinary charges are pending against the City officer or employee; or

(.5) Refer the alleged violation to the Inspector General or other appropriate enforcement authorities.

(g) *Investigations and Referrals.*

(i) The Board shall have the power to conduct an investigation of any matter related to the Board's responsibilities under this Chapter.

(ii) Whenever a City agency receives a complaint alleging a violation of the provisions of this Chapter or determines that a violation of this Chapter may have occurred, it shall refer such matter

to the Board. Such referral shall be reviewed and acted upon by the Board in the same manner as a complaint received by the Board under paragraph (e) of this Section.

(h) *Adjudication.* The Board shall, by regulation, provide for adjudication of alleged violations of this Chapter, insuring that notice and an opportunity to be heard are provided prior to any final decision by the Board. If the Board finds that there has been a violation of this Chapter it may impose penalties pursuant to Section 20-612. Findings and decisions of the Board on any actions taken by the Board shall be final and there shall be no further appeal other than to court as provided by law.

(i) *Confidentiality.* Except as otherwise provided in this Chapter, the records, reports, memoranda and files of the Board shall be confidential and shall not be subject to public inspection, except as otherwise provided by law. Also, no person shall disclose or acknowledge to any other person any information relating to a complaint, investigation, referral or pending adjudication, except as otherwise provided by law.

(j) *Retaliation Prohibited.* No officer or employee shall discharge, or change the official rank, grade or compensation, or deny a promotion or threaten to do so of an officer or employee for filing a complaint with or providing information to the Board, or for testifying in any Board proceeding.

(k) *Frivolous Complaints.* If an officer or employee has reason to believe a complaint to the Board is frivolous, or without probable cause and made primarily for a purpose other than that of reporting a violation of this Chapter, or a person publicly disclosed or caused to be disclosed that a complaint against an officer or employee has been filed with the Board, the officer or employee shall notify the Board and the Board shall conduct an investigation.

(l) *Annual Report and Recommendations.*

(i) The Board shall submit an annual report to the Mayor and City Council. The report shall include a summary of the proceedings and activities of the Board, a description of the education and training conducted, a summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations the Board deems appropriate, the rules of the Board, and an index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain any information which, if disclosed, would constitute an invasion of the privacy of a City officer or employee.

(ii) The Board shall, whenever it deems necessary, make recommendations to the Mayor and to City Council which seek to improve the administration and enforcement of this Chapter, including any legislative changes which help strengthen or clarify the standards of conduct and ethics.

(2) *Mandatory Cooperation with the Board.* All City officers and employees shall cooperate fully with any request of the Board made pursuant to the execution of the Board's powers and duties. Any City officer or employee who fails or refuses to cooperate with the Board shall be deemed to be in violation of this Chapter.

§ 20-607. Conflict of Interest.

(a) Unless there is public disclosure and disqualification as provided for in Section 20-608 hereof, no member of Council, or other City officer or employee shall be financially interested in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, or by any board or body of which he is a member nor shall any

financial interest be held by a parent, spouse, child, brother, sister or like relative-in-law, or by any person, firm, partnership, corporation, business association, trustee or straw party for his or her benefit, nor shall a member of Council or other City officer or employee be a purchaser at any sale or vendor at any purchase made by him in his official capacity. This latter prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from being such purchaser or vendor for or on behalf of the member of City Council, City officer or employee.

(b) In the event that a financial interest in any legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment, resides in a parent, spouse, child, brother, sister, or like relative-in-law of the member of City Council, other City officer or employee; or in a member of a partnership, firm, corporation or other business organization or professional association organized for profit of which said member of City Council, City officer or employee is a member and where said member of City Council, City officer or employee has knowledge of the existence of such financial interest he or she shall comply with the provisions of Section 20-608(a)(b)(c) of this ordinance and shall thereafter disqualify himself or herself from any further official action regarding such legislation (including ordinances and resolutions) award, contract, lease, case, claim, decision, decree or judgment.

(c) No member of Council or other City officer or employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, during his term of office or employment and until two (2) years have elapsed since the expiration of service or employment in the term of office of said member of Council or other City officer or employee.

This prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from becoming financially interested for or on behalf of a member of City Council, City officer or employee within said two (2) year period.

§ 20-608. Public Disclosure and Disqualification.

