

Report on public hearing held July 22, 2019 by the Philadelphia Board of Ethics
Regarding a proposed amendment to Regulation No. 8 "Political Activity"

Dated: 10/25/19



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

Dated: 10/24/19



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Approved: Richard Feder
Law Department
Richard Feder
Chief Deputy City Solicitor
(Legislation) and Counsel to the
Solicitor
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A. Legal Authority

The Board of Ethics was created by an amendment to the Philadelphia Home Rule Charter that voters approved via a ballot question at the May 2006 primary election. See Philadelphia Home Rule Charter §§ 3-806 and 4-1100. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, such as conflicts of interest, financial disclosure, standards of governmental conduct, campaign finance, prohibited political activities, and such additional duties as City Council may assign. The Board has the power to promulgate regulations as necessary to implement and interpret the laws over which it has jurisdiction, including the City's Campaign Finance Law. See Code §§ 20-606(1)(a), 20-1008.

B. Procedural Summary

The Board followed the procedures set forth in Home Rule Charter Section 8-407 when promulgating this amendment to Board Regulation No. 8 (Political Activity). On June 19, 2019, the Board voted to approve the posting of a proposed amendment to Regulation No. 8 at the Department of Records. The Law Department approved the proposed amendment of Regulation No. 8 for public comment posting and, on June 21, 2019, the Board filed the proposed amendment with the Records Department. The Board scheduled a hearing on the proposed amendment for July 22, 2019, notice of which was advertised in local newspapers and posted prominently on the Board's website and Twitter account.

Through this report on the July 22, 2019 hearing, the Board modifies the amendment and adopts the amendment as modified. A clean copy of the Regulation as amended is attached as Exhibit A and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made to the Regulation by the regulatory process initiated on June 19, 2019, and being approved by the Board through this Report, is attached as Exhibit B.

C. The July 22, 2019 Hearing

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Phyllis Beck and Board members Sanjuanita González, and Brian McCormick. Board member JoAnne Epps was not in attendance. Richard Feder, Chief Deputy City Solicitor (Legislation) and Counsel to the Solicitor, attended on behalf of the Law Department. The hearing transcript is attached as Exhibit C. The proposed amendment as posted for public comment at the Records Department is included in Exhibit C as an attachment to the hearing transcript. The following witnesses provided testimony: Michael Cooke, the Board's Acting General Counsel; Mary McDaniel, City Council's Chief Ethics Officer; Ellen Mattleman Kaplan and Krystle Baker, the City's Chief Integrity Officer and Deputy Chief Integrity Officer, respectively; and Adam Bonin and Joseph Corrigan, attorneys in private practice. Ms. Kaplan and Ms. Baker also provided written testimony that was attached to the hearing transcript as Exhibit 3. Mr. Corrigan provided written testimony that was attached to the hearing transcript as Exhibit 4.

D. September 18, 2019 Board Meeting

At the Board's September 18, 2019 public meeting, Staff presented a version of the proposed amended Regulation that had been revised in response to the testimony received at the July hearing. All attendees at the September 18, 2019 meeting were given a copy of the proposed revision and invited to offer comments on it in advance of the October 16, 2019 Board meeting. Staff also posted it on the Board's website and sent copies of the proposed revision to those who testified at the July hearing.

Notable changes in this revised version were:

- Adding a table of contents, reducing the number of subparts, clarifying and simplifying wording, eliminating repetitive text, and minimizing cross-references and legalistic phrasing, all with the goal of making the rules easier to understand and follow.
- Adding new examples and refining existing ones to better illustrate rules.
- Setting forth basic rules with minimal introductory text, such as at Paragraphs 8.7 and 8.9.
- Specifically identifying permissible social media activity at Paragraph 8.10 and providing numerous examples.
- Affirmatively listing permissible activity for City Council employees at Paragraph 8.12. In Subpart B, specifically marking any restrictions that do not apply to City Council employees, such as Subparagraph 8.5(a) and Paragraph 8.7.

The Board suggested several edits to this version, which, as modified by those edits as well as the changes discussed below, is attached hereto as Exhibit A, the final version of the Regulation approved by this hearing report.

E. Summary of Hearing Testimony and Board Responses Thereto

1. Testimony of Michael Cooke, on behalf of Board Staff

Mr. Cooke testified that after consultation with the Law Department, Board Staff recommended numerous changes to the proposed amendment that had been posted at the Department of Records. He offered a marked up version of the proposed amendment that showed the recommended changes. That document was made Exhibit 2 to the transcript of the hearing. Mr. Cooke then described any of the proposed changes that Staff deemed to be particularly noteworthy.

Board Response

The Board did not object to any of the changes proposed by Staff as memorialized in the markup attached as Exhibit 2 to the hearing transcript. These changes have been incorporated into the final version of the amendment, attached hereto as Exhibit A.

2. Testimony of Mary McDaniel

a. At the time of Ms. McDaniel's testimony, proposed Paragraph 8.3(c) provided that a City employee could not engage in political activity while "Using a social media account that is used for City business."

Ms. McDaniel expressed concern that a City Council employee would violate Paragraph 8.3(c) if he or she occasionally used a personal account to share City-related information and then subsequently used that same account for political activity.

Board Response

The Board acknowledges this concern and addresses it by revising this provision, now found at Paragraph 8.4(b), as follows:

An appointed officer or employee shall not engage in political activity...Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business.

b. Ms. McDaniel observed that some of the examples identified conduct as prohibited that would in fact be permissible for a City Council employee.

Board Response

The Board agrees that it is important that the Regulation clearly state what conduct is and is not permissible for City Council employees and addresses this concern in the final version of the amendment (attached hereto as Exhibit A) by (1) listing in Paragraph 8.12 precisely what is permissible for City Council employees and (2) identifying in Subpart B the provisions that do not apply to City Council employees.

3. Testimony of Ellen Mattleman Kaplan and Krystle Baker

a. Ms. Kaplan suggested that the Board define the word "campaign."

Board Response

In most instances in the Regulation, the word "campaign" is used as part of the phrase "political campaign," which is a defined term. In places in the Regulation where "campaign" is not immediately preceded by the word "political" it is clear from the context that it is simply a shorthand for that term. As such, it is not necessary to add a definition for the word "campaign."

b. Ms. Kaplan asked that the Regulation state that appointed officers and employees are permitted to vote in elections.

Board Response

The Board notes that Paragraph 8.12 of the currently effective Regulation states: "An appointed officer or employee may register and vote in any election." Paragraph 8.8 of the final version of the amendment (attached hereto as Exhibit A) states: "An appointed officer or employee may register and vote in any election and may be a member of a political party or a partisan political group."

c. Ms. Kaplan proposed that the Regulation include the reasoning as to why specific boards and commissions are subject to the full political activity restrictions.

Board Response

The reason the entities listed at Paragraph 8.13 of the final version of the amendment (attached hereto as Exhibit A) are subject to the full political activity restrictions is because they exercise significant powers of City government, as noted in the introductory sentence of that Paragraph. For the five entities being added to the list, Board staff testified at the July hearing about the factual basis for finding that these entities exercise significant powers of City government.¹ For the entities that have been listed since the Regulation was first promulgated, that analysis is set forth in Board Opinions 2007-004 and 2007-006. The Board does not believe it is necessary to repeat that information in the Regulation.

d. Ms. Kaplan expressed concern about the political activity restrictions applying to members of boards and commissions who are from “designated member organizations.”

Board Response

The Board acknowledges this concern but notes that the determination on the applicability of the political activity restrictions is based on the powers and duties of the board or commission in question, as discussed above. As such, the Board does not believe it is advisable or within its power to have the rules apply differently to different members of the same board or commission. The Board also notes that even if the Charter designates a seat on a board or commission for a particular organization or constituency, an individual can always decline the appointment if he or she does not want to abide by the political activity restrictions. The Charter sets forth procedures for filling a vacancy in such situations.

e. Regarding the application of the restrictions to nominating panels, Ms. Kaplan expressed a concern about what it means for a panel to be convened and opined that it could be problematic for the rules to “turn on and off” for those entities.

Board Response

Home Rule Charter Section 3-1003 sets forth the procedures and timing for when a nominating panel is considered “convened.” It is only while the panel is convened that its members are subject to the political activity restrictions. In order to clarify this, Paragraph 8.15 is revised to include a specific reference to Charter Sections 3-1003 and 12-207.

f. Ms. Kaplan requested additional examples throughout the Regulation.

Board Response

The Board agrees and notes that the final version of the Regulation as amended (attached hereto as Exhibit A) includes additional examples.

¹ In the case of the Educational Nominating Panel, on February 20, 2018 , the State Ethics Commission issued Opinion No. 18-002 in which it found that the Panel was not purely advisory because it exercised the power of City government through its ability to exclude persons from the opportunity to sit on the Board of Education. It is our understanding that the Law Department has reached a similar conclusion regarding the applicability of the Sunshine Act to the Educational Nominating Panel.

g. Ms. Kaplan requested that the Regulation use gender inclusive language.

Board Response

The Board agrees and makes modifications consistent with this the final version of the Regulation as amended (attached hereto as Exhibit A).

h. Ms. Kaplan asked that Example 7 for Paragraph 8.7 specify that it refers to candidates for judge of election, majority inspector, and minority inspector.

Board Response

The Board agrees and the example is modified to read as follows:

An employee may not be a candidate for a position on an election board such as, judge of election, majority inspector, and minority inspector.

i. Ms. Kaplan asked that the Regulation clearly state (1) whether appointed officers and employees are permitted to volunteer for partisan political groups that do not coordinate with a candidate, political campaign, or political party and, (2) whether appointed officers and employees are permitted to volunteer for partisan political groups that endorse candidates.

Board Response

The Board agrees that it is important to provide clear guidance on these questions and notes that Paragraph 8.9(i) of the final version of the Regulation as amended (attached hereto as Exhibit A) states that an employee may:

Participate in political activities organized or sponsored by a civic, community, labor, or professional organization or a partisan political group so long as the organization or group has not acted in coordination with a political party, candidate, or political campaign with regard to those activities.

j. Ms. Baker suggested that the definition of social media be modified to match the definition found in the Merriam Webster Dictionary.

Board Response

The Board believes the definition of Social Media is sufficiently clear and does not require further modification.

k. Ms. Baker suggested that (1) the guidance on social media in the Regulation should be confined to a list of what activity would be prohibited; (2) the Board should clarify what an appointed officer or employee can share on private social media while off duty; (3) appointed officers and employees should be permitted to identify both their City position and their party affiliation in their social media profiles; and (4) additional examples regarding the use of social media would be helpful.

Board Response

The Regulation as modified addresses these concerns by: (1) listing in Paragraph 8.10 the manner in which appointed officers and employees may permissibly use social media for political expression or activity; (2) clarifying the provisions that describe prohibited activity; (3) stating that appointed officers and employees are permitted to identify both their City position and their party affiliation in their social media profiles; and (4) adding examples related to social media.

4. Testimony of Adam Bonin

a. At the time of Mr. Bonin's testimony, Paragraph 8.3(c) provided that a City employee could not engage in political activity while "Using a social media account that is used for City business."

Mr. Bonin expressed concern that a City employee would violate Paragraph 8.3(c) if he or she occasionally used a personal account to share City-related information and then subsequently used that same account for political activity.

Board Response

The Board acknowledges this concern and addresses it by revising this provision, now found at Paragraph 8.4(b), as follows:

An appointed officer or employee shall not engage in political activity...Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business.

b. At the time of Mr. Bonin's testimony, Paragraph 8.11(e) prohibited a City employee from "sharing or distributing information via social media at the request of a political party, candidate, or political campaign." Similarly, Paragraph 8.14(c) prohibited a City employee from distributing political literature "at the request of or with the consent of a political party, candidate, or political campaign."

Mr. Bonin suggested that the Regulation should provide greater clarity on what "at the request of" means, especially since on social media, people frequently make posts with the hope or expectation that they will be shared or republished even if they do not explicitly request that others do so. Mr. Bonin observed that he thought it would be better to maintain the existing rule which turns on whether the employee coordinates his or her activities with a campaign.

Board Response

The Board agrees with Mr. Bonin that maintaining the existing rules in this regard is the best approach and notes that these provisions can now be found in Paragraph 8.7 of the final version of the Regulation as amended, attached hereto as Exhibit A.

c. Mr. Bonin suggested that additional examples would be helpful.

Board Response

The Board agrees and notes that the final version of the Regulation as amended (attached hereto as Exhibit A) includes additional examples.

d. At the time of Mr. Bonin's testimony, proposed Example 5 for Subpart D stated: "An employee may not share a candidate's fundraiser event on Facebook." Mr. Bonin asked whether the Facebook post must clearly state that the event is a fundraiser.

Board Response

Given the strict prohibitions of Charter Section 10-107(3), if an event is a fundraiser, an employee should not be sharing information about it, regardless of how the post describes the event. All employees should take care to examine the content of political posts before they share or republish them via social media. That said, if an employee inadvertently shared something via social media without realizing it was an invitation to a fundraiser, Enforcement Staff have discretion to decide whether to pursue enforcement in any particular matter. In addition, in order to more closely tailor it to the conduct of concern, the Board revises what is now Example 3 of Paragraph 8.6 as follows:

"An employee may not share promote a candidate's fundraiser even on Facebook."

5. Testimony of Joseph Corrigan

a. At the time of Mr. Corrigan's testimony, Paragraph 8.3(c) provided that a City employee could not engage in political activity while "Using a social media account that is used for City business."

Mr. Corrigan expressed concern that a City employee would violate Paragraph 8.3(c) if he or she occasionally used a personal account to share City-related information and then subsequently used that same account for political activity.

Board Response

The Board acknowledges this concern and addresses it by revising this provision, now found at Paragraph 8.4(b), as follows:

An appointed officer or employee shall not engage in political activity...Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business.

b. At the time of Mr. Corrigan's testimony, Paragraph 8.11(e) prohibited a City employee from "sharing or distributing information via social media at the request of a political party, candidate, or political campaign." Mr. Corrigan suggested that the Regulation should provide greater clarity on what "at the request of" means, especially since on social media, people frequently make posts with the hope or expectation that they will be shared or republished even if they do not explicitly request that others do so.

Board Response

The Board agrees and believes that this concern is addressed by maintaining the existing rules regarding coordinated activity and notes that these provisions can now be found in Paragraph 8.7 of the final version of the Regulation as amended, attached hereto as Exhibit A.

c. Mr. Corrigan expressed concern that a City employee could not simultaneously comply with existing Paragraph 8.4(a), which prohibits use of City title while engaging in political activity, and proposed Paragraph 8.14(f), which would permit a City employee to include his or her political party affiliation in a social media profile.

Board Response

The Board agrees that greater clarity on this question would be helpful and notes that Paragraph 8.10 of the final version of the Regulation as amended (attached hereto as Exhibit A) will provide more extensive guidance to City employees.

b. At the time of Mr. Corrigan's testimony, Paragraph 8.14(c) prohibited a City employee from distributing political literature "at the request of or with the consent of a political party, candidate, or political campaign." He noted, however, that Example 3 for Subpart F seemed inconsistent with this rule.

Board Response

The Board agrees that the Regulation should provide greater clarity as to whether a City employee can engage in this type of conduct. Paragraph 8.7 of the final version of the Regulation as amended (attached hereto as Exhibit A) clearly sets forth that a City employee cannot distribute literature produced or paid for by a campaign.

F. Approval

At a public meeting on October 16, 2019, the Board voted 5-0 to approve the proposed amendment to Regulation No. 8 as modified and to approve this Hearing Report. The Regulation as amended is attached as Exhibit A.

* * *

The Board of Ethics appreciates the input of the Law Department and the participation of those who provided testimony and those who simply attended the hearing on this Regulation.

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Exhibit A

Exhibit A

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 8
POLITICAL ACTIVITY

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Exhibit A

SUBPART A. SCOPE; DEFINITIONS

8.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3) & (4) as applied to appointed City officers and employees, but not to elected officials. The examples and lists of permissible and prohibited behavior provided in this Regulation are for illustration and are not exhaustive.

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

- a. **Appointed officer.** An individual who is appointed to any position in a City department, agency, office, board, or commission, whether paid or unpaid, but not including elected officials.
- b. **Board.** Board of Ethics.
- c. **Blog.** A website that displays in chronological order the postings of one or more individuals.
- d. **Candidate.** An individual who:
 - i. Files nomination petitions or papers for public elective office; or
 - ii. Publicly announces candidacy for public elective office.
- e. **City.** City of Philadelphia.
- f. **Contribution intended for a political purpose.**
 - i. Money or things having a monetary value received by a candidate or their agent for use in advocating for or influencing the election of the candidate; and
 - ii. Money or things having a monetary value received by a political committee, political party, political campaign, or partisan political group.
- g. **Election.** Any primary, general, or special election for public elective office.
- h. **Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay, but not including:
 - i. Elected officials; or
 - ii. An employee on unpaid leave to be a full-time elected officer or appointed staff representative of a City employee union.
- i. **Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.
- j. **Life partner.** An individual who has a long-term committed relationship with another individual of any gender, provided that both individuals meet the same criteria as set out in The Philadelphia Code Section 9-1106(2)(a)(i)-(vi).

Exhibit A

- k. On duty.** An appointed officer or employee is on duty:
 - i. During normal working hours, which for those with fixed work schedules includes the time between the start and end of the workday excluding a lunch break;
 - ii. When performing the duties of the officer's or employee's City job or appointment; or
 - iii. When acting in their official capacity as a City appointed officer or employee.
- l. Partisan political group.** Any committee, club, or other organization whose primary purpose is to promote the success or failure of a political party, candidate, or political campaign.
- m. Political activity.** An activity directed toward the success or failure of a political party, candidate, political campaign, or partisan political group.
- n. Political campaign.** A group of people organized by or on behalf of an individual in order to obtain that individual's nomination or election to public elective office.
- o. Political party.** Includes any national, state, or local political party, or any affiliate thereof, such as a ward committee.
- p. Public elective office.** Any public office for which candidates are nominated or elected as representing a political party.
- q. Social media.** Facebook, Twitter, Myspace, Linkedin, Instagram, Reddit, a blog, SnapChat, or any similar website or Internet platform.

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

Exhibit A

SUBPART B. PROHIBITED ACTIVITY

8.3 No political activity on duty.

An appointed officer or employee shall not engage in political activity while:

- a. On duty;
- b. In uniform, or while wearing a badge or other insignia that identifies them as a City officer or employee; or
- c. In City Hall or in any other City-owned or City-leased building, property, or office space, except that an appointed officer or employee may, while not on duty, attend a political event held in a City-owned or leased building, property, or office space if the event is open to the public.

Examples for Paragraph 8.3

- 1) An employee may not display in her City workplace a sticker promoting a political party or candidate.
- 2) An employee may not wear a button promoting a candidate while in his uniform, even if he is not on duty.
- 3) An employee may not sign a nominating petition while in City Hall or in a City-owned or City-leased building or office.

8.4 No political activity using City resources.

An appointed officer or employee shall not engage in political activity:

- a. Using any City-owned or City-leased resources, such as telephones, smart phones, tablets, vehicles, printers, computers, or other supplies or equipment.
- b. Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business.

Examples for Paragraph 8.4

- 1) An employee may not send an email that supports a candidate while using the City's email system, a City computer, or a City-provided smart phone.
- 2) An appointed officer may not make a post that supports a political party on the official Facebook page for the officer's department.
- 3) An employee may not use a City-owned photocopier to copy campaign literature.

Exhibit A

8.5 No political activity using City position.

An appointed officer or employee shall not use their authority, influence, title, or status as a City officer or employee while engaging in political activity, such as:

- a. Using their title or status as a City officer or employee while participating in political activity;*
- b. Using their authority or influence to coerce any individual to participate in political activity; and
- c. Requesting, directing, or suggesting that a subordinate officer or employee participate in political activity.

Examples for Paragraph 8.5

- 1) An employee may write a letter to the editor promoting a candidate for public office so long as he does not make reference to his title or his status as a City employee in that letter.
- 2) An employee uses a photo of herself in her uniform in her personal Google account profile. The employee may not send emails in support of a candidate from this account because her profile photo of herself in uniform will appear as part of each such email.
- 3) An employee uses their City title in her profile headline on their personal LinkedIn account. Because a LinkedIn headline automatically accompanies almost every action on that platform, the employee may not post messages on LinkedIn supporting a candidate for public elective office.

8.6 No political fundraising.

An appointed officer or employee shall not:

- a. Be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose, either directly or indirectly.
- b. Authorize or use a political committee to collect, receive, or solicit contributions intended for a political purpose on their behalf.
- c. Permit, authorize, or direct others to collect, receive, or solicit contributions intended for a political purpose for the appointed officer or employee's benefit or on behalf of the appointed officer or employee.

An appointed officer or employee of the Police Department shall not make a contribution to a candidate or a political committee affiliated with a candidate.

Examples for Paragraph 8.6

- 1) An employee may not sell tickets to a candidate's fundraiser event.
- 2) An employee may not be a treasurer of a political committee.
- 3) An employee may not promote a candidate's fundraiser event on Facebook.

* Subparagraph 8.5(a) does not apply to City Council appointed officers and employees. See Paragraph 8.12.

Exhibit A

8.7 No involvement in political campaigns or in management of political parties.*

An appointed officer or employee shall not:

- a. Take any part in the management or affairs of any political party.
- b. Take any part in any political campaign.
- c. Engage in political activity in coordination with a candidate, political party, or political campaign.
- d. Republish or distribute any printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.
- e. Be a member of any national, state, or local committee of a political party.
- f. Be an officer of a partisan political group or a member of a committee of a partisan political group.

Examples for Paragraph 8.7

- 1) An appointed officer may not serve as a delegate to a political party convention.
- 2) An employee may not participate in get-out-the-vote activities organized or sponsored by a political party.
- 3) An employee may not be a candidate for public elective office or political party office.
- 4) An appointed officer may not circulate nomination petitions for a candidate for public elective office.
- 5) An employee may not distribute campaign posters that she obtains from a political campaign.
- 6) An employee may not volunteer at a phone bank organized by a candidate's campaign.
- 7) An employee may not be a candidate for a position on an election board such as judge of election, majority inspector, and minority inspector.
- 8) An employee may not serve as a committee person or ward leader.
- 9) A representative of the campaign of a candidate for State Senate sends an appointed officer a direct message on Twitter asking the appointed officer to tweet about the candidate's upcoming rally. The appointed officer may not make such tweets at the request of the campaign.

* Paragraph 8.7 does not apply to City Council appointed officers and employees. See Paragraph 8.12.

Exhibit A

SUBPART C. PERMISSIBLE ACTIVITY

- 8.8** Appointed officers or employees may register and vote in any election and may be members of a political party or a partisan political group.
- 8.9** So long as they comply with the restrictions set forth in Subpart B, appointed officers and employees may:
- a. Publicly express their personal opinion on political matters or candidates.
 - b. Campaign for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances.
 - c. Participate in civic, community, labor, or professional organizations, including seeking election to positions within such organizations.
 - d. Circulate petitions related to referendum questions, constitutional amendments, federal or state laws, municipal ordinances, or other matters of public interest.
 - e. Assist in voter registration drives that are not organized or sponsored by a political party, a candidate, or a political campaign.
 - f. Sign a political petition, such as a nominating petition, including those that are circulated by a political party, candidate, or political campaign.
 - g. Attend political rallies, conventions, fundraisers, or other political events as a spectator.
 - h. Make contributions intended for a political purpose, except that appointed officers and employees of the Police Department may not make contributions to a candidate or to a political committee affiliated with a candidate.
 - i. Participate in political activities organized or sponsored by a civic, community, labor, or professional organization or a partisan political group where the organization or group has not acted in coordination with a political party, candidate, or political campaign with regard to those activities.

Examples for Paragraph 8.9

- 1) An employee may place in his yard a sign supporting a candidate.
- 2) An appointed officer may write a letter to the editor expressing their support for a candidate for City office.
- 3) An employee may wear a political party button when the employee is not on duty, at her City workplace, or in uniform.
- 4) An employee may volunteer at a phone bank that promotes a candidate and that is organized by the employee's union, where the union has not coordinated with a candidate's campaign.

Exhibit A

8.10 Permissible activity involving social media.

So long as they comply with the restrictions set forth in Subpart B, appointed officers and employees may:

- a. Use social media to express their personal opinion on political matters, including to express support for or opposition to a candidate, political campaign, or political party.
- b. Identify in their social media profile their title or status as a City officer or employee and the political party he or she supports.
- c. Share, respond to, or follow the social media account, post, or page of a political party, candidate, or political campaign.

Appointed officers and employees must ensure that their City title or status is not referenced, reproduced, or depicted in any social media post they make that expresses support for or opposition to a candidate, political campaign, or political party.

If a social media platform automatically reproduces profile information alongside user actions, appointed officers or employees must choose between including their title or status in the profile for that platform or using that platform to express support for or opposition to candidates, political campaigns, or political parties.

Examples for Paragraph 8.10

- 1) An off-duty employee using her personal mobile phone and Instagram account may “like” an Instagram post made by a candidate for Mayor.
- 2) An off-duty employee using his personal mobile phone and Twitter account may retweet a tweet by a candidate for the U. S. Senate.
- 3) The campaign of a candidate for the U. S. House of Representatives publishes a post on Instagram that includes a picture of the candidate with Beyoncé and the statement “Hey everybody! Please share this amazing picture with all your friends!!” A City employee may share the photo on his personal social media accounts.

8.11 Family member of a candidate.

An appointed officer or employee who is the family member of a candidate may appear in photographs of the candidate’s family that appear in a political advertisement, broadcast, campaign literature, or similar material. A family member also may attend political events with the candidate, but may not engage in any other activity that would be prohibited by this Regulation.

Examples for Paragraph 8.11

- 1) An employee who is the spouse of a candidate may stand in the receiving line and sit at the head table during a political fundraising dinner honoring the spouse, but he may not organize, speak at, distribute invitations to, or sell tickets to the event.
- 2) An appointed officer who is the daughter of a candidate may appear in a family photograph that is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

Exhibit A

8.12 City Council employees.

In addition to activity permitted by Paragraphs 8.8 through 8.11, so long as they comply with the applicable restrictions set forth in Subpart B, appointed officers and employees of City Council may:

- a. Take part in the management or affairs of a political party or in a political campaign, including engaging in activity in coordination with a candidate, political party, or political campaign.
- b. Republish or distribute printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.
- c. Be a member of any national, state, or local committee of a political party or an officer of a partisan political group or a member of a committee of a partisan political group.
- d. Use their title while engaging in political activity.

Examples for Paragraph 8.12

- 1) An employee of City Council may be a committeeperson.
- 2) An employee of City Council may be a candidate for political party office.
- 3) An employee of City Council may serve as the campaign manager for a candidate for City Council.
- 4) An employee of City Council may serve as a delegate to a political party convention.

