

Exhibit D to Regulation No. 9 Hearing Report

IN RE:

CITY OF PHILADELPHIA BOARD OF ETHICS
HEARING ON PROPOSED REGULATION 9, LOBBYING

TRANSCRIPT OF THE ABOVE MATTER, taken by
and before ERICA HEARN, Professional Court
Reporter and Notary Public, at the CITY OF
PHILADELPHIA BOARD OF ETHICS, One Parkway
Building, 1515 Arch Street, 18th Floor,
Philadelphia, Pennsylvania, on Wednesday,
November 16, 2016 commencing at 1:00 p.m.

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DRAFT FOR DISCUSSION

ERSA COURT REPORTERS
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United Plaza - Suite 1520
Philadelphia, PA 19103
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A P P E A R A N C E S :

BOARD MEMBERS :

MICHAEL H. REED, CHAIRMAN
PHYLLIS W. BECK, VICE CHAIR
JOANNE A. EPPS, ESQ., MEMBER
SANJUANITA GONZALEZ, ESQ., MEMBER
BRIAN J. MCCORMICK, ESQ., MEMBER

BOARD STAFF :

J. SHANE CREAMER, JR., ESQ.
MAYA NAYAK, ESQ.
NEDDA MASSAR, ESQ.
MICHAEL COOKE, ESQ.
DIANA LIN, ESQ.
THOMAS KLEMM, ESQ.

MARTHA JOHNSTON, ESQ.,
City of Philadelphia
Law Department

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E X H I B I T S

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DEPARTMENT OF PUBLIC SAFETY
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NUMBER	DESCRIPTION	PAGE
ATTACHED		
EXHIBIT 1	Law Department Approval Memorandum; Regulation 9 proposed amendments approved for public comment	32
EXHIBIT 2	Letter from Adam C. Bonin	33

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1 PROCEEDINGS

2 - - -

3 MR. REED: Welcome, everybody.

4 We note that we apparently have some
5 guests here who are joining us as part of
6 the City of Philadelphia's Integrity Week.
7 I would like to congratulate Ellen Kaplan
8 for helping to organize that event and we
9 welcome everyone here.

10 I'm going to acknowledge the
11 presence of a quorum, and the first matter
12 is our public hearing on the proposed
13 amendments for Board Regulation No. 9.

14 My name is Mike Reed; I'm the
15 Chair of the Board.

16 I will note for the record that I
17 am joined by Vice Chair Judge Beck, Board
18 Members Brian McCormick and Joanne Epps,
19 and we expect our fifth board member,
20 Sanjuanita Gonzalez, but she has not yet
21 arrived.

22 I further note for the record
23 that Martha Johnston from the law
24 department is present. We welcome her.

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1 Today's hearing is an opportunity
2 for members of the public and interested
3 parties to provide modifications to the
4 proposed amendments to Board Regulation
5 No. 9 on Lobbying. Copies of these
6 proposed amendments have been made
7 available electronically. Hard copies are
8 available here today for anyone who would
9 like one, I believe they were in the back
10 of the room.

The Board is following a process required by Home Rule Charter Section 8-407 for these proposed amendments. The Board approved these proposed amendments for public posting at the Records Department during its October 19, 2016 public meeting. The Law Department reviewed the proposed amendments and found the proposed amendments to Board Regulation No. 9 to be legal within the Board's authority and in proper form. The Department of Records advertised and gave public notice of the proposed amendments. The Board also took action by notifying

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1 members of the relevant email distribution
2 list and by giving notice of the proposed
3 amendments on its website.

4 The Board proactively scheduled
5 this hearing on the proposed amendments
6 and provided notice of this hearing by
7 newspaper and the Board's website. The
8 Board will not take action on the proposed
9 amendments at this hearing, rather this
10 hearing is an opportunity for the public
11 to make comments on the proposed
12 amendments or recommendations for
13 modifications of the proposed changes to
14 Board Regulation No. 9.

15 Board members may ask questions
16 of the witnesses if they wish. A hearing
17 report 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 amendments to
22 Board Regulation No. 9 that are pending.

23 A court reporter is present and
24 we welcome her to transcribe this hearing.

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1 At this time, the documents that
2 the Board filed with the Department of
3 Records, including proposed amendments to
4 Board Regulation No. 9, should be entered
5 on the record of this hearing and marked
6 as Exhibit-1.

7 (At this time, the court reporter
8 marked the exhibit for identification as
9 Exhibit-1.)

10 MR. REED: We will now take
11 testimony. I ask that the witnesses sit
12 at that table. Each witness should
13 identify himself or herself prior to
14 testifying. Before hearing from members
15 of the public, I would like to invite
16 Board staff to testify if they wish.

17 Mr. Cooke, are you going to be
18 speaking today?

19 MR. COOKE: I am.

20 Thank you, Mr. Chair.

21 Mr. Chair, may I beg to need an
22 exception from your last directive and
23 simply move the microphone here so I can
24 fit all of my materials.

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1 Thank you, Mr. Chair. My name is
2 Michael Cooke and I'm the Board's Director
3 of Enforcement and I will be presenting
4 testimony on behalf of court staff
5 regarding the proposed amendment to
6 Regulation No. 9.

7 At the last Board meeting, Board
8 staff presented a proposed amendment to
9 Regulation No. 9 to the Board, and after
10 discussion of it with the Board, attained
11 approval from the Board to post its
12 records. Since the posting, of course, we
13 have gone back through the proposed
14 amendments very carefully. We have found
15 a number of typographical errors,
16 formatting, and things that needed to be
17 corrected and have noted and marked all of
18 those, but I propose in my testimony today
19 not to go through each one of those or
20 any, really, of those non-substantive
21 typographical errors. Instead, what we
22 propose to do is make those corrections
23 and have them identified and presented as
24 part of the hearing report, the proposed

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1 hearing report that we'll present the
2 Board at the next Board meeting in
3 December, similar to what we did with
4 Regulation No. 1.

5 So just to flag that at the
6 outset. Aside from the typos, which I
7 just discussed, I have two more
8 substantive changes I want to talk about
9 with the Board, and then wanted to share
10 with the Board some proposed examples that
11 the Board staff recommend be added to the
12 regulation. And I'll hand those up to the
13 Board members now.

14 I'll just note for the record
15 that there are copies of these examples in
16 the back for members of the public or our
17 guests who are here today.

18 So I'll actually start with the
19 two substantive things, and then I'll move
20 to the examples, and it's really just two
21 changes that I wanted to note, and if you
22 look on page two, Tab 1 of your Board
23 books, Board Members, and for members of
24 the audience, page three rather of the

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1 black lined proposed amendment to
2 Regulation No. 9 that was in the back.

3 JUDGE BECK: Are we looking at
4 the final copy or the copy that was
5 amended?

6 MR. COOKE: The black lined copy,
7 on page three of that actually.

8 The two changes, one, the first
9 is in the definition of Agency where at C
10 (ii) it talks about any City related
11 agency. We propose to add back into that
12 sentence the phrase "as defined at
13 Philadelphia Code Section 17-1401(9) to
14 maintain, as Board members suggested, the
15 cross reference to the relevant
16 substantive provision of the City Code,
17 but we would keep in the additional
18 descriptive language that would let people
19 know what that means without having to
20 flip to it, but still recognize the value
21 of having a cross cite in there in these
22 circumstances. So we propose adding that
23 back in.

24 MS. EPPS: Right now this is

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1 struck out, you are telling us that you
2 are proposing to put it back?

3 MR. COOKE: That's correct.

4 We propose revising the language
5 so that it would say, "any City related
6 agency as defined at Philadelphia Code
7 Section 17-1401(9) which includes," and
8 then the rest of the sentence.

9 MS. EPPS: Thank you.

10 MR. COOKE: And then the second
11 change that we propose making is at the
12 definition of city official or employee,
13 "F" there, the lobbying ordinance is
14 somewhat unusual in the ordinances that
15 are within our jurisdiction, and it uses
16 the term "city official" as opposed to
17 "city officer," and we have carried over
18 that term "official" instead of "officer"
19 in the regulation; however, it does create
20 this odd inconsistency in that in our
21 other laws we never talk about officials,
22 we talk about officers. And, so, what we
23 propose doing is throughout the
24 regulation, is substituting officer for

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1 official to be consistent with our other
2 laws. Before making that change, we want
3 to confirm with the Law Department that
4 there's no issue with using a term that is
5 different than what's in the ordinance.
6 We've had some preliminary conversations
7 with the Law Department and it seems like
8 it will be fine, but we will confirm that
9 before we actually would make that change,
10 but that is our proposal.

11 So those are the only two sort of
12 text changes that we propose for the
13 amendments to Regulation No. 9.

14 Aside from text changes though,
15 we wanted to put in three examples into
16 the body of the regulation.

17 As you will recall, the current
18 version of Regulation 9 has a number of
19 examples, some of which are quite lengthy,
20 and that is both good and bad. Bad in the
21 sense that it breaks up the regulation and
22 can make it hard to follow. What we did,
23 is we went back and we started with a
24 clean slate and tried to identify the

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1 specific places in the Regulation where we
2 thought it was important in the Regulation
3 of the examples, and we did that, and that
4 led to the three proposed examples that
5 I've handed up to the Board members. I
6 note that we do not see this as the only
7 guidance of this type that would be
8 available to members of the public. We
9 envision, in addition to the Regulation
10 with these examples in it, a standalone
11 FAQ document, at the very least, hopefully
12 additional manuals or more how to plain
13 English in documents that would help
14 people understand and navigate the
15 lobbying law. We think that for the most
16 part it's good to have those as separate
17 freestanding documents as it allows for
18 greater flexibility to add in new things
19 as they arise, or to adapt them as we
20 learn more from our continued interactions
21 with our regulated community.

22 So these three examples would not
23 be the only guidance available to people,
24 it's just that these three we think would

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1 be particularly helpful to have in the
2 Regulation.

3 So if you look at those, you see
4 proposed example for paragraph 9.1, which
5 at this point, actually, I would suggest
6 it would probably be easier to look at the
7 clean version of the Regulation, which is
8 if you just flip ahead after the 38 pages
9 of black lining, it changes to a clean
10 version of what the Regulation would look
11 like if the amendments would go through, a
12 little easier to follow I think. On that
13 document, it would be page six.

14 And this on the example sheet, it
15 actually should read example for 9.2. 9.1
16 is the definition section.

17 9.2 is the paragraph that deals
18 with the requirement to register. And so
19 we propose adding this example here that
20 lays out a standard registration scenario
21 for a principal and a lobbyist, and we
22 think this will just help illustrate the
23 basic rule for readers of the Regulation.

24 The second place that we believe

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1 it would be important in the body of the
2 Regulation to have an example is for
3 paragraph 9.13(d), which is found on page
4 nine, and this is in the subpart that
5 deals with the content and requirement to
6 file expense reports, and expense reports
7 have several different components, but one
8 of them as described in 9.13(d) is a
9 requirement to disclose expenses related
10 to gifts, hospitality, transportation or
11 lodging. And, here, again, we thought
12 that it would be useful to have an
13 example, an illustration of the basic rule
14 given that there is a threshold for
15 reportable gifts for what needs to be
16 disclosed simply as part of the lump sum
17 and what needs to be itemized.

18 So the proposed example would
19 show how you can have a principal who
20 gives three gifts in the quarter, how some
21 of them are only disclosed in the lump
22 sum, but one of them would have to be
23 itemized. Just, again, to illustrate what
24 should be a fairly basic scenario to make

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1 the point of the rule clear.

2 MS. EPPS: May I ask a question?

3 MR. COOKE: Yes.

4 MS. EPPS: It applies to all
5 three of these, so perhaps the question
6 is, is there some particular reason why
7 the company is ABC and the people are ABC?
8 I understand that it probably doesn't
9 matter because their responsibilities are
10 not dictated by their relationship, but it
11 feels a little odd to me that we would
12 choose in the abundance of 26 consonants
13 and vowels.

14 MR. REED: She is a former dean
15 of a law school.

16 MR. COOKE: I will confess to the
17 Dean, to the Provost, that our executive
18 director actually brought this up. And it
19 actually suggested that we might do better
20 to have XYZ, Inc., I think with the
21 addition of your comment. Certainly if
22 his was given as a directive, it would
23 have been done, but with the addition of
24 your comment, we'll change ABC to XYZ.

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1 Then for the last example, which,
2 again, features the XYZ, Inc. business, is
3 at 9.19(a), which is found at page 12 of
4 the proposed Regulation. This is a
5 section that deals with exceptions from
6 registration and reporting, and, in
7 particular, the exception for
8 communications that occur solely related
9 to testifying before City Council or a
10 Committee of City Council and the
11 preparation for that testimony. So we
12 wanted to have an example that illustrates
13 how a given principal may spend money
14 related to such testimony, but that
15 doesn't count towards the lobbying limits
16 as distinct from other types of lobbying
17 activity which does.

18 So we have this example here
19 where we have some money spent for
20 testimony, some money spent for indirect
21 communications, and how the reporting
22 would flow as a result of those
23 expenditures. So, that's the third place
24 where we think an example would be

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1 particularly helpful in the Regulation.

2 So, with that, I conclude my
3 testimony, unless members of the Board
4 have any questions.

5 JUDGE BECK: No, but I think what
6 you should do for the audience is give
7 them some background about the fact that
8 City Council passed an ordinance and we
9 constructed a Regulation and this is our
10 second go round.

11 MR. COOKE: Sure. So back in
12 2010, the City Council passed into law a
13 lobbying ordinance that regulates the
14 lobbying of City of Philadelphia
15 government and related agencies, including
16 the School District, and charged the Board
17 with administering, interpreting, and
18 enforcing that law. As a result, in the
19 year or so after the passage of the
20 lobbying ordinance, the Board promulgated
21 Regulation No. 9 interpreting that
22 ordinance and providing additional detail
23 about how lobbyists or principals have to
24 comply with the law.

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1 Since then, the current version
2 of the Regulation went into effect in
3 November of 2011, so almost exactly five
4 years ago, the lobbying law, of course,
5 has now been in operation in all that time
6 and we've learned a lot about the way
7 people interact with our system. We have
8 a functioning and well used software
9 program that lobbyists and principals use
10 to comply with the requirements of the
11 law. And we wanted to do this amendment
12 that we're currently doing in order to
13 update, improve, and clarify the existing
14 Regulation in light of the experience that
15 we've had over the past five years.

16 Also, you know, a notable change
17 we're proposing to this amendment is to
18 increase the registration fee for
19 lobbyists and principals. At the current
20 Regulation, it is set at \$100 per year.
21 We are proposing in this amendment to
22 increase it to \$200 per year. The
23 ordinance authorizes the Board to impose
24 an annual registration fee of up to \$500 a

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1 year. So we originally started at \$100
2 five years ago, now we propose given the
3 passage of time to increase that up to
4 \$200 at this point.

5 MR. REED: Thank you.

6 Thank you for your testimony,
7 Mr. Cooke.

8 The Board would now welcome
9 testimony from other witnesses, and are we
10 going to acknowledge the receipt of the
11 communication from Mr. Bonin and what did
12 we propose to do with that communication?

13 MR. COOKE: Perhaps the best
14 thing, and I can even do this before
15 anybody else testifies, is just on the
16 record state that earlier, it was either
17 this morning or last night, I received
18 written testimony from Adam Bonin, a
19 lawyer who represents folks involved in
20 the Board, practices extensively in our
21 area. He is not able to attend in person,
22 and so I would recommend that we make his
23 written testimony part of the record and
24 staff will consider any changes that he

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1 suggests in that testimony as we prepare
2 the proposed hearing report for the
3 Board's consideration.