(1) Any member of City Council having a financial interest, under Section 20-607(a), (b), in any legislation including ordinances and resolutions, shall make public the nature and extent of such interest as set forth in paragraph (a) hereof. Other City officers and employees having a financial interest in legislation, including ordinances and resolutions, shall make public the nature and extent of their interest as set forth in paragraph (b) hereof. When any member of City Council or other officer or employee has a financial interest in an award, lease, case, claim, decree or judgment, such person shall make public the nature and extent of the interest as set forth in paragraph (c) hereof. Thereafter, such person shall disqualify himself or herself from any further official action regarding such legislation including ordinances and resolutions; award, contract, lease, case, claim, decree or judgment.

(a) In the case of a member of Council, it shall be done at the scheduled public hearing of such legislation including ordinances and resolutions; if such interest occurs after the public hearing and prior to five (5) days before such legislation is to be acted upon, it shall be made by registered or certified mail to the Chief Clerk of the Council and all members of the Council and be announced by the presiding officer of the Council at the time the legislation is called up for consideration; if such interest occurs less than five (5) days prior to the action by the Council on such legislation, the member shall announce his interest publicly on the floor of the Council in public session. This provision shall apply notwithstanding the fact that the member of Council did not participate or was absent upon or during the

vote or consideration of such legislation.

(b) In the case of any other City officer or employee having such interest in legislation including ordinances and resolutions, he shall notify the Chief Clerk of the Council and every member of the Council, by registered or certified mail, at least five (5) days prior to the public hearing on the legislation and such notice shall be made part of the official records; in the event said interest occurs after the public hearing, the City officer or employee shall notify the Chief Clerk of the Council and every member of the Council by registered or certified mail, prior to the time of the Council meeting when action is to be taken upon said legislation.

(c) Where there is a financial interest, as set forth in Section 20-607(a), by any member of Council or other City officer or employee in any award, contract, lease, case, claim, decree or judgment, other than legislation, the person having such interest, prior to any City action thereon, shall notify, by registered or certified mail, the Commissioner, Secretary and/or Executive Director of the pertinent agency, authority, board or commission, and the Board of Ethics and the Department of Records which shall maintain a public record of such notices; in the event of action within a department or by a department head, such notice by registered or certified mail shall be given, prior to any action taken, to the Mayor, the Managing Director, the Board of Ethics and the Department of Records which shall maintain a public record of such notices.

This Section shall not apply to routine applications or requests for routine information or other matters which are of a ministerial nature and do not require substantial discretion on the part of a City officer or employee.

§ 20-609. Confidential Information.

No member of the Council or other elected official or City officer or employee, paid or unpaid, full-time or part-time, shall directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others.

§ 20-610. Statement of Financial Interests. 36

(1) All individuals who are paid an annual salary pursuant to the provisions of Sections 20-303, 20-304 and 20-305 of this Chapter and all members of boards and commissions whether compensated or not shall file a statement of financial interests for the preceding calendar year with the Board of Ethics no later than the first day of May of each year that he holds office and of the year after he leaves such office except that for calendar year 1983 the effective filing date shall be July 1, 1984. All such individuals or members who take office after the effective filing date or less than thirty (30) days before the effective filing date must file a statement of financial interest for the preceding calendar year within thirty (30) days of taking office. 37

(2) The statement of financial interests filed pursuant to this Section shall be signed under penalty of perjury and include the following information for the prior calendar year with regard to the individual required to file the statement:

- (a) The name, address and position of the individual required to file statement.
- (b) The occupation or profession of the individual required to file the statement.

(c) Any direct or indirect interest in any real estate which was sold or leased to the City of Philadelphia or any of its departments, boards, commissions, authorities or other agencies; purchased or leased from the City of Philadelphia or any of its departments, boards, commissions, authorities or other agencies; or was subject to any condemnation proceeding by the City of Philadelphia or any of its departments, boards, commissions, authorities or other agencies.

(d) The name and address of each creditor to whom is owed in excess of five thousand (\$5,000) dollars and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property which is the principal residence of the individual filing shall not be included.

(e) The name and address of any person who is the direct or indirect source of income totalling in the aggregate five hundred (\$500) dollars or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics.

(f) The name and address of any person from whom a gift or gifts valued in the aggregate at two hundred (\$200) dollars or more were received, and the value and the circumstances of each gift.

(g) The source of any honorarium received which is in excess of one hundred (\$100) dollars.

(h) Any office, directorship or employment of any nature whatsoever in any business entity.

(i) Any financial interest in any legal entity engaged in business for profit.

(3) Except for gifts reported under § 20-610(2)(f), the statement of financial interests need not include specific amounts for any of the items required to be listed.

(4) All statements of financial interest filed pursuant to the provisions of this Section shall be made available for public inspections and copying during regular office hours.

§ 20-611. Notice to Members of Council, Other City Officers and Employees. 38

It shall be the duty of each head of a department, agency, authority, board, and commission to furnish a copy of this ordinance to each and every employee under his or her direction.

§ 20-612. Penalties. 39

(1) In addition to the penalties as presently provided by law, any person in violation of this Chapter shall be subject to a civil penalty of seven hundred dollars (\$700) for each violation committed during calendar year 2005; eleven hundred dollars (\$1,100) for each violation committed during calendar year 2006; fifteen hundred dollars (\$1,500) for each violation committed during calendar year 2007; nineteen hundred dollars (\$1,900) for each violation committed during calendar year 2008; and two thousand dollars (\$2,000) for each violation committed thereafter. Except with respect to Section 20-610, any person in violation of this Chapter is forever disqualified from holding any elected or appointed City office or employment with the City, its agencies, authorities, boards or commissions. 40

(2) City Council shall have the right to repeal legislation enacted in violation of this ordinance. The Mayor, with the concurrence of a majority of all the members of City Council, may void any award,

contract, lease, case, claim, decision, decree or judgment made in violation of this ordinance, provided that no such legislative act including ordinances and resolutions, award, contract, lease, case, claim, decision, decree of judgment may be avoided because of the interest of an officer or employee unless such contract is made in the official capacity of such officer or employee or by a board or body of which he is an officer, member or employee.

(3) *Repeat Offenders.* Any person who commits, on more than one occasion, a violation of this Chapter, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than three hundred (300) dollars, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

§ 20-613. Ethics-Related Matters Incorporated as Part of this Chapter. 41

(1) The following provisions of the Code are incorporated by reference as part of this Chapter and shall be subject to the jurisdiction of the Board of Ethics under § 20-606 (including, but not limited to, the Board's powers and duties relating to education, training, issuance of advisory opinions, receipt of complaints, investigations, referral, and adjudication), and violations of these provisions shall be subject to the penalties set forth in § 20-612:

(a) The provisions of § 17-1407(2) 42 prohibiting certain persons from making material misrepresentations or omissions in disclosures required by Chapter 17-1400 43 (relating to Non-Competitively Bid Contracts) and by Chapter 17-1300 44 (relating to Competitively Bid Contracts).

(b) The provision of § 20-1006(4) prohibiting the failure to file information as required by § 20-1006 or the making of material misstatements or omissions in any filing required by that Section in Chapter 20-1000 (relating to Campaign Contributions and Expenditures).

§ 20-614. Severability. 45

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application and to this end the provisions of this ordinance are severable.

§ 20-615. Repealer. 46

This ordinance hereby repeals any prior inconsistent ordinance.

Notes

- 25 Added, 1963 Ordinances, p. 480; amended, 1974 Ordinances, p. 122.
- 26 Added, 1982 Ordinances, p. 1748.
- 27 Added, 1982 Ordinances, p. 1748.

- 28 Added, 1982 Ordinances, p. 1748.
- 29 Added, 1982 Ordinances, p. 1748.
- 30 Added, 1982 Ordinances, p. 1748.
- 31 Added, 1982 Ordinances, p. 1748.
- 32 Added, 1982 Ordinances, p. 1748.
- 33 Added, 1982 Ordinances, p. 1748.
- 34 Added, 1982 Ordinances, p. 1748.
- 35 Amended, Bill No. 051024 (approved December 15, 2005). Section 3 of Bill No. 051024 provides: "Effective Date. This Ordinance shall take effect upon the certification of the approval by the electors of the amendment to the Philadelphia Home Rule Charter providing for the creation and appointment of a Board of Ethics." Such an amendment was approved and became effective June 5, 2006.
- 36 Added, 1982 Ordinances, p. 1748; amended, 1984 Ordinances, p. 710.
- 37 Amended, 1983 Ordinances, p. 1460.
- 38 Renumbered, 1982 Ordinances, p. 1748.
- 39 Amended and renumbered, 1982 Ordinances, p. 1748; amended, Bill No. 758 (approved July 24, 1995), 1995 Ordinances, p. 1081.
- 40 Amended, Bill No. 051024 (approved December 15, 2005). Section 3 of Bill No. 051024 provides: "Effective Date. This Ordinance shall take effect upon the certification of the approval by the electors of the amendment to the Philadelphia Home Rule Charter providing for the creation and appointment of a Board of Ethics." Such an amendment was approved and became effective June 5, 2006.
- 41 Added, Bill No. 051024 (approved December 15, 2005). See note 40 for effective date provisions.
- 42 Enrolled bill read "17-1207(2)"; renumbered by Code editor.
- 43 Enrolled bill read "17-1200"; renumbered by Code editor.
- 44 As of this printing, the cross-reference to "Chapter 17-1300" is not in effect. The reference refers to a new Chapter that would have been added by Bill No. 051023 (and renumbered, because there already is a Chapter 17-1300), but Bill No. 051023 was not enacted by City Council.
- 45 Renumbered, 1982 Ordinances, p. 1748; renumbered, Bill No. 051024 (approved December 15, 2005). See note 40 for effective date provisions.
- 46 Renumbered, 1982 Ordinances, p. 1748; renumbered, Bill No. 051024 (approved December 15, 2005). See note 40 for effective date provisions.

PHILADELPHIA CODE § 20-1000 ET SEQ.

CHAPTER 20-1000. POLITICAL CONTRIBUTIONS AND EXPENDITURES⁵⁰

§ 20-1001. Definitions. 51

For purposes of this Chapter, the following definitions shall apply:

(1) *Board of Ethics*. The Board of Ethics created under Section 3-100(e) of the Philadelphia Home Rule Charter. 52

(2) *Candidate*.

- (a) An individual who files nomination papers or petitions for City elective office;
- (b) An individual who publicly announces his or her candidacy for City elective office.

(3) *Candidate political committee*. The one political committee used by a candidate to receive all contributions and make all expenditures as required by § 20-1003.

(4) *City Commissioners*. The City Commissioners acting in their capacity as the County Board of Elections. 53

(5) *City elective office*. The offices of Mayor, District Attorney, City Controller, Register of Wills, Sheriff, Clerk of Quarter Sessions, City Commissioner or City Council.

(6) *Contribution*. Money, gifts, forgiveness of debts, loans, or things having a monetary value incurred or received by a candidate or his/her agent for use in advocating or influencing the election of the candidate.

(7) *Covered election*. Every primary, general or special election for City elective office. 54

(8) *Election Reform Board*. A nonpartisan, non-governmental entity to be created that will execute and monitor voluntary contracts for expenditure limitations and will include representation from the League of Women Voters of Philadelphia and/or the Committee of Seventy.

(9) *Excess pre-candidacy contributions*. The amount of a person or committee's pre-candidacy contributions to a particular political committee that, had the contributions been made to a candidate for elective City office, would have been in excess of the contribution limitations set forth in subsections 20-1002(1) or 20-1002(2).

(10) *Expenditure*. The payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person for the purpose of influencing the outcome of a covered election.

(11) *Person*. An individual, partnership, corporation, sole proprietorship, or other form of business organization.

(12) *Political Committee*. Any committee, club, association, political party, or other group of persons, including the candidate political committee of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election.

(13) *Pre-candidacy contribution*. A contribution made to a political committee that: (a) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (b) was made before such candidate became a candidate.

§ 20-1002. Contribution Limitations. 55

(1) Except as provided in subsection (6), no individual shall make total contributions per calendar year, including contributions made to or through one or more political committees, of more than two thousand five hundred dollars (\$2,500) to a candidate for City elective office. 55.1

(2) Except as provided in subsection (6), no person, other than individuals who are covered under § 20-1002(1), and no political committee shall make total contributions per calendar year of more than ten thousand dollars (\$10,000) to a candidate for City elective office. 55.2

(3) During those calendar years in which a covered election is not occurring, candidates shall be limited in receiving political committee contributions as follows:

(i) candidates for Mayor may receive political committee contributions totaling no more than two hundred fifty thousand dollars (\$250,000) per year;

(ii) candidates for District Attorney and City Controller may receive political committee contributions totaling no more than one hundred thousand dollars (\$100,000) per year;

(iii) candidates for City Council, Register of Wills, Sheriff, Clerk of Quarter Sessions Court and City Commissioner may receive political committee contributions totaling no more than seventy-five thousand dollars (\$75,000) per year.

(4) No candidate may spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate, nor may any candidate political committee spend any excess pre-candidacy contributions for such purpose, including, but not limited to, the purpose of paying any expenses of such candidate political committee.

(5) A pre-candidacy contribution made in the same calendar year that a person becomes a candidate shall count toward the limitations on contributions set forth in paragraphs (1) and (2).

