

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

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SUBPART A. SCOPE; DEFINITIONS.

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

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

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

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

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

SUBPART B. IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST.¹

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

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

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

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

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

SUBPART C. FINANCIAL INTEREST.

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

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

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

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

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

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

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

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

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

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

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

Example for Paragraph 5.7

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

SUBPART D. OFFICIAL ACTION.

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

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

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

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

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

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

SUBPART E. DISQUALIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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- g. Non-employee members of a for-profit business.** A City officer or employee who is a non-employee member of a for-profit business is disqualified from any official action that would affect the financial interests of such business, including:
1. the opportunity for future business;
 2. the financial interests of clients of the for-profit business;
 3. fellow members of the for-profit business acting on behalf of the business or its clients; or
 4. fellow members of the for-profit business representing any person as an agent or attorney.
- h. Family members as non-employee members of a for-profit business.** Where the financial interest at issue is a family member's non-employment interest in a for-profit business, the City officer or employee is disqualified from any official action that would affect the financial interest of their family member, including:
1. the business' ability to pay the family member;
 2. the value of the compensation or benefits provided by the business to the family member;
 3. the willingness to continue the membership relationship with the family member; or
 4. the opportunity for future business.

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

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

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

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

5.14 Exceptions to disqualification.

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

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

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

Examples for Paragraph 5.14(a)

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

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

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

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

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

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

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

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

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

SUBPART F. DISCLOSURE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. After the public hearing:

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

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

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

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

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

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

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

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

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

5.21 Delivery methods.

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

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

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

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

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

SUBPART G. PAST OFFICIAL ACTIONS.

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

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

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

Example for Paragraph 5.23

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

5.24 Restricted financial interests. This subpart applies to:

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

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

SUBPART H. PENALTIES.

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

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

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

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

Approved for public comment by Board:
Posted for public comment by Records:
Hearing held:
Adopted by Board:
Effective: