

Report on public hearing held November 15, 2023 by the
Philadelphia Board of Ethics regarding proposed
Regulation No. 5 “Conflicts of Interest”

Dated: December 22, 2023

/s/ J. Shane Creamer, Jr. Esq
Board of Ethics
J. Shane Creamer, Jr., Esq
Executive Director

Dated: December 22 , 2023

/s/ Reynelle Staley, Esq.
Law Department
Reynelle Staley
Senior Attorney
Legislative & Legal Counsel Unit

A. Legal Authority

The Board of Ethics (hereinafter “the Board”) was created by an amendment to the Philadelphia Home Rule Charter approved by voters via a ballot question in May 2006. *See* Philadelphia Home Rule Charter §§ 3-806 and 4-1100. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, such as conflicts of interest, financial disclosure, standards of governmental conduct, campaign finance, political activity, and such additional duties as City Council may assign. The Board also has the power to promulgate regulations as necessary to implement and interpret the laws over which it has jurisdiction. *See* Philadelphia Home Rule Charter § 8-407 (conferring rulemaking authority).

The Board has jurisdiction over laws pertaining to conflicts of interest of City officers and employees under the City Code:

- § 20-607(1) and (2) set forth what constitutes a conflict of interest requiring disclosure and disqualification by a City officer or employee;
- § 20-602(5) requires disclosure and disqualification where a member of a for-profit business of which the City officer or employee is also a member represents another in a matter in which the City officer or employee has some official role;
- § 20-608 sets forth the requirements and process for public disclosure and disqualification by a City officer or employee who has a conflict of interest; and
- § 20-607(3) restricts City officers and employees from obtaining a financial interest in certain official actions until two years have passed since the end of their City service.

B. Procedural Summary

The Board followed the procedures set forth in Home Rule Charter § 8-407 when promulgating Board Regulation No. 5 (Conflicts of Interest). On October 18, 2023, the Board voted to approve the posting of proposed Regulation No. 5 at the Department of Records. The Law Department approved proposed Regulation No. 5 for public comment posting and, on October 20, 2023, the Board filed the proposed regulation with the Department of Records. The Board scheduled a hearing on the proposed regulation for November 15, 2023, notice of which was advertised in local newspapers and posted prominently on the Board’s website and X (formerly known as Twitter) account.

Through this report on the November 15, 2023 hearing, the Board modifies proposed Regulation No. 5, and adopts it as modified. A clean copy of the regulation is attached as Exhibit 1 and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made as a result of the hearing to

the regulation as posted for public comment at the Records Department, and as approved by the Board through this Report, is attached as Exhibit 2.

C. The November 15, 2023 Hearing

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Brian McCormick and Board members Sanjuanita González and Ellen Mattleman Kaplan. The hearing transcript is attached as Exhibit 3. The proposed regulation as posted for public comment at the Department of Records is included in Exhibit 3 as Exhibit A to the hearing transcript. The following witnesses provided testimony: Jordana Greenwald, on behalf of Board staff, and Krystle Baker, the City's Deputy Chief Integrity Officer. Ms. Baker provided written material accompanying her testimony that is attached to the hearing transcript as Exhibit C. The Board also received written testimony from Lauren Cristella, Chief Executive Officer of the Committee of Seventy, which is attached to the hearing transcript as Exhibit D.

D. Summary of Hearing Testimony and Board Responses Thereto

1. Testimony of Jordana Greenwald, on behalf of Board staff

Ms. Greenwald testified that in response to discussions with other City offices and amongst Board staff, Board staff recommended changes to the version of proposed Regulation No. 5 approved for public comment. Ms. Greenwald offered a markup of the version of proposed Regulation No. 5 approved for public comment that showed the recommended changes including typographical edits. It was duly entered into the record as Exhibit B to the hearing transcript.

a. Ms. Greenwald testified that Board staff proposed replacing the term “business” with “economic opportunities” throughout the regulation where it is used to refer not to a business entity, but instead to potential income or a potential financial opportunity. Ms. Greenwald explained that this change would make the use of “business” consistent with the regulatory definition of that term.

Board Response

The Board agrees with the changes proposed by Board staff as memorialized in the markup attached as Exhibit B to the hearing transcript. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

b. Ms. Greenwald outlined several changes proposed by Board staff to Subpart C, which deals with financial interests that can result in a conflict. Board staff proposed changing the title of Subpart C to clarify that it relates specifically to the financial interests of City officers and employees. Board staff also proposed slight changes to the language of Subpart C. These changes would clarify that financial

interests under Subpart C are distinct from the financial interests of for-profit businesses or others that may be impacted by official action.

Board Response

The Board agrees with the changes proposed by Board staff as memorialized in the markup attached as Exhibit B to the hearing transcript, except that the Board removes the word “generally” from the title of Paragraph 5.11. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

c. Ms. Greenwald testified that Board staff proposed additional examples in Subpart D, relating to official action, to illustrate activities that would be considered ministerial or non-ministerial.

Board Response

The Board agrees with the changes proposed by Board staff as memorialized in the markup attached as Exhibit B to the hearing transcript. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

d. Ms. Greenwald explained Board staff’s proposed revisions to Subpart E, relating to disqualification. Ms. Greenwald highlighted Board staff’s recommendation to divide Paragraph 5.12 into three separate paragraphs, each focused on a specific type of relationship that constitutes a financial interest. Specifically, the three paragraphs would cover employment relationships, independent contractor relationships, and non-employee membership in for-profit businesses. Ms. Greenwald testified that throughout these three new paragraphs, Board staff recommended changes to clarify that the items listed in the subparagraphs are not factors, but types of actions that would be prohibited.

In addition to the reorganization of Subpart E, Board staff recommended new examples illustrating prohibited and permissible interactions with potential employers, as well as a note regarding the potential application of the State Ethics Act to conflicts of interest as to prospective employers.

Board Response

The Board agrees with the changes proposed by Board staff as memorialized in the markup attached as Exhibit B to the hearing transcript. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

e. Ms. Greenwald described changes recommended by Board staff to Subpart G, which addresses financial interests in past official actions. These changes were designed to clarify that Subpart G generally does not apply to interests held by family members.

Board Response

The Board agrees that Subpart G should be clarified but finds the changes to new Paragraph 5.26 (formerly Paragraph 5.24) sufficient. The Board will leave the language of new Paragraph 5.27 (formerly Paragraph 5.25) as it appears in the version posted for public comment. The changes to new Paragraph 5.26 (formerly Paragraph 5.24) have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

2. Testimony of Krystle Baker, Deputy Chief Integrity Officer, City of Philadelphia

a. Ms. Baker testified that the Office of the Chief Integrity Officer requested that the Board add examples to the regulation regarding what acts are ministerial, what interaction with a potential employer would require disclosure and disqualification, and the scope of disqualification. Ms. Baker noted that the changes proposed by Board staff through Ms. Greenwald's testimony included examples regarding ministerial acts and prospective employers. With respect to the scope of disqualification, Ms. Baker requested an example to address conflicts of interest arising in the contract selection process. Specifically, Ms. Baker asked that an example be added to clarify whether an employee with a conflict of interest would be disqualified from reviewing a particular application or must be removed from the entire contracting process.

Board Response

The Board agrees with the recommendation to add examples regarding ministerial acts and prospective employers and adopts Board staff's proposed changes to that effect. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

With respect to an example addressing contract selection, the Board appreciates the concern about this specific scenario but believes that while educational, such an example is not well-suited for inclusion as an example to a specific paragraph or subparagraph in the regulation. The Board expects to include such an example in future educational or training materials where it can illustrate several aspects of the conflicts of interest rules.

b. Ms. Baker testified that the current form letter for disclosure and disqualification has a technical issue that makes it difficult to identify the official actions from which they are disqualified. Ms. Baker asked that Board staff update the PDF form to address this issue.

Board Response

The Board agrees that the disclosure and disqualification form letter should be user-friendly and directs Board staff to update the disclosure and disqualification form letter to

conform to the requirements of this regulation and address any technical issues.

3. Written Testimony of Lauren Cristella, Chief Executive Officer, Committee of Seventy

Ms. Cristella's written testimony noted the Committee of Seventy's appreciation of the Board's work on a proposed conflicts of interest regulation. Ms. Cristella notes the Committee of Seventy's desire for further examination of the underlying City law to ensure that it is effective, is not overly burdensome, and does not have unintended consequences that need to be mitigated. Ms. Cristella reiterated the importance of a robust ethics scheme to promoting public trust and to establishing clear expectations for City officials and those who wish to do business with the City. Ms. Cristella stated that the Committee of Seventy supports the proposed regulation and hopes that it is the beginning of a larger conversation around updating the City's ethics laws.

Board Response

The Board agrees that the underlying City law on conflicts of interest should be reviewed, and updates considered. The Board appreciates the Committee of Seventy's support for its efforts to improve understanding and compliance with existing law through this regulation.

E. Approval

At a public meeting on December 20, 2023, the Board voted 5-0 to approve Regulation No. 5 as modified and to approve this Hearing Report. The Regulation as approved is attached as Exhibit 1.

Hearing Report

re: Regulation No. 5 (Conflicts of Interest)

Exhibit 1

**Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023**

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 5

CONFLICTS OF INTEREST

Table of Contents

Subpart A.	Scope; Definitions.....	2
Subpart B.	Identifying and Resolving Conflicts of Interest.....	4
Subpart C.	Financial Interest.....	4
Subpart D.	Official Action.....	6
Subpart E.	Disqualification.....	6
Subpart F.	Disclosure.....	11
Subpart G.	Past Official Actions.....	15
Subpart H.	Penalties.....	15

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

SUBPART A. SCOPE; DEFINITIONS.

5.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of The Philadelphia Code Sections 20-607, 20-608, and 20-602(5). To the extent this Regulation references, but does not incorporate, prohibitions or requirements of the State Ethics Act, 65 Pa. C.S. §1101, et seq., such references (in bracketed, italicized text) are for educational purposes only and do not confer any new authority on the Board to enforce State law. The examples and lists provided in this Regulation are for illustration and are not exhaustive.

5.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Board.** Board of Ethics.
- b. Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or legal entity organized for profit, including nonprofits and limited liability companies, but not including a government entity or City-related nonprofit.
- c. City.** City of Philadelphia.
- d. City board or commission.** Any City board or commission, without regard to the body's title (including a body denoted as a board, commission, council, committee, task force, working group, panel, or other similar designation), established by the City's Home Rule Charter, ordinance, or Executive Order.
- e. City officer or employee.** Any person who is elected or appointed to a position in any branch of the government of the City including:
 - 1. elected City officials;
 - 2. employees of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay;
 - 3. members of City boards and commissions;
 - 4. individuals appointed or assigned to any City position, whether paid or unpaid, that exercises significant powers of government.
- f. City-related nonprofit.** Any not-for-profit entity established by the City through administrative or legislative action, such as the Delaware River Waterfront Corporation, Community Behavioral Health, the Philadelphia Housing Development Corporation, and the Philadelphia Industrial Development Corporation.
- g. City resources.** All real and personal property, facilities, equipment, supplies, and services that are owned, purchased, or leased by the City.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

- h. Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.
 - i. Final action.** As to an individual, any approval, denial, disposition, or decision that typically concludes that individual's authority over or consideration of a matter. As to a board, commission, or other body, any approval, denial, disposition, collective positive or negative consensus, or other determination, whether by vote or otherwise, that concludes the body's authority over or consideration of a matter.
 - j. Financial interest.** An interest involving money or its equivalent or an interest involving any right, power, or privilege that has economic value, including interests in property or investments. See Subpart C for further details of the types and scope of financial interests covered by this Regulation.
 - k. Government entity.** Any agency, office, department, board, commission, authority, or other entity that is part of the United States or a State, local, or foreign government.
 - l. Legislation.** Bills, resolutions, amendments, and nominations pending or proposed in City Council, and any other matter that may become the subject of action by City Council.
 - m. Life partner.** An individual who has a long-term committed relationship with another individual of any gender.
 - n. Member of a for-profit business.** An officer, director, partner, manager, board member, trustee, owner, operator, or employee of a for-profit business.
 - o. Ministerial.** Requiring a prescribed response when faced with a specific set of facts.
 - p. Official action.** An act or omission taken by an officer or employee in their official capacity that requires discretion and is not ministerial in nature, including any non-ministerial act or omission by a City officer or employee in the course of discharging their City duties, using their City position or title, or using City resources available by virtue of their City position. See Subpart D for further details of the types and scope of official actions covered by this Regulation.
 - q. Person.** A business, individual, corporation, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons, including nonprofits and limited liability companies.
- 5.2 Applicability.** Except where expressly indicated otherwise, the provisions of this Regulation apply to all officers and employees of the City.

**Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023**

SUBPART B. IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST.¹

5.3 A conflict of interest arises under City law when a City officer or employee can take official action that would affect a financial interest of:

- a. the City officer or employee;
- b. a family member of the City officer or employee; or
- c. a for-profit business of which the City officer or employee is a member.

[Conflicts of interest also arise under State law under the circumstances listed above. Additionally, a conflict of interest arises under State law when a public official or public employee, as defined by the State Ethics Act, 65 Pa. C.S. §1101, et seq., can take official action that would financially benefit a nonprofit of which they, or an immediate family member (parent, child, spouse, or sibling), are an officer, director, or employee.]

5.4 A City officer or employee who has a conflict of interest:

- a. is disqualified from certain official actions as set forth in Subpart E; and
- b. shall disclose the conflict of interest as required by Subpart F.

SUBPART C. FINANCIAL INTERESTS OF CITY OFFICERS AND EMPLOYEES.

5.5 A City officer or employee has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or economic opportunities. Where a City officer or employee has a financial interest as described below, they may have a conflict of interest that requires disclosure and disqualification under Subparts E and F.²

- a. **Personal financial interest.** A personal financial interest is one held, in full or in part, by a City officer or employee, including:
 - 1. a contract to provide goods or services;
 - 2. employment by a nonprofit;
 - 3. ownership of real property;
 - 4. investment income; or
 - 5. freelance or gig work.

¹ Certain financial interests in City contracts are prohibited under Charter Sections 10-100 and 10-102. Those restrictions are not addressed in this Regulation.

² The scope of financial interests described in Subpart C is specific to conflicts of interest. A different range of financial interests are subject to restriction or disclosure under other City or State ethics rules.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

b. Financial interest of family members. A financial interest held by any of the following family members:

1. Spouse;
2. Sibling;
3. Child;
4. Parent;
5. Life partner; or
6. Like in-law (e.g., parent-in-law), including any individual who is a sibling, child, or parent of a life partner.

c. Member of a for-profit business. A City officer or employee has a financial interest in any for-profit business of which they are a member, including as a(n):

1. Officer;
2. Director;
3. Partner;
4. Manager;
5. Board member;
6. Trustee;
7. Owner;
8. Operator; or
9. Employee.

An independent contractor of a for-profit business is not a member of a for-profit business but has a personal financial interest in such business under Paragraph 5.5(a).

5.6 Interests held by others for the benefit of a City officer or employee. A financial interest held by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if held directly by that officer or employee.

5.7 Past financial interests not covered. This Regulation does not apply to past financial interests absent some ongoing financial relationship or obligation.

Example for Paragraph 5.7

Several years prior to becoming a member of the Historical Commission, Abigail Ballot was retained by Calvin Delegate to provide a letter of technical support for the proposed designation of Hogwarts as a historic building. At the time, Ms. Ballot was a principal in SPEW Consulting and submitted her letter on SPEW letterhead. Ms. Ballot left SPEW several months before joining the Historical Commission. Neither Ms. Ballot nor her new employer have a financial relationship with Mr. Delegate. Because there is no current financial relationship, Ms. Ballot does not have a financial interest that could give rise to a conflict of interest.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

SUBPART D. OFFICIAL ACTION.

5.8 Official action. For the purpose of this Regulation, official action includes any non-ministerial act or omission by a City officer or employee:

- a. In the course of discharging their duties as a City officer or employee; or
- b. Using their City position or title, or City resources available by virtue of their City position (whether or not authorized).

As defined in Paragraph 5.1(o), an act is ministerial if a prescribed response is required when faced with a specific set of facts.

Examples for Paragraph 5.8

1) Mikayla Nominee is an investigator in the City's Department of Labor tasked with evaluating whether an employer complied with the City's fair workweek requirements. Because the employer failed to maintain clear records of employees' schedules, Ms. Nominee must reconstruct the schedules through interviews and transaction logs. Ms. Nominee's investigative work requires the exercise of discretion and is non-ministerial.

2) Oakley Precinct is a clerk in the Department of Revenue who is responsible for processing tax payments. Revenue's procedures require that Mx. Precinct accepts payment via check so long as the check is signed and the amount, account number, and bank routing number are legible. Mx. Precinct's acceptance of a check that meets these criteria is ministerial.

5.9 Not limited to final action. Official action includes not only a final action, but also any discussion, review, deliberation, consideration, analysis, or recommendation. Official action can occur even in the absence of a final action.

5.10 Omissions presumed non-ministerial. An omission is presumed to be non-ministerial unless:

- a. the omitted act, if taken, would have been ministerial, and
- b. the omission was inadvertent.

SUBPART E. DISQUALIFICATION.

5.11 Disqualification; official action prohibited. No City officer or employee shall take official action if the officer or employee knows, or should know, that such official action will affect a financial interest identified in Subpart C.

5.12 Scope of disqualification; employment relationships. For the employment relationships listed below, the scope of official actions from which a City officer or employee is disqualified depends on the type of employment relationships affected as follows:

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

- a. For-profit employment.** A City officer or employee who is an employee of a for-profit business is disqualified from any official action that would affect any financial interest of such business. Examples of prohibited official actions include any official action that:
1. affects the for-profit business' profits, assets, or future economic opportunities;
 2. affects the financial interests of clients of the for-profit business;
 3. involves fellow members of the for-profit business acting on behalf of the business or its clients; or
 4. involves a matter in which a fellow member of the for-profit business represents any person as an agent or attorney.
- b. Future employment.** A City officer or employee who applies for or is offered non-City employment is disqualified from any official action that would affect the financial interests of such prospective employer. Disqualification is required until an application is rejected or a pending offer is declined or rescinded.

[Note that State Ethics Commission has opined that a conflict may arise where a public employee or public officer reasonably anticipates pursuing future employment. See, e.g., State Ethics Comm'n Confidential Advice No. 11-514.]

- c. Nonprofit employment.** A City officer or employee who is an employee of a nonprofit is disqualified from any official action that would affect their employment by the nonprofit, including any official action that would affect:
1. the nonprofit employer's ability to pay the City officer or employee;
 2. the value of the compensation or benefits provided; or
 3. the willingness to hire or retain the City officer or employee.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

- d. Employment of family members.** Where the financial interest at issue is the employment of a family member, the City officer or employee is disqualified from any official action that would affect the employment of their family member, including any official action that would affect:

1. the employer's ability to pay the family member;
2. the value of the compensation or benefits provided; or
3. the willingness to hire or retain the family member.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

Examples for Paragraph 5.12(b)

1a) Shonda Tally is a project manager with the Department of Aviation. She is considering a move to the private sector but wants to know more before applying for any positions. A manager with BuildCo, a firm she deals with regularly in her City position, offers her an informational interview to help evaluate her options. The informational interview is not a job application or offer and does not require disqualification or disclosure.

b) Ms. Tally decides to apply for a recently posted position with ConstruX, a firm that is the general contractor on the Terminal Z project Ms. Tally manages. As project manager, Ms. Tally reviews all work performed by ConstruX on Terminal Z. ConstruX only gets paid if Ms. Tally signs off on their work and invoices. Once Ms. Tally submits an application to ConstruX, she has a conflict of interest and is disqualified from any official action that would affect the financial interests of ConstruX, including oversight of the Terminal Z project.

5.13 Scope of disqualification; independent contractors. For the independent contractor arrangements listed below, the scope of official actions from which a City officer or employee is disqualified is as follows:

- a. City officers or employees as independent contractors.** A City officer or employee who is an independent contractor is disqualified from any official action that would affect their relationship with any business with which they have a contract, including any official action that would affect:
 1. the contracting business' ability to pay the City officer or employee;
 2. the value of the compensation or benefits provided by the contracting business;
 3. the willingness to continue the contractual relationship; or
 4. the opportunity for future contracts.
- b. Family members as independent contractors.** Where the financial interest at issue is a family member who works as an independent contractor, the City officer or employee is disqualified from any official action that would affect the family member's relationship with any business with which they have a contract, including any official action that would affect:
 1. the contracting business' ability to pay the family member;
 2. the value of the compensation or benefits provided by the contracting business;
 3. the willingness to continue the contractual relationship; or
 4. the opportunity for future contracts.