(6) The limitations imposed by this Chapter shall not apply to contributions from a candidate's personal resources to the candidate's candidate political committee. However, if such contributions total \$250,000 or more (regardless of the time period over which such contributions are made), then the contribution limits set forth in this Section for all other candidates for that City elective office shall double.

(7) The limitations imposed by this subsection shall not apply to volunteer labor.

(8) On January 1, 2008 and on January 1 every four years thereafter, the maximum amounts set forth in § 20-1002(1) and (2) shall be adjusted, as follows. On the December 15 immediately preceding the adjustment, the Finance Director shall calculate the "CPI Multiplier" by dividing the average consumer price index for Philadelphia during the then-current calendar year by the average consumer price index for Philadelphia during calendar year 2005. To determine the average consumer price index for Philadelphia, the Finance Director shall use the latest available figures for the Consumer Price Index for all urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as measured by the United States Department of Labor, Bureau of Labor Statistics. After calculating the CPI Multiplier, the Finance Director shall calculate the new maximum amounts as follows:

(i) The maximum amount for purposes of § 20-1002(1) shall equal \$2,500, multiplied by the CPI Multiplier, rounded to the nearest \$100.

(ii) The maximum amount for purposes of § 20-1002(2) shall equal \$10,000, multiplied by the CPI Multiplier, rounded to the nearest \$100.

The Finance Director shall certify the new maximum amounts in writing to the Mayor, the City Council President and Chief Clerk of Council.

(9) No candidate for City elective office, and no political committee, shall accept any contribution which exceeds the contribution limits set forth in this Chapter.

§ 20-1003. Candidate Political Committee Accounts. 56

A candidate for City elective office shall have no more than one political committee and one checking account for the city office being sought, into which all contributions for such office shall be made, and out of which all expenditures for that office shall be made. If the candidate for office maintains other political or non-political accounts for which contributions are solicited, such funds collected in these accounts shall not be used the purpose of influencing the outcome of a covered election.

§ 20-1004. Candidate Expenditure Limitations. 57

(1) Expenditure Contract.

(a) Effective for the elections for District Attorney and City Controller in the year 2005, and Mayor, Register of Wills, Sheriff, Clerk of Quarter Sessions Court, City Commissioner and City Council in the year 2007 and thereafter, a candidate seeking election to any of said offices may sign a contract with the Election Reform Board to abide by limitations on expenditures. 58

(b) The expenditure contract for a particular covered election may be signed by an individual candidate no later than the last date upon which such individual may withdraw as an official candidate in said election.

(c) A candidate may sign an expenditure contract limiting his/her overall expenditures as specified in § 20-1004(2).

(2) *Expenditure Limitations.* A candidate who signs an expenditure contract in accordance with this Chapter shall not make expenditures per covered election in excess of the following amounts:

Mayor \$2,000,000

District Attorney \$500,000

City Controller \$500,000

City Council \$250,000

Register of Wills \$250,000

Sheriff \$250,000

Clerk of Quarter Sessions Court \$250,000

City Commissioner \$250,000

§ 20-1005. Injunctive Relief.

Any person residing in the City of Philadelphia, including the City Solicitor may bring an action for injunctive relief in any Court of competent jurisdiction to enjoin any violations of, or to compel compliance with, the provisions of this Chapter. The Court may award to a prevailing plaintiff in any such action his or her costs of litigation, including reasonable attorney's fees.

§ 20-1006. Campaign Finance Disclosure. 59

(1) Whenever a candidate, treasurer of a political committee or other person files a required report of receipts and expenditures with the City Commissioners pursuant to Article XVI of the Pennsylvania Election Code (25 P.S. § 3241 et seq.), or files such report with the Secretary of the Commonwealth because such report is filed by a political committee and concerns both candidates who file for nomination with the Secretary of the Commonwealth and candidates who file with the City Commissioners, such candidate, treasurer or other person shall at the same time file with the Board of Ethics a copy of all information set forth in such report, in an electronic format mandated by the Board of Ethics. Such filing shall be accompanied by a written statement, signed by the person making the filing, that subscribes and swears to the information set forth in such filing. Upon receipt of such filing, the Board of Ethics shall issue a written receipt to the person making the filing.

