CITY OF PHILADELPHIA

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Evan Meyer
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GC-2007-504

Philadelphia Board of Ethics
Confidential Advice of Counsel

December 18, 2007

Re: Recognition Event Funded by Private Donations

The Board of Ethics was asked for confidential advice as to whether any issues would arise under the ethics laws for City officials or employees attending an event that would involve providing free food and drink, along with token awards such as plaques, to certain present and former City officials and employees, as well as some private citizens. We were not advised as to all of the details of the planning of the event. The Board has authority to issue advisory opinions, under Section 4-1100 of the Charter and Section 20-606(1)(d) of the Philadelphia Code. The Board may also issue regulations further providing for the form and procedure for such opinions, but has not yet done so. In the absence of formal regulations, the Board has authorized its General Counsel to issue advice based on the ethics laws and on prior opinions in matters where referral to the full Board for a formal opinion is deemed to be unnecessary due to time constraints, clear prior precedent, or other considerations. A confidential Advice of Counsel was issued, and—as required by Code §20-606(1)(d)(iii)—the Board is making public this "redacted" version of the letter, edited to the degree possible to prevent disclosure of the identity of the requesting official.

Summary of Conclusions

We advised that there would be no issue of a violation of any ethics provision prohibiting gifts to City officials and employees, provided that donations are made to the Fund for Philadelphia. In addition, the Fund should either incur expenses itself or make a single payment to the City to reimburse for the cost of the event. Nevertheless, how the event is organized and funded, and how

donations are solicited and acknowledged may present appearance issues, if organizers are not careful in how publicity is handled. Otherwise, it may not be possible to avoid a possible public perception that donors are purchasing influence. Therefore, insofar as possible, the planned event should be structured so that donations are solicited by private individuals, not by City officials, that such donations are made to the Fund for Philadelphia, not the City, and that the names of individual donors to the Fund for Philadelphia for this purpose should not be given prominent publicity, as discussed on page 6 below. Under these circumstances, we concluded that, to the extent that attendance at the event, the consumption of refreshments, or the receipt of token gifts such as plaques or mementoes constitute gifts, they are gifts to the City and thus not gifts at all to the individual recipients.

Introduction

We were advised that the purpose of the event was to recognize contributions of members of the Street Administration and other key community partners who have worked toward the improvement of the City of Philadelphia, and that the event would consist of a cocktail party and dinner in a City or City-related venue in December 2007. We were advised that, to fund various aspects of the event, it was proposed that local businesspersons would solicit contributions to the Fund for Philadelphia, which will incur any expenses involved. The event would be hosted by the Mayor as an official City event. The receipt of donations raised issues under the ethics provisions that restrict the acceptance of gifts by City officials and employees.

As a matter of applying the ethics laws, it is immaterial whether the donors make contributions directly to the City or to the Fund for Philadelphia, which in turn makes one large donation to the City. We understand that it is the purpose of nonprofit organizations like the Fund for Philadelphia to accept donations that might not otherwise be accepted and spent by particular City offices. See Advice of Counsel of September 12, 2007. Moreover, as will be discussed below, we concluded that any appearance of influence would be lessened if individual donors did not make direct contributions and that any public acknowledgement of such donations from particular donors was minimized. Accordingly. we approved the concept of the Fund for Philadelphia accepting the donations, rather than individual donors transmitting payments directly to the City[1].

[1] Since donations will be solicited by private individuals, not City officials, and since the funding is being provided by The Fund for Philadelphia, Inc., a private nonprofit 501(c)(3) corporation, there would be no issue under either the Campaign Finance Law (Code Ch. 20-1000) or the Contract Reform Law (Code Ch. 17-1400).

There are a number of ethics provisions that relate to gifts: Sections 1103(b) and (c) of the State Ethics Act, Section 10-105 of the Charter, Section 20-604 of the Philadelphia Code, and Executive Order No. 002-04. The State Ethics Act provisions prohibit only gifts where there is an understanding that the recipients would be influenced. It was assumed that is not the case here. The Charter provision prohibits gifts given for an act or omission in official work. Although it appears that any gifts will be in recognition of a body of work, we concluded that there was not a direct link between any gift at such a recognition event and a particular official action, and thus the Charter provision does not apply. The Code and the Executive Order required more analysis.

Executive Order No. 002-04

Executive Order No. 002-04 was issued by Mayor Street on August 12, 2004. It prohibits gifts of any kind from various sources to any officer or employee in the Administrative and Executive Branch. There are a few exceptions, but no minimum value of gift that is *per se* acceptable. Gifts from sources not listed in Section 1 of the Executive Order would be permissible. Potentially prohibited sources are broadly defined to include almost any person or entity located within the City limits, or that is ever regulated, taxed, or provided public services by the City, or that does business or is likely to seek to do business with the City. It is likely that most of those approached to contribute or who do contribute to the planned celebration will be potentially prohibited sources. As an entity located in the City, indeed in a City-owned building, The Fund for Philadelphia is clearly a source identified in Section 1 of the Executive Order as being subject to City action, and thus a source from which gifts may not be made to City officers or employees, unless an exception applies. Hence, the only question is whether any exception applies to donations for this event.