4 MR. REED: Okay. The Board
5 thinks it might be, given that we have
6 such an unbelievable wonderful audience
7 today, that it might be useful for you to
8 read Mr. Bonin's letter. Even though we
9 are going to admit the document into the
10 record, and we will know what's in it, it
11 might be of some interest for other people
12 to do that.

13 MR. COOKE: I will be delighted
14 to do that. I will also be delighted to
15 report to Mr. Bonin that I have the
16 personal pleasure of reading his testimony
17 at the hearing. And I promise to
18 faithfully read only what he has written
19 in his letter.

20 MR. CREAMER: Try to imitate his
21 voice too.

22 MR. COOKE: I will take that not
23 as a directive, but a suggestion, and I
24 will use my normal speaking voice.

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1 So this is a letter dated
2 November 16, 2016 from Adam C. Bonin, and
3 addressed to the City of Philadelphia
4 Board of Ethics regarding the proposed
5 revisions to Board Regulation 9.

6 "To the Board: I am writing to
7 raise my concerns regarding the proposed
8 Amendments to Regulation 9. These
9 comments are in my personal capacity, as
10 an attorney whose practice includes
11 assisting a variety of clients with
12 lobbying disclosure compliance, and are
13 not offered on behalf of any particular
14 client past or present."

15 Footnote 1. "I regret that I
16 cannot deliver these comments in person,
17 but client responsibilities pertaining to
18 continuing vote canvasses in the suburbs
19 prevent me from doing so. I am always
20 open to discussing my concerns with the
21 Board and Staff, if needed."

22 Returning to the body of the
23 letter. "In general, these regulations do
24 an impressive job of clarifying and

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1 simplifying the regulations and serve to
2 enhance compliance with the law.

3 "My main concern is the one I
4 expressed at last month's hearing when the
5 staff introduced the proposed regulations:
6 Make sure you bring back the examples
7 illustrating what compliance requires, and
8 the more examples, the better. Whether
9 these examples live as an evolving
10 appendix to the regulations or within them
11 directly, they really do aid practitioners
12 and principals in understanding what is
13 expected.

14 "My specific comments are as
15 follows:

16 "Proposed Reg 9.1(a) (iv) (6) : By
17 adding "Adjudication of claims,
18 determination of complaints, or imposition
19 of fines or fees" to the definition of
20 administrative actions which constitute
21 lobbying. I fear the Board may be
22 unnecessarily re-opening the door between
23 lawyering and lobbying, which Gmerek v.
24 State Ethics Commission, 807 A. 2d 812

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1 (Pa. 2002) as well as these regulations
2 had left shut. This is too much of an
3 intrusion into the other direction - when
4 a lawyer is representing a client before
5 an agency in these contexts, especially in
6 such defensive contexts, it should not be
7 regulated as lobbying. (Would this
8 include the resolution of investigations
9 by the Board of Ethics itself?)

10 "Proposed Regs 9.5(e), 9.18: For
11 registrations, any amendments must be
12 filed within 14 days after learning of a
13 change; for expense reports, the deadline
14 is 15 days. I realize the underlying
15 ordinance contains this discrepancy as
16 well, but it would be preferable if the
17 intervals were consistent. I recognize
18 that you may not be able to fix this,
19 however.

20 "Proposed Reg 9.20: This
21 Regulation concerns the disclaimers
22 required for indirect communications.
23 Under the Pennsylvania Election Code,
24 there is an exemption from disclosure

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1 requirements when disclosure would be
2 impractical, for "bumper stickers, pins,
3 buttons, pens and similar small items upon
4 which the statement cannot be conveniently
5 printed. 4 Pa. Code Section 181.1(b). It
6 would be helpful if such an exemption were
7 expressly included within Regulation 9 as
8 well. I would further suggest that as to
9 small digital advertisements, the
10 disclosure requirement can be met so long
11 as the proper disclosure appears on the
12 target page from the advertisement - i.e.,
13 the page you get to when you click the ad.

14 "Proposed Reg 9.24(a): Since
15 "City elected office" is used here, it
16 should be defined in the beginning of the
17 Regulation. (I recognize that it is
18 defined within Regulation 1, but it's
19 worth making clear that this excludes the
20 Court of Common Pleas, for instance.)

21 Proposed Reg 9.24(j): As I have
22 stated since Regulation 9 was enacted, I
23 continue to believe that a provision
24 barring "conduct that brings the practice

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1 of lobbying or the legislative or
2 executive branches of City government into
3 disrepute" is thoroughly vague and
4 provides no notice to individuals as to
5 what conduct is prohibited, thus violating
6 due process. I am gratified that it has
7 yet to be enforced, to my knowledge.
8 Please keep it that way. Thank you for
9 your consideration of these comments.
10 Very truly yours, Adam C Bonin."

11 MR. REED: Thank you, Mr. Cooke.
12 As we noted earlier, those comments will
13 be included in the record.

14 We are now happy to welcome and
15 hear from any other witness who may desire
16 to testify at the public hearing on the
17 amendments to Reg 9.

18 Yes, please. Welcome.

19 MS. KAPLAN: Thank you,
20 Mr. Chairman.

21 I'm Ellen Madeline Kaplan, I'm
22 the City of Philadelphia's Chief Integrity
23 Officer, and I just want to thank so many
24 people who are here today listening to

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1 this public hearing and also the open
2 meeting of the Board of Ethics.

3 I would ask that you please sign
4 in so we know that you got our email and
5 you're here because of that, but we plan
6 Integrity Week every November to coincide
7 with the Board's meeting because we really
8 strongly encourage City employees to come
9 hear the work of this very important
10 Board, and, so, if you go on their
11 website, you can see when their monthly
12 meetings are held. And, again, we
13 appreciate the participation of the Board
14 of Ethics in Integrity Week. Ned is
15 training about 80 City employees, tomorrow
16 is the annual ethics refresher, and Maya
17 is participating on a panel with her
18 counterpart at the State Ethics Commission
19 on Friday.

20 So, again, we thank you. So on
21 behalf of Mayor Kenney, thank you all for
22 being here.

23 MR. REED: Thank you, Ellen.

24 MS. KAPLAN: I just want to

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1 comment first on the fee increase.

2 We certainly appreciate the fee
3 increase is something that we have talked
4 about, and talked about not only in
5 respect to the fact that, as Mr. Cooke
6 said, it's time, it has been several years
7 since the lobbying ordinance was enacted,
8 but also because we talked about it in
9 respect to increased funding for the Board
10 of Ethics. And I can assure you that I
11 know from personal experience with this
12 Board over a great many years how hard the
13 people on this staff work. And the
14 lobbying ordinance is one example of an
15 additional responsibility that you have
16 all picked up since the Board of Ethics
17 was created, but without an increase in
18 your budget.

19 So we certainly appreciate and
20 support the increase in the lobbying fees.
21 And as I told Mr. Kramer yesterday, the
22 administration is certainly open to
23 considering a funding increase for fiscal
24 year '18, and he and I talked about the

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1 best way to handle that. So, again, my
2 thanks.

3 I did have a question about the
4 lobbying ordinance as it pertains to
5 expense reporting, and this is under
6 Section 9.13, and this is really just more
7 of a question about how to handle this,
8 and I think, Michael, you had an exchange
9 with my office about this kind of issue,
10 which is that we got a letter to Mayor
11 Kenney, this is all in the public record,
12 so I'm fine with saying it.

13 Mayor Kenney got a letter from a
14 company that told him that a gift was
15 being reported as part of its required
16 lobbyist expense report. So, they looked
17 at that as a gift that they should report,
18 but then there was a question of is it
19 really a gift. So Michael helped us
20 navigate that issue, but I think, I'm just
21 wondering about whether there could be
22 some communications or whether there are
23 communications that would let lobbyists
24 know what they need to report or not, or

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1 what is a gift or what is not a gift
2 because sometimes we face the situation
3 where a lobbyist includes a gift in his or
4 her expense report, and then the mayor or
5 somebody else to whom the gift is given
6 does not report that as a gift, and then
7 what, then you have a situation
8 potentially where somebody is saying how
9 come it was reported here, but you, Mayor
10 Kenney, or you, Ellen Kaplan, didn't
11 report that. So, again, I just wondered
12 how we can work together to make it so
13 that the lobbyist know what to report and
14 so we don't get those kinds of questions.
15 So, maybe that's not something that we
16 could put in an example here, because I
17 think it's very fact specific, but I just
18 wanted to mention that we do have that
19 issue from time to time with the lobbying
20 ordinance.

21 MR. REED: We'll consider your
22 suggestions and see what we can do to
23 respond to them.

24 MS. KAPLAN: Thank you.

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1 MR. REED: The Board would
2 welcome any other testimony, and seeing no
3 one approaching the table, we are going to
4 declare the public hearing on Board
5 Regulation No. 9 closed. We're going to
6 deem any of the exhibits that were filed
7 to be admitted and want to thank everyone
8 for attending the public hearing.

9 (At this time, the court reporter
10 marked the exhibit for identification as
11 Exhibit 2.)

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13 (Hearing concluded at 1:35 p.m.)

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DEPT. OF TRANSPORTATION
2016 DEC 23 PM 12:18
ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

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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 21, 2016 _____

ERICA HEARN

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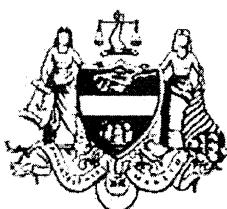
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Exhibit D to Regulation No. 9 Hearing Report



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
P: (215) 686 - 9450
F: (215) 686 - 9453

MEMORANDUM

TO: Department of Records
Attn: Jeanne Reedy
Anthony Tann, Jr.
FROM: Maya Nayak, General Counsel *MN*
DATE: October 24, 2016
SUBJECT: Board of Ethics Regulation 9 ("Lobbying")
CC: Martha E. Johnston, Senior Attorney (via email)

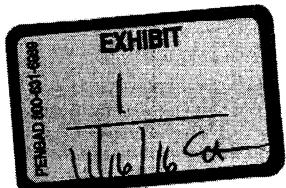
At a public meeting on October 19, 2016, the Board of Ethics voted to approve for public comment the proposed amendments to Regulation 9 ("Lobbying") that are attached. In accordance with Section 8-407 of the Home Rule Charter, the proposed amendments have been submitted to the Law Department, which has given approval as reflected in the attached Law Department memorandum. Please advertise these proposed amendments to Regulation 9 and make them available for public inspection along with the attached, more user-friendly version of the regulation that incorporates the proposed amendments.

The Board has already scheduled a public hearing on these proposed amendments to be held on November 16, 2016 at 1:00 pm at this location: Philadelphia Board of Ethics, Room # 18-022, One Parkway Building, 1515 Arch Street, 18th floor, Philadelphia, PA 19102.

It would be very helpful for the Department of Records' newspaper legal notices of these proposed amendments to include the time and location of the November 16, 2016 public hearing on these proposed amendments. The Board will also separately arrange for newspaper and website notice of the November 16, 2016 public hearing.

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

Enclosures: Law Department Approval Memorandum
Board Regulation 9 Proposed Amendments Approved for Public Comment
Highlighted
Board Regulation 9 Proposed Amendments Approved for Public Comment
Incorporated





CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
P: (215) 686 - 9450
F: (215) 686 - 9453

MEMORANDUM

TO: Department of Records
Attn: Jeanne Reedy
Anthony Tann, Jr.
FROM: Maya Nayak, General Counsel *MN*
DATE: October 24, 2016
SUBJECT: Board of Ethics Regulation 9 ("Lobbying")
CC: Martha E. Johnston, Senior Attorney (via email)

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Enclosures: Law Department Approval Memorandum
Board Regulation 9 Proposed Amendments Approved for Public Comment
Highlighted
Board Regulation 9 Proposed Amendments Approved for Public Comment
Incorporated

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

MEMORANDUM

DATE: October 21, 2016

TO: Michael H. Reed, Chair, Board of Ethics
FROM: Martha Johnston, Senior Attorney/MJ *M. Johnston*
SUBJECT: Ethics Board Amended Regulation No. 9

I have reviewed the Philadelphia Board of Ethics' proposed Amended Regulation No. 9, and find it to be legal, within the Board's authority, and in proper form. In accordance with Section 8-407(a) of the Home Rule Charter, you may now forward the proposed Amended Regulation to the Department of Records where it will be made available for public inspection.

Attachment

Cc: Shane Creamer, Executive Director
Michael Cooke, Director of Enforcement
Maya Nayak, General Counsel

DEPARTMENT OF
2016 OCT 25 AM 10:14

Approved by Board at October 19, 2016 meeting for public comment posting
~~Strikethrough~~ indicates matter removed; underline indicates new matter

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 9, LOBBYING**

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SUBPART A. SCOPE; DEFINITIONS; GENERAL.

9.0 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 Chapters 20-600 and 20-1200 of the Philadelphia Code, specifically §20-1210, interprets and provides implementing detail to Philadelphia's lobbying ordinance found at Code Chapter 20-1200. ~~The examples provided in this Regulation are for illustration and are not intended to be exhaustive. In order to provide a single document for the convenience of users, this Regulation restates all provisions of Chapter 20-1200 that concern application of Chapter 20-1200 to lobbyists, lobbying firms and principals.~~

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

(A) ~~Chapter 20-1200. Chapter 20-1200, Lobbying, of the Philadelphia Code.~~

(B) a. **Administrative action.** Any of the following:

- i. The Mayor's approval or veto of legislation;
- ii. The nomination or appointment of an individual as a City officer or employee;
- iii. The proposal, consideration, promulgation or rescission of an executive order; or

iv. An agency's:

(a) 1. Proposal, consideration, promulgation, review, revision, approval, disapproval, rejection, or rescission of a regulation;

(b) 2. Development or modification of a written statement of policy;

(c) 3. Preparation of a Request for Qualifications, Request for Proposals, or contract specifications;

(d) 4. Solicitation, award, or administration of a contract, including for the procurement of goods or services;

(e) 5. Solicitation, award, or administration of a grant, loan, or agreement involving the disbursement of public monies;

(f) 6. Adjudication of claims, determination of complaints, or imposition of fines or fees; or

7. Determination with respect to

a. zoning or the use, development, or improvement of real property subject to City regulation;

(ii)b. the terms of the acquisition or disposition by the City of any interest in real property;

(ii)c. a license or permit for the use of real property of or by the City;

(ii)d. a franchise or concession;

b. Affiliated political action committee. (1) A “political action committee” as defined in section 1621(l) of established pursuant to the Pennsylvania Election Code, the Chair or Treasurer of which is a principal, an officer or an employee of a principal, a lobbyist, or an employee of a lobbyist. (2) A political action committee is not an “affiliated political action committee” if an employee of a registrant serves as the officer of a political action committee in a clearly personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant.

has an officer who:

- (a) Must be included in a registration statement under section 1624(b)(2) and (3) of the Pennsylvania Election Code; and
(b)

(D) c. **Agency.** Any of the following, unless the lobbying of the entity is subject to the Pennsylvania Lobbying Law (65 P. C.S. § 13A01 *et seq.*):

- (1) Any
i. An office, department, board, commission, or other entity that is part of the government of the City of Philadelphia, including City Council.

(2) The
ii. Any City related agency, which includes an authority or quasi-public corporation which either: receives appropriations from the City, has entered into continuing contractual or cooperative relationships with the City, or operates under legal authority granted by City ordinance, including the Philadelphia Industrial Development Corporation, the Philadelphia Authority for Industrial Development, and the Redevelopment Authority of the City of Philadelphia, and any other entity that meets the definition of "City related agency" under Section 17-1401(9) of The Philadelphia Code.