5.14 Scope of disqualification; non-employment membership in a for-profit business. Where the financial interest at issue is membership in a for-profit business other than as an employee (*see* Paragraph 5.5(c)), the scope of official actions from which a City officer or employee is disqualified depends on whether they or a family member are affiliated with the for-profit business as follows:

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

- a. Non-employee members of a for-profit business.** A City officer or employee who is a non-employee member of a for-profit business is disqualified from any official action that would affect any financial interest of such business. Examples of prohibited official actions include any official action that could be reasonably expected to:
1. affects the for-profit business' profits, assets, or future economic opportunities;
 2. affects the financial interests of clients of the for-profit business;
 3. involves fellow members of the for-profit business acting on behalf of the business or its clients; or
 4. involves a matter in which a fellow member of the for-profit business represents any person as an agent or attorney.
- b. Family members as non-employee members of a for-profit business.** Where the financial interest at issue is a family member's non-employment interest in a for-profit business, the City officer or employee is disqualified from any official action that would affect the financial interest of their family member, including any official action that would affect:
1. the business' ability to pay the family member;
 2. the value of the compensation or benefits provided by the business to the family member;
 3. the willingness to continue the membership relationship with the family member; or
 4. future economic opportunities of the for-profit business.

This threshold may also be met if the official action would have a significant and substantial impact on the business.

[Nonprofit affiliation. In addition to the disqualification required by this subpart, any public employee or public official as defined by the State Ethics Act must also recuse themselves from any use of their City authority that would financially benefit a nonprofit of which they, or an immediate family member, are an officer, director, or employee or in which they otherwise have a financial interest.]

5.15 Delegating prohibited official action. Where a City officer or employee is disqualified from taking official action under this subpart, the responsibility or authority for such official action shall not be reallocated or reassigned by the disqualified officer or employee to a subordinate. Delegation of prohibited official action may be accomplished by:

- a.** A superior officer or employee; or
- b.** A pre-existing policy that specifies how and by whom such reallocation or reassignment shall be accomplished, so long as the responsibility or authority for taking such official action is not reallocated or reassigned to a subordinate of the disqualified City officer or employee.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

5.16 Exceptions to disqualification.

a. Matters of general application. A City officer or employee may take official action with respect to a matter of general application even if such official action will affect a financial interest listed in Paragraph 5.5. A matter is of general application if:

1. it affects the financial interest of the general public or a substantial segment thereof in a manner substantially similar to that in which it affects the financial interest of the City officer or employee; and
2. the impact of the matter on the financial interest of the City officer or employee is substantially proportionate to its impact on the financial interests of members of the general public or members of the relevant segment thereof.

The scope or nature of the relevant segment of the public may change over the course of the legislative, regulatory, or other decision-making process if the scope or nature of the matter under consideration changes.

b. Actions necessary for compliance. Discussions and correspondence necessary to identify the conflict, determine the scope of disqualification, and effectuate such disqualification are permitted.

Examples for Paragraph 5.16(a)

1) Ezra Form is a manager with Parks and Recreation who has three school-age children. He is asked to write a grant to fund expanded after-school programming at City rec centers. Mr. Form and his husband could save a lot of money on after-school childcare if more seats were available. While Mr. Form has a financial interest in the expansion of after-school programs, his interest is affected in the same manner as any other City resident with school-age children (who collectively are a substantial segment of the general public). Thus, Mr. Form is not disqualified from serving on the working group.

2) In addition to serving as a legislative aide to a Councilmember, Georgina House owns six bowling alleys in the City. Fifteen operators control approximately 80% of City bowling alleys.

a) After a highly publicized brawl outside a bowling alley in Camden, Ms. House's Councilmember asks her to draft a bill that would require bowling alleys to provide private security patrols during certain operating hours. The cost of private security officers would increase operating costs for all bowling alleys in the City. Ms. House has a financial interest in legislation that would increase the operating cost of the for-profit businesses she owns. Because the bowling industry in the City is concentrated in a small number of owners and operators, the segment of the population affected by the legislation is not substantial and therefore the matter is not of general application. As a result, Ms. House is disqualified from working on the bowling alley legislation and must disclose her conflict of interest as required by Subpart F.

b) To combat a difficult economic climate, Council is considering a year-long moratorium on the business privilege tax. Ms. House's Councilmember asks her to review the proposal and make recommendations as to how the Councilmember should vote. While Ms. House has a financial interest in a tax break for businesses, her interest is the same as that of any

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

of the many thousands of business owners in the City. Because the proposed tax moratorium would affect Ms. House's interest similarly to a substantial segment of the population, Ms. House is not disqualified from working on the legislation.

3) Ira Jacket is a Deputy Health Commissioner. He is also an entrepreneur who has invested in a variety of industries, including nail salons. After several news stories regarding workplace and consumer safety concerns around UV nail lamps, Council is considering a bill to require additional safety certifications for all nail salons in the City where UV nail lamps are used. The Health Commissioner was invited to present testimony at the committee hearing and has asked for Mr. Jacket's assistance in preparing her testimony.

Mr. Jacket owns 250 nail salons in the City. All of those salons use UV lamps, meaning all locations would need to be certified. There are 2,500 nail salons in the City. There are 2,000 nail salon owners, with most owners having an interest in only one or two salons. The next largest owner has six nail salons.

Although the proposed legislation would impact all nail salon owners in a similar manner – each would need to bear the cost of both time and money to obtain a certification – it has a disproportionate impact on Mr. Jacket as compared to the universe of nail salon owners because he controls a much larger share of the market as compared to most other owners. As a result, Mr. Jacket is disqualified from participating in the Health Department's preparation of testimony or recommendations regarding the proposed ordinance.

5.17 Compatibility with City position to be determined by the appointing authority. In some cases, disqualification required by this subpart may make it impractical or even impossible for the City officer or employee to carry out the essential functions of their City role. Although the scope of disqualification required for a particular matter is for the Board to determine, it is left to the relevant appointing authority to evaluate whether such disqualification is compatible with continued employment or service.

SUBPART F. DISCLOSURE.

5.18 Required disclosures. A City officer or employee who can take official action that would affect a financial interest described in Subpart C shall disclose the conflict of interest as set forth in this subpart.

5.19 Content of disclosures. Whether submitted in writing or entered into the record of a public meeting or hearing, disclosures made pursuant to this subpart shall include all of the following information:

- a. Full name of the City officer or employee making the disclosures;
- b. City title(s);
- c. If the financial interest is through a family member, the full name of the family member(s);
- d. Brief description of the nature and extent of the financial interest;

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

- e. Brief description of the official actions from which the City officer or employee is disqualified; and
- f. Effective date of disqualification if before the date of disclosure.

5.20 Disclosure of legislative conflicts of interest by Councilmembers. Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when the Councilmember knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

- 1. **When:** At the public hearing on that legislation before any committee of Council (including the Committee of the Whole), regardless of whether the Councilmember serves on the committee holding the hearing.
- 2. **How:** By making a statement on the record consistent with Paragraph 5.19. Such statement shall be made part of the official hearing transcript.

b. After the public hearing but more than five days before the legislation is to be acted upon by Council:

- 1. **When:** No less than five days before the meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service as described in Paragraph 5.23 to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the presiding officer of Council at the time legislation is called up for consideration shall read the written statement into the public record of the Council meeting.

c. Less than five days before legislation is to be acted upon by Council:

- 1. **When:** At the public meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By making a statement on the record consistent with Paragraph 5.19. Such statement shall be made part of the official meeting transcript.

d. Absence. If the Councilmember is absent from a hearing or meeting at which disclosure on the record are required by:

- 1. **Paragraph 5.20(a) or 5.20(c),** the Councilmember shall either send a designee to make the required disclosures on the record on their behalf or shall submit a written disclosure consistent with Paragraph 5.19 to the presiding officer to be read into the official record of the hearing or meeting.
- 2. **Paragraph 5.20(b),** the Councilmember must still submit the written disclosure as required by Paragraph 5.20(b)(2) and the presiding officer shall read such disclosure into the record regardless of whether the Councilmember is in attendance.

Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023

- e. **Non-participation.** Whether the Councilmember participates in consideration of the legislation in a hearing or meeting shall have no effect on their duty to comply with the disclosures required by this subpart.
- f. **Disqualification required upon knowledge of interest.** Regardless of when disclosed, once a Councilmember knows, or should know, of a financial interest in legislation, the Councilmember shall not take any official action regarding that legislation beyond the disclosures required by this subpart or permitted by Paragraph 5.16(b).

5.21 Disclosure of legislative conflicts of interest by other City officers and employees.

Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when a City officer or employee (other than a Councilmember) knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

- 1. **When:** No less than five days before the scheduled public hearing.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the written statement shall be made a part of the official record of the hearing.

b. After the public hearing:

- 1. **When:** Before the meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.

5.22 Disclosure of non-legislative conflicts of interest. Any City officer or employee who knows, or should know, that they have a financial interest in any official action other than legislation shall disclose such interest in a written statement consistent with Paragraph 5.19.

a. Submission of disclosures. All disclosures made under this paragraph shall be submitted via tracked delivery service as described in Paragraph 5.23.

- 1. **Heads of City departments.** A department head shall submit disclosures made under this paragraph to the following:
 - i. Mayor;
 - ii. Managing Director;
 - iii. Board of Ethics; and
 - iv. Department of Records.

**Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023**

2. Other City officers and employees.³ All other City officers and employees shall submit disclosures made under this paragraph to the following:

- i. Head of the City officer or employee's City department, agency, board, or commission;
- ii. Board of Ethics; and
- iii. Department of Records.

b. Timing of disclosures. Disclosures made after the City officer or employee has taken official action from which they were disqualified do not cure any violation of this Regulation arising from such official action.

c. Recordkeeping. The Department of Records shall be the custodian of records for all disclosures made under this paragraph and shall maintain a public record of all such submissions.

[Non-legislative voting conflicts. In addition to the written disclosures required by this subpart, any public employee or public official as defined by the State Ethics Act must also comply with Section 1103(j) of the State Ethics Act, 65 Pa. C.S. §1101, et seq., regarding voting conflicts.]

5.23 Delivery methods.

a. Tracked delivery services. Delivery methods must provide tracking, delivery confirmation, or other proof of the date sent and date delivered.

b. Date of submission. For disclosures sent via certified or registered U.S. mail, other than for disclosures by Councilmembers under Paragraph 5.20(b)(2), the date of submission shall be the date of mailing. For disclosures by Councilmembers under Paragraph 5.20(b)(2), or where a method other than certified or registered U.S. mail is selected, the date of submission shall be the date of delivery.

c. Email submissions. Where disclosure via tracked delivery service is required under this subpart, submission exclusively via email shall not fulfill the disclosure requirements. If, however, a City officer or employee submits disclosures by both email and tracked delivery service, the date of any email delivery receipt or acknowledgement from the recipient (whichever is earlier) shall be considered the date of disclosure for purposes of evaluating whether the submission was timely.

5.24 Statement of Financial Interests not affected. City officers and employees required to make disclosures under this subpart may also be required to file a Statement of Financial Interests under Code Section 20-610. Disclosures made pursuant to this subpart do not fulfill the requirements of Section 20-610.

³ A form letter for submitting disclosures under Paragraph 5.20(a)(2), including mailing addresses for the Board of Ethics and Department of Records, is available at ethics.pub/DnD.

**Exhibit 1 to Regulation No. 5 Hearing Report
Final Regulation as Approved by the Board on December 20, 2023**

SUBPART G. PAST OFFICIAL ACTIONS.

5.25 No financial interest in past official action. After a final action, no City officer or employee shall obtain a financial interest in any official action they took as part of or related to that final action:

- a. during their City service or employment; and
- b. for two years after the end of such service or employment.

This paragraph shall apply regardless of who took or was responsible for taking the final action.

Example for Paragraph 5.25

Kasey Ladder works in the Mayor's office supervising volunteer service programs. She is part of a team that selects a vendor for volunteer management software. The vendor is so impressed by Ms. Ladder's technical knowledge that they offer her a part-time position working on their contract with the City. Ms. Ladder cannot accept that position as a second job while working for the City. She also cannot accept that position as post-City employment for the first two years after she leaves her City job. She may, however, be able to accept a different position with the same vendor that is unrelated to a City contract.

5.26 Covered financial interests. This subpart applies only to:

- a. personal financial interests as described in Paragraph 5.5(a); and
- b. membership in a for-profit business as described in Paragraph 5.5(c).

5.27 Interests obtained by others for the benefit of a City officer or employee. A financial interest obtained by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if obtained directly by that officer or employee.

SUBPART H. PENALTIES.

5.28 An officer or employee of the City who violates any of the restrictions set forth in this Regulation shall be subject to a civil penalty of up to \$2,000 for each such violation.

In determining the appropriate amount of monetary penalty, the Board may consider both mitigating and aggravating factors.

Mitigating factors that the Board may consider include: (i) a good faith effort to comply with the law; (ii) prompt corrective action; and (iii) prompt self-reporting to the Board of Ethics.

Aggravating factors that the Board may consider include whether the violator: (i) acted knowingly; (ii) is a repeat offender; or (iii) obstructed the investigation of the Board of Ethics.

Approved for public comment by Board: October 18, 2023

Posted for public comment by Records: October 20, 2023

Hearing held: November 15, 2023

Adopted by Board: December 20, 2023

Effective:

Hearing Report

re: Regulation No. 5 (Conflicts of Interest)

Exhibit 2

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 5

CONFLICTS OF INTEREST

Table of Contents

Subpart A.	Scope; Definitions.....	2
Subpart B.	Identifying and Resolving Conflicts of Interest.....	4
Subpart C.	Financial Interest.....	4
Subpart D.	Official Action.....	6
Subpart E.	Disqualification.....	6
Subpart F.	Disclosure.....	10 <u>11</u>
Subpart G.	Past Official Actions.....	14 <u>15</u>
Subpart H.	Penalties.....	14 <u>15</u>

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

SUBPART A. SCOPE; DEFINITIONS.

5.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of The Philadelphia Code Sections 20-607, 20-608, and 20-602(5). To the extent this Regulation references, but does not incorporate, prohibitions or requirements of the State Ethics Act, 65 Pa. C.S. §1101, et seq., such references (in bracketed, italicized text) are for educational purposes only and do not confer any new authority on the Board to enforce State law. The examples and lists provided in this Regulation are for illustration and are not exhaustive.

5.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Board.** Board of Ethics.
- b. Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or legal entity organized for profit, including nonprofits and limited liability companies, but not including a government entity or City-related nonprofit.
- c. City.** City of Philadelphia.
- d. City board or commission.** Any City board or commission, without regard to the body's title (including a body denoted as a board, commission, council, committee, task force, working group, panel, or other similar designation), established by the City's Home Rule Charter, ordinance, or Executive Order.
- e. City officer or employee.** Any person who is elected or appointed to a position in any branch of the government of the City including:
 - 1. elected City officials;
 - 2. employees of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay;
 - 3. members of City boards and commissions;
 - 4. individuals appointed or assigned to any City position, whether paid or unpaid, that exercises significant powers of government.
- f. City-related nonprofit.** Any not-for-profit entity established by the City through administrative or legislative action, such as the Delaware River Waterfront Corporation, Community Behavioral Health, the Philadelphia Housing Development Corporation, and the Philadelphia Industrial Development Corporation.
- g. City resources.** All real and personal property, facilities, equipment, supplies, and services that are owned, purchased, or leased by the City.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

- h. Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.
- i. Final action.** As to an individual, any approval, denial, disposition, or decision that typically concludes that individual's authority over or consideration of a matter. As to a board, commission, or other body, any approval, denial, disposition, collective positive or negative consensus, or other determination, whether by vote or otherwise, that concludes the body's authority over or consideration of a matter.
- j. Financial interest.** An interest involving money or its equivalent or an interest involving any right, power, or privilege that has economic value, including interests in property or investments. See Subpart C for further details of the types and scope of financial interests covered by this Regulation.
- k. Government entity.** Any agency, office, department, board, commission, authority, or other entity that is part of the United States or a State, local, or foreign government.
- l. Legislation.** Bills, resolutions, amendments, and nominations pending or proposed in City Council, and any other matter that may become the subject of action by City Council.
- m. Life partner.** An individual who has a long-term committed relationship with another individual of any gender.
- n. Member of a for-profit business.** An officer, director, partner, manager, board member, trustee, owner, operator, or employee of a for-profit business.
- o. Ministerial.** Requiring a prescribed response when faced with a specific set of facts.
- p. Official action.** An act or omission taken by an officer or employee in their official capacity that requires discretion and is not ministerial in nature, including any non-ministerial act or omission by a City officer or employee in the course of discharging their City duties, using their City position or title, or using City resources available by virtue of their City position. See Subpart D for further details of the types and scope of official actions covered by this Regulation.
- q. Person.** A business, individual, corporation, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons, including nonprofits and limited liability companies.

5.2 Applicability. Except where expressly indicated otherwise, the provisions of this Regulation apply to all officers and employees of the City.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough indicates matter removed~~; underline indicates new matter

SUBPART B. IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST.¹

5.3 A conflict of interest arises under City law when a City officer or employee can take official action that would affect a financial interest of:

- a. the City officer or employee;
- b. a family member of the City officer or employee; or
- c. a for-profit business of which the City officer or employee is a member.

[Conflicts of interest also arise under State law under the circumstances listed above. Additionally, a conflict of interest arises under State law when a public official or public employee, as defined by the State Ethics Act, 65 Pa. C.S. §1101, et seq., can take official action that would financially benefit a nonprofit of which they, or an immediate family member (parent, child, spouse, or sibling), are an officer, director, or employee.]

5.4 A City officer or employee who has a conflict of interest:

- a. is disqualified from certain official actions as set forth in Subpart E; and
- b. shall disclose the conflict of interest as required by Subpart F.

SUBPART C. FINANCIAL ~~INTEREST~~INTERESTS OF CITY OFFICERS AND EMPLOYEES.

5.5 A City officer or employee has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or ~~business prospects.~~The economic opportunities. Where a City officer or employee has a financial interestsinterest as described below, they may ~~give rise to~~have a conflict of interest that requires disclosure and disqualification under Subparts E and F.²

- a. **Personal financial interest.** A personal financial interest is one held, in full or in part, by a City officer or employee, including:
 - 1. a contract to provide goods or services;
 - 2. employment by a nonprofit;
 - 3. ownership of real property;
 - 4. investment income; or
 - 5. freelance or gig work.

¹ Certain financial interests in City contracts are prohibited under Charter Sections 10-100 and 10-102. Those restrictions are not addressed in this Regulation.

² The scope of financial interests described in Subpart C is specific to conflicts of interest. A different range of financial interests are subject to restriction or disclosure under other City or State ethics rules.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

- b. Financial interest of family members.** A financial interest held by any of the following family members:
1. Spouse;
 2. Sibling;
 3. Child;
 4. Parent;
 5. Life partner; or
 6. Like in-law (e.g., parent-in-law), including any individual who is a sibling, child, or parent of a life partner.
- c. Member of a for-profit business.** A City officer or employee has a financial interest in any for-profit business of which they are a member, including as a(n):
1. Officer;
 2. Director;
 3. Partner;
 4. Manager;
 5. Board member;
 6. Trustee;
 7. Owner;
 8. Operator; or
 9. Employee.

An independent contractor of a for-profit business is not a member of a for-profit business but has a personal financial interest in such business under Paragraph 5.5(a).

5.6 Interests held by others for the benefit of a City officer or employee. A financial interest held by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if held directly by that officer or employee.

5.7 Past financial interests not covered. This Regulation does not apply to past financial interests absent some ongoing financial relationship or obligation.

Example for Paragraph 5.7

Several years prior to becoming a member of the Historical Commission, Abigail Ballot was retained by Calvin Delegate to provide a letter of technical support for the proposed designation of Hogwarts as a historic building. At the time, Ms. Ballot was a principal in SPEW Consulting and submitted her letter on SPEW letterhead. Ms. Ballot left SPEW several months before joining the Historical Commission. Neither Ms. Ballot nor her new employer have a financial relationship with Mr. Delegate. Because there is no current financial relationship, Ms. Ballot does not have a financial interest that could give rise to a conflict of interest.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

SUBPART D. OFFICIAL ACTION.