As a threshold matter, however, we first addressed the effect of the Executive Order. In general, executive orders are not law. They are more in the nature of a directive from an executive officer to his subordinates. See Client News No. 96-3, *1994-1996 City Solicitor's Opinions* at 273; *Shapp v. Butera*, 348 A.2d 910, 913-14 (Pa. Commw. 1975) (*cited in Cutler v. State Civil Service Comm'n*, 924 A.2d 706, 712 (Pa. Commw. 2007)). They may not be enforced in court, and the City has no mechanism for adjudicating violations of executive orders and imposing fines. Rather, executive orders may be enforced by the same kind of employment action that would result from any kind of disciplinary procedure that may be imposed by an employer upon his or her subordinates, typically suspension, demotion or other reduction in pay, or discharge. Nevertheless, in the past the City, without objection from the Mayor's Office, has typically looked to the City Solicitor's Office and the prior, advisory Board of

Ethics to interpret Mayors' executive orders. See, e.g. Opinion No. 99-10, *1997-1999 City Solicitor's Opinions* at 341 and Opinion No. 98-08, *1997-1999 City Solicitor's Opinions* at 189 (advising various officials on the effect of Executive Order No. 8-93 creating the Police Advisory Commission); Opinion No. 95-28, *1994-1996 City Solicitor's Opinions* at 177 n.4 (advising on effect of executive order on Education Advocate); Opinion No. 95-15, *1994-1996 City Solicitor's Opinions* at 125 (advising Procurement Commissioner on effect of Executive Order No. 1-93 on minority business enterprise); Opinion No. 87-11, *1986-87 City Solicitor's Opinions* at 151 (interpreting Executive Order No. 8-86 on procurement); as well as numerous opinions of both the Law Department and prior advisory Boards of Ethics, interpreting the various gift executive orders over the years. The Mayor certainly may, at any point, revise his own executive order, or issue an interpretation of it. However, in the absence of any such action or of any indication that the sitting Mayor does not intend the Board of Ethics to interpret executive orders relating to ethics, the Board of Ethics will continue the existing practice of interpreting such directives.

None of the exceptions listed in Section 2 of Executive Order No. 002-04 apply to the proposed program of soliciting and receiving donations of monetary contributions to defray the cost of the celebration, the refreshments to be offered, and any gifts or plaques to be presented to honorees. The only exceptions that might arguably apply are as follows:

> (c) 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.
>
> * * *
>
> (f) 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.

As to Section 2(c), an invitation-only event or an event that charged admission would not be considered a "public event." There are probably very few public events at which a non-profit offers free food to the public, and so this may not have been what the Mayor intended. Nevertheless, we may not go beyond the plain language of the Executive Order; a "public event" is an event to which the public is invited. It is possible that (f) may apply, but what is the value of the gift? If the donor is the Fund for Philadelphia, then the value is the entire cost to the Fund, which would not be "nominal." Accordingly, Section 2 of the Executive Order does not except these gifts. Nevertheless, prior interpretations have

analyzed the exception implied in Section 4(b), relating to the concept of a "gift to the City."

As to the "gift to the City" exception, although the City Solicitor's Office and our predecessor board, the advisory Board of Ethics, have both allowed City employees to accept certain gifts as a "gift to the City," the advisory Board had spelled out, in a number of rulings, the criteria:

- The gift must not simply be offered to and accepted by the City employee receiving the benefit of the gift.
- Instead, the private entity wishing to make a gift to the City, such as attendance at a dinner or conference by certain mid-level managers, must make the offer to the appointing authority of any officials invited to attend, so that appointing authority can approve acceptance and then make the decision as to which City employee/official is the logical person to represent the City at the dinner or conference.
- The recipient official's appointing authority must be able to articulate a defensible justification as to a legitimate governmental purpose of the City that is advanced or assisted by the acceptance of this gift.
- In determining whether a gift is justifiable, the official should consider whether the City would be willing to expend funds out of the City budget for a similar purpose.

See Opinion Nos. 2004-01, 2004-02, and 2005-01 of the former, advisory Board of Ethics (all posted on the Board's web site). For the purpose of the above criteria, it can be difficult to define the "appointing authority" when such a gift is offered to the Mayor and other high officials. In such a case, we believe it is up to the Board of Ethics to determine whether there is "a defensible justification as to a legitimate governmental purpose of the City that is advanced or assisted by the acceptance of this gift." We concluded that there is a legitimate governmental purpose in an outgoing Administration hosting a celebratory event to recognize the contributions to the City of certain public and private individuals. Nevertheless, how the event is organized and funded, and how donations are solicited and acknowledged may present appearance issues, if not conducted in a way to avoid a possible public perception that donors are purchasing influence.

It was our understanding that the fund-raising for the planned event would be arranged so that donations are solicited by private individuals, not by City officials. It was planned that such donations would then be made to the Fund for Philadelphia, and the Fund either incur expenses itself or make a single payment to the City to reimburse for the cost of the event. Further, it was our understanding that publicity for the event—invitations, program, flyers, and the like—would not involve prominent recognition of the names of individual donors to the Fund for

Philadelphia for this purpose. Otherwise, the event may appear to involve payment in exchange for influence. Under these circumstances, I conclude that, to the extent that attendance at the event, the consumption of refreshments, or the receipt of token gifts such as plaques or mementoes[2] constitute gifts, they are gifts to the City and thus not gifts at all to the individual recipients. In that circumstance, there would be no violation of Executive Order No. 002-04 for any City officer or employee to attend the event and accept free food or token gifts.

Philadelphia Code

Section 20-604 of the Code provides:

> § 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.

Whether a party is a gift "of substantial economic value" is an interesting question, particularly in respect to a single donor, where the cost to the donor may be substantial, but the value to any one attendee may only be what the fair market value of a "ticket" to such an event would be, which might well be only $25 or $30. Nevertheless, the City Solicitor concluded in 1990 that a $7000 party was "of substantial economic value" when the entire cost was borne by one donor. Opinion No. 90-30, *1990 City Solicitor's Opinions* at 87. Whether the circumstances might "reasonably be expected to influence" any City official recipients depends in part on the value and in part on whether the donor is a person or entity that might be affected by the official's performance of his/her official duties. For the same reasons that the Fund for Philadelphia is a potentially prohibited source for purposes of the Executive Order, I conclude that this prong of Code §20-604 is met. However, the "gift to the City" exception can apply to

[2] It is my understanding that the City on occasion presents a replica of the Liberty Bell or a Philadelphia Bowl to officials leaving government after long and faithful service and others, and that these items are purchased as part of the Commerce Department budget. I see nothing wrong with this time-honored practice.

the Code as well, since a gift to the City is not a gift at all to any particular person. Accordingly, there would be no issue under Code Section 20-604. Also, similar to the discussion of the Executive Order above, I conclude that the same considerations apply, and my advice is the same as to the method of obtaining and publicizing contributions.

Sincerely yours,

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director

CITY OF PHILADELPHIA
BOARD OF ETHICS

MEMORANDUM

TO: J. Shane Creamer, Executive Director

FROM: Nedda G. Massar, Deputy Executive Director

DATE: December 13, 2007

SUBJECT: Possible Legislative Recommendations

At its November 20, 2007 meeting, the Board asked staff to examine specifically three sections of the City Code to determine whether it would be appropriate or beneficial for the Board to consider making recommendations in its Annual Report for legislative changes to clarify or improve the sections. The three sections are as follows: Section 20-607, Conflict of Interest; Section 20-608, Public Disclosure and Disqualification; and Section 20-610, Statement of Financial Interests. Staff reviewed the three sections, prior recommendations of General Counsel Meyer, and information concerning financial disclosure in other jurisdictions and offers the following for the Board's review:

Summary

- With regard to Sections 20-607 and 20-608, the Board might wish to recommend in its Annual Report that the text of each be reorganized and rewritten to be more "user friendly." Staff will also offer an alternative approach for the Board's consideration which does not require that Sections 20-607 and 20-608 be redrafted.

- Section 20-610 presents different issues. It generally establishes the requirement for city officers, employees, and members of boards and commissions to file annual financial disclosure statements. There are two additional financial disclosure requirements, arising under State law and Mayoral Executive Orders 11-84 and 1-90, each of which requires that a form, in addition to the City form, be filed. Copies of the three forms are attached for the Board's examination. Based upon the position he or she holds, an individual in City government may be required to file all three disclosure reports, while others may file one or two. The information required to be reported and the reporting thresholds differ from form to form; however some of the differences are minor.

Staff has included a chart summarizing the three reports (City Form, Mayor's Form, and State Form) and their contents. The Board may find it reasonable to make a legislative recommendation in its Annual Report to simplify the three-prong reporting system and may therefore wish to discuss some or all of the following alternatives to the existing reports: to adopt one form for all three reporting obligations; to conform the City's and Mayor's reporting

thresholds to those in the State law, eliminating the need for three forms; and to eliminate the Mayor's form because it frequently parallels the City Form.

▪ Staff will also note additional topics for legislative recommendations that the Board may wish to discuss at a future meeting for inclusion in its Annual Report.

Section 20-607

Members of Council and City officers and employees are prohibited by Section 20-607 from having any conflict of interest associated with their official actions. Staff understands that the conflict provision in Section 20-607 is similar in reach and approach to those in other jurisdictions. The general purpose of such conflicts provisions is to preserve public trust in government by preventing elected and appointed government officials and employees from having an interest in and benefiting from matters pending before them. Staff has reviewed the conflicts provisions in the statutes, ordinances, and rules of several cities and states and concludes that they contain some variation of the following common elements:

- They prohibit an official or employee from acting in any matter in which he or she has a financial interest;

- They expand the concept of financial interest to include businesses, firms, and organizations with which the official or employee is affiliated or associated;

- They attempt to define the types of government activity (e.g., ordinances, decisions, contracts, etc.) that are subject to the conflicts restrictions;

- They frequently expand the prohibition beyond the official or employee to include the interests of various family members; and

- They provide a mechanism by which the official or employee may publicly disclose the interest and remove himself or herself from the conflict position.

Staff believes that Section 20-607 contains all these elements, but as noted by the Board, the existing text is complicated and confusing. The Board may therefore wish to recommend a reexamination of Section 20-607 to clarify and simplify its provisions.

Staff suggests that, as an initial step toward simplification, the phrase "transaction involving the City," defined in the Code at Section 20-601(4), be used to replace the list of official actions (legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment) that is currently repeated in existing paragraphs (a), (b), and (c). Staff notes that the definition of "transaction involving the City" contains additional official actions that may be undertaken by a member of Council or City officer or employee (i.e., proceeding, application, submission, request for a ruling, other determination, or other particular matter) that are not now

included in existing Section 20-607. The Board may find it appropriate to recommend that the reach of the Conflicts section be expanded to include these activities by incorporating the phrase "transaction involving the City," as defined at Section 20-601(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.

It might also be desirable for the purposes of Section 20-607 to expand the definition of the term "immediate family," appearing at Section 20-601(9), to include the additional family members whose interests must be considered in a conflicts analysis (e.g., parent, bother, sister, or like relative-in-law). The text of Section 20-607 would be simplified by using the term "immediate family," rather than reciting the lengthy list of family members which now appears at Section 20-607(a), (b), and (c). Similarly, the two separate lists of business or other entities with which a City official or employee may be associated (see paragraphs (a) and (b) of Section 20-607), could be normalized and referred to by a single term (such as "related business entity or entities").

These and other suggestions could be shared in the Board's Annual Report.

Existing text of Section 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.

Section 20-608

Section 20-608 establishes the procedures a member of City Council, City officer or employee must use to remedy a conflict situation. To preserve public confidence, the member, officer, or employee must publicly disclose the conflict and disqualify himself or herself from the matter. These procedures comport with those in other jurisdictions surveyed by staff. As with Section 20-607, the Board may wish to recommend in the Annual Report that the existing structure of Section 20-608 would benefit from reexamination and clarification.

For example, it might be possible to recast Section 20-608 by providing specific definitions of the terms "public disclosure" and "disqualification" so that a City official or employee will know what specific behavior is required when he or she faces a conflict situation, as defined in Section 20-607. "Public disclosure" might include both the public statement "on the record" by a Council member and a written statement filed by an employee with the Board, as well as with his or her supervisor. The term "disqualification" could similarly be defined to specify the actions that must be taken by a City official or employee.

Existing text of Section 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.

Alternative Approach

As a result of review of materials available in other jurisdictions and discussions among staff in preparing this memorandum, General Counsel Meyer has suggested an alternative approach to address the complex text of Sections 20-607 and 20-608. Rather than recommending that the two Code sections be redrafted and simplified, the Board might restate and interpret the requirements of the two sections, as well as other major ethics provisions, in a "plain language" ethics manual for City officials and employees. Such a document would accomplish the goal of making the ethics requirements more accessible to those affected by them. The Board might therefore state in its Annual Report that a priority for 2008 is the production of such a "plain language" manual.

Staff believes that this was the intent of Section 20-606(b)(i) which mandates that, as part of its training and education responsibilities, the Board "develop a Code of Ethics Manual." The Board is also required by Section 20-606(1)(c) to prepare a "code of business ethics manual" in conjunction with the Procurement Commissioner. Staff believes that the legislative intent of these two requirements is to provide a simplified and "user friendly" document for those who must apply the ethics requirements to their activities. There are "plain language" materials in other jurisdictions which are especially effective because they include practical examples of ethical issues faced by City officials and employees.

Section 20-610

The chart which follows presents the major features of the three financial disclosure reports required by the City Code (§§ 20-606(e) and 20-610), Mayoral Executive Orders 11-84 and 1-90, and the State Ethics Act (Pa. C.S. §1101 *et seq.*) and State regulations (51 Pa. Code §11.1 *et seq.* and §17.1 *et seq.*). Because some individuals are required to file all three forms, but much of the information disclosed on the forms is frequently the same, with the exception of the reporting thresholds, the Board may wish to consider alternatives to simplify the financial disclosure requirements. Following the chart is a list of which individuals are required to file each of the three forms.

Comparison of Financial Disclosure Requirements:
City, Mayor's Executive Orders, and State

Form	City of Philadelphia Statement of Financial Interest (City Form)	Mayor's Executive Order Financial Disclosure Statement (Mayor's Form)	Commonwealth of Pennsylvania Statement of Financial Interest (State Form)
Authority	Code §20-606(e) & §20-610	**Executive Orders 11-84 & 1-90** (as amended 1986 & 1988)	State Ethics Act, Pa. C.S. §1101 *et seq.*, & State regulations, 51 Pa. Code §11.1 *et seq.* & §17.1 *et seq.*
Who must file?	All individuals who are paid a salary (city officers & elected officials) & all members of boards & commissions, whether compensated or not (see Code §20-303, 304, & 305)	Mayor, Members of Mayor's Office, Cabinet Members & Commissioners & their deputies, & Board & Commission members who receive more than $40/meeting or are paid on an annual basis	Candidates[1] & any official or employee who is responsible for taking or recommending official action of a non-ministerial nature, whose actions have greater than a *de minimis* economic impact, who acts without on-site supervision, or who has authority to make final decisions (requires examination of position responsibilities)
Filer's Identifying information required	Name, address, public position, occupation or profession	Same	Same
When & where to file?	May 1st Records Department City Hall Room 156	Same	Same
Signed under oath?	Yes	Yes (Alternate certification provided for "best efforts")	Yes
Provide copy to supervisor?	Yes, with the exception of independently elected offices **Executive Order 1-90**	Yes **Executive Order 1-90**	Yes **Executive Order 1-90**

Information Disclosed	City Form	Mayor's Form	State Form
Income	Salary, wages, fees, interest, dividends, royalties, rent, capital gains, & trust income	Salary, wages, fees, dividends, capital gains, trust income	Payments, salary, fees, interest, dividends, royalties, rent, capital gains, forbearance, forgiveness, reward, severance payment, prize winning, & tax exempt income
Threshold for reporting "income"	Each source of **$500** or more received during the previous calendar year, unless the source is protected by statute or existing professional code of ethics; instructions suggest that the Board of Ethics may be asked to review disclose of a client's name if disclosure would reveal a privileged communication.	Each source of **$500** or more received during the previous calendar year by the filer or a member of his/her "immediate family" (spouse living in filer's household & minor dependent children)	Each source of **$1,300** or more of gross income received during the previous calendar year
Real estate interests	Address of any real estate in which the filer has a direct or indirect interest if the real estate was sold or leased to the City, purchased or leased from the City, or subject to any City condemnation proceeding	Income of **$500** or more from property is required to be reported	Address of any property that was involved in a lease, purchase, or condemnation proceeding with the State
Business interests	Office, directorship, or employment in any business entity; any financial interest in any for-profit business	Income of **$500** or more from a business, partnership, or other entity received by the filer, his or her spouse, or minor dependent children; offices or directorships in for-profit & nonprofit businesses & associations of filer & his/her "immediate family"	• Name, address, & position in a for-profit business if filer owns more than **5% of the equity or 5% of the assets** in the business; • Name & address of any business if the filer transferred a financial interest (5% of the equity or 5% of the assets) to a parent, spouse, child, brother, or sister; • Any office held by the filer in a business entity

Information Disclosed (continued)	City Form	Mayor's Form	State Form
Creditor information	Name & address of each creditor owed more than **$5,000** & interest rate; excludes loans between immediate family members & mortgage on principal residence.	N/A	Name & address of each creditor owed more than **$6,500** & interest rate; excludes mortgage or equity loan on filer's home & credit between filer & spouse, child, parent, or sibling
Gift(s)	Instructions accompanying the City form indicate that gifts exceeding $200 from one source must be disclosed, but **Executive Order 002-04** prohibits most gifts	Name & address of any source of gift(s) aggregating **$100** or more to filer, spouse, & minor dependent children	Name & address of any source of gift(s) aggregating **$250** or more
Honoraria	Disclose each source of honoraria in excess of **$100**	Name & address of any source of honoraria aggregating **$100** or more to filer, spouse, & minor dependent children	Prohibited by Pa. C.S. §1103(d), therefore not included on the form

[1]The term "candidate" has a more expansive definition under the State Ethics Act (65 Pa. C.S. §1102) than in the Code §20-1001(2). Under the State Ethics Act, an individual becomes a "candidate" when he or she has "received a contribution or made an expenditure or given his [or her]consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election . . . whether or not the individual has announced the specific office for which he will seek nomination or election at the time the contribution is received or the expenditure is made . . . ." The Board does not have jurisdiction over application of this definition.

WHO FILES WHAT FINANCIAL DISCLOSURE FORM?

1. All Three Forms (City, Mayor's, and State):

Mayor
All Department Heads (18 officials)
Members of 9 boards/commissions
Any deputy commissioners who serve on a board or commission

2. City and State Forms.

All City Councilmembers
All Other Elected Officials, other than the Mayor
(Controller and "Row Offices," like D.A., Sheriff, Clerk of Quarter Sessions, City Commissioners, etc.)
Members (including alternates) of approximately 20 boards and commissions

3. City and Mayor's Forms

None (except that any departmental deputies or members of the Mayor's Office who are already doing the Mayor's Form may also do the City Form, if they happen to be appointed (or serve as alternate) to a City board or commission, and don't meet requirement to do State Form -- likely few, if any).

4. State and Mayor's Forms

Deputy Commissioners
Certain members of Mayor's Office (if duties meet State Act's definition of "public employee")

5. State Form only

Employees who meet Act's definition of "public employee" but are not Department Head, deputy, member of Mayor's Office, or serving on a board or commission.

6. City Form only

Members of advisory and minimally compensated boards and commissions (approximately 50 boards/commissions)

7. Mayor's Form only

Possibly none. Depends on how the Mayor's Office interprets the Mayor's Form executive order. Could include some members of the Mayor's Office who do not file the State Form.

To determine whether the State form could be used to satisfy the City's Statement of Financial Interest filing requirements, staff compared the types of information required to be reported on the City and State forms. With the exception of honoraria, for which there is no space on the State form (because they are prohibited under State law), all other types of City information would fit into fields currently provided on the State form. Honoraria might be listed in Block 11 of the State form, the field provided for gifts, which are prohibited by Mayoral Executive Order 002-04. It appears that the State form could accommodate all the detail required by the City Code to be disclosed on the City Statement of Financial Interest.

Staff similarly believes that the Board might consider a recommendation that the State form also be used to satisfy the Mayor's filing requirement. Staff notes that the Mayor's form requires reporting of the amount or value of each financial interest and of the interests of a filer's spouse and minor dependent children. It might be possible to report such additional information on a separate schedule as an attachment to the State form.

The State thresholds for reporting at times differ from those required by the City or the Mayor's form. Therefore, if an individual were to use the State form to satisfy the City reporting obligation, he or she would appear to "over report" by disclosing sources of income of $500 or more, instead of $1,300 or more. Similarly, individuals disclose creditors of more than $5,000 on the City report, while the threshold for the State report is $6,500. There does not appear to be any reason to preclude such "over reporting."

Staff therefore believes that the Board may find it reasonable to recommend in its Annual Report that individuals be permitted to use the State form to file the City's Statement of Financial Interest. The Board may also wish to consider a recommendation that the City reporting thresholds be conformed to those in the State Ethics Act. For example, the Board might conclude that the differences between the City and State thresholds for reporting income and creditors, $800 and $1,500, respectively, are not so great that the public would be deprived of significant information.

Additional Topics for Discussion

Contribution limits: The Board may wish to consider a recommendation that contribution limits apply on a "per election" basis, rather than an annual basis. Such a change would restrict the amount that individuals could amass as a "war chest" in non-election years, and would assist the candidate who uses maximum funds in a hotly-contested primary election, and then has little left in annual contributions to fund a difficult general election.

Inaugural event and transition activities: The Board may wish to consider the suggestions presented during the discussion of Advisory Opinion 2007-005 concerning raising and spending funds by a mayor-elect for inaugural events and transition expenses.

Conclusion

If the Board wishes to proceed further with any of the suggestions in this memorandum, staff will prepare recommendations for the Board's review for inclusion in the Annual Report. Staff will also continue to review the Code Sections discussed above, recent Board advisory opinions, and other Board actions to assist in making suggestions for possible future legislative recommendations and regulations.

CITY OF PHILADELPHIA

STATEMENT OF FINANCIAL INTERESTS

PHILADELPHIA BOARD OF ETHICS
DEPARTMENT OF RECORDS
ROOM 156, CITY HALL
PHILADELPHIA, PA 19107

All Statements of Financial Interests shall be made available for public inspection and copying during regular office hours.

INSTRUCTIONS: Complete the entire form. Type or print in ink. Clearly enter your name in the space provided. Attach additional 8-1/2" x 11" sheets if necessary, identifying each item by number.

☐ **AMENDED STATEMENT**

1. LAST NAME | FIRST NAME | MI | SUFFIX

2. STREET ADDRESS | CITY | STATE | ZIP CODE

CITY DEPARTMENT / AGENCY / COMMISSION / BOARD | 3. TELEPHONE NUMBER

4. NAME OF PUBLIC POSITION OR PUBLIC OFFICE YOU HOLD/HELD | 5. OCCUPATION OR PROFESSION

REMEMBER: Items 6 THROUGH 12 - All information concerns the PRIOR CALENDAR YEAR. NO DOLLAR AMOUNTS are required except in Item 9. If answer is NONE, check the box where indicated. Information must be included for the filer only and not family members.