Exhibit A

SUBPART D. MEMBERS OF CITY BOARDS AND COMMISSIONS

8.13 Because the following entities exercise significant powers of City government, their members shall be fully subject to the provisions of this Regulation, except as provided in Paragraph 8.16:

- a. Air Pollution Control Board
- b. Art Commission
- c. Board of Building Standards
- d. Board of Ethics
- e. Board of Health
- f. Board of Labor Standards
- g. Board of Pensions and Retirement
- h. Board of Revision of Taxes
- i. Board of Safety and Fire Prevention
- j. Board of Surveyors
- k. City Planning Commission
- l. Civil Service Commission
- m. Commission on Human Relations
- n. Fair Housing Commission
- o. Free Library of Philadelphia, Board of Trustees
- p. Historical Commission
- q. Historical Commission Architectural Committee
- r. Historical Commission Committee on Historic Designation
- s. Licenses & Inspections Review Board
- t. Living Wage and Benefits Review Committee
- u. Philadelphia Gas Commission
- v. Police Advisory Commission
- w. Sinking Fund Commission
- x. Tax Review Board
- y. Vacant Property Review Committee
- z. Water, Sewer and Storm Water Rate Board
- aa. Zoning Board of Adjustment

8.14 A member of a board or commission not listed in Paragraph 8.13 shall only be subject to those provisions of this Regulation that prohibit (a) political activity while on duty (Paragraph 8.3), (b) political activity using City resources (Paragraph 8.4), or (c) the use of City position for political activity (Paragraph 8.5).

8.15 Nominating Panels.

A member of the Educational Nominating Panel, Civil Service Panel, or Finance Panel shall be fully subject to the provisions of this Regulation, but only for those periods of time when the panel is convened, as provided in Home Rule Charter Sections 3-1003 and 12-207.

Exhibit A

8.16 A member of a board or commission who is separately a City officer or employee shall be subject to this Regulation without regard to their position on the board or commission.

Examples for Paragraph 8.16

- 1) An employee of the Water Department is a member of the Commission for Women. The employee is subject to all parts of this Regulation that apply to City employees, even though the Commission is not listed in Paragraph 8.13.
- 2) An employee of City Council serves on an advisory Board formed by the Mayor. The City Council employee is subject to this Regulation as provided in Subparts B and C, not as provided by Paragraph 8.14.
- 3) A City of Philadelphia elected official serves on a commission listed in Paragraph 8.13. The elected official is not subject to this Regulation.

SUBPART E. PENALTIES

8.17 The penalties for violations of Home Rule Charter Section 10-107 are set forth at Charter Sections 10-109 and 10-107(6). If an appointed officer or employee engages or participates in prohibited political activity, the Board may seek a maximum civil penalty of \$300 for each separate instance of prohibited political activity. The Board shall not seek imprisonment as a sanction if an appointed officer or employee engages or participates in prohibited political activity.

Approved for public comment by Board: January 19, 2011

Public hearing held: February 23, 2011

Adopted by Board with modifications: March 16, 2011

Effective: March 28, 2011

Approved for public comment by Board: June 19, 2019

Public hearing held: July 22, 2019

Adopted by Board with modifications: October 16, 2019

Effective: November 7, 2019

Exhibit B

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PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 8

POLITICAL ACTIVITY

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SUBPART A. SCOPE; DEFINITIONS.

8.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3) & (4) as applied to appointed City officers and employees, but not to elected officials. The examples and lists of permissible and prohibited behavior provided in this Regulation are for illustration and are not exhaustive.

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

- a. Appointed officer.** An individual who is appointed to any position in a City department, agency, office, board, or commission, whether paid or unpaid, but not including elected officials.
- b. Board.** The Board of Ethics.
- c. Blog.** A website that displays in chronological order the postings of one or more individuals.
- d. Candidate.** An individual who:
 - i) Files nomination petitions or papers for public elective office; or
 - ii) Publicly announces his or her candidacy for public elective office.
- e. City.** City of Philadelphia.
- f. Contribution intended for a political purpose.**
 - i. Money or things having a monetary value received by a candidate or ~~his or her~~ their agent for use in advocating for or influencing the election of the candidate; and
 - ii. Money or things having a monetary value received by a political committee, political party, political campaign, or partisan political group.
- g. Election.** Any primary, general, or special election for public elective office.
- h. Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay, but not including:
 - i. Elected officials; or
 - ii. An employee on unpaid leave to be a full-time elected officer or appointed staff representative of a City employee union.
- i. Family member.** A parent, spouse, life partner, child, brother, sister, or like relative-in-law.

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- j. **Life partner.** An individual who has a long-term committed relationship with another individual of any gender, provided that both individuals meet the same criteria as set out in The Philadelphia Code Section 9-1106(2)(a)(i)-(vi).
- k. **On duty.** An appointed officer or employee is on duty:
 - i. During normal working hours, which for those with fixed work schedules includes the time between the start and end of the workday excluding a lunch break;
 - ii. When performing the duties of ~~his or her~~ the officer's or employee's City jobs or appointments; or
 - iii. When acting in ~~his or her~~ their official capacity as a City appointed officer or employee.
- l. **Partisan political group.** Any committee, club, or other organization ~~that is affiliated with whose primary purpose is to promote the success or failure of a political party, or candidate, or whose primary purpose is to engage in political activity political campaign.~~
- m. **Political.** Related to a political party, candidate, or partisan political group.
- n. **Political activity.** An activity directed toward the success or failure of a political party, candidate, political campaign, or partisan political group.
- o. **Political campaign.** Actions taken by a candidate or his or her supporters ~~A group of people organized by or on behalf of an individual in order to obtain the candidate's that individual's nomination or election to public elective office.~~
- p. **Political party.** Includes any national, state, or local political party, or any affiliate thereof, such as a ward committee.
- p. **Public elective office.** Any public office for which candidates are nominated or elected as representing a political party.
- q. **Social media networking website.** Facebook, Twitter, Myspace, Linkedin, Instagram, Reddit, a blog, SnapChat, or any similar website or Internet platform.

8.2 Applicability. Except where expressly indicated otherwise, the provisions of this Regulation apply to all appointed officers and employees. ~~Additional rules for members of boards and commissions can be found at Subpart J, and additional rules for employees of City Council can be found at Subpart K.~~

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SUBPART B. PROHIBITED ACTIVITY
~~POLITICAL ACTIVITY ON DUTY OR WHILE USING CITY
RESOURCES IS PROHIBITED~~

8.3 No political activity on duty.

An appointed officer or employee shall not engage in political activity while:

- a. On duty;
- b. In uniform, or while wearing a badge or other insignia that identifies ~~him or her~~ them as a City officer or employee;
- c. In City Hall or in any other City-owned or ~~City~~-leased building, property, or office space, except that an appointed officer or employee may, while not on duty, attend a political event held in a City-owned or leased building, property, or office space if the event is open to the public.

Examples for SUBPART B Paragraph 8.3

Example 1): An employee may not display ~~political stickers~~ in her City workplace a sticker promoting a political party or candidate.

Example 2): An employee may not wear a ~~political button~~ promoting a candidate while in his uniform, even if he is not on duty.

Example 3): An employee may not sign a nominating petition while in City Hall or in a City-owned or ~~City~~-leased building or office.

8.4 No political activity using City resources.

- e. An appointed officer or employee shall not engage in political activity:
 - a. Using any City-owned or ~~City~~-leased resources, such as telephones, smart phones ~~Blackberries~~, tablets, vehicles, printers, computers, or other supplies or equipment.
 - b. Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business.

Examples for Paragraph 8.4

1) An employee may not send an email that supports a candidate while using the City's email system, a City computer, or a City-provided smart phone ~~Blackberries~~.

2) An appointed officer may not make a post that supports a political party on the official Facebook page for the officer's department.

3) An employee may not use a City-owned photocopier to copy campaign literature.

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SUBPART C. USE OF CITY POSITION FOR POLITICAL PURPOSES IS PROHIBITED

8.4 5 No political activity using City position.

An appointed officer or employee shall not use ~~his or her~~ their authority, influence, title, or status as a City officer or employee while engaging in political activity, such as: Activities prohibited by this Paragraph include:

- a. Using ~~his or her~~ their title or status as a City officer or employee while participating in political activity; *
- b. Using ~~his or her~~ their authority or influence to coerce any individual to participate in political activity; and
- c. Requesting, directing, or suggesting that a subordinate officer or employee participate in political activity.

Examples for Paragraph 8.5 SUBPART C

Example 1): An employee who writes may write a letter to the editor promoting a candidate for public office expressing his opinion on a political matter may so long as he does not make reference to his title or his status as a City employee in that letter.

Example 2): An appointed officer may not send her subordinate employees an email that promotes the success of a political party. An employee uses a photo of herself in her uniform in her personal Google account profile. The employee may not send emails in support of a candidate from this account because her profile photo of herself in uniform will appear as part of each such email.

3) An employee uses their City title in her profile headline on their personal Linkedin account. Because a Linkedin headline automatically accompanies almost every action on that platform, the employee may not post messages on Linkedin supporting a candidate for public elective office.

SUBPART D. COLLECTING, RECEIVING, OR SOLICITING CONTRIBUTIONS INTENDED FOR A POLITICAL PURPOSE IS PROHIBITED

* Subparagraph 8.5(a) does not apply to City Council appointed officers and employees.
See Paragraph 8.12.

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8.5 6 No political fundraising.

An appointed officer or employee shall not:

- a. ~~Be directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose, either directly or indirectly.~~
- b. ~~8.6 An appointed officer or employee shall not authorize Authorize or use a political committee to collect, receive, or solicit contributions intended for a political purpose on his or her their behalf.~~
- c. ~~8.7 An appointed officer or employee shall not permit Permit, authorize, or direct others to collect, receive, or solicit contributions intended for a political purpose for the appointed officer or employee's benefit or on behalf of the appointed officer or employee.~~

An appointed officer or employee of the Police Department shall not make a contribution to a candidate or a political committee affiliated with a candidate.

~~8.8 An appointed officer or employee, except for an appointed officer or employee of the Police Department, may make contributions intended for a political purpose.~~

Examples for Paragraph 8.6 SUBPART D

Example 1): An employee may not sell tickets to a candidate's fundraiser event.

Example 2): An employee may not be a treasurer of a political committee.

Example 3): An employee may not promote a candidate's fundraiser event on Facebook.

~~An employee (but not an employee of the Police Department) may purchase tickets to a candidate's fundraiser event.~~

~~An employee may not use a political committee to raise money for a potential candidacy.~~

SUBPART E. OTHER PROHIBITED POLITICAL ACTIVITY

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8.7 No involvement in political campaigns or in management of political parties.[†]

An appointed officer or employee shall not:

- a. Take any part in the management or affairs of any political party.
- b. Take any part in any political campaign.
- c. Engage in political activity in coordination with a candidate, political party, or political campaign.
- d. Republish or distribute any printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.
- e. ~~8.9 An appointed officer or employee shall not be Be a member of any national, state, or local committee of a political party.~~
- f. ~~8.10 An appointed officer or employee shall not be Be an officer of a partisan political group or a member of a committee of a partisan political group.~~

8.11 An appointed officer or employee shall not take any part in the management or affairs of any political party, political campaign or partisan political group, which includes any political activity that is performed in concert or coordination with a political party, candidate, or partisan political group, such as:

- a. ~~Circulating or initiating nomination petitions or papers for public elective office;~~
- b. ~~Being a candidate for public elective office or political party office;~~
- c. ~~Serving as a delegate to a political party convention;~~
- d. ~~Participating in get out the vote activities organized or sponsored by a political party, candidate, or partisan political group; or~~
- e. ~~Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or partisan political group.~~

EXAMPLES FOR SUBPART E

Example 1: An employee may not serve as a committee person or ward leader.

Example 2: An employee may not distribute campaign posters that she obtains from a candidate's campaign office.

Example 3: An employee may not volunteer at a phone bank organized by a candidate's campaign.

[†] Paragraph 8.7 does not apply to City Council appointed officers and employees. See Paragraph 8.12.

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Examples for Paragraph 8.7

- 1) An appointed officer may not serve as a delegate to a political party convention.
- 2) An employee may not participate in ~~get-out-the-vote activities organized or sponsored by a political party.~~
- 3) An employee may not be a candidate for public elective office or political party office.
- 4) An appointed officer may not circulate nomination petitions for a candidate for public elective office.
- 5) An employee may not distribute campaign posters that she obtains from a political campaign.
- 6) An employee may not volunteer at a phone bank organized by a candidate's campaign.
- 7) An employee may not be a candidate for a position on an election board such as ~~judge of election, majority inspector, and minority inspector.~~
- 8) An employee may not serve as a committee person or ward leader.
- 9) A representative of the campaign of a candidate for State Senate sends an appointed officer a direct message on Twitter asking the appointed officer to tweet about the candidate's upcoming rally. The appointed officer may not make such tweets at the request of the campaign.

SUBPART C F. PERMISSIBLE EXPRESSION AND POLITICAL ACTIVITY

~~8.12-8 An appointed officer or employee Appointed officers or employees may register and vote in any election. and 8.13 An appointed officer or employee may be a member~~
~~may be members of a political party or a partisan political group.~~

8.9 So long as they comply with the restrictions set forth in Subpart B, appointed officers and employees may:

- a. Publicly express their personal opinion on political matters or candidates.
- b. Campaign for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances.
- c. Participate in civic, community, labor, or professional organizations, including seeking election to positions within such organizations.
- d. Circulate petitions related to referendum questions, constitutional amendments, federal or state laws, municipal ordinances, or other matters of public interest.
- e. Assist in voter registration drives that are not organized or sponsored by a political party, a candidate, or a political campaign.

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- f. ~~Sign a political petition, such as a nominating petition, including those that are circulated by a political party, candidate, or political campaign.~~
- g. ~~Attend political rallies, conventions, fundraisers, or other political events as a spectator.~~
- h. ~~Make contributions intended for a political purpose, except that appointed officers and employees of the Police Department may not make contributions to a candidate or to a political committee affiliated with a candidate.~~
- i. ~~Participate in political activities organized or sponsored by a civic, community, labor, or professional organization or a partisan political group where the organization or group has not acted in coordination with a political party, candidate, or political campaign with regard to those activities.~~

Examples for Paragraph 8.9

- 1) An employee may place in his yard a sign supporting a candidate.
- 2) An appointed officer may write a letter to the editor expressing their support for a candidate for City office.
- 3) An employee may wear a political party button when the employee is not on duty, at her City workplace, or in uniform.
- 4) An employee may volunteer at a phone bank that promotes a candidate and that is organized by the employee's union, where the union has not coordinated with a candidate's campaign.

8.14 ~~An appointed officer or employee may engage or participate in personal political expression and activity that is directed toward the success or failure of a political party, candidate or political group, including the following, so long as he or she complies with Subparts B, C, D, E, and H and so long as he or she does not do so in concert or coordination with a political party, candidate, or partisan political group:~~

- a. ~~Publicly expressing an opinion on political matters or candidates, including in letters to the editor or on the internet;~~
- b. ~~Signing a political petition, such as a nominating petition, including those that are circulated by a political party, candidate or partisan political group;~~
- c. ~~Distributing political literature that was not created by a political party, candidate or partisan political group;~~
- d. ~~Making contributions intended for a political purpose (except for appointed officers and employees of the Police Department); and~~
- e. ~~Attending political rallies, conventions, fundraisers or other political events solely as a spectator.~~

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~~8.15 Political activities organized by a civic, community, labor, or professional organization.~~ An appointed officer or employee may engage or participate in activities organized or sponsored by a civic, community, labor, or professional organization that are directed toward the success or failure of a political party, candidate, or partisan political group so long as the organization has not acted in concert or coordination with that political party, candidate, or partisan political group.

~~8.16 Political buttons, signs, and stickers.~~ As long as he or she complies with the requirements of Subparts B and C, an appointed officer or employee may wear political buttons and may display political signs or stickers, including buttons, signs, and stickers he or she obtains from a political party, candidate, or partisan political group. However, an appointed officer or employee shall not distribute buttons, signs, or stickers that he or she obtains from a political party, candidate, or partisan political group.

EXAMPLES FOR SUBPART F

~~Example 1:~~ An employee may place in his yard a sign supporting a candidate.

~~Example 2:~~ An employee may wear a political party button when the employee is not on duty, at her City workplace, or in uniform.

~~Example 3:~~ An employee may print at her own expense one thousand fliers that state her personal opinion that a specific candidate is the best suited for public office. She may distribute the fliers at a shopping mall on the weekend, but may not distribute them in her City workplace. She also may not distribute fliers printed or paid for by the candidate's campaign committee, a political party, or a partisan political group.

~~Example 4:~~ An employee may attend a fundraising event that benefits a candidate, but he may not organize, distribute invitations to, or sell tickets to the fundraiser.

~~Example 5:~~ An employee may be a member of the audience at a political gathering organized by a candidate, but she may not appear on stage with a candidate or address the audience at such a gathering.

~~Example 6:~~ An employee may volunteer at a phone bank that promotes a candidate and that is organized by the employee's union, but not if the union has coordinated with that candidate's campaign.

SUBPART G. ACTIVITY THAT IS NOT POLITICAL IS PERMITTED

~~8.17 An appointed officer or employee may engage or participate in expression and activity that is not political and is not directed toward the success or failure of a political party, candidate, or partisan political group. Such activity or expression includes the following so long as it is not performed in concert or coordination with a political party, candidate, or partisan political group:~~

- a. Campaigning for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances;
- b. Participating in civic, community, labor, or professional organizations, including seeking election to positions within such organizations;

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- e. Circulating petitions related to referendum questions, constitutional amendments, federal or state laws, municipal ordinances, or other matters of public interest not related to a political party, candidate, or partisan political group; and
- d. Assisting in voter registration drives that are not organized or sponsored by a political party, candidate, or partisan political group.

8.10 Permissible activity involving social media.

So long as they comply with the restrictions set forth in Subpart B, appointed officers and employees may:

- a. Use social media to express their personal opinion on political matters, including to express support for or opposition to a candidate, political campaign, or political party.
- b. Identify in their social media profile their title or status as a City officer or employee and the political party he or she supports.
- c. Share, respond to, or follow the social media account, post, or page of a political party, candidate, or political campaign.

Appointed officers and employees must ensure that their City title or status is not referenced, reproduced, or depicted in any social media post they make that expresses support for or opposition to a candidate, political campaign, or political party.

If a social media platform automatically reproduces profile information alongside user actions, appointed officers or employees must choose between including their title or status in the profile for that platform or using that platform to express support for or opposition to candidates, political campaigns, or political parties.

Examples for Paragraph 8.10

- 1) An off-duty employee using her personal mobile phone and Instagram account may “like” an Instagram post made by a candidate for Mayor.
- 2) An off-duty employee using his personal mobile phone and Twitter account may retweet a tweet by a candidate for the U. S. Senate.
- 3) The campaign of a candidate for the U. S. House of Representatives publishes a post on Instagram that includes a picture of the candidate with Beyoncé and the statement “Hey everybody! Please share this amazing picture with all your friends!!” A City employee may share the photo on his personal social media accounts.

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SUBPART H. USE OF SOCIAL MEDIA

8.18 Blogs. An appointed officer or employee may maintain a blog in which he or she expresses support or opposition to political parties, candidates, or partisan political groups so long as he or she:

- a. Does not do so write or maintain the blog while on duty, in any City owned or leased building, property, or office space, or while using any City resources;
- b. Does not use his or her title or status as a City officer or employee in social media posts on the blog;
- c. Does not republish post anything on his or her blog that was created by, or links to information created by, a political party, a candidate, or political campaign partisan political group; and
- d. Does not suggest, encourage or ask readers of the blog to make contributions intended for a political purpose.

8.19 Social networking websites.

- a. An appointed officer or employee's profile page on a social networking website may identify the officer or employee's title or status as a City officer or employee and may also identify the political party the appointed officer or employee supports.
- b. An appointed officer or employee may express support or opposition to political parties, candidates, or partisan political groups in posts to a social networking website so long as he or she:
 - i. Does not make such posts to the website while on duty, in any City owned or leased building, property, or office space, or while using any City resources;
 - ii. Does not use his or her title or status as a City officer or employee in such posts to the website;
 - iii. Does not include in such posts anything that was created by, or links to information created by, a political party, candidate, or partisan political group; and
 - iv. Does not suggest, encourage or ask others to make contributions intended for a political purpose.
- c. An appointed officer or employee may become a "friend" or "fan" of, or "like" the page of a political party, candidate, or partisan political group.
- d. An appointed officer or employee may follow the Twitter account of a political party, candidate, or partisan political group.

SUBPART I. FAMILY MEMBER OF A CANDIDATE

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8.11 Family member of a candidate.

8.20 An appointed officer or employee who is the family member of a candidate may appear in photographs of the candidate's family that appear in a political advertisement, broadcast, campaign literature, or similar material. A family member also may attend political events with the candidate, ~~but may . However, the appointed officer or employee who is the family member~~ shall not engage in any other activity that would be prohibited under ~~by~~ this Regulation.

Examples for Paragraph 8.11 SUBPART I

Example 1): An employee who is the spouse of a candidate may stand in the receiving line and sit at the head table during a political fundraising dinner honoring the spouse, but he may not organize, speak at, distribute invitations to, or sell tickets to the event.

Example 2): An appointed officer who is the daughter of a candidate may appear in a family photograph that is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

8.12 City Council employees.

In addition to activity permitted by Paragraphs 8.8 through 8.11, so long as they comply with the applicable restrictions set forth in Subpart B, appointed officers and employees of City Council may:

- a. Take part in the management or affairs of a political party or in a political campaign, including engaging in activity in coordination with a candidate, political party, or political campaign.
- b. Republish or distribute printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.
- c. Be a member of any national, state, or local committee of a political party or an officer of a partisan political group or a member of a committee of a partisan political group.
- d. Use their title while engaging in political activity.

Examples for Paragraph 8.12

- 1) An employee of City Council may be a committeeperson.
- 2) An employee of City Council may be a candidate for political party office.
- 3) An employee of City Council may serve as the campaign manager for a candidate for City Council.
- 4) An employee of City Council may serve as a delegate to a political party convention.

SUBPART K. CITY COUNCIL EMPLOYEES

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~~8.23 An employee of City Council shall not be subject to the following provisions of this Regulation: Subpart E (other prohibited political activity) and Paragraphs 8.4(a) (use of title), 8.18(b) (use of title in blog posts), 8.18(e) (links to political websites in blog posts), 8.19(b)(ii) (use of title in political posts to social networking sites), and 8.19(b)(iii) (links to political websites in posts to social networking sites).~~

~~8.24 An employee of City Council shall not collect, receive, or solicit contributions intended for a political purpose as prohibited by Subpart D.~~

EXAMPLES FOR SUBPART K

~~Example 1:~~ A City Council employee may not be a treasurer of a political committee.

~~Example 2:~~ A City Council employee may not use a City owned photocopier to copy campaign literature.

~~Example 3:~~ A City Council employee may not circulate or sign a nominating petition while in City Hall or in a City owned or leased building or office.

~~Example 4:~~ A City Council employee may not ask an individual to make a contribution intended for a political purpose.

~~Example 5:~~ A City Council employee may not collect from the City Committee a check that is made out to or intended for a ward committee.

~~Example 6:~~ A City Council employee may enter data for a campaign finance report if the employee is not on duty and does not use City resources.

SUBPART J D. MEMBERS OF CITY BOARDS AND COMMISSIONS

~~8.2113 Boards and commissions that exercise significant powers of government. A member of a City board or commission that exercises significant powers of government shall be fully subject to the provisions of this Regulation. The boards and commissions that exercise significant powers of government are the following
Because the following entities exercise significant powers of City government, their members shall be fully subject to the provisions of this Regulation, except as provided in Paragraph 8.16:~~

- a. Air Pollution Control Board
- b. Art Commission
- c. Board of Building Standards
- d. Board of Ethics
- e. Board of Health
- f. Board of Labor Standards
- g. Board of Pensions and Retirement
- h. Board of Revision of Taxes
- i. Board of Safety and Fire Prevention
- j. Board of Surveyors
- k. City Planning Commission
- l. Civil Service Commission
- m. Commission on Human Relations
- n. Fair Housing Commission

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- o. Free Library of Philadelphia, Board of Trustees
- p. Historical Commission
- q. Historical Commission Architectural Committee
- r. Historical Commission Committee on Historic Designation
- s. Licenses & Inspections Review Board
~~Malt and Brewed Beverage Hearing Board~~
- t. Living Wage and Benefits Review Committee
- u. Philadelphia Gas Commission
- v. Police Advisory Commission
~~Philadelphia Prisons Board of Trustees~~
- w. Sinking Fund Commission
- x. Tax Review Board
- y. Vacant Property Review Committee
- z. Water, Sewer and Storm Water Rate Board
- aa. Zoning Board of Adjustment
~~Zoning Code Commission~~

8.22-14 ~~Advisory boards and commissions.~~ A member of a board or commission not listed in Paragraph 8.2113 shall only be subject to those provisions of this Regulation that prohibit (a) political activity while on duty (Paragraph 8.3), (b) political activity using City resources (Paragraph 8.4), or (c) the use of City position for political activity (Paragraph 8.5).

- a. ~~Shall be subject to the following provisions of this Regulation: Subpart B (on duty or while using City resources), Subpart C (use of City position), Subpart L (evasion) and Subpart M (penalties); and~~
- b. ~~Shall not be subject to the following provisions of this Regulation: Subpart D (contributions intended for a political purpose), Subpart E (other prohibited political activity) and Subpart H (use of social media).~~

8.15 Nominating Panels.

A member of the Educational Nominating Panel, Civil Service Panel, or Finance Panel shall be fully subject to the provisions of this Regulation, but only for those periods of time when the panel is convened, as provided in Home Rule Charter Sections 3-1003 and 12-207.

8.16 A member of a board or commission who is separately a City officer or employee shall be subject to this Regulation without regard to their position on the board or commission.

Examples for Paragraph 8.16

- 1) An employee of the Water Department is a member of the Commission for Women. The employee is subject to all parts of this Regulation that apply to City employees, even though the Commission is not listed in Paragraph 8.13.

All changes made by Regulatory process begun in June of 2019
Additions shown as underline and deletions as ~~strikethrough~~

- 2) An employee of City Council serves on an advisory Board formed by the Mayor.
~~The City Council employee is subject to this Regulation as provided in Subparts B and C, not as provided by Paragraph 8.14.~~
- 3) A City of Philadelphia elected official serves on a commission listed in Paragraph 8.13. The elected official is not subject to this Regulation.

