

Subject: Ethics Ordinance Proposal

To: City Council all members and Council Solicitor

From: Councilwoman Olga Negrón-Dipini and Councilman Michael Colón

Date: December 29, 2016

Please, see attached a draft of a propose ordinance for Ethics to be included on the communication for the next council meeting on January, 3<sup>rd</sup>, 2017. It should then be send to appropriate committee. It is our hope that members of council are willing to have a conversation and to work on the creation of an Ethics Commission for the City of Bethlehem.

We worked on it for almost a year and we are looking forward to shaping this up as a committee in order to create transparency and must important re-establish faith and trust for our local government.

Respectfully,

Councilman Michael Colón

Councilwoman Olga Negrón-Dipini

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**City of Bethlehem, Pennsylvania**

**Code of Ethics**

**Declaration of Policy, Purpose, and Obligations**

The proper operation of our city's government requires that its public officials and employees act as fiduciaries entrusted with and responsible for the property and resources of the community; that they make governmental decisions and policies in the proper channels of the government structure, free of coercive or other improper influence; that they use their position in the best interests of the city rather than for personal interests, whether their own interests or those of their family, friends, or business associates; and that they do not, directly or indirectly, in a positive or negative sense, treat anyone preferentially, that is, other than in a manner generally accorded to city residents.

It is central to gaining and retaining the public's trust in our city's government that public servants seek to avoid even the appearance of impropriety. Fulfilling one's role as public servant sometimes means sacrificing rather than gaining opportunities.

This code focuses on conflicts of interest, which affect the decisions of government officials and employees in ways that are unfair both to the community and to individuals and entities who lack special relationships with our city's officials. When public servants make decisions that are not or do not appear to be impartial, this seriously undermines public confidence in government.

While the vast majority of municipal officials are well-meaning, being well-meaning is not enough. It is important that officials understand the conflicts they confront every day, appreciate their fiduciary obligations to city residents, and recognize the importance of preventing conflicts from occurring, disclosing conflicts when they arise, and withdrawing from any involvement in a matter where they have a conflict.

Nothing is more important to public trust than having public servants err on the side of disclosing every possible conflict and withdrawing from participation even where they feel certain they can act impartially.

The purposes of this ethics code are:

- (a) To establish standards of ethical conduct - especially those dealing with conflicts between personal interests and those of the city - for public officials, city employees, consultants, candidates, and those who do business with the city;
- (b) To provide clear, consistent guidance with respect to such standards by clarifying which acts are allowed and which are not and a means for consideration of possible ethical problems before they arise;
- (c) To establish a board of ethics with a monopoly on ethics advice, training, disclosure, and enforcement in order to provide for the fair and effective administration and enforcement of this code;

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(d) To promote public confidence in the integrity of our city's governance and administration, to minimize unwarranted suspicion and damage to public trust, and to enhance the accountability of our city's government to city residents;

There is more to ethical conduct than what is covered by this code, which consists primarily of enforceable rules about conflicts of interest, and procedures for enforcing the rules and providing ethics advice. The city must also provide a healthy ethics environment with positive means of encouraging ethical behavior among its public servants. And individuals - especially community leaders - must commit themselves to dealing responsibly with their conflict situations.

Ethical conduct depends on thinking about one's acts not in terms of what is politically popular, best for oneself and one's colleagues, or even most effective and efficient, but in terms of what is in the best interests of the city. Ethics is not just about enforceable rules, but also about democratic ideals and aspirational goals. Central to ethical action is respect for city residents as well as for one's own integrity.

This code is enacted pursuant to Section 1111 of Pennsylvania Public Official and Employee Ethics Act and is not intended to authorize any conduct prohibited by that act.

## Chapter 11 - Ethics Standards, Campaign Finance and Financial Disclosure

### 1101. The City of Bethlehem Public Official and City Employee Ethics Act

#### 1101. Purpose

- (a) **Declarations.** The Council of the City of Bethlehem hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of Bethlehem in their government, the City Council of Bethlehem further declares that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials in their actions. Thus, the Council of the City of Bethlehem by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.
- (b) **Recognition.** It is recognized that many public officials are citizen-officials who bring to their public office the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in order to foster maximum compliance with its terms, this chapter shall be administered in a manner that emphasizes guidance to public officials and city employees regarding the ethical standards established by this chapter.
- (c) **Legislative intent.**—It is the intent of the Council of the City of Bethlehem that this code of ethics be administered by an independent, non-partisan board of ethics composed of members who

**Comment [B1]:** Since our code is based on and permitted by the state statute I have included the designation of the chapter as 11 according to the state code. Is this correct? Should it be designated in accordance with any city code?

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are cognizant of the responsibilities and burdens of public officials and city employees and who have demonstrated an interest in promoting public confidence in government.

**1102. Definitions**

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

**"Advice."** Any directive of the City of Bethlehem Board of Ethics under section 1104 of this ordinance relating to the powers and duties of the board or of the State Ethics Commission under section 1107 relating to the powers and duties of the State Ethics Commission.

**"Advisory opinion."** A directive of the Board issued pursuant to section 1104 (e) of this ordinance (relating to the powers and duties of the Board) or the State Ethics Commission pursuant to section 1107(10) (relating to powers and duties of commission) setting forth a public official's or public employee's duties under this ordinance.

**"Aggregate."** The total of all gifts received from a single source as provided in section 1106(b)(6) (relating to statement of financial interests).

**"Appearance of impropriety."** The perception that wrong-doing or misconduct may have occurred. When a reasonable person could reasonably believe that improper actions have taken or are taking place.

**"Authority of office or employment."** The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

**"Board."** The Board of Ethics of the City of Bethlehem.

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

**"Business associates."** Employers, employees, colleagues, consultants, and businesses with which a member of the family is associated.

**"Business with which he/she is associated."** Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

**"Candidate."** Any individual who seeks nomination or election to public office by vote of the electorate, other than a judge of elections, inspector of elections or official of a political party, whether or not such individual is nominated or elected. An individual shall be deemed to be seeking nomination or election to such office if he has:

- (1) received a contribution or made an expenditure or given his consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election to such office, 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; 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.

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The term shall include individuals nominated or elected as write-in candidates unless they resign such nomination or elected office within 30 days of having been nominated or elected.

"Candidate political committee." The one political committee used by a candidate to receive all contributions and make all expenditures.

"City." City of Bethlehem.

"City employee." Any individual receiving salary or wages from the City of Bethlehem.

Comment [B2]: Is this adequate?

"Code." City of Bethlehem Code of Ethics

"Confidential information." Information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

"Conflict" or "conflict of interest." Use by a public official or city employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

"Contract." An agreement or arrangement for the acquisition, use or disposal by the City or a City agency or instrumentality of consulting or other services or of supplies, materials, equipment, land or other personal or real property. The term shall not mean an agreement or arrangement between the City or City agency or instrumentality as one party and a public official or public employee as the other party, concerning his expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his current public employment with the City or other City agency or instrumentality

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

Comment [B3]: I used the Reading definition since we are using the Reading campaign limits language but added the exclusion of volunteer time from Bill's definition.

"Covered Election" Every primary, general, or special election for city elected office.

"De minimis economic impact." An economic consequence which has an insignificant effect.

"Financial interest." An interest involving money or its equivalent or an interest involving any right, power or privilege that has economic value.

"Findings report." An initial report containing findings of fact as determined by the Board of Ethics's investigation but not containing any conclusions of law or any determination of whether there has been a violation of law.

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**"Frivolous complaint."** A complaint filed in a grossly negligent manner without basis in law or fact.

**"Gift."** A payment, gratuity, subscription, advance, forbearance, rendering, or deposit of money, services or anything of value given to, or for the benefit of, a public official or city employee, unless

consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a family member of the individual or from a relative within the third degree of consanguinity of the individual or of the individual's spouse or life partner, or from the spouse or life partner of any such relative. The term also excludes non-pecuniary awards publicly presented, in recognition of public service, and occasional non-pecuniary gift of nominal value, complimentary travel for official purposes and/or admissions to charitable, civic, political or other public events.

**Comment [B4]:** I used the gift definition from the Phila code and the last section is from the Reading code. Have to check this with the code to see if it is consistent.

**"Governmental body."** Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a governmental function.

**Comment [B5]:** This & the following are in the state code but not in this document – delete?

**"Governmental body with which a public official or public employee is or has been associated."** The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

**"Honorarium."** Payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact.

**"Hospitality."** The term includes meals, beverages, recreation and entertainment, as defined in section 13A03 (relating to definitions).

**"Immediate family."** A parent, spouse, ex-spouse, life partner, child, step-child, siblings, step-siblings, aunts, uncles, cousins and in-laws.

**"Income."** Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. The term refers to gross income and includes prize winnings and tax-exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children.

**"Individual."** A person, including a married couple.

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**"Indirect interest in real estate."** Any business entity the assets of which are 80% or more in real property.

Comment [B6]: In the state statute but not in our document – delete?

**"Ministerial action."** An action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of the person's own judgment as to the desirability of the action being taken.

**"Money or monetary gifts."** Cash, checks, money orders, or the equivalent, including pre-paid debit or gift or credit cards.

**"Material interest."** Direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.

**"Nominee."** Any person whose name has been submitted to a public official or governmental body vested with the power to finally confirm or reject proposed appointments to public office or employment.

**"Nonministerial actions."** An action in which the person exercises his own judgment as to the desirability of the action taken.

**"Order."** A directive of the State Ethics Commission issued pursuant to section 1107(13) (relating to powers and duties of commission) at the conclusion of an investigation which contains findings of fact, conclusions of law and penalties.

**"Person."** A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

**"Political contribution."** Any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, purchase of a ticket to a testimonial or similar fund-raising affair, or subscription of money or anything of value, except volunteer services, in connection with a political campaign, and any contract, agreement, promise or other obligations, whether or not legally enforceable, to make a political contribution.

**"Political subdivision."** Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.

**"Public employee."** Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.



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The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

**"Public official."** Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

**"Represent."** To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

**"Solicitor."** A person elected or appointed to the office of solicitor for the political subdivision.

**"Source."** Any person who is a provider of an item reportable under section 1105 (relating to statement of financial interests).

**"State consultant."** A person who, as an independent contractor, performs professional, scientific, technical or advisory service for an agency of this Commonwealth, and who receives a fee, honorarium or similar compensation for such services. A State consultant is not an executive-level employee.

### 1103. Restricted Activities

a) **Conflict of interest.** – No public official or city employee shall engage in conduct that constitutes a conflict of interest.

i) Unless there is public disclosure and disqualification as provided for in Section 1103.M (I-iii) hereof, no public official or city employee shall be 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, or by any board or body of which he/she is a member nor shall any financial interest be held by a parent, spouse, life partner, child, brother, sister or like relative-in-law, or by any firm, partnership, corporation, business association, trustee or straw party for his or her benefit, nor shall a member of public official or city employee be a purchaser at any sale or vendor at any purchase made by him/her in his/her official capacity. This latter provision 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 public official or city employee.

ii) 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, Life Partner, child, brother, sister or like relative-in-law of the public official or city employee; or in a member of a partnership, firm, corporation or other business organization or professional association organized for profit of which said public official or city employee is a member and where said public official or city employee has knowledge of the existence

Comment [B7]: Yellow highlighting is from the Phila Code.

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of such financial interest he or she shall comply with the provisions of Section 1103.M (I-III) 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 judgement.

- iii) No public official or city employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgement 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 public official or city employee. This prohibition shall apply so as to prevent a parent, spouse, life partner, 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 public official or city employee within said two (2) year period.
  
- b) *Seeking improper influence.* – No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated, anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.
  
- c) *Accepting improper influence.* – No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.
  
- d) *Honorarium.* – No public official or public employee shall accept an honorarium.
  
- e) *Contingent and severance payments.* –
  - (1) No person shall solicit or accept a severance payment or anything of monetary value contingent upon the assumption or acceptance of public office or employment
  - (2) This subsection shall not prohibit:
    - (i) Payments received pursuant to an employment agreement in existence prior to the time a person becomes a candidate or is notified by a member of a transition team, a search committee or a person with appointive power that he is under consideration for public office or makes application for public employment.
    - (ii) Receipt of a salary, fees, severance payment or proceeds resulting from the sale of a person's interest in a corporation, professional corporation, partnership or

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other entity resulting from termination or withdrawal therefrom upon the assumption or acceptance of public office or employment.

- (3) Payments made or received pursuant to paragraph (2)(i) and (ii) shall not be based on the agreement, written or otherwise, that the vote or official action of the prospective public official or employee would be influenced thereby.

f) *Awarding Contracts*. –

**Comment [B8]:** This section 1-4 is from the Reading code; 5 is from Phila.

- (1) No public official or public employee or member of his/her immediate family or any business in which the person or member of his immediate family is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or city employee is associated, unless the contract has been awarded through an open and public process including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.
- (2) Prior to entering into or awarding any no-bid contract, the city employee, official agent or instrumentality entering into such no-bid contract on behalf of the city must immediately provide the Board of Ethics with the following information:
- (i) The name and address of all contracting parties;
  - (ii) A draft copy of the contract to be entered into;
  - (iii) A report, in compliance with 25 P.S. 3260a (section 1641 of the PA election code), as amended, which shall provide the following:
    - a. An itemized list of all political contributions known to each contracting party by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
      - 1 Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family of the aforementioned parties when the contributions exceed an aggregate of one thousand dollars (\$1000) by and individual during the preceding year; or
      - 2 Any employee or members of his or her immediate family whose political contribution exceeded one thousand dollars (\$1000) during the preceding year.
  - (iv) Any other information that the Board may require.
- (3) In the event that the intended recipient of a city no-bid contract or any officer, director, associate, partner, limited partner, individual owner, member, employee, or immediate family of any of the aforementioned parties has made a donation to a political

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committee of a city employee, city official, agent or instrumentality, in excess of the contribution limitations set for in section 1106 during any of the preceding two (2) calendar years from the date the draft copy of the proposed contract is submitted to the Board, then and in that event the city is prohibited from awarding that no-bid contract to that intended party.

- (4) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be as provided for by the established purchasing policies of the City of Bethlehem
- (5) It is a violation of this code for a public official or city employee to, within two (2) years of entering city employment or service, award a contract or participate in a matter benefiting a person or entity that formerly employed him or her.

**g) Representation by public officials and city employees. –**

- (1) No public official or city 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 does not apply to any assistance rendered by any public official or city 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 1103.(g).(4).
  - (i) No public official or city employee shall accept any fee from anyone for referring any matter to another person where the public official or city employee would be barred from assisting or representing them under this ordinance.
- (2) An uncompensated or a compensated public official or city employee whose service is part-time (excluding public officials or city 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 or she 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 public official or city employee may take uncompensated action, not inconsistent with the faithful performance of his/her 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 public official or city 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, life partner, 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/she has participated personally as a public official or city 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 public official or

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city employee is a member shall represent any person directly or indirectly as agent or attorney in any matter in which such public official or city employee has the responsibility for decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise determining such matters, unless such public official or city employee shall disclose such fact and disqualify him/herself from such responsibility in the manner set forth in Section 1103.m.(i-iii).

(6) No person who has served for compensation as a public official or city 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 city service or employment.

(h) *Misuse of statement of financial interest.* – No person shall use for any commercial purpose information copied from statements of financial interests required by this chapter or from lists compiled from such statements.

(l) *Former executive-level employee.* – No former public official or city employee may for a period of two (2) years from the time that he terminates employment or leaves office be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he actively participated in recruiting or that he actively participated in inducing to open a new plant, facility or branch in the Commonwealth or that he actively participated in inducing to expand an existent plant or facility within this Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand.

**Comment [B9]:** Ask Chris Spadoni. This language is from the Phila. Code so perhaps Commonwealth is appropriate.

(j) *Voting Conflict.* – Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided the whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally require vote unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

(k) *Gifts, loans and favors to public officials or city employees.* –

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(1) No public official or city employee shall accept or receive gifts worth more than \$100.00 in the aggregate per calendar year or any gifts of money from any person who is seeking official action from that Council member or officer who has a financial interest at the time, or in close proximity to the time the gift is received, which the member or officer is able to substantially affect through official action. A public official or city employee may not solicit gifts of any value from a person who is seeking official action from that public official or city employee or who has a financial interest the public official or city employee is able to substantially affect through official action.

(2) No person shall offer, make or render gifts worth more than \$100.00 in the aggregate per calendar year or any gifts of money to any public official or city employee if the person is seeking official action from that official or employee or has a financial interest at the time, or in close proximity of the time the gift is received, which the official or employee is able to substantially affect through official action.

(3) A public official or city employee may accept, but not solicit, the following gifts, notwithstanding the person giving the gift may be seeking official action from that official or employee or may have a financial interest the official or employee receiving the gift is able to substantially affect through official action:

- i. Hospitality provided at a residence when the donor or a family member of the donor is present;
- ii. Food, beverages, or entertainment provided at a reception for which attendees do not have to purchase a ticket;
- iii. Rebates or discounts offered to members of the general public or a class of persons, including rebates or discounts offered to a class of officers or employees;
- iv. Gifts resulting solely from the public official or city employee's membership in a bona fide charitable, professional, educational, labor, or trade organization;
- v. Free attendance at an event celebrating a major life event of another individual, for which attendees do not have to purchase a ticket;
- vi. Food and beverages provided to all participants in the ordinary course of a meeting where the food and beverages are provided at the site of the meeting;;
- vii. Food and beverages provided by a superior, subordinate, or other co-worker and consumed as part of an office or agency event;
- viii. Gifts resulting solely from the public official or city employee's outside employment;
- ix. Gifts resulting solely from the public official or city employee's life partner's or spouse's business or employment;
- x. Free admission to political events, including food and beverages, if the public official or city employee is permitted to engage in political activity in coordination with candidates, political parties or partisan political groups;
- xi. Payment or reimbursement of a public official or city employee's reasonable expenses for admission, travel, lodging, or food and beverage related to attendance at an event, convention, conference, seminar, or fact-finding trip that will benefit the

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city and is reasonably related to the public official or city employee's official duties or expertise;

- xii. Tickets for public events given to a public official or city employee that they do not personally make use of and give to members of the public, who shall not include a family member or a member of the public official or city employee's government or campaign staff;
- xiii. A gift from a government entity.

(4) Other limitations on gifts. – No person shall give a gift to a public official or city employee through another person if this ordinance would prohibit the person from giving the gift directly to the member or officer. A gift to another person is a gift to a public official or city employee if the official or employee solicits the gift and receives a financial benefit from it. If a person offers a public official or city employee a gift prohibited by this ordinance, the official or employee shall not suggest or request an alternative recipient, such as a charity.

(5) Valuation of gifts. – The value of a gift is the retail cost the public official or city employee would incur to purchase the gift. An official or employee who does not know the retail cost of a gift shall estimate the retail cost by reference to similar items of like quality. The value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

(l) *Nepotism.* Hiring a relative is a special type of a conflict of interest that should be avoided. No public official or city employee shall appoint, hire, advance or advocate the appointing, hiring or advancing of a member of his/her immediate family or household member to a city position.

(m) *Exparte Communication.* –

(1) 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 public official or city employee in the performance of his/her official duties.

(n) *Public Disclosure and Disqualification*

(1) Any member of City Council having a financial interest under Section 1103.(a), (b), in any legislation including ordinances and resolutions, shall make public the nature and extent of such interest as set forth in paragraph (i) hereof. Other public officials 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 (ii) hereof. When any public official or city employee has a financial interest in an award, lease, case, claim, decree or judgment,

Comment [B10]: Check this for consistency.

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such person shall make public the nature and extent of the interest as set forth in paragraph (iii) 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.

- (i) 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 City 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.
- (ii) In the case of any other public official or employee having such interest in legislation including ordinances and resolutions, he shall notify the City 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 public official or city employee shall notify the City Clerk 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.
- (iii) Where there is a financial interest, as set forth in Section 1103 (a), by any public official or city 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 City Clerk 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 City Clerk which shall maintain a public record of such notices.

(0) *Use of city property and personnel.*

City employees or elected officials may not use any personnel, equipment, supplies, facilities, vehicles or any other property owned and belonging to the city for their private purposes, use, enjoyment or benefit. City employees or officials who hold a supervisory position may not use the time, effort and resources of any subordinate city employees or official for their private purposes, use, enjoyment or benefit. The provisions of this section are to be read together and with any related provision of the City of Bethlehem.

Comment [B11]: This is from the Reading code



(p) *Political activities*

Section \_\_\_ and \_\_\_ of the City \_\_\_ and Section \_\_\_ of the City of Bethlehem Personnel Code are incorporated herein by reference and made a part hereof. City employees or officials are to adhere to the sections restricting involvement in political activities as set forth in the above sections. In the event that the city or city council has failed to take appropriate action in enforcing the aforementioned provisions, then the Board of Ethics shall have jurisdiction to adjudicate any violation thereof.

Comment [B12]: This is from the Reading code.

1104. Board of Ethics

a) *Appointment, composition and structure*

i) Appointment. Within sixty days after the effective date of this code, and no later than December 31 each year thereafter, the Council of the City of Bethlehem will appoint the members of the Board from a list of nominees prepared by no less than three designated non-partisan civic organizations.

Comment [B13]: Gray highlighting is from Chris Spadoni's draft. The Reading code & Chris's are very similar. I have indicated where I have included elements from Reading and the Model Code.

ii) Composition. The Board established by the City of Bethlehem shall be composed of five members and two alternates all of whom are residents of the city. No member of the Board may be, or have been within the three years prior to appointment, an official or employee, consultant or contractor of the city; an officer in a political party or political committee; a candidate or an active member of the campaign of a candidate for any office within the Board's jurisdiction; or a lobbyist. Nor should a member nor his/ her immediate family, have, within the three years prior to appointment, sought any special benefits from the city, directly or indirectly. A Board member or staff member, or a member of his/ her immediate family, who has during the past 3 years directly or indirectly, sought any special benefits from the city, made campaign contributions, or participated in any way in the campaign of a candidate for any office within the Board's jurisdiction, or of an individual currently within the Board's jurisdiction will be required to abstain from a decision by the board if his/her participation presents a conflict of interest. In that case an alternate will be designated to replace the board member.

Comment [B14]: From the Model Code

Comment [B15]: Recommended by the Model Code and Easton also.

ii) Terms of service. Members of the Board shall serve for terms of three years, except that members shall continue to serve until their successors are appointed and qualified. The terms of the initial members shall be staggered, with one member serving a term of one year, two members serving for two years, and two members serving for three years.

Comment [B16]: Although the model code does not permit this, I have revised to permit these activities as suggested by the group

iii) Vacancy. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds and it eligible for appointment thereafter according to the terms herein.

iv) Election of chairperson and vice chairperson. The Board shall elect a chairperson and a vice chairperson annually. The vice chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

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- v) **Quorum.** A majority of the members of the Board shall constitute a quorum; however, the votes of a majority of the members are required for any action or recommendation of the Board.
- vi) **Staff.** The Board shall appoint a solicitor, a secretary and such other staff as may be deemed necessary. The solicitor, secretary and such other staff need not be members of the Board.
- vii) **Meetings.** The Board shall meet at the call of the chairperson or at the call of a majority of its members.
- viii) **Investigative officer.** The Board shall appoint an investigating officer. The Board shall determine an amount to be paid as reasonable compensation to the investigating officer as payment for such services. The investigating officer shall be a member of good standing of the Northampton County Bar and shall have been so for at least five years. The investigating officer is authorized to retain the services of investigators and may only delegate nondiscretionary functions.

Comment [B17]: From the Reading code

*b) Powers and Duties*

- i) **Rules and Regulations.** The board shall promulgate rules and regulations as are necessary to administer, implement, interpret and enforce the provisions of this ordinance consistent with the goal of providing clear guidance regarding standards of conduct and ethics.
- ii) **Advice.** Upon the written request of any public official or city employee or without such request should the majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of governmental ethics; shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this chapter; and shall issue advisory opinions in writing as to any such question. The Board may in its discretion publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion. An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the official or employee who sought the opinion did so in good faith and only to the extent material facts were not misrepresented in the request for the opinion.
- iii) **Complaints.** The Board shall receive and dispose of complaints of violations of the ethics provisions of this Code of Ethics and exercise discretion in declining to pursue an investigation if such a course would be in the best interest of the citizens of Bethlehem or where the activity complained of amounts to no more than a de minimis violation.
- iv) **Investigative Officer.** The Board shall appoint an investigating officer to conduct investigations and to issue findings reports where appropriate.
- v) **Hearings.** The Board shall hold hearings, issue subpoenas and compel the attendance of witnesses, administer oaths, take testimony, require evidence on any matter under

Comment [B18]: I added administer and enforce from the Reading code.

Comment [B19]: This seems redundant with viii in the section above. It appears both times in the Reading and Chris's code. Delete one of them?

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Investigation before the Board, and issue orders, including but not limited to those related to adjudications and penalties set forth in \_\_\_\_\_ of this chapter.

vi) **Review.** The Board shall review annually the statements of financial interest filed pursuant to section 1105 of this Code.

vii) **Mandatory Training and Education**

- 1) The Board shall have the responsibility of training and education of all public officials and city employees regarding the standards of conduct and ethics. In fulfilling this responsibility, the Board shall prepare and disseminate educational materials regarding the provisions contained with this ordinance and related interpretive regulations, including a Code of Ethics Manual, and shall develop and conduct routine and mandatory education and training programs for all public officials and city 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 ordinance.
- 2) Within sixty (60) days of the effective date of the ordinance each head of a city department shall provide a copy of this ordinance to all employees under his/her direction. Thereafter, on or before the tenth day after an individual becomes a public official or city employee, each head of a city department shall provide a copy of this ordinance to all such new officers or employees. Upon receipt of a copy of this ordinance, the public official or city employee shall sign a written statement that such official or employee has read and shall conform with the provisions of this ordinance and this statement shall be placed in the official or employees personnel file. Failure of a public official or city employee to receive a copy of this ordinance, 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 official or employee to be in compliance with this ordinance.
- 3) Within one year of the effective date of the ordinance and annually thereafter, all elected public officials, department heads, and all board member 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.
- 4) All public officials and city employees shall cooperate fully with any request of the Board made pursuant to the execution of the Board's powers and duties. Failure to attend the mandatory ethics program or to refuse to cooperate with the Board shall be deemed a violation of this ordinance.

**Comment [B20]:** The Phila code refers to Chapter & I changed to ordinance. Also since this mandates producing a Code of Ethics Manual, should that replace ordinance as what is given to new employees?

**Comment [B21]:** Phila. Board said this is very important – that responsibility is reciprocal.

**Comment [B22]:** I think more time would be needed to get the materials ready for distribution.

c) **Complaint procedure.**

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i) **Who may file.** Any person may file a complaint about alleged violations of the Bethlehem Code of Ethics or the \_\_\_\_\_. In addition, the Board may initiate proceedings. A person signing a complaint shall:

**Comment [B23]:** Reading says city charter. Do we have a city code to cite here?

- 1) **reasonably believe in the existence of facts upon which the claim is based; and**
- 2) **reasonably believe that the complaint may be valid under the ethics provisions of the Code of Ethics.**

ii) **How to file.** Complaints must be submitted on forms provided by the Board. The Board shall make this form available online and upon request. The complaint shall state the name, job or office held by the alleged violator and a description of the facts that are alleged to constitute a violation. The form must contain a notarized signature subject to the penalties of 18 Pa.C.S.A.4904 relating to unsworn falsification to authorities. Complaints are to be sent in a sealed envelope to the Investigating Officer of the Board of Ethics, c/o the City Clerk.

*d) Jurisdiction & Investigation.*

*Preliminary investigation*

- 1) Each complaint filed with the Board shall be immediately directed to and preliminarily reviewed by an investigating officer appointed by the Board (the "Officer") to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determinations shall be made within 30 days of the filing of the complaint. If the Officer determines that the Board does not have jurisdiction over the matter underlying the complaint, the complainant will be notified and no further action will be taken. If, however, the Officer determines that the complaint falls with the jurisdiction of the Board, the Officer shall authorize a preliminary investigation.
- 2) The preliminary investigation shall be initiated and accomplished at the sole direction of the Officer. If the Officer, in his/her sole discretion, finds that the violation(s) as alleged in the complaint would, if proved constitute a de minimis infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint if to do so would be in the interest of the citizens of Bethlehem.
- 3) At the onset of the preliminary investigation, the Officer shall notify both the complainant and the subject of the investigation of the filing of the complaint, the nature of the same, and the initiation of a preliminary investigation.
- 4) The preliminary investigation shall be completed within 60 days of the Officer's finding of jurisdiction.

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- 5) If at any time during the preliminary investigation, an extension is necessary and justified, the Officer shall have additional time in thirty-day segments. The Officer shall timely notify both the complainant and the subject of the investigation of each such extension.
  - 6) At the conclusion of the preliminary investigation, the Officer shall determine whether there may exist facts to support the complaint. If the inquiry fails to establish such facts, the Officer shall dismiss the complaint and notify both the complainant and the subject of the complaint of the dismissal of the complaint. If, however, at the conclusion of the preliminary investigation the Officer determines that there may exist facts to support the complaint, the Officer shall authorize a full investigation.
- ii) **Full Investigation.** If a preliminary investigation uncovers facts to support the complaint, the Officer shall authorize a full investigation. The complainant and the subject of the investigation shall be notified within three days of the initiation of a full investigation, and the subject shall be notified of the identity of the complainant. Until the investigation is concluded or terminated, the Officer will notify both the complainant and the subject of the investigation of the status of the investigation at least every 90 days. Within 180 days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report on the subject.
  - iii) **Findings Report.** The findings report shall set forth the pertinent findings of fact as determined by the Officer. The Officer shall deliver the findings of fact to the complainant and the subject of the investigation. If no violation of the Code of Ethics was found, the Officer shall dismiss the complaint. If the subject of the investigation was found to be in violation of the Code of Ethics, the subject may, within 30 days of the report, request an evidentiary hearing, unless an extension is obtained from the Officer. When such a request is received by the Officer, the Officer shall immediately notify the Board of the request for a hearing and the names of the parties involved. The Board shall, upon receipt of such notice, engage two attorneys; one to represent the facts in support of the complaint and one to advise the Board in matters related to the evidentiary hearing. No City Solicitor or any other attorney appointed to serve the City in any capacity may be engaged for this purpose. If no request for an evidentiary hearing is received, the Officer will forward the findings report to the Board for its decision and final order.
  - iv) **Evidentiary hearing**
    - 1) **Timing.** An evidentiary hearing must be held within 45 days of the filing of a request for same.
    - 2) **Evidence.** The subject of the investigation shall have reasonable access to any evidence intended to be used at a hearing. The subject of the investigation shall

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have the opportunity to be represented by counsel and to subpoena witnesses, present evidence, cross-examine witnesses against him/her, submit argument and shall be entitled to exercise all rights of confrontation and the like afforded him/her by the United States Constitution and the Pennsylvania Constitution.

3) **Closed hearing** The hearing shall be closed to the public unless the subject requests an open hearing, in writing, to the Board at least five days before the hearing.

v) **Decision by the Board; final order.** At the conclusion of the evidentiary hearing or upon receipt of the findings report, the Board will determine by majority vote whether the evidence supports a finding that the subject of the complaint violated provision(s) of either the City of Bethlehem Code of Ethics. Upon reaching a determination on the complaint, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint.

**Comment [B24]:** Delete "either" or add something. The Reading code mentions the Charter.

vi) **Petition for reconsideration.** A subject, having been found to have violated a provision of the Code, may file a petition for reconsideration of the Board's decision. Such petition shall be filed with the Board within 10 days after the Board issues its final order.

vii) **Whistle Blowing; Protection of complainant.** Employees are required to expose a violation of the Code of Ethics by any employee or business entity with which the City is doing business if such a violation suggests malfeasance and/or creates a serious and specific danger to the public's health, safety or welfare. Employers are required to expose improper use of public office or any other abuse or neglect on the part of a city employee or public official. An employee with knowledge of actions or activities of ethical concern shall report them to the Board of Ethics. The identity of the employee will be confidential information of the Board until a full investigation is initiated.

**Comment [B25]:** This paragraph is from the Reading code. I changed 'expected' to 'required' and added malfeasance.

Retaliation against an employee is strictly prohibited. No person may be penalized, nor any employee of the City be discharged, suffer change in his/her official rank, grade or compensation, be denied a promotion or threatened, for a good faith filing of a complaint with the Board or for providing information or testifying in any Board proceeding.

viii) **Confidentiality of Board information.** All Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board, except as may be required to effect due process. The final order shall become a public record once the subject has exhausted all appeal rights or has failed to timely exercise such rights. All other file material shall remain confidential.

ix) **Wrongful use of the Board of Ethics.** The purpose of the Board of Ethics is to endeavor to maintain a high standard of ethical behavior by City employees and officials. This will be most effective when City employees, officials, and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact.

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Those filing complaints must have the intent to improve the ethical climate of the City. Wrongful use of the Code is prohibited, and those individuals engaged in such conduct may be subject to penalties as set for in section 1104.(d). Wrongful use of the Code of Ethics is defined as:

- 1) Filing an unfounded, frivolous or false complaint. A complaint is unfounded, frivolous or false if it is filed in a grossly negligent manner without a basis in law or fact and was made for a purpose other than reporting a violation of this chapter. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this chapter or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.
- 2) Publicly disclosing or causing to be disclosed information regarding the status of proceedings before the Board and facts underlying a complaint before the Board, including the identity of persons involved and that a complaint has been filed.

e) ~~Penalties; Restitution~~

**i) Penalties.** Upon any violation of the city provisions, including the undertaking of wrongful acts as described in the City of Bethlehem Code of Ethics, any of the following penalties shall be available to the Board for imposition:

- 1) **Admonition.** In compliance with existing personnel practices, collective bargaining agreements and/or statutes, a letter to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, indicating that the respondent has been found to have violated the City provisions;
- 2) **Public Censure.** In compliance with existing personnel practices, collective bargaining agreements and/or statutes, notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, and the new media indicating that the violation of the City provisions took place and that the Board strongly disapproves of the actions of the public official or city employee;
- 3) **Recommendation to the Managing Director of Suspension,** without compensation for a stated period of time not to exceed thirty (30) days, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant. If any such suspension is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;

**Comment [B26]:** The section is from Penalties through Advisory opinions is from the Reading code. I used the Reading code because it is very similar to Chris Spadoni's

**Comment [B27]:** Revise this and the following for application to Bethlehem's organization, replace managing director with appropriate designation.

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**4) Recommendation to the Managing Director of Termination** in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification going to the respondent, the Managing Director, the Mayor, the Director of the Department in which respondent is employed, if any, and the complainant, if any. If any such termination is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;

**5) Referral** to the appropriate authorities for criminal prosecution in cases where a violation of this ordinance is also a violation of federal or state law;

**6) Ineligibility** for holding any office or position within the City for a period of up to five years, as set forth in Section 1202 (b) of the Charter of the City of Bethlehem;

**7) Imposition of an administrative fine** of not more than one thousand dollars (\$1000) per violation;

**8)** Any person who realizes financial gain by way of a violation of any provisions of this ordinance, in addition to any other penalty provided by law or this ordinance, shall pay into the Treasury of the City, a sum of money up to the financial gain resulting from the violation. The Board shall determine the amount of financial gain realized; and

**9)** Any public official, public employee, person, corporation, company or other entity found to have participated in or benefited from a violation of this ordinance may be barred from participating in business dealings with the City for a period of time not to exceed five (5) years, said period of time to be determined by the Board, in addition to being subject to any other penalty (prescribed by this ordinance) deemed appropriate by the Board.