6. REAL ESTATE INTERESTS: List any direct or indirect interest in any real estate as described in attached **Instructions.** If none, check: ☐

ADDRESS | NATURE OF INTEREST

7. CREDITORS: List each loan or debt over $5000 and the interest thereon as described in attached **Instructions.** If none, check: ☐

CREDITOR | ADDRESS | INTEREST RATE

8. DIRECT OR INDIRECT SOURCES OF INCOME: List all sources of $500 or more as described in attached **Instructions.** If City is a source, list City. If none, check: ☐

SOURCE OF INCOME | ADDRESS

9. GIFTS: List sources of gifts with an aggregate value of $200 or more as described in attached **Instructions.** If none, check: ☐

SOURCE OF GIFT | ADDRESS

VALUE OF GIFT | CIRCUMSTANCES OF GIFT

10. HONORARIA: List sources over $100 described in attached **Instructions.** If none, check: ☐

SOURCE OF HONORARIA | ADDRESS OF SOURCE

11. OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS ORGANIZED FOR PROFIT: If none, check: ☐

BUSINESS | POSITION HELD

12. FINANCIAL INTEREST IN ANY BUSINESS ORGANIZED FOR PROFIT: (See attached **Instructions.**) If none, check: ☐

THIS FORM MUST BE SIGNED *AND* **DATED** *IN ORDER TO BE ACCEPTED.*

Information represents disclosure for the prior calendar year _____. False statements made herein are punishable as authorized by Section 20-612 of the Philadelphia Code and are subject to the penalties prescribed for perjury set forth in 18 Pa. C.S. § 4904.

Signature _____ Date _____

CITY OF PHILADELPHIA

MAYOR'S EXECUTIVE ORDER

FINANCIAL DISCLOSURE STATEMENT

Completed forms will be available for public inspection and copying during regular office hours.

INSTRUCTIONS: Complete the entire form. Type or print in ink. **Enter your name of each page.**
Attach additional 8-1/2" x 11" sheets if necessary, identifying each item by number.
Send completed forms to Department of Records, Room 156, City Hall, Philadelphia, Pennsylvania 19107.
Detailed **Instructions** are attached.

☐ **AMENDED STATEMENT**

1. LAST NAME | FIRST NAME | MI | SUFFIX

2. CITY DEPARTMENT / AGENCY / COMMISSION / BOARD

3. JOB TITLE / PROFESSION

4. OFFICE ADDRESS

5. PRIVATE BUSINESS ADDRESS *(IF APPLICABLE)*

6. SPOUSE *(NAME AND OCCUPATION OR PROFESSION)*

7. DEPENDENT CHILD(REN) *(NAME(S) AND OCCUPATION(S) OR PROFESSION(S))*

REMEMBER: You must provide the following information on financial interests held during the previous calendar year by you and, if applicable, by your spouse living in your household and by your minor dependent children. Check in each of the first columns below the person to whom the item applies.

8. SALARY, WAGES AND FEES: List all sources of income in the form of salary, wages, fees and other compensation for service received by you, your spouse, or your minor dependent children during the previous calendar year, as described in attached **Instructions.** If none, check this box: ☐

CHECK (✓) YOU	SPOUSE	CHILD	SOURCE AND ADDRESS	NATURE OF BUSINESS	NATURE OF SERVICE RENDERED	AMOUNT
☐	☐	☐				
☐	☐	☐				
☐	☐	☐				
☐	☐	☐				
☐	☐	☐				
☐	☐	☐				

LAST NAME	FIRST NAME	MI	SUFFIX

9. INCOME FROM PROPERTY, BUSINESS, PARTNERSHIP OR OTHER ENTITY: List sources from which $500 or more was received by you, your spouse, or your minor dependent children during the previous calendar year, as described in attached **Instructions**. If none, check this box: ☐

CHECK (✓) YOU	SPOUSE	CHILD	SOURCE AND ADDRESS	NATURE OF BUSINESS	AMOUNT
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			

10. GAINS ON PROPERTY OR INVESTMENTS; List gains *(sale prices minus purchase price)* which equal or exceed **both** $500 **and** 5% of the purchase price, received by you, your spouse, or your minor dependent children during the previous calendar year, See **Instructions**. If none, check this box: ☐

CHECK (✓) YOU	SPOUSE	CHILD	PROPERTY OR INVESTMENT	AMOUNT OF GAIN
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		

11. GIFTS AND HONORARIA: **Do not** list gifts exchanged among certain family members (see **Instructions**). **Do list** all other sources of $100 or more *(in the aggregate during the previous calendar year.)* in gifts or honoraria received by you, your spouse, or your minor dependent children. Gifts include transactions in which you received at least $100 more in money or property value compared to what you paid or exchanged. See **Instructions.** If none, check this box: ☐