(2) The Board of Ethics shall arrange for the publication of all information it receives under this Section on the City's official website as soon as practicable after the Board receives such information, but no later than five business days after receipt, in a format that will permit the public to easily search such information by candidate, by political committee, by contributor, and by any other means determined by the Board by regulation. 60

(3) In carrying out its duties under this Section, the Board of Ethics shall work with the City Commissioners to devise efficient means of advising candidates, treasurers, political committees and other persons of the requirements of this Section, and to devise means of coordinating the activities of the Board of Ethics under this Section with the duties of the City Commissioners to receive, file and promptly make available for public inspection all required reports filed by candidates, treasurers, political committees and other persons.

(4) The failure to file information as required by this Section, or the making of material misstatements or omissions in any filing required by this Section, shall be deemed to be a violation of Chapter 20-600 (Standards of Conduct and Ethics) and subject to enforcement and the imposition of penalties under that Chapter.

§ 20-1007. Required Notice of Contribution Limits. 61

(1) The Board of Ethics shall, at least every six months, arrange for the publication in the three newspapers with the largest circulation in the City and in such other newspapers as the Board shall determine, of a notice setting forth the contribution limits set forth in this Chapter, together with a plain English explanation of the provisions of this Chapter and the penalties and remedies for violations. Such notice shall also appear at all times on the City's official website.

§ 20-1008. Penalties. 62

A violation of this Chapter shall be punishable by a civil penalty in the amount set forth in § 20-612 (relating to violations of the Standards of Conduct and Ethics). The provisions of this Chapter shall be subject to the jurisdiction of the Board of Ethics under § 20-606, including, but not limited to, the Board's powers and duties relating to education, training, issuance of advisory opinions, receipt of complaints, investigations, referral, and adjudication.

Notes

- 50 Added, Bill No. 030562 (became law December 18, 2003). Enrolled bill numbered this as Chapter 20-800; renumbered by Code editor. Section 2 states "This Ordinance shall be effective January 1, 2004." Caption amended, Bill No. 060629 (approved November 16, 2006).
- 51 Amended, Bill No. 060629 (approved November 16, 2006). Subsections renumbered by Code editor because of inconsistent numbering provided in Bill No. 060629 and Bill No. 050014 (approved December 15, 2005).
- 52 Added, Bill No. 050014 (approved December 15, 2005). Section 2 of Bill No. 050014 provides: "This Ordinance shall take effect immediately. Until the certification of the approval by the electors of the amendment to the Philadelphia Home Rule Charter providing for the creation and appointment of a Board of Ethics, the duties this Ordinance assigns to the Board of Ethics shall be carried out by the Department of Records, and all filings required to be made with the Board of Ethics shall be made with the Department of Records."
- 53 Added, Bill No. 050014 (approved December 15, 2005). For effective date provisions of Bill No. 050014, see note 52.
- 54 Amended, Bill No. 050301-A (approved June 9, 2005). Section 2 of Bill No. 050301-A provides: "Effective date. This Ordinance shall be effective immediately, provided, however, that contributions to candidates for District Attorney or City Controller made before this Ordinance becomes law shall not be considered in determining compliance with the contribution limits established by this Ordinance."
- 55 Amended, Bill No. 050301-A (approved June 9, 2005). For effective date provisions of Bill No. 050301-A, see note 54. Caption and Section amended, Bill No. 060629 (approved November 16, 2006).
- 55.1 Pursuant to § 20-1002(8)(i), the Director of Finance on December 12, 2007, certified a new contribution limit of \$2,600.
- 55.2 Pursuant to § 20-1002(8)(ii), the Director of Finance on December 12, 2007, certified a new contribution limit of \$10,600.
- 56 Amended, Bill No. 050301-A (approved June 9, 2005). For effective date provisions of Bill No. 050301-A, see note 54. Caption and Section amended, Bill No. 060629 (approved November 16, 2006).
- 57 Amended, Bill No. 050301-A (approved June 9, 2005). For effective date provisions of Bill No. 050301-A, see note 54. Caption

and Section amended, Bill No. 060629 (approved November 16, 2006).

58 Amended, Bill No. 050014 (approved December 15, 2005). For effective date provisions of Bill No. 050014, see note 52.

59 Added, Bill No. 050014 (approved December 15, 2005). For effective date provisions of Bill No. 050014, see note 52.

60 Enrolled bill read "of regulation."

61 Added, Bill No. 060629 (approved November 16, 2006). Enrolled bill numbered this as Section 20-1006; renumbered by Code editor.

62 Added, Bill No. 060629 (approved November 16, 2006). Enrolled bill numbered this as Section 20-1007; renumbered by Code editor.