Comment [B28]: Apply to Bethlehem

**ii) Restitution; Other penalties and remedies.** After finding that an individual has violated any provision of the Code of Ethics within the jurisdiction of the Board as provided for in this Code, the Board may take one or more of the following actions, if appropriate, in addition to penalties described in section 1104 (d).

- 1) Order the subject to make restitution to those incurring damage or injury as a direct result of the actions of the subject that have been adjudicated as a violation of the Code;
- 2) Order the subject to cease and desist from engaging in a particular activity that is in violation of the Code, or any order issued by the Board;
- 3) Order the subject to take specified action to bring him/her into compliance with Board directives;
- 4) Refer the matter for review or with specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction of the matters;
- 5) Institute appropriate civil or equitable action to enforce the order and decision of the Board; and
- 6) Recommend to City Council the forfeiture of the office or position held by the subject with the City and recommend that the subject be ineligible to hold any City office or position for a period of up to five (5) years following such decision.



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f) *Advisory Opinions.* Upon the written request of any public official or city employee, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this ordinance, and shall issue an advisory opinion in writing as to any such question. The Board may in its discretion publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion. An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the official or employee who sought the opinion did so in good faith and only to the extent material facts were not misrepresented in the request for the opinion.

1105. Statement of financial interests required to be filed

(a) *Public official or city employee.*--Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he/she holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Persons who are full-time or part-time solicitors for political subdivisions are required to file under this section.

Comment [B29]: Section 1105 is from the state statute but appears there are 1104

(b) *Candidate.*--

(1) Any candidate for a State-level public office shall file a statement of financial interests for the preceding calendar year with the commission on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(2) Any candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(3) No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests as set forth in paragraphs (1) and (2). Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.

(c) *Nominee.*--Each State-level nominee for public office shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the

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nomination. Each nominee for a county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he or she is a nominee and, if different, with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination.

**(d) Failure to file required statement.**--No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required by this chapter.

**(e) Public inspection and copying.**--All statements of financial interests filed pursuant to the provisions of this chapter shall be filed electronically and made available for public inspection online by the City Clerk and available for copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.

**Comment [B30]:** We require electronic submission as does Phila.

**1106 Statement of financial interests**

- (a) *Form.*--The statement of financial interests filed pursuant to this chapter shall be on a form prescribed by the Pennsylvania State Ethics Commission. All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.
- (b) All statements of Financial Interest require pursuant to section 1105 shall be filed with the Board.
- (c) *Required information.*--The statement shall include the following information for the prior calendar year with regard to the person required to file the statement:
  - (1) Name, address and public position.
  - (2) Occupation or profession.
  - (3) Any direct or indirect interest in any real estate which was sold or leased to the City, any of its departments, boards, commissions, authorities or other agencies; purchased or leased from the City or any of its departments, boards, commissions, authorities or other agencies; or were the subject of any condemnation proceedings by the City or any of its departments, boards, commissions, authorities or other agencies.
  - (4) The name and address of each creditor to whom is owed in excess of \$5,000 and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property and equity loans, which is the principal or secondary residence of the person filing shall not be included.
  - (5) The name and address of any direct or indirect source of income totaling in the aggregate \$1,000 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 or common law privileges.
  - (6) The name and address of the source and the amount of any gift or gifts valued in the aggregate at \$100 or more and the circumstances of each gift. This paragraph shall not

**Comment [B31]:** Should we make this lower with the idea that they may want to negotiate up

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apply to a gift or gifts received from a spouse, parent, parent by marriage, sibling, child, grandchild, other family member or friend when the circumstances make it clear that the motivation for the action was a personal or family relationship. However, for the purposes of this paragraph, the term "friend" shall not include a registered lobbyist or an employee of a registered lobbyist.

**Comment [B32]:** I don't believe we require registration for lobbyists. But that can be our next endeavor.

(7) The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed \$650 in an aggregate amount per year. This paragraph shall not apply to expenses reimbursed by a governmental body or to expenses reimbursed by an organization or association of public officials which the public official or employee serves in an official capacity.

**Comment [B33]:** Amount?

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

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

(10) The identity of any financial interest in a business with which the reporting person is or has been associated in the preceding calendar year which has been transferred to a member of the reporting person's immediate family.

**(c) Reporting amounts.**—Except where an amount is required to be reported pursuant to subsection (b)(6) and (7), the statement of financial interests need not include specific amounts for the items required to be listed.

**(d) Filing.**—All statements shall be filed electronically

**(e) Cost-of-living adjustments.**—On a biennial basis the City shall review the dollar amounts set forth in this section and may increase these amounts to such rates as are deemed reasonable for assuring appropriate disclosure. The City shall publish any such adjusted threshold amounts as required by law.

The following is from the Reading Code

1107. Campaign Contributions and Reporting Requirements

a) Campaign Contribution Limitations

**Comment [B34]:** These limits are similar to Phila. Which is based on federal limits.

1) During a Calendar Year in which a Covered Election is Held.

i) To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D, Pre-Candidacy Contributions, hereinafter, no Individual shall make, and no Candidate and/or no Candidate Political Committee shall accept, a Candidate Campaign Contribution, including those contributions made to or

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through one or more Political Committees by such Individual, in excess of Two Thousand Six Hundred Dollars (\$2,600.00).