CHECK (✓) YOU	SPOUSE	CHILD	NAME AND ADDRESS OF SOURCE	DESCRIPTION GIFTS OR HONORARIA	AMOUNT OR VALUE
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			

LAST NAME	FIRST NAME	MI	SUFFIX

12. OFFICE AND DIRECTORSHIPS: List all such positions in any entity or association, whether for profit or not for profit, held by you, your spouse, or your minor dependent children during the previous calendar year. See **Instructions.** If none, check this box: ☐

CHECK (✓)			NAME AND ADDRESS OR ENTITY/ASSOCIATION	NATURE OF ENTITY/ASSOCIATION	POSITION HELD
YOU	SPOUSE	CHILD			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			
☐	☐	☐			

13. COMPLETE ONE **AND ONLY ONE** OF THE FOLLOWING CERTIFICATIONS. See **Instructions.**

A. CERTIFICATION

Information on this form represents disclosure for previous calendar year 20[ ].

I HEREBY CERTIFY that to the best of my knowledge that all statements contained herein are true and correct. The financial interests reported include, where applicable, those held by my spouse living in my household and by my minor dependent children. I FURTHER CERTIFY that during the previous calendar year, no financial interest held by me, or if applicable, by my spouse living with me in my household or by my minor dependent children, was the subject of any decision made by me in my official capacity.

Signature _____ *Date* [ ]

B. CERTIFICATION

Information on this form represents disclosure for previous calendar year 20[ ].

I HEREBY CERTIFY that to the best of my knowledge that all statements contained herein are true and correct. Despite my best efforts, I have been unable to provide complete information as to financial interests held by my spouse living in my household and/or by my minor dependent children. I FURTHER CERTIFY that during the previous calendar year, no financial interest held by me, or, to the best of my knowledge, by my spouse living in my household or by my minor dependent children, was the subject of any decision made by me in my official capacity.

Signature _____ *Date* [ ]

NOTE: A willful failure to disclose properly the financial interest of you and your immediate family, as required by the Mayor's Executive Order, may result in removal from your City position.

COMMONWEALTH OF PENNSYLVANIA
SEC-1 REV. 01/07

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

PENNSYLVANIA STATE ETHICS COMMISSION
(717) 783-1610 • TOLL FREE 1-800-932-0936

01 **LAST NAME** | **FIRST NAME** | **MI** | **SUFFIX**

02 **STREET ADDRESS** (work or residence) | City | State | Zip Code | Area Code | Phone

COUNTY OF RESIDENCE

03 **STATUS** Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)

A ☐ Candidate (including write-in) C ☐ Public Official (Current) D ☐ Public Employee (Current)
B ☐ Nominee C ☐ Public Official (Former) D ☐ Public Employee (Former)

☐ **Check this block if you are amending an original filing**

04 **PUBLIC POSITION OR PUBLIC OFFICE** (member, Commissioner, job title, etc.) you are ☐ **seeking** ☐ **hold** ☐ **held**

A

☐ **seeking** ☐ **hold** ☐ **held**

B

05 **POLITICAL SUBDIVISION/AGENCY** in which you are/were an Official or Employee, or are a candidate or nominee **(Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)**

A

B

06 **OCCUPATION OR PROFESSION** (This may be the same as block 4)

07 **YEAR** The information below represents financial interests for the **PRIOR** year.

08 **REAL ESTATE INTERESTS** (See instructions on page 2) **If NONE, check this box.** ☐

09 **CREDITORS** (See instructions on page 2). **If NONE, check this box.** ☐

Creditor | Interest Rate

10 **DIRECT OR INDIRECT SOURCES OF INCOME** (Including, but not limited to employment. See instructions on pg. 2) **If NONE, check this box.** ☐ (OFFICIAL USE ONLY)

Name | Address

11 **GIFTS** (See instructions on page 2) **If NONE, check this box.** ☐

Source of Gift | Value of Gift

Address of Source of Gift | Reason for Gift

12 **TRANSPORTATION, LODGING, HOSPITALITY** (See instructions on page 2) **If NONE, check this box.** ☐

Source (Name and Address) | Value

13 **OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS** (See instructions on page 2) **If NONE, check this box.** ☐

Business Entity | Position Held

14 **FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT** (See instructions on page 2) **If NONE, check this box.** ☐

Name and Address of Business | Interest Held

15 **BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER** (See instructions on page 2) **If NONE, check this box.** ☐

Business (Name and Address)
Transferee (Name and Address)
Interest Held
Relationship
Date Transferred

The undersigned hereby affirms that the foregoing information is true and correct to best of said person's knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities) and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b).

Signature _____ Date _____

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.