(3) iii. The School District of Philadelphia, including any board or other instrumentality thereof; or

iv. The Philadelphia Land Bank.

d. Attorney at law. An individual admitted to practice law by a court of record of the Commonwealth of Pennsylvania.

(F) e. **Board.** The Board of Ethics.

(G) Budget process. The consideration and passage of the annual operating budget and the capital budget and capital program, and any amendments thereto. **21**

(II) City. City of Philadelphia.

(1) City Code. The Philadelphia Code.

(4) f. **City official or employee.** Any person who is elected or appointed to a position in ~~an agency~~ any branch of the government of the City of Philadelphia, including, but not limited to, members of agencies, authorities, boards and commissions, however elected or appointed, ~~including~~ persons serving full-time, part-time or intermittently, and persons serving with or without compensation.

(K) g. **Compensation.** Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

(L) h. **Direct communication.** An effort, whether written, oral or by any other medium, made ~~A communication~~ by a lobbyist or principal, directed to a City official or employee, the purpose or foreseeable effect of which is to influence legislative ~~action~~ or administrative action. The term includes personnel expenses and office expenses.

(M) i. **Disciplinary Board.** The Disciplinary Board of the Supreme Court of Pennsylvania.

(N) j. **Economic consideration.** Anything of value offered, promised, or received. The term includes compensation and reimbursement for expenses.

(O) k. **Electronic Signature.** The unique combination of user name, password, and PLIS registration number assigned to a lobbyist, lobbying firm or principal by the Board ~~which that~~ shall be used by the lobbyist, lobbying firm or principal to file a registration statement, expense report, termination or amendment to such filing and ~~which that~~ constitutes a signature under oath or affirmation by a lobbyist, lobbying firm, or principal as required by Chapter 20-1200.

(P) ~~Enrollment.~~ The process by which a lobbyist, lobbying firm, or principal receives the user name, password and PLIS registration number that are required to access the mandatory Philadelphia lobbying electronic filing system.

(Q) ~~Filed.~~ For the purposes of imposition of the penalties in Chapter 20-1200:

(1) A lobbyist registration statement is filed when the Board has received all of the following:

- (a) The electronic registration statement;
- (b) The required electronic signature or signatures;
- (c) All information required to be included in the lobbyist registration statement by this Regulation;
- (d) A photograph of the lobbyist; and
- (e) The annual registration fee required pursuant to this Regulation.

(2) A principal or lobbying firm registration statement is filed when the Board has received all of the following:

- (a) The electronic registration statement;
- (b) The required electronic signature or signatures;
- (c) All information required to be included in the registration statement by this Regulation; and
- (d) The annual registration fee required pursuant to this Regulation.

- (3) An expense report is filed when the Board has received all of the following:
- (a) The electronic registration statement;
 - (b) The required electronic signature or signatures; and
 - (c) All information required to be included in the expense report by this Regulation;
- (4) An amendment to a registration statement or expense report is filed when the Board has received the electronic amendment containing required electronic signature or signatures.
- (5) A notice of termination is filed when the Board has received the electronic notice of termination containing required electronic signature or signatures.

(R) l. **Gift**. Anything that is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.

(S) m. **Hospitality**. Meals, beverages and recreation and entertainment, but not gifts, transportation or lodging.

(T) n. **Immediate family member**. An individual's spouse or Life Partner, child, parent, brother, sister and like relative-in-law or comparable relation of a Life Partner.

(U) o. **Indirect communication**. An effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative ~~action or~~ 833674 administrative action, ~~including, but not limited to such as letter-writing~~ campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues, but not including regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

(V) p. **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.

(W) q. **Legislative action**. An action taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of:

- (1) i. Legislation;
- (2) ii. Legislative motions;
- (3) iii. A veto by the Mayor; or
- (4) iv. Confirmation of appointments by the Mayor or City Council, or appointments to public boards or commissions by the Mayor or City Council.

(X) r. **Lobbying.** An effort to influence legislative action or administrative action including: (1) Direct or, whether through (i) direct communication, (ii) indirect communication; (2) Incurring office expenses; and (3) Providing, or (iii) by providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of ~~the~~ lobbyist or principal.

For purposes of this Regulation and Chapter 20-1200, it is not lobbying when a principal, or a consultant or professional (e.g., an accountant, architect, attorney, doctor, or engineer), acting as the representative or agent of a principal or client, communicates with a City agency in a matter in which the principal or client is subject to or seeking a specific City agency action in which the principal's or client's interests, rights, or privileges are at issue, provided that such communication is in an effort to address those interests, rights, or privileges and is in the normal course for such matters. This exception shall not apply to efforts to influence general policy on behalf of an interest group, nor to direct communications with City officials or employees who the principal, representative, or agent knows or should know are not those who would ordinarily make determinations in the matter at issue.

Example 1: A City taxpayer receives a notice from the Department of Revenue that the taxpayer is in arrears on his net profits tax and imposing a substantial penalty and interest. The taxpayer's accountant contacts the contact person listed on the notice, meets with that person, and provides documentation of the taxpayer's position. Must the taxpayer register as a principal, the accountant register as a lobbyist, and the taxpayer file an expense report for the quarter?

Result: The facts presented in this example do not constitute lobbying under the definition of "lobbying" in Paragraph 9.1(X). The accountant does not have to register as a lobbyist, and the taxpayer does not have to register as a principal or file an expense report.

Example 2: Same factual situation as above, except that, in addition to working with the assigned contact person in the Revenue Department, the accountant prepares a letter arguing that the Department should change its policy. On the taxpayer's behalf, the accountant meets with the Revenue Commissioner, the Managing Director, and takes to lunch the Councilperson for the taxpayer's district and two at-large Councilpersons, provides all these officials with the letter, and bills the taxpayer for his time and expenses, for a total of \$5000.

Result: This is clearly lobbying under the second sentence of Paragraph 9.1(X). The taxpayer must register as a principal, the accountant as a lobbyist, and the taxpayer must file an expense report for the quarter. (NOTE: Under both of these examples, whether registration and reporting is required also depends on whether the taxpayer or the accountant, or both, are exempt under any of the provisions of Paragraph 9.24, especially the thresholds in Paragraphs 9.24(D), (E), and (F)).

Example 3: An accountant representing a seller in a real estate transaction contacts the City Revenue Department to discuss a realty transfer tax issue on the transaction which is not addressed by the City's regulations and is otherwise unclear. Not satisfied with the result, the accountant contacts a tax attorney in the Law Department. The seller's accountant and the Law Department attorney discuss the

transaction and arrive at a mutually agreeable approach to the realty transfer tax issue for that transaction.

~~Result:~~ The facts presented in this example do not constitute lobbying under the definition of "lobbying" in Paragraph 9.1(X). The accountant does not have to register as a lobbyist, and the client does not have to register as a principal or file an expense report, because the issue concerns specific City action involving the individual client's interests.

Example 4: An attorney is contacted by a client to process an application with the Department of Licenses and Inspections (L&I) for a building permit for the construction of a new food market. Subsequent to the submission, the zoning examiner reviews the application and L&I issues a denial of the permit. The attorney, on behalf of his client, applies to the Zoning Board of Adjustment for a variance. The examiner contends that the food market requires more off street parking than that which is provided on the plan. The attorney disagrees with this reading of the Code and discusses the matter with the zoning examiner in order to determine the basis of the L & I ruling. The attorney also contacts the staff of the City Planning Commission and the applicable Deputy L&I Commissioner to gather information, as preparation for the variance hearing.

~~Result:~~ The facts presented in this example do not constitute lobbying under the definition of "lobbying" in Paragraph 9.1(X). The attorney does not have to register as a lobbyist, and the client does not have to register as a principal or file an expense report, because the issue concerns specific City action involving the individual client's interests, and the attorney is preparing for a hearing. However, if the attorney were to contact the L & I Commissioner or the Chair of the Planning Commission in an attempt to influence L & I to reverse its denial of the building permit, such contacts would be outside the normal course of business, and would constitute lobbying.

Example 5: An engineer has been engaged by a college to represent its interests in the development of a proposed academic building. In order to proceed with the development, City Council ordinances will need to be obtained to: (i) relocate the underground Water Department right-of-way to another part of the college's property; and (ii) permit certain sidewalk encroachment. The college's engineer contacts and meets with the relevant officials of the Water Department, the Streets Department and the City Planning Commission and the applicable District Councilperson to facilitate the introduction and passage of the required ordinances.

~~Result:~~ The facts presented in this example do not constitute lobbying under the definition of "lobbying" in Paragraph 9.1(X). The required ordinances do not concern or affect general policy issues. Rather, the required ordinances are "special ordinances" under Section 21-501 of the Philadelphia Code, wherein the property owner identifies itself, pays a fee to the City and otherwise participates in public meeting(s) and hearing(s) on the proposed ordinances. Additionally, the special ordinances concern only private rights appurtenant to a particular piece of real estate. The engineer does not have to register as a lobbyist, and the client does not have to register as a principal or file an expense report. However, if the engineer or the client were to contact other Councilmembers or the Mayor in an attempt to influence the passage or approval of the subject ordinance, that would constitute lobbying.

DEPARTMENT OF
GENERAL
COUNSEL
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(Y) s. **Lobbying firm.** An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.

(Z) t. **Lobbyist.** ~~An individual, association, corporation, partnership, business trust or other entity that engages in lobbying on behalf of a principal for economic consideration, including an attorney at law while engaged in lobbying; provided, however, that attorneys engaged in lobbying are subject to the requirements and restrictions of Chapter 20-1200 only to the extent permissible under the Pennsylvania Rules of Professional Conduct.~~

(AA) Oath or Affirmation. The electronic signature of an individual who is required to sign a registration statement, a quarterly expense report, a notice of termination, or an amendment to any such filing shall constitute an oath or affirmation which is a statement of the correctness of the contents of the registration statement, quarterly expense report, notice of termination, or amendment to any such filing. A false statement in a registration statement, a quarterly expense report, a notice of termination, or an amendment to any such filing shall be subject to the penalties provided in City Code §20-1207 and in 18 Pa.C.S. §4904.

(BB) u. **Office expense.** An expenditure for an office, equipment or supplies, utilized for lobbying.

(CC) v. **Person.** A business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

(DD) w. **Personnel expense.** An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, publications and public relations staff, technical staff, ~~or~~ clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under §20-1204 of the Philadelphia Code relating to exemption from registration and reporting. For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.

(EE) x. **PLIS – Philadelphia Lobbying Information System.**

(FF) y. **Principal.** An individual, association, corporation, partnership, business trust or other entity: (1) ~~That person that engages in lobbying on its own behalf or on whose behalf a lobbying firm or lobbyist engages in lobbying; or,~~ (2) ~~That engages in lobbying on the principal's own behalf.~~

(GG) z. **Registrant.** A registered lobbyist, registered lobbying firm or registered principal.

(HH) Regulation. Any rule or regulation promulgated under the procedure set forth in Section 8-406 or Section 8-407 of the Philadelphia Home Rule Charter, and any formal or informal opinion issued by the City Solicitor.

(II) Reporting period, quarterly reporting period, or expense reporting period.

Any of the following quarterly periods:

- (1) First Quarter—January 1 through March 31;
- (2) Second Quarter—April 1 through June 30;
- (3) Third Quarter—July 1 through September 30;
- (4) Fourth Quarter—October 1 through December 31.

9.2 Filing Deadlines.

(A) When the deadline for a filing with the Board, pursuant to Chapter 20-1200, falls on a weekend or holiday, or on a day that the Board's office is closed or closes early, the deadline for the filing will be extended to the following City business day.

(B) An expense report shall be filed no later than 30 days after the end of the Quarter as follows:

Quarter	Covers the period	Expense Report due on or before
1	January 1 through March 31	April 30
2	April 1 through June 30	July 30
3	July 1 through September 30	October 30
4	October 1 through December 31	January 30

SUBPART B. REGISTRATION BY PRINCIPALS, LOBBYISTS, AND LOBBYING FIRMS

SUBPART B. REGISTRATION; ANNUAL FEE

9.2 Requirement to register.

- a. A **principal** shall register with the Board within ten days of its incurring expenses for lobbying in that quarter of a calendar year exceeding \$2,500. In calculating the amount of its lobbying expenses, a principal shall include all office and personnel expenses related to the principal's direct communications, indirect communications, and provision of gifts, transportation, hospitality, or lodgings to City officials and employees.
- b. A **lobbyist** shall register with the Board within ten days of engaging in lobbying for which he or she has or will receive economic consideration of more than \$2,500 in that quarter of a calendar year. However, an individual who engages in lobbying on behalf of his or her employer shall not be required to register if he or she engaged in less than 20 hours of lobbying activity in that quarter.
- c. A **lobbying firm** shall register with the Board within ten days of engaging in lobbying for which it has or will receive economic consideration of more than \$2,500 in that quarter of a calendar year.

- d. In calculating the amount of its lobbying expenses, a principal, lobbyist, or lobbying firm shall exclude any expenses exempted pursuant to Subpart D.
- e. A principal's, lobbyist's, or lobbying firm's registration is effective only from the date of filing through December 31 of the same calendar year. A principal, lobbyist, or lobbying firm shall renew its registration in each calendar year in which it meets the requirements set forth in this Paragraph.
- f. Gifts of food, beverage, entertainment, or admission provided to a City official or employee at a reception that the City official or employee attends in his or her official capacity do not count towards the registration threshold unless the person who paid for the food, beverage, entertainment, or admission lobbies the City official at the reception.

~~9.3 General Rule.~~ Unless exempt from registration and reporting under City Code §20-1204 and Subpart D of this Regulation, a lobbyist, lobbying firm or principal shall register with the Board in the electronic format mandated by the Board within ten days of engaging in lobbying.

~~Example:~~ On January 10, 2012, Vice President Jones of Business Firm X meets with the local District Councilman concerning a pending bill in Council. Jones spends a total of 5 hours of his time preparing for and participating in this meeting, and the Firm's only expense is Jones' time, which, for the 5 hours, is valued at less than \$1000. On February 15, 2012, Business Firm X contracts with the lobbying firm of Y to do all lobbying for the firm for the year beginning on that date. Under the contract, Lobbying Firm Y will bill Business Firm X on a monthly basis. On March 5, 2012, Lobbying Firm Y begins contacting City Councilmembers on behalf of Business Firm X. On April 6, 2012, Lobbying Firm Y bills Business Firm X \$3000 for lobbying in March. Who must register and when?

~~Result:~~ The thresholds for registration are stated in Paragraph 9.24 and Code Section 20-1204. Under these thresholds, an employee who engages in lobbying for his employer of less than 20 hours is exempt from registering as a lobbyist, so Vice President Jones' 5 hours of lobbying on January 10 does not require him to register. Nor must Firm X register as a principal based on Jones' work, since the expense does not exceed the threshold of \$2500. Since Lobbying Firm Y did \$3000 worth of lobbying, the dollar threshold is passed and Business Firm X must register as a principal and Lobbying Firm Y must register as a lobbying firm. But these registrations need not occur until ten days after the thresholds are exceeded, or by April 16.

~~9.4. Registration Period.~~

- (A) On or after January 1, 2012, the registration period shall be for the period of time that begins on January 1 and ends on December 31 of each calendar year.
- (B) Unless terminated, a registration statement is effective from the date of filing through December 31 of that calendar year.