SUBPART L. EVASION BY INDIRECT MEANS IS PROHIBITED

~~8.25 An appointed officer or employee shall not evade the prohibitions of this Regulation by indirect means or by acting through another individual to accomplish what is prohibited.~~

SUBPART M.E. PENALTIES

~~8.26 17 The penalties for violations of Home Rule Charter Section 10-107 are set forth at Charter Sections 10-109 and 10-107(6). If an appointed officer or employee engages or participates in prohibited political activity, the Board may seek a maximum civil penalty of \$300 for each separate instance of prohibited political activity. 8.29-The Board shall not seek imprisonment as a sanction if an appointed officer or employee engages or participates in prohibited political activity.~~

~~8.27 If a court finds that an appointed officer or employee has engaged or participated in prohibited political activity, the Board may seek the appointed officer or employee's removal from office or dismissal from employment.~~

~~8.28 If an appointed officer or employee engages or participates in prohibited political activity, he or she shall be ineligible for one year for any office or position under the City.~~

Approved for public comment by Board: January 19, 2011

Public hearing held: February 23, 2011

Adopted by Board with modifications: March 16, 2011

Effective: March 28, 2011

Approved for public comment by Board: June 19, 2019

Public hearing held: July 22, 2019

Adopted by Board with modifications: October 16, 2019

Effective:

Exhibit C

CITY OF PHILADELPHIA BOARD OF ETHICS

PUBLIC HEARING ON BOARD REGULATION NO. 8

POLITICAL ACTIVITY

TRANSCRIPT OF BOARD MEETING,

taken by and before Janet M. Maloney, Professional
Reporter and Notary Public, at the City of
Philadelphia, 1515 Arch Street, 18th Floor,
Philadelphia, Pennsylvania, on Monday, July 22,
2019, scheduled for 1:00 p.m.

ERSA COURT REPORTERS

30 South 17th Street

United Plaza - Suite 1520

Philadelphia, PA 19103

(215) 564-1233

BOARD MEETING

<p style="margin: 0;">1 A P P E A R A N C E S:</p> <p style="margin: 0;">2</p> <p style="margin: 0;">3 Michael Reed, Chairman of the Board</p> <p style="margin: 0;">4 Judge Phyllis W. Beck, Vice Chairwoman</p> <p style="margin: 0;">5 Sanjuanita Gonzalez, Esquire</p> <p style="margin: 0;">6 Brian J. McCormick, Jr., Esquire</p> <p style="margin: 0;">7</p> <p style="margin: 0;">8</p> <p style="margin: 0;">9 Michael Cooke, Acting General Counsel</p> <p style="margin: 0;">10 J. Shane Creamer, Jr., Executive Director, Board of Ethics</p> <p style="margin: 0;">11 Richard Feder, Chief Deputy Solicitor</p> <p style="margin: 0;">12</p> <p style="margin: 0;">13</p> <p style="margin: 0;">14</p> <p style="margin: 0;">15 Mary McDaniel, Chief Ethics Officer</p> <p style="margin: 0;">16 Ellen Mattleman Kaplan, Chief Integrity Officer</p> <p style="margin: 0;">17 Krystle Baker, Deputy Chief Integrity Officer</p> <p style="margin: 0;">18</p> <p style="margin: 0;">19</p> <p style="margin: 0;">20 Adam Bonin, Esquire</p> <p style="margin: 0;">21 Joseph Corrigan</p> <p style="margin: 0;">22</p> <p style="margin: 0;">23</p> <p style="margin: 0;">24</p>	<p style="margin: 0;">2</p> <p style="margin: 0;">1 - - -</p> <p style="margin: 0;">2 PUBLIC HEARING ON BOARD REGULATION NO. 8</p> <p style="margin: 0;">3 - - -</p> <p style="margin: 0;">4 THE CHAIRMAN: My name is</p> <p style="margin: 0;">5 Michael Reed, I am the Chair of the Board</p> <p style="margin: 0;">6 of Ethics and our first activity today is</p> <p style="margin: 0;">7 to hold a public hearing on proposed</p> <p style="margin: 0;">8 amendments to Board Regulation No. 8 on</p> <p style="margin: 0;">9 Political Activity.</p> <p style="margin: 0;">10 I note for the record that I am</p> <p style="margin: 0;">11 joined by Vice Chair Judge Phyllis Beck,</p> <p style="margin: 0;">12 Board Members Sanjuanita Gonzalez and</p> <p style="margin: 0;">13 Brian McCormick and Board Member Joanne</p> <p style="margin: 0;">14 Epps is reported to be doing jury duty and</p> <p style="margin: 0;">15 is, therefore, not here. I further note</p> <p style="margin: 0;">16 for the record that Richard Feder,</p> <p style="margin: 0;">17 distinguished member from the Law</p> <p style="margin: 0;">18 Department is present and he is welcome to</p> <p style="margin: 0;">19 join us in our deliberations. He pointed</p> <p style="margin: 0;">20 out to me that the Charter suggests that</p> <p style="margin: 0;">21 he and someone from the Law Department</p> <p style="margin: 0;">22 should be here and we welcome them.</p> <p style="margin: 0;">23 Today's hearing is an</p> <p style="margin: 0;">24 opportunity for members of the public and</p>																		
<p style="margin: 0;">1</p> <p style="margin: 0;">2 E X H I B I T S</p> <p style="margin: 0;">3</p> <p style="margin: 0;">4 PAGE</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">NUMBER</th> <th style="width: 60%;">DESCRIPTION</th> <th style="width: 25%;">ATTACHED</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">5 1</td> <td style="vertical-align: top;">Memorandum 6/20/2019</td> <td style="vertical-align: top;">92</td> </tr> <tr> <td style="vertical-align: top;">6 2</td> <td style="vertical-align: top;">To: Department of Records</td> <td style="vertical-align: top;">93</td> </tr> <tr> <td style="vertical-align: top;">7 3</td> <td style="vertical-align: top;">Regulation No. 8/changes</td> <td style="vertical-align: top;">94</td> </tr> <tr> <td style="vertical-align: top;">8 4</td> <td style="vertical-align: top;">Kaplan/Baker Testimony</td> <td style="vertical-align: top;">95</td> </tr> <tr> <td style="vertical-align: top;">9</td> <td style="vertical-align: top;">Joseph Corrigan Testimony</td> <td style="vertical-align: top;">95</td> </tr> </tbody> </table>	NUMBER	DESCRIPTION	ATTACHED	5 1	Memorandum 6/20/2019	92	6 2	To: Department of Records	93	7 3	Regulation No. 8/changes	94	8 4	Kaplan/Baker Testimony	95	9	Joseph Corrigan Testimony	95	<p style="margin: 0;">3</p> <p style="margin: 0;">1 interested parties to provide comments and</p> <p style="margin: 0;">2 recommendations on modifications to</p> <p style="margin: 0;">3 proposed amendments to Board Regulation</p> <p style="margin: 0;">4 No. 8 on Political Activity. Copies of</p> <p style="margin: 0;">5 these proposed amendments have been made</p> <p style="margin: 0;">6 available electronically and hard copies</p> <p style="margin: 0;">7 are available here today for anyone that</p> <p style="margin: 0;">8 would like a copy and these proceedings</p> <p style="margin: 0;">9 are being transcribed.</p> <p style="margin: 0;">10 The Board is following the</p> <p style="margin: 0;">11 process required by Philadelphia Home Rule</p> <p style="margin: 0;">12 Charter Section 8-407 for these proposed</p> <p style="margin: 0;">13 amendments. The Board approved these</p> <p style="margin: 0;">14 proposed amendments for public posting at</p> <p style="margin: 0;">15 the Records Department during its June 19,</p> <p style="margin: 0;">16 2019 public meeting. The Law Department</p> <p style="margin: 0;">17 reviewed the proposed amendments and found</p> <p style="margin: 0;">18 the proposed amendments to Board</p> <p style="margin: 0;">19 Regulation No. 8 to be legal within the</p> <p style="margin: 0;">20 Board's authority and in proper form. The</p> <p style="margin: 0;">21 Department of Records advertised and gave</p> <p style="margin: 0;">22 public notice of the proposed amendments.</p> <p style="margin: 0;">23 The Board also took action by notifying</p> <p style="margin: 0;">24 members of the relevant email distribution</p>
NUMBER	DESCRIPTION	ATTACHED																	
5 1	Memorandum 6/20/2019	92																	
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2 (Pages 2 to 5)

ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

BOARD MEETING

<p>1 list and by giving notice of the proposed 2 amendments on its website.</p> <p>3 The Board proactively scheduled 4 this hearing on the proposed amendments 5 and provided notice of this hearing by 6 newspaper and on the Board's website. The 7 Board will not take any action on the 8 proposed amendments at this hearing. 9 Rather, this hearing is an opportunity for 10 the public to make comments on the 11 proposed amendments or recommendations for 12 modifications to the proposed amendments 13 to Board Regulation No. 8. Board members 14 may ask questions of the witnesses if they 15 so desire.</p> <p>16 A hearing report will be 17 considered and approved by the Board at a 18 future Board meeting. The hearing report 19 will respond to testimony and is the 20 mechanism by which the Board may modify 21 the proposed amendments to Board 22 Regulation 8 that are now pending. A 23 court reporter is present to transcribe 24 this hearing. At this time the documents</p>	<p>6</p> <p>1 for you to do, that's fine.</p> <p>2 MR. COOKE: Thank you. All 3 right. So, at our last Board meeting 4 staff presented to the Board proposed 5 amendments to Board Regulation No. 8, 6 which after some modifications the Board 7 approved and authorized for posting at the 8 Records Department which was done. Since 9 that time Board staff have continued to 10 review the proposed regulations and have 11 had discussions about them with various 12 folks, in particular, the Law Department 13 with whom we have engaged in a number of 14 conversations regarding the proposed 15 changes and their coverage and accuracy 16 and all sorts of things. And as a result 17 staff would like to testify today to 18 propose modifications to the version of 19 the regulation that was posted at the 20 Records Department. So that's what I will 21 be talking about.</p> <p>22 In order to make the record as 23 clear as possible we have actually done a 24 markup of the version that was posted at</p>
<p>7</p> <p>1 that the Board filed with the Department 2 of Records including the proposed 3 amendments to Board Regulation No. 8 4 should be entered on the record of this 5 hearing and marked as Exhibit-1.</p> <p>6 We will now take testimony. I 7 ask that the witnesses sit at that table, 8 which has a mic that I hope is working. 9 Each witness should identify himself or 10 herself prior to testifying. Before 11 hearing from members of the public I would 12 like to invite Board staff to testify if 13 they wish. Is it the wish of Board staff 14 to testify?</p> <p>15 MR. COOKE: It is, Mr. Chairman.</p> <p>16 THE CHAIRMAN: I recognize Mr. 17 Cooke, Acting General Counsel of the Board 18 for his testimony.</p> <p>19 MR. COOKE: Thank you, 20 Mr. Chair. Would it be all right if I 21 remain in my current location rather than 22 moving to the table in the middle up 23 there?</p> <p>24 THE CHAIRMAN: If that is easier</p>	<p>9</p> <p>1 the Records Department, which we have 2 given to Board members and copies were 3 available in the back for other folks 4 attending the hearing today. It is the 5 document that shows changes in green type. 6 So if anybody wants a copy but doesn't 7 have one, please let us know and we will 8 make sure you have one.</p> <p>9 I would also like to ask the 10 court reporter if we could make that 11 document an exhibit to the hearing report. 12 Again, just for the sake of the record.</p> <p>13 THE CHAIRMAN: Do you want to 14 give that a number, Mr. Cooke?</p> <p>15 MR. COOKE: I think that would 16 be good.</p> <p>17 THE CHAIRMAN: Number 2?</p> <p>18 MR. COOKE: Number 2.</p> <p>19 THE CHAIRMAN: And just for 20 purposes of clarification, I note that the 21 document to which Mr. Cooke just referred 22 being marked up has marked in red, and if 23 I get this wrong, please correct me, the 24 changes to the existing language that</p>

BOARD MEETING

<p style="text-align: right;">10</p> <p>1 was -- that were contained in the form of 2 the amendments that was posted and in 3 green there are edits reflecting changes 4 about which Mr. Cooke is going to testify 5 now that have been made since the posting 6 of the original proposed amendments. Did 7 I get that right, Mr. Cooke?</p> <p>8 MR. COOKE: That is correct.</p> <p>9 UNIDENTIFIED PERSON: Sorry to 10 interrupt. There are no more copies of 11 that in the back.</p> <p>12 (At this time, a brief 13 discussion was held off the record.)</p> <p>14 THE CHAIRMAN: Please proceed, 15 Mr. Cooke.</p> <p>16 MR. COOKE: Thank you, 17 Mr. Chair. So looking at that document, 18 as the Chair just noted, changes that 19 staff recommend are in green. I am not 20 going to mention every single edit since 21 we have the document in the record, but 22 will instead briefly talk about the more 23 substantive changes that Board staff 24 proposed.</p>	<p style="text-align: right;">12</p> <p>1 prohibitive political activity, paragraph 2 8.11, which sets forth the general rule 3 prohibiting a City employee from taking 4 part in the management or affairs of a 5 political party or in a political campaign 6 which includes activity that is done in 7 concert or coordination with a political 8 party, candidate or political campaign. 9 And then there is a list of more specific 10 examples of types of conduct that would 11 qualify.</p> <p>12 We propose to delete what was 13 previously 8.11E because due to the 14 revisions in Subpart F related to 15 permissible expression and political 16 activity, it is now or would be in 17 conflict with those revisions as the 18 regulation -- the proposed amendment was 19 posted at the Records Department. So we 20 would propose simply cutting 8.11E as one 21 of the sub-examples of the general rule 22 stated in 8.11.</p> <p>23 We also propose adding another 24 example which would say that an employee</p>
<p style="text-align: right;">11</p> <p>1 So that would begin on Page 2 in 2 the definition section. Down towards the 3 bottom the definition of political 4 campaign. In conversations with the Law 5 Department, Mr. Feder, in fact, pointed 6 out that in the body of the regulation we 7 use the term political campaign to refer 8 to an enterprise, such as the Mayoral 9 campaign of somebody who is running for 10 Mayor. But the way it is defined in the 11 definition section is as an activity. And 12 so taking that as a good point we propose 13 modifying the definition to describe an 14 enterprise as opposed to an activity and, 15 therefore, to match the way it's used in 16 the body of the regulation so that as 17 revised the definition of a political 18 campaign would read: A group of people 19 organized by or on behalf of an individual 20 in order to obtain that individual's 21 nomination or election to public office.</p> <p>22 The next change of note that 23 Board staff would recommend is on Page 5. 24 In the Subpart about other types of</p>	<p style="text-align: right;">13</p> <p>1 may not be a candidate for a position on 2 an election Board since that is a public 3 election like Council or City 4 Commissioners or the like.</p> <p>5 Turning to Page 6. We are now 6 in Subpart F, which deals with permissible 7 expression and political activity changes 8 that we propose to what was posted at the 9 Records Department beginning at 8.14C to 10 add in the phrase or with the consent of 11 to that subparagraph such that it would 12 read: Distributing political literature 13 but not at the request of or with the 14 consent of a political party, candidate or 15 political campaign. In order to make sure 16 that we are not opening the loophole for 17 sort of wink and a nod activity on behalf 18 of folks to ensure that the rule is clear 19 that they can't do activity with political 20 campaign or candidate.</p> <p>21 To help further make that point 22 we propose on the next page adding 23 examples 8 and 9, which through giving the 24 particular scenarios attempt to elucidate</p>

BOARD MEETING

<p style="text-align: right;">14</p> <p>1 that substantive rule.</p> <p>2 Then I would note, and this is</p> <p>3 jumping back a bit for which I apologize,</p> <p>4 to the bottom of Page 6, paragraph 8.15,</p> <p>5 and you will see and this happens a few</p> <p>6 times going forward in the regulation that</p> <p>7 the changes with the -- in some cases</p> <p>8 addition of the term partisan political</p> <p>9 group and then other places the deletion</p> <p>10 and replacement by the phrase political</p> <p>11 campaign to be consistent with the similar</p> <p>12 change or the same change that we proposed</p> <p>13 when amendment was approved and posted in</p> <p>14 Records we missed a few spots where that</p> <p>15 change should also have been made. So you</p> <p>16 will see from this point forward a couple</p> <p>17 points where political campaign is added</p> <p>18 or partisan political group was added or</p> <p>19 struck as the case may be.</p> <p>20 THE CHAIRMAN: Mr. Cooke, is it</p> <p>21 going to interrupt your flow if I ask a</p> <p>22 question now?</p> <p>23 MR. COOKE: Nope.</p> <p>24 THE CHAIRMAN: Okay. With</p>	<p style="text-align: right;">16</p> <p>1 MR. COOKE: Her to get that box</p> <p>2 of bumper stickers and distribute it in</p> <p>3 the neighborhood.</p> <p>4 THE CHAIRMAN: And that's</p> <p>5 because she is not acting "at the request</p> <p>6 of."</p> <p>7 MR. COOKE: Yes. Although, I</p> <p>8 will point out that again the</p> <p>9 subparagraphs in 8.14 are more like</p> <p>10 examples, they are not actual examples of</p> <p>11 the regulation but they are instances of</p> <p>12 specific conduct that would fall within</p> <p>13 the scope of the actual rule which is set</p> <p>14 out in 8.14, which is you can't do</p> <p>15 something or you can do certain things but</p> <p>16 not in concert or coordination with a</p> <p>17 political party, candidate or political</p> <p>18 campaign. So while I think that the</p> <p>19 general provisions of 8.14 would have</p> <p>20 prohibited that activity even absent the</p> <p>21 change that we propose in C, we still</p> <p>22 think in the interest of trying to give</p> <p>23 the best guidance as possible that the</p> <p>24 proposed language in C is helpful to make</p>
<p style="text-align: right;">15</p> <p>1 regard to 8.14C and the proposed added</p> <p>2 language: Or with the content of.</p> <p>3 MR. COOKE: Yes.</p> <p>4 THE CHAIRMAN: I appreciate your</p> <p>5 desire to avoid winks and nods as a ways</p> <p>6 of getting around the black letter of the</p> <p>7 regulation, but could you conceive of a</p> <p>8 hypothetical that would meet that</p> <p>9 language?</p> <p>10 MR. COOKE: Yes. And in example</p> <p>11 8 on the next page there is an attempt at</p> <p>12 that. So that says an employee may obtain</p> <p>13 a bumper sticker from a candidate's</p> <p>14 campaign headquarters and put it on their</p> <p>15 car. And then the second sentence really</p> <p>16 goes to this change which is: She may not</p> <p>17 obtain a box of bumper stickers from a</p> <p>18 candidate's campaign headquarters and</p> <p>19 distribute them in the neighborhood. So</p> <p>20 the previous language would arguably have</p> <p>21 permitted this because the campaign didn't</p> <p>22 ask her to --</p> <p>23 THE CHAIRMAN: Would have</p> <p>24 permitted what?</p>	<p style="text-align: right;">17</p> <p>1 that point that even though the lady goes</p> <p>2 to the campaign headquarters and she asks</p> <p>3 and they give her the bumper stickers,</p> <p>4 that's prohibited. They are doing it</p> <p>5 whether it's through a tacit agreement or</p> <p>6 with the explicit request of the campaign.</p> <p>7 In either case it's political activity</p> <p>8 that this employee would be engaging in in</p> <p>9 concert with the campaign and, therefore,</p> <p>10 prohibited.</p> <p>11 THE CHAIRMAN: Knowledge of the</p> <p>12 campaign wouldn't be sufficient, however,</p> <p>13 mere knowledge?</p> <p>14 MR. COOKE: I agree.</p> <p>15 THE CHAIRMAN: I was asking, you</p> <p>16 agree.</p> <p>17 MR. COOKE: No.</p> <p>18 THE CHAIRMAN: Please proceed.</p> <p>19 MR. COOKE: So next, changes of</p> <p>20 note are actually not until Page 10. This</p> <p>21 is a Subpart that deals with the rules as</p> <p>22 they apply to members of City Boards and</p> <p>23 Commissions. In the version that the</p> <p>24 Board approved for public comment included</p>

5 (Pages 14 to 17)

ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

BOARD MEETING

<p style="text-align: right;">18</p> <p>1 significant revisions to this section. 2 However, as we continue to work on it and 3 again consult with the Law Department, it 4 seemed that we needed to change what had 5 been the proposed approach. Most 6 importantly, that there is a lot of value 7 in affirmatively listing the small 8 percentage frankly of City Boards and 9 Commissions that are covered by the full 10 scope of the regulation. So that's the 11 way it is in the current effective version 12 of the regulation. We had proposed going 13 to a different approach but upon 14 reflection and consultation with the Law 15 Department think it is better to revert 16 back to the same general approach with 17 some improvements where needed.</p> <p>18 What you will see in the green 19 type is the list of 27 Boards and 20 Commissions that it is our view exercise 21 significant powers of City government and 22 should, therefore, be fully covered by the 23 political activity restrictions as set 24 forth in the regulation.</p>	<p style="text-align: right;">20</p> <p>1 the Law Department, and with the Chief 2 Integrity Officer went through not just 3 the list and the existing regulation but 4 the master list such that there is one of 5 all existing Boards and Commissions to 6 make sure that we have all those that do 7 exercise significant powers of government 8 listed and that if there are any that are 9 on the list that didn't that they would be 10 removed. So there are some changes, which 11 I now will cover.</p> <p>12 There are to the list at 8.21 13 there are six additions. So this would be 14 six Boards or Commissions that are not 15 currently in the regulation would now be 16 added. And in some cases it's because 17 these Boards or Commissions were, or I 18 think almost all the cases because they 19 were established after the prior version 20 of Regulation 8 went into effect. But 21 they are the Air Pollution Control Board, 22 The Board of Safety and Fire Prevention, 23 The Living Wage and Benefit Review 24 Committee, The Police Advisory Commission,</p>
<p style="text-align: right;">19</p> <p>1 THE CHAIRMAN: Michael, can I 2 ask you something about the current text 3 that exists right now on the website. 4 MR. COOKE: Yes. 5 THE CHAIRMAN: Does it have that 6 list? 7 MR. COOKE: It has the list on 8 Page 11. 9 THE CHAIRMAN: It has the list 10 but it's somewhere else? 11 MR. COOKE: Yes, if you look at 12 Page 11 of the regulation. 13 THE CHAIRMAN: I see. Okay, you 14 answered my question. 15 MR. COOKE: Now, the actual 16 entities on those two lists there are some 17 differences, different coverage which I 18 will highlight in a moment. But that on 19 Page 11 would be the existing list. 20 So first thing we would revert 21 back to the prior approach of 22 affirmatively listing the Boards and 23 Commissions. And then as part of that, 24 part of this process, we, with the help of</p>	<p style="text-align: right;">21</p> <p>1 The Vacant Property Review Commission and 2 the Water, Sewer and Storm Water Rate 3 Board. So they would be newly added to 4 the list at 8.21. 5 In addition, we propose adding 6 on Page 11 you will see paragraph 8.23 7 which addresses Nominating Panels, which 8 are also City Boards and Commissions but 9 function differently in that they only 10 convene intermittently as a need arises. 11 However, they do exercise significant 12 powers of government and so it is our view 13 that when they are convened and in 14 operation these rules would apply and we 15 list in 8.23 the three Nominating Panels 16 that would be covered by the rules and I 17 don't believe that any of the three was 18 listed in the previous regulation. 19 THE CHAIRMAN: So, Mr. Cooke, 20 something to think about between now and 21 when we finally adopt these amendments and 22 maybe I am missing something but is there 23 a -- you have noted that there are six 24 entities that came into existence after</p>

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<p style="text-align: right;">22</p> <p>1 the current text was adopted and we are 2 adding them to this list?</p> <p>3 MR. COOKE: Yes.</p> <p>4 THE CHAIRMAN: Question is what 5 would the status of those six entities 6 have been since they did, in fact, 7 exercise significant powers of City 8 government but they weren't on our list? 9 Do you understand the question I am 10 asking?</p> <p>11 MR. COOKE: I do and there are a 12 couple aspects of that that I want to 13 touch on. So the first is that we have 14 shared with the Chief Integrity Officer 15 our thought process and, in fact, she has 16 been involved with the discussion at 17 various points to let the administration 18 know that we think that these entities 19 exercise significant powers of government 20 and would be included in the list, so that 21 the Chief Integrity Officer who is 22 responsible for coordinating much of the 23 administration side stuff related to 24 Boards and Commission can let them know so</p>	<p style="text-align: right;">24</p> <p>1 recent change to the City Charter they are 2 guaranteed a budget appropriation of at 3 least \$500,000 per fiscal year. So that 4 since the last time we advised The Police 5 Advisory Commission on this issue they 6 have been granted the ability to disburse 7 City funds in a way that they did not. So 8 that is a change with regard to the nature 9 of that particular entity that changes our 10 view on what powers they have.</p> <p>11 THE CHAIRMAN: Let me get to my 12 main point so that you don't have to take 13 up a lot of time on this. Query whether 14 there should be a language that says 15 something like that codifies what you say 16 you did when three entities not previously 17 on the list became eligible to be on the 18 list and you notified the Chief Integrity 19 Officer of that. Query whether there 20 should be some language that codifies 21 that. If in the future there is a new Air 22 Pollution Control Board, or you know, some 23 other thing that does something, environmental stuff like that. For</p>
<p style="text-align: right;">23</p> <p>1 they have the notice. So that's one thing 2 that we want to make sure that each of the 3 members of these Boards know that they 4 would be subject to these restrictions and 5 we will work with the Chief Integrity 6 Officer and whoever else that we need to 7 in order to do so.</p> <p>8 I will note, however, that for 9 three of them they have, in fact, been 10 previously advised by the Board or by the 11 Board's General Counsel that they were not 12 subject to the Political Activity 13 restrictions because at the time the view 14 was they did not exercise significant 15 powers of government. And those three are 16 the Board of Safety and Fire Prevention, 17 The Police Advisory Commission and the 18 Educational Nominating Panel. Based on 19 either developments that have occurred 20 since that advice was given or on new 21 information, we think that they do 22 exercise significant powers of government. 23 So, for example, The Police 24 Advisory Commission as a result of a</p>	<p style="text-align: right;">25</p> <p>1 example, and that entity, in fact, 2 exercises significant powers of City 3 government, but is not in the current 4 text, should there be something that 5 codifies what you said that you did, a 6 catch-all?</p> <p>7 MR. COOKE: So we have 8 conferred with the Law Department on what 9 the effect is of affirmatively listing the 10 entities under regulation like that and 11 that if a new entity comes into being that 12 if as a matter of effective law they are 13 going to be covered then we would need to 14 amend the regulation and so a 15 catch-all would -- until they are actually 16 named in there they would not be covered 17 by the regulation.</p> <p>18 THE CHAIRMAN: Doesn't this come 19 from the Charter, Rich? Doesn't the 20 substantive restriction come from the 21 Charter? Do you understand?</p> <p>22 MR. FEDER: I think the 23 substantive restriction while engaging in 24 political activities comes from the</p>

