



**City of Philadelphia Law Department
WAIVER/ EXEMPTION COMMITTEE PROCEDURES**

April, 29, 2020

1. The Chief of Staff of the City Solicitor will serve as the Committee Liaison.
2. When a Department Leader or Law attorney receives a request for a waiver of or exemption from statutory requirements, contractual terms, or City policies and practices that may implicate complex Constitutional issues, the Department or Law Attorney must refer the request to the Committee Liaison. In addition, Departments and attorneys should refer matters that raise similar issues to the Committee as well (i.e., any matter that concerns a complex religious liberty or free speech issue).
3. The Committee Liaison will identify the appropriate group of attorneys (including but not limited to attorneys familiar with the Department, attorneys with subject matter expertise on the basis of the requested waiver/exemption, etc.) to evaluate the request and advise the Department on the appropriate decision (“the Waiver Committee”). For example, if a waiver or exemption request is based upon religious rights or any other constitutional rights, the Chief Deputy of the Appeals Unit or their designees will participate. If the request primarily pertains to a City contract, the Chair of the Corporate Group and/or their designees will participate. If a request primarily concerns active or threatened litigation, the Chair of Litigation and/or their designees will ~~also~~ participate.
4. The Committee Liaison will notify the requester when a request has been referred to the Waiver Committee. The requester will receive an opportunity to explain, in writing, why it should receive the requested waiver or exception, and to identify any relevant facts or legal authorities.
5. The Waiver Committee will consult applicable law to determine whether the Department (a) is legally required to grant or deny the requested waiver or exemption, or (b) has discretion to grant or deny the requested waiver or exemption.
6. In some cases, the law sets forth specific criteria that must be satisfied to entitle a person to a requested waiver or exemption. For example, the Fair Practices Ordinance provides that entities are exempt from its non-discrimination requirements only in specified circumstances. *See* Pa. Code §§ 9-1104, 9-1109. When the Waiver Committee receives a request for an exemption from a law of this kind, it will determine whether any of the specified statutory exceptions applies, or

whether the federal or state Constitution or other applicable law requires the requested exemption. In other cases, the law may afford latitude to grant or deny the requested waiver or exemption.

7. Once the Waiver Committee has met and evaluated the request, one of its members will draft a privileged and confidential letter advising the Department of the following: applicable case law; facts and circumstances considered; and recommended course of action in response to the request, including whether the Department (a) is legally required to grant or deny the requested waiver or exemption, or (b) has discretion to grant or deny the requested waiver or exemption. The letter will come from the Committee Liaison, who will copy the Chairs of the Law Department and the attorney of record if they are not part of the Waiver Committee that drafts the letter.
8. If no deadline is attached to the request, the Department will receive the Committee Liaison's letter within 45 days.
9. Either Law or the operating Department will notify the requester in writing once a decision is made and provide a brief explanation of the basis for its decision. The requester will have an opportunity to explain why it should receive the requested waiver or exception.

Text of the Policy From Law's Website:

The Waiver/Exemption Committee (the "Waiver Committee") will formalize and streamline the Law Department's policy and procedure for reviewing complex constitutional and statutory issues that may arise from formal requests for waivers of, or exemptions from, City contracting requirements and City policies, laws, and regulations. The Waiver Committee will comprise a cross-section of Law Department attorneys from the following Units: Commercial Law, Appeals, Affirmative & General Litigation, and the attorney of record for the matter or contractual relationship in which the waiver or exemption is requested. Depending on the issue, attorneys from other Units (e.g., Regulatory Affairs, Privacy, etc.) may also participate. Further, the Waiver Committee may consult with experts as needed from outside the Law Department. Requests for the Waiver Committee to review an issue will be funneled through a committee liaison (the "Committee Liaison"). All Law Department attorneys who become aware of a waiver request that presents significant legal issues should promptly refer the request to the Committee Liaison for advice and consultation. Such requests may be brought to the attention of the Law Department from many sources, including, but not limited to, other City agencies, active or threatened litigation, or parties with City contracts. The Waiver Committee will have point persons in the Units identified above to help guide and convene all requests for legal advice to the Committee Liaison, who will, in turn, determine the appropriate subject matter experts within Law to consult. As noted above, the Waiver Committee may also consult with outside experts as needed. The Waiver Committee's role will include addressing requests for waivers of, or exemptions from, statutory requirements, contractual terms, or City policies and practices that may implicate complex constitutional issues, such as equal protection, due process, religious

liberty, or other First Amendment concerns. Attorneys may also refer other requests for waivers of, or exemptions from, contract provisions or City policies, laws, or regulations that raise significant legal issues and may benefit from interdisciplinary legal review.