- i. To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D, Pre-Candidacy Contributions, hereinafter, no Organization (excluding Individuals covered by the Code of Ethics as part of the Administrative Code, as amended, shall make, and no Candidate and/or no Candidate Campaign Committee shall accept, a Candidate Campaign Contribution, including those contributions made to or through one or more Political Committees by such Organization, in excess of Ten Thousand Dollars (\$10,000.00).
  - iii) To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D hereinafter, no Political Committee (excluding Candidate Political Committees) shall make, and no Candidate and/or no Candidate Campaign Committee shall accept, a Candidate Campaign Contribution, in excess of Ten Thousand Dollars (\$10,000.00).
- 2) **During a Calendar Year in which a Covered Election Is Not Held.**
- i) Candidates for Mayor may receive Candidate Campaign Contributions totaling no more than Two Hundred and Fifty Thousand Dollars (\$250,000.00) per year.
  - ii) Candidates for Auditor may receive Candidate Campaign Contributions totaling no more than One Hundred Thousand Dollars (\$100,000) per year.
  - ii. Candidates for City Council may receive Candidate Campaign Contributions totaling no more than One Hundred Thousand Dollars (\$100,000.00) per year.
- 3) **Post Election Intervals.**
- i) During the interval between the general election (or primary/special election, with respect to Candidates who were not nominated) and the end of the calendar year in which the election occurred, and in each calendar year thereafter, no Individual shall make total Post-Candidacy Contributions, including those contributions made to or through one or more Political Committees by such Individual, of more than Two Thousand Six Hundred Dollars (\$2,600.00).
  - ii) During the interval between the general election (or primary/special election, with respect to Candidates who were not nominated) and the end of the calendar year in which the general election occurred, and in each calendar year thereafter, no Organization shall make total Post-Candidacy Contributions, including those contributions made to or through one or more Political Committees by such Organization, of more than Ten Thousand Six Hundred Dollars (\$10,600.00).
- 4) **Pre-Candidacy Contributions.**

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- i) No Candidate or Candidate Political Committee 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.
  - ii) No Candidate or Candidate Campaign Committee may spend any excess Pre-Candidacy Contributions or excess Post-Candidacy Contributions for the purposes of:
    - a. Transition or inauguration expenses; or
    - b. Retiring debt that was incurred to influence the outcome of an already completed Covered Election, or cover transition or inauguration expenses related to an already completed Covered Election.
  - iii) A Pre-Candidacy Contribution made in the same calendar year that a person becomes a Candidate shall count toward those limitations on contributions set forth in the Code of Ethics as part of the Administrative Code, as amended.
- 5) **Candidate's Personal Resources.** The limitations imposed by the Code of Ethics as part of the Administrative Code, as amended shall not apply to contributions from a Candidate's personal resources to his or her Candidate Political Committee. However, if such contributions from a Candidate's personal resources shall exceed \$250,000.00 (regardless of the time period over which such contributions were made), then the contribution limits set forth in the Code of Ethics as part of the Administrative Code, as amended, for that City Elected Office, other than those listed above, shall double.
- 6) **Volunteer Labor.** The limitations imposed by this Section shall not apply to volunteer labor.
- 7) **Adjustments.**
- i) On January 1, 2016 and on every January 1 every four (4) years thereafter, the maximum contribution amounts set forth in section 1106 shall be adjusted, as follows: on the December 15 immediately preceding the adjustment, the City Administrative Services Director shall calculate the "CPI Multiplier" by dividing the average consumer price index for Reading, Pennsylvania during the then-current calendar year by the average consumer price index for Reading, Pennsylvania during the calendar year of 2011. To determine the average consumer price index for Reading, Pennsylvania, the City Administrative Services Director shall use the latest available figures for the Consumer Price Index for all Urban Consumers (CPI-U), Reading, Pennsylvania, as measured by the United States Department of Labor, Bureau of Labor Statistics. After calculating the CPI Multiplier, the City Administrative Services Director shall calculate the new maximum amounts as follows:
    - a. The maximum amount for purposes of Code Section 12 (1) (A) (i) shall equal \$2,500.00, multiplied by the CPI Multiplier, rounded to the nearest \$100.00.
    - b. The maximum amount for purposes of Code Section 12 (a) (A) (ii) shall equal \$10,000.00, multiplied by the CPI Multiplier, rounded to the nearest \$100.00.

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- ii. The City Administrative Services Director shall certify the new maximum amounts in writing to the Mayor, the City Auditor, the City Council President, and the City Clerk.

8) *Candidate Political Committees*

- i) A Candidate shall have no more than one (1) Candidate Political Committee and one (1) checking account for the City Elected Office sought, into which all Contributions and Post-Candidacy Contributions for that sought office shall be made, and out of which all expenditures for that sought office shall be made, including expenditures for retiring debt and for transition or inauguration to that office. If the Candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in these accounts shall not be used for the purpose of influencing the outcome of a Covered Election, or to retire debt that was incurred to influence the outcome of that Covered Election, or to cover transition or inauguration expenses.
- ii) Upon the formation of a Candidate Political Committee, the Candidate shall immediately file with the Board of Ethics a statement identifying:
  - a. The name and address of the committee;
  - b. The bank account information of the committee;
  - c. The treasurer of the committee; and
  - d. Any other information that the Board of Ethics may require.

c) *Enforcement; Injunctive Relief*

- i) The provisions of this Section shall be enforced by the City of Bethlehem Board of Ethics, in accordance with the Code of Ethics including but not limited to the complaint, investigation, restitution and penalties provisions thereof.
- ii) In addition to the provisions of the Code of Ethics, any person residing in the City of Bethlehem 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 Section in accordance with the Code of Ethics as part of the Administrative Code, as amended. The Court may award to a prevailing plaintiff in any such action his or her costs of litigation, including reasonable attorney's fees.

d) *Reporting Requirements.*

1) **Statement of Financial Interests.**

- i) Any City Employee or City Official must be in compliance with Code Section 4 ("Statement of Financial Interests") prior to filing any nomination papers or petitions for City Elected Office or publicly announcing his or her candidacy for City Elected Office.

2) **Campaign Finance Disclosure**

- i) Whenever a Candidate, treasurer of a Candidate Political Committee, or other representative of a Candidate Political Committee files a required report of receipts and expenditures with the Northampton County Board of Elections and/or Secretary of the

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Commonwealth as required by the Pennsylvania Election Code (25 P.S. §§3241, et seq.), or other applicable laws or regulations, such person shall at the same time file electronically with the Board of Ethics and the City Clerk of Bethlehem, a copy of all information set forth in such report(s), in that format mandated by the Board of Ethics. Such filing with the City Clerk 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. Campaign finance reports shall be filed electronically and made available on the city's website.

3) **Required Notice of Contribution Limits.**

i) The Board of Ethics shall, at least every six (6) months, arrange for publication in the newspaper with the largest circulation in the City and on the City website, a notice setting forth the contribution limits set forth in this Code together with a plain English explanation of the provisions of this Section and the penalties and remedies for violations thereof. Such notice shall remain posted and available for review on the City's website at all times.