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<p style="text-align: right;">26</p> <p>1 Charter, but it's up to the Board to 2 decide who are the officers or employees 3 of the City who are subject to that 4 substantive restriction.</p> <p>5 THE CHAIRMAN: So I could see a 6 due process concern about enforcing 7 against a Board or members of a Board who 8 had not been alerted by notice that they 9 were deemed to have significant powers of 10 City government. But putting that issue 11 aside, I just have a question as to 12 whether or not the absence of the entity 13 from the regulation, putting aside due 14 process, would defeat our ability to 15 enforce against them once they had been 16 given notice. Something to think about, 17 I'm not sure where I come out on that, 18 but.</p> <p>19 MR. CREAMER: I think it also 20 raises a fairness question too going after 21 someone that didn't understand.</p> <p>22 THE CHAIRMAN: That's what I 23 mean by due process.</p> <p>24 MR. CREAMER: Yeah, so I would</p>	<p style="text-align: right;">28</p> <p>1 Department has explained to us has the 2 ability to grant a variance to the 3 requirements of the Fire Code which the 4 Law Department contends and we agree is a 5 significant power of government, so that's 6 why they would be covered here.</p> <p>7 And then, lastly, the 8 Educational Nominating Panel, which is 9 actually I believe covered in a Board 10 opinion from earlier this year or last 11 year, which at the time shortly after it 12 was or it was in the process of being 13 convened, the Board found did not exercise 14 significant powers of government. 15 However, since the Board issued its 16 opinion the State Ethics Commission issued 17 an advisory opinion related to the entity 18 and the Law Department has also weighed in 19 and both found that because the Mayor can 20 only select someone who has been nominated 21 by that panel it does.</p> <p>22 THE CHAIRMAN: They have 23 significant powers.</p> <p>24 MR. COOKE: So we recommend that</p>
<p style="text-align: right;">27</p> <p>1 hope that if a new entity were created 2 that the Chief Integrity Officer or 3 somebody else perhaps in City government 4 would ask the Board for guidance on how 5 the restrictions would apply and there 6 could be an opinion, an advisory opinion 7 where the Board could address that before 8 we had sufficient time to amend this 9 regulation.</p> <p>10 THE CHAIRMAN: We could always 11 amend the regulation too.</p> <p>12 MR. CREAMER: But that takes 13 more time than --Okay. This is very 14 nitpicking small minutiae items just to 15 let you know the Chair is awake today. 16 Good to know, good to know. I just wanted 17 to just touch on to put it on the record 18 to make sure everything is clear, the two 19 other entities besides the Police Advisory 20 Commission that the Board had previously 21 said did not exercise significant powers 22 but then there had been a different point 23 of view. So the second is the Board of 24 Safety and Fire Prevention which the Law</p>	<p style="text-align: right;">29</p> <p>1 the Board adopt for the same reason and 2 find they do have significant powers of 3 government.</p> <p>4 Then the last thing with regard 5 to the list, I wanted to note there were 6 three entities removed from the current 7 version. That's the Philadelphia Prison 8 Board of Trustees, the Malt and Brewed 9 Beverage Hearing Board and the Zoning Code 10 Commission. For the last two, the Malt 11 and Brewed Beverage Hearing Board and 12 Zoning Code Commission, they are defunct, 13 so there's no need to list them there. 14 And for the Philadelphia Prison Board of 15 Trustees, their powers were significantly 16 changed and resaved to turn them into 17 merely or just all that remains of them is 18 to be an Advisory Board so they don't 19 exercise significant powers of City 20 government, so they would be removed from 21 the list. That's what I wanted to point 22 out with regard to the coverage of Boards 23 and Commissions.</p> <p>24 We talked already about</p>

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<p>1 paragraph 8.23 that deals with Nominating 2 Panels. And then the last thing is 3 paragraph 8.24, which is to set out in a 4 separate substantive paragraph the rule 5 that if there is someone who is already a 6 City officer or employee who is appointed 7 to a City Board or Commission, whether 8 ex-officio or as a designee for somebody, 9 the political activity restrictions apply 10 to that person based on his or her 11 original City position, not their 12 membership on the Board. So then we give 13 some examples for paragraph 8.24. 14 If a Water Department employee 15 is asked to serve on an Advisory 16 Commission that Water Department employee 17 is still subject to the full restrictions. 18 Or if you look at the next page, if an 19 employee of City Council, a staffer say, 20 serves on an Advisory Board formed by 21 Mayor, that City Council staffer is 22 subject to the rules as any other City 23 Council staffer would be. 24 Then, lastly, if an elected</p>	<p>30</p> <p>1 McDaniel, I am the Chief Ethics Officer 2 for Philadelphia City Council. Thank you 3 for having us here today and giving us 4 this opportunity to have some input on 5 your regulations. Just listening to 6 Mr. Cooke testify earlier you have 7 addressed some of my concerns, which I 8 thank you for. And I also thank you for 9 getting rid of the double negative on the 10 City Council part, that was truly 11 confusing and I think this is much better. 12 But I do have a couple of points I would 13 like to discuss with the Board today. 14 If we go to 8.3C, political 15 activities, it is under Subpart B, which I 16 believe under these new regulations -- 17 JUDGE BECK: Page 3? 18 MS. MARY McDANIEL: Correct. 19 The top of Page 3 under 8.3C. And I 20 believe this part applies to City Council 21 according to the new regulations. I would 22 also like to note that I just saw these 23 new changes today so I am kind of taken a 24 little bit by surprise and I have to</p>
<p>31</p> <p>1 official serves on a Board because elected 2 officials aren't subject to regulation at 3 all, the fact that that person is on this 4 Board or Commission wouldn't change that. 5 So elected official would not become 6 subject to the political activity 7 restrictions just by service on a City 8 Board or Commission. 9 So those were the proposed 10 changes that staff had for the regulation 11 and would be happy to take any questions 12 that Board members may have about that?</p> <p>13 THE CHAIRMAN: I've already had 14 my questions. The floor is open to the 15 rest of the Board for any questions of 16 staff.</p> <p>17 Hearing none, I will now ask 18 whether there are any other people who 19 would like to testify, and if so, please 20 come forward and I would ask you to sit 21 here and identify yourself for the record 22 and then we will be pleased to receive 23 your packet.</p> <p>24 MS. MARY McDANIEL: Hi, Mary</p>	<p>31</p> <p>1 adjust my testimony a little bit in 2 accordance to that. If we do have an 3 opportunity to make further comments, is 4 that possible?</p> <p>5 MR. COOKE: I would like to just 6 note that anything that is in red was what 7 was approved by the Board last time, so 8 that's not --</p> <p>9 MS. MARY McDANIEL: I'm not 10 saying that this was changed, I will have 11 some comments based upon the testimony you 12 gave today.</p> <p>13 MR. COOKE: Okay.</p> <p>14 MS. MARY McDANIEL: This one, 15 yeah, I would agree this is how it was 16 written. So using social media account 17 that is used for City business. I have 18 become aware that there are City Council 19 employees who use their own -- we have 20 social media people employed by many of 21 the Council members and they are very 22 active in their communities and a lot of 23 them have their own social media accounts 24 that they use occasionally for City</p>

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<p style="text-align: right;">34</p> <p>1 business. They will say we are having a 2 meeting on education funding or my boss is 3 holding a meeting on whatever, hunger in 4 the community, but it's not a City owned 5 account, it's not administered by the 6 City. And I believe that they would be 7 allowed to use that account for political 8 activity even though they occasionally 9 would post on there saying my boss is 10 having a meeting, please come. I'm 11 putting that out there, I think they 12 should be exempted from that.</p> <p>13 THE CHAIRMAN: We will make a 14 note of that.</p> <p>15 MS. MARY McDANIEL: Because 16 under the rules as it's written, they 17 would be applicable to City Council 18 employees.</p> <p>19 If you would like to discuss 20 that further I would be willing to give 21 you examples of what I mean. All right. 22 And the new example on Page 7, example 8 23 and example 9. Again, I just saw these 24 today but I believe this section is also</p>	<p style="text-align: right;">36</p> <p>1 MS. MARY McDANIEL: Questions 2 for me?</p> <p>3 THE CHAIRMAN: I appreciate 4 those comments and we will certainly 5 consider them.</p> <p>6 MS. MARY McDANIEL: Thank you 7 for listening to me.</p> <p>8 THE CHAIRMAN: I believe Ellen 9 raised her hand.</p> <p>10 MS. ELLEN MATTLEMAN KAPLAN: I 11 apologize that we don't have a lot of 12 copies. We are happy if you want 13 electronic copies, just let us know and we 14 will send them to you.</p> <p>15 Good afternoon, everyone. I am 16 Ellen Matteleman Kaplan, I am the Chief 17 Integrity Officer for the Executive Branch 18 of government. I am here today with 19 Deputy Chief Integrity Officer Krystle 20 Baker and our colleagues in the Mayor's 21 office, from the communication's office, 22 the City's Digital Director Linda Huss and 23 also the City's Deputy Communications 24 Director Sarah Reyes. And if you don't</p>
<p style="text-align: right;">35</p> <p>1 applicable to Council employees, Subpart 2 F.</p> <p>3 THE CHAIRMAN: What page are you 4 on?</p> <p>5 MS. MARY McDANIEL: Page 7, down 6 the bottom.</p> <p>7 THE CHAIRMAN: 8 and 9?</p> <p>8 MS. MARY McDANIEL: 8 and 9. It 9 says an employee may obtain a bumper 10 sticker from a candidate, blah, blah, 11 blah, she may not obtain a box of bumper 12 stickers from a candidate's campaign 13 headquarters and distribute them in her 14 neighborhood. I don't think that should 15 apply to Council and the same thing for 16 example 9. An appointed officer or 17 employee may distribute campaign 18 literature, blah, blah, blah.</p> <p>19 All right. I think you took 20 care of my other comments as far as on 21 Page 12. I appreciate that I was able to 22 do it. I think that was my other 23 comments.</p> <p>24 . THE CHAIRMAN: Okay. Thank you.</p>	<p style="text-align: right;">37</p> <p>1 mind Krystle and I are going to do a tag 2 team for this testimony.</p> <p>3 We want to first thank the Board 4 and staff for simplifying and clarifying a 5 number of provisions to Regulation No. 8, 6 especially as they pertain to the use of 7 private social media and as always our 8 friends Michael Cooke and Tom Klemm and 9 Jordana Greenwald for answering questions 10 so that we can focus our testimony for 11 today's hearing.</p> <p>12 First we are going to talk about 13 the new provisions as they relate to 14 members of City Boards and Commissions. 15 So, again, we may have other comments 16 because we are seeing these for the first 17 time, but our first request as you are 18 adding some entities to the list of City 19 Boards and Commissions that exercise 20 significant powers of City government and 21 whose members will be fully subject to the 22 provisions of Reg 8 is for background 23 information similar to what the Board did 24 back in -- I think you were here, you</p>

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	38		40
1	remember at the committee back then, so I	1	it to you folks and maybe Krystle knows.
2	remember in Board Opinions 2007-006 and	2	I don't remember, Judge, off the top of my
3	2007-004, which took City Boards and	3	head.
4	Commissions at that time and did an	4	Michael, do you remember there
5	analysis of why the Board believed that	5	was a Board before you were Acting General
6	they do, in fact, exercise significant	6	Counsel, there was a Board Opinion about
7	powers of government and should be subject	7	the Land Bank, so I do not recall it, but
8	fully to the provisions of Reg 8. So we	8	I am happy to get that information to you
9	would like to see the analysis that you	9	if nobody in the room remembers.
10	used to apply Reg 8 to those new entities.	10	JUDGE BECK: I was wondering, in
11	And one concern and, again,	11	your listing here of organizations or
12	these were just preliminary things that I	12	Commissions that have power over property,
13	am mentioning, is that some of the	13	real property, but the Land Bank is not
14	entities new to the list consist of	14	mentioned.
15	designated member organizations. It's not	15	MS. KRYSTLE BAKER: It is not
16	as if the Mayor can say I am going to	16	mentioned because it was not in existence
17	appoint this person instead of this	17	when this provision was granted.
18	person. And we use the example of the	18	MR. FEDER: Judge, if I can just
19	Vacant Property Review Committee, which	19	jump in. I don't recall who has
20	comes from the City Code, which consists	20	appointing power to the Land Bank Board,
21	of representatives of six entities that	21	but the Land Bank Board is not a City
22	are independent of City government, The	22	agency, The Land Bank is a separate
23	Redevelopment Authority, The Philadelphia	23	governmental entity that's not part of the
24	Industrial Development Corp, The Housing	24	City. It's like the Redevelopment
	39		41
1	Development Corp, The Philadelphia	1	Authority or the Parking Authority, they
2	Commercial Development Corp, which I know	2	are separate entities and so the Charter's
3	now from research no longer exists but is	3	political activity rules wouldn't apply to
4	still in the Code. The Philadelphia	4	members of those Boards.
5	Association of Community Development	5	THE CHAIRMAN: Thank you.
6	Corporations and The Local Initiatives	6	MS. ELLEN MATTLEMAN KAPLAN: The
7	Support Corporation. So as I said, unlike	7	same is true for members of the --
8	many other Boards and Commissions, neither	8	Educational Nominating Panel. It has 13
9	the Mayor nor City Council have appointing	9	members, this panel, that are chosen by
10	authority to select the organizational	10	the Mayor, nine of whom are required to be
11	representatives. So if these designated	11	the highest ranking officers of certain
12	entities engage in political activity that	12	City-wide organizations or institutions.
13	are prohibited by Reg 8, it may be	13	One of these organizations is a Labor
14	difficult for these entities to select a	14	Union Council or other organization of
15	member.	15	unions of workers and employees organized
16	JUDGE BECK: Is there a Land	16	and operated for the benefit of such
17	Bank Commission?	17	workers and employees requiring the
18	MS. ELLEN MATTLEMAN KAPLAN:	18	highest ranking officer of a City labor
19	Yes, there is a Land Bank Board.	19	union to be fully subject to the
20	JUDGE BECK: Who appoints the	20	provisions of Regulation 8 may present a
21	members of that Board?	21	challenge. Just mentioning something that
22	MS. ELLEN MATTLEMAN KAPLAN: I'm	22	needs to be discussed.
23	glad you asked that question and since	23	We are also concerned about new
24	there was a Land Bank Opinion I will leave	24	section 8.23 requiring members of the

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<p style="text-align: right;">42</p> <p>1 Education Nominating Panel, Civil Service 2 Commission and Finance Panel to be fully 3 subject to the provisions of Regulation 8 4 for those periods of time when the panel 5 is actively convened. There is no set 6 time period when these panels are, in 7 fact, convened to review candidates for 8 the Education Nominating Panel which are 9 for members of the Board of Education, the 10 Civil Service Panel for members of the 11 Civil Service Commission or the Finance 12 Panel for the City's Finance Director. 13 They convene when there is an opening to 14 be filled. So with the Educational 15 Nominating Panel, they were first 16 empanelled in early 2018 after the City 17 regained control of the schools to name 18 the nine members of the Board of 19 Education. And then after giving the 20 names to the Mayor the panel was in hiatus 21 and we are now coming up in the spring of 22 2020 when the terms of the nine first 23 members of the Board of Education or 24 the -- of the Board of Education in this</p>	<p style="text-align: right;">44</p> <p>1 understanding is that we are constrained. 2 I think we may have been where you are in 3 terms of our view on this, but then we 4 were constrained by the State Ethics 5 Commission and the Law Department. Am I 6 correct on that? 7 MR. COOKE: Well, I wouldn't say 8 constrained. 9 THE CHAIRMAN: Constrained may 10 not be the right word. We changed 11 direction. 12 MR. COOKE: Correct. 13 THE CHAIRMAN: I just note that. 14 MS. ELLEN MATTLEMAN KAPLAN: 15 Understandably. I just think it's 16 something we need to talk about, the full 17 impact of these Boards that are on hiatus 18 in and out. 19 THE CHAIRMAN: Sure. 20 MS. ELLEN MATTLEMAN KAPLAN: I 21 also wanted to mention this to Chairman 22 Reed's point, having to do with educating 23 members, especially of the new Boards and 24 Commissions whose members are going to be</p>
<p style="text-align: right;">43</p> <p>1 iteration of now post-local control, the 2 panel needs to be convened, reconvened to 3 give the Mayor names to fill nine 4 positions once again. And after that 5 happens the panel will be in hiatus until 6 there is a vacancy on the Board because 7 after the spring -- and, Rich, you can 8 correct me if I'm wrong. The members then 9 serve terms of different lengths, so it's 10 not that all nine will be open again. 11 So it is entirely possible that 12 when the Educational Nominating Panel is 13 in hiatus then a panel member may agree to 14 host a fundraiser for a candidate. Well, 15 what happens if there is a sudden vacancy 16 on the Board, the panel needs to 17 reconvene? Does the fundraiser have to be 18 canceled? If not, what does it mean about 19 that person's decisions made as a member 20 of the Nominating Panel. Just raising 21 that as something that we do need to or 22 that you should consider. 23 THE CHAIRMAN: Ellen, just for 24 purposes of clarification, my</p>	<p style="text-align: right;">45</p> <p>1 subject to the new Regulation 8, fully 2 subject to these provisions. And, again, 3 we are just looking forward to developing 4 a realistic educational plan. The Board 5 already does a wonderful job with the 6 herculean effort required of them to train 7 City employees much less members of City 8 Boards and Commissions and we will 9 certainly pledge the help of our office in 10 doing any educational efforts to let these 11 Boards and Commission members know of the 12 new obligation should the Board adopt 13 these revisions. 14 And, finally, again, this is 15 another point raised by Chairman Reed 16 directed to Richard here. Making sure 17 that every time there is a new Board and 18 Commission and I think we can all agree in 19 this room that they are added quite 20 frequently by Mayoral Executive Orders. 21 In particular, we are not going to have to 22 come back to have other public hearings 23 and I think we talked about this once with 24 the campaign finance law when there are</p>

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<p style="text-align: right;">46</p> <p>1 cost of living jumps making sure that we 2 don't have to come back each and every 3 time.</p> <p>4 THE CHAIRMAN: Okay.</p> <p>5 MS. ELLEN MATTLEMAN KAPLAN: I 6 think that's important. I'm going to turn 7 to Krystle here.</p> <p>8 MS. KRYSTLE BAKER: I was asked 9 to research the social media piece, so all 10 of my comments in this section are on 11 social media. First, I just want to again 12 thank the Board for really rethinking a 13 lot of the provisions on social media and 14 making so many updates, so thank you for 15 that.</p> <p>16 Because there is a significant 17 number of Americans who use social media, 18 it's like 69 percent of Americans had at 19 least one account. Applying that same 20 statistic to our City workforce we have 21 about 19,300 users on social media, so 22 this is really important activity that 23 will relate to what they can and cannot 24 do. But because there are so many City</p>	<p style="text-align: right;">48</p> <p>1 would incorporate any new platforms that 2 come up or ones that are not similar to 3 the examples listed.</p> <p>4 So we actually recommended a 5 modified version of the definition of 6 social media from Merriam Webster 7 Dictionary to include forms of electronic 8 communication such as websites and apps 9 for social networking and microblogging 10 through which users can create online 11 communities to share information, ideas, 12 personal messages and other content such 13 as images and videos in lieu of listing 14 just some examples of some popular social 15 media platforms.</p> <p>16 THE CHAIRMAN: Is that in your 17 written document?</p> <p>18 MS. KRYSTLE BAKER: Yes, it is. 19 THE CHAIRMAN: Thank you. 20 MS. KRYSTLE BAKER: We also 21 recommend simplifying political activity 22 restrictions related to social media to 23 highlight only what is prohibited 24 political activity. While we understand</p>
<p style="text-align: right;">47</p> <p>1 employees on social media, we really urge 2 you to make it as easy as possible to 3 understand prohibitive activity on social 4 media.</p> <p>5 So our first recommendation is 6 to better define social media. In section 7 8.1r, to encompass other social media 8 platforms that are not covered by the 9 revised definition. The current 10 definition just lists a couple examples of 11 social media platforms, but it doesn't 12 actually provide a broader definition for 13 social media.</p> <p>14 Thankfully you included 15 Snapchat. I was going to go into length 16 about how Snapchat should be included, but 17 I don't need to do that now, so that's 18 wonderful.</p> <p>19 But to my point about Snapchat, 20 there are many other social media 21 platforms that are out there that are not 22 similar to Facebook, Twitter, MySpace, 23 LinkedIn, et cetera, so we really should 24 craft the social media definition that</p>	<p style="text-align: right;">49</p> <p>1 that the Board may prefer to list both 2 permissible and impermissible political 3 activity restrictions related to social 4 media, we fear that social media is 5 evolving at a rate faster than we at the 6 City or The Board of Ethics or even 7 Regulation No. 8 can keep up with, so we 8 instead recommend that it would be easier 9 if you just identified what was not 10 permissible.</p> <p>11 There are currently four 12 revisions in Regulation No. 8 that list 13 examples of restricted behavior linked to 14 social media. They are section 8.3C, that 15 City employees may not engage in political 16 activity on social media accounts used for 17 City business. Subpart C, example 3, that 18 we may not reference title or status as a 19 City employee in a private social media 20 post that supports or opposes a candidate. 21 Subpart D, example 5, may not share a 22 candidates fundraising event on Facebook. 23 And section 8.11F, that we may not 24 distribute or share information via social</p>

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<p style="text-align: right;">50</p> <p>1 media at the request of a political party, 2 candidate or political campaign.</p> <p>3 THE CHAIRMAN: Wait, you lost 4 me. Go back to Subpart 5 you said. I'm 5 not sure where you are.</p> <p>6 MS. KRYSTLE BAKER: Sure. I 7 will try to make it easier as well.</p> <p>8 THE CHAIRMAN: You jumped ahead.</p> <p>9 MS. KRYSTLE BAKER: So section 10 8.3C which is located on Page 3.</p> <p>11 THE CHAIRMAN: I got the first 12 two.</p> <p>13 MS. KRYSTLE BAKER: So Subpart D 14 example 3 is --</p> <p>15 THE CHAIRMAN: Five?</p> <p>16 MS. KRYSTLE BAKER: Sorry, 17 example 5. Thank you. An employee may 18 not share a candidate's fundraiser event 19 on Facebook. That's on Page 4. And 20 section 811F is located on Page 6 and that 21 says may not share or distribute 22 information via social media at the 23 request of a political party, candidate or 24 political campaign.</p>	<p style="text-align: right;">52</p> <p>1 concern is that if it is not in one 2 section a reader may not find all the 3 information they are looking for if they 4 are not actively searching throughout the 5 document. So I have an example for you.</p> <p>6 THE CHAIRMAN: Before you do 7 that, as you know and I hope I am not 8 making work for staff, we have produced 9 documents in plain English or summary 10 documents that summarize various 11 provisions and regulations. Particularly 12 in the campaign finance area. We just put 13 something out on lobbying?</p> <p>14 MR. COOKE: Yes.</p> <p>15 THE CHAIRMAN: I guess my point 16 is should the architecture of the 17 Regulation be driven by or primarily by or 18 solely by ease of reading when we -- you 19 could, someone could take the relevant 20 portions of the Regulation from the 21 various places where they are in the 22 Regulation, create another document that 23 could be used for the teaching that you 24 are talking about?</p>
<p style="text-align: right;">51</p> <p>1 THE CHAIRMAN: Thank you. 2 MS. KRYSTLE BAKER: No problem. 3 We just believe this will be easier to 4 convey to a large workforce if it's very 5 clear what they cannot do. We also 6 recommended placing all social media 7 guidance in one section as currently 8 organized in Regulation No. 8. While we 9 appreciate the desire to integrate social 10 media for the rules throughout the other 11 sections, we respectfully believe that 12 this will result in more confusion than 13 less.</p> <p>14 This recommendation is based on 15 feedback received from monthly Social 16 Media Managers' Meetings hosted by our 17 Mayor's Office of communication to provide 18 guidance to City employees who manage 19 social media accounts using City business. 20 Linda Huss shared with us that it is easy 21 for her when she receives questions about 22 political activity she directs the 23 employees to a particular section of this 24 Regulation to provide guidance. And our</p>	<p style="text-align: right;">53</p> <p>1 MS. KRYSTLE BAKER: I think 2 that's an excellent suggestion. 3 THE CHAIRMAN: Okay, but I mean, 4 okay. So, we may decide that this 5 architecture is sounder from the 6 standpoint of our Regulation, but 7 understanding that it would be desirable 8 for another document to be created that 9 might be used to capture various relevant 10 provisions in social media for teaching 11 purposes.</p> <p>12 MS. KRYSTLE BAKER: Absolutely. 13 If I may just to illustrate why that's so 14 important. I think that for the 15 educational piece if a City employee just 16 wanted to know what they could share about 17 or share about their City employment on 18 their private social media account, the 19 answer is not located in one section. 20 They would have to go to Subpart C on Page 21 4, example 3, that they can't reference 22 their title or status in a post that 23 supports or opposes a candidate. And they 24 would also have to go two pages over to</p>

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<p style="text-align: right;">54</p> <p>1 section 8.14 where it identifies that a 2 City employee may identify their title or 3 status or may identify their political 4 party.</p> <p>5 THE CHAIRMAN: But you 6 understand the tradeoff that we have got 7 to make, which is we don't want someone 8 looking at -- let's assume we had all the 9 social media stuff in one place.</p> <p>10 MS. KRYSTLE BAKER: Right.</p> <p>11 THE CHAIRMAN: We don't want 12 someone, part of the regulated community, 13 looking at another section, and just 14 thinking that's what is relevant to their 15 particular problem, not seeing any 16 teaching there or any restrictions there 17 relevant to social media and thinking they 18 are okay, so that's the flip side of what 19 you are saying. We have to make the 20 decision as to the architecture of the 21 Regulation, but I get your point.</p> <p>22 MS. KRYSTLE BAKER: Thank you. 23 One other recommendation that we have is 24 to provide additional examples that</p>	<p style="text-align: right;">56</p> <p>1 can share on private social media while 2 off duty. So right now if I look for 3 guidance to that question, 814 and this is 4 where I would go, excuse me, 814G on Page 5 6 is where I would go. And it gives all 6 kinds of action words such as responding 7 to, tagging, tweeting at, retweeting, et 8 cetera, but these words, these action 9 words are confined only to a couple social 10 media platforms. It really doesn't -- 11 it's very limiting in that it doesn't 12 consider other social media platforms so 13 we recommend using share and interact or 14 sharing and interacting in lieu of all the 15 other retweeting, liking examples because 16 we believe that that is a broader 17 definition that will evolve over time and 18 you can use retweeting or liking as 19 examples of permissible examples. 20 Just as an example we have a 21 couple attachments to our proposed 22 testimony. In Attachment 2 you will see 23 literature and graphics designed by two 24 campaigns. The first screen shot comes</p>
<p style="text-align: right;">55</p> <p>1 highlight the proposed amendments, 2 including those contained in recently 3 issued General Counsel opinions. So I 4 provided a couple examples of where I feel 5 that we could fill the void with examples 6 based on the changes that were made to 7 Regulation 8 or addressed in General 8 Counsel Opinion 2017-506, so I will just 9 leave those there for you.</p> <p>10 THE CHAIRMAN: Thank you. We're 11 going to plagiarize. Thank you for this.</p> <p>12 MS. KRYSTLE BAKER: That's fine.</p> <p>13 THE CHAIRMAN: I mean I don't 14 know if we are going to put it in as an 15 Exhibit? You're making the offer but 16 would it be a problem?</p> <p>17 MR. COOKE: The testimony should 18 be attached.</p> <p>19 MS. KRYSTLE BAKER: Wonderful.</p> <p>20 THE CHAIRMAN: Whether or not 21 it's an exhibit, we are going to use it.</p> <p>22 MS. KRYSTLE BAKER: Okay. As 23 well as providing additional examples, we 24 recommend clarifying what a City employee</p>	<p style="text-align: right;">57</p> <p>1 from a website for a current democratic 2 candidate for president and for visitors 3 to share literature about their policies 4 on their private social media accounts. 5 The second screen shot comes from the 6 Twitter account of a former Democratic 7 candidate for president who encouraged 8 their followers to Tweet republican 9 representatives. So we just had general 10 questions, are these permissible, it 11 doesn't seem to -- that question does not 12 seem to be addressed in the current 13 regulations as they are. 14 And my last point about social 15 media is that we recommend permitting City 16 employees to identify their title and 17 status as a City officer or employee and 18 identifying the political party that they 19 support in the private social media 20 profile. We weren't sure why the word or 21 was added. 22 If you look at Attachment 3 we 23 have provided several screen shots of 24 examples of why we are not really sure why</p>

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<p style="text-align: right;">58</p> <p>1 this was added because additional content 2 can always help the reader reach the same 3 conclusion. So the first three 4 attachments are screen shots from a very 5 hypothetical City employee's profile that 6 separately -- that seem to follow the -- 7 they seem to be permissible under the 8 current regs where only they are 9 identified as a City employee or as a 10 party member and then below you can see 11 Tweets where you can clearly identify 12 their City employment. So on Page 17 of 13 our testimony, but also part of Attachment 14 2, you can see two examples that may not 15 be permissible. So we just wanted to be 16 absolutely clear that we understood the 17 distinction between the two. That's all 18 on my social media.</p> <p>19 MS. ELLEN MATTLEMAN KAPLAN: I 20 am going to handle the next section but 21 before we leave social media you are 22 welcome to ask not only Krystle but Linda 23 and Sarah for any clarifications you may 24 have on the social media section because</p>	<p style="text-align: right;">60</p> <p>1 And section 8.10 defines what 2 political campaign means and our question 3 is whether this definition would preclude 4 a City employee obviously in his or her 5 off time, not in a City building and not 6 using City resources, from volunteering 7 for a political action committee that is 8 not aimed for the nomination or election 9 of an individual, particular individual, 10 but is instead focused on defeating the 11 nomination or election of another although 12 unnamed individual. For instance, can a 13 City employee volunteer for a political 14 action committee that's entitled Anyone 15 but Trump or Anyone but a Democrat and we 16 just suggest clarification on that point.</p> <p>17 UNIDENTIFIED PERSON: What about 18 recall elections? That seems to be a 19 popular activity now.</p> <p>20 THE CHAIRMAN: We don't have to 21 worry about that in Pennsylvania.</p> <p>22 MS. ELLEN MATTLEMAN KAPLAN: I 23 don't think we have to worry about that in 24 Pennsylvania.</p>
<p style="text-align: right;">59</p> <p>1 they were very gracious in helping us 2 prepare this testimony.</p> <p>3 I have some additional points or 4 clarifications some of which Michael 5 addressed in the revisions that were given 6 to the Board today. I just will quickly 7 run through them. One is section 8.9 8 which states that an appointed officer or 9 employee should not be a member of any 10 national, state or local committee of a 11 political party. It may be obvious to 12 everyone that excluded is when you 13 register as a member of a political party 14 particularly for people who want to vote 15 in a Pennsylvania primary. In any event, 16 we think it would be helpful to say 17 excluding registration on your voter 18 registration form.</p> <p>19 Section 8.11, which is on Page 20 5, addresses the prohibition in the 21 Charter of an appointed City employee from 22 taking part in the management or affairs 23 of a political party or a political 24 campaign.</p>	<p style="text-align: right;">61</p> <p>1 THE CHAIRMAN: Move on.</p> <p>2 MS. ELLEN MATTLEMAN KAPLAN: In 3 section 8.11 states the Charter 4 prohibition includes any political 5 activity this is performed in concert or 6 coordination with a political party, 7 candidate or political campaign and the 8 term partisan political group is removed. 9 And then we note that affiliation with a 10 political party or candidate is included 11 in the definition of a partisan political 12 group.</p> <p>13 So, again, we need clarification 14 of whether City employees again in their 15 off-duty time, not using resources, are 16 permitted to volunteer with partisan 17 political groups as long as these groups 18 are not working in concert or coordination 19 with a political party, candidate or 20 political campaign or affiliated with a 21 political party or candidate. If so, are 22 there any limitations on volunteering with 23 those groups such as phone banking, get 24 out the vote activities and distributing</p>

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<p style="text-align: right;">62</p> <p>1 political literature.</p> <p>2 I think to the extent possible</p> <p>3 the more examples that can be provided</p> <p>4 even if we think the inverse of something</p> <p>5 said in the Regulation should be</p> <p>6 intuitive, it's always best to spell it</p> <p>7 out so people who are covered by Reg 8</p> <p>8 really understand what the limitations</p> <p>9 are.</p> <p>10 And I think for my next point</p> <p>11 Mr. Cooke already talked about defining</p> <p>12 the word campaign in the context of</p> <p>13 permissible and impermissible political</p> <p>14 activity because there are certainly great</p> <p>15 many organizations that engage in campaign</p> <p>16 that are not political, but are rather</p> <p>17 aimed at public policy issues.</p> <p>18 Another revision that we are</p> <p>19 pleased to see was added to the revisions</p> <p>20 today talk about an election to members of</p> <p>21 -- pardon me, talk about members of an</p> <p>22 Election Board. My best guess is most</p> <p>23 people do not know what an Election Board</p> <p>24 is, so again, I would spell out what this</p>	<p style="text-align: right;">64</p> <p>1 reoccurrence when it comes to committee</p> <p>2 people because those elections are coming</p> <p>3 up in 2022 and for Election Boards in</p> <p>4 2021.</p> <p>5 And, finally, this Board and</p> <p>6 General Counsel has issued a great many</p> <p>7 opinions on political activity and to the</p> <p>8 greatest extent possible we think it would</p> <p>9 be great to add examples that come from</p> <p>10 those opinions into the proposed revisions</p> <p>11 to Regulation No. 8. I am thinking about</p> <p>12 Tuesdays with Toomey and some other</p> <p>13 opinions that were issued.</p> <p>14 MS. KRYSTLE BAKER: And we have</p> <p>15 one final recommendation and that's to</p> <p>16 utilize gender-inclusive language moving</p> <p>17 forward with this amendment and future</p> <p>18 Board of Ethics Regulations. Gender</p> <p>19 neutral or gender inclusive language is</p> <p>20 speaking or writing in a way that does not</p> <p>21 discriminate against a particular sex, a</p> <p>22 social gender or gender identity. This</p> <p>23 type of language is heavily used in</p> <p>24 journalistic and academic writing and it's</p>
<p style="text-align: right;">63</p> <p>1 means are the three elected positions at</p> <p>2 the City's polling places. In other</p> <p>3 words, The Judge of Elections, The</p> <p>4 Minority Inspector and Majority Inspector</p> <p>5 because those are elected positions to</p> <p>6 which a City employee cannot -- they can't</p> <p>7 run for those offices.</p> <p>8 And, again, I know that very</p> <p>9 often there are not -- regulations don't</p> <p>10 cross reference to the Charter, but in</p> <p>11 this regard we would ask that the Board</p> <p>12 consider referencing that an employee</p> <p>13 cannot run for certain elected positions.</p> <p>14 Because as the Board knows all too</p> <p>15 painfully well we had, in fact, in the</p> <p>16 spring of 2018 a situation where 25 City</p> <p>17 employees did run for positions as</p> <p>18 committee people and that these</p> <p>19 individuals stated they were not aware</p> <p>20 they couldn't run.</p> <p>21 My very best guess is that even</p> <p>22 fewer understand that they cannot run for</p> <p>23 seats on an Election Board. And I think</p> <p>24 we just want to make sure there is no</p>	<p style="text-align: right;">65</p> <p>1 also being utilized throughout City</p> <p>2 government.</p> <p>3 In May 2019 Philadelphia voters</p> <p>4 supported a ballot question to change</p> <p>5 gender specific references in the City</p> <p>6 Charter and the City's Digital Standards</p> <p>7 also encourage the use of gender neutral</p> <p>8 language whenever possible. So we would</p> <p>9 like for you to consider that as well,</p> <p>10 THE CHAIRMAN: Thank you. Great</p> <p>11 job.</p> <p>12 MR. CREAMER: Should we make</p> <p>13 this an exhibit?</p> <p>14 THE CHAIRMAN: The Board would</p> <p>15 welcome it if you desire to offer the</p> <p>16 document that you kindly prepared as an</p> <p>17 exhibit? We would be happy to receive it</p> <p>18 and mark it and include it in the record,</p> <p>19 so we will call this 3.</p> <p>20 MS. ELLEN MATTLEMAN KAPLAN: You</p> <p>21 are most welcome to do that.</p> <p>22 THE CHAIRMAN: Thank you so</p> <p>23 much.</p> <p>24 State your name and affiliation.</p>

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<p style="text-align: right;">66</p> <p>1 MR. ADAM BONIN: Good afternoon, 2 Mr. Chairman, members of the Board and 3 staff. My name is Adam Bonin, B-O-N-I-N. 4 I am an attorney in private solo practice 5 in Philadelphia whose practice greatly 6 includes political law, including campaign 7 finance and election law.</p> <p>8 My testimony today is not on 9 behalf of any particular candidate of 10 mine, these are my personal observations 11 from years of working with City staffers 12 and recommendations for the Board. And 13 given the extensive commentary before 14 which covers a lot of what I was going to 15 say, I am going to try to be brief.</p> <p>16 There are two particular areas 17 of inquiry. Let me preface all this by 18 saying I recognize the enormously 19 difficult task that the staff has in front 20 of you here and I think of it in two 21 dimensions.</p> <p>22 Number one, that this has to 23 cover City staffers from the level of, you 24 know, people, senior people reporting</p>	<p style="text-align: right;">68</p> <p>1 all of this. 2 What I want to focus on are two 3 areas in which I am hoping that the 4 Regulations could be clarified so that 5 affected employees know what is and isn't 6 allowed of them. 7 The first is Section 8.3C which 8 talks about social media accounts, you 9 know, shall not engage in political 10 activity while using a social media 11 account that is used for City business. 12 Like others before, I'm not entirely sure 13 what it means for accounts to be used for 14 City business. Whether it is only, you 15 know, the use of social media as an 16 authorized and assigned part of one's job 17 responsibilities that you are told to put 18 out things. Whether you are a City 19 staffer in some form or other who 20 occasionally posts things about what they 21 are doing on their day-to-day life and 22 announcing things like today is going to 23 be a snow day, you know, whatever it is 24 that they, you know, occasionally and</p>
<p style="text-align: right;">67</p> <p>1 directly to the Mayor or members of City 2 Council, you know, down to people who work 3 for the Sanitation Department.</p> <p>4 THE CHAIRMAN: The really 5 important people, down to the really 6 important people.</p> <p>7 MR. ADAM BONIN: Well, all of 8 them have the same First Amendment Rights.</p> <p>9 THE CHAIRMAN: True.</p> <p>10 MR. ADAM BONIN: It has to cover 11 a wide scope of people, people who are 12 directly interfacing with the public, 13 people with all different sorts of 14 responsibilities and so I appreciate the 15 difficulty of that here.</p> <p>16 The second is the dimension of 17 elections that these regulations need to 18 address, both from the hyper-local 19 questions as to candidacy for or support 20 for neighbors running for Election Board 21 positions all the way up to materials that 22 are put out there by Presidential 23 campaigns. It is an enormous task to try 24 to come up with something that could cover</p>	<p style="text-align: right;">69</p> <p>1 intermittently use it to discuss City 2 business while it is a personal account 3 that hasn't been authorized by the City or 4 by one's supervisors for City business but 5 it is used for that. I think it is 6 important to clarify whether sort of any 7 use of one's account for City business or 8 to discuss one's work for the City 9 pollutes, for lack of a better word, the 10 account in terms of I'm a user whether, 11 you know, you are really saying whether 12 we're talking about Twitter or Facebook or 13 other forms of social media you actually 14 need to maintain a second account just for 15 that stuff. I would want to push against 16 that as much as possible. 17 People try to live their lives 18 online under one identity and not having 19 to have people look at two places. 20 Obviously, people who are 21 elected City officials, you know, have to 22 maintain two accounts, one for official 23 City business and one for their more 24 general or political work. But I would</p>

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<p style="text-align: right;">70</p> <p>1 hate to have to see that multiply all the 2 way down the board across City government 3 because I think less information is going 4 to get out to the public if the City 5 business part of it is only included in 6 the, for lack of a better term, boring 7 account, whereas the personal account, the 8 one that sort of attracts attention all 9 the time, you know, can't talk about City 10 business because the person can't use it 11 to talk about anything else.</p> <p>12 I am not entirely sure how to 13 resolve this but I can look at this and 14 look at language like that as used for 15 City business and I have real concerns as 16 to what that means. And I think that 17 clarity in some direction or other is 18 appropriate.</p> <p>19 THE CHAIRMAN: Would a way of 20 dividing the -- you know, we have this 21 issue in Clinton emails, I mean this is a 22 tremendously complex issue. Is a way to 23 divide it hypothetically who paid for the 24 account?</p>	<p style="text-align: right;">72</p> <p>1 don't know if the answer is it has to be 2 an authorized City account. That's sort 3 of, you know, and I don't know how we 4 would define that or how the departments 5 would define that.</p> <p>6 THE CHAIRMAN: We have another 7 issue floating out there right now dealing 8 with official records and the Sunshine Act 9 or retention of records.</p> <p>10 MR. ADAM BONIN: Sure.</p> <p>11 THE CHAIRMAN: We know that 12 tweets now are official announcements. I 13 mean those are recognized, but I am 14 thinking about the local thing where 15 people in City government have not 16 retained emails and so forth, so it's a 17 big issue.</p> <p>18 MR. ADAM BONIN: It is a big 19 issue and I don't think you can go through 20 this regulatory process without coming up 21 with some better definition for what that 22 means.</p> <p>23 THE CHAIRMAN: Okay.</p> <p>24 MR. ADAM BONIN: The other</p>
<p style="text-align: right;">71</p> <p>1 MR. ADAM BONIN: You don't have 2 to pay to establish a Twitter account or a 3 Facebook account or an Instagram account, 4 I mean they are all free.</p> <p>5 THE CHAIRMAN: Okay. See, I 6 don't do any of that, I wouldn't know.</p> <p>7 JUDGE BECK: To get 8 clarification because the Judiciary has 9 been down this road in their interchange 10 of pornography and some of it was done on 11 private accounts and some of it was done 12 on state accounts, but it didn't matter.</p> <p>13 MR. ADAM BONIN: But it didn't 14 matter in that case because it wasn't 15 protected activity no matter, you know, 16 and it brought disgrace upon the Judiciary 17 no matter where it was done. Here we are 18 talking about activity that sort of is 19 core First Amendment activity when it 20 doesn't conflict with the Charter. And, 21 obviously, I mean even the First Amendment 22 supercedes the Charter, but the Charter 23 should have maximal effect to accomplish 24 its goals within those parameters. And I</p>	<p style="text-align: right;">73</p> <p>1 question and this really is a social media 2 question, what it means and this is now in 3 8.11E and in 8.14C. We share information 4 at the request of a candidate or political 5 actor in some terms. You know, when 6 something is put on social media sort of 7 the implicit message all the time is 8 please share this. Or, you know, if a 9 campaign sends out a bulk email to all 10 100,000 people on its list to promote an 11 issue or promote a thing, is that what we 12 mean by acting at the request of a 13 campaign or what the regulation, you know, 14 are we really getting at what the 15 regulation means. Are we talking about 16 more direct contact with campaign staffers 17 as opposed to this sort of announcement 18 into the cloud as to a thing, you know. I 19 mean does it matter if the tweet says 20 please retweet, does it matter? Again, I 21 think there needs to be clarity as to what 22 it means.</p> <p>23 One of the, you know, an example 24 that occurred to me most recently on this,</p>

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<p style="text-align: right;">74</p> <p>1 there was a rally in the City last week 2 regarding trying to preserve Hahnemann 3 Hospital. Bernie Sanders who is a 4 candidate for president was speaking at 5 that rally. Helen Gym and I believe other 6 members of council who are up for 7 re-election this year, were speaking at 8 that rally. They posted things on their 9 social media pages about the Hahnemann 10 issue, not about their re-election but 11 just about the Hahnemann issue. Although, 12 one could argue that implicitly anything 13 that they are doing, that they are 14 promoting on their campaign account is in 15 effect campaign activity because it's, you 16 know, support Hahnemann and I'm a good 17 person because I support Hahnemann and, 18 therefore, you should vote for me. When 19 those kinds of tweets are out there, that 20 kind of social media are out there and we 21 are dealing with a Regulation that says an 22 appointed officer or City employment 23 officer or employee shall not take part in 24 the management or affairs of any political</p>	<p style="text-align: right;">76</p> <p>1 MR. ADAM BONIN: Describe the 2 ways you could limit it? 3 JUDGE BECK: Yes. 4 MR. ADAM BONIN: Defining at the 5 request of can mean something closer to 6 the coordination rules that we have under 7 campaign finance law. That there actually 8 needs to be some direct discussion 9 between, you know, the individual employee 10 and the candidate or agents of the 11 campaign, you know, other than sort of in 12 a mass public message, whether it's a 13 tweet, or you know, a bulk campaign email. 14 If it really is, you know, we the campaign 15 are directing you City employee in 16 particular, you know, to do this thing, or 17 you know, you the City employee directly 18 talk to the campaign about wanting to do a 19 thing, if that brings you in, but merely 20 responding to a public notice, you know, 21 or a bulk email does not constitute acting 22 at the request of the candidate. 23 The final thing I want to say 24 because it came up in the new revisions</p>
<p style="text-align: right;">75</p> <p>1 party to include activity performed in 2 concert or coordination with any party or 3 candidate, then that says sharing or 4 distributing information via social media 5 at the request of a political party, 6 candidate or political campaign. If they 7 say spread the word at the rally is that 8 enough, you know, if it's in their tweet 9 please spread the word about this, does 10 that bring it in or is anything that they 11 put on social media by definition an 12 implicit request that others spread the 13 word including City employees and, 14 therefore, such activities, you know, 15 should not be retweeted, retransmitted, et 16 cetera. 17 Again, I think that there are 18 ways to do this to provide clarity and 19 good notice, but I don't believe that just 20 saying at the request of by itself given 21 the social media age is enough. 22 JUDGE BECK: If you think there 23 are ways of doing it, just describe the 24 ways.</p>	<p style="text-align: right;">77</p> <p>1 today, this is 8.16. The examples for 2 Subpart F, examples 8 and 9. Where it 3 says that, you know, okay, you can get one 4 bumper sticker from the campaign and 5 that's okay. You can't get a box. And 6 then it says, you know, you can distribute 7 campaign literature as long the literature 8 was not obtained directly from the 9 campaign. I don't know how far that takes 10 you because we also have later in the 11 Regulations under renumbered Regulation 12 8.27 that you can't evade the Regulation 13 by doing indirectly or by directing 14 someone else to help you that which you 15 cannot do directly. So if you can't 16 obtain the literature yourself, then I'm 17 not sure what kind of activity that, you 18 know, example 9 in particular, is supposed 19 to cover unless people spontaneously just 20 start dropping off literature at your 21 house. But I don't know what this means 22 given the catch-all language about not 23 doing indirectly what you can't do 24 directly. I guess the one last thing I</p>

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<p style="text-align: right;">78</p> <p>1 would raise is Subpart D, example 5. An 2 employee may not --</p> <p>3 JUDGE BECK: What page are you 4 on?</p> <p>5 MR. ADAM BONIN: Page 4 of the 6 newly revised. An employee may not share 7 a candidate's fundraiser event on 8 Facebook. My only question as to that is 9 whether sort of the event invite must make 10 clear like on the face of the Facebook 11 announcement that it is a fundraiser event 12 or whether, you know, if it's not until 13 you get to the event page that you realize 14 it's a fundraiser. I'm worried about 15 looping in City employees inadvertently 16 because they see that there is an event 17 for someone that they like and they don't 18 realize that money is being raised there. 19 Again, I think you can legitimately rope 20 all of that in, but just be clear about 21 what it means. I am someone who 22 absolutely believes that the more examples 23 the better throughout this, whether it's 24 within this document or in supplemental</p>	<p style="text-align: right;">80</p> <p>1 communications consultant based here in 2 Philadelphia. I'm a former City employee, 3 having spent nearly two years as a 4 Director of Communications on City Council 5 and I am related to another City employee.</p> <p>6 THE CHAIRMAN: Okay.</p> <p>7 MR. JOSEPH CORRIGAN: Good 8 afternoon, Chairman Reed, Honorable Vice 9 Chairwoman Beck, and Members of the Board 10 and staff. As someone who switched 11 between campaigns and politics and 12 campaign politics to government and back 13 and I have advised elected officials, I 14 think that for a non-lawyer I am as well 15 versed on Regulation 8 as I could be. And 16 knowing those rules has been incredibly 17 helpful with my clients and myself and the 18 Board and staff have been extremely 19 willing to provide guidance along the way. 20 A lot of the things that I have prepared 21 here have already been spoken about by a 22 number of the other testifiers. You know, 23 and I am here today to speak as one who 24 could hypothetically be impacted as</p>
<p style="text-align: right;">79</p> <p>1 documents provided by the Board staff. 2 And certainly we have seen recently, we 3 talked about this last month, the recent 4 frequently asked questions list for the 5 lobby restrictions was a really invaluable 6 addition to the public understanding as to 7 what those regulations mean and I think 8 the more examples that can be provided 9 with this the better. You need to be 10 flexible and you need a document that can 11 be constantly updated as technology 12 changes. With that I have nothing 13 further. Thank you.</p> <p>14 THE CHAIRMAN: Thank you. 15 Please state your name and 16 affiliation.</p> <p>17 MR. JOSEPH CORRIGAN: Good 18 afternoon, my name is Joseph Corrigan. 19 I'm a political and communications 20 consultant.</p> <p>21 THE CHAIRMAN: Can you spell 22 your name?</p> <p>23 MR. JOSEPH CORRIGAN: Sure. 24 It's C-O-R-R-I-G-A-N. I'm a political and</p>	<p style="text-align: right;">81</p> <p>1 someone who has a job in communications, 2 and who could hypothetically be hired by 3 the City at any time to come back and 4 continue the same work that I am doing now 5 on behalf of the people of Philadelphia. 6 And I think I also like many before me 7 take the largest issue with proposed 8 addition of subsection C in section 8.3 9 under Subpart B. I think it is --</p> <p>10 THE CHAIRMAN: What is it? 11 MR. JOSEPH CORRIGAN: I'm sorry, 12 this is the one on --</p> <p>13 THE CHAIRMAN: Page 3? 14 MR. JOSEPH CORRIGAN: Page 3, 15 this is using a social media account that 16 is used for City business.</p> <p>17 THE CHAIRMAN: Okay. 18 MR. JOSEPH CORRIGAN: And the 19 social media accounts to my knowledge used 20 at the City level, and the Chairman 21 alluded to this in his last comments about 22 not being bound by the same archiving 23 rules as say govern the White House. It's 24 generally not assumed that being employed</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">82</p> <p>1 by the City, an individual just by nature 2 of being employed by the City, an 3 individual is surrendering their social 4 media account forever to the City. But 5 this addition does on its face appear to 6 be that, you know.</p> <p>7 And our City and its officials 8 often stand in stark opposition to many 9 state and federal policies and 10 policymakers. The proposed addition to 11 Regulation 8 would effectively either 12 censor those whose job it is to amplify 13 the voice of the principal or the 14 department they work for or force 15 employees to relinquish their right to 16 exercise free speech on a platform that is 17 neither owned or controlled by the City 18 until such time that their employment 19 ends. If the purpose of this addition is 20 to keep employees from using the 21 quote/unquote official social media 22 accounts like @Philastreet to post 23 political messages, which would be 24 exceptionally dumb, then additional</p>	<p style="text-align: right;">84</p> <p>1 Because this applies to such a 2 limited number of positions within the 3 City government, I would also consider an 4 exemption for designated spokespeople akin 5 to the political fund designees in the 6 U.S. Senate, without the funds part 7 obviously. And, you know, the specific 8 examples that I have on this were --</p> <p>9 THE CHAIRMAN: If I understand 10 what you just said, I think what you are 11 saying is if we retained a formulation 12 like this we would be -- there should be a 13 carve out from it for people who are 14 whatever you just described designated?</p> <p>15 MR. JOSEPH CORRIGAN: Designated 16 spokespeople, designated communications.</p> <p>17 THE CHAIRMAN: I just wanted to 18 make sure I was following you.</p> <p>19 MR. JOSEPH CORRIGAN: Yes. You 20 know, and the specific example is if a 21 spokesperson for a department uses a 22 Twitter account under their own name to 23 retweet a department's official account or 24 to explain to a reporter that their boss's</p>
<p style="text-align: right;">83</p> <p>1 wording ought to be added to indicate 2 social media account whose official 3 purpose is City business. Additionally, I 4 suggest defining City business. I have 5 specific examples in which one could claim 6 a social media post to be City business if 7 it's posted by an employee even off duty, 8 which would then disqualify them from 9 posting politically even off the clock.</p> <p>10 As a spokesman I was expected to 11 back my boss up online. I mean there are 12 a couple of other spokespeople in the room 13 right now. Explaining issues to 14 reporters, further amplifying our message 15 and talking about events and sometimes 16 hitting back against another elected 17 official with a bad idea. Those elected 18 officials become candidates as all members 19 of City Council are right now and I could 20 think of one very big one who has just 21 become a candidate for re-election. It 22 becomes impossible for spokespeople to do 23 the job they have been hired to do while 24 abiding this proposed addition.</p>	<p style="text-align: right;">85</p> <p>1 position on an issue, their personal 2 Twitter account could effectively be 3 surrendered to the City for the rest of 4 the time they are employed. I don't 5 believe that this is the intention of the 6 addition, it's just a plain English 7 reading of it.</p> <p>8 But an even more innocuous 9 seeming use could be that a sanitation 10 worker wishes to remind his or her family 11 and neighbors via Facebook that during the 12 week of a national holiday that trash 13 pickup will be delayed. While this may 14 seem like common knowledge to all of us 15 who are Philadelphians, the worker still 16 using their social media account to 17 propagate a message from City government 18 and, therefore, under a certain reading of 19 this section would no longer be able to, 20 even while off duty, make statements on 21 their account about political parties or 22 candidates effectively surrendering their 23 right to free speech until such time they 24 are no longer employed.</p>
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<p style="text-align: right;">86</p> <p>1 To piggyback off what Mr. Bonin 2 mentioned, another subsection, I'm sorry, 3 I will go to the page here. Section 4 8.11F. You know, sharing or distributing 5 information based on social media at the 6 request of a political party would 7 effectively ban an employee from 8 retweeted a political campaign only if 9 the original tweet stated something like 10 please retweet or retweet if you agree. 11 Otherwise, it would clear employees or 12 officials who are off duty from sharing 13 anything else.</p> <p>14 Additionally, every platform has 15 a button to share content. On Facebook it 16 is the share button, on Twitter it's a 17 retweet, it could be argued as Mr. Bonin 18 said that any post made by a political 19 party, candidate or political campaign 20 contains an implicit suggestion to share 21 to one's own personal network. So are we 22 banning employees from sharing anything 23 from a political entity while they are off 24 duty.</p>	<p style="text-align: right;">88</p> <p>1 clocks out at 4:30 p.m. on a Monday from 2 work, likes a post by a political 3 candidate at 4:31 and someone who follows 4 them regularly, looks at what they liked 5 in the last 24 hours, a like at 4:31 and a 6 like at 4:30 appear to be exactly the 7 same. And so there is virtually no way to 8 ascertain except through, you know, 9 extensive subpoenas of social media giants 10 when those likes occur. And my fear is 11 also that this would push a lot of folks 12 underground. And while Page 13 Subpart K 13 does say that evasion by indirect means 14 are prohibited, you know, in the City of 15 Philadelphia we have seen burner accounts 16 take people down. People will set up fake 17 Twitter accounts, fake Facebook accounts, 18 fake Instagram accounts with fake email 19 addresses, et cetera, just to get around 20 the rules and almost never be caught. And 21 I'm not saying it's a reason not to 22 regulate, it's just a fact. The reason ~ 23 that the former vice president of the 24 Sixers was caught was artificial (1) (2)</p>
<p style="text-align: right;">87</p> <p>1 And the only other issue that I 2 had was with example 8 in Subpart F, which 3 is on Page 7. It has to do with an 4 off-duty employee using their personal 5 mobile phone and Instagram account, may 6 like an Instagram post made by a candidate 7 for Mayor. And it previously stated a 8 candidate for president. And, look, the 9 average adult spends about three hours a 10 day on their smart phone, that's more time 11 than any other medium other than digital 12 television. People check their phones 13 between customers, at lunch, and I hate to 14 say this but while in the bathroom. This 15 Subpart states that when an employee is 16 either on lunch or on a cigarette break or 17 in the bathroom, while strolling their 18 social media feeds, they can like a post 19 by any friend, a celebrity, a brand, or a 20 cat, but they need to skip hitting the 21 like button if they scroll over a 22 candidate for office.</p> <p>23 Additionally, with the way a 24 platform like Instagram works, if someone</p>	<p style="text-align: right;">89</p> <p>1 intelligence was used to basically look at 2 his past Tweets and recognize patterns and 3 recognize that he was Eric, Junior and 4 that's a very niche reference there, I 5 recognize that.</p> <p>6 But I do think that at a time 7 when, you know, certain elements both 8 foreign and domestic are attempting to 9 misinform voters with social media, the 10 more information available on social media 11 accounts the better others can determine 12 information to be legitimate or not. So 13 it makes sense for people to Tweet under 14 their real name and not an alias and 15 display their credentials or more about 16 who they are and their bios rather than 17 less. Thank you.</p> <p>18 THE CHAIRMAN: Thank you.</p> <p>19 MR. CREAMER: If I could just 20 say I would like to have your written 21 testimony, you have extensive testimony 22 and offer it as an Exhibit?</p> <p>23 MR. JOSEPH CORRIGAN: Will do, 24 absolutely.</p>

23 (Pages 86 to 89)

ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

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<p>1 THE CHAIRMAN: We are up to 2 four. Thank you very much. 3 Anyone else? Hearing none, 4 let's see what we are going to do here. I 5 declare the public hearing on Board 6 Regulation No. 8 closed. Thank you for 7 attending.</p> <p>8 - - -</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>90</p>	<p>92</p> <p>Exhibit 1</p>
<p>1 C E R T I F I C A T I O N</p> <p>2</p> <p>3</p> <p>4 I, Janet M. Maloney, 5 Professional Court Reporter and Notary 6 Public, do hereby certify that the 7 foregoing is a true and accurate 8 transcript of the stenographic notes taken 9 by me in the aforementioned matter.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Date: 7/31/19</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 _____ 24 JANET M. MALONEY</p>	<p>91</p>	<p>93</p> <p>Exhibit 2</p>

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ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

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Exhibit 4	95

25 (Pages 94 to 95)

ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES

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Exhibit 1

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CITY OF PHILADELPHIA
BOARD OF ETHICS

MEMORANDUM

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

FROM: Michael Cooke, Acting General Counsel *MSC/Acting*

DATE: June 20, 2019

SUBJECT: Board of Ethics Regulation 8 ("Political Activity")

CC: Richard Feder, Chief Deputy Legislation & Counsel to Solicitor
(via email)

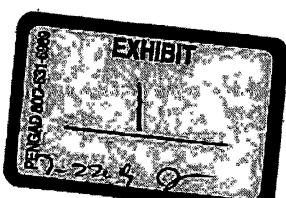
At a public meeting on June 19, 2019, the Board of Ethics voted to approve for public comment the proposed amendments to Regulation 8 ("Political Activity") that are attached. In accordance with Section 8-407 of the Home Rule Charter, the proposed amendments have been submitted to the Law Department, which has given approval as reflected in the attached Law Department memorandum. Please advertise these proposed amendments to Regulation 8 and make them available for public inspection.

In accordance with past practice that our Office has previously discussed with Commissioner Leonard, the Board has already scheduled a public hearing on these proposed amendments to be held on July 31, 2019 at 1:00 p.m. at this location: Philadelphia Board of Ethics, One Parkway Building, 1515 Arch Street, 18th Floor, Philadelphia, PA 19102.

It would be very helpful for the Department of Records' newspaper legal notice of these proposed amendments to include the time and location of the July 31, 2019 public hearing on these proposed amendments. The Board will also separately arrange for newspaper and website notice of the July 31, 2019 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 8 Proposed Amendments Approved for Public Comment



M e m o r a n d u m

TO: Shane Creamer, Executive Director, Board of Ethics
FROM: Richie Feder, Chief Deputy City Solicitor
DATE: June 20, 2019
SUBJECT: Amendment to Regulation No. 8: Political Activity

I have reviewed the Proposed Amendment Approved By the Board on June 19, 2019, relating to Regulation No. 8: Political Activity (attached), and find the proposed amendments to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these Regulations to the Department of Records where they will be made available for public inspection.

10190
10065
/s/ Richard Feder
RICHARD FEDER
Chief Deputy City Solicitor

Attachment

2019 JUN 21 AM 10:14:53

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 8
POLITICAL ACTIVITY**

SUBPART A. SCOPE; DEFINITIONS.

8.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3) & (4) as applied to appointed City officers and employees, but not to elected officials. The examples and lists of permissible and prohibited behavior provided in this Regulation are for illustration and are not exhaustive.

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

- a. Appointed officer.** An individual who is appointed to any position in a City department, agency, office, board, or commission, whether paid or unpaid, but not including elected officials.
- b. Board.** The Board of Ethics.
- c. Blog.** A website that displays in chronological order the postings of one or more individuals.
- d. Candidate.** An individual who i) files nomination petitions or papers for public elective office, or ii) publicly announces his or her candidacy for public elective office.
- e. City.** City of Philadelphia.
- f. Contribution intended for a political purpose.**
 - i. Money or things having a monetary value received by a candidate or his or her agent for use in advocating for or influencing the election of the candidate; and
 - ii. Money or things having a monetary value received by a political committee, political party, political campaign, or partisan political group.
- g. Election.** Any primary, general, or special election for public elective office.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

- h. **Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay, but not including:
 - i. Elected officials; or
 - ii. An employee on unpaid leave to be a full-time elected officer or appointed staff representative of a City employee union.
- j. **Family member.** A parent, spouse, life partner, child, brother, sister or like relative-in-law.
- j. **Life partner.** An individual who has a long-term committed relationship with another individual of any gender, provided that both individuals meet the same criteria as set out in The Philadelphia Code Section 9-1106 (2)(a)(i)-(vi).
- k. **On duty.** An appointed officer or employee is on duty:
 - i. During normal working hours, which for those with fixed work schedules includes the time between the start and end of the workday excluding a lunch break;
 - ii. When performing the duties of his or her City jobs or appointments; or
 - iii. When acting in his or her official capacity as a City appointed officer or employee.
- l. **Partisan political group.** Any committee, club, or other organization that is affiliated with a political party or candidate or whose primary purpose is to engage in political activity.
- m. **Political.** Related to a political party, candidate, or partisan political group.
- n. **Political activity.** An activity directed toward the success or failure of a political party, candidate, or partisan political group.
- o. **Political campaign.** Actions taken by a candidate or his or her supporters to obtain the candidate's an individual's nomination or election to public elective office.
- p. **Political party.** Includes any national, state, or local political party, or any affiliate thereof, such as a ward committee.
- q. **Public elective office.** Any public office for which candidates are nominated or elected as representing a political party.
- r. **Social Media networking website.** Facebook, Twitter, Myspace, Linkedin, Instagram, Reddit, a blog, or any similar website or Internet platform.

8.2 Applicability. Except where expressly indicated otherwise, the provisions of this Regulation apply to all appointed officers and employees. Additional rules for members of boards and commissions can be found at Subpart J I, and additional rules for employees of City Council can be found at Subpart K J.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

**SUBPART B. POLITICAL ACTIVITY ON DUTY OR WHILE USING CITY
RESOURCES IS PROHIBITED**

8.3 An appointed officer or employee shall not engage in political activity while:

- a. On duty;
- b. In uniform, or while wearing a badge or other insignia that identifies him or her as a City officer or employee;
- c. Using a social media account that is used for City business;
- d. e. Using any City-owned or leased resources, such as telephones, smart phones Blackberries, tablets, vehicles, printers, computers, or other supplies or equipment; or
- e. f. In City Hall or in any other City-owned or leased building, property, or office space, except that an appointed officer or employee may, while not on duty, attend a political event held in a City-owned or leased building, property, or office space if the event is open to the public.

EXAMPLES FOR SUBPART B

Example 1: An employee may not display political stickers in her City workplace.

Example 2: An employee may not wear a political button while in his uniform, even if he is not on duty.

Example 3: An employee may not send an email or share information via social media that supports a candidate while using the City's email system or a City computer or City provided smart phone Blackberries.

Example 4: An employee may not sign a nominating petition while in City Hall or in a City-owned or leased building or office.

**SUBPART C. USE OF CITY POSITION FOR POLITICAL PURPOSES IS
PROHIBITED**

8.4 An appointed officer or employee shall not use his or her authority, influence, title, or status as a City officer or employee for any political purpose. Activities prohibited by this Paragraph include:

- a. Using his or her title or status as a City officer or employee while participating in political activity;
- b. Using his or her authority or influence to coerce any individual to participate in political activity; and
- c. Requesting, directing, or suggesting that a subordinate officer or employee participate in political activity.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

EXAMPLES FOR SUBPART C

Example 1: An employee who writes a letter to the editor expressing his opinion on a political matter may not make reference to his title or his status as a City employee.

Example 2: An appointed officer may not send her subordinate employees an email that promotes the success or failure of a political party.

Example 3: An employee may not reference her title or status as a City employee in a social media post that supports or opposes a candidate.

**SUBPART D. COLLECTING, RECEIVING, OR SOLICITING
CONTRIBUTIONS INTENDED FOR A POLITICAL PURPOSE
IS PROHIBITED**

8.5 An appointed officer or employee shall not directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose.

8.6 An appointed officer or employee shall not authorize a political committee to collect, receive, or solicit contributions intended for a political purpose on his or her behalf.

8.7 An appointed officer or employee shall not permit, authorize, or direct others to collect, receive, or solicit contributions intended for a political purpose for the appointed officer or employee's benefit or on behalf of the appointed officer or employee.

8.8 An appointed officer or employee, except for an appointed officer or employee of the Police Department, may make contributions intended for a political purpose. An appointed officer or employee of the Police Department may make a contribution intended for a political purpose to a political committee that is not affiliated with a candidate, but may not make such a contribution to a candidate or a committee affiliated with a candidate.

EXAMPLES FOR SUBPART D

Example 1: An employee may not sell tickets to a candidate's fundraiser event.

Example 2: An employee (but not an employee of the Police Department) may purchase tickets to a candidate's fundraiser event.

Example 3: An employee may not be a treasurer of a political committee.

Example 4: An employee may not use a political committee to raise money for a potential candidacy.

Example 5: An employee may not share a candidate's fundraiser event on Facebook.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
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SUBPART E. OTHER PROHIBITED POLITICAL ACTIVITY

8.9 An appointed officer or employee shall not be a member of any national, state, or local committee of a political party.

8.10 An appointed officer or employee shall not be an officer of a partisan political group or a member of a committee of a partisan political group.

8.11 An appointed officer or employee shall not take any part in the management or affairs of any political party, or political campaign–partisan political group, which includes any political activity that is performed in concert or coordination with a political party, candidate, or political campaign–partisan political group, such as:

- a. Circulating or initiating nomination petitions or papers for public elective office;
- b. Being a candidate for public elective office or political party office;
- c. Serving as a delegate to a political party convention;
- d. Participating in get-out-the-vote activities organized or sponsored by a political party, candidate, or political campaign–partisan political group; or
- e. Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or political campaign–partisan political group.
- f. Sharing or distributing information via social media at the request of a political party, candidate, or political campaign.

EXAMPLES FOR SUBPART E

Example 1: An employee may not serve as a committee person or ward leader.

Example 2: An employee may not distribute campaign posters that she obtains from a candidate's campaign office.

Example 3: An employee may not volunteer at a phone bank organized by a candidate's campaign.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

SUBPART F. PERMISSIBLE EXPRESSION AND POLITICAL ACTIVITY

8.12 An appointed officer or employee may register and vote in any election.

8.13 An appointed officer or employee may be a member of a political party or a partisan political group.

8.14 An appointed officer or employee may engage or participate in personal political expression and activity that is directed toward the success or failure of a political party, candidate or political group, including the following, so long as he or she complies with Subparts B, C, D, E, and H and so long as he or she does not do so in concert or coordination with a political party, candidate, or political campaign partisan political group:

- a. Publicly expressing an opinion on political matters or candidates, including in letters to the editor, or on the internet, or via social media;
- b. Signing a political petition, such as a nominating petition, including those that are circulated by a political party, candidate or political campaign partisan political group;
- c. Distributing political literature that was not created by but not at the request of a political party, candidate or political campaign partisan political group;
- d. Making contributions intended for a political purpose (except for appointed officers and employees of the Police Department); and
- e. Attending political rallies, conventions, fundraisers or other political events solely as a spectator.
- f. An appointed officer or employee's profile page on a social networking website may identify the officer or employee's Identifying his or her title or status as a City officer or employee and may also identify or the political party the appointed officer or employee he or she supports in his or her social media profile.
[NOTE: This sub-paragraph was moved from prior Subparagraph 8.19(a) below]
- g. An appointed officer or employee may Responding to, tagging, tweeting at, retweeting, friending, liking, or follow following the Twitter social media account, post, or page of a political party, candidate, or political campaign partisan political group.
[NOTE: This sub-paragraph was moved from prior Subparagraph 8.19(d) below]

8.15 Political activities organized by a civic, community, labor, or professional organization. An appointed officer or employee may engage or participate in activities organized or sponsored by a civic, community, labor, or professional organization that are directed toward the success or failure of a political party, candidate, or partisan political group so long as the organization has not acted in concert or coordination with that political party, candidate, or political campaign partisan political group.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

8.16 Political buttons, signs, and stickers. As long as he or she complies with the requirements of Subparts B and C, an appointed officer or employee may wear political buttons and may display political signs or stickers, including buttons, signs, and stickers he or she obtains from a political party, candidate, or partisan political group. However, an appointed officer or employee shall not distribute buttons, signs, or stickers that he or she obtains from a political party, candidate, or political campaign partisan political group.

EXAMPLES FOR SUBPART F

Example 1: An employee may place in his yard a sign supporting a candidate.

Example 2: An employee may wear a political party button when the employee is not on duty, at her City workplace, or in uniform.

Example 3: An employee may print at her own expense one thousand fliers that state her personal opinion that a specific candidate is the best suited for public office. She may distribute the fliers at a shopping mall on the weekend, but may not distribute them in her City workplace. She also may not distribute fliers printed or paid for by the candidate's campaign committee, a political party, or a political campaign partisan political group.

Example 4: An employee may attend a fundraising event that benefits a candidate, but he may not organize, distribute invitations to, or sell tickets to the fundraiser.

Example 5: An employee may be a member of the audience at a political gathering organized by a candidate, but she may not appear on stage with a candidate or address the audience at such a gathering.

Example 6: An employee may volunteer at a phone bank that promotes a candidate and that is organized by the employee's union, but not if the union has coordinated with that candidate's campaign.

Example 7: An off duty employee may "like" an Instagram post made by a candidate for President using her personal mobile phone and Instagram account.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

SUBPART G. ACTIVITY THAT IS NOT POLITICAL IS PERMITTED

8.17 An appointed officer or employee may engage or participate in expression and activity that is not political and is not directed toward the success or failure of a political party, candidate, or partisan political group. Such activity or expression includes the following so long as it is not performed in concert or coordination with a political party, candidate, or political campaign partisan political group:

- a. Campaigning for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances;
- b. Participating in civic, community, labor, or professional organizations, including seeking election to positions within such organizations;
- c. Circulating petitions related to referendum questions, constitutional amendments, federal or state laws, municipal ordinances, or other matters of public interest ~~not related to a political party, candidate, or partisan political group~~; and
- d. Assisting in voter registration drives that are not organized or sponsored by a political party, ~~a candidate, or a political campaign partisan political group~~.

SUBPART H. USE OF SOCIAL MEDIA

8.18 Blogs. ~~An appointed officer or employee may maintain a blog in which he or she expresses support or opposition to political parties, candidates, or partisan political groups so long as he or she:~~

- a. ~~Does not do so write or maintain the blog while on duty, in any City owned or leased building, property, or office space, or while using any City resources;~~
- b. ~~Does not use his or her title or status as a City officer or employee in social media posts on the blog;~~
- c. ~~Does not republish post anything on his or her blog that was created by, or links to information created by, a political party, a candidate, or political campaign partisan political group; and~~
- d. ~~Does not suggest, encourage or ask readers of the blog to make contributions intended for a political purpose.~~

8.19 Social networking websites.

- a. ~~An appointed officer or employee's profile page on a social networking website may identify the officer or employee's title or status as a City officer or employee and may also identify the political party the appointed officer or employee supports.~~
[NOTE: This sub-paragraph (a) was moved to new Subparagraph 8.14(f) above]
- b. ~~An appointed officer or employee may express support or opposition to political parties, candidates, or partisan political groups in posts to a social networking website so long as he or she:~~

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

- i. ~~Does not make such posts to the website while on duty, in any City owned or leased building, property, or office space, or while using any City resources;~~
 - ii. ~~Does not use his or her title or status as a City officer or employee in such posts to the website;~~
 - iii. ~~Does not include in such posts anything that was created by, or links to information created by, a political party, candidate, or partisan political group; and~~
 - iv. ~~Does not suggest, encourage or ask others to make contributions intended for a political purpose.~~
 - c. ~~An appointed officer or employee may become a "friend" or "fan" of, or "like" the page of a political party, candidate, or partisan political group.~~
 - d. ~~An appointed officer or employee may follow the Twitter account of a political party, candidate, or partisan political group.~~
- [NOTE: This sub-paragraph (d) was moved to new Subparagraph 8.14(g) above]

SUBPART I H. FAMILY MEMBER OF A CANDIDATE

8.20 An appointed officer or employee who is the family member of a candidate may appear in photographs of the candidate's family that appear in a political advertisement, broadcast, campaign literature, or similar material. A family member also may attend political events with the candidate. However, the appointed officer or employee who is the family member shall not engage in any other activity that would be prohibited under this Regulation.

EXAMPLES FOR SUBPART I H

Example 1: An employee who is the spouse of a candidate may stand in the receiving line and sit at the head table during a political fundraising dinner honoring the spouse, but he may not organize, speak at, distribute invitations to, or sell tickets to the event.

Example 2: An appointed officer who is the daughter of a candidate may appear in a family photograph that is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

SUBPART J I. MEMBERS OF CITY BOARDS AND COMMISSIONS

8.21 Boards and commissions that exercise significant powers of government. A member of a City board or commission who is not otherwise an appointed officer or employee shall be subject to the Regulation as follows:

- a. A member of a City board or commission that is named in the Home Rule Charter exercises significant powers of government shall be fully subject to the provisions of this Regulation, except as provided in Paragraph 8.21(b).
- b. A member of a board or commission that does not exercise significant powers of government, such as the following, shall be subject to the provisions of this Regulation only to the extent provided for in Paragraph 8.22:
 - i. Youth Commission
 - ii. Jobs Commission
 - iii. Commission for Women
 - iv. Housing Advisory Board
 - v. Commission on African-American Males
 - vi. Commission on Universal Pre-Kindergarten
 - vii. Board of Trustees of Philadelphia Prisons
 - viii. Commission on Parks and Recreation

The boards and commissions that exercise significant powers of government are the following: Art Commission

- a. Board of Building Standards
- b. Board of Ethics
- c. Board of Health
- d. Board of Labor Standards
- e. Board of Pensions and Retirement
- f. Board of Revision of Taxes
- g. Board of Surveyors
- h. City Planning Commission
- i. Civil Service Commission
- j. Commission on Human Relations
- k. Fair Housing Commission
- l. Free Library of Philadelphia, Board of Trustees
- m. Historical Commission
- n. Historical Commission Architectural Committee
- o. Historical Commission Committee on Historic Designation
- p. Licenses & Inspections Review Board
- q. Malt and Brewed Beverage Hearing Board
- r. Philadelphia Gas Commission
- s. Philadelphia Prisons Board of Trustees
- t. Sinking Fund Commission

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

- u. Tax Review Board
- v. Zoning Board of Adjustment
- w. Zoning Code Commission

8.22 Advisory boards and commissions. A member of a board or commission not listed in Paragraph 8.21 named in the Charter shall only be subject to those provisions of this Regulation that prohibit (i) political activity while on duty or using City resources (Subpart B), or (ii) the use of City position for political activity (Subpart C). :

- a. Shall be subject to the following provisions of this Regulation: Subpart B (on duty or while using City resources), Subpart C (use of City position), Subpart L (evasion) and Subpart M (penalties); and
- b. Shall not be subject to the following provisions of this Regulation: Subpart D (contributions intended for a political purpose), Subpart E (other prohibited political activity) and Subpart H (use of social media).

SUBPART K J. CITY COUNCIL EMPLOYEES

8.23 An employee of City Council is subject to all of the shall not be subject to the following provisions of this Regulation except: Subpart E (other prohibited political activity) and Paragraphs 8.4(a) (use of title), 8.18(b) (use of title in blog posts), 8.18(e) (links to political websites in blog posts), 8.19(b)(ii) (use of title in political posts to social networking sites), and 8.19(b) (iii) (links to political websites in posts to social networking sites).

8.24 An employee of City Council shall not collect, receive, or solicit contributions intended for a political purpose as prohibited by Subpart D.

EXAMPLES FOR SUBPART K J

Example 1: A City Council employee may not be a treasurer of a political committee.

Example 2: A City Council employee may not use a City-owned photocopier to copy campaign literature.

Example 3: A City Council employee may not circulate or sign a nominating petition while in City Hall or in a City-owned or leased building or office.

Example 4: A City Council employee may not ask an individual to make a contribution intended for a political purpose.

Example 5: A City Council employee may not collect from the City Committee a check that is made out to or intended for a ward committee.

Example 6: A City Council employee may enter data for a campaign finance report if the employee is not on duty and does not use City resources.

**PROPOSED AMENDMENT APPROVED BY BOARD ON JUNE 19, 2019 FOR
PUBLIC COMMENT POSTING AT DEPARTMENT OF RECORDS**

SUBPART L.K. EVASION BY INDIRECT MEANS IS PROHIBITED

8.25 An appointed officer or employee shall not evade the prohibitions of this Regulation by indirect means or by acting through another individual to accomplish what is prohibited.

SUBPART M.L. PENALTIES

8.26 If an appointed officer or employee engages or participates in prohibited political activity, the Board may seek a maximum civil penalty of \$300 for each separate instance of prohibited political activity.

8.27 If a court finds that an appointed officer or employee has engaged or participated in prohibited political activity, the Board may seek the appointed officer or employee's removal from office or dismissal from employment.

8.28 If an appointed officer or employee engages or participates in prohibited political activity, he or she shall be ineligible for one year for any office or position under the City.

8.29 The Board shall not seek imprisonment as a sanction if an appointed officer or employee engages or participates in prohibited political activity.

Approved for public comment by Board: January 19, 2011

Public hearing held: February 23, 2011

Adopted by Board with modifications: March 16, 2011

Effective: March 28, 2011

Approved for public comment by Board: June 19, 2019

Public hearing held:

Adopted by Board with modifications:

Effective:

BOARD MEETING

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Exhibit 2

Changes to version of Regulation posted at Records Dept on 6/21/2019

as recommended by Board staff at hearing

Posted version shows additions as underline and deletions as ~~strikethrough~~

Additions proposed at hearing are shown as *italic*

Deletions proposed at hearing are shown [bracketed]

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 8

POLITICAL ACTIVITY

SUBPART A. SCOPE; DEFINITIONS.

8.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of The Philadelphia Code, interprets the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3) & (4) as applied to appointed City officers and employees, but not to elected officials. The examples and lists of permissible and prohibited behavior provided in this Regulation are for illustration and are not exhaustive.