5.8 Official action. For the purpose of this Regulation, official action includes any non-ministerial act or omission by a City officer or employee:

- a. In the course of discharging their duties as a City officer or employee; or
- b. Using their City position or title, or City resources available by virtue of their City position (whether or not authorized).

As defined in Paragraph 5.1(o), an act is ministerial if a prescribed response is required when faced with a specific set of facts.

Examples for Paragraph 5.8

1) Mikayla Nominee is an investigator in the City's Department of Labor tasked with evaluating whether an employer complied with the City's fair workweek requirements. Because the employer failed to maintain clear records of employees' schedules, Ms. Nominee must reconstruct the schedules through interviews and transaction logs. Ms. Nominee's investigative work requires the exercise of discretion and is non-ministerial.

2) Oakley Precinct is a clerk in the Department of Revenue who is responsible for processing tax payments. Revenue's procedures require that Mx. Precinct accepts payment via check so long as the check is signed and the amount, account number, and bank routing number are legible. Mx. Precinct's acceptance of a check that meets these criteria is ministerial.

5.9 Not limited to final action. Official action includes not only a final action, but also any discussion, review, deliberation, consideration, analysis, or recommendation. Official action can occur even in the absence of a final action.

5.10 Omissions presumed non-ministerial. An omission is presumed to be non-ministerial unless:

- a. the omitted act, if taken, would have been ministerial, and
- b. the omission was inadvertent.

SUBPART E. DISQUALIFICATION.

5.11 ~~Prohibited~~Disqualification; official action prohibited. No City officer or employee shall take official action if the officer or employee knows, or should know, that such official action will affect a financial interest identified in Subpart C.

5.12 Scope of disqualification; employment relationships. For the ~~financial~~ interestsemployment relationships listed below, the scope of official actions from which a City officer or employee is disqualified depends on the type of ~~interest~~employment relationships affected as follows:

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

- a. **For-profit employment.** A City officer or employee who is an employee of a for-profit business is disqualified from any official action that would affect ~~the~~any financial ~~interests~~interest of such business, ~~including~~. Examples of prohibited official actions include any official action that:
1. ~~opportunity~~affects the for-profit business' profits, assets, or future ~~business~~economic opportunities;
 2. affects the financial interests of clients of the for-profit business;
 3. involves fellow members of the for-profit business acting on behalf of the business or its clients; or
 4. involves a matter in which a fellow ~~members~~member of the for-profit business ~~representing~~represents any person as an agent or attorney.
- b. **Future employment.** A City officer or employee who applies for or is offered non-City employment is disqualified from any official action that would affect the financial interests of such prospective employer. Disqualification is required until an application is rejected or a pending offer is declined or rescinded.

[Note that State Ethics Commission has opined that a conflict may arise where a public employee or public officer reasonably anticipates pursuing future employment. See, e.g., State Ethics Comm'n Confidential Advice No. 11-514.]

- c. **Nonprofit employment.** A City officer or employee who is an employee of a nonprofit is disqualified from any official action that would affect their employment by the nonprofit, including any official action that would affect:
1. the nonprofit employer's ability to pay the City officer or employee;
 2. the value of the compensation or benefits provided; or
 3. the willingness to hire or retain the City officer or employee.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

- d. **Employment of family members.** Where the financial interest at issue is the employment of a family member, the City officer or employee is disqualified from any official action that would affect the employment of their family member, including any official action that would affect:
1. the employer's ability to pay the family member;
 2. the value of the compensation or benefits provided; or
 3. the willingness to hire or retain the family member.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

Examples for Paragraph 5.12(b)

1a) Shonda Tally is a project manager with the Department of Aviation. She is considering a move to the private sector but wants to know more before applying for any positions. A manager with BuildCo, a firm she deals with regularly in her City position, offers her an informational interview to help evaluate her options. The informational interview is not a job application or offer and does not require disqualification or disclosure.

b) Ms. Tally decides to apply for a recently posted position with ConstruX, a firm that is the general contractor on the Terminal Z project Ms. Tally manages. As project manager, Ms. Tally reviews all work performed by ConstruX on Terminal Z. ConstruX only gets paid if Ms. Tally signs off on their work and invoices. Once Ms. Tally submits an application to ConstruX, she has a conflict of interest and is disqualified from any official action that would affect the financial interests of ConstruX, including oversight of the Terminal Z project.

5.13 Scope of disqualification; independent contractors. For the independent contractor arrangements listed below, the scope of official actions from which a City officer or employee is disqualified is as follows:

e.a. **City officers or employees as independent contractors.** A City officer or employee who is an independent contractor is disqualified from any official action that would affect their relationship with any business with which they have a contract, including any official action that would affect:

1. the contracting business' ability to pay the City officer or employee;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

f.b. **Family members as independent contractors.** Where the financial interest at issue is a family member who works as an independent contractor, the City officer or employee is disqualified from any official action that would affect the family member's relationship with any business with which they have a contract, including any official action that would affect:

1. the contracting business' ability to pay the family member;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough indicates matter removed~~; underline indicates new matter

5.14 Scope of disqualification; non-employment membership in a for-profit business.

Where the financial interest at issue is membership in a for-profit business other than as an employee (see Paragraph 5.5(c)), the scope of official actions from which a City officer or employee is disqualified depends on whether they or a family member are affiliated with the for-profit business as follows:

g.a. **Non-employee members of a for-profit business.** A City officer or employee who is a non-employee member of a for-profit business is disqualified from any official action that would affect ~~the~~any financial ~~interests~~interest of such business, ~~including~~. Examples of prohibited official actions include any official action that could be reasonably expected to:

1. affects the ~~opportunity~~for-profit business' profits, assets, or future ~~business~~economic opportunities;
2. affects the financial interests of clients of the for-profit business;
3. involves fellow members of the for-profit business acting on behalf of the business or its clients; or
4. involves a matter in which a fellow ~~members~~member of the for-profit business ~~representing~~represents any person as an agent or attorney.

h.b. **Family members as non-employee members of a for-profit business.** Where the financial interest at issue is a family member's non-employment interest in a for-profit business, the City officer or employee is disqualified from any official action that would affect the financial interest of their family member, including any official action that would affect:

1. the business' ability to pay the family member;
2. the value of the compensation or benefits provided by the business to the family member;
3. the willingness to continue the membership relationship with the family member; or
4. future economic opportunities of the ~~opportunity~~for-future-profit business.

This threshold may also be met if the official action would have a significant and substantial impact on the business.

[Nonprofit affiliation. In addition to the disqualification required by this subpart, any public employee or public official as defined by the State Ethics Act must also recuse themselves from any use of their City authority that would financially benefit a nonprofit of which they, or an immediate family member, are an officer, director, or employee or in which they otherwise have a financial interest.]

5.135.15 **Delegating prohibited official action.** Where a City officer or employee is disqualified from taking official action under this subpart, the responsibility or authority for such

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

official action shall not be reallocated or reassigned by the disqualified officer or employee to a subordinate. Delegation of prohibited official action may be accomplished by:

- a. A superior officer or employee; or
- b. A pre-existing policy that specifies how and by whom such reallocation or reassignment shall be accomplished, so long as the responsibility or authority for taking such official action is not reallocated or reassigned to a subordinate of the disqualified City officer or employee.

~~5.14~~5.16 Exceptions to disqualification.

- a. **Matters of general application.** A City officer or employee may take official action with respect to a matter of general application even if such official action will affect a financial interest listed in Paragraph 5.5. A matter is of general application if:
 1. it affects the financial interest of the general public or a substantial segment thereof in a manner substantially similar to that in which it affects the financial interest of the City officer or employee; and
 2. the impact of the matter on the financial interest of the City officer or employee is substantially proportionate to its impact on the financial interests of members of the general public or members of the relevant segment thereof.

The scope or nature of the relevant segment of the public may change over the course of the legislative, regulatory, or other decision-making process if the scope or nature of the matter under consideration changes.

- b. **Actions necessary for compliance.** Discussions and correspondence necessary to identify the conflict, determine the scope of disqualification, and effectuate such disqualification are permitted.

Examples for Paragraph 5.~~14~~16(a)

1) Ezra Form is a manager with Parks and Recreation who has three school-age children. He is asked to write a grant to fund expanded after-school programming at City rec centers. Mr. Form and his husband could save a lot of money on after-school childcare if more seats were available. While Mr. Form has a financial interest in the expansion of after-school programs, his interest is affected in the same manner as any other City resident with school-age children (who collectively are a substantial segment of the general public). Thus, Mr. Form is not disqualified from serving on the working group.

2) In addition to serving as a legislative aide to a Councilmember, Georgina House owns six bowling alleys in the City. Fifteen operators control approximately 80% of City bowling alleys.

a) After a highly publicized brawl outside a bowling alley in Camden, Ms. House's Councilmember asks her to draft a bill that would require bowling alleys to provide private security patrols during certain operating hours. The cost of private security officers would increase operating costs for all bowling alleys in the City. Ms. House has a financial interest in

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

legislation that would increase the operating cost of the for-profit businesses she owns. Because the bowling industry in the City is concentrated in a small number of owners and operators, the segment of the population affected by the legislation is not substantial and therefore the matter is not of general application. As a result, Ms. House is disqualified from working on the bowling alley legislation and must disclose her conflict of interest as required by Subpart F.

b) To combat a difficult economic climate, Council is considering a year-long moratorium on the business privilege tax. Ms. House's Councilmember asks her to review the proposal and make recommendations as to how the Councilmember should vote. While Ms. House has a financial interest in a tax break for businesses, her interest is the same as that of any of the many thousands of business owners in the City. Because the proposed tax moratorium would affect Ms. House's interest similarly to a substantial segment of the population, Ms. House is not disqualified from working on the legislation.

3) Ira Jacket is a Deputy Health Commissioner. He is also an entrepreneur who has invested in a variety of industries, including nail salons. After several news stories regarding workplace and consumer safety concerns around UV nail lamps, Council is considering a bill to require additional safety certifications for all nail salons in the City where UV nail lamps are used. The Health Commissioner was invited to present testimony at the committee hearing and has asked for Mr. Jacket's assistance in preparing her testimony.

Mr. Jacket owns 250 nail salons in the City. All of those salons use UV lamps, meaning all locations would need to be certified. There are 2,500 nail salons in the City. There are 2,000 nail salon owners, with most owners having an interest in only one or two salons. The next largest owner has six nail salons.

Although the proposed legislation would impact all nail salon owners in a similar manner – each would need to bear the cost of both time and money to obtain a certification – it has a disproportionate impact on Mr. Jacket as compared to the universe of nail salon owners because he controls a much larger share of the market as compared to most other owners. As a result, Mr. Jacket is disqualified from participating in the Health Department's preparation of testimony or recommendations regarding the proposed ordinance.

5.15.17 Compatibility with City position to be determined by the appointing authority. In some cases, disqualification required by this subpart may make it impractical or even impossible for the City officer or employee to carry out the essential functions of their City role. Although the scope of disqualification required for a particular matter is for the Board to determine, it is left to the relevant appointing authority to evaluate whether such disqualification is compatible with continued employment or service.

SUBPART F. DISCLOSURE.

5.16.18 Required disclosures. A City officer or employee who can take official action that would affect a financial interest described in Subpart C shall disclose the conflict of interest as set forth in this subpart.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

~~5.17~~5.19 **Content of disclosures.** Whether submitted in writing or entered into the record of a public meeting or hearing, disclosures made pursuant to this subpart shall include all of the following information:

- a. Full name of the City officer or employee making the disclosures;
- b. City title(s);
- c. If the financial interest is through a family member, the full name of the family member(s);
- d. Brief description of the nature and extent of the financial interest;
- e. Brief description of the official actions from which the City officer or employee is disqualified; and
- f. Effective date of disqualification if before the date of disclosure.

~~5.18~~5.20 **Disclosure of legislative conflicts of interest by Councilmembers.** Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when the Councilmember knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

1. **When:** At the public hearing on that legislation before any committee of Council (including the Committee of the Whole), regardless of whether the Councilmember serves on the committee holding the hearing.
2. **How:** By making a statement on the record consistent with Paragraph 5.~~17~~19. Such statement shall be made part of the official hearing transcript.

b. After the public hearing but more than five days before the legislation is to be acted upon by Council:

1. **When:** No less than five days before the meeting at which Council is scheduled to take action on the legislation.
2. **How:** By submitting a written statement consistent with Paragraph 5.~~17~~19 via tracked delivery service as described in Paragraph ~~5.21~~5.23 to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the presiding officer of Council at the time legislation is called up for consideration shall read the written statement into the public record of the Council meeting.

c. Less than five days before legislation is to be acted upon by Council:

1. **When:** At the public meeting at which Council is scheduled to take action on the legislation.
2. **How:** By making a statement on the record consistent with Paragraph 5.~~17~~19. Such statement shall be made part of the official meeting transcript.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

d. **Absence.** If the Councilmember is absent from a hearing or meeting at which disclosure on the record are required by:

1. *Paragraph 5.~~18~~20(a) or 5.~~18~~(20(c))*, the Councilmember shall either send a designee to make the required disclosures on the record on their behalf or shall submit a written disclosure consistent with Paragraph ~~5.17~~5.19 to the presiding officer to be read into the official record of the hearing or meeting.
2. *Paragraph 5.~~18~~20(b)*, the Councilmember must still submit the written disclosure as required by Paragraph 5.~~18~~(20(b-~~c~~)(2) and the presiding officer shall read such disclosure into the record regardless of whether the Councilmember is in attendance.

e. **Non-participation.** Whether the Councilmember participates in consideration of the legislation in a hearing or meeting shall have no effect on their duty to comply with the disclosures required by this subpart.

f. **Disqualification required upon knowledge of interest.** Regardless of when disclosed, once a Councilmember knows, or should know, of a financial interest in legislation, the Councilmember shall not take any official action regarding that legislation beyond the disclosures required by this subpart or permitted by Paragraph 5.~~14~~(~~a~~-(216(b)).

~~5.19~~5.21 **Disclosure of legislative conflicts of interest by other City officers and employees.** Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when a City officer or employee (other than a Councilmember) knew or should have known of the financial interest:

a. **Before or at the time of the public hearing on the legislation:**

1. **When:** No less than five days before the scheduled public hearing.
2. **How:** By submitting a written statement consistent with Paragraph 5.~~17~~19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.

In addition, the written statement shall be made a part of the official record of the hearing.

b. **After the public hearing:**

1. **When:** Before the meeting at which Council is scheduled to take action on the legislation.
2. **How:** By submitting a written statement consistent with Paragraph 5.~~17~~19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

~~5.20~~5.22 **Disclosure of non-legislative conflicts of interest.** Any City officer or employee who knows, or should know, that they have a financial interest in any official action other than legislation shall disclose such interest in a written statement consistent with Paragraph 5.~~17~~19.

a. Submission of disclosures. All disclosures made under this paragraph shall be submitted via tracked delivery service as described in Paragraph 5.~~21~~23.

1. Heads of City departments. A department head shall submit disclosures made under this paragraph to the following:

- i. Mayor;
- ii. Managing Director;
- iii. Board of Ethics; and
- iv. Department of Records.

2. Other City officers and employees.³ All other City officers and employees shall submit disclosures made under this paragraph to the following:

- i. Head of the City officer or employee's City department, agency, board, or commission;
- ii. Board of Ethics; and
- iii. Department of Records.

b. Timing of disclosures. Disclosures made after the City officer or employee has taken official action from which they were disqualified do not cure any violation of this Regulation arising from such official action.

c. Recordkeeping. The Department of Records shall be the custodian of records for all disclosures made under this paragraph and shall maintain a public record of all such submissions.

[Non-legislative voting conflicts. In addition to the written disclosures required by this subpart, any public employee or public official as defined by the State Ethics Act must also comply with Section 1103(j) of the State Ethics Act, 65 Pa. C.S. §1101, et seq., regarding voting conflicts.]

~~5.21~~5.23 **Delivery methods.**

a. Tracked delivery services. Delivery methods must provide tracking, delivery confirmation, or other proof of the date sent and date delivered.

b. Date of submission. For disclosures sent via certified or registered U.S. mail, other than for disclosures by Councilmembers under Paragraph ~~5.18(b)(2)~~,5.20(b)(2), the date of submission shall be the date of mailing. For disclosures by Councilmembers under Paragraph ~~5.18(b)(2)~~,5.20(b)(2), or where a method other than certified or registered U.S. mail is selected, the date of submission shall be the date of delivery.

³ A form letter for submitting disclosures under Paragraph 5.20(a)(2), including mailing addresses for the Board of Ethics and Department of Records, is available at ethics.pub/DnD.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

- c. **Email submissions.** Where disclosure via tracked delivery service is required under this subpart, submission exclusively via email shall not fulfill the disclosure requirements. If, however, a City officer or employee submits disclosures by both email and tracked delivery service, the date of any email delivery receipt or acknowledgement from the recipient (whichever is earlier) shall be considered the date of disclosure for purposes of evaluating whether the submission was timely.

~~5.22~~5.24 Statement of Financial Interests not affected. City officers and employees required to make disclosures under this subpart may also be required to file a Statement of Financial Interests under Code Section 20-610. Disclosures made pursuant to this subpart do not fulfill the requirements of Section 20-610.

SUBPART G. PAST OFFICIAL ACTIONS.

~~5.23~~5.25 No financial interest in past official action. After a final action, no City officer or employee shall obtain a financial interest in any official action they took as part of or related to that final action:

- a. during their City service or employment; and
- b. for two years after the end of such service or employment.

This paragraph shall apply regardless of who took or was responsible for taking the final action.

Example for Paragraph 5.~~23~~25

Kasey Ladder works in the Mayor's office supervising volunteer service programs. She is part of a team that selects a vendor for volunteer management software. The vendor is so impressed by Ms. Ladder's technical knowledge that they offer her a part-time position working on their contract with the City. Ms. Ladder cannot accept that position as a second job while working for the City. She also cannot accept that position as post-City employment for the first two years after she leaves her City job. She may, however, be able to accept a different position with the same vendor that is unrelated to a City contract.

~~5.24~~5.26 ~~Restrieted~~Covered financial interests. This subpart applies only to:

- a. personal financial interests as described in Paragraph 5.5(a); and
- b. membership in a for-profit business as described in Paragraph 5.5(c).

~~5.25~~5.27 Interests obtained by others for the benefit of a City officer or employee. A financial interest obtained by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if obtained directly by that officer or employee.

Exhibit 2 to Regulation No. 5 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

SUBPART H. PENALTIES.

~~5.26~~5.28 An officer or employee of the City who violates any of the restrictions set forth in this Regulation shall be subject to a civil penalty of up to \$2,000 for each such violation.

In determining the appropriate amount of monetary penalty, the Board may consider both mitigating and aggravating factors.

Mitigating factors that the Board may consider include: (i) a good faith effort to comply with the law; (ii) prompt corrective action; and (iii) prompt self-reporting to the Board of Ethics.

Aggravating factors that the Board may consider include whether the violator: (i) acted knowingly; (ii) is a repeat offender; or (iii) obstructed the investigation of the Board of Ethics.

Approved for public comment by Board: October 18, 2023

Posted for public comment by Records: October 20, 2023

Hearing held: November 15, 2023

Adopted by Board: December 20, 2023

Effective:

Hearing Report

re: Regulation No. 5 (Conflicts of Interest)

Exhibit 3

IN RE: CITY OF PHILADELPHIA BOARD OF ETHICS
HEARING ON PROPOSED AMENDMENTS TO
REGULATION NO. 5, CONFLICTS OF INTEREST

- - -

TRANSCRIPT OF THE ABOVE MATTER, taken by
and before ERICA HEARN, Professional Court
Reporter and Notary Public, via ZOOM WEB
CONFERENCE by the hosting offices of the CITY OF
PHILADELPHIA BOARD OF ETHICS, One Parkway
Building, 1515 Arch Street, 18th Floor,
Philadelphia, Pennsylvania, on Wednesday,
November 15, 2023 commencing at 1:02 p.m.

- - -

ERSA COURT REPORTERS
30 South 17th Street
United Plaza - Suite 1520
Philadelphia, PA 19103
(215) 564-1233

HEARING

A P P E A R A N C E S:

BOARD MEMBERS:

MICHAEL REED, ESQ., CHAIR
SANJUANITA GONZALEZ, ESQ., MEMBER
BRIAN J. MCCORMICK, JR., ESQ., MEMBER
ELLEN MATTLEMAN KAPLAN, ESQ., MEMBER

BOARD STAFF:

J. SHANE CREAMER, JR., ESQ.

DAKOTA BAERING, ESQ.

RICHARD BARZAGA, ESQ.