~~9.3 General Rule.~~ Unless exempt from registration and reporting under City Code §20-1204 and Subpart D of this Regulation, a lobbyist, lobbying firm or principal shall

register with the Board in the electronic format mandated by the Board within ten days of engaging in lobbying.

Example: On January 10, 2012, Vice President Jones of Business Firm X meets with the local District Councilman concerning a pending bill in Council. Jones spends a total of 5 hours of his time preparing for and participating in this meeting, and the Firm's only expense is Jones' time, which, for the 5 hours, is valued at less than \$1000. On February 15, 2012, Business Firm X contracts with the lobbying firm of Y to do all lobbying for the firm for the year beginning on that date. Under the contract, Lobbying Firm Y will bill Business Firm X on a monthly basis. On March 5, 2012, Lobbying Firm Y begins contacting City Councilmembers on behalf of Business Firm X. On April 6, 2012, Lobbying Firm Y bills Business Firm X \$3000 for lobbying in March. Who must register and when?

Result: The thresholds for registration are stated in Paragraph 9.24 and Code Section 20-1204. Under these thresholds, an employee who engages in lobbying for his employer of less than 20 hours is exempt from registering as a lobbyist, so Vice President Jones' 5 hours of lobbying on January 10 does not require him to register. Nor must Firm X register as a principal based on Jones' work, since the expense does not exceed the threshold of \$2500. Since Lobbying Firm Y did \$3000 worth of lobbying, the dollar threshold is passed and Business Firm X must register as a principal and Lobbying Firm Y must register as a lobbying firm. But these registrations need not occur until ten days after the thresholds are exceeded, or by April 16.
CO 93677

9.4. Registration Period:

- (A) On or after January 1, 2012, the registration period shall be for the period of time that begins on January 1 and ends on December 31 of each calendar year.
- (B) Unless terminated, a registration statement is effective from the date of filing through December 31 of that calendar year.

9.3. Annual Registration Fee. In order to register, a principal, lobbyist, or lobbying firm shall pay a fee of \$200 plus an additional nominal processing charge. Each separate registrant shall pay the annual fee and processing charge. A registrant shall pay the annual fee even if it registered and paid the fee in a previous calendar year. The annual registration fee is non-refundable and non-transferable.

DEPARTMENT OF
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REGISTRATION
AND
LOBBYING
COMMISSION

9.4 Method of registration. A principal, lobbyist, or lobbying firm shall electronically register using the Philadelphia Lobbying Information System. In order to register, the registrant shall create a PLIS account at <http://plis.cloudapp.net/>. Upon completion of the registration process, including payment of the annual registration fee, the registrant shall receive a PLIS number.

9.5 Annual Registration Fee.

- (A) Each principal, lobbying firm or lobbyist required to register under Chapter 20-4200 shall pay an annual registration fee of \$100 to the Board, made payable to the "City of Philadelphia."

- (B) A separate annual registration fee shall be paid for each registration period for each principal, lobbying firm or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the annual registration fee.
- (C) The annual registration fee is nonrefundable and nontransferable and is a flat fee for the calendar year in which it is paid, regardless of when during the calendar year the annual registration fee is paid. A registrant will not be required to pay more than one annual registration fee in any given calendar year, unless a registrant terminates and attempts to reregister during the same calendar year.
- (D) The failure to pay an annual registration fee as required by Chapter 20-1200 constitutes a failure to register.

9.6 Renewal of Registration.

- (A) An annual registration shall end on December 31 of a calendar year.
- (B) A new registration statement shall be filed and an annual registration fee shall be paid for each calendar year as required by Paragraph 9.3.

9.5 Information required for registration.

- a. Each registrant shall provide the following information:
 - i. name, business address, telephone number, and email address,
 - ii. the date the registrant commenced lobbying,
 - iii. the name and the Department of State filer identification number of any affiliated political action committee, and acronym, if applicable,
- b. A principal that is an association or organization with members shall include in its registration statement the approximate number of dues-paying members of the association or organization in the most recently completed calendar year.
- c. A principal or lobbying firm shall also provide:
 - i. the nature of its business,
 - ii. the name, business address, and PLIS registration number of each individual engaged in lobbying for economic consideration on behalf of the principal or lobbying firm that is required to register pursuant to Paragraph 9.2(b).
- d. A lobbyist shall also provide:
 - i. the name, business address, telephone number and PLIS registration number of each principal for whom the lobbyist is engaged in lobbying,
 - ii. the name and PLIS registration number of any lobbying firm with which the lobbyist has a relationship involving economic consideration,

Approved by Board at October 19, 2016 meeting for public comment posting
Strikethrough indicates matter removed; underline indicates new matter

- iii. the name and Department of State filer identification number of any candidate political committee of which the lobbyist is the Chair or Treasurer,
 - iv. a statement as to whether he or she is an attorney,
- e. **Amending a Registration Statement.** A principal, lobbying firm, or lobbyist shall file an amended registration statement with the Board within 14 days of a change occurring in the required information.

9.7 Contents of Principal and Lobbying Firm Registration Statements

(A) Each principal or lobbying firm required to register shall file a separate registration statement setting forth the following information:

- (1) Name and PLIS registration number;
- (2) Permanent address;
- (3) Daytime telephone number;
- (4) E-mail address;
- (5) Name and nature of business;
- (6) Name, Department of State registration number and acronym of any affiliated political action committees;
- (7) Name, permanent business address, and PLIS registration number of each individual who will for economic consideration engage in lobbying on behalf of the principal or lobbying firm;
- (8) Date lobbying commenced.

NOTE: In light of the requirement in Code Section 20-1202(1) that registration must be filed within ten days of "engaging in lobbying" (if other thresholds are met), the information in (8) above is necessary in order for the Board to be able to determine if the deadline requirements are being complied with. This Paragraph 9.7(A)(8) does not define "lobbying" for any other purpose. See the Example at Paragraph 9.3 for further explanation.

(B) A lobbying firm shall include in its registration statement the following information for each principal it represents:

- (1) Name;
- (2) Permanent business address;
- (3) Telephone number;
- (4) PLIS Registration number.

(C) A principal that is an association or organization with members shall include in its registration statement the approximate number of dues paying members of the association or organization in the most recently completed calendar year.

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9.6 Electronic signature required for registration

- a. A principal or lobbyist that is an individual shall sign on his or her own behalf;
- b. For a principal that is not an individual or for a lobbying firm, the signer shall be an individual who has the authority to sign documents on behalf of the lobbying firm or principal;
- c. The electronic signature shall constitute consent by the principal, lobbying firm, or lobbyist to receive service of notices, mailings, or process at the address listed in the registration statement, even if the principal, lobbying firm, or lobbyist is located outside the City.

9.8 Signatures on Registration Statements

- (A) If a principal or lobbying firm is an individual, that individual shall sign the registration statement with his or her electronic signature.
- (B) If a principal is a firm, association, corporation, partnership, business trust or business entity, a named officer or other individual who has the authority to sign documents on behalf of the principal shall sign the registration statement with his or her electronic signature.
- (C) A lobbyist who is an individual shall sign the registration statement with his or her electronic signature.
- (D) An electronic signature on a registration statement that is filed with the Board by a principal, lobbying firm, or lobbyist shall:
 - (1) Constitute the oath or affirmation required pursuant to City Code §20-1206(3) of the individual who signed the registration statement to the validity and accuracy to the best of the attester's knowledge of the information reported on the registration statement and that the individual acknowledges that the oath or affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities); and
 - (2) Constitute consent by the principal, lobbying firm, or lobbyist to receive service of notices, other official mailings, or process at the address listed in the registration statement that was filed with the Board, even if the principal or lobbying firm is located outside the City.

9.9 Contents of a Lobbyist Registration Statement

- (A) A lobbyist who is required to register shall file a single registration statement with the Board, setting forth the following information:
 - (1) Name;
 - (2) Permanent business address;
 - (3) Daytime telephone number;
 - (4) E-mail address;

- (5) Name, permanent business address, daytime telephone number and PLIS registration number of each principal for whom the lobbyist will engage in lobbying.
- (6) Name and PLIS registration number of any lobbying firm with which the lobbyist has a relationship involving economic consideration.
- (7) Name, Department of State registration number and acronym of any affiliated political action committees.
- (8) Name, Department of State registration number and acronym of any candidate political committee of which the lobbyist is an officer who must be included in a registration statement under section 1624(b)(2) and (3) of the Pennsylvania Election Code.
- (9) Date lobbying commenced.
- (B) A lobbyist who is an individual shall include a recent passport-sized (2 inch x 2 inch) photograph of the lobbyist at the time he or she files the registration statement.
- (C) If a lobbyist is a firm, association, corporation, partnership, business trust or business entity, the registration statement shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.
- (D) The failure to submit a photograph constitutes a failure to register as required by Chapter 20-1200. (E) A lobbyist shall indicate on the registration statement if he or she is admitted to practice law by a court of record of the Commonwealth of Pennsylvania.

9.10 Amending a Registration Statement.

- (A) A principal, lobbying firm, or lobbyist shall file an amended registration statement with the Board within 14 days after a change occurs in the information required to be included in any registration statement.
- (B) A principal that is an association or organization shall amend its registration statement if there is a change in the number of the principal's dues paying members. The amended registration statement shall be filed with the Board within 14 days of the end of the year in which the change occurs.

9.7 Termination of Registration. A principal, lobbying firm, or lobbyist may terminate its registration by filing a notice of termination with the Board. Within 30 days of receiving the notice, the Board shall send a letter confirming the termination. Notwithstanding a termination of registration, a principal, lobbying firm, or lobbyist must comply with the reporting requirements of Subpart B for any quarter in which it engaged in reportable lobbying.

9.11 Termination of Registration; Notice of Termination.

- (A) A lobbyist, lobbying firm or principal shall terminate his, her or its registration by filing a notice of termination with the Board.
- (B) After a review of the notice of termination, but no later than 30 days after receipt of the notice, the Board shall issue to the lobbyist, lobbying firm or principal a letter stating that the registrant has terminated registration. The filing of a notice of

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termination shall not affect the Board's authority to conduct investigations and hearings.

(C) No lobbying may occur after the filing of a notice of termination unless the lobbying is pursuant to a separate registration statement that is filed with the Board and that, at the time of the lobbying, has not been terminated.

(D) Filing a notice of termination shall not exempt a lobbyist, lobbying firm or principal from any of the requirements in City Code §20-1203, relating to reporting.

SUBPART C. REQUIREMENT TO FILE QUARTERLY EXPENSE REPORTS

SUBPART C. QUARTERLY EXPENSE REPORT; CONTENTS

9.12—RESERVED

9.8 Filing Deadlines.

<u>Quarter</u>	<u>Covers the period</u>	<u>Expense Report due on or before</u>
1	January 1 through March 31	April 30
2	April 1 through June 30	July 30
3	July 1 through September 30	October 30
4	October 1 through December 31	January 30

If the filing deadline falls on a weekend or holiday, or on a day that the Board's office is closed or closes early, the deadline for the filing is the following City business day.

9.9 Principal expense report. A registered principal shall electronically file an expense report with the Board for each quarter in a calendar year, beginning with the quarter in which it registers. If a registered principal's lobbying expenses are \$2,500 or less in a given quarter, the principal may, in lieu of a report, file a statement so stating. In calculating the amount of its lobbying expenses, a principal shall exclude any expenses exempted pursuant to Subpart D.

9.10 Lobbying firm or lobbyist expense report. A lobbying firm, or a lobbyist who is not associated with a lobbying firm, shall electronically file an expense report with the Board if, in a given quarter, a represented principal failed to disclose the lobbying firm's or lobbyist's activity in a required expense report.

9.11 A lobbying firm or lobbyist expense report shall be filed on or before 30 days after the date the principal's report was or would have been due. The filing of an expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements.

9.12 Method of filing an expense report. Principals, lobbying firms, and lobbyists shall electronically file required expense reports by using the Philadelphia Lobbying Information System. In order to file an expense report, a principal's, lobbying firm, or lobbyist must first register, as provided in Subpart B.

9.13 General rule. A registered principal shall, under affirmation, file an expense report with the Board, in the electronic format and with an electronic signature or signatures, as required by this Regulation, no later than 30 days after the last day of each reporting period.

9.14 Reporting Threshold.

(A) A registered principal shall file a quarterly expense report required under this section when total expenses for lobbying made on the principal's behalf by the registered principal, its registered lobbying firm(s) and registered lobbyist(s) exceed \$2,500 in a reporting period.

(B) In a reporting period in which total expenses for lobbying on the principal's behalf by the registered principal, its registered lobbying firm(s) and registered lobbyist(s) are \$2,500 or less, a statement to that effect shall be filed by checking the appropriate block on the quarterly expense report form.

9.13 Content of an expense report. An expense report filed pursuant to this Subpart shall contain the following information:

- a. The name and PLIS registration number of each lobbyist that received economic consideration of more than \$2,500 in a quarter of that year on behalf of the principal.
- b. **Direct communications.** Total expenses during the quarter for direct communications, including those for related personnel expenses and office expenses, and a description of each specific administrative action or legislative action (including bill number, if any) that was the subject of such communications, including:
 - i. the subject matter of the communication. If not available in the PLIS drop down menu, the filer shall describe the subject matter in the space provided.
 - ii. the position taken, such as supported, opposed, proposed, or amended.
 - iii. the name or names of any City official or employee to whom communications were directed and his or her department or agency. If a communication was directed to a City official or employee and that official's or employee's staff were present, the report need not list the staff members in attendance. If a direct communication occurs with multiple individuals who are staff of a City official or employee, it is sufficient to report that the direct communication was with "staff of (name of official or employee)."

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- c. **Indirect communications.** Total expenses during the quarter for indirect communications, including those for related personnel expenses and office expenses, and a description of each specific administrative action or legislative action (including bill number, if any) that was the subject of such communications, including:
 - i. the subject matter of the communication. If not available in the PLIS drop down menu, the filer shall describe the subject matter in the space provided.
 - ii. the position taken, such as supported, opposed, proposed, or amended.
 - iii. A description of the persons or groups to whom the indirect communication was directed.
 - iv. The method used for the indirect communication, such as a letter, billboard, or telephone bank.
- d. **Gifts, hospitality, transportation, or lodging,** as follows:
 - i. The filer shall disclose the total amount of expenses for gifts, hospitality, transportation, or lodging provided to City officials or employees or their immediate family member during the quarter.
 - ii. In the case of gifts, hospitality, transportation, or lodging of \$25 or more, in the aggregate, provided to a City official or employee, or their immediate family member of a City official or employee, during the quarter, the filer shall also disclose:
 1. the name of the recipient and, if a City official or employee, his or her position, job title, and agency.
 2. a description of what was provided, including its value.
 3. the date and location each gift, hospitality, transportation, or lodging was provided.
 4. the name and address of the source of each gift, payment, or reimbursement.
- e. The name, permanent business address and telephone number of any person that contributed more than 10% of the total resources received by the principal during the quarter, including any and all contributions, dues, or grants.
- f. Any other lobbying costs.
- g. A statement affirming that, to the best of the filer's knowledge, the filer is in compliance with Paragraph 9.22 regarding conflicts of interest.
- h. The electronic signature of the individual filing the report and of each lobbyist named in the expense report. A lobbyist may include with his or her electronic signature a description of the limits of his or her knowledge concerning the contents of an expense report.