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

- a. **Appointed officer.** An individual who is appointed to any position in a City department, agency, office, board, or commission, whether paid or unpaid, but not including elected officials.
 - b. **Board.** The Board of Ethics.
 - c. **Blog.** A website that displays in chronological order the postings of one or more individuals.
 - d. **Candidate.** An individual who i) files nomination petitions or papers for public elective office, or ii) publicly announces his or her candidacy for public elective office.
 - e. **City.** City of Philadelphia.
 - f. **Contribution intended for a political purpose.**
 - i. Money or things having a monetary value received by a candidate or his or her agent for use in advocating for or influencing the election of the candidate; and
 - ii. Money or things having a monetary value received by a political committee, political party, political campaign, or partisan political group.
 - g. **Election.** Any primary, general, or special election for public elective office.



- h. Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay, but not including:
 - i. Elected officials; or
 - ii. An employee on unpaid leave to be a full-time elected officer or appointed staff representative of a City employee union.
 - i. **Family member.** A parent, spouse, life partner, child, brother, sister or like relative-in-law.
 - j. **Life partner.** An individual who has a long-term committed relationship with another individual of any gender, provided that both individuals meet the same criteria as set out in The Philadelphia Code Section 9-1106(2)(a)(i)-(vi).
 - k. **On duty.** An appointed officer or employee is on duty:
 - i. During normal working hours, which for those with fixed work schedules includes the time between the start and end of the workday excluding a lunch break;
 - ii. When performing the duties of his or her City jobs or appointments; or
 - iii. When acting in his or her official capacity as a City appointed officer or employee.
 - l. **Partisan political group.** Any committee, club, or other organization that is affiliated with a political party or candidate or whose primary purpose is to engage in political activity.
 - m. **Political.** Related to a political party, candidate, *political campaign*, or partisan political group.
 - n. **Political activity.** An activity directed toward the success or failure of a political party, candidate, *political campaign*, or partisan political group.
 - o. **Political campaign.** [Actions taken] by a candidate or his or her supporters /*group of people organized by or on behalf of an individual in order to obtain the candidate's [an] that individual's nomination or election to public elective office.*
 - p. **Political party.** Includes any national, state, or local political party, or any affiliate thereof, such as a ward committee.
 - q. **Public elective office.** Any public office for which candidates are nominated or elected as representing a political party.
 - r. **Social Media networking website.** Facebook, Twitter, Myspace, Linkedin, Instagram, Reddit, a blog, *SnapChat* or any similar website or Internet platform.

8.2 Applicability. Except where expressly indicated otherwise, the provisions of this Regulation apply to all appointed officers and employees. Additional rules for members of boards and commissions can be found at Subpart **J**, and additional rules for employees of City Council can be found at Subpart **K**.

SUBPART B. POLITICAL ACTIVITY ON DUTY OR WHILE USING CITY RESOURCES IS PROHIBITED

- 8.3 An appointed officer or employee shall not engage in political activity while:
- a. On duty;
 - b. In uniform, or while wearing a badge or other insignia that identifies him or her as a City officer or employee;
 - c. Using a social media account that is used for City business;
 - d. e. Using any City-owned or leased resources, such as telephones, smart phones ~~Blackberries~~, tablets, vehicles, printers, computers, or other supplies or equipment; or
 - e. d. In City Hall or in any other City-owned or leased building, property, or office space, except that an appointed officer or employee may, while not on duty, attend a political event held in a City-owned or leased building, property, or office space if the event is open to the public.

EXAMPLES FOR SUBPART B

Example 1: An employee may not display political stickers in her City workplace.

Example 2: An employee may not wear a political button while in his uniform, even if he is not on duty.

Example 3: An employee may not send an email or share information via social media that supports a candidate while using the City's email system or a City computer or City-provided smart phone ~~Blackberries~~.

Example 4: An employee may not sign a nominating petition while in City Hall or in a City-owned or leased building or office.

SUBPART C. USE OF CITY POSITION FOR POLITICAL PURPOSES IS PROHIBITED

- 8.4 An appointed officer or employee shall not use his or her authority, influence, title, or status as a City officer or employee for any political purpose. Activities prohibited by this Paragraph include:

- a. Using his or her title or status as a City officer or employee while participating in political activity;
- b. Using his or her authority or influence to coerce any individual to participate in political activity; and
- c. Requesting, directing, or suggesting that a subordinate officer or employee participate in political activity.

EXAMPLES FOR SUBPART C

Example 1: An employee who writes a letter to the editor expressing his opinion on a political matter may not make reference to his title or his status as a City employee.

Example 2: An appointed officer may not send her subordinate employees an email that promotes the success or failure of a political party.

Example 3: An employee may not reference her title or status as a City employee in a social media post that supports or opposes a candidate.

**SUBPART D. COLLECTING, RECEIVING, OR SOLICITING
CONTRIBUTIONS INTENDED FOR A POLITICAL PURPOSE
IS PROHIBITED**

8.5 An appointed officer or employee shall not directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose.

8.6 An appointed officer or employee shall not authorize a political committee to collect, receive, or solicit contributions intended for a political purpose on his or her behalf.

8.7 An appointed officer or employee shall not permit, authorize, or direct others to collect, receive, or solicit contributions intended for a political purpose for the appointed officer or employee's benefit or on behalf of the appointed officer or employee.

8.8 An appointed officer or employee, except for an appointed officer or employee of the Police Department, may make contributions intended for a political purpose. An appointed officer or employee of the Police Department may make a contribution intended for a political purpose to a political committee that is not affiliated with a candidate, but may not make such a contribution to a candidate or a committee affiliated with a candidate.

EXAMPLES FOR SUBPART D

Example 1: An employee may not sell tickets to a candidate's fundraiser event.

Example 2: An employee (but not an employee of the Police Department) may purchase tickets to a candidate's fundraiser event.

Example 3: An employee may not be a treasurer of a political committee.

Example 4: An employee may not use a political committee to raise money for a potential candidacy.

Example 5: An employee may not share a candidate's fundraiser event on Facebook.

SUBPART E. OTHER PROHIBITED POLITICAL ACTIVITY

8.9 An appointed officer or employee shall not be a member of any national, state, or local committee of a political party.

8.10 An appointed officer or employee shall not be an officer of a partisan political group or a member of a committee of a partisan political group.

8.11 An appointed officer or employee shall not take any part in the management or affairs of any political party, or political campaign or partisan political group, which includes any political activity that is performed in concert or coordination with a political party, candidate, or political campaign–partisan political group, such as:

- a. Circulating or initiating nomination petitions or papers for public elective office;
- b. Being a candidate for public elective office or political party office;
- c. Serving as a delegate to a political party convention;
- d. Participating in get-out-the-vote activities organized or sponsored by a political party, candidate, or political campaign–partisan political group; or
- e. Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or political campaign–partisan political group.]

[f.] e. Sharing or distributing information via social media at the request of a political party, candidate, or political campaign.

EXAMPLES FOR SUBPART E

Example 1: An employee may not serve as a committee person or ward leader.

Example 2: An employee may not distribute campaign posters that she obtains from a candidate's campaign office.

Example 3: An employee may not volunteer at a phone bank organized by a candidate's campaign.

Example 4: An employee may not be a candidate for a position on an election board.

SUBPART F. PERMISSIBLE EXPRESSION AND POLITICAL ACTIVITY

- 8.12 An appointed officer or employee may register and vote in any election.
- 8.13 An appointed officer or employee may be a member of a political party or a partisan political group.
- 8.14 An appointed officer or employee may engage or participate in personal political expression and activity that is directed toward the success or failure of a political party, candidate or political group, including the following, so long as he or she complies with Subparts B, C, D, and E[, and H] and so long as he or she does not do so in concert or coordination with a political party, candidate, or political campaign partisan political group:
- a. Publicly expressing an opinion on political matters or candidates, including in letters to the editor, or on the internet, or via social media;
 - b. Signing a political petition, such as a nominating petition, including those that are circulated by a political party, candidate or political campaign partisan political group;
 - c. Distributing political literature, ~~that was not created by~~ but not at the request of or with the consent of a political party, candidate or political campaign partisan political group;
 - d. Making contributions intended for a political purpose (except for appointed officers and employees of the Police Department); and
 - e. Attending political rallies, conventions, fundraisers or other political events solely as a spectator.
 - f. ~~An appointed officer or employee's profile page on a social networking website may identify the officer or employee's Identifying his or her title or status as a City officer or employee and may also identify or the political party the appointed officer or employee he or she supports in his or her social media profile.~~
[NOTE: This sub-paragraph was moved from prior Subparagraph 8.19(a) below and revised]
 - g. ~~An appointed officer or employee may Responding to, tagging, tweeting at, retweeting, friending, liking, or follow following the Twitter social media account, post, or page of a political party, candidate, or political campaign partisan political group.~~
[NOTE: This sub-paragraph was moved from prior Subparagraph 8.19(d) below and revised]
- 8.15 Political activities organized by a *partisan political group, civic, community, labor, or professional organization*. An appointed officer or employee may engage or participate in activities organized or sponsored by a *partisan political group or a civic, community, labor, or professional organization* that are directed toward the success or failure of a political party, candidate, *political campaign*, or partisan political group so long as the organization has not acted in concert or coordination with that political party, candidate, or political campaign partisan political group.

8.16 Political buttons, signs, and stickers. As long as he or she complies with the requirements of Subparts B and C, an appointed officer or employee may wear political buttons and may display political signs or stickers, including buttons, signs, and stickers he or she obtains from a political party, candidate, or *political campaign* [partisan political group]. However, an appointed officer or employee shall not distribute buttons, signs, or stickers that he or she obtains from a political party, candidate, or political campaign partisan political group.

EXAMPLES FOR SUBPART F

Example 1: An employee may place in his yard a sign supporting a candidate.

Example 2: An employee may wear a political party button when the employee is not on duty, at her City workplace, or in uniform.

Example 3: An employee may print at her own expense one thousand fliers that state her personal opinion that a specific candidate is the best suited for public office. She may distribute the fliers at a shopping mall on the weekend, but may not distribute them in her City workplace. [She also may not distribute fliers printed or paid for by the candidate's campaign committee, a political party, or a political campaign partisan political group.]

Example 4: An employee may attend a fundraising event that benefits a candidate, but he may not organize, distribute invitations to, or sell tickets to the fundraiser.

Example 5: An employee may be a member of the audience at a political gathering organized by a candidate, but she may not appear on stage with a candidate or address the audience at such a gathering.

Example 6: An employee may volunteer at a phone bank that promotes a candidate and that is organized by the employee's union, but not if the union has coordinated with that candidate's campaign.

Example 7: An off duty employee using her personal mobile phone and Instagram account may "like" an Instagram post made by a candidate for Mayor [using her personal mobile phone and Instagram account].

Example 8: An employee may obtain a bumper sticker from a candidate's campaign headquarters and put it on her car. She may not obtain a box of bumper stickers from a candidate's campaign headquarters and distribute them in her neighborhood.

Example 9: An appointed officer or employee may distribute campaign literature produced and paid for by a political campaign, so long as the literature was not obtained by the officer or employee directly from the campaign or directly from someone working in concert with the campaign.

SUBPART G. ACTIVITY THAT IS NOT POLITICAL IS PERMITTED

8.17 An appointed officer or employee may engage or participate in expression and activity that is not political and is not directed toward the success or failure of a political party, candidate, *political campaign*, or partisan political group. Such activity or expression includes the following so long as it is not performed in concert or coordination with a political party, candidate, or political campaign partisan political group:

- a. Campaigning for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances;
- b. Participating in civic, community, labor, or professional organizations, including seeking election to positions within such organizations;
- c. Circulating petitions related to referendum questions, constitutional amendments, federal or state laws, municipal ordinances, or other matters of public interest ~~not related to a political party, candidate, or partisan political group~~; and
- d. Assisting in voter registration drives that are not organized or sponsored by a political party, ~~a~~ candidate, or a political campaign partisan political group.

SUBPART H. USE OF SOCIAL MEDIA

8.18 Blogs. An appointed officer or employee may maintain a blog in which he or she expresses support or opposition to political parties, candidates, or partisan political groups so long as he or she:

- a. Does not do so write or maintain the blog while on duty, in any City owned or leased building, property, or office space, or while using any City resources;
- b. Does not use his or her title or status as a City officer or employee in social media posts on the blog;
- c. Does not republish post anything on his or her blog that was created by, or links to information created by, a political party, a candidate, or political campaign partisan political group; and
- d. Does not suggest, encourage or ask readers of the blog to make contributions intended for a political purpose.

8.19 Social networking websites.

- a. An appointed officer or employee's profile page on a social networking website may identify the officer or employee's title or status as a City officer or employee and may also identify the political party the appointed officer or employee supports.
[NOTE: This sub-paragraph (a) was moved to new Subparagraph 8.14(f) above]
- b. An appointed officer or employee may express support or opposition to political parties, candidates, or partisan political groups in posts to a social networking website so long as he or she:

- i. Does not make such posts to the website while on duty, in any City owned or leased building, property, or office space, or while using any City resources;
 - ii. Does not use his or her title or status as a City officer or employee in such posts to the website;
 - iii. Does not include in such posts anything that was created by, or links to information created by, a political party, candidate, or partisan political group; and
 - iv. Does not suggest, encourage or ask others to make contributions intended for a political purpose.
- e. An appointed officer or employee may become a "friend" or "fan" of, or "like" the page of a political party, candidate, or partisan political group.
 - d. An appointed officer or employee may follow the Twitter account of a political party, candidate, or partisan political group.

[NOTE: This sub-paragraph (d) was moved to new Subparagraph 8.14(g) above]

SUBPART I H. FAMILY MEMBER OF A CANDIDATE

8.20 An appointed officer or employee who is the family member of a candidate may appear in photographs of the candidate's family that appear in a political advertisement, broadcast, campaign literature, or similar material. A family member also may attend political events with the candidate. However, the appointed officer or employee who is the family member shall not engage in any other activity that would be prohibited under this Regulation.

EXAMPLES FOR SUBPART I H

Example 1: An employee who is the spouse of a candidate may stand in the receiving line and sit at the head table during a political fundraising dinner honoring the spouse, but he may not organize, speak at, distribute invitations to, or sell tickets to the event.

Example 2: An appointed officer who is the daughter of a candidate may appear in a family photograph that is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

SUBPART J.I. MEMBERS OF CITY BOARDS AND COMMISSIONS

8.21 Boards and commissions that exercise significant powers of government. [A member of a City board or commission who is not otherwise an appointed officer or employee shall be subject to the Regulation as follows:]

[a.] Because the following entities exercise significant powers of City government, their members [A member of a City board or commission that is named in the Home Rule Charter] exercises significant powers of government shall be fully subject to the provisions of this Regulation, except as provided in Paragraph 8.24 [8.21(b).]:

- a. Air Pollution Control Board
- b. Art Commission
- c. Board of Building Standards
- d. Board of Ethics
- e. Board of Health
- f. Board of Labor Standards
- g. Board of Pensions and Retirement
- h. Board of Revision of Taxes
- i. Board of Safety and Fire Prevention
- j. Board of Surveyors
- k. City Planning Commission
- l. Civil Service Commission
- m. Commission on Human Relations
- n. Fair Housing Commission
- o. Free Library of Philadelphia Board of Trustees
- p. Historical Commission
- q. Historical Commission Architectural Committee
- r. Historical Commission Committee on Historic Designation
- s. Licenses & Inspections Review Board
- t. Living Wage and Benefits Review Committee
- u. Philadelphia Gas Commission
- v. Police Advisory Commission
- w. Sinking Fund Commission
- x. Tax Review Board
- y. Vacant Property Review Committee
- z. Water, Sewer and Storm Water Rate Board
- aa. Zoning Board of Adjustment

[b.] A member of a board or commission that does not exercise significant powers of government, such as the following, shall be subject to the provisions of this Regulation only to the extent provided for in Paragraph 8.22:

- i. Youth Commission
- ii. Jobs Commission
- iii. Commission for Women
- iv. Housing Advisory Board
- v. Commission on African-American Males

- vi. Commission on Universal Pre-Kindergarten
- vii. Board of Trustees of Philadelphia Prisons
- viii. Commission on Parks and Recreation]

The boards and commissions that exercise significant powers of government are the following:

- a. Art Commission
- b. Board of Building Standards
- c. Board of Ethics
- d. Board of Health
- e. Board of Labor Standards
- f. Board of Pensions and Retirement
- g. Board of Revision of Taxes
- h. Board of Surveyors
- i. City Planning Commission
- j. Civil Service Commission
- k. Commission on Human Relations
- l. Fair Housing Commission
- m. Free Library of Philadelphia, Board of Trustees
- n. Historical Commission
- o. Historical Commission Architectural Committee
- p. Historical Commission Committee on Historic Designation
- q. Licenses & Inspections Review Board
- r. Malt and Brewed Beverage Hearing Board
- s. Philadelphia Gas Commission
- t. Philadelphia Prisons Board of Trustees
- u. Sinking Fund Commission
- v. Tax Review Board
- w. Zoning Board of Adjustment
- x. Zoning Code Commission

8.22 Advisory boards and commissions. A member of a board or commission not listed in Paragraph 8.21 listed in Paragraph 8.21 [named in the Charter] shall only be subject to those provisions of this Regulation that prohibit (i) political activity while on duty or using City resources (Subpart B), or (ii) the use of City position for political activity (Subpart C). :

8.23 Nominating Panels. A member of the Educational Nominating Panel, Civil Service Panel, or Finance Panel shall be fully subject to the provisions of this Regulation, but only for those periods of time when the panel is actively convened.

8.24 A member of a board or commission who is separately a City officer or employee shall be subject to this Regulation without regard to his or her position on the board or commission.

Examples for Paragraph 8.24

Example 1: An employee of the Water Department is a member of the Commission for Women. The employee is subject to all parts of this Regulation that apply to City employees, even though the Commission is not listed in Paragraph 8.21.

Example 2: An employee of City Council serves on an advisory Board formed by the Mayor. The City Council employee is subject to this Regulation as provided in Subpart J, not as provided by Paragraph 8.22.

Example 3: A City of Philadelphia elected official serves on a commission listed in Paragraph 8.21. The elected official is not subject to this Regulation

- a. Shall be subject to the following provisions of this Regulation: Subpart B (on duty or while using City resources), Subpart C (use of City position), Subpart L (evasion) and Subpart M (penalties); and
- b. Shall not be subject to the following provisions of this Regulation: Subpart D (contributions intended for a political purpose), Subpart E (other prohibited political activity) and Subpart H (use of social media).

SUBPART K.J.CITY COUNCIL EMPLOYEES

[8.23] 8.25 An employee of City Council is subject to all of the shall not be subject to the following provisions of this Regulation except: Subpart E (other prohibited political activity) and Paragraphs 8.4(a) (use of title), 8.18(b) (use of title in blog posts), 8.18(e) (links to political websites in blog posts), 8.19(b)(ii) (use of title in political posts to social networking sites), and 8.19(b)(iii) (links to political websites in posts to social networking sites).

[8.24] 8.26 An employee of City Council shall not collect, receive, or solicit contributions intended for a political purpose as prohibited by Subpart D.

EXAMPLES FOR SUBPART K.J

Example 1: A City Council employee may not be a treasurer of a political committee.

Example 2: A City Council employee may not use a City-owned photocopier to copy campaign literature.

Example 3: A City Council employee may not circulate or sign a nominating petition while in City Hall or in a City owned or leased building or office.

Example 4: A City Council employee may not ask an individual to make a contribution intended for a political purpose.

Example 5: A City Council employee may not collect from the City Committee a check that is made out to or intended for a ward committee.

Example 6: A City Council employee may enter data for a campaign finance report if the employee is not on duty and does not use City resources.

SUBPART L K. EVASION BY INDIRECT MEANS IS PROHIBITED

[8.25] 8.27 An appointed officer or employee shall not evade the prohibitions of this Regulation by indirect means or by acting through another individual to accomplish what is prohibited.

SUBPART M L. PENALTIES

[8.26] 8.28 If an appointed officer or employee engages or participates in prohibited political activity, the Board may seek a maximum civil penalty of \$300 for each separate instance of prohibited political activity.

[8.27] 8.29 If a court finds that an appointed officer or employee has engaged or participated in prohibited political activity, the Board may seek the appointed officer or employee's removal from office or dismissal from employment.

[8.28] 8.30 If an appointed officer or employee engages or participates in prohibited political activity, he or she shall be ineligible for one year for any office or position under the City.

[8.29] 8.31 The Board shall not seek imprisonment as a sanction if an appointed officer or employee engages or participates in prohibited political activity.

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Public hearing held: February 23, 2011

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Effective: March 28, 2011

Approved for public comment by Board: June 19, 2019

Public hearing held:

Adopted by Board with modifications:

Effective:

BOARD MEETING

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Exhibit 3

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Testimony for Public Hearing on Revisions to Regulation No. 8 – Political Activity

Philadelphia Board of Ethics

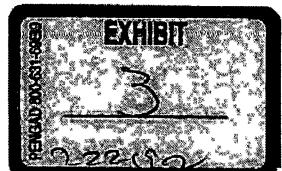
July 22, 2019

I am Ellen Matteleman Kaplan, Chief Integrity Officer for the Executive Branch of City government. I am here with Deputy Chief Integrity Officer Krystle Baker, the City's Digital Director Linda Huss and the City's Deputy Communications Director Sarah Reyes to address proposed revisions to Regulation No. 8 on political activity.

We would first like to thank the Board and staff for simplifying and clarifying a number of provisions in Regulation No. 8 and, most notably, for addressing how the Regulation can be revised to be less stringent as applied to the use by City employees of private social media accounts, while off-duty.

We also appreciate the willingness of Michael Cooke, Jordana Greenwald and Tom Klemm to engage in conversations with our office to answer questions prior to this hearing so we are able to better focus our comments today.

We will first address issues related to Members of Boards and Commissions. Next we will comment on



proposed revisions to the social media provisions. Then we will note certain areas that, in our view, require further clarification and conclude our testimony by recommending the use of gender-inclusive language. We ask your indulgence as we skip around a bit.

MEMBERS OF CITY BOARDS AND COMMISSIONS

Substantial revisions are being recommended today to the Subpart of Regulation No. 8 relating to Members of City Boards and Commissions. The administration has not had ample time to consider these revisions, which we learned about only last Thursday. However, we would like to share some initial thoughts.

As we understand it, several entities are being added to the list of City Boards and Commissions that exercise significant powers of City government and whose members are fully subject to the provisions of Regulation No. 8. Our first request is for background information, similar to what was provided in Board of Ethics Opinions No. 2007-006 and 2007-004, that explains why the newly added entities are considered to have "significant powers of City government." We do not necessarily disagree with these additions, but would appreciate hearing the analysis used.

One concern likely to arise is that some entities new to the list consist of designated member organizations. For instance, the Vacant Property Review Committee (VPRC) consists of representatives of six entities that are independent of City government: The Redevelopment Authority, The Philadelphia Industrial Development Corporation, The Philadelphia Housing Development Corporation, The Philadelphia Commercial Development Corporation, The Philadelphia Association of Community Development Corporations, and The Local Initiatives Support Corporation. Unlike many other City Boards and Commissions, neither the Mayor nor City Council have appointing authority to select the organizational representative for the VPRC meetings. So if the designated entities engage in political activity prohibited by Regulation No. 8 as part of their own organizational agendas, it may be difficult for these entities to select a member for the VPRC.

The same is true for members of the Educational Nominating Panel (ENP). Although its 13 members are chosen by the Mayor, nine are required to be the highest ranking officers of certain City-wide organizations or institutions. I note that one ENP member must represent “a labor union council or other organization of unions of workers and employees organized and operated for the benefit of such workers and employees.” Requiring the highest ranking officer of a City labor union to be fully subject to the provisions of Regulation No. 8 is likely to present a challenge.

We are also concerned about new Section 8.23 requiring members of the ENP, Civil Service Panel or Finance Panel to be fully subject to the provisions of Regulation No. 8 “...for those periods of time when the panel is actively convened.”

There is no set period of time these Panels are reviewing candidates for the Board of Education, Civil Service Commission or Finance Director, respectively. They convene when there is an opening to be filled. The ENP was first empanelled to review applicants for all nine seats on the Board of Education in early 2018 after the City regained local control of the School District of Philadelphia. After recommendations were made to the Mayor, the Panel was in hiatus. Since the terms of all nine Board members expire in the spring of 2020, the ENP will again be convened to recommend to the Mayor nine Board of Education members. Thereafter, the ENP will again be in hiatus until there is a vacancy on the Board.

It is entirely possible that, while the ENP is in hiatus, an ENP member may agree to host a fundraiser for a candidate. What happens if a Board of Education member unexpectedly leaves the Board, leaving a vacancy for the ENP to fill? Does the ENP member have to cancel the fundraiser? If they do not do so, are their decisions on the ENP invalidated?

We raise this to point out that some forms of prohibited political activity may be difficult to turn off and on. The full impact of political activity restrictions that pertain to Nominating Panels that do not regularly meet should be considered before Regulation No. 8 is applied to its members.

Finally, we are concerned about how the revisions to Regulation No. 8, and the consequences of violating its provisions, will be communicated to members of Boards and Commissions. The Board of Ethics already has a herculean task of training current City employees, much less members of Boards and Commissions, on the City's ethics rules. We urge the Board to develop a realistic educational plan to ensure that newly covered members of City Boards and Commissions obtain the requisite information. The Office of the Chief Integrity Officer is certainly willing to assist the Board's efforts in any way we can.

One last comment that perhaps is best directed to the Law Department. With the proliferation of new Boards and Commissions in every mayoral administration, will a public hearing on additions to Subpart I be necessary each time a new entity is established?

USE OF SOCIAL MEDIA

Once again, my name is Krystle Baker, Deputy Chief Integrity Officer, and I'm here today with Linda Huss, the City's Digital Director and Sarah Reyes, Deputy Communications Director. Thank you for the opportunity to share our comments on the proposed revisions to Regulation No. 8 on political activity as they relate to) social media.

First, let me begin by thanking the Board of Ethics and its staff for including many updates related to social media in its proposed revisions. As you all know, we now live in the Information Age where the Internet is providing more content, from more sources, to more people, more often and quicker than ever before. Nowhere is that more clear than social media sites such as Facebook, Twitter, and Instagram. Anyone with a social media account can generate content and interact locally and internationally. And a significant number of Americans have a social media account. According to Hootsuite, 69% of Americans use at least one social media account, of which there are hundreds of options, and more are added to the list each year.

Applying this statistic to the City workforce of approximately 28,000 employees, an estimated 19,320 City employees have at least one private social media account. Given the large number of City employees on social media, we urge the Board of Ethics to make it as easy as possible to understand prohibited activity on social media.

First, we recommend better defining social media in Section 8.1(r) to encompass other social media platforms not covered by the revised definition. The proposed definition lists examples of social media sites such as “Facebook, Twitter, Myspace, LinkedIn, Instagram, Reddit, a blog, or any similar website or Internet platform” to define social media. Yet this definition does not cover all social media websites or Internet platforms.

For example, Snapchat is a social media messaging application to share photos, videos, text, and drawings and is used by 24% of Americans with at least one social media account according to Omni Core Agency. However, it is very different than the other social media sites because it permits the user to take a video or picture, modify the photo with filters, clip art, and text, and then send the altered video or picture to your followers as a message. As you can see in Attachment 1 to this testimony, a number of campaigns have already started using Snapchat filters to support their campaigns. However, neither Snapchat nor similar social media platforms are listed in the definition of social media.

We recommend using a modified version of the definition of social media from Merriam Webster Dictionary: “forms of electronic communication, such as websites and apps for social networking and microblogging, through which users create online communities to share information, ideas, personal messages, and other content, such as images and videos.”

We also recommend simplifying the political activity restrictions related to social media to highlight only what is prohibited political activity. While we understand that the Board may prefer to list both permissible and impermissible political activity restrictions related to social media, we fear that social media is evolving so quickly that Regulation No. 8 will not be able to keep up. New features to already existing social media sites occur constantly. New social media platforms and apps are emerging even

faster. Instead of amending Regulation No. 8 every couple of years to include permissible activity on these new platforms, it is more sustainable to limit the restrictions to prohibited political activity on social media.

Furthermore, having fewer rules to comprehend would make information easier to convey to a large workforce and Board and Commission members, and easier for covered employees and members to comply.

As we read the proposed revisions to Regulation No. 8, , there are four examples of restricted behavior related to social media:

- Section 8.3(c) – May not engage in political activity on a social media account used for City business.
- Subpart C, Example 3 – May not reference title or status as a City employee in a private social media post that supports or opposes a candidate.
- Subpart D, Example 5 – May not share a candidate’s fundraising event on Facebook.
- Section 8.11(f) – May not share or distribute information via social media at the request of a political party, candidate, or political campaign.

Alternatively, if the Board prefers both permissible and prohibited behavior on social media to be expansively outlined in the proposed revisions to Regulation No 8, we urge consideration of the following recommendations.

We recommend placing all social media guidance in one section as organized in current Regulation No. 8. While we appreciate the desire to integrate the social media rules within other Regulation No. 8 provisions, we respectfully believe this results in more confusion than less. In our view, it is more effective and efficient to direct employees and Board and Commission members to one section of the Regulation rather than many different sections.

Our recommendation is based on feedback received in monthly Social Media Managers' meetings hosted by the Mayor's Office of Communications to provide guidance to City employees who manage social media accounts used for City business. At these meetings and through emails, Linda Huss, the City's Digital Director, shared that she receives many questions about political activity from these managers who want to remind their work colleagues of the rules surrounding social media and political activity. It is easy for her to direct City employees to find guidance in one place - current Subpart H. By spreading the social media content in a piecemeal fashion over six pages in proposed Regulation No. 8, valuable content may be lost if the reader is not actively searching in the correct subsection.

For example, if City employees want to know whether they can share information about their City employment on their private social media account, the answer is not located in one section of the proposed Regulation. A diligent employee would need to review the example provided in Subpart C on page 4 (Example 3: Cannot reference title or status as a City employee in a social media post that supports/opposes a candidate), and Section 8.14(f) on page 6 (City employees may identify their title/status as a City officer or employee or may identify the political party they support).

Also, we recommend providing additional examples that highlight the proposed amendments, including those contained in recently issued General Counsel opinions on social media. By providing examples that highlight changes to Regulation No. 8, it will proactively address any potential confusion following the implementation of the revisions. Some examples could include the following:

- An off-duty employee may "retweet" a Twitter post made by a candidate for president regarding a policy position using their personal Twitter account. (Addressed in proposed Section 8.14(g).)
- An off-duty employee can use hashtags associated with candidates, such as #MAGA or #imwithher, using their private Twitter account. (Addressed in General Counsel Opinion 2017-506.)

- An employee may not “retweet” or “share” any content asking for a donation to a political candidate. This includes social media posts from a political candidate and/or posts from someone else that links to a donate page. (Broadens Example 5 in Subpart D.)

As well as providing additional examples, we recommend clarifying what a City employee can share on private social media, while off-duty. Again, as we stated earlier in this testimony, our preference is to include only what is *prohibited* political activity. But if the Board of Ethics wishes to include both what is permitted and what is prohibited, the Board should be as clear as possible about what is permissible, leaving no room for misinterpretation. For instance, Section 8.14(f) does not mention the word “share” when listing action items that one can take on social media. We believe that leaving it out is more confusing than the proposed language that permits “responding to, tagging, tweeting at, retweeting, friending, liking, or following.”



Speaking generally, the purpose of social media is to share, learn, and interact. If City employees are sharing content, the proposed revisions should not leave any doubt what content can be shared. “Responding to, tagging, tweeting at, retweeting, friending, liking, or following” are action words confined to certain social media platforms. Presently, there are many other actions that one can take on social media that are not included in this list. Therefore, we recommend using “sharing and interacting.” To clarify the meaning of “sharing and interacting,” the Board could provide examples such as “retweeting” or “liking” as permissible expressions of political activity on social media. Substituting action words and expanding the examples will provide greater clarity in this area.

By way of illustration, Section 8.14(c) prohibits employees from distributing political literature at the request of a political party, candidate, or political campaign. What if this political literature is shared on social media? In fact, much of the content on social media is intended to be shared and distributed whether by a candidate for office or the average City employee. It is not clear whether Regulation No. 8 interprets “distributing” and “sharing” as the same. Distributing is not a term that is related to social media use.

If you turn to Attachment 2, you will see literature and graphics designed by two campaigns. The first screen shot comes from a website for a current Democratic candidate for President and encourages visitors to share literature about his health policy on their private social media accounts. The second screen shot comes from the Twitter account of a former Democratic candidate for President who encouraged supporters to tweet Republican representatives to pass a bi-partisan piece of legislation. Are City employees permitted to share this content or engage in this activity on their private social media accounts?

Along the same lines, if a current candidate posts on their social media account, "Support my campaign, share this post" or alternatively, in an email, requests supporters to "Help us spread the word, share this post," is a City employee permitted to share this content on their private social media? Again, these are points for clarification.

Finally, we recommend permitting City employees to identify their title and status as a City officer or employee and identify the political party they support in their private social media profile. First, profile information is not always readily accessible. Facebook requires an additional step to access profile information from the main profile account page. However, even if the profile information is located on the main page, content shared in other sections of one's private social media account may provide context to reach the same conclusion.

To demonstrate this point, please consider the screen shots in Attachment 3. All five screenshots in Attachment 3 illustrate how City employees can identify their status as a City employee, as well as the political party they support on Twitter. The first three screen shots appear to comply with the proposed revisions to Regulation No. 8 because the profiles do not identify both their City employment and political party affiliation. However, when you review the additional content located below Verdana's profiles, Verdana is clearly a City employee and has a political party affiliation. How are these three screen shots permissible political activity but the fourth screen shot impermissible? The content is the same. The only difference is the location of the content.

Alternatively, the proposed revisions do not address social media handles, profile and header images, and video streaming. Any of these features could identify a private social media user as a City employee. For example, many current City employees can be identified by their handle alone. The fifth screen shot is an example of a hypothetical Philadelphia Police Department employee with a handle that identifies his place of work. However, his profile mentions only his political party affiliation. It is unclear whether this is permissible political activity under the proposed amendment.

ADDITIONAL POINTS FOR CLARIFICATION

We would next like to point out a few areas in proposed Regulation No. 8 about which we have questions or that, in our view, are in need of further clarification.

- **Section 8.9.** Section 8.9 states that “an appointed officer or employee shall not be a member of any national, state, or local committee of a political party.” While it may seem obvious that this definition excludes registration with a political party when completing a voter registration form, we believe it would be helpful to state this exclusion in this section.
- **Section 8.11.** Section 8.11 addresses the prohibition in Charter Subsection 10-107(4) of an appointed City employee from taking any part in the management or affairs of any political party or political campaign. Political campaign is defined in Section 8.1(o) as “actions taken to obtain an individual’s nomination or election to public elective office.” Would this definition preclude a City employee – obviously in his or her off-duty time, not using City resources or in a City-owned or leased building – from volunteering for a political action committee that is not aimed towards the nomination or election of a particular individual, but is instead focused on defeating the nomination or election of another, although unnamed, individual? For instance, can a City employee volunteer for a political action committee entitled “Anyone but Trump” or “Anyone but a Democrat?”
- **Section 8.11.** Section 8.11 also states that the Charter prohibition “...includes any political activity that is performed in concert or coordination with a political party, candidate, or political

campaign.” The term “partisan political group” is removed. We note that affiliation with a political party or candidate is included in the definition of “partisan political group” in Section 8.1(l). We urge clarification of whether City employees – again in their off-duty time – are permitted to volunteer with partisan political groups as long as these groups are not working in concert or coordination with a political party, candidate or political campaign or affiliated with a political party or candidate. And if so, are there any limitations on volunteering, e.g., phone banking, distributing political literature, get-out-the-vote activities.

- **Section 8.11.** Related to the above point is whether City employees are permitted to volunteer for organizations that do not fit the definition of partisan political group, but may endorse candidates that support their missions, e.g., the National Organization for Women or even the Chamber of Commerce for Greater Philadelphia that does endorse candidates for elective office. We urge clarification of this question.
- **Section 8.11.** As we reviewed Section 8.11, we thought it would also be useful to define the word “campaign” in the context of permissible/impermissible political activity. For example, there are a great many organizations that engage in “campaigns” that are not political, but rather are aimed at public policy issues – such as supporting/opposing abortion rights, climate change, etc.
- **Section 8.11, Example 1.** This example states that “an employee may not serve as a committee person or ward leader.” We urge two clarifications to this example. First, that an employee also may not serve as Judge of Elections, Majority Inspector or Minority Inspector – three elected positions at the City’s 1,692 voting divisions. Second, that employees also may not run for any of these elected positions without first resigning their City job. Given that 25 or so City employees filed to run for committee person in the spring of 2018, it certainly appears that many City employees are not aware of the Charter’s “resign to run” provision. It would be helpful to reference this provision in Section 8.11, Example 1 so that we don’t see a recurrence

in 2022. Elections for the three elected positions at voting divisions will next take place in 2021.

- **Greater Use of Examples.** Since its inception, the Board of Ethics and General Counsel have issued quite a few Opinions related to political activity. Greater use of examples drawn from these Opinions would help employees better understand Regulation No. 8.

* * *

GENDER-INCLUSIVE LANGUAGE

Turning to another topic, we would also like to address the masculine and feminine pronouns that refer to gender. Our final recommendation is to utilize gender-inclusive language moving forward with this proposed Regulation and in all Regulations and Board documents moving forward. Gender-neutral or gender-inclusive language is speaking or writing in a way that does not discriminate against a particular sex, social gender, or gender identity and does not perpetuate gender stereotypes. This type of language also helps people who are transgender, gender nonconforming, or nonbinary feel welcome in this space. There is a shift outside government in journalistic and academic writing, as well as inside governments, to use this type of language moving forward. Examples of this transition at the City level include:

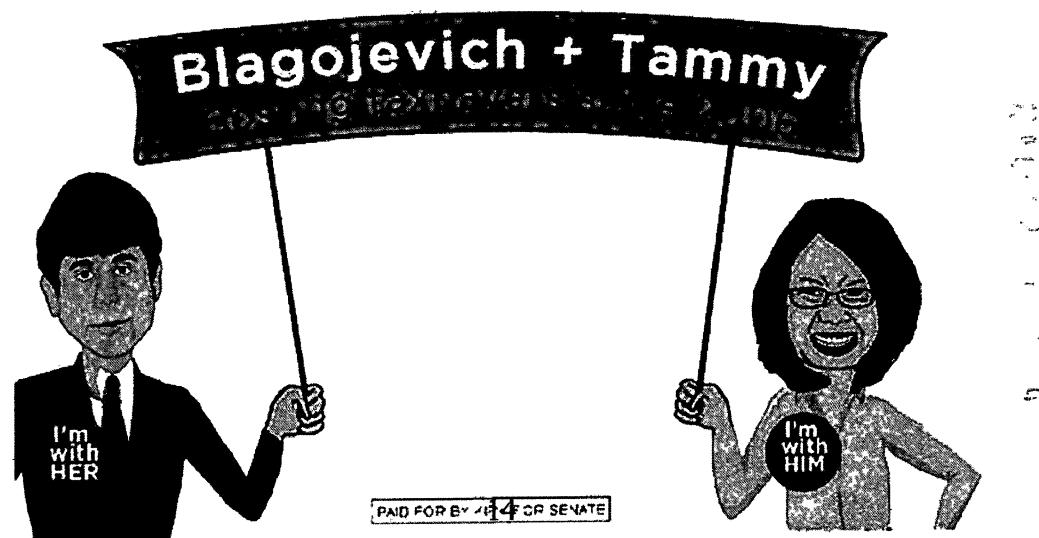
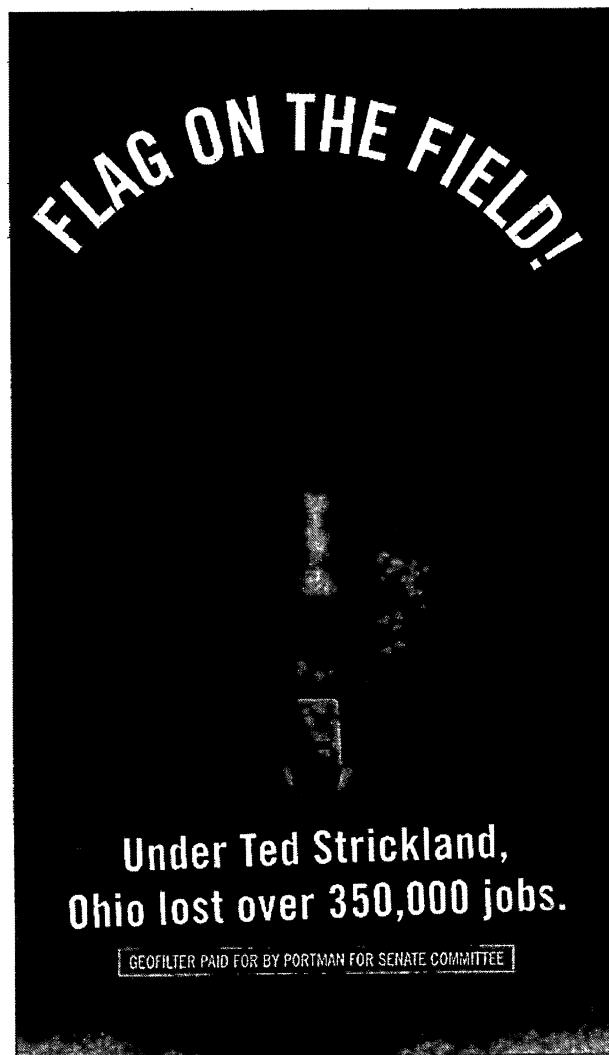
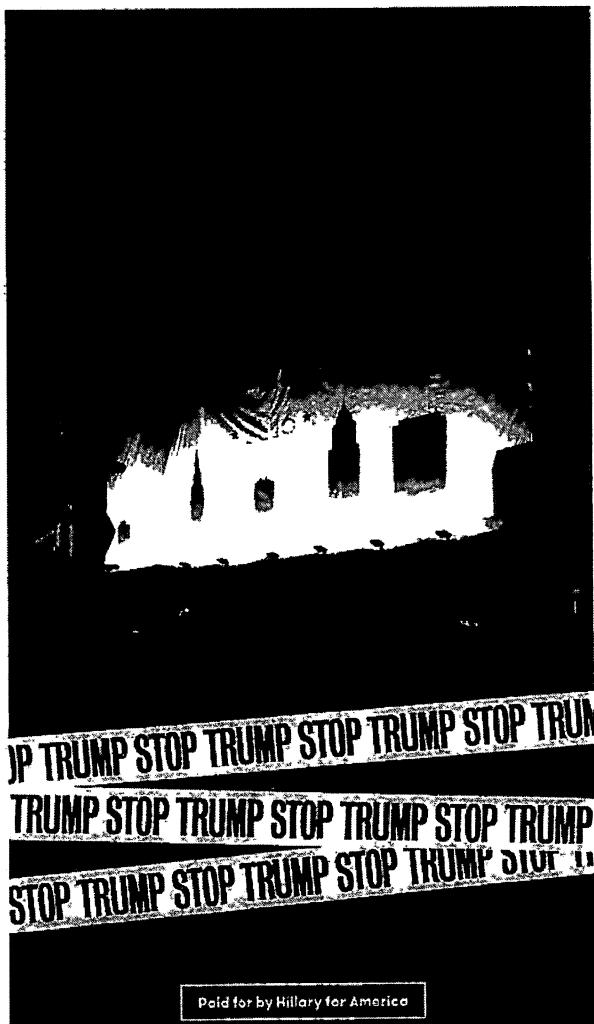
- In May 2019, Philadelphia voters supported a ballot question to change gender-specific references, such as councilman, to gender-neutral references, such as councilmember, in the Philadelphia Home Rule Charter.
- In the City's Digital Standards that serves as a reference guide to make government services more accessible and understandable, gender-neutral language is recommended whenever possible.
- In the Kenney administration, the City started using gender-neutral language on certain City forms.

* * *

The Office of the Chief Integrity Officer appreciates the Board's consideration of its testimony on revisions to Regulation No. 8. We look forward to continuing our dialogue and are happy to answer any questions you may have.

Thank you.

Attachment 1 – Snapchat Filters



Attachment 2 – Sharing Content



Freedom means not having to choose
between health care and financial survival.



BarackObama Barack Obama

Voters in Alabama: Tweet your Republican representative and ask them to support a bipartisan solution to the deficit crisis.

Attachment 3 – Profile Content



22verdana

@22verdana

Proud Democrat #Resist #DumpTrump

Joined June 2019

6 Following 2 Followers

Tweets

Tweets & replies

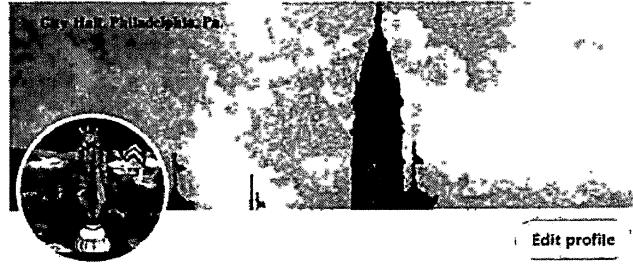
Media

Likes



22verdana 2 days ago

When you spend all day answering calls at Philly311 and then you come home and your family wants to know what's for dinner



22verdana

@22verdana

Proud @PhiladelphiaGov DHS employee

Joined June 2019

6 Following 2 Followers



22verdana 5 hr ago

Proud to vote for Elizabeth Warren for President. This country needs a woman in charge!



22 Verdana

@22verdana

Testing...testing...is this thing on?

Joined June 2019

6 Following 2 Followers

Tweets

Tweets & replies

Media

Likes

187

124

124

124

124

124

124

124

124

124

124

124

124

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124



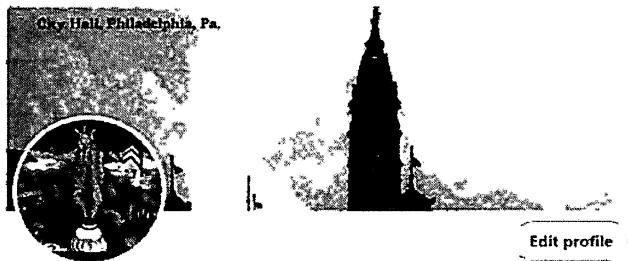
22 Verdana @22verdana · 4m

When you spend all day answering calls at Philly311 and then you come home and your family wants to know what's for dinner



22 Verdana @22verdana · 7m

Proud to vote for Elizabeth Warren for President. This country needs a woman in charge!



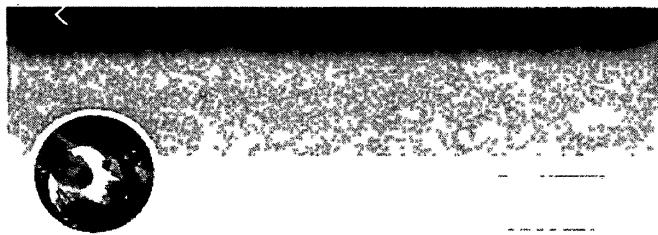
22 Verdana

@22verdana

Proud Republican and @PhiladelphiaGov employee #MAGA

Joined June 2019

6 Following **2 Followers**



PPDMikeCole

@PpdCole

Father, Husband, Democrat

Happy birthday! Joined July 2019

0 Following **0 Followers**

[Tweets](#) [Tweets & replies](#) [Media](#) [Likes](#)

BOARD MEETING

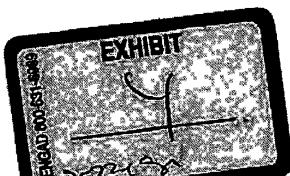
95

Exhibit 4

Good afternoon Chairman Reed, the honorable Vice Chairwoman Beck, and members of the board and staff. My name is Joseph Corrigan, and I am a political and communications consultant based here in Philadelphia. I am a former city employee, having spent nearly two years as a communications director for a member of City Council. I'd also be remiss if I did not indicate that my spouse is a City Employee who has also served as spokesperson for two City elected officials.

As someone who has switched between campaign politics and government and back, and then have advised elected officials, I think I am as well-versed on Regulation 8 as a non-lawyer could be. Knowing these rules has been helpful to me and my clients and the Board staff's willingness to provide guidance has been invaluable.

I am here today to speak as someone who could hypothetically be impacted by the proposed changes to Regulation 8. While I do have a few concerns with the proposed changes, I take the largest issue with the proposed addition of subsection (c) in section 8.3 under Subpart B. I believe this change is unintentionally vague and broad.



Social media accounts used at the City level are not bound by the same archiving rules that govern certain staff in the White House—it is generally not assumed that by being employed by the City, an individual is surrendering their social media account forever to the City. But this addition appears to do just that.

At a time when there are certain elements both foreign and domestic attempting to misinform voters on social media, the more information available on a social media account, the better others can determine information to be legitimate or not. So, it makes sense for more people to tweet under their real name, not an alias, and to display their credentials or more about who they are in their bios, rather than less.

→ Bio

Our City and its officials often stand in stark opposition to many state and federal policies and policymakers. This proposed addition to Regulation 8 would effectively either censor those whose job it is to amplify the voice of the principal or department for whom they work, or force employees to relinquish their right to exercise free speech on a platform that is neither owned or controlled by the City until such time that their employment ends.

If the purpose of this proposed addition is to keep employees from using “official” social media accounts like @PhilaStreets to post political messages—which would be exceptionally dumb—then additional wording ought to be added to indicate “social media account whose official purpose is City business.” Additionally, I’d suggest defining “City business;” I have specific examples in which one could claim a social media post to be “City business” if posted by an employee, even off duty, which would then disqualify them from posting politically indefinitely.

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As a spokesman, I was expected to back up my boss online—explaining issues to reporters, further amplifying our message, and yes, sometimes hitting back against another elected official with a bad idea. As those elected officials become candidates—and I can think of a very big one who’s just become a candidate for re-election—it becomes impossible for spokespeople to do the job they’ve been hired to do while abiding the proposed addition.

Because this applies to such a limited number of positions within the City government, I would also consider an exemption for designated spokespeople akin to the “Political Fund Designees” in the US Senate, just without the funds part.

Specific Issues

In **Section 8.3(c) under Subpart B**, “City business” has not been defined. As written, this would suggest that *any* use of a City Employee or Official’s social media account to conduct City business would consequently bar the Employee or Official from using that account to exhibit political speech.

A specific example of this could be: If a spokesperson for a Department uses a Twitter account under their own name to retweet the Department’s official account or to explain to a reporter their boss’s position on an issue, their personal Twitter account would be effectively surrendered to the City for the rest of the time they are employed.

But an even more innocuous-seeming use could be: A sanitation worker wishes to remind his or her family and neighbors via Facebook that during the week of a national holiday, trash pickup will be delayed a day. While this may seem like common knowledge to most, the worker is still using their social

media account to propagate a message from City government, and therefore, under a certain reading of Section 8.3(c), would no longer be able to, even while off duty, make statements on their account about political parties or candidates, effectively surrendering their right to free speech until such time that they are no longer employed by the City.

Section 8.11(f) under Subpart E would effectively ban an employee of the City from retweeting a political campaign only if the original tweet stated something like, "Please RT," or "RT if you agree." Otherwise, it would clear employees or officials who are off duty from sharing anything else. Additionally, every platform has a button to share content: On Facebook, it's a "share" button, on Twitter it's a Retweet. It could be argued that *any* post made by a political party, candidate, or political campaign contains an implicit suggestion to "share" to one's own personal network. So, are we banning employees from sharing *anything* from a political entity while on or off duty?

Another example would be: If an employee of the Department of Licenses & Inspections had their title or position in their social media platform's biography section, they would be barred from Retweeting or Sharing anything

political, on or off duty, until such time that they are no longer employed by the City.

Next, I really cannot understand how an appointed officer or employee is able to both comply with **Subpart C, specifically 8.4(a) and 8.14(f)** simultaneously considering 8.14(f) almost completely contradicts the third example provided for Subpart C. At a time in our country when the differences between the two major political parties could not be more distinct, it seems that any mention of *party* is very clearly commuted to a *candidate* of that party.

A lesser issue is that Section 8.16 contains an example (Example 3) that contradicts the proposed change to 8.14(c). If an officer or employee may distribute literature created by the campaign—and I think this is a good change—then Example 3 of Subpart F should conform, as should the daughter of a candidate in Example 2 of Subpart H.

Example 7 in Subpart F is downright draconian. The average adult spends about three hours per day on their smartphone. That's more time than any medium other than a digital television. People check their phones between

customers, at lunch, and—and I hate to say this—while in the bathroom. This subpart states that when an employee is either on lunch or a cigarette break that they—while scrolling their social media feeds—can like any post by a friend, a celebrity, a brand, or a cat, but they need to skip hitting that like button if they scroll over a candidate for office. Additionally, with the way that a platform like Instagram works, if someone clocks out at 4:30pm on Monday from work, likes a post by a political candidate at 4:31pm and someone who follows them looks at what they've liked in the near past, a "like" at 4:31pm and a "like" at 4:00pm will show up the same as "a day ago" on Tuesday. This rule is virtually unenforceable unless the Ethics Board plans to routinely subpoena social media giants to turn over specific timestamping (which may or may not exist).

- Burner Accounts