DANI GARDNER WRIGHT, ESQ.

JORDANA GREENWALD, ESQ.

THOMAS KLEMM, ESQ.

BRYAN MCHALE, ESQ.,

HORTENCIA VASQUEZ

JULIA SHEPPARD, ESQ.

ALSO PRESENT:

KRYSTLE BAKER, ESQ.

SEAN WALSH

COOPER J. ATTIG

- - -

E X H I B I T S

NUMBER	DESCRIPTION	PAGE MARKED	PAGE ATTACHED
Exhibit-A	Memorandum	7	32
Exhibit-B	Regulation Draft Copy	10	33
Exhibit-C	Testimony of Krystle Baker	30	34
Exhibit-D	Testimony of Committee of Seventy	30	35

1 PROCEEDINGS

2 - - -

3 MR. REED: It is 1:02, so I
4 acknowledge the presence of a quorum, full
5 board.

6 And first thing on our agenda is
7 the Reg 5 hearing.

8 So I want to welcome everyone.
9 My name is Mike Reed, and I am Chair of
10 the Philadelphia Board of Ethics.

11 Today we are holding a public
12 hearing on proposed Board Regulation No. 5
13 which regards conflicts of interest.

14 I note for the record that I am
15 joined by Vice Chair Brian McCormick and
16 Board Members Sanjuanita Gonzalez and
17 Ellen Mattleman Kaplan.

18 I further note for the record
19 that Reynelle Staley from the law
20 department is present.

21 MS. GREENWALD: I don't think she
22 is actually on the call yet.

23 MR. REED: Well, if she does join
24 us, we will welcome her.

1 And today's hearing is an
2 opportunity for members of the public and
3 interested parties to provide comments and
4 recommendations for the proposed
5 Regulation No. 5. Copies of this proposed
6 regulation have been made available
7 electronically. For the convenience of
8 today's attendees, I will ask a member of
9 our staff to now provide an electronic
10 link in the chat feature of this Zoom
11 call, which contains the proposed
12 regulation. The Board is following the
13 process required by Philadelphia Home Rule
14 Charter Section 8-407 for this proposed
15 regulation.

16 The Board approved this proposed
17 regulation for public posting at the
18 records department during its October 18,
19 2023 public meeting.

20 The Law Department reviewed the
21 proposed regulation and found it to be
22 legal, within the Board's authority, and
23 in proper form.

24 The Department of Records

1 advertised and gave public notice of the
2 proposed regulation. The Board also took
3 action by giving notice of the proposed
4 regulation on its website.

5 The Board proactively scheduled
6 this hearing on the proposed regulation
7 and provided notice of this hearing by
8 newspaper and on the Board's website.

9 The Board will not take any
10 action on the proposed regulation at this
11 hearing; rather, this hearing is an
12 opportunity for the public to comment on
13 the proposed regulation or recommend
14 modifications to it.

15 Board members may ask questions
16 of the witnesses, if they wish. A hearing
17 record will be considered and approved by
18 the Board at a future Board meeting. The
19 hearing report will respond to testimony
20 and is the mechanism by which the Board
21 may modify the proposed regulation.

22 A court reporter is present to
23 transcribe this hearing.

24 At this time, the documents that

1 the Board filed with the Department of
2 Records, including proposed Board
3 Regulation No. 5, should be entered into
4 the record of this hearing and marked as
5 Exhibit-A, and I am going to assume that
6 that has been done.

7 (At this time, the document was
8 marked for identification as Exhibit-A.)

9 MR. REED: And we have confirmed
10 the presence of the reporter. I see Erica
11 Hearn. Welcome, Erica.

12 So we now will take testimony. I
13 ask any person present at this hearing who
14 wishes to testify to please notify our
15 staff of your intent through the chat
16 feature of this Zoom. Our staff will then
17 coordinate with each of you regarding your
18 testimony, including the order in which
19 you testify. When it is a witness' turn
20 to testify, we will ask the witness to
21 identify themselves prior to their
22 testimony.

23 For those of you that have any
24 documents you would like to submit as

1 exhibits, please send a copy to
2 BOEGCstaff@phila.gov, Capital B,
3 capital O, capital E, capital G,
4 capital C, staff@phila.gov. And the
5 document will be added to the record.

6 Before hearing from members of
7 the public, I invite Board staff to
8 testify. It is my understanding that
9 Board staff will recommend several
10 revisions to the proposed regulation.
11 Members of the public should not feel
12 pressed to respond to those
13 recommendations during the hearing.
14 Anyone who wishes to comment on the
15 revised proposed regulation after today's
16 hearing may do so by submitting written
17 testimony by way of email to general
18 counsel, Jordana Greenwald, no later than
19 November 22, 2023.

20 Jordana, would you kindly state
21 your email address?

22 MS. GREENWALD: Yes. And,
23 actually, we'll put both the general email
24 address and my email address into the chat

1 because it is my first name, dot, my last
2 name, @phila.gov, so it's
3 jordana.greenwald@phila.gov.

4 MR. REED: Thank you.

5 We are now prepared for
6 testimony. Is anyone from staff going to
7 testify?

8 MS. GREENWALD: Yes, I will be
9 testifying, Chair Reed.

10 MR. REED: Are you ready to roll?

11 MS. GREENWALD: I am.

12 MR. REED: Let's roll.

13 MS. GREENWALD: Okay. Good
14 afternoon, Board members and guests.

15 My name is Jordana Greenwald. I
16 am general counsel for the Board of
17 Ethics, and as Chair Reed mentioned, I am
18 here to testify on behalf of Board staff
19 because we are proposing some additional
20 changes to the public comment version of
21 Regulation 5, Conflicts of Interest.

22 These recommendations are based
23 on both internal and external discussions
24 and are intended to address the

1 suggestions and concerns that were raised
2 during those discussions.

3 Just to note, you know, for the
4 most part, there aren't major substantive
5 changes. The focus of these added is
6 really on increasing the clarity by
7 adjusting some of the text in the
8 regulation, as well as supporting
9 compliance by adding some additional
10 examples within the regulation.

11 Before I go further, I am going
12 to share a link where you should be able
13 to access the marked-up version of the
14 recommendations by staff for edits to the
15 posting version of the Reg. This document
16 should get entered as Exhibit-B to the
17 transcript of today's hearing.

18 (At this time, the document was
19 marked for identification as Exhibit-B.)

20 MS. GREENWALD: So I will not be
21 in the process of this presentation going
22 through all of the formatting and sort of
23 typographical updates. Anytime we make a
24 change that involves adding a piece to the

1 Reg, a paragraph to the Reg, it will
2 require a whole bunch of typical changes
3 to update the numbering and internal
4 references. We're not going to talk about
5 those today, what I am going to focus on
6 is where we actually have some more meaty
7 changes. And I am going to share my
8 screen so we can all take a look at those
9 together.

10 So hopefully everybody can see my
11 presentation. Yes?

12 MR. REED: I see it.

13 MS. GREENWALD: Great. Okay.

14 So the key changes -- and one of
15 them is a global change, which is really
16 intended to avoid any confusion over
17 business as a defined term, and when we're
18 talking about conflicts of interest which
19 is really business as an entity.

20 So in the places where we have
21 discussed business as an entity, we have
22 left it alone. Where we have discussed
23 business really more in terms of potential
24 income or financial opportunity, we tried

1 to make that more explicit by replacing
2 business with economic opportunities.

3 So, for example, if we were
4 talking about Joe owning a pizza business,
5 that is something we were going to leave
6 alone because that's business as an
7 entity. If we were talking about Joe
8 wanting to drum up business by giving away
9 free pizza, that's more about the
10 potential for income and economic
11 opportunity and we've replaced those terms
12 throughout.

13 And the first place that comes up
14 is in subpart C which deals with financial
15 interest. So here we have made a couple
16 of changes, first to the title of the
17 subpart, wanting to clarify that what we
18 are talking about here is specifically the
19 financial interest of City officers and
20 employees. Because when we talk about
21 financial interests of businesses that may
22 be impacted by official action, we aren't
23 necessarily restricted to what is
24 described in subpart C. We wanted to

1 clarify that, and we have made some slight
2 language changes, including replacing
3 business prospects with economic
4 opportunities, and to otherwise changing
5 the text a little bit just to clarify what
6 it is we're talking about with an employee
7 or officer's financial interest.

8 The second place where we have
9 made some adjustments is in subpart D,
10 which deals with official action, and in
11 particular there were requests to give
12 some examples of what may constitute a
13 non-ministerial act versus a ministerial
14 act. So we've added two examples, one
15 where the activity is something that would
16 be non-ministerial, requiring discretion,
17 and the other where somebody who is a
18 clerk accepting payments would not be
19 exercising discretion and that activity
20 would be ministerial. So we tried to give
21 some examples to assist people in
22 understanding what we mean here.

23 And subpart E is really where
24 we've made the bulk of the recommended

1 changes. We really wanted to clarify, you
2 know, what we meant by disqualification
3 and which areas the Board felt needed more
4 specific explanation with respect to
5 disqualification. So that has involved
6 renaming paragraph 5.11 to make clear that
7 there is a general prohibition on certain
8 official action where an employee knows or
9 should know that they could take official
10 action that would impact one of the
11 financial interests identified in
12 subpart C.

13 MR. REED: Jordana, did you mean
14 to scroll to the pages that you're talking
15 about? Because the only thing that has
16 appeared on the shared screen is the cover
17 page.

18 MS. GREENWALD: Oh, that's
19 troubling. You're still seeing the cover
20 page?

21 MR. REED: That's all I see.

22 MR. MCCORMICK: I think that's
23 you, Mike.

24 MS. GONZALEZ: Yeah, I saw

1 subpart E disqualification.

2 MS. GREENWALD: Can you see
3 subpart E, Chair Reed?

4 MR. REED: I do not. So don't
5 worry about it. If everybody else is
6 cool, I'm cool.

7 MS. GREENWALD: It is also in the
8 full version. These are just sort of
9 zoomed in on the specific portions of the
10 proposed changes.

11 MR. REED: All right. Well, if
12 it's working for everyone else, that's
13 fine.

14 MS. GREENWALD: Okay.

15 So in the realm of
16 disqualification, the biggest change is
17 that we have taken and are recommending
18 that the Board take 5.12, which more
19 generally talked about the scope of
20 disqualification and then listed a number
21 of different types of financial interest
22 and how we believe that disqualification
23 applies in that situation, taking that
24 sort of lengthy paragraph and broken it

1 down into three paragraphs, each applying
2 to a specific type of relationship that
3 constitutes a financial interest.

4 We have got now three paragraphs,
5 one covering employment relationships, one
6 covering independent contractor
7 relationships, and one addressing
8 non-employee members of a for-profit
9 business. So that would be anyone who is
10 an owner, a shareholder, or otherwise is a
11 member of a business but not an employee.

12 So moving through that, you know,
13 first starting with employment
14 relationships, one of the other pieces
15 that we have worked to clarify is
16 particularly when it comes to for-profit
17 employment, making very clear what types
18 of -- what interest we're talking about,
19 and then making very clear that what is
20 listed are examples of prohibited official
21 actions, including those affecting the
22 profits, assets, or future economic
23 opportunities of the for-profit business
24 and just trying to clarify the language,

1 both to make sure it's clear that those
2 are examples, they're not factors, and
3 also to clarify that ultimately for-profit
4 -- membership in a for-profit business is
5 what is going to give rise to the broadest
6 range of the conflicts and resulting
7 disqualification in contrast to some of
8 the other types of relationships. So
9 that's probably the one that changed the
10 most. Again, not really so much a change
11 in the substance or goals of the
12 provisions, but an attempt to clarify what
13 they mean and make them easier to
14 understand and apply.

15 We did make some changes with
16 respect to future employment, not to the
17 substance of the subparagraph, but one we
18 have noted that the State Ethics
19 Commission may have sort of a broader
20 definition of when a prospective employer
21 creates a conflict and we wanted to call
22 that out for folks who are subject to the
23 State Ethics Act.

24 We also provided examples of what

1 types of interactions with a potential
2 employer are going to create a conflict.

3 I think there has been a lot of
4 concern about when there is a conflict,
5 and based on the discussions that we had,
6 we wanted to clarify that things like an
7 informational interview, not going to
8 create a conflict, and actually submitting
9 an application will create a potential
10 conflict. I am trying to help people
11 understand when they need to be thinking
12 about disqualification and disclosure when
13 they're applying for jobs. So that's
14 additional examples.

15 The changes to the other parts
16 under employment, again, are just trying
17 to make very clear that the listed items
18 are types of official actions that would
19 be prohibited. Similar changes in each of
20 the subparagraphs to do that.

21 And then we have -- this is where
22 we start separating out into independent
23 contractors and making clear that
24 independent contractor arrangements result

1 in sort of a different level of
2 disqualification. It's going to be a
3 little narrower and require a closer nexus
4 between the official action and the
5 financial interest in the contract. And
6 we have tried to update this language to
7 make that more clear.

8 Similarly, calling out separately
9 in new 5.14, the scope of disqualification
10 for non-employment membership in a
11 for-profit business to make clear that
12 there are similar obligations to the
13 employment relationship in terms of
14 disqualification if you are a non-employee
15 member of a for-profit business as a city
16 officer or employee, and then again
17 clarifying that where a family member is
18 the person who is the non-employee member
19 of a for-profit business, it is going to
20 be a slightly narrower realm of
21 disqualification. So, again, just trying
22 to clarify what was already there, make it
23 easier to understand and apply.

24 The last changes were in

1 subpart G, which relates to past official
2 action. We had some feedback that the
3 last two pieces of this section weren't as
4 clear as they needed to be in explaining
5 the scope of this portion of the Reg.

6 So the piece that deals with past
7 official action which comes from 26073 is
8 -- it applies to a different realm of
9 financial interest of city officers and
10 employees than the rest of the conflicts
11 Reg. And that's what these two paragraphs
12 were intending to clarify. So what we did
13 was specify, instead of saying restricted
14 financial interest, we changed it to
15 covered financial interest, made it clear
16 that the subpart only applies to the
17 listed interest, and then clarified in the
18 last paragraph that for the most part the
19 difference is that this subpart does not
20 apply to financial interest held by family
21 members. So that's just, again, trying to
22 clarify the language that's there.

23 And that is the extent of the
24 sort of non-typical changes that are being

1 recommended. And we will continue, of
2 course, to consider the other testimony
3 today in moving forward with the
4 regulation.

5 That concludes my testimony.

6 MR. REED: Thank you, Ms.
7 Greenwald. The floor is open to other
8 Board members for any questions or
9 comments at this time.

10 MR. MCCORMICK: Jordana, can you
11 hear me? It is Brian.

12 MS. GREENWALD: Yes.

13 MR. MCCORMICK: On 5.27, the one
14 we were just looking at, while this
15 subpart generally does not apply to
16 interest held by family members, a
17 financial interest obtained by a family
18 member, it just seems a little confusing
19 to me. You know, we say not applied by --
20 not held by family members but then
21 obtained by family, and I understand that
22 to some of us that are lawyers, but would
23 it be better to say it generally does not
24 apply to direct interests held by a family

1 member or something a little bit more
2 specific? It just -- it reads a little
3 confusing, I think.

4 MS. GREENWALD: Okay. We can
5 absolutely -- we can certainly look at how
6 to clarify that further because it -- I
7 understand your concern with that, so we
8 will take a look at that.

9 MR. MCCORMICK: And then my other
10 question was on section 5.11, which was
11 the first part of subpart E,
12 disqualification, and you added the
13 language disqualification official action
14 generally prohibited. Why are we using
15 "generally" there? Isn't it just -- I
16 mean, it's prohibited, isn't it?

17 MS. GREENWALD: Yeah. There was
18 to contrast that general prohibition with
19 the following paragraphs because not every
20 official action is, in fact -- that
21 impacts the financial interest as defined
22 by subpart C is, in fact, prohibited
23 because the Board has looked for specific
24 connections between the official action

1 and the financial interest in particular
2 in situations of nonprofit employment,
3 independent contractors, and interest of
4 family members in contrast to for-profit
5 membership by the city officer employee.
6 So it's really a bit of a catchall to be a
7 general prohibition on official action for
8 particular types of interest not covered
9 by 5.12, -13 or -14, as well as to, you
10 know, kind of be the fallback for anything
11 that's not specified, you know, even
12 underneath those areas that are discussed
13 in 5.12, -13 and -14.

14 MR. MCCORMICK: Okay. All right.

15 MR. REED: So the question is
16 whether or not you need generally there.

17 MR. MCCORMICK: Not a big deal.
18 Those were just my two quick questions.

19 MS. KAPLAN: Jordana, I have a
20 question about training now that we have a
21 new training protocol that we just passed,
22 and that is I always have a concern about
23 conflicts of interest when people are
24 coming into government, when people are

1 coming from the private sector and may
2 have conflicts of interest and not
3 understand these rules.

4 I am assuming that these will be
5 incorporated into any kind of training
6 that we're doing for folks within, what
7 was it, 90 days, you know, just making
8 sure because that's there.

9 MS. GREENWALD: Sure. No, I
10 appreciate the concern, and really a big
11 purpose of the regulation and promulgating
12 it at this moment in time is to assist
13 folks coming into the government, the city
14 government, with understanding what
15 conflicts are under city and state law and
16 how to address them.

17 Substantively, there is not a lot
18 of changes from what we currently cover in
19 our training. It is just that a lot of
20 what we currently cover in our training
21 has come out of opinions and
22 interpretations and now it is all in one
23 place. So the material -- this regulation
24 when finalized will go into the ethics

1 manuals that we provide, and to the extent
2 there are differences that need to be
3 called out in training, we will be doing
4 that as well.

5 Just for the record, the
6 discussion about training is a little bit
7 to -- it is not something that for the
8 hearing report purposes we'll be
9 addressing in the hearing report, but
10 absolutely we can have further discussion
11 about how we're approaching it in
12 training.

13 MS. KAPLAN: Thanks.

14 MR. REED: Are there any other
15 questions or comments by Board members?

16 Hearing none, I would ask that we
17 would invite testimony from any other
18 witnesses who desire to provide testimony.

19 We would ask that you identify
20 yourself, and I believe that it has been
21 requested that you coordinate with staff.
22 So I am going to --

23 MS. BAKER: Chair Reed?

24 MR. REED: Yes.

1 MS. BAKER: May I have the
2 opportunity to speak? I requested this
3 yesterday to Jordana, but I did not
4 include it in the chat. My apologies.

5 MR. REED: That's all right. I
6 would ask Jordana to remove the screen
7 share.

8 MS. GREENWALD: I did turn off my
9 screen share. You shouldn't be seeing it.

10 MR. REED: I got it. So The
11 Chair has a particular problem with his
12 particular connection, so let's just
13 proceed and I'll try to fix whatever my
14 problem is.

15 So you may proceed.

16 MS. BAKER: Thank you, Chair
17 Reed.

18 Good afternoon, everyone. I am
19 Krystle Baker, the deputy chief integrity
20 officer with the City of Philadelphia. I
21 am here to testify on behalf of the Kenney
22 Administration on proposed Regulation 5.

23 The Administration appreciates
24 efforts made by the Board and staff to

1 provide greater clarity to the rules
2 around conflicts of interest.

3 Sarah Stevenson and I met with
4 Board staff on Wednesday, November 1st to
5 discuss our initial concerns and offer
6 several comments to this Board on the
7 proposed regulation.

8 First, we recommend several areas
9 of the regulation where examples would be
10 beneficial to understand key terms and
11 application of the regulation.

12 Specifically, we requested
13 examples to explain the definition of
14 ministerial. This recommendation was
15 addressed in the amended regulation.

16 The second example was the timing
17 and circumstances needed for an employee
18 seeking future employment to file a
19 disqualification and disclosure letter,
20 this recommendation was also addressed in
21 the amended regulation, and, third, the
22 extent of disqualification.

23 Our office receives many
24 questions from contract selection

1 committees, and whether someone is
2 disqualified from reviewing one
3 application as a result of the conflict or
4 the entire selection process.

5 Second, we recommended that the
6 Board staff update its online draft
7 disclosure and disqualification form so
8 employees can better identify any other
9 action that may cause the conflict of
10 interest. As of right now, only a couple
11 words can fit into this text field on the
12 PDF due to a technical glitch.

13 So those are the only comments
14 that I am offering today. Thank you for
15 the opportunity to appear and addressing
16 this important issue.

17 MR. REED: Thank you, Ms. Baker.

18 I would open up the floor to
19 other Board members for any questions or
20 comments that they may have for Ms. Baker.

21 MR. REED: Hearing none, we would
22 thank Ms. Baker for her testimony and
23 would welcome testimony from anyone else
24 who desires to testify.

1 Is staff aware of anyone else who
2 is in the queue?

3 MS. GREENWALD: I am not, Chair
4 Reed.

5 I do have written testimony from
6 Committee of Seventy that I will provide
7 to the court reporter to be submitted and
8 will circulate to the Board as well.

9 MR. REED: Yeah, I guess we'll be
10 marking that as Exhibit-C maybe?

11 MS. GREENWALD: I believe that if
12 Krystle wanted to submit written
13 testimony, that that would be C.

14 MR. REED: Okay.

15 MS. GREENWALD: And that will be
16 D.

17 MR. REED: Based on the lettering
18 of the exhibits.

19 Yes, please. I interrupted you,
20 please.

21 MS. GREENWALD: No, that's all.
22 That's the only other testimony that I am
23 aware of.

24 MR. REED: So appearing that

1 there are no other witnesses, I will
2 declare this public hearing closed and
3 thank everyone for attending.

4 And our next activity will be the
5 regular public meeting of the Board.

6 I believe that people can just
7 stay on. They don't have to leave the
8 meeting and come back. They can stay on.

9 MS. GREENWALD: I am going to
10 thank Erica Hearn from ERSA, and we are
11 done for the hearing and that's your piece
12 of it, thank you so much.

13 (At this time, the court reporter
14 marked the exhibits for identification as
15 Exhibit-C and Exhibit-D.)

16 - - -

17 (Deposition adjourned at 1:32 p.m.)

18

19

20

21

22

23

24

C E R T I F I C A T I O N

I, ERICA HEARN, Professional Court
Reporter and Notary Public, do hereby certify that
the foregoing is a true and accurate transcript of
the stenographic notes taken by me in the
aforementioned matter.

- - -

DATE: NOVEMBER 20, 2023_____

ERICA HEARN

EXHIBIT-A

EXHIBIT-B

EXHIBIT-C

<p>A</p> <p>able 10:12</p> <p>absolutely 22:5 25:10</p> <p>accepting 13:18</p> <p>access 10:13</p> <p>accurate 31:7</p> <p>acknowledge 4:4</p> <p>act 13:13,14 17:23</p> <p>action 6:3,10 12:22 13:10 14:8,10 19:4 20:2,7 22:13 22:20,24 23:7 28:9</p> <p>actions 16:21 18:18</p> <p>activity 13:15,19 30:4</p> <p>added 8:5 10:5 13:14 22:12</p> <p>adding 10:9,24</p> <p>additional 9:19 10:9 18:14</p> <p>address 8:21,24,24 9:24 24:16</p> <p>addressed 27:15,20</p> <p>addressing 16:7 25:9 28:15</p> <p>adjourned 30:17</p> <p>adjusting 10:7</p> <p>adjustments 13:9</p> <p>Administration 26:22,23</p> <p>advertised 6:1</p> <p>aforementioned 31:9</p> <p>afternoon 9:14 26:18</p> <p>agenda 4:6</p> <p>amended 27:15,21</p> <p>AMENDMENTS 1:1</p> <p>Anytime 10:23</p> <p>apologies 26:4</p> <p>appear 28:15</p> <p>appeared 14:16</p> <p>appearing 29:24</p> <p>application 18:9 27:11 28:3</p> <p>applied 21:19</p> <p>applies 15:23 20:8,16</p> <p>apply 17:14 19:23 20:20 21:15,24</p> <p>applying 16:1 18:13</p> <p>appreciate 24:10</p> <p>appreciates 26:23</p> <p>approaching 25:11</p> <p>approved 5:16 6:17</p> <p>Arch 1:13</p>	<p>areas 14:3 23:12 27:8</p> <p>arrangements 18:24</p> <p>assets 16:22</p> <p>assist 13:21 24:12</p> <p>assume 7:5</p> <p>assuming 24:4</p> <p>ATTACHED 3:14</p> <p>attempt 17:12</p> <p>attendees 5:8</p> <p>attending 30:3</p> <p>ATTIG 2:24</p> <p>authority 5:22</p> <p>available 5:6</p> <p>avoid 11:16</p> <p>aware 29:1,23</p> <p>B</p> <p>B 3:10 8:2</p> <p>back 30:8</p> <p>BAERING 2:11</p> <p>Baker 2:22 3:21 25:23 26:1 26:16,19 28:17,20,22</p> <p>BARZAGA 2:12</p> <p>based 9:22 18:5 29:17</p> <p>behalf 9:18 26:21</p> <p>believe 15:22 25:20 29:11 30:6</p> <p>beneficial 27:10</p> <p>better 21:23 28:8</p> <p>big 23:17 24:10</p> <p>biggest 15:16</p> <p>bit 13:5 22:1 23:6 25:6</p> <p>board 1:1,12 2:2,8 4:5,10,12 4:16 5:12,16 6:2,5,9,15,18 6:18,20 7:1,2 8:7,9 9:14,16 9:18 14:3 15:18 21:8 22:23 25:15 26:24 27:4,6 28:6,19 29:8 30:5</p> <p>Board's 5:22 6:8</p> <p>BOEGCstaff@phila.gov 8:2</p> <p>Brian 2:4 4:15 21:11</p> <p>broaden 17:19</p> <p>broadest 17:5</p> <p>broken 15:24</p> <p>BRYAN 2:16</p> <p>Building 1:13</p> <p>bulk 13:24</p>	<p>bunch 11:2</p> <p>business 11:17,19,21,23 12:2 12:4,6,8 13:3 16:9,11,23 17:4 19:11,15,19</p> <p>businesses 12:21</p> <p>C</p> <p>C 2:1 8:4 12:14,24 14:12 22:22 29:13 31:1,1</p> <p>call 4:22 5:11 17:21</p> <p>called 25:3</p> <p>calling 19:8</p> <p>capital 8:2,3,3,3,4</p> <p>catchall 23:6</p> <p>cause 28:9</p> <p>certain 14:7</p> <p>certainly 22:5</p> <p>certify 31:6</p> <p>Chair 2:3 4:9,15 9:9,17 15:3 25:23 26:11,16 29:3</p> <p>change 10:24 11:15 15:16 17:10</p> <p>changed 17:9 20:14</p> <p>changes 9:20 10:5 11:2,7,14 12:16 13:2 14:1 15:10 17:15 18:15,19 19:24 20:24 24:18</p> <p>changing 13:4</p> <p>Charter 5:14</p> <p>chat 5:10 7:15 8:24 26:4</p> <p>chief 26:19</p> <p>circulate 29:8</p> <p>circumstances 27:17</p> <p>city 1:1,11 12:19 19:15 20:9 23:5 24:13,15 26:20</p> <p>clarified 20:17</p> <p>clarify 12:17 13:1,5 14:1 16:15,24 17:3,12 18:6 19:22 20:12,22 22:6</p> <p>clarifying 19:17</p> <p>clarity 10:6 27:1</p> <p>clear 14:6 16:17,19 17:1 18:17,23 19:7,11 20:4,15</p> <p>clerk 13:18</p> <p>closed 30:2</p> <p>closer 19:3</p> <p>come 24:21 30:8</p>
---	---	--

<p>comes 12:13 16:16 20:7 coming 23:24 24:1,13 commencing 1:15 comment 6:12 8:14 9:20 comments 5:3 21:9 25:15 27:6 28:13,20 Commission 17:19 Committee 3:24 29:6 committees 28:1 compliance 10:9 concern 18:4 22:7 23:22 24:10 concerns 10:1 27:5 concludes 21:5 CONFERENCE 1:11 confirmed 7:9 conflict 17:21 18:2,4,8,10 28:3,9 conflicts 1:2 4:13 9:21 11:18 17:6 20:10 23:23 24:2,15 27:2 confusing 21:18 22:3 confusion 11:16 connection 26:12 connections 22:24 consider 21:2 considered 6:17 constitute 13:12 constitutes 16:3 contains 5:11 continue 21:1 contract 19:5 27:24 contractor 16:6 18:24 contractors 18:23 23:3 contrast 17:7 22:18 23:4 convenience 5:7 cool 15:6,6 COOPER 2:24 coordinate 7:17 25:21 Copies 5:5 copy 3:18 8:1 counsel 8:18 9:16 couple 12:15 28:10 course 21:2 court 1:9,20 6:22 29:7 30:13 31:5 cover 14:16,19 24:18,20</p>	<p>covered 20:15 23:8 covering 16:5,6 CREAMER 2:10 create 18:2,8,9 creates 17:21 currently 24:18,20</p> <hr/> <p>D</p> <hr/> <p>D 13:9 29:16 DAKOTA 2:11 DANI 2:13 DATE 31:22 days 24:7 deal 23:17 deals 12:14 13:10 20:6 declare 30:2 defined 11:17 22:21 definition 17:20 27:13 department 4:20 5:18,20,24 7:1 Deposition 30:17 deputy 26:19 described 12:24 DESCRIPTION 3:13 desire 25:18 desires 28:24 difference 20:19 differences 25:2 different 15:21 19:1 20:8 direct 21:24 disclosure 18:12 27:19 28:7 discretion 13:16,19 discuss 27:5 discussed 11:21,22 23:12 discussion 25:6,10 discussions 9:23 10:2 18:5 disqualification 14:2,5 15:1 15:16,20,22 17:7 18:12 19:2 19:9,14,21 22:12,13 27:19 27:22 28:7 disqualified 28:2 document 7:7 8:5 10:15,18 documents 6:24 7:24 doing 24:6 25:3 dot 9:1 draft 3:18 28:6 drum 12:8</p>	<p>due 28:12</p> <hr/> <p>E</p> <hr/> <p>E 2:1,1 3:10 8:3 13:23 15:1,3 22:11 31:1 easier 17:13 19:23 economic 12:2,10 13:3 16:22 edits 10:14 efforts 26:24 electronic 5:9 electronically 5:7 Ellen 2:5 4:17 email 8:17,21,23,24 employee 13:6 14:8 16:11 19:16 23:5 27:17 employees 12:20 20:10 28:8 employer 17:20 18:2 employment 16:5,13,17 17:16 18:16 19:13 23:2 27:18 entered 7:3 10:16 entire 28:4 entity 11:19,21 12:7 Erica 1:9 7:10,11 30:10 31:5 31:24 ERSA 1:20 30:10 ESQ 2:3,4,4,5,10,11,12,13,14 2:15,16,18,22 ethics 1:1,12 4:10 9:17 17:18 17:23 24:24 everybody 11:10 15:5 example 12:3 27:16 examples 10:10 13:12,14,21 16:20 17:2,24 18:14 27:9,13 exercising 13:19 Exhibit-A 3:16 7:5,8 32:8 Exhibit-B 3:18 10:16,19 33:8 Exhibit-C 3:20 29:10 30:15 34:8 Exhibit-D 3:23 30:15 exhibits 8:1 29:18 30:14 explain 27:13 explaining 20:4 explanation 14:4 explicit 12:1 extent 20:23 25:1 27:22 external 9:23</p>
--	---	--

<p>F</p> <p>F 31:1 fact 22:20,22 factors 17:2 fallback 23:10 family 19:17 20:20 21:16,17 21:20,21,24 23:4 feature 5:10 7:16 feedback 20:2 feel 8:11 felt 14:3 field 28:11 file 27:18 filed 7:1 finalized 24:24 financial 11:24 12:14,19,21 13:7 14:11 15:21 16:3 19:5 20:9,14,15,20 21:17 22:21 23:1 fine 15:13 first 4:6 9:1 12:13,16 16:13 22:11 27:8 fit 28:11 fix 26:13 floor 1:13 21:7 28:18 focus 10:5 11:5 folks 17:22 24:6,13 following 5:12 22:19 for-profit 16:8,16,23 17:3,4 19:11,15,19 23:4 foregoing 31:7 form 5:23 28:7 formatting 10:22 forward 21:3 found 5:21 free 12:9 full 4:4 15:8 further 4:18 10:11 22:6 25:10 future 6:18 16:22 17:16 27:18</p> <p>G</p> <p>G 8:3 20:1 GARDNER 2:13 general 8:17,23 9:16 14:7 22:18 23:7</p>	<p>generally 15:19 21:15,23 22:14,15 23:16 give 13:11,20 17:5 giving 6:3 12:8 glitch 28:12 global 11:15 go 10:11 24:24 goals 17:11 going 7:5 9:6 10:11,21 11:4,5 11:7 12:5 17:5 18:2,7 19:2 19:19 25:22 30:9 Gonzalez 2:4 4:16 14:24 Good 9:13 26:18 government 23:24 24:13,14 Great 11:13 greater 27:1 Greenwald 2:14 4:21 8:18,22 9:8,11,13,15 10:20 11:13 14:18 15:2,7,14 21:7,12 22:4,17 24:9 26:8 29:3,11 29:15,21 30:9 guess 29:9 guests 9:14</p> <p>H</p> <p>H 3:10 hear 21:11 hearing 1:1 4:7,12 5:1 6:6,7 6:11,11,16,19,23 7:4,13 8:6 8:13,16 10:17 25:8,9,16 28:21 30:2,11 Hearn 1:9 7:11 30:10 31:5,24 held 20:20 21:16,20,24 help 18:10 holding 4:11 Home 5:13 hopefully 11:10 HORTENCIA 2:17 hosting 1:11</p> <p>I</p> <p>identification 7:8 10:19 30:14 identified 14:11 identify 7:21 25:19 28:8 impact 14:10 impacted 12:22</p>	<p>impacts 22:21 important 28:16 include 26:4 including 7:2,18 13:2 16:21 income 11:24 12:10 incorporated 24:5 increasing 10:6 independent 16:6 18:22,24 23:3 informational 18:7 initial 27:5 integrity 26:19 intended 9:24 11:16 intending 20:12 intent 7:15 interactions 18:1 interest 1:2 4:13 9:21 11:18 12:15,19 13:7 15:21 16:3,18 19:5 20:9,14,15,17,20 21:16 21:17 22:21 23:1,3,8,23 24:2 27:2 28:10 interested 5:3 interests 12:21 14:11 21:24 internal 9:23 11:3 interpretations 24:22 interrupted 29:19 interview 18:7 invite 8:7 25:17 involved 14:5 involves 10:24 issue 28:16 items 18:17</p> <p>J</p> <p>J 2:4,10,24 jobs 18:13 Joe 12:4,7 join 4:23 joined 4:15 Jordana 2:14 8:18,20 9:15 14:13 21:10 23:19 26:3,6 jordana.greenwald@phila... 9:3 JR 2:4,10 JULIA 2:18</p> <p>K</p>
---	---	--

<p>Kaplan 2:5 4:17 23:19 25:13 Kenney 26:21 key 11:14 27:10 kind 23:10 24:5 kindly 8:20 KLEMM 2:15 know 10:3 14:2,9 16:12 21:19 23:10,11 24:7 knows 14:8 Krystle 2:22 3:21 26:19 29:12</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>language 13:2 16:24 19:6 20:22 22:13 law 4:19 5:20 24:15 lawyers 21:22 leave 12:5 30:7 left 11:22 legal 5:22 lengthy 15:24 let's 9:12 26:12 letter 27:19 lettering 29:17 level 19:1 link 5:10 10:12 listed 15:20 16:20 18:17 20:17 little 13:5 19:3 21:18 22:1,2 25:6 look 11:8 22:5,8 looked 22:23 looking 21:14 lot 18:3 24:17,19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>major 10:4 making 16:17,19 18:23 24:7 manuals 25:1 marked 3:14 7:4,8 10:19 30:14 marked-up 10:13 marking 29:10 material 24:23 matter 1:8 31:9 Mattleman 2:5 4:17 McCormick 2:4 4:15 14:22</p>	<p>21:10,13 22:9 23:14,17 MCHALE 2:16 mean 13:22 14:13 17:13 22:16 meant 14:2 meaty 11:6 mechanism 6:20 meeting 5:19 6:18 30:5,8 member 2:4,4,5 5:8 16:11 19:15,17,18 21:18 22:1 members 2:2 4:16 5:2 6:15 8:6,11 9:14 16:8 20:21 21:8 21:16,20 23:4 25:15 28:19 membership 17:4 19:10 23:5 Memorandum 3:16 mentioned 9:17 met 27:3 MICHAEL 2:3 Mike 4:9 14:23 ministerial 13:13,20 27:14 modifications 6:14 modify 6:21 moment 24:12 moving 16:12 21:3</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1 31:1 name 4:9 9:1,2,15 narrower 19:3,20 necessarily 12:23 need 18:11 23:16 25:2 needed 14:3 20:4 27:17 new 19:9 23:21 newspaper 6:8 nexus 19:3 non-employee 16:8 19:14,18 non-employment 19:10 non-ministerial 13:13,16 non-typical 20:24 nonprofit 23:2 Notary 1:10 31:6 note 4:14,18 10:3 noted 17:18 notes 31:8 notice 6:1,3,7 notify 7:14 November 1:15 8:19 27:4</p>	<p>31:22 number 3:13 15:20 numbering 11:3</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 8:3 31:1 obligations 19:12 obtained 21:17,21 October 5:18 offer 27:5 offering 28:14 office 27:23 officer 19:16 23:5 26:20 officer's 13:7 officers 12:19 20:9 offices 1:11 official 12:22 13:10 14:8,9 16:20 18:18 19:4 20:1,7 22:13,20,24 23:7 Oh 14:18 Okay 9:13 11:13 15:14 22:4 23:14 29:14 online 28:6 open 21:7 28:18 opinions 24:21 opportunities 12:2 13:4 16:23 opportunity 5:2 6:12 11:24 12:11 26:2 28:15 order 7:18 owner 16:10 owning 12:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 2:1,1 p.m 1:15 30:17 PA 1:23 page 3:13,13 14:17,20 pages 14:14 paragraph 11:1 14:6 15:24 20:18 paragraphs 16:1,4 20:11 22:19 Parkway 1:12 part 10:4 20:18 22:11 particular 13:11 23:1,8 26:11 26:12</p>
---	---	--

<p> particularly 16:16 parties 5:3 parts 18:15 passed 23:21 payments 13:18 PDF 28:12 Pennsylvania 1:14 people 13:21 18:10 23:23,24 30:6 person 7:13 19:18 phila.gov 9:2 Philadelphia 1:1,12,14,23 4:10 5:13 26:20 piece 10:24 20:6 30:11 pieces 16:14 20:3 pizza 12:4,9 place 12:13 13:8 24:23 places 11:20 Plaza 1:22 please 7:14 8:1 29:19,20 portion 20:5 portions 15:9 posting 5:17 10:15 potential 11:23 12:10 18:1,9 prepared 9:5 presence 4:4 7:10 present 2:20 4:20 6:22 7:13 presentation 10:21 11:11 pressed 8:12 prior 7:21 private 24:1 proactively 6:5 probably 17:9 problem 26:11,14 proceed 26:13,15 PROCEEDINGS 4:1 process 5:13 10:21 28:4 Professional 1:9 31:5 profits 16:22 prohibited 16:20 18:19 22:14 22:16,22 prohibition 14:7 22:18 23:7 promulgating 24:11 proper 5:23 proposed 1:1 4:12 5:4,5,11 5:14,16,21 6:2,3,6,10,13,21 7:2 8:10,15 15:10 26:22 </p>	<p> 27:7 proposing 9:19 prospective 17:20 prospects 13:3 protocol 23:21 provide 5:3,9 25:1,18 27:1 29:6 provided 6:7 17:24 provisions 17:12 public 1:10 4:11 5:2,17,19 6:1,12 8:7,11 9:20 30:2,5 31:6 purpose 24:11 purposes 25:8 put 8:23 </p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p> question 22:10 23:15,20 questions 6:15 21:8 23:18 25:15 27:24 28:19 queue 29:2 quick 23:18 quorum 4:4 </p> <hr/> <p style="text-align: center;">R</p> <hr/> <p> R 2:1 31:1 raised 10:1 range 17:6 reads 22:2 ready 9:10 really 10:6 11:15,19,23 13:23 14:1 17:10 23:6 24:10 realm 15:15 19:20 20:8 receives 27:23 recommend 6:13 8:9 27:8 recommendation 27:14,20 recommendations 5:4 8:13 9:22 10:14 recommended 13:24 21:1 28:5 recommending 15:17 record 4:14,18 6:17 7:4 8:5 25:5 records 5:18,24 7:2 Reed 2:3 4:3,9,23 7:9 9:4,9 9:10,12,17 11:12 14:13,21 15:3,4,11 21:6 23:15 25:14 </p>	<p> 25:23,24 26:5,10,17 28:17 28:21 29:4,9,14,17,24 references 11:4 Reg 4:7 10:15 11:1,1 20:5,11 regarding 7:17 regards 4:13 regular 30:5 regulation 1:2 3:18 4:12 5:5 5:6,12,15,17,21 6:2,4,6,10 6:13,21 7:3 8:10,15 9:21 10:8,10 21:4 24:11,23 26:22 27:7,9,11,15,21 relates 20:1 relationship 16:2 19:13 relationships 16:5,7,14 17:8 remove 26:6 renaming 14:6 replaced 12:11 replacing 12:1 13:2 report 6:19 25:8,9 reporter 1:10 6:22 7:10 29:7 30:13 31:6 REPORTERS 1:20 requested 25:21 26:2 27:12 requests 13:11 require 11:2 19:3 required 5:13 requiring 13:16 respect 14:4 17:16 respond 6:19 8:12 rest 20:10 restricted 12:23 20:13 result 18:24 28:3 resulting 17:6 reviewed 5:20 reviewing 28:2 revised 8:15 revisions 8:10 Reynelle 4:19 RICHARD 2:12 right 15:11 23:14 26:5 28:10 rise 17:5 roll 9:10,12 Rule 5:13 rules 24:3 27:1 </p> <hr/> <p style="text-align: center;">S</p> <hr/>
---	--	--

<p>S 2:1 3:10 Sanjuanita 2:4 4:16 Sarah 27:3 saw 14:24 saying 20:13 scheduled 6:5 scope 15:19 19:9 20:5 screen 11:8 14:16 26:6,9 scroll 14:14 SEAN 2:23 second 13:8 27:16 28:5 section 5:14 20:3 22:10 sector 24:1 see 7:10 11:10,12 14:21 15:2 seeing 14:19 26:9 seeking 27:18 selection 27:24 28:4 send 8:1 separately 19:8 separating 18:22 Seventy 3:24 29:6 SHANE 2:10 share 10:12 11:7 26:7,9 shared 14:16 shareholder 16:10 SHEPPARD 2:18 similar 18:19 19:12 Similarly 19:8 situation 15:23 situations 23:2 slight 13:1 slightly 19:20 somebody 13:17 sort 10:22 15:8,24 17:19 19:1 20:24 South 1:21 speak 26:2 specific 14:4 15:9 16:2 22:2 22:23 specifically 12:18 27:12 specified 23:11 specify 20:13 staff 2:8 5:9 7:15,16 8:7,9 9:6 9:18 10:14 25:21 26:24 27:4 28:6 29:1 staff@phila.gov 8:4 Staley 4:19</p>	<p>start 18:22 starting 16:13 state 8:20 17:18,23 24:15 stay 30:7,8 stenographic 31:8 Stevenson 27:3 Street 1:13,21 subject 17:22 submit 7:24 29:12 submitted 29:7 submitting 8:16 18:8 subparagraph 17:17 subparagraphs 18:20 subpart 12:14,17,24 13:9,23 14:12 15:1,3 20:1,16,19 21:15 22:11,22 substance 17:11,17 substantive 10:4 Substantively 24:17 suggestions 10:1 Suite 1:22 supporting 10:8 sure 17:1 24:8,9</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 3:10 31:1,1 take 6:9 7:12 11:8 14:9 15:18 22:8 taken 1:8 15:17 31:8 talk 11:4 12:20 talked 15:19 talking 11:18 12:4,7,18 13:6 14:14 16:18 technical 28:12 term 11:17 terms 11:23 12:11 19:13 27:10 testify 7:14,19,20 8:8 9:7,18 26:21 28:24 testifying 9:9 testimony 3:20,23 6:19 7:12 7:18,22 8:17 9:6 21:2,5 25:17,18 28:22,23 29:5,13 29:22 text 10:7 13:5 28:11 thank 9:4 21:6 26:16 28:14 28:17,22 30:3,10,12</p>	<p>Thanks 25:13 thing 4:6 14:15 things 18:6 think 4:21 14:22 18:3 22:3 thinking 18:11 third 27:21 THOMAS 2:15 three 16:1,4 time 6:24 7:7 10:18 21:9 24:12 30:13 timing 27:16 title 12:16 today 4:11 11:5 21:3 28:14 today's 5:1,8 8:15 10:17 training 23:20,21 24:5,19,20 25:3,6,12 transcribe 6:23 transcript 1:8 10:17 31:7 tried 11:24 13:20 19:6 troubling 14:19 true 31:7 try 26:13 trying 16:24 18:10,16 19:21 20:21 turn 7:19 26:8 two 13:14 20:3,11 23:18 type 16:2 types 15:21 16:17 17:8 18:1 18:18 23:8 typical 11:2 typographical 10:23</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 17:3 underneath 23:12 understand 17:14 18:11 19:23 21:21 22:7 24:3 27:10 understanding 8:8 13:22 24:14 United 1:22 update 11:3 19:6 28:6 updates 10:23</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>VASQUEZ 2:17 version 9:20 10:13,15 15:8</p>
---	---	--

versus 13:13	13 23:9,13	
Vice 4:15	14 23:9,13	
	15 1:15	
W	1515 1:13	
WALSH 2:23	1520 1:22	
want 4:8	17th 1:21	
wanted 12:24 14:1 17:21	18 5:18	
18:6 29:12	18th 1:13	
wanting 12:8,17	19103 1:23	
way 8:17	1st 27:4	
we'll 8:23 25:8 29:9		
we're 11:4,17 13:6 16:18 24:6	2	
25:11	20 31:22	
we've 12:11 13:14,24	2023 1:15 5:19 8:19 31:22	
WEB 1:10	215 1:24	
website 6:4,8	22 8:19	
Wednesday 1:14 27:4	26073 20:7	
welcome 4:8,24 7:11 28:23		
weren't 20:3	3	
wish 6:16	30 1:21 3:21,24	
wishes 7:14 8:14	32 3:16	
witness 7:20	33 3:18	
witness' 7:19	34 3:21	
witnesses 6:16 25:18 30:1	35 3:24	
words 28:11		
worked 16:15	4	
working 15:12		
worry 15:5	5	
WRIGHT 2:13	5 1:2 4:7,12 5:5 7:3 9:21	
written 8:16 29:5,12	26:22	
	5.11 14:6 22:10	
	5.12 15:18 23:9,13	
X	5.14 19:9	
X 3:10	5.27 21:13	
	564-1233 1:24	
Y		
Yeah 14:24 22:17 29:9	6	
yesterday 26:3		
	7	
Z	7 3:16	
Zoom 1:10 5:10 7:16		
zoomed 15:9	8	
	8-407 5:14	
0		
	9	
1	90 24:7	
1:02 1:15 4:3		
1:32 30:17		
10 3:18		



**CITY OF PHILADELPHIA
BOARD OF ETHICS**

EXHIBIT

EXHIBIT-A/NOVEMBER 15, 2023/EH

exhibiticker.com

M E M O R A N D U M

TO: Department of Records, City Hall Room 156
Attn: James Leonard
Kattie Anderson
Anthony Tann, Jr.

FROM: Jordana Greenwald, General Counsel

DATE: October 20, 2023

SUBJECT: Board of Ethics Regulation No. 5 (“Conflicts of Interest”)

CC: Lewis Rosman, Chief Deputy City Solicitor
Reynelle Brown Staley, Law Department (Senior Attorney)

At a public, virtual meeting on October 18, 2023, the Board of Ethics voted to approve for public comment new Regulation 5 ("Conflicts of Interest") that is attached. In accordance with Section 8-407 of the Home Rule Charter, the proposed regulation has been submitted to the Law Department, which has given approval as reflected in the attached Law Department memorandum. Please advertise this proposed Regulation 5 and make it available for public inspection.

In accordance with past practice that our Office has previously discussed with Commissioner Leonard, the Board has already scheduled a public hearing on this proposed regulation to be held on November 15, 2023 at 1:00 p.m. In the following weeks, instructions on how members of the public may participate in the public hearing will be posted on the Board's website at: <https://www.phila.gov/ethicsboard/pages/default.aspx>.

It would be very helpful for the Department of Records' newspaper legal notice of this proposed regulation to include the date and time of the November 15, 2023 public hearing. The Board will also separately arrange for newspaper and website notice of the November 15, 2023 public hearing.

Please let me know if you have any questions. Thank you for your assistance with this matter.

Enclosures: Law Department Approval Memorandum
Proposed Board Regulation No. 5, Approved for Public Comment

City of Philadelphia
Law Department

Memorandum

TO: J. Shane Creamer, Executive Director, Board of Ethics

FROM: Reynelle Brown Staley, Senior Attorney//rbs

DATE: October 19, 2023

SUBJECT: Philadelphia Board of Ethics Regulation No. 5 (“Conflicts of Interest”)

I have reviewed the enclosed “**Philadelphia Board of Ethics Regulation No. 5 (“Conflicts of Interest”)**” that was submitted to the Law Department and find it to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may forward these Amended Regulations to the Department of Records where they will be made available for public inspection.

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 5
CONFLICTS OF INTEREST**

Table of Contents

Subpart A.	Scope; Definitions.....	2
Subpart B.	Identifying and Resolving Conflicts of Interest.....	4
Subpart C.	Financial Interest.....	4
Subpart D.	Official Action.....	6
Subpart E.	Disqualification.....	6
Subpart F.	Disclosure.....	10
Subpart G.	Past Official Actions.....	14
Subpart H.	Penalties.....	14

SUBPART A. SCOPE; DEFINITIONS.

5.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of The Philadelphia Code Sections 20-607, 20-608, and 20-602(5). To the extent this Regulation references, but does not incorporate, prohibitions or requirements of the State Ethics Act, 65 Pa. C.S. §1101, et seq., such references (in bracketed, italicized text) are for educational purposes only and do not confer any new authority on the Board to enforce State law. The examples and lists provided in this Regulation are for illustration and are not exhaustive.

5.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Board.** Board of Ethics.
- b. Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or legal entity organized for profit, including nonprofits and limited liability companies, but not including a government entity or City-related nonprofit.
- c. City.** City of Philadelphia.
- d. City board or commission.** Any City board or commission, without regard to the body's title (including a body denoted as a board, commission, council, committee, task force, working group, panel, or other similar designation), established by the City's Home Rule Charter, ordinance, or Executive Order.
- e. City officer or employee.** Any person who is elected or appointed to a position in any branch of the government of the City including:
 - 1. elected City officials;
 - 2. employees of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay;
 - 3. members of City boards and commissions;
 - 4. individuals appointed or assigned to any City position, whether paid or unpaid, that exercises significant powers of government.
- f. City-related nonprofit.** Any not-for-profit entity established by the City through administrative or legislative action, such as the Delaware River Waterfront Corporation, Community Behavioral Health, the Philadelphia Housing Development Corporation, and the Philadelphia Industrial Development Corporation.
- g. City resources.** All real and personal property, facilities, equipment, supplies, and services that are owned, purchased, or leased by the City.

DRAFT FOR PUBLIC COMMENT APPROVAL

- h. Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.
- i. Final action.** As to an individual, any approval, denial, disposition, or decision that typically concludes that individual's authority over or consideration of a matter. As to a board, commission, or other body, any approval, denial, disposition, collective positive or negative consensus, or other determination, whether by vote or otherwise, that concludes the body's authority over or consideration of a matter.
- j. Financial interest.** An interest involving money or its equivalent or an interest involving any right, power, or privilege that has economic value, including interests in property or investments. See Subpart C for further details of the types and scope of financial interests covered by this Regulation.
- k. Government entity.** Any agency, office, department, board, commission, authority, or other entity that is part of the United States or a State, local, or foreign government.
- l. Legislation.** Bills, resolutions, amendments, and nominations pending or proposed in City Council, and any other matter that may become the subject of action by City Council.
- m. Life partner.** An individual who has a long-term committed relationship with another individual of any gender.
- n. Member of a for-profit business.** An officer, director, partner, manager, board member, trustee, owner, operator, or employee of a for-profit business.
- o. Ministerial.** Requiring a prescribed response when faced with a specific set of facts.
- p. Official action.** An act or omission taken by an officer or employee in their official capacity that requires discretion and is not ministerial in nature, including any non-ministerial act or omission by a City officer or employee in the course of discharging their City duties, using their City position or title, or using City resources available by virtue of their City position. See Subpart D for further details of the types and scope of official actions covered by this Regulation.
- q. Person.** A business, individual, corporation, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons, including nonprofits and limited liability companies.

5.2 Applicability. Except where expressly indicated otherwise, the provisions of this Regulation apply to all officers and employees of the City.

SUBPART B. IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST.¹

5.3 A conflict of interest arises under City law when a City officer or employee can take official action that would affect a financial interest of:

- a. the City officer or employee;
- b. a family member of the City officer or employee; or
- c. a for-profit business of which the City officer or employee is a member.

[Conflicts of interest also arise under State law under the circumstances listed above. Additionally, a conflict of interest arises under State law when a public official or public employee, as defined by the State Ethics Act, 65 Pa. C.S. §1101, et seq., can take official action that would financially benefit a nonprofit of which they, or an immediate family member (parent, child, spouse, or sibling), are an officer, director, or employee.]

5.4 A City officer or employee who has a conflict of interest:

- a. is disqualified from certain official actions as set forth in Subpart E; and
- b. shall disclose the conflict of interest as required by Subpart F.

SUBPART C. FINANCIAL INTEREST.

5.5 A City officer or employee has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or business prospects. The financial interests described below may give rise to a conflict of interest that requires disclosure and disqualification under Subparts E and F.²

- a. **Personal financial interest.** A personal financial interest is one held, in full or in part, by a City officer or employee, including:
 - 1. a contract to provide goods or services;
 - 2. employment by a nonprofit;
 - 3. ownership of real property;
 - 4. investment income; or
 - 5. freelance or gig work.

¹ Certain financial interests in City contracts are prohibited under Charter Sections 10-100 and 10-102. Those restrictions are not addressed in this Regulation.

² The scope of financial interests described in Subpart C is specific to conflicts of interest. A different range of financial interests are subject to restriction or disclosure under other City or State ethics rules.

b. Financial interest of family members. A financial interest held by any of the following family members:

1. Spouse;
2. Sibling;
3. Child;
4. Parent;
5. Life partner; or
6. Like in-law (e.g., parent-in-law), including any individual who is a sibling, child, or parent of a life partner.

c. Member of a for-profit business. A City officer or employee has a financial interest in any for-profit business of which they are a member, including as a(n):

1. Officer;
2. Director;
3. Partner;
4. Manager;
5. Board member;
6. Trustee;
7. Owner;
8. Operator; or
9. Employee.

An independent contractor of a for-profit business is not a member of a for-profit business but has a personal financial interest in such business under Paragraph 5.5(a).

5.6 Interests held by others for the benefit of a City officer or employee. A financial interest held by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if held directly by that officer or employee.

5.7 Past financial interests not covered. This Regulation does not apply to past financial interests absent some ongoing financial relationship or obligation.

Example for Paragraph 5.7

Several years prior to becoming a member of the Historical Commission, Abigail Ballot was retained by Calvin Delegate to provide a letter of technical support for the proposed designation of Hogwarts as a historic building. At the time, Ms. Ballot was a principal in SPEW Consulting and submitted her letter on SPEW letterhead. Ms. Ballot left SPEW several months before joining the Historical Commission. Neither Ms. Ballot nor her new employer have a financial relationship with Mr. Delegate. Because there is no current financial relationship, Ms. Ballot does not have a financial interest that could give rise to a conflict of interest.

SUBPART D. OFFICIAL ACTION.

5.8 Official action. For the purpose of this Regulation, official action includes any non-ministerial act or omission by a City officer or employee:

- a. In the course of discharging their duties as a City officer or employee; or
- b. Using their City position or title, or City resources available by virtue of their City position (whether or not authorized).

As defined in Paragraph 5.1(o), an act is ministerial if a prescribed response is required when faced with a specific set of facts.

5.9 Not limited to final action. Official action includes not only a final action, but also any discussion, review, deliberation, consideration, analysis, or recommendation. Official action can occur even in the absence of a final action.

5.10 Omissions presumed non-ministerial. An omission is presumed to be non-ministerial unless:

- a. the omitted act, if taken, would have been ministerial, and
- b. the omission was inadvertent.

SUBPART E. DISQUALIFICATION.

5.11 Prohibited official action. No City officer or employee shall take official action if the officer or employee knows, or should know, that such official action will affect a financial interest identified in Subpart C.

5.12 Scope of disqualification. For the financial interests listed below, the scope of official actions from which a City officer or employee is disqualified depends on the type of interest affected as follows:

- a. **For-profit employment.** A City officer or employee who is an employee of a for-profit business is disqualified from any official action that would affect the financial interests of such business, including:
 - 1. opportunity for future business;
 - 2. financial interests of clients of the for-profit business;
 - 3. fellow members of the for-profit business acting on behalf of the business or its clients; or
 - 4. fellow members of the for-profit business representing any person as an agent or attorney.
- b. **Future employment.** A City officer or employee who applies for or is offered non-City employment is disqualified from any official action that would affect the financial interests of such prospective employer. Disqualification is required until an application is rejected or a pending offer is declined or rescinded.

DRAFT FOR PUBLIC COMMENT APPROVAL

- c. **Nonprofit employment.** A City officer or employee who is an employee of a nonprofit is disqualified from any official action that would affect their employment by the nonprofit, including:

1. the nonprofit employer's ability to pay the City officer or employee;
2. the value of the compensation or benefits provided; or
3. the willingness to hire or retain the City officer or employee.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

- d. **Employment of family members.** Where the financial interest at issue is the employment of a family member, the City officer or employee is disqualified from any official action that would affect the employment of their family member, including:

1. the employer's ability to pay the family member;
2. the value of the compensation or benefits provided; or
3. the willingness to hire or retain the family member.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

- e. **City officers or employees as independent contractors.** A City officer or employee who is an independent contractor is disqualified from any official action that would affect their relationship with any business with which they have a contract, including:

1. the contracting business' ability to pay the City officer or employee;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

- f. **Family members as independent contractors.** Where the financial interest at issue is a family member who works as an independent contractor, the City officer or employee is disqualified from any official action that would affect the family member's relationship with any business with which they have a contract, including:

1. the contracting business' ability to pay the family member;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

g. Non-employee members of a for-profit business. A City officer or employee who is a non-employee member of a for-profit business is disqualified from any official action that would affect the financial interests of such business, including:

1. the opportunity for future business;
2. the financial interests of clients of the for-profit business;
3. fellow members of the for-profit business acting on behalf of the business or its clients; or
4. fellow members of the for-profit business representing any person as an agent or attorney.

h. Family members as non-employee members of a for-profit business. Where the financial interest at issue is a family member's non-employment interest in a for-profit business, the City officer or employee is disqualified from any official action that would affect the financial interest of their family member, including:

1. the business' ability to pay the family member;
2. the value of the compensation or benefits provided by the business to the family member;
3. the willingness to continue the membership relationship with the family member; or
4. the opportunity for future business.

This threshold may also be met if the official action would have a significant and substantial impact on the business.

[Nonprofit affiliation. In addition to the disqualification required by this subpart, any public employee or public official as defined by the State Ethics Act must also recuse themselves from any use of their City authority that would financially benefit a nonprofit of which they, or an immediate family member, are an officer, director, or employee or in which they otherwise have a financial interest.]

5.13 Delegating prohibited official action. Where a City officer or employee is disqualified from taking official action under this subpart, the responsibility or authority for such official action shall not be reallocated or reassigned by the disqualified officer or employee to a subordinate. Delegation of prohibited official action may be accomplished by:

- a. A superior officer or employee; or
- b. A pre-existing policy that specifies how and by whom such reallocation or reassignment shall be accomplished, so long as the responsibility or authority for taking such official action is not reallocated or reassigned to a subordinate of the disqualified City officer or employee.

5.14 Exceptions to disqualification.

a. Matters of general application. A City officer or employee may take official action with respect to a matter of general application even if such official action will affect a financial interest listed in Paragraph 5.5. A matter is of general application if:

1. it affects the financial interest of the general public or a substantial segment thereof in a manner substantially similar to that in which it affects the financial interest of the City officer or employee; and
2. the impact of the matter on the financial interest of the City officer or employee is substantially proportionate to its impact on the financial interests of members of the general public or members of the relevant segment thereof.