9.15—Reporting of Direct and Indirect Communications Conducted in an Expense Report Period. Each expense report shall include the following:

- (A) The names, PLIS registration numbers, addresses, and phone numbers of all lobbyists by whom lobbying is conducted on behalf of the principal. The expense report shall include the electronic signature of each lobbyist or lobbying firm named in the expense report.
- (B) A description of each specific subject matter, issue, administrative action, or legislative action (including bill number, if any) being lobbied and the following additional information for the direct communications concerning that subject matter, issue, administrative action, or legislative action:
- (1) The category of the subject matter or issue being lobbied which shall be indicated by selecting the appropriate subject matter category from a drop down menu in PLIS on the expense report form or, if no relevant category is available, by describing the subject matter or issue in the space provided.
 - (2) The position taken on the specific subject matter, issue, administrative action, or legislative action being lobbied, such as supported, opposed, proposed, or amended.
 - (3) The name or names of the City official or employee who was lobbied and his or her department or agency.
 - (a) If a meeting is conducted with a City official or employee and members of that official's or employee's staff are present, it is sufficient to report the name of the City official or employee. It is not required to report the staff members in attendance.
 - (b) If a direct communication occurs during a City Council meeting or hearing with multiple individuals who are staff of a City official or employee, it is sufficient to report that the direct communication was with "staff of (name of official or employee)."
- (C) A description of each specific subject matter, issue, administrative action, or legislative action (including bill number, if any) being lobbied and the following additional information for the indirect communications concerning that subject matter, issue, administrative action, or legislative action:
- (1) The category of the subject matter or issue being lobbied which shall be indicated by selecting the appropriate subject matter category from a drop down menu in PLIS on the expense report form or, if no relevant category is available, by describing the subject matter or issue in the space provided.
 - (2) The position taken on the specific subject matter, issue, administrative action, or legislative action being lobbied, such as supported, opposed, proposed, or amended.

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- (3) A description of the persons or groups to whom the indirect communication was directed;
- (4) The method used for the indirect communication, such as a letter, billboard, or telephone bank;
- (5) The term indirect communication shall not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

Example 1: Assuming that no exemption pursuant to Paragraph 9.24 applies, when lobbying concerns an insurance contract with the City, the category selected shall be "insurance," and it shall be a sufficient description of the specific subject matter to report the contract number and the City Department from which the contract is sought.

Example 2: In 2015, Bill No. 15001 would rezone a property in City Neighborhood A to permit construction of a warehouse. Restaurant X is located next to the property in Bill No. 15001. Restaurant X pays for a billboard on Route 95 that tells residents of City Neighborhood A to call or write their Councilmember to oppose Bill No. 15001. Assuming that no exemption pursuant to Paragraph 9.24 applies, Restaurant X would report the following on its expense report: the category of the indirect communication is zoning; the specific subject matter is Bill No. 15001; the position is "opposed"; the method is a billboard; and the communication is directed to citizens.

9.16 — Reporting of Total Lobbying Costs in a Report Period. The total costs of all lobbying expenses for the reporting period shall be reported on the expense report and shall include:

- (A) The amount of economic consideration paid to lobbying firms or lobbyists for lobbying during the reporting period;
- (B) The total costs for gifts, hospitality, transportation and lodging, given to or provided to City officials or employees or their immediate families during the reporting period:
 - (1) Any cost for a gift, hospitality, transportation or lodging given to or provided to a City official or employee or to his or her immediate family which is of a value not exceeding \$25 need not be included in the total costs for gifts, hospitality, transportation and lodging on an expense report. If the same or similar gift, hospitality or transportation or lodging is provided on more than one occasion or to more than one City official or employee, the aggregate economic value of which is more than \$50, that value shall be included on the expense report in the total costs reported for gifts, hospitality, transportation and lodging;
 - (2) The valuation of a complimentary ticket to a fundraiser shall be the ticket price to the general public;
 - (3) The reportable value of gifts, transportation, lodging or hospitality shall be the fair market value to the registrant, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

- (4) See also Paragraph 9.19 which requires that notice be given to the recipients of gifts, hospitality, transportation, and lodging.
- (C) The total costs for personnel expenses made during the reporting period.
- (1) Reportable personnel costs include expenditures for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff and technical staff, as well as clerical and administrative support staff and individuals who engage in lobbying but who are exempt from reporting under City Code §20-1204 and Subpart D of this Regulation.
- (2) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying. These expenses include transportation, food and lodging paid for any individuals in furtherance of lobbying.
- (3) If compensation is reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a prorated estimate based on the value of the time devoted to lobbying.
- (D) The total costs for office expenses during the reporting period, including but not limited to offices, equipment and supplies utilized for lobbying.
- (E) Any other lobbying costs.
- (F) Each lobbying expense described in Paragraphs 9.16(A) through 9.16(E), above, made during the reporting period shall be allocated to one of the following three categories and shall not be included in more than one category:
- (1) The costs for gifts, hospitality, transportation and lodging given to or provided to City officials or employees or their immediate families and shall include any thing of value.
- (2) The costs for direct communication.
- (3) The costs for indirect communication.
- (G) For the purpose of calculating total lobbying costs reportable in an expense report, a registrant may use a reasonable method of estimation and allocation. Any reasonable method may be used to determine how to allocate expenses between direct and indirect communication costs. The registrant shall maintain a detailed written description of the method of estimation and allocation used and shall make such written description available when requested by the Board.
- (H) A registered principal that attempts, or that retains a lobbying firm or lobbyist to attempt, to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in any expense report filed under Subpart C.

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9.14 In reporting gifts, hospitality, transportation, and lodging as required by Paragraph 9.13(d):

- a. The reportable value of gifts, transportation, lodging or hospitality is their fair market value.
- b. If a City official or employee has repaid, in whole or in part, any costs for gifts, hospitality, transportation or lodging provided to him or her or his or her immediate family, the report shall disclose both the initial expenditure for the gift and the repayment by the official or employee.
- c. The reportable value of a ticket to an event is the ticket price a member of the general public would pay.
- d. A filer need not report gifts of food, beverage, entertainment, or admission provided to a City official or employee at a reception attended by the City official or employee in his or her official capacity, unless the filer lobbies the official or employee at the reception.

9.17 Reporting Expenses for Gifts, Hospitality, Transportation and Lodging:

(A) In accordance with Code Section 20-1203(2)(e), each expense report must include any expenditure on any gift, hospitality, transportation, or lodging, or reimbursement for the same, provided to a City official or employee where the fair market value of the gift, hospitality, transportation, lodging, or reimbursement received exceeds the value of the cost borne by the official or employee.

EXCEPTION: When a City official or employee attends a reception in connection with his or her public office or employment at the invitation of and hosted by an organization and, at the reception, receives food, beverage, entertainment, and admission without charge, the fair market value of the same shall not be considered a gift to the individual official or employee within the meaning of Code Chapter 20-1200. Accordingly, the reception host is neither required to report the related expenditure on any expense report required to be filed under this Regulation or City Code Chapter 20-1200 nor to include it in the calculation of any reporting thresholds under this Regulation or City Code Chapter 20-1200. Provided, however, that if lobbying covered by Code Chapter 20-1200 occurs at such a reception, such lobbying activity and any related expenditure must be reported pursuant to Chapter 20-1200 and this Regulation.

(B) For each expenditure described in Paragraph 9.17(A), the report must identify the following:

- (1) Name of the official or employee who received the value;
- (2) Position of the official or employee who received the value and his or her job title and unit of government;
- (3) Description of thing of value provided, including fair market value received;
- (4) Date and place provided.

(5) Name and address of the source of each gift, payment or reimbursement.

(C) For any quarterly report period, where the value of all expenditures for gifts, hospitality, transportation, lodging, or reimbursement received by a particular official or employee from the same registrant, in the aggregate for the calendar year, to that point, is less than \$200, Paragraph 9.17(C) does not require reporting of those expenditures pursuant to Paragraph 9.17(B) in that reporting period. However, the value shall be included in the total costs for gifts, hospitality, transportation, lodging or reimbursements pursuant to Paragraph 9.16(B).

(D) Notwithstanding Paragraph 9.17(C) above, once the aggregate total cost of all expenditures for gifts, hospitality, transportation, lodging, or reimbursements to a recipient in a calendar year reaches or exceeds \$200, the registrant shall report such previously unreported expenditures on that quarter's report, and on each subsequent expense report in that calendar year report the details of each subsequent gift, transportation, hospitality, lodging, or reimbursement to that recipient.

(E) A lobbyist, lobbying firm, principal, or City official or employee is not relieved by the provisions of Chapter 20-1200 from the restrictions in City Code §20-604 (Gifts, Loans and Favors to City Personnel), or from financial disclosure requirements such as those in Code §20-610, or from departmental or other restrictions or prohibitions on the offer or acceptance of gifts, hospitality, transportation, and lodging.

(F) The requirement to report gifts, hospitality, transportation, and lodging expense shall not apply to anything of value received from immediate family when the circumstances make it clear that the motivation for the action was the personal or family relationship.

Example: Paul is a City employee who received tickets with a value of \$150 from a lobbyist for Principal A on March 15th. Because the \$150 gift of the tickets is less than \$200, Principal A is not required to disclose the details of the gift on the expense report for the first quarter, but must include the \$150 value of the tickets in the total costs for gifts, hospitality, transportation, and lodging on that report. See Paragraph 9.16.

On May 15th, another lobbyist for Principal A gives Paul tickets with a value of \$60. Because the total value of all gifts to Paul in the calendar year is now \$210, Principal A must on its second quarter report include the \$60 value of the tickets in the total costs for gifts, hospitality, transportation, and lodging, and report both the \$150 and \$60 gifts in detail. If Principal A gives any additional gifts in that calendar year to Paul, regardless of their value, each one must be reported in detail on the appropriate expense report and included in the total cost of gifts for the quarter.

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9.18 Repayment to a Principal or Lobbyist for Gifts, Hospitality, Transportation or Lodging

If a City official or employee repays, in whole or in part, any costs for gifts, hospitality, transportation or lodging received from a registrant, and if the gift, hospitality, transportation or lodging expense is or would have been required to be reported on an expense report under Paragraph 9.17, the expense report shall disclose both the expenditure and the repayment.

Example: On January 15th, a City official received tickets costing \$300 from a lobbyist for Principal A. On March 1st, the official sent a check for \$150 to Principal A as a partial repayment for the tickets. Because the \$300 gift of the tickets was \$200 or more, both the \$300 gift and the \$150 repayment must be reported on the principal's first quarter expense report.

9.15 Written Notice to a recipient of gifts, hospitality, transportation or lodging.

At least seven days prior to filing an expense report with the Board, a registrant shall provide written notice to each City official or employee who is listed in the expense report as a recipient of gifts, hospitality, transportation or lodging. The written notice shall include the following information:

- a. The value and a description of each gift, or payment for hospitality, transportation, or lodging;
- c. The date and location of receipt;
- d. The name and address of the source of the gift; and
- e. The total amount of the gifts and payments for hospitality, transportation, or lodging given during the expense reporting period and the cumulative amount given from January 1 through the end of the applicable reporting period.

9.19 Written Notice to a Recipient of Gifts, Hospitality, Transportation or Lodging

(A) At least seven days prior to submitting an expense report to the Board, a registrant shall provide written notice to each City official or employee who is listed in the expense report as a recipient of a gift or gifts, hospitality, transportation or lodging.

(B) The written notice shall include the following information:

- (1) The name of the recipient official or employee and his or her department and position;
- (2) The cost and a description of each gift, or payment for hospitality, transportation, or lodging;
- (3) The date and place of receipt;
- (4) The name and address of the source of the gift; and

(5) The total amount of the gifts and payments for hospitality, transportation, or lodging given during the expense reporting period and the cumulative amount given from January 1 through the end of the applicable reporting period.

9.16 In reporting the expenses described in this Subpart, a registrant may use any reasonable method of estimation and allocation, including for allocation of expenses between direct and indirect communication costs. The registrant shall maintain a detailed written description of the method of estimation and allocation used and shall make such written description available to the Board upon request.

9.17 A registered principal that attempts, or that retains a lobbying firm or lobbyist to attempt, to influence an agency's preparing, bidding, entering into or approving a contract shall include the related expenses in an expense report filed under this Subpart.

9.20 Lobbying Firm or Lobbyist Expense Report

(A) Although generally not required to file expense reports, a lobbying firm or a lobbyist not associated with a lobbying firm shall submit an expense report if either of the following occurs:

- (1) During the reporting period the lobbying firm or lobbyist engaged in lobbying that was not reported in any expense report filed by a principal or principals represented, or
(2) The lobbying firm or lobbyist engaged in lobbying on behalf of any entity that is exempt under City Code §20-1204(7) relating to government officials acting in an official capacity.

(B) The expense report filed by a lobbyist or lobbying firm shall contain the information described in Subpart C.

(C) The expense report shall be filed on or before the 30th day after the due date of a principal's report.

(D) The filing of an expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements.

9.21 Reporting Contributions to a Principal: Each expense report shall include the following:

(A) The name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity that contributed more than 10% of the total resources received by the principal during the reporting period.

(B) The term "total resources" includes all contributions to the principal and all dues and grants received by the principal during the reporting period.

9.22 Signatures Required on the Expense Report

(A) Signature of Principal:

- (1) If a principal or lobbying firm is an individual, that individual shall sign the expense report with his or her electronic signature.
- (2) If a principal is a firm, association, corporation, partnership, business trust or business entity, a named officer or other individual who has the authority to sign documents on behalf of the principal shall sign the expense report with his or her electronic signature.
- (3) Each electronic signature for the principal shall:
 - (a) Constitute the oath or affirmation required pursuant to Section 20-1206(3) of Chapter 20-1200, of the individual(s) who signed the expense report on behalf of the principal to the validity and accuracy to the best of the attester's knowledge of the information reported on the expense report and that the individual acknowledges that the oath or affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
 - (b) Constitute consent to receive service of notices, other official mailings, or process at the address listed in the registration statement that was filed with the Board, even if the lobbyist is located outside the City.

(B) Signature of Lobbying Firm or Lobbyist

- (1) A named officer or other individual in a lobbying firm who has the authority to sign documents on behalf of the lobbying firm shall sign the principal's expense report with his or her electronic signature.
- (2) A lobbyist shall sign the principal's expense report with his or her electronic signature.
- (3) The electronic signature of the individual, described in (1) and (2) above shall serve as his or her affirmation, to the best of his or her knowledge, of the validity and accuracy of the information in the expense report during the reporting period. A lobbying firm or lobbyist may include with his or her electronic signature a description of the limits of his or her knowledge concerning contents of the expense report.

9.18 Amending an Expense Report. A principal, lobbying firm, or lobbyist shall file an amended expense report with the Board within 15 days of the principal, lobbying firm, or lobbyist determining that information was omitted from an expense report or that information reported in an expense report is incorrect.

9.23 Amending an Expense Report

- (A)** A principal, lobbying firm, or lobbyist shall file an amended expense report, including the required electronic signature(s), with the Board within 14 days after the principal, lobbying firm, or lobbyist determines that information was omitted from an expense report or that information reported in an expense report is incorrect.

(B) The filing of an amended expense report by a principal, lobbyist or lobbying firm does not relieve the principal, lobbyist or lobbying firm of any reporting requirements.

SUBPART D. EXEMPTIONS FROM REGISTRATION AND REPORTING

9.19.24. Exemptions The following persons and activities are exempt from registration and reporting:

- a. An individual who limits lobbying to preparing testimony and testifying or commenting before City Council or a committee of City Council, or participating in an administrative proceeding of an agency. For this purpose, "administrative proceeding" shall have the meaning as defined in 2 Pa. C.S. §101, and the phrase "administrative proceeding of an agency" shall refer to adjudications under the Local Agency Law, 2 Pa.C.S. §§551 *et seq.*

Note: This Paragraph 9.24(A) is derived from an exemption stated in the Philadelphia Code, Section 20-1204(1). See the Note to Paragraph 9.24(J), below.

