

EXECUTIVE ORDER NO. 3-11

Prohibition of Acceptance of Gifts by City Officers and Employees

WHEREAS, All citizens have a right to expect integrity in government; and

WHEREAS, The Philadelphia Home Rule Charter, the City Ethics Code, and the State Ethics Act all include provisions prohibiting the acceptance by City officers and employees of certain gifts in certain circumstances; and

WHEREAS, To eliminate even the appearance of impropriety, and to reduce uncertainty among City employees and persons dealing with City officers and employees as to the circumstances under which acceptance of Gifts is improper, clear rules should be adopted to prohibit the acceptance by City officers and employees of certain Gifts from specified Persons; now, therefore,

I, Michael A. Nutter, by the power vested in me as Mayor of the City of Philadelphia, do hereby order as follows:

Section 1. Definitions.

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

(1) "Gift" shall mean any conveyance of anything of value, including a gift, gratuity, favor, entertainment, invitation, food, drink, or loan, unless consideration of equal or greater value is conveyed in return. "Gift" shall not include a political contribution otherwise reported as required by law, or a commercially reasonable loan made in the ordinary course of business.

(2) "Person" shall mean a natural person or a business, governmental body, corporation, union, association, firm, partnership, committee, club or other organization or group of persons, or agents thereof.

Section 2. Prohibited Gifts.

No officer or employee in the Executive and Administrative Branch shall solicit or accept, directly or indirectly, any Gift from any of the following sources:

- (a) A Person seeking to obtain business from, or who has financial relations with, the City;
- (b) A Person whose operations or activities are regulated or inspected by any City agency, department, office, board, or commission;

- (c) A Person engaged, either as principal or attorney, in proceedings before any City agency, department, office, board, or commission, or in court proceedings in which the City is an adverse party;
- (d) A Person seeking legislative or administrative action by the City; or
- (e) A Person whose interests may be substantially affected by the performance or nonperformance of the officer's or employee's official duties.

Section 3. Exceptions.

The prohibitions of Section 2 shall not apply to:

- (a) The solicitation or acceptance of a Gift from a friend or relative when the circumstances make it clear that the motivation for the action is a personal or family relationship. In the case of an invitation to an event issued to, hosted by, or honoring a friend or relative, the officer or employee may attend such an event without payment if the circumstances make it clear that the invitation arises out of the family or friend relationship, regardless of the location at which the event is held;
- (b) The 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;
- (c) A voluntary Gift of nominal value or donation in a nominal amount made by a City officer or employee to another City officer or employee on a special occasion such as marriage, illness, retirement, or a holiday on which the exchange of gifts is customary;
- (d) 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;
- (e) A promotional offer of discounted goods, services, food, drink, or entertainment, when offered to all members of a large recipient group (e.g., all City employees);
- (f) A "Gift to the City," defined as: (i) a gift that, while designated for or used by one or more City officers or employees, has a legitimate governmental purpose, such as promoting the City or providing City representation at an event for which the City might otherwise have expended City funds for an official or employee to attend; or (ii) a tangible gift designated for a particular City officer or employee or group of employees that for practical reasons cannot be returned and can be shared among members of the recipient's department or agency.

(g) The acceptance of a Gift by a member of a City board or commission from a Person who, though he/she may do business with some department, agency, office, board or commission of the City, is not currently conducting, and is not reasonably expected to conduct in the near future, business before the recipient's board or commission, or before a related department, agency, office, board or commission.

Section 4. Prohibition on Giving or Offering Gifts.

(a) No Person shall offer, make or render any Gift to any City official or employee where receipt of such Gift by the recipient would be prohibited under Section 2 hereof.

(b) Any Person, including any person doing or seeking to do any business with the City, who violates this Section shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in particular City contracts, to debarment, depending on the nature of the particular violation, as determined, after consultation with the Chief Integrity Officer, by the Procurement Department for competitively bid contracts, or the Office of the Director of Finance, for noncompetitively bid contracts.

Section 5. Gift to the City.

(a) A Gift shall be considered a "Gift to the City," and not prohibited by this Order, if it fits the definition in Section 3(f), and if the following procedure is followed:

(i) A Person wishing to make a Gift to the City (such as tickets to an event, dinner or conference, sometimes including travel thereto; or a food or other tangible item) must offer the Gift to an appointing authority of a City department, agency, office, board, or commission (the "approving official"), for use by such department, agency, office, board, or commission. The approving official must then determine whether the Gift is an appropriate Gift to the City, under the criteria set forth in Section 3(f) and in part (ii) hereof; and, if so, which City officer or employee is the logical person to represent the City at the dinner, conference, or other event, or otherwise make use of the Gift. An invitation extended directly to an officer or employee must be referred to the approving official for that officer or employee, for a determination of whether the invited officer or employee is the appropriate person to attend the event on behalf of the City.

(ii) The approving official must make a determination as to whether a legitimate governmental purpose of the City is advanced or assisted by the acceptance of the proposed Gift. In making this determination, the official must obtain all available relevant information and review the full extent and value of the Gift, including the number of recipients and whether that number is appropriate; whether the Gift includes unnecessary extras unrelated to the governmental purpose; and whether the City would be willing to expend funds out of the City budget for a similar purpose. In the case of a tangible gift, the

approving official must also determine whether the gift must be returned or distributed pursuant to Section 6(b).

Section 6. Procedure to Follow Upon Receipt of Prohibited Gift.

(a) Any officer or employee who receives a Gift that is prohibited by this Order shall forward the Gift to the head of his or her department, agency, office, board, or commission, together with a written explanation of the circumstances surrounding the Gift, and send a copy of the explanation to the Chief Integrity Officer and the Inspector General.

(b) A department, agency, office, board, or commission head shall return to the donor all Gifts received from others or from employees pursuant to Section 6(a) with a written explanation as to why the return is necessary. If return of a Gift to the donor is not practicable, the Gift shall be deemed a Gift to the City, and the department, agency, office, board, or commission head for the recipient of the Gift shall determine the appropriate equitable use or disposition of the Gift. Where a Gift is perishable, the department, agency, office, board, or commission head shall make the Gift generally available to members of the department or agency on a non-discriminatory basis. In both cases, the department, agency, office, board, or commission head shall provide a written explanation of this decision to the Chief Integrity Officer and the Inspector General.

Section 7. Dissemination of Information.

A summary of the provisions of this Executive Order shall be distributed to all current officers and employees of the Administrative and Executive Branch, and to all newly appointed officers and employees. Such a summary shall also be provided to bidders and prospective bidders for City Contracts.

Section 8. Waivers.

Notwithstanding anything to the contrary in this Order, the Chief Integrity Officer shall have the authority to issue waivers, if requested in advance of acceptance of a gift, or restrictions, when, in his/her judgment, such waiver or restriction would not be inconsistent with the efficient, accountable, and transparent operation of government.

Section 9. Conformance with Other Laws.

Nothing in this Order shall be deemed to authorize an officer or employee to accept a Gift of any value in violation of any other applicable federal, state, or local law or regulation.

Section 10. Repeals.

Executive Order No. 02-04 is hereby rescinded.

Section 11. Effective Date.

This Order shall take effect immediately.

Date: 1/25/11



Michael A. Nutter, Mayor