The scope or nature of the relevant segment of the public may change over the course of the legislative, regulatory, or other decision-making process if the scope or nature of the matter under consideration changes.

b. Actions necessary for compliance. Discussions and correspondence necessary to identify the conflict, determine the scope of disqualification, and effectuate such disqualification are permitted.

Examples for Paragraph 5.14(a)

1) Ezra Form is a manager with Parks and Recreation who has three school-age children. He is asked to write a grant to fund expanded after-school programming at City rec centers. Mr. Form and his husband could save a lot of money on after-school childcare if more seats were available. While Mr. Form has a financial interest in the expansion of after-school programs, his interest is affected in the same manner as any other City resident with school-age children (who collectively are a substantial segment of the general public). Thus, Mr. Form is not disqualified from serving on the working group.

2) In addition to serving as a legislative aide to a Councilmember, Georgina House owns six bowling alleys in the City. Fifteen operators control approximately 80% of City bowling alleys.

a) After a highly publicized brawl outside a bowling alley in Camden, Ms. House's Councilmember asks her to draft a bill that would require bowling alleys to provide private security patrols during certain operating hours. The cost of private security officers would increase operating costs for all bowling alleys in the City. Ms. House has a financial interest in legislation that would increase the operating cost of the for-profit businesses she owns. Because the bowling industry in the City is concentrated in a small number of owners and operators, the segment of the population affected by the legislation is not substantial and therefore the matter is not of general application. As a result, Ms. House is disqualified from working on the bowling alley legislation and must disclose her conflict of interest as required by Subpart F.

b) To combat a difficult economic climate, Council is considering a year-long moratorium on the business privilege tax. Ms. House's Councilmember asks her to review the proposal and make recommendations as to how the Councilmember should vote. While Ms. House has a financial interest in a tax break for businesses, her interest is the same as that of any

of the many thousands of business owners in the City. Because the proposed tax moratorium would affect Ms. House's interest similarly to a substantial segment of the population, Ms. House is not disqualified from working on the legislation.

3) Ira Jacket is a Deputy Health Commissioner. He is also an entrepreneur who has invested in a variety of industries, including nail salons. After several news stories regarding workplace and consumer safety concerns around UV nail lamps, Council is considering a bill to require additional safety certifications for all nail salons in the City where UV nail lamps are used. The Health Commissioner was invited to present testimony at the committee hearing and has asked for Mr. Jacket's assistance in preparing her testimony.

Mr. Jacket owns 250 nail salons in the City. All of those salons use UV lamps, meaning all locations would need to be certified. There are 2,500 nail salons in the City. There are 2,000 nail salon owners, with most owners having an interest in only one or two salons. The next largest owner has six nail salons.

Although the proposed legislation would impact all nail salon owners in a similar manner – each would need to bear the cost of both time and money to obtain a certification – it has a disproportionate impact on Mr. Jacket as compared to the universe of nail salon owners because he controls a much larger share of the market as compared to most other owners. As a result, Mr. Jacket is disqualified from participating in the Health Department's preparation of testimony or recommendations regarding the proposed ordinance.

5.15 Compatibility with City position to be determined by the appointing authority. In some cases, disqualification required by this subpart may make it impractical or even impossible for the City officer or employee to carry out the essential functions of their City role. Although the scope of disqualification required for a particular matter is for the Board to determine, it is left to the relevant appointing authority to evaluate whether such disqualification is compatible with continued employment or service.

SUBPART F. DISCLOSURE.

5.16 Required disclosures. A City officer or employee who can take official action that would affect a financial interest described in Subpart C shall disclose the conflict of interest as set forth in this subpart.

5.17 Content of disclosures. Whether submitted in writing or entered into the record of a public meeting or hearing, disclosures made pursuant to this subpart shall include all of the following information:

- a. Full name of the City officer or employee making the disclosures;
- b. City title(s);
- c. If the financial interest is through a family member, the full name of the family member(s);
- d. Brief description of the nature and extent of the financial interest;

- e. Brief description of the official actions from which the City officer or employee is disqualified; and
- f. Effective date of disqualification if before the date of disclosure.

5.18 Disclosure of legislative conflicts of interest by Councilmembers. Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when the Councilmember knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

- 1. **When:** At the public hearing on that legislation before any committee of Council (including the Committee of the Whole), regardless of whether the Councilmember serves on the committee holding the hearing.
- 2. **How:** By making a statement on the record consistent with Paragraph 5.17. Such statement shall be made part of the official hearing transcript.

b. After the public hearing but more than five days before the legislation is to be acted upon by Council:

- 1. **When:** No less than five days before the meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.17 via tracked delivery service as described in Paragraph 5.21 to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the presiding officer of Council at the time legislation is called up for consideration shall read the written statement into the public record of the Council meeting.

c. Less than five days before legislation is to be acted upon by Council:

- 1. **When:** At the public meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By making a statement on the record consistent with Paragraph 5.17. Such statement shall be made part of the official meeting transcript.

d. Absence. If the Councilmember is absent from a hearing or meeting at which disclosure on the record are required by:

- 1. **Paragraph 5.18(a) or 5.18(c),** the Councilmember shall either send a designee to make the required disclosures on the record on their behalf or shall submit a written disclosure consistent with Paragraph 5.17 to the presiding officer to be read into the official record of the hearing or meeting.
- 2. **Paragraph 5.18(b),** the Councilmember must still submit the written disclosure as required by Paragraph 5.18(b.(2) and the presiding officer shall read such disclosure into the record regardless of whether the Councilmember is in attendance.

- e. **Non-participation.** Whether the Councilmember participates in consideration of the legislation in a hearing or meeting shall have no effect on their duty to comply with the disclosures required by this subpart.
- f. **Disqualification required upon knowledge of interest.** Regardless of when disclosed, once a Councilmember knows, or should know, of a financial interest in legislation, the Councilmember shall not take any official action regarding that legislation beyond the disclosures required by this subpart or permitted by Paragraph 5.14(a.(2).

5.19 Disclosure of legislative conflicts of interest by other City officers and employees.

Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when a City officer or employee (other than a Councilmember) knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

- 1. **When:** No less than five days before the scheduled public hearing.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.17 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the written statement shall be made a part of the official record of the hearing.

b. After the public hearing:

- 1. **When:** Before the meeting at which Council is scheduled to take action on the legislation.
- 2. **How:** By submitting a written statement consistent with Paragraph 5.17 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.

5.20 Disclosure of non-legislative conflicts of interest. Any City officer or employee who knows, or should know, that they have a financial interest in any official action other than legislation shall disclose such interest in a written statement consistent with Paragraph 5.17.

a. Submission of disclosures. All disclosures made under this paragraph shall be submitted via tracked delivery service as described in Paragraph 5.21.

- 1. **Heads of City departments.** A department head shall submit disclosures made under this paragraph to the following:
 - i. Mayor;
 - ii. Managing Director;
 - iii. Board of Ethics; and
 - iv. Department of Records.

2. Other City officers and employees.³ All other City officers and employees shall submit disclosures made under this paragraph to the following:

- i. Head of the City officer or employee's City department, agency, board, or commission;
- ii. Board of Ethics; and
- iii. Department of Records.

b. Timing of disclosures. Disclosures made after the City officer or employee has taken official action from which they were disqualified do not cure any violation of this Regulation arising from such official action.

c. Recordkeeping. The Department of Records shall be the custodian of records for all disclosures made under this paragraph and shall maintain a public record of all such submissions.

[Non-legislative voting conflicts. In addition to the written disclosures required by this subpart, any public employee or public official as defined by the State Ethics Act must also comply with Section 1103(j) of the State Ethics Act, 65 Pa. C.S. §1101, et seq., regarding voting conflicts.]

5.21 Delivery methods.

- a. Tracked delivery services.** Delivery methods must provide tracking, delivery confirmation, or other proof of the date sent and date delivered.
- b. Date of submission.** For disclosures sent via certified or registered U.S. mail, other than for disclosures by Councilmembers under Paragraph 5.18(b)(2), the date of submission shall be the date of mailing. For disclosures by Councilmembers under Paragraph 5.18(b)(2), or where a method other than certified or registered U.S. mail is selected, the date of submission shall be the date of delivery.
- c. Email submissions.** Where disclosure via tracked delivery service is required under this subpart, submission exclusively via email shall not fulfill the disclosure requirements. If, however, a City officer or employee submits disclosures by both email and tracked delivery service, the date of any email delivery receipt or acknowledgement from the recipient (whichever is earlier) shall be considered the date of disclosure for purposes of evaluating whether the submission was timely.

5.22 Statement of Financial Interests not affected. City officers and employees required to make disclosures under this subpart may also be required to file a Statement of Financial Interests under Code Section 20-610. Disclosures made pursuant to this subpart do not fulfill the requirements of Section 20-610.

³ A form letter for submitting disclosures under Paragraph 5.20(a)(2), including mailing addresses for the Board of Ethics and Department of Records, is available at ethics.pub/DnD.

SUBPART G. PAST OFFICIAL ACTIONS.

5.23 No financial interest in past official action. After a final action, no City officer or employee shall obtain a financial interest in any official action they took as part of or related to that final action:

- a. during their City service or employment; and
- b. for two years after the end of such service or employment.

This paragraph shall apply regardless of who took or was responsible for taking the final action.

Example for Paragraph 5.23

Kasey Ladder works in the Mayor's office supervising volunteer service programs. She is part of a team that selects a vendor for volunteer management software. The vendor is so impressed by Ms. Ladder's technical knowledge that they offer her a part-time position working on their contract with the City. Ms. Ladder cannot accept that position as a second job while working for the City. She also cannot accept that position as post-City employment for the first two years after she leaves her City job. She may, however, be able to accept a different position with the same vendor that is unrelated to a City contract.

5.24 Restricted financial interests. This subpart applies to:

- a. personal financial interests as described in Paragraph 5.5(a); and
- b. membership in a for-profit business as described in Paragraph 5.5(c).

5.25 Interests obtained by others for the benefit of a City officer or employee. A financial interest obtained by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if obtained directly by that officer or employee.

SUBPART H. PENALTIES.

5.26 An officer or employee of the City who violates any of the restrictions set forth in this Regulation shall be subject to a civil penalty of up to \$2,000 for each such violation.

In determining the appropriate amount of monetary penalty, the Board may consider both mitigating and aggravating factors.

Mitigating factors that the Board may consider include: (i) a good faith effort to comply with the law; (ii) prompt corrective action; and (iii) prompt self-reporting to the Board of Ethics.

Aggravating factors that the Board may consider include whether the violator: (i) acted knowingly; (ii) is a repeat offender; or (iii) obstructed the investigation of the Board of Ethics.

Approved for public comment by Board:

Posted for public comment by Records:

Hearing held:

Adopted by Board:

Effective:



PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 5

CONFLICTS OF INTEREST

Table of Contents

Subpart A.	Scope; Definitions.....	2
Subpart B.	Identifying and Resolving Conflicts of Interest.....	4
Subpart C.	Financial Interest.....	4
Subpart D.	Official Action.....	6
Subpart E.	Disqualification.....	6
Subpart F.	Disclosure.....	10 <u>11</u>
Subpart G.	Past Official Actions.....	14 <u>15</u>
Subpart H.	Penalties.....	14 <u>15</u>

SUBPART A. SCOPE; DEFINITIONS.

5.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of The Philadelphia Code Sections 20-607, 20-608, and 20-602(5). To the extent this Regulation references, but does not incorporate, prohibitions or requirements of the State Ethics Act, 65 Pa. C.S. §1101, et seq., such references (in bracketed, italicized text) are for educational purposes only and do not confer any new authority on the Board to enforce State law. The examples and lists provided in this Regulation are for illustration and are not exhaustive.

5.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Board.** Board of Ethics.
- b. Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or legal entity organized for profit, including nonprofits and limited liability companies, but not including a government entity or City-related nonprofit.
- c. City.** City of Philadelphia.
- d. City board or commission.** Any City board or commission, without regard to the body's title (including a body denoted as a board, commission, council, committee, task force, working group, panel, or other similar designation), established by the City's Home Rule Charter, ordinance, or Executive Order.
- e. City officer or employee.** Any person who is elected or appointed to a position in any branch of the government of the City including:
 - 1. elected City officials;
 - 2. employees of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay;
 - 3. members of City boards and commissions;
 - 4. individuals appointed or assigned to any City position, whether paid or unpaid, that exercises significant powers of government.
- f. City-related nonprofit.** Any not-for-profit entity established by the City through administrative or legislative action, such as the Delaware River Waterfront Corporation, Community Behavioral Health, the Philadelphia Housing Development Corporation, and the Philadelphia Industrial Development Corporation.
- g. City resources.** All real and personal property, facilities, equipment, supplies, and services that are owned, purchased, or leased by the City.

DRAFT FOR PUBLIC COMMENT APPROVAL
Showing revisions recommended via staff testimony at hearing 11/15/2023
Text added in blue underline; text removed in ~~red strikethrough~~

- h. Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.
 - i. Final action.** As to an individual, any approval, denial, disposition, or decision that typically concludes that individual's authority over or consideration of a matter. As to a board, commission, or other body, any approval, denial, disposition, collective positive or negative consensus, or other determination, whether by vote or otherwise, that concludes the body's authority over or consideration of a matter.
 - j. Financial interest.** An interest involving money or its equivalent or an interest involving any right, power, or privilege that has economic value, including interests in property or investments. See Subpart C for further details of the types and scope of financial interests covered by this Regulation.
 - k. Government entity.** Any agency, office, department, board, commission, authority, or other entity that is part of the United States or a State, local, or foreign government.
 - l. Legislation.** Bills, resolutions, amendments, and nominations pending or proposed in City Council, and any other matter that may become the subject of action by City Council.
 - m. Life partner.** An individual who has a long-term committed relationship with another individual of any gender.
 - n. Member of a for-profit business.** An officer, director, partner, manager, board member, trustee, owner, operator, or employee of a for-profit business.
 - o. Ministerial.** Requiring a prescribed response when faced with a specific set of facts.
 - p. Official action.** An act or omission taken by an officer or employee in their official capacity that requires discretion and is not ministerial in nature, including any non-ministerial act or omission by a City officer or employee in the course of discharging their City duties, using their City position or title, or using City resources available by virtue of their City position. See Subpart D for further details of the types and scope of official actions covered by this Regulation.
 - q. Person.** A business, individual, corporation, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons, including nonprofits and limited liability companies.
- 5.2 Applicability.** Except where expressly indicated otherwise, the provisions of this Regulation apply to all officers and employees of the City.

SUBPART B. IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST.¹

5.3 A conflict of interest arises under City law when a City officer or employee can take official action that would affect a financial interest of:

- a. the City officer or employee;
- b. a family member of the City officer or employee; or
- c. a for-profit business of which the City officer or employee is a member.

[Conflicts of interest also arise under State law under the circumstances listed above. Additionally, a conflict of interest arises under State law when a public official or public employee, as defined by the State Ethics Act, 65 Pa. C.S. §1101, et seq., can take official action that would financially benefit a nonprofit of which they, or an immediate family member (parent, child, spouse, or sibling), are an officer, director, or employee.]

5.4 A City officer or employee who has a conflict of interest:

- a. is disqualified from certain official actions as set forth in Subpart E; and
- b. shall disclose the conflict of interest as required by Subpart F.

SUBPART C. FINANCIAL ~~INTEREST~~INTERESTS OF CITY OFFICERS AND EMPLOYEES.

5.5 A City officer or employee has a financial interest in matters that have a potential impact on their income, compensation, value of assets, wealth, employment prospects, or ~~business prospects.~~The economic opportunities. Where a City officer or employee has a financial ~~interests~~interest as described below, ~~they~~ may ~~give rise to~~have a conflict of interest that requires disclosure and disqualification under Subparts E and F.²

- a. **Personal financial interest.** A personal financial interest is one held, in full or in part, by a City officer or employee, including:
 - 1. a contract to provide goods or services;
 - 2. employment by a nonprofit;
 - 3. ownership of real property;
 - 4. investment income; or
 - 5. freelance or gig work.

¹ Certain financial interests in City contracts are prohibited under Charter Sections 10-100 and 10-102. Those restrictions are not addressed in this Regulation.

² The scope of financial interests described in Subpart C is specific to conflicts of interest. A different range of financial interests are subject to restriction or disclosure under other City or State ethics rules.

- b. Financial interest of family members.** A financial interest held by any of the following family members:
1. Spouse;
 2. Sibling;
 3. Child;
 4. Parent;
 5. Life partner; or
 6. Like in-law (e.g., parent-in-law), including any individual who is a sibling, child, or parent of a life partner.
- c. Member of a for-profit business.** A City officer or employee has a financial interest in any for-profit business of which they are a member, including as a(n):
1. Officer;
 2. Director;
 3. Partner;
 4. Manager;
 5. Board member;
 6. Trustee;
 7. Owner;
 8. Operator; or
 9. Employee.

An independent contractor of a for-profit business is not a member of a for-profit business but has a personal financial interest in such business under Paragraph 5.5(a).

5.6 Interests held by others for the benefit of a City officer or employee. A financial interest held by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if held directly by that officer or employee.

5.7 Past financial interests not covered. This Regulation does not apply to past financial interests absent some ongoing financial relationship or obligation.

Example for Paragraph 5.7

Several years prior to becoming a member of the Historical Commission, Abigail Ballot was retained by Calvin Delegate to provide a letter of technical support for the proposed designation of Hogwarts as a historic building. At the time, Ms. Ballot was a principal in SPEW Consulting and submitted her letter on SPEW letterhead. Ms. Ballot left SPEW several months before joining the Historical Commission. Neither Ms. Ballot nor her new employer have a financial relationship with Mr. Delegate. Because there is no current financial relationship, Ms. Ballot does not have a financial interest that could give rise to a conflict of interest.

SUBPART D. OFFICIAL ACTION.

5.8 Official action. For the purpose of this Regulation, official action includes any non-ministerial act or omission by a City officer or employee:

- a. In the course of discharging their duties as a City officer or employee; or
- b. Using their City position or title, or City resources available by virtue of their City position (whether or not authorized).

As defined in Paragraph 5.1(o), an act is ministerial if a prescribed response is required when faced with a specific set of facts.

Examples for Paragraph 5.8

1) Mikayla Nominee is an investigator in the City's Department of Labor tasked with evaluating whether an employer complied with the City's fair workweek requirements. Because the employer failed to maintain clear records of employees' schedules, Ms. Nominee must reconstruct the schedules through interviews and transaction logs. Ms. Nominee's investigative work requires the exercise of discretion and is non-ministerial.

2) Oakley Precinct is a clerk in the Department of Revenue who is responsible for processing tax payments. Revenue's procedures require that Mx. Precinct accepts payment via check so long as the check is signed and the amount, account number, and bank routing number are legible. Mx. Precinct's acceptance of a check that meets these criteria is ministerial.

5.9 Not limited to final action. Official action includes not only a final action, but also any discussion, review, deliberation, consideration, analysis, or recommendation. Official action can occur even in the absence of a final action.

5.10 Omissions presumed non-ministerial. An omission is presumed to be non-ministerial unless:

- a. the omitted act, if taken, would have been ministerial, and
- b. the omission was inadvertent.

SUBPART E. DISQUALIFICATION.

5.11 ~~Prohibited~~Disqualification; official action generally prohibited. No City officer or employee shall take official action if the officer or employee knows, or should know, that such official action will affect a financial interest identified in Subpart C.

5.12 Scope of disqualification; employment relationships. For the ~~financial interests~~employment relationships listed below, the scope of official actions from which a City officer or employee is disqualified depends on the type of ~~interest~~employment relationships affected as follows:

DRAFT FOR PUBLIC COMMENT APPROVAL
Showing revisions recommended via staff testimony at hearing 11/15/2023
Text added in blue underline; text removed in ~~red strikethrough~~

- a. **For-profit employment.** A City officer or employee who is an employee of a for-profit business is disqualified from any official action that would affect ~~the~~any financial ~~interests~~interest of such business, ~~including~~. Examples of prohibited official actions include any official action that:
1. ~~opportunity~~affect the for-profit business' profits, assets, or future ~~business~~economic opportunities;
 2. affect the financial interests of clients of the for-profit business;
 3. involve fellow members of the for-profit business acting on behalf of the business or its clients; or
 4. involve a matter in which a fellow ~~members~~member of the for-profit business ~~representing~~represents any person as an agent or attorney.
- b. **Future employment.** A City officer or employee who applies for or is offered non-City employment is disqualified from any official action that would affect the financial interests of such prospective employer. Disqualification is required until an application is rejected or a pending offer is declined or rescinded.

[Note that State Ethics Commission has opined that a conflict may arise where a public employee or public officer reasonably anticipates pursuing future employment. See, e.g., State Ethics Comm'n Confidential Advice No. 11-514.]

- c. **Nonprofit employment.** A City officer or employee who is an employee of a nonprofit is disqualified from any official action that would affect their employment by the nonprofit, including any official action that would affect:
1. the nonprofit employer's ability to pay the City officer or employee;
 2. the value of the compensation or benefits provided; or
 3. the willingness to hire or retain the City officer or employee.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

- d. **Employment of family members.** Where the financial interest at issue is the employment of a family member, the City officer or employee is disqualified from any official action that would affect the employment of their family member, including any official action that would affect:
1. the employer's ability to pay the family member;
 2. the value of the compensation or benefits provided; or
 3. the willingness to hire or retain the family member.

This threshold may also be met if the official action would have a significant and substantial impact on the employer.

Examples for Paragraph 5.12(b)

1a) Shonda Tally is a project manager with the Department of Aviation. She is considering a move to the private sector, but wants to know more before applying for any positions. A manager with BuildCo, a firm she deals with regularly in her City position, offers her an informational interview to help evaluate her options. The informational interview is not a job application or offer and does not require disqualification or disclosure.

b) Ms. Tally decides to apply for a recently posted position with ConstruX, a firm that is the general contractor on the Terminal Z project Ms. Tally manages. As project manager, Ms. Tally reviews all work performed by ConstruX on Terminal Z. ConstruX only gets paid if Ms. Tally signs off on their work and invoices. Once Ms. Tally submits an application to ConstruX, she has a conflict of interest and is disqualified from any official action that would affect the financial interests of ConstruX, including oversight of the Terminal Z project.

5.13 Scope of disqualification; independent contractors. For the independent contractor arrangements listed below, the scope of official actions from which a City officer or employee is disqualified is as follows:

e.a. **City officers or employees as independent contractors.** A City officer or employee who is an independent contractor is disqualified from any official action that would affect their relationship with any business with which they have a contract, including any official action that would affect:

1. the contracting business' ability to pay the City officer or employee;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

f.b. **Family members as independent contractors.** Where the financial interest at issue is a family member who works as an independent contractor, the City officer or employee is disqualified from any official action that would affect the family member's relationship with any business with which they have a contract, including any official action that would affect:

1. the contracting business' ability to pay the family member;
2. the value of the compensation or benefits provided by the contracting business;
3. the willingness to continue the contractual relationship; or
4. the opportunity for future contracts.

5.14 Scope of disqualification; non-employment membership in a for-profit business.

Where the financial interest at issue is membership in a for-profit business other than as an employee (see Paragraph 5.5(c)), the scope of official actions from which a City officer or employee is disqualified depends on whether they or a family member are affiliated with the for-profit business as follows:

a. Non-employee members of a for-profit business. A City officer or employee who is a non-employee member of a for-profit business is disqualified from any official action that would affect any financial interest of such business. Examples of prohibited official actions include any official action that could be reasonably expected to:

1. affect the for-profit business' profits, assets, or future economic opportunities;

~~g. affect~~ the financial interests of ~~such business, including:~~

~~1. the opportunity for future business;~~

~~2. the financial interests of~~ clients of the for-profit business;

3. involve fellow members of the for-profit business acting on behalf of the business or its clients; or

4. involve a matter in which a fellow ~~members~~member of the for-profit business ~~representing~~represents any person as an agent or attorney.

h.b. Family members as non-employee members of a for-profit business. Where the financial interest at issue is a family member's non-employment interest in a for-profit business, the City officer or employee is disqualified from any official action that would affect the financial interest of their family member, including any official action that would affect:

1. the business' ability to pay the family member;

2. the value of the compensation or benefits provided by the business to the family member;

3. the willingness to continue the membership relationship with the family member;
or

4. future economic opportunities of the ~~opportunity~~ for ~~future-profit~~ business.

This threshold may also be met if the official action would have a significant and substantial impact on the business.

[Nonprofit affiliation. In addition to the disqualification required by this subpart, any public employee or public official as defined by the State Ethics Act must also recuse themselves from any use of their City authority that would financially benefit a nonprofit of which they, or an immediate family member, are an officer, director, or employee or in which they otherwise have a financial interest.]

5.135.15 Delegating prohibited official action. Where a City officer or employee is disqualified from taking official action under this subpart, the responsibility or authority for such

official action shall not be reallocated or reassigned by the disqualified officer or employee to a subordinate. Delegation of prohibited official action may be accomplished by:

- a. A superior officer or employee; or
- b. A pre-existing policy that specifies how and by whom such reallocation or reassignment shall be accomplished, so long as the responsibility or authority for taking such official action is not reallocated or reassigned to a subordinate of the disqualified City officer or employee.

5.145.16 Exceptions to disqualification.

- a. **Matters of general application.** A City officer or employee may take official action with respect to a matter of general application even if such official action will affect a financial interest listed in Paragraph 5.5. A matter is of general application if:
 1. it affects the financial interest of the general public or a substantial segment thereof in a manner substantially similar to that in which it affects the financial interest of the City officer or employee; and
 2. the impact of the matter on the financial interest of the City officer or employee is substantially proportionate to its impact on the financial interests of members of the general public or members of the relevant segment thereof.

The scope or nature of the relevant segment of the public may change over the course of the legislative, regulatory, or other decision-making process if the scope or nature of the matter under consideration changes.

- b. **Actions necessary for compliance.** Discussions and correspondence necessary to identify the conflict, determine the scope of disqualification, and effectuate such disqualification are permitted.

Examples for Paragraph 5.16(a)

1) Ezra Form is a manager with Parks and Recreation who has three school-age children. He is asked to write a grant to fund expanded after-school programming at City rec centers. Mr. Form and his husband could save a lot of money on after-school childcare if more seats were available. While Mr. Form has a financial interest in the expansion of after-school programs, his interest is affected in the same manner as any other City resident with school-age children (who collectively are a substantial segment of the general public). Thus, Mr. Form is not disqualified from serving on the working group.

2) In addition to serving as a legislative aide to a Councilmember, Georgina House owns six bowling alleys in the City. Fifteen operators control approximately 80% of City bowling alleys.

a) After a highly publicized brawl outside a bowling alley in Camden, Ms. House's Councilmember asks her to draft a bill that would require bowling alleys to provide private security patrols during certain operating hours. The cost of private security officers would increase operating costs for all bowling alleys in the City. Ms. House has a financial interest in

DRAFT FOR PUBLIC COMMENT APPROVAL
Showing revisions recommended via staff testimony at hearing 11/15/2023
Text added in blue underline; text removed in ~~red strikethrough~~

legislation that would increase the operating cost of the for-profit businesses she owns. Because the bowling industry in the City is concentrated in a small number of owners and operators, the segment of the population affected by the legislation is not substantial and therefore the matter is not of general application. As a result, Ms. House is disqualified from working on the bowling alley legislation and must disclose her conflict of interest as required by Subpart F.

b) To combat a difficult economic climate, Council is considering a year-long moratorium on the business privilege tax. Ms. House's Councilmember asks her to review the proposal and make recommendations as to how the Councilmember should vote. While Ms. House has a financial interest in a tax break for businesses, her interest is the same as that of any of the many thousands of business owners in the City. Because the proposed tax moratorium would affect Ms. House's interest similarly to a substantial segment of the population, Ms. House is not disqualified from working on the legislation.

3) Ira Jacket is a Deputy Health Commissioner. He is also an entrepreneur who has invested in a variety of industries, including nail salons. After several news stories regarding workplace and consumer safety concerns around UV nail lamps, Council is considering a bill to require additional safety certifications for all nail salons in the City where UV nail lamps are used. The Health Commissioner was invited to present testimony at the committee hearing and has asked for Mr. Jacket's assistance in preparing her testimony.

Mr. Jacket owns 250 nail salons in the City. All of those salons use UV lamps, meaning all locations would need to be certified. There are 2,500 nail salons in the City. There are 2,000 nail salon owners, with most owners having an interest in only one or two salons. The next largest owner has six nail salons.

Although the proposed legislation would impact all nail salon owners in a similar manner – each would need to bear the cost of both time and money to obtain a certification – it has a disproportionate impact on Mr. Jacket as compared to the universe of nail salon owners because he controls a much larger share of the market as compared to most other owners. As a result, Mr. Jacket is disqualified from participating in the Health Department's preparation of testimony or recommendations regarding the proposed ordinance.

~~5.15~~5.17 **Compatibility with City position to be determined by the appointing authority.** In some cases, disqualification required by this subpart may make it impractical or even impossible for the City officer or employee to carry out the essential functions of their City role. Although the scope of disqualification required for a particular matter is for the Board to determine, it is left to the relevant appointing authority to evaluate whether such disqualification is compatible with continued employment or service.

SUBPART F. DISCLOSURE.

~~5.16~~5.18 **Required disclosures.** A City officer or employee who can take official action that would affect a financial interest described in Subpart C shall disclose the conflict of interest as set forth in this subpart.

5.175.19 Content of disclosures. Whether submitted in writing or entered into the record of a public meeting or hearing, disclosures made pursuant to this subpart shall include all of the following information:

- a. Full name of the City officer or employee making the disclosures;
- b. City title(s);
- c. If the financial interest is through a family member, the full name of the family member(s);
- d. Brief description of the nature and extent of the financial interest;
- e. Brief description of the official actions from which the City officer or employee is disqualified; and
- f. Effective date of disqualification if before the date of disclosure.

5.185.20 Disclosure of legislative conflicts of interest by Councilmembers. Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when the Councilmember knew or should have known of the financial interest:

a. Before or at the time of the public hearing on the legislation:

1. **When:** At the public hearing on that legislation before any committee of Council (including the Committee of the Whole), regardless of whether the Councilmember serves on the committee holding the hearing.
2. **How:** By making a statement on the record consistent with Paragraph 5.19. Such statement shall be made part of the official hearing transcript.

b. After the public hearing but more than five days before the legislation is to be acted upon by Council:

1. **When:** No less than five days before the meeting at which Council is scheduled to take action on the legislation.
2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service as described in Paragraph ~~5.21~~5.23 to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the presiding officer of Council at the time legislation is called up for consideration shall read the written statement into the public record of the Council meeting.

c. Less than five days before legislation is to be acted upon by Council:

1. **When:** At the public meeting at which Council is scheduled to take action on the legislation.
2. **How:** By making a statement on the record consistent with Paragraph 5.19. Such statement shall be made part of the official meeting transcript.

DRAFT FOR PUBLIC COMMENT APPROVAL
Showing revisions recommended via staff testimony at hearing 11/15/2023
Text added in blue underline; text removed in ~~red strikethrough~~

- d. **Absence.** If the Councilmember is absent from a hearing or meeting at which disclosure on the record are required by:
1. **Paragraph 5.20(a) or 5.20(c),** the Councilmember shall either send a designee to make the required disclosures on the record on their behalf or shall submit a written disclosure consistent with Paragraph 5.19 to the presiding officer to be read into the official record of the hearing or meeting.
 2. **Paragraph 5.20(b),** the Councilmember must still submit the written disclosure as required by Paragraph 5.20(b.(2) and the presiding officer shall read such disclosure into the record regardless of whether the Councilmember is in attendance.
- e. **Non-participation.** Whether the Councilmember participates in consideration of the legislation in a hearing or meeting shall have no effect on their duty to comply with the disclosures required by this subpart.
- f. **Disqualification required upon knowledge of interest.** Regardless of when disclosed, once a Councilmember knows, or should know, of a financial interest in legislation, the Councilmember shall not take any official action regarding that legislation beyond the disclosures required by this subpart or permitted by Paragraph 5.16(a.(2).

5.195.21 Disclosure of legislative conflicts of interest by other City officers and employees. Disclosure of a financial interest in legislation shall be made at the following time and in the following manner, based on when a City officer or employee (other than a Councilmember) knew or should have known of the financial interest:

- a. **Before or at the time of the public hearing on the legislation:**
1. **When:** No less than five days before the scheduled public hearing.
 2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.In addition, the written statement shall be made a part of the official record of the hearing.
- b. **After the public hearing:**
1. **When:** Before the meeting at which Council is scheduled to take action on the legislation.
 2. **How:** By submitting a written statement consistent with Paragraph 5.19 via tracked delivery service to:
 - i. the Chief Clerk of Council and
 - ii. all members of Council.

~~5.20~~5.22 **Disclosure of non-legislative conflicts of interest.** Any City officer or employee who knows, or should know, that they have a financial interest in any official action other than legislation shall disclose such interest in a written statement consistent with Paragraph 5.19.

a. Submission of disclosures. All disclosures made under this paragraph shall be submitted via tracked delivery service as described in Paragraph 5.23.

1. Heads of City departments. A department head shall submit disclosures made under this paragraph to the following:

- i. Mayor;
- ii. Managing Director;
- iii. Board of Ethics; and
- iv. Department of Records.

2. Other City officers and employees.³ All other City officers and employees shall submit disclosures made under this paragraph to the following:

- i. Head of the City officer or employee's City department, agency, board, or commission;
- ii. Board of Ethics; and
- iii. Department of Records.

b. Timing of disclosures. Disclosures made after the City officer or employee has taken official action from which they were disqualified do not cure any violation of this Regulation arising from such official action.

c. Recordkeeping. The Department of Records shall be the custodian of records for all disclosures made under this paragraph and shall maintain a public record of all such submissions.

[Non-legislative voting conflicts. In addition to the written disclosures required by this subpart, any public employee or public official as defined by the State Ethics Act must also comply with Section 1103(j) of the State Ethics Act, 65 Pa. C.S. §1101, et seq., regarding voting conflicts.]

~~5.21~~5.23 **Delivery methods.**

a. Tracked delivery services. Delivery methods must provide tracking, delivery confirmation, or other proof of the date sent and date delivered.

b. Date of submission. For disclosures sent via certified or registered U.S. mail, other than for disclosures by Councilmembers under Paragraph ~~5.18(b)(2)~~, 5.20(b)(2), the date of submission shall be the date of mailing. For disclosures by Councilmembers under Paragraph ~~5.18(b)(2)~~, 5.20(b)(2), or where a method other than certified or registered U.S. mail is selected, the date of submission shall be the date of delivery.

³ A form letter for submitting disclosures under Paragraph 5.22(a)(2), including mailing addresses for the Board of Ethics and Department of Records, is available at ethics.pub/DnD.

- c. **Email submissions.** Where disclosure via tracked delivery service is required under this subpart, submission exclusively via email shall not fulfill the disclosure requirements. If, however, a City officer or employee submits disclosures by both email and tracked delivery service, the date of any email delivery receipt or acknowledgement from the recipient (whichever is earlier) shall be considered the date of disclosure for purposes of evaluating whether the submission was timely.

~~5.22~~5.24 **Statement of Financial Interests not affected.** City officers and employees required to make disclosures under this subpart may also be required to file a Statement of Financial Interests under Code Section 20-610. Disclosures made pursuant to this subpart do not fulfill the requirements of Section 20-610.

SUBPART G. PAST OFFICIAL ACTIONS.

~~5.23~~5.25 **No financial interest in past official action.** After a final action, no City officer or employee shall obtain a financial interest in any official action they took as part of or related to that final action:

- a. during their City service or employment; and
- b. for two years after the end of such service or employment.

This paragraph shall apply regardless of who took or was responsible for taking the final action.

Example for Paragraph 5.25

Kasey Ladder works in the Mayor's office supervising volunteer service programs. She is part of a team that selects a vendor for volunteer management software. The vendor is so impressed by Ms. Ladder's technical knowledge that they offer her a part-time position working on their contract with the City. Ms. Ladder cannot accept that position as a second job while working for the City. She also cannot accept that position as post-City employment for the first two years after she leaves her City job. She may, however, be able to accept a different position with the same vendor that is unrelated to a City contract.

~~5.24~~5.26 **~~Restrieted~~Covered financial interests.** This subpart applies only to:

- a. personal financial interests as described in Paragraph 5.5(a); and
- b. membership in a for-profit business as described in Paragraph 5.5(c).

~~5.25~~5.27 **Interests obtained by others for the benefit of a City officer or employee.**

AWhile this subpart generally does not apply to interests held by family members, a financial interest obtained by a family member, trustee, or other person for the specific benefit of the City officer or employee shall be treated the same as if obtained directly by that officer or employee.

SUBPART H. PENALTIES.

~~5.26~~5.28 An officer or employee of the City who violates any of the restrictions set forth in this Regulation shall be subject to a civil penalty of up to \$2,000 for each such violation.

In determining the appropriate amount of monetary penalty, the Board may consider both mitigating and aggravating factors.

Mitigating factors that the Board may consider include: (i) a good faith effort to comply with the law; (ii) prompt corrective action; and (iii) prompt self-reporting to the Board of Ethics.

Aggravating factors that the Board may consider include whether the violator: (i) acted knowingly; (ii) is a repeat offender; or (iii) obstructed the investigation of the Board of Ethics.

Approved for public comment by Board: October 18, 2023

Posted for public comment by Records: October 20, 2023

Hearing held: November 15, 2023

Adopted by Board:

Effective:

Testimony of Krystle Baker, Deputy Chief Integrity Officer, City of Philadelphia**Board of Ethics Public Hearing for Proposed Regulation 5
Wednesday, November 15, 2023**

Good afternoon, Chair Reed, Board of Ethics members, and staff. I am Krystle Baker, Deputy Chief Integrity Officer for the City of Philadelphia. I am here today to testify on behalf of the Kenney Administration on proposed Regulation 5. The administration appreciates efforts made by the Board and staff to provide greater clarity to the rules around conflicts of interest. Sarah Stevenson and I met with Board staff on Wednesday, November 1, 2023 to discuss initial concerns. Now, I offer several comments to this Board on the proposed regulation.

First, we recommend several areas of the regulation where examples would be beneficial to understand key terms and the application of the regulation. Specifically, we request examples to explain:

- The definition of “ministerial.”
- The timing and circumstances needed for an employee seeking future employment to file a disqualification and disclosure letter.
- The extent of disqualification. Our office receives many questions from contract selection committees and whether someone is disqualified from reviewing one application as a result of the conflict or the entire selection process.

Second, we recommend that Board staff update its online draft disclosure and disqualification form so employees can better identify any official action that may cause the conflict of interest. As of right now, only a couple words can fit in this text field due to a technical glitch.

Thank you for the opportunity to appear here today. Again, thank you for addressing this important issue.



Public Comment on Regulation No. 5 November 15, 2023

The Committee of Seventy is appreciative of the Board of Ethics' work on Proposed Regulation No. 5, which seeks to provide clarity and assemble into a single resource the Board of Ethics' various opinions and interpretations on the City's conflict of interest laws. We recognize that in issuing this regulation, that the Board is constrained to the four corners of the Philadelphia Code governing conflicts of interest. While we are supportive of efforts to provide guidance on the current law through the regulatory process, we hope that this is just the first step in strengthening and clarifying the City's conflict of interest rules.

As with every law, the City's laws governing conflicts of interest should be regularly reviewed and debated. Hindsight with the chance to effect change is a rare opportunity, but one that allows us to ask and answer three very important questions. First, is the law, as written, effective in preventing the wrong or behavior we are seeking to avoid? Second, is compliance with the law overly burdensome, or is there an easier or more effective way to accomplish our purpose? And lastly, are there any unintended consequences to the law that can and should be mitigated?

We hope that the Board of Ethics' proposed regulation and the accompanying public process will be the start of a larger conversation regarding the City's Ethics Code. Various bills have been introduced into Council over the years that would both expand coverage and provide clarity on the conflict of interest rules governing city officials and employees. Unfortunately, these bills did not receive consideration.

While ethics rules are often looked at as a burden on those who must abide by them, we believe that a well-defined and robust ethics scheme benefits all. It provides the general public protection and assurance that decisions are being made for the well-being of the citizenry. It provides those seeking to do business with the city well-articulated rules on prohibited versus acceptable behavior. Lastly, it provides employees and officials clear guidelines and offers protections from improper third-party interests.

With that being said, the Committee of Seventy supports the proposed regulation and hopes that today's action is only the beginning of the conversation. The majority of our current ethics rules were passed decades ago, and while some updates have been made over the years, a thorough review and revisitation of the ethics code is long overdue. The Committee of Seventy is committed to serving as a partner and resource to City Council and the Board of Ethics to ensure that the governing laws are both effective at prohibiting unethical behavior, but also are written in a way to provide for ease of compliance by public employees, officials and those with business before the City.

Lauren Cristella, CEO