- b. An individual who is an employee of an entity engaged in the business of publishing or broadcasting while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business.
 - c. An individual who does not receive economic consideration for lobbying.

(C) An individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(D) An individual who engages in lobbying on behalf of the individual's employer if the lobbying represents less than 20 hours during any reporting period.

(E) Except as required under City Code §20-1203(7), a principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

Example: In January 2012, a nonprofit group that supports safety hires a lobbyist (registered with the State) to meet with the Mayor, along with the group's executive director, to ask for his support of a bill in Council prohibiting anyone from running with scissors. The executive director and the lobbyist both spend 5 hours preparing for the meeting and meeting with the Mayor, and the lobbyist bills the nonprofit group \$1000 for his time. That is the only lobbying in Philadelphia for any client that the lobbyist does in the first half of 2012 and the only lobbying activity that the nonprofit group engages in during that same period. Who must register and report?

Result: No one. Even though the activity is clearly lobbying under Paragraph 9.1(C), the lobbyist did not receive more than \$2500 in the quarter, and is exempt under 9.24(D). The executive director of the nonprofit did not spend 20 hours in lobbying in the quarter, and is exempt under 9.24(E). And the nonprofit group itself did not

~~incur lobbying expenses exceeding \$2500 during the quarter, and is exempt under 9.24(f).~~

(G) A City official or employee who acts in an official capacity, as well as elected or appointed officials and employees of the following jurisdictions, when acting in an official capacity: the Commonwealth, political subdivisions thereof, other States or political subdivisions thereof, and the federal government.

(H)d. A government official or employee acting in his or her official capacity.

e. An individual representing a bona fide church or bona fide religious body of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.

f. An individual who is not a registered lobbyist and who serves on an advisory board, working group or task force at the request of a City agency.

(H)g. Participating as a party or as an attorney ~~at law~~ or representative of a party in a case or controversy, or in any administrative adjudication. This includes all actions, including responses, questions, discussions, submissions, and settlement negotiations regarding any claim, controversy, assessment, voluntary tax disclosure, ~~in which the principal or letter ruling request. Provided, however client is subject to or seeking a specific agency action in which the principal's or client's interests, rights, or privileges are at issue, provided that such communication is in an effort to address those interests, rights, or privileges and is in the normal course for such matters. However, this exemption shall not apply to efforts to influence general policy on behalf of an interest group, nor to direct communications with City officials or employees who the principal, representative, or agent knows or should know are not those who would ordinarily make determinations in the matter at issue.~~

Note: This Paragraph 9.24(j) is derived from an exemption stated in the Philadelphia Code, Section 20-1204(10). Other communications with the City government, in the normal process of a party seeking to resolve a dispute with the government, may not be exempt under this Paragraph 9.24(j). However, such communications may not constitute "lobbying" as defined in Paragraph 9.1(X). In difficult cases, advice should be sought, in advance of acting, from the Board, in accordance with Regulation No. 4.

(K)h. Expenditures and other transactions subject to reporting under Article XVI of the Pennsylvania Election Code.

(L)i. Activities and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals.

(M)j. Communication with a City official or employee on a routine, ministerial matter, such as:

For purposes of this exemption, "routine, ministerial matters" include, but are not limited to, the following:

- i. Scheduling a meeting;
- ii. Requesting information about the status of an administrative matter;
- iii. Requesting forms or procedures;
- (4) iv. Requesting information on requirements for compliance with existing laws or regulations;
- (5) v. Participating in an inspection required by law;
- vi. Responding to an audit conducted pursuant to law;
- vii. Performing services pursuant to an existing contract, but not communications concerning extensions of an existing contract;
- (8) viii. Inquiring about the delivery of services or materials pursuant to an existing contract;
- (9) ix. Filing a complaint with an City agency to seek enforcement of existing laws or regulations;
- (10) x. Filing a response to a complaint or other enforcement action commenced by an City agency;
- (11) xi. Applying for means-tested City services or benefits for that individual as an agent or representative of a specific individual for whom the services or benefits are sought.

(N) Communications concerning extensions of an existing contract with the City are not routine, ministerial matters.

(O) For purposes of this Regulation and Chapter 20-1200, it is not lobbying when a principal, or a consultant or professional (e.g., an accountant, architect, attorney, doctor, or engineer), acting as the representative or agent of a principal or client, communicates with a City agency in a matter in which the principal or client is subject to or seeking a specific City agency action in which the principal's or client's interests, rights, or privileges are at issue, provided that such communication is in an effort to address those interests, rights, or privileges and is in the normal course for such matters. This exception shall not apply to efforts to influence general policy on behalf of an interest group, nor to direct communications with City officials or employees who the principal, representative, or agent knows or should know are not those who would ordinarily make determinations in the matter at issue.

(P) Activities of an individual volunteer, not undertaken for compensation, including an attorney rendering pro bono publico services in activities for improving the law.

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SUBPART E. OTHER REQUIREMENTS AND RESTRICTIONS INDIRECT COMMUNICATION DISCLOSURE

9. 20 25 Identification of Person Who Financed an Indirect Communication

Whenever any person makes an expenditure for Any indirect communication for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, the communication shall clearly and conspicuously state the name of the person who ~~made or~~ financed the expenditure ~~paid~~ for the communication.

SUBPART F. PROHIBITED ACTIVITIES AND UNLAWFUL ACTS

9.21 26 Records retention.

- a. A registrant shall maintain for four years, in written or electronic form, records of its Philadelphia lobbying activity in sufficient detail to enable the registrant to fully comply with the requirements set forth in this Regulation. Such records shall be made available for inspection within ten business days upon request by the Board.
- b. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expense promptly prepare a written voucher, journal entry or other written or electronic form of record to document the expenditure. The record must include a notation of the reason an original source document was not available.
- c. A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. Upon receipt of a request from the Board to examine lobbying records, a registrant may redact any records that do not pertain to Philadelphia lobbying activity.

9.22 Conflicts of Interest.

- a. A lobbyist shall not lobby on behalf of a principal on any subject matter in which the principal's interests are directly adverse to the lobbyist's interests or to the interests of another principal the lobbyist represented at anytime during the current four-year session of Council, unless:
 - i. The lobbyist reasonably believes that he or she will be able to provide competent and diligent representation to each affected principal;
 - ii. The lobbyist provides written notice to each affected principal upon becoming aware of the conflict; and
 - iii. Each affected principal provides written informed consent waiving the conflict of interest.

- b. If a lobbyist is unable to comply with Paragraph 9.22(a), he or she shall promptly withdraw from one or more representations to the extent necessary to come into compliance with Paragraph 9.22(a).
- c. If a lobbyist is not in compliance with Paragraph 9.22(a), neither the lobbyist's employer, partner, nor any other person associated with the lobbyist shall lobby on behalf of the affected principals.

9.23 Contingent Compensation.

- a. A person may not compensate or incur an obligation to compensate a person to engage in lobbying for compensation contingent in whole or in part upon the occurrence, nonoccurrence or amendment of any administrative or legislative action.
- b. A person may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon the occurrence, nonoccurrence or amendment of any administrative or legislative action.
- c. An individual who is paid on a contingent or commission basis for the sale of goods or services may contact a City official or employee regarding the purchase by the City or an agency of such goods or services, provided that such individual is contacting only those City officials or employees who have responsibility for making purchasing decisions regarding such goods or services in the normal course.

9.24 Prohibited Activities. A lobbyist, lobbying firm, or principal shall not

- a. serve as a treasurer or other officer who must be included in a registration statement under section 1624(b)(2) and (3) of the Pennsylvania Election Code, for the Chair or Treasurer of a candidate's political committee or a candidate's political action committee if the candidate is seeking City elected office.
- b. charge a fee or receive economic consideration based on a contract, either written or oral, that any part of the fee or economic consideration will be converted into a contribution to a candidate for public office or a political committee subject to reporting under Article XVI of the Pennsylvania Election Code.
- c. for the purpose of influencing legislative action or administrative action, transmit, utter or publish to a City official or employee a communication, knowing that the communication or a signature on the communication is false, forged, counterfeit or fictitious.
- d. make a material misstatement or omission on a registration statement or expense report filed with the Board. However, if a filer learns that an already-filed registration statement or expense report included a material misstatement or omission and, within 15 days of learning the same, files an amended, corrected registration statement or expense report, that filer shall not be in violation of this Chapter, except where the filer learned of the material misstatement or omission from the Board.

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- e. ~~instigate~~ the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation.
- f. ~~knowingly counsel a person to violate Philadelphia Code Chapter 20-1200 or any other provision of the City Code, State, or of any Federal or State statute law.~~
 - (1) Engage in or counsel a person to engage in fraudulent conduct.
- g. attempt to influence a City official or employee on legislative or administrative action by making or facilitating the making of a loan to the City official or employee.
- h. while engaging in lobbying on behalf of the principal, refuse to disclose to a City official or employee, upon request, the identity of the principal.
 - (1) Commit a criminal offense arising from lobbying.
 - (2) Influence or attempt to influence, by coercion, bribery or threat of economic sanction, a City official or employee in the discharge of the duties of office.
 - (3) Extort or otherwise unlawfully retaliate against a City official or employee by reason of the City official's or employee's position with respect to or vote on administrative or legislative action.
- i. attempt to influence a City official or employee on legislative or administrative action by the promise of financial support or the financing of opposition to the candidacy of the City official or employee at a future election.
- j. engage in conduct that brings the practice of lobbying or the legislative or executive branches of City government into disrepute.

D) Conflicts of Interest

- (1) Except as permitted by Paragraph 9.26(D)(2), a registrant may not lobby on behalf of a principal on any subject matter in which the principal's interests are directly adverse to the interests of another principal currently represented by the lobbyist or previously represented by the lobbyist during the current four year session of Council, or directly adverse to the lobbyist's own interests.
- (2) A lobbyist may represent a principal in circumstances described in Paragraph 9.26(D)(1) if:
 - (a) The lobbyist reasonably believes that the lobbyist will be able to provide competent and diligent representation to each affected principal;
 - (b) The lobbyist provides written notice to each affected principal upon becoming aware of the conflict; and
 - (c) Each affected principal provides written informed consent waiving the conflict of interest.

- (3) If a lobbyist represents a principal in violation of Code Section 20-1205 or if multiple representation properly accepted becomes improper under this section and the conflict is not waived, the lobbyist shall promptly withdraw from one or more representations to the extent necessary for the remaining representation to not be in violation of that section.
- (4) If a lobbyist is prohibited by Code Section 20-1205 from engaging in particular conduct, an employer of the lobbyist or a partner or other person associated with the lobbyist may not engage in the particular conduct.
- (5) A principal or lobbyist required to file an expense report under this Chapter shall include in the report a statement affirming that to the best of the principal's or lobbyist's knowledge the principal or lobbyist has complied with this section.
- (6) A lobbyist and principal shall maintain the records relating to the conflict of interest set forth in Paragraph 9.26(D) for a four-year period beginning on the date the conflict is discovered and provide copies of the records to the Board upon request.
- (7) Complaints regarding violations of Code Section 20-1205(5) involving a lobbyist or principal who is an attorney at law shall be referred to the Disciplinary Board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.
- (E) Multiple Principals. Nothing in this Subpart shall be construed to require a lobbyist representing multiple principals who each have an interest in the budget process to comply with Paragraph 9.26(D)(3) unless a conflict of interest exists under Paragraph 9.26(D)(4).

(F) Contingent Compensation:

- (1) A person may not compensate or incur an obligation to compensate a person to engage in lobbying for compensation contingent in whole or in part upon any of the following:
- (a) Occurrence, nonoccurrence or amendment of legislative action;
- (b) Occurrence, nonoccurrence or amendment of an administrative action.
- (2) A person may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon any:
- (a) Occurrence, nonoccurrence or amendment of legislative action;
- (b) Occurrence, nonoccurrence or amendment of an administrative action.

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(3) It shall not be a violation of Paragraph 9.26(f) or Code Section 20-1205(7) for an individual who is paid on a contingent or commission basis for the sale of goods or services to contact a City official or employee regarding the purchase by the City of such goods or services, provided that such individual is contacting only those City officials or employees who have responsibility for making purchasing decisions regarding such goods or services in the normal course.

9.27 Unlawful Acts

(A) A lobbyist or principal may not:

(1) Make a material misstatement or omission on a registration statement or expense report filed with the Board pursuant to this Regulation and Chapter 20-1200. Provided, however, that if a lobbyist, lobbying firm, or principal learns that an already filed registration statement or expense report included a material misstatement or omission and, within 15 days of learning the same, files an amended, corrected registration statement or expense report, it shall not be a violation of this Chapter; further provided, however, that this exception shall not apply in cases where the filer learns of the material misstatement or omission from the Ethics Board.

(B) The Board:

(1) May, as it deems appropriate, refer an alleged violation of Code Section 20-1205(8) to any appropriate agency for investigation or law enforcement agency for investigation and prosecution; and

(2) Shall, if the subject of the complaint is an attorney at law, refer an alleged violation of Code Section 20-1205(8) to the Disciplinary Board.

SUBPART G. LOBBYING RECORDS

9.28 Records

(A) A registrant shall maintain records of its Philadelphia lobbying activity in sufficient detail to enable the registrant to fully comply with the registration and reporting requirements of Chapter 20-1200, which records may be in written or electronic formats. If a document is maintained in an electronic format, it shall be maintained to enable the Board to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

(B) The documents to be used in recordkeeping include: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts,

subcontracts, business diaries and calendars and other related written or computerized records.

(C) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. If a registrant's records include records of lobbying and non-lobbying activities, only those records that pertain to Philadelphia lobbying activity shall be retained and made available for inspection by the Board, upon request, as required by Code Section 20-1203(6) and this Regulation. Upon receipt of a request from the Board to examine lobbying records, a registrant may redact any records which do not pertain to Philadelphia lobbying activity.

(D) If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry or other written or electronic form of record to document the expenditure. The record must include a notation of the reason an original source document was not available.

(E) Documents to substantiate contributions of resources reportable under Paragraph 9.21, must include for each reportable item, the following information:

- (1) The full names of the donor and donee;
- (2) The amount or value and date of the contribution;
- (3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided;
- (4) Instructions, directions, conditions, restrictions, limitations or controls, provided or imposed by the donor as to the use or disposition of the contribution.

9.29 Period of Retention: A registrant shall retain all records of lobbying activity described in Subpart G for four years from the date of filing the subject report. Upon request by the Board, these materials shall be made available to the Board for inspection within ten business days.

SUBPART H. ADVICE AND OPINIONS; ENFORCEMENT; PENALTIES; and TRAINING

9.30 Advice and Opinions

Requests for advisory opinions and the process of issuing advisory opinions shall be subject to Board of Ethics Regulation No. 4, with the following addition:

(A) Paragraph 4.1(b), "such other matters as may be assigned by Council" shall be understood to include Chapter 20-1200.

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(B) Paragraphs 4.1(c) and 4.1(f), in listing the persons who may receive advice, shall be read to include a lobbyist, a lobbying firm, a principal, the Disciplinary Board or a person or entity seeking to determine whether that person or entity is required to register or file expense reports pursuant to Chapter 20-1200 and this Regulation.

(C) Paragraph 4.4, on the information to be provided by a requestor, shall be read to require, from requestors, additional detail relating to the name, address, and telephone number of any principal, lobbyist, or lobbying firm that is the subject of the request.

