

CITY OF BETHLEHEM

Inter-Office Memorandum

SUBJECT: Amending Article 117 – Officers and Employees to include Restriction on Acceptance of Gifts


TO: City Council Members

FROM: Bryan G. Callahan, Member of Council

DATE: July 28, 2017

Attached for Council's consideration is an Ordinance I am proposing to amend Article 117 titled Officers and Employees, to include restrictions on acceptance of gifts for elected officials and City employees. I plan to place this on the August 1, 2017 City Council agenda as a Communication.

Thank you.


Bryan G. Callahan
Member of Council

Attachment

cc: J. Spirk, Jr., Esq.
Mayor Donchez
George Yasso
Kaija Farber
William P. Leeson, Esq.
Warren Achey
Michael Alkhal

Edward Boscola
David Brong
Mark DiLuzio
Alicia Karner
Michelle Cichocki

BILL NO.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF BETHLEHEM,
COUNTIES OF LEHIGH AND NORTHAMPTON,
COMMONWEALTH OF PENNSYLVANIA, AMENDING ARTICLE 117
OF THE CODIFIED ORDINANCES OF
THE CITY OF BETHLEHEM TITLED
OFFICERS AND EMPLOYEES

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1 – That Article 117 of the Codified Ordinances of the City of Bethlehem, entitled “Officers and Employees”, as amended, shall be amended to include the following:

117.05 RESTRICTION ON ACCEPTANCE OF GIFTS

(a) PURPOSE

Every City employee is a public servant. Public servants must treat members of the public fairly and equitably. Receipt of money, favors, gifts, gratuities invitations, food, drink, loans, promises or other benefits (collectively and subsequently referred to in this section as “gifts”) offered to a public servant because of that person’s position, may create the appearance of a conflict of interest, if not an actual conflict of interest. Similarly, solicitation of gifts by a public servant in that person’s capacity as a public servant, for that person’s own benefit, likely establishes a conflict of interest.

Public servants, in performing their duties, must work for the benefit of the community as a whole, giving equal consideration to each member of the public, and doing so without giving special regard because of finances, political affiliations, gender, orientation, creed, or other categorization.

Conflicts of interest betray the trust of the public with its government and violate traditional notions of fair play and substantial justice.

(b) DEFINITIONS

“City employee.” Any individual receiving a salary or wages from the City of Bethlehem, or serving as a member of a City agency, Authority, Board, or Commission, and all elected and appointed officials of the City, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursements for personal expenses or to otherwise exercise the power of the City, and provided also it shall not include Boards, Authorities or Commissions that are not required to file a State of Financial Interest with the State Ethics Commission.

“Donor” is a person who makes or attempts to make a gift to a City Employee.

“Gift” is a payment, gratuity, discount, subscription, advance, forbearance, rendering, cash or a deposit of money, food or drink, services or anything of value given to, or for the benefit of, a city employee, or to a recipient designated by the employee, unless consideration of equal or greater value is received.

“Prohibited gifts” are gifts made when a reasonable person would infer there has been an actual or attempted effort to influence the employee in the discharge of that employee’s duties to benefit the donor or another party with treatment more favorable than accorded the public generally.

(c) GIFT RESTRICTION

- (1). City employees are prohibited from soliciting or accepting prohibited gifts as defined in Section 117.05 of this ordinance for which an exception does not apply.

(d) EXCEPTIONS

- (1). The Gift Restriction set by Section 117.05 of this ordinance does not apply, and gifts may be accepted, under the following circumstances:

(A) When a gift has a clear market value and is one that is also available for the public to purchase (e.g. concert or sporting event ticket; meal), the City employee may accept the gift provided the City employee pays its face value, publicly listed price or the fair market value if there is no fixed value for the gift.

(B) Gifts of food (cookies, candy, etc.) for consumption on the premises by City employees when the offer may not be reasonably interpreted as trying to influence the City employee to give more favorable treatment to the donor in the discharge of the City employee’s duties.

(C) From family members, business acquaintances and friends who are not seeking official action or business, and whose offer of the gifts may not be reasonably interpreted as trying to influence the City employee to give more favorable treatment to the donor in the discharge of the City employee’s duties.

(D) Promotional offers or discounts on goods or services when offered to all City employees may be accepted when such offer may not be reasonably interpreted as trying to influence the City employee to give more favorable treatment to the donor than is accorded the general public in the discharge of the City employee’s duties.

(E) Nominal, de minimis tokens of appreciation at public appearances may be accepted.

(F) Food or drink of nominal value supplied at business or informational meetings or at social events where it is available to all attendees (meaning nominal offerings commonly provided in the spirit of convenience, good will or hospitality) may be accepted when such offer may not be reasonably interpreted as an attempt to influence the City employee to give favorable treatment to the host, sponsor or supplier in the discharge of the City employee's duties.

(G) A political contribution otherwise reportable as required by law.

(H) A commercially reasonable loan made in the ordinary course of business.

(I) 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.

(J) 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, and also excludes canvassing and other non-professional time of volunteers.

(e) RETURN OF GIFTS

If the recipient does not pay consideration of equal or greater value for the gift, prohibited gifts shall be returned to the donor. When it is not practical to return a gift, the gift shall be delivered to the Controller who shall record the gift and the donor and donate the gift in the name of the City to a charity located in the City.

(f) DEBARMENT

The Mayor shall have the authority to debar a contractor, vendor, professional or other party deemed in the Mayor's or the Controller's judgment to have either attempted to influence or in fact influenced a City employee in the discharge of that employee's duties by providing or attempting to provide prohibited gifts.

(g) REVIEW COMMITTEE

The Administration shall create a committee to address questions regarding the application of these rules in particular situations. The Committee shall consist of the Chief of Staff, the Director of Human Resources and a representative of the Law Bureau,

or their equivalent positions, as well as such others as the Administration deems appropriate, if any.

(h) NON-EXCLUSIVE EFFECT

Section 117.05 of this ordinance shall not be interpreted to limit the City's powers with respect to any power authorized or matter regulated by this ordinance which is also authorized or regulated by statutes of the of the Commonwealth of Pennsylvania or another City ordinance not effectively repealed by enactment of this ordinance.

117.99 - INVESTIGATION, ENFORCEMENT, PENALTY

- (a) Any City Employee who violates any provision of Section 117.05 of this Ordinance shall be subject to citation, a fine up to but not to exceed \$1,000.00 and compelled return of a prohibited gift or the value thereof.
- (b) In addition to any other investigation, enforcement, and penalty provisions of state or city law, the City Controller shall have the authority to investigate alleged violations and to enforce the penalty provisions of Section 117.05 of this ordinance, and, for the purposes of hearing or investigation, shall have the authority to issue subpoenas in the name of the City and signed by the City Controller, and to compel testimony.
- (c) Where it is alleged that an employee under supervision of the Mayor or the Controller has violated Section 117.05 of this ordinance, the Controller shall defer and refer the matter to the Mayor for investigation and disciplinary action as the Mayor deems appropriate in lieu of a fine.
- (d) City Council shall investigate and enforce the penalty provisions of Section 117.05 of this ordinance - with no less than the powers granted the Controller - when there is an alleged violation of this ordinance by the Controller.
- (e) Investigatory information and materials shall remain confidential and not subject to disclosure as a public record. Results of investigations by the Controller or a committee of City Council shall be written to include factual findings, conclusions and recommendations which shall be subject to disclosure, redaction or non-disclosure in accordance with the Pennsylvania Right to Know Law.
- (f) Under circumstances where the either the City Solicitor or City Council Solicitor has or potentially may have a conflict, or when material testimony is likely to be required from a Solicitor, the other shall provide legal services and representation as needed by the City or City Council in matters involving alleged or proven violations of Section 117.05 of this ordinance.

(g) The Controller may also refer any matter for further investigation by appropriate authorities when he deems it in the public interest.

SECTION 2 – REPEALER

That all ordinances and sections thereof that are inconsistent with this Ordinance are hereby repealed.

Sponsored by _____

PASSED finally in Council on this day of , 2017.

President of Council

ATTEST:

City Clerk

This Ordinance approved this day of 2017.

Mayor