9.31 Enforcement

(A) Investigations and hearings shall be governed by Board of Ethics Regulation No. 2, with the following additions:

(B) Paragraph 2.0(a), "other matters assigned to the Board by City Council" shall be understood to include Chapter 20-1200.

9.32-9.25 If the Board receives a complaint regarding a violation of this Subpart involving a lobbyist or principal who is an attorney at law, the Board shall refer the complaint to the Disciplinary Board.

SUBPART F. PENALTIES

9.26 The failure to register or amend a registration, or file or amend an expense report as required by Chapter 20-1200 this Regulation is subject to a civil penalty not exceeding \$250 for each late day, provided that the total fines that may be imposed for failure to file a particular registration or report shall not exceed \$2,000. (A) A person who violates this Chapter shall be subject to a civil penalty of up to \$2,000.

(B) Notwithstanding Paragraph 9.32(A), above

9.27 All other violations of the lobbying law are subject to a civil monetary penalty of \$1,000 per violation that shall be increased or decreased as follows:

- a. Mitigating factors. The civil monetary penalty of \$1,000 shall be reduced by \$500 if one of the following mitigating factors is present and shall be reduced by \$750 if more than one of the following mitigating factors is present:
 - i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
 - ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.

- iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.
- b. Aggravating factors. The civil monetary penalty of \$1,000 shall be increased by \$1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed \$2,000:
 - i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
 - ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
 - iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

9.28 The Board shall notify the Disciplinary Board if it imposes a penalty on any lobbyist or principal who is an attorney at law.

9.29 In addition to any penalties imposed under Chapter 20-1200 pursuant to this Subpart, the Board may prohibit a person from lobbying for economic consideration for up to five years for intentional violations of this Chapter. The Board shall not impose the prohibition under this Paragraph unless the person has been afforded the opportunity for a hearing.

- (D) The Board shall notify the Disciplinary Board of any lobbyist or principal who is an attorney at law against whom a civil penalty is imposed.
- (E) Affirmative Defense. Any of the following is an affirmative defense to an action brought under Chapter 20-1200:
 - (1) The respondent relied on an advisory opinion issued to the respondent by the Board pursuant to Paragraph 9.30.
 - (2) The respondent reasonably relied on notice as required by Paragraph 9.19.

9.33 Training

- (A) Each lobbyist and principal shall within 120 days of filing a registration statement pursuant to Subpart B attend an initial training session conducted by the Board regarding the requirements of Chapter 20-1200 and other relevant sections of the City Code. Principals that do not have an office in Pennsylvania, Maryland, Delaware, or New Jersey may be sent materials prepared by the staff of the Board.
- (B) In addition to the initial training described above, each lobbyist and principal shall be required to attend further training if the Board shall determine, by Resolution adopted at a public meeting, that additional training is necessary. Factors to be

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Approved by Board at October 19, 2016 meeting for public comment posting
Strikethrough indicates matter removed; underline indicates new matter

~~considered by the Board in determining whether additional training is necessary includes:~~

- (1) Any recent amendments to Chapter 20-1200 or other relevant sections of the City Code, and the degree of substantive change represented by such amendments;
- (2) The number of years since the initial training attended by the lobbyist or principal;
- (3) Other significant events that may indicate that re-training is called for;
- (4) The availability and cost of available methods of providing training, such as on-line computer training;

~~Training programs developed and conducted by the Board shall include programs developed and approved by staff of the Board and on-line training programs developed by staff.~~

Approved for public comment by Board: May 11, 2011
Public hearing held: June 15, 2011
Adopted by Board with modifications: September 21, 2011
Effective: November 21, 2011

Proposed amendments approved for public comment by Board: December 21, 2011
Effective: February 3, 2012

Proposed amendments approved for public comment by Board: October 19, 2016
Public hearing held:
Adopted by Board with modifications:
Effective:

Regulation if proposed amendments shown in blackline are approved

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 9, LOBBYING**

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SUBPART A. SCOPE; DEFINITIONS.

9.0 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 Chapters 20-600 and 20-1200 of the Philadelphia Code, specifically §20-1210, interprets and provides implementing detail to Philadelphia's lobbying ordinance found at Code Chapter 20-1200.

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

- a. Administrative action.** Any of the following:
 - i. The Mayor's approval or veto of legislation;
 - ii. The nomination or appointment of an individual as a City officer or employee;
 - iii. The proposal, consideration, promulgation or rescission of an executive order; or
 - iv. An agency's:
 - 1. Proposal, consideration, promulgation, review, revision, approval, disapproval, rejection, or rescission of a regulation;
 - 2. Development or modification of a written statement of policy;
 - 3. Preparation of a Request for Qualifications, Request for Proposals, or contract specifications;
 - 4. Solicitation, award, or administration of a contract, including for the procurement of goods or services;
 - 5. Solicitation, award, or administration of a grant, loan, or agreement involving the disbursement of public monies;
 - 6. Adjudication of claims, determination of complaints, or imposition of fines or fees; or
 - 7. Determination with respect to
 - a. zoning or the use, development, or improvement of real property subject to City regulation;
 - b. the terms of the acquisition or disposition by the City of any interest in real property;
 - c. a license or permit for the use of real property of or by the City;
 - d. a franchise or concession.

- b. **Affiliated political action committee.** A political action committee established pursuant to the Pennsylvania Election Code, the Chair or Treasurer of which is a principal, an officer or an employee of a principal, a lobbyist, or an employee of a lobbyist. A political action committee is not an “affiliated political action committee” if an employee of a registrant serves as the officer of a political action committee in a clearly personal capacity and the goals and mission of the committee clearly have no relationship to the goals and mission of the registrant.
- c. **Agency.** Any of the following, unless the lobbying of the entity is subject to the Pennsylvania Lobbying Law (65 P. C.S. § 13A01 *et seq.*):
 - i. An office, department, board, commission, or other entity that is part of the government of the City of Philadelphia, including City Council.
 - ii. Any City related agency, which includes an authority or quasi-public corporation which either: receives appropriations from the City, has entered into continuing contractual or cooperative relationships with the City, or operates under legal authority granted by City ordinance, including the Philadelphia Industrial Development Corporation, the Philadelphia Authority for Industrial Development, and the Redevelopment Authority of the City of Philadelphia.
 - iii. The School District of Philadelphia, including any board or other instrumentality thereof; or
 - iv. The Philadelphia Land Bank.
- d. **Attorney.** An individual admitted to practice law by a court of record of the Commonwealth of Pennsylvania.
- e. **Board.** The Board of Ethics.
- f. **City official or employee.** Any person who is elected or appointed to a position in an agency however elected or appointed, including persons serving full-time, part-time, or intermittently, and persons serving with or without compensation.
- g. **Compensation.** Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.
- h. **Direct communication.** A communication by a lobbyist or principal to a City official or employee, the purpose or foreseeable effect of which is to influence legislative or administrative action.
- i. **Disciplinary Board.** The Disciplinary Board of the Supreme Court of Pennsylvania.
- j. **Economic consideration.** Anything of value offered, promised, or received. The term includes compensation and reimbursement for expenses.

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Regulation if proposed amendments shown in blackline are approved

- k. Electronic Signature.** The unique combination of user name, password, and PLIS registration number assigned to a lobbyist, lobbying firm or principal by the Board that shall be used by the lobbyist, lobbying firm or principal to file a registration statement, expense report, termination or amendment to such filing and that constitutes a signature under oath or affirmation by a lobbyist, lobbying firm, or principal.
- l. Gift.** Anything that is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.
- m. Hospitality.** Meals, beverages and recreation and entertainment, but not gifts, transportation or lodging.
- n. Immediate family member.** An individual's spouse or Life Partner, child, parent, brother, sister and like relative-in-law or comparable relation of a Life Partner.
- o. Indirect communication.** An effort to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative or administrative action, such as letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues, but not including regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.
- p. 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.
- q. Legislative action.** An action taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of:
 - i. Legislation;
 - ii. Legislative motions;
 - iii. A veto by the Mayor; or
 - iv. Confirmation of appointments by the Mayor or City Council, or appointments to public boards or commissions by the Mayor or City Council.

- r. **Lobbying.** An effort to influence legislative or administrative action, whether through (i) direct communication, (ii) indirect communication, or (iii) by providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of a lobbyist or principal.
It is not lobbying when a principal, or a consultant or professional (e.g., an accountant, architect, attorney, doctor, or engineer), acting as the representative or agent of a principal or client, communicates with a City agency in a matter in which the principal or client is subject to or seeking a specific City agency action in which the principal's or client's interests, rights, or privileges are at issue, provided that such communication is in an effort to address those interests, rights, or privileges and is in the normal course for such matters. This exception shall not apply to efforts to influence general policy on behalf of an interest group, nor to direct communications with City officials or employees who the principal, representative, or agent knows or should know are not those who would ordinarily make determinations in the matter at issue.
- s. **Lobbying firm.** An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.
- t. **Lobbyist.** An individual that engages in lobbying on behalf of a principal for economic consideration, including an attorney while engaged in lobbying.
- u. **Office expense.** An expenditure for an office, equipment or supplies, utilized for lobbying.
- v. **Person.** A business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.
- w. **Personnel expense.** An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, publications and public relations staff, technical staff, or clerical and administrative support staff.
- x. **PLIS – Philadelphia Lobbying Information System.**
- y. **Principal.** An individual, association, corporation, partnership, business trust or other person that engages in lobbying on its own behalf or on whose behalf a lobbying firm or lobbyist engages in lobbying.
- z. **Registrant.** A registered lobbyist, registered lobbying firm or registered principal.

SUBPART B. REGISTRATION BY PRINCIPALS, LOBBYISTS, AND LOBBYING FIRMS

9.2 Requirement to register.

- a. A **principal** shall register with the Board within ten days of its incurring expenses for lobbying in that quarter of a calendar year exceeding \$2,500. In calculating the amount of its lobbying expenses, a principal shall include all office and personnel expenses related to the principal's direct communications, indirect communications, and provision of gifts, transportation, hospitality, or lodging to City officials and employees.
- b. A **lobbyist** shall register with the Board within ten days of engaging in lobbying for which he or she has or will receive economic consideration of more than \$2,500 in that quarter of a calendar year. However, an individual who engages in lobbying on behalf of his or her employer shall not be required to register if he or she engaged in less than 20 hours of lobbying activity in that quarter.
- c. A **lobbying firm** shall register with the Board within ten days of engaging in lobbying for which it has or will receive economic consideration of more than \$2,500 in that quarter of a calendar year.
- d. In calculating the amount of its lobbying expenses, a principal, lobbyist, or lobbying firm shall exclude any expenses exempted pursuant to Subpart D.
- e. A principal's, lobbyist's, or lobbying firm's registration is effective only from the date of filing through December 31 of the same calendar year. A principal, lobbyist, or lobbying firm shall renew its registration in each calendar year in which it meets the requirements set forth in this Paragraph.
- f. Gifts of food, beverage, entertainment, or admission provided to a City official or employee at a reception that the City official or employee attends in his or her official capacity do not count towards the registration threshold unless the person who paid for the food, beverage, entertainment, or admission lobbies the City official at the reception.

9.3. Annual Registration Fee. In order to register, a principal, lobbyist, or lobbying firm shall pay a fee of \$200 plus an additional nominal processing charge. Each separate registrant shall pay the annual fee and processing charge. A registrant shall pay the annual fee even if it registered and paid the fee in a previous calendar year. The annual registration fee is non-refundable and non-transferable.

9.4 Method of registration. A principal, lobbyist, or lobbying firm shall electronically register using the Philadelphia Lobbying Information System. In order to register, the registrant shall create a PLIS account at <http://plis.cloudapp.net/>. Upon completion of the registration process, including payment of the annual registration fee, the registrant shall receive a PLIS number.

9.5 Information required for registration.

- a. Each registrant shall provide the following information:
 - i. name, business address, telephone number, and email address.
 - ii. the date the registrant commenced lobbying.
 - iii. the name and the Department of State filer identification number of any affiliated political action committee, and acronym, if applicable.
- b. A principal that is an association or organization with members shall include in its registration statement the approximate number of dues-paying members of the association or organization in the most recently completed calendar year.
- c. A principal or lobbying firm shall also provide:
 - i. the nature of its business.
 - ii. the name, business address, and PLIS registration number of each individual engaged in lobbying for economic consideration on behalf of the principal or lobbying firm that is required to register pursuant to Paragraph 9.2(b).
- d. A lobbyist shall also provide:
 - i. the name, business address, telephone number and PLIS registration number of each principal for whom the lobbyist is engaged in lobbying.
 - ii. the name and PLIS registration number of any lobbying firm with which the lobbyist has a relationship involving economic consideration.
 - iii. the name and Department of State filer identification number of any candidate political committee of which the lobbyist is the Chair or Treasurer.
 - iv. a statement as to whether he or she is an attorney.
- e. **Amending a Registration Statement.** A principal, lobbying firm, or lobbyist shall file an amended registration statement with the Board within 14 days of a change occurring in the required information.

9.6 Electronic signature required for registration

- a. A principal or lobbyist that is an individual shall sign on his or her own behalf.
- b. For a principal that is not an individual or for a lobbying firm, the signer shall be an individual who has the authority to sign documents on behalf of the lobbying firm or principal.
- c. The electronic signature shall constitute consent by the principal, lobbying firm, or lobbyist to receive service of notices, mailings, or process at the address listed in the registration statement, even if the principal, lobbying firm, or lobbyist is located outside the City.

Regulation if proposed amendments shown in blackline are approved

9.7 Termination of Registration. A principal, lobbying firm, or lobbyist may terminate its registration by filing a notice of termination with the Board. Within 30 days of receiving the notice, the Board shall send a letter confirming the termination. Notwithstanding a termination of registration, a principal, lobbying firm, or lobbyist must comply with the reporting requirements of Subpart B for any quarter in which it engaged in reportable lobbying.

SUBPART C. REQUIREMENT TO FILE QUARTERLY EXPENSE REPORTS

9.8 Filing Deadlines.

Quarter	Covers the period	Expense Report due on or before
1	January 1 through March 31	April 30
2	April 1 through June 30	July 30
3	July 1 through September 30	October 30
4	October 1 through December 31	January 30

If the filing deadline falls on a weekend or holiday, or on a day that the Board's office is closed or closes early, the deadline for the filing is the following City business day.

9.9 Principal expense report. A registered principal shall electronically file an expense report with the Board for each quarter in a calendar year, beginning with the quarter in which it registers. If a registered principal's lobbying expenses are \$2,500 or less in a given quarter, the principal may, in lieu of a report, file a statement so stating. In calculating the amount of its lobbying expenses, a principal shall exclude any expenses exempted pursuant to Subpart D.

9.10 Lobbying firm or lobbyist expense report. A lobbying firm, or a lobbyist who is not associated with a lobbying firm, shall electronically file an expense report with the Board if, in a given quarter, a represented principal failed to disclose the lobbying firm's or lobbyist's activity in a required expense report.

9.11 A lobbying firm or lobbyist expense report shall be filed on or before 30 days after the date the principal's report was or would have been due. The filing of an expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements.

9.12 Method of filing an expense report. Principals, lobbying firms, and lobbyists shall electronically file required expense reports by using the Philadelphia Lobbying Information System. In order to file an expense report, a principal's, lobbying firm, or lobbyist must first register, as provided in Subpart B.

9.13 Content of an expense report. An expense report filed pursuant to this Subpart shall contain the following information:

- a. The name and PLIS registration number of each lobbyist that received economic consideration of more than \$2,500 in a quarter of that year on behalf of the principal.
- b. **Direct communications.** Total expenses during the quarter for direct communications, including those for related personnel expenses and office expenses, and a description of each specific administrative action or legislative action (including bill number, if any) that was the subject of such communications, including:
 - i. the subject matter of the communication. If not available in the PLIS drop down menu, the filer shall describe the subject matter in the space provided.
 - ii. the position taken, such as supported, opposed, proposed, or amended.
 - iii. the name or names of any City official or employee to whom communications were directed and his or her department or agency. If a communication was directed to a City official or employee and that official's or employee's staff were present, the report need not list the staff members in attendance. If a direct communication occurs with multiple individuals who are staff of a City official or employee, it is sufficient to report that the direct communication was with "staff of (name of official or employee)." 93695
- c. **Indirect communications.** Total expenses during the quarter for indirect communications, including those for related personnel expenses and office expenses, and a description of each specific administrative action or legislative action (including bill number, if any) that was the subject of such communications, including:
 - i. the subject matter of the communication. If not available in the PLIS drop down menu, the filer shall describe the subject matter in the space provided.
 - ii. the position taken, such as supported, opposed, proposed, or amended.
 - iii. A description of the persons or groups to whom the indirect communication was directed.
 - iv. The method used for the indirect communication, such as a letter, billboard, telephone bank.
- d. **Gifts, hospitality, transportation, or lodging,** as follows:
 - i. The filer shall disclose the total amount of expenses for gifts, hospitality, transportation, or lodging provided to City officials or employees or their immediate family member during the quarter.
 - ii. In the case of gifts, hospitality, transportation, or lodging of \$25 or more, in the aggregate, provided to a City official or employee, or their immediate

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family member of a City official or employee, during the quarter, the filer shall also disclose:

1. the name of the recipient and, if a City official or employee, his or her position, job title, and agency.
 2. a description of what was provided, including its value.
 3. the date and location each gift, hospitality, transportation, or lodging was provided.
 4. the name and address of the source of each gift, payment, or reimbursement.
- e. The name, permanent business address and telephone number of any person that contributed more than 10% of the total resources received by the principal during the quarter, including any and all contributions, dues, or grants.
 - f. Any other lobbying costs.
 - h. A statement affirming that, to the best of the filer's knowledge, the filer is in compliance with Paragraph 9.22 regarding conflicts of interest.
 - i. The electronic signature of the individual filing the report and of each lobbyist named in the expense report. A lobbyist may include with his or her electronic signature a description of the limits of his or her knowledge concerning the contents of an expense report.

9.14 In reporting gifts, hospitality, transportation, and lodging as required by Paragraph 9.13(d):

- a. The reportable value of gifts, transportation, lodging or hospitality is their fair market value.
- b. If a City official or employee has repaid, in whole or in part, any costs for gifts, hospitality, transportation or lodging provided to him or her or his or her immediate family, the report shall disclose both the initial expenditure for the gift and the repayment by the official or employee.
- c. The reportable value of a ticket to an event is the ticket price a member of the general public would pay.

Regulation if proposed amendments shown in blackline are approved

- d. A filer need not report gifts of food, beverage, entertainment, or admission provided to a City official or employee at a reception attended by the City official or employee in his or her official capacity, unless the filer lobbies the official or employee at the reception.

9.15 Written Notice to a recipient of gifts, hospitality, transportation or lodging. At least seven days prior to filing an expense report with the Board, a registrant shall provide written notice to each City official or employee who is listed in the expense report as a recipient of gifts, hospitality, transportation or lodging. The written notice shall include the following information:

- a. The value and a description of each gift, or payment for hospitality, transportation, or lodging;
- c. The date and location of receipt;
- d. The name and address of the source of the gift; and
- e. The total amount of the gifts and payments for hospitality, transportation, or lodging given during the expense reporting period and the cumulative amount given from January 1 through the end of the applicable reporting period.

9.16 In reporting the expenses described in this Subpart, a registrant may use any reasonable method of estimation and allocation, including for allocation of expenses between direct and indirect communication costs. The registrant shall maintain a detailed written description of the method of estimation and allocation used and shall make such written description available to the Board upon request.

9.17 A registered principal that attempts, or that retains a lobbying firm or lobbyist to attempt, to influence an agency's preparing, bidding, entering into or approving a contract shall include the related expenses in an expense report filed under Subpart C.

9.18 Amending an Expense Report. A principal, lobbying firm, or lobbyist shall file an amended expense report with the Board within 15 days of the principal, lobbying firm, or lobbyist determining that information was omitted from an expense report or that information reported in an expense report is incorrect.

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SUBPART D. EXEMPTIONS FROM REGISTRATION AND REPORTING

- 9.19** The following persons and activities are exempt from registration and reporting:
- a. An individual who limits lobbying to preparing testimony and testifying or commenting before City Council or a committee of City Council.
 - b. An individual who is an employee of an entity engaged in the business of publishing or broadcasting while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business.
 - c. An individual who does not receive economic consideration for lobbying.
 - d. A government official or employee acting in his or her official capacity.
 - e. An individual representing a bona fide church or bona fide religious body of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.
 - f. An individual who is not a registered lobbyist and who serves on an advisory board, working group or task force at the request of an agency.
 - g. Participating as a party or as an attorney or representative of a party in a case or controversy, or in any administrative adjudication, in which the principal or client is subject to or seeking a specific agency action in which the principal's or client's interests, rights, or privileges are at issue, provided that such communication is in an effort to address those interests, rights, or privileges and is in the normal course for such matters. However, this exemption shall not apply to efforts to influence general policy on behalf of an interest group, nor to direct communications with City officials or employees who the principal, representative, or agent knows or should know are not those who would ordinarily make determinations in the matter at issue.
 - h. Expenditures and other transactions subject to reporting under Article XVI of the Pennsylvania Election Code.
 - i. Activities and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals.
 - j. Communication with a City official or employee on a routine, ministerial matter, such as:
 - i. Scheduling a meeting;
 - ii. Requesting information about the status of an administrative matter;
 - iii. Requesting forms or procedures;
 - iv. Requesting information on requirements for compliance with existing laws or regulations;

- v. Participating in an inspection required by law;
- vi. Responding to an audit conducted pursuant to law;
- vii. Performing services pursuant to an existing contract, but not communications concerning extensions of an existing contract;
- viii. Inquiring about the delivery of services or materials pursuant to an existing contract;
- ix. Filing a complaint with an agency to seek enforcement of existing laws or regulations;
- x. Filing a response to a complaint or other enforcement action commenced by an agency;
- xi. Applying for means-tested City services or benefits for that individual as an agent or representative of a specific individual for whom the services or benefits are sought.

SUBPART E. OTHER REQUIREMENTS AND RESTRICTIONS

9.20 Identification of Person Who Financed an Indirect Communication. Any indirect communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, shall clearly and conspicuously state the name of the person who paid for the communication.

9.21 Records retention.

- a. A registrant shall maintain for four years, in written or electronic form, records of its Philadelphia lobbying activity in sufficient detail to enable the registrant to fully comply with the requirements set forth in this Regulation. Such records shall be made available for inspection within ten business days upon request by the Board.
- b. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expense promptly prepare a written voucher, journal entry or other written or electronic form of record to document the expenditure. The record must include a notation of the reason an original source document was not available.
- c. A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. Upon receipt of a request from the Board to examine lobbying records, a registrant may redact any records that do not pertain to Philadelphia lobbying activity.

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DEPARTMENT OF
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REGISTRATION
AND LICENSING

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9.22 Conflicts of Interest.

- a. A lobbyist shall not lobby on behalf of a principal on any subject matter in which the principal's interests are directly adverse to the lobbyist's interests or to the interests of another principal the lobbyist represented at anytime during the current four-year session of Council, unless:
 - i. The lobbyist reasonably believes that he or she will be able to provide competent and diligent representation to each affected principal;
 - ii. The lobbyist provides written notice to each affected principal upon becoming aware of the conflict; and
 - iii. Each affected principal provides written informed consent waiving the conflict of interest.
- b. If a lobbyist is unable to comply with Paragraph 9.22(a), he or she shall promptly withdraw from one or more representations to the extent necessary to come into compliance with Paragraph 9.22(a).
- c. If a lobbyist is not in compliance with Paragraph 9.22(a), neither the lobbyist's employer, partner, nor any other person associated with the lobbyist shall lobby on behalf of the affected principals.

9.23 Contingent Compensation.

- a. A person may not compensate or incur an obligation to compensate a person to engage in lobbying for compensation contingent in whole or in part upon the occurrence, nonoccurrence or amendment of any administrative or legislative action.
- b. A person may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon the occurrence, nonoccurrence or amendment of any administrative or legislative action.
- c. An individual who is paid on a contingent or commission basis for the sale of goods or services may contact a City official or employee regarding the purchase by the City or an agency of such goods or services, provided that such individual is contacting only those City officials or employees who have responsibility for making purchasing decisions regarding such goods or services in the normal course.

9.24 Prohibited Activities. A lobbyist, lobbying firm, or principal shall not:

- a. serve as the Chair or Treasurer of a candidate's political committee if the candidate is seeking City elected office.
- b. charge a fee or receive economic consideration based on a contract, either written or oral, that any part of the fee or economic consideration will be converted into a contribution to a candidate for public office or a political committee.
- c. for the purpose of influencing legislative action or administrative action, transmit, utter or publish to a City official or employee a communication, knowing that the communication or a signature on the communication is false, forged, counterfeit or fictitious.
- d. make a material misstatement or omission on a registration statement or expense report filed with the Board. However, if a filer learns that an already-filed registration statement or expense report included a material misstatement or omission and, within 15 days of learning the same, files an amended, corrected registration statement or expense report, that filer shall not be in violation of this Chapter, except where the filer learned of the material misstatement or omission from the Board.
- e. instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation.
- f. Knowingly counsel a person to violate City, State, or Federal law.
- g. Attempt to influence a City official or employee on legislative or administrative action by making or facilitating the making of a loan to the City official or employee.
- h. While engaging in lobbying on behalf of the principal, refuse to disclose to a City official or employee, upon request, the identity of the principal.
- i. Attempt to influence a City official or employee on legislative or administrative action by the promise of financial support or the financing of opposition to the candidacy of the City official or employee at a future election.
- j. Engage in conduct that brings the practice of lobbying or the legislative or executive branches of City government into disrepute.

9.25 If the Board receives a complaint regarding a violation of this Subpart involving a lobbyist or principal who is an attorney at law, the Board shall refer the complaint to the Disciplinary Board.

SUBPART F. PENALTIES

9.26 The failure to register or amend a registration, or file or amend an expense report as required by this Regulation is subject to a civil penalty not exceeding \$250 for each late day, provided that the total fines that may be imposed for failure to file a particular registration or report shall not exceed \$2,000.

9.27 All other violations of the lobbying law are subject to a civil monetary penalty of \$1,000 per violation that shall be increased or decreased as follows:

- a. Mitigating factors. The civil monetary penalty of \$1,000 shall be reduced by \$500 if one of the following mitigating factors is present and shall be reduced by \$750 if more than one of the following mitigating factors is present:
 - i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
 - ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
 - iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.
- b. Aggravating factors. The civil monetary penalty of \$1,000 shall be increased by \$1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed \$2,000:
 - i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
 - ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
 - iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

9.28 The Board shall notify the Disciplinary Board if it imposes a penalty on any lobbyist or principal who is an attorney at law.

9.29 In addition to any penalties imposed pursuant to this Subpart, the Board may prohibit a person from lobbying for economic consideration for up to five years for intentional violations of this Chapter. The Board shall not impose the prohibition under this Paragraph unless the person has been afforded the opportunity for a hearing.

Regulation if proposed amendments shown in blackline are approved

Approved for public comment by Board: May 11, 2011

Public hearing held: June 15, 2011

Adopted by Board with modifications: September 21, 2011

Effective: November 21, 2011

Proposed amendments approved for public comment by Board: October 19, 2016

Public hearing held:

Adopted by Board with modifications:

Effective:

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DEPARTMENT OF RECORDS

2016DEC23 PH12:19

Exhibit D to Regulation No. 9 Hearing Report



ADAM C. BONIN
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November 16, 2016

City of Philadelphia Board of Ethics
One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1504

re: Proposed Revisions to Regulation 9

To the Board:

I am writing to raise my concerns regarding the proposed Amendments to Regulation 9. These comments are in my personal capacity, as an attorney whose practice includes assisting a variety of clients with lobbying disclosure compliance, and are not offered on behalf of any particular client past or present.¹

In general, these regulations do an impressive job of clarifying and simplifying the regulations, and should serve to enhance compliance with the law.

My main concern is the one I expressed at last month's hearing when the staff introduced the proposed regulations: make sure you bring back the examples illustrating what compliance requires, and the more examples, the better. Whether these examples live as an evolving appendix to the regulations or within them directly, they really do aid practitioners and principals in understanding what is expected.

My specific comments are as follows:

Proposed Reg. 9.1(a)(iv)(6): By adding "Adjudication of claims, determination of complaints, or imposition of fines or fees" to the definition of administrative actions which constitute lobbying, I fear the Board may be unnecessarily re-opening the door between lawyering and lobbying which Gmerek v. State Ethics Commission, 807 A. 2d 812 (Pa. 2002) as well as these regulations had left shut. This is too much of an intrusion into the other direction when a lawyer is representing a client before an agency in these contexts, especially in such

¹ I regret that I cannot deliver these comments in person, but client responsibilities pertaining to continuing vote canvasses in the suburbs prevent me from doing so. I am always open to discussing my concerns with the Board and Staff, if needed.

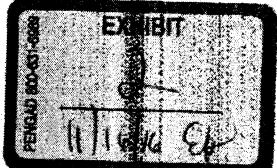


Exhibit D to Regulation No. 9 Hearing Report

Proposed Regulation 9

November 15, 2016

Page 2

defensive contexts, it should not be regulated as lobbying. (Would this include the resolution of investigations by the Board of Ethics itself?)

Proposed Regs 9.5(e), 9.18: For registrations, any amendments must be filed within 14 days after learning of a change; for expense reports, the deadline is 15 days. I realize the underlying ordinance contains this discrepancy as well, but it would be preferable if the intervals were consistent. I recognize that you may not be able to fix this, however.

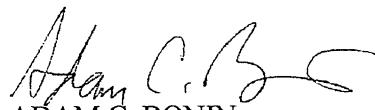
Proposed Reg. 9.20: This regulation concerns the disclaimers required for indirect communications. Under the Pennsylvania Election Code, there is an exemption from disclosure requirements when disclosure would be impractical, for “bumper stickers, pins, buttons, pens and similar small items upon which the statement cannot be conveniently printed.” 4 Pa. Code § 181.1(b). It would be helpful if such an exemption were expressly included within Regulation 9 as well. I would further suggest that as to small digital advertisements, the disclosure requirement can be met so long as the proper disclosure appears on the target page from the advertisement – i.e., the page you get to when you click on the ad.

Proposed Reg. 9.24(a): Since “City elected office” is used here, it should be defined in the beginning of the regulation. (I recognize that it is defined within Regulation 1, but it’s worth making clear that this excludes the Court of Common Pleas, for instance.)

Proposed Reg. 9.24(j): As I have stated since Regulation 9 was enacted, I continue to believe that a provision barring “conduct that brings the practice of lobbying or the legislative or executive branches of City government into disrepute” is thoroughly vague and provides no notice to individuals as to what conduct is prohibited, thus violating due process. I am gratified that it has yet to be enforced, to my knowledge. Please keep it that way.

Thank you for your consideration of these comments.

Very truly yours,



ADAM C. BONIN