



**CITY OF PHILADELPHIA
BOARD OF ETHICS**

MEMORANDUM

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

FROM: Michael Cooke, General Counsel

DATE: June 29, 2020

SUBJECT: Board of Ethics Regulation 8 (“Political Activity”)

CC: Lewis Rosman, Chief Deputy City Solicitor (via email)

At a public, virtual meeting on June 24, 2020, 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 15, 2020 at 1:00 p.m. Due to the ongoing COVID-19 crisis, this hearing will be conducted virtually through the Zoom teleconferencing platform. In the following weeks, instructions on how members of the public may participate in the public hearing will be posted on the Board’s website at: <https://www.phila.gov/ethicsboard/pages/default.aspx>.

It would be very helpful for the Department of Records’ newspaper legal notice of these proposed amendments to include the time and virtual nature of the July 15, 2020 public hearing on these proposed amendments. The Board will also separately arrange for newspaper and website notice of the July 15, 2020 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 No. 8, Proposed Amendments Approved for Public Comment



Memorandum

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

FROM: Lewis Rosman, Chief Deputy City Solicitor//lr

DATE: June 26, 2020

SUBJECT: Amendment to Board of Ethics “Regulation No. 8: Political Activities”

I have reviewed the attached amendment to Board of Ethics “Regulation No. 8: Political Activities” which was submitted to the Law Department. The amended regulations are legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may forward these amended regulations to the Department of Records where they will be made available for public inspection.

Attachment

**Proposed amendment approved for public comment posting at
Department of Records by Board at public meeting on June 24, 2020**

**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.** 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).

k. Local elective office.

- i. Mayor, City Council, District Attorney, City Controller, City Commissioner, Sheriff;
- ii. Philadelphia Court of Common Pleas, Philadelphia Municipal Court, Register of Wills;
- iii. State Senator or State Representative for any seat that includes any part of Philadelphia in its district; and
- iv. Judge of Election, Majority Inspector, and Minority Inspector for a Philadelphia polling place.

k.l. 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.m. 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.n. Political activity. An activity directed toward the success or failure of a political party, candidate, political campaign, or partisan political group.

n.o. 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.p. Political party. Includes any national, state, or local political party, or any affiliate thereof, such as a ward committee.

p.q. Public elective office. Any public office for which candidates are nominated or elected as representing a political party.

q.r. Social media. Facebook, Twitter, Myspace, LinkedIn, Instagram, Reddit, a blog, SnapChat, or any similar website, application, or Internet platform.

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

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.

8.5 No political activity using City title or 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.
- d. Identifying their City title or position in their profile on a social media account, if they use that account for 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~~ Because an employee ~~uses their~~ includes her 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 she~~ 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.

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

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.

8.7 No involvement in ~~political campaigns or in the~~ management of political parties*, political campaigns, or partisan political groups.

~~An appointed officer or employee shall not:~~ No appointed officer or employee, other than an employee of City Council*, shall take any part in the management of any political party, political campaign, or partisan political group such as:

- a. Supervising or directing party or campaign workers or volunteers.
~~Take any part in the management or affairs of any political party.~~
- b. Having responsibility for or substantial input into strategy, communications, compliance, or finances of a political party, political campaign, or partisan political group.
~~Take any part in any political campaign.~~
- c. Holding any paid position for a political party, political campaign, or partisan political group, including as an independent contractor.
~~Engage in political activity in coordination with a candidate, political party, or political campaign.~~
- d. Being a candidate for public elective office or political party office.
~~Republish or distribute any printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.~~
- e. Being Be a member of any committee of a national, state, or local committee of a political campaign, political party, or partisan political group.
- f. Being a committee person, ward leader, delegate, or other officer of a political party or Be 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.~~

* For permissible activity for City Council employees, see Paragraph 8.15.
~~Paragraph 8.7 does not apply to City Council appointed officers and employees. See Paragraph 8.12.~~

~~6) An employee may not volunteer at a phone bank organized by a candidate's campaign.~~

2 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.~~

3) An appointed officer may not serve as a campaign manager for a political campaign.

4) An employee may not participate in developing or directing campaign strategies, such as public relations or data analytics.

8.8 No involvement in any political campaign by appointed officers and employees of the Police Department, the Board of Ethics, or the Office of the City Commissioners, Sheriff, or District Attorney.

Appointed officers or employees of the Police Department, the Board of Ethics, or the Office of the City Commissioners, Sheriff, or District Attorney shall not:

- a. Take any part in any political campaign.
- b. Engage in political activity in coordination with a political party, political campaign, or partisan political group.
- c. Republish or distribute any printed campaign literature that was produced or paid for by a candidate, political party, or political campaign.

This Paragraph shall apply to anyone temporarily assigned to one of the listed offices or departments for the duration of that assignment.

Examples for Paragraph 8.8

1) An employee of the Commissioners' office may not volunteer for the campaign of a candidate for Governor.

2) An employee of the Police Department may not distribute palm cards printed by the campaign of a candidate for United States Senate.

3) An appointed officer of the Board of Ethics may not stuff envelopes for a friend running for state representative in Wisconsin.

8.9 No involvement in political campaigns for local elective office.

No appointed officer or employee, other than an employee of City Council*, shall:

- a. Take any part in any political campaign in support of a candidate for local elective office.
- b. Engage in political activity in coordination with a political party, political campaign, or partisan political group in support of a candidate for local elective office.
- c. Republish or distribute any printed campaign literature in support of a candidate for local elective office that was produced or paid for by a candidate, political party, political campaign, or partisan political group.
- d. Local elective office is:
 - i. Mayor, City Council, District Attorney, City Controller, City Commissioner, Sheriff;
 - ii. Philadelphia Court of Common Pleas, Philadelphia Municipal Court, Register of Wills;
 - iii. Pennsylvania State Senator or Representative for any seat that includes any part of Philadelphia in its district; and
 - iv. Judge of Election, Majority Inspector, and Minority Inspector for a Philadelphia polling place.

Examples for Paragraph 8.9

- 1) An appointed officer may not circulate nomination petitions for a candidate for Philadelphia Court of Common Pleas.
- 2) An employee may not distribute campaign posters that she obtains from the campaign of a candidate for Mayor.
- 3) An employee may not volunteer at a phone bank organized by a political party in support of a candidate for a State Senate seat in a district that includes part of Philadelphia.
- 4) An appointed officer may not volunteer to knock on doors as part of a partisan political group's efforts to support a candidate for State Representative in a district that includes neighborhoods in both Philadelphia and Montgomery counties.
- 5) A representative of the campaign of a candidate for a Philadelphia Court of Common Pleas judgeship 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.

* For permissible activity for City Council employees, see Paragraph 8.15.

SUBPART C. PERMISSIBLE ACTIVITY

8.-810 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.-811 So long as they comply with the restrictions set forth in Subpart B, all 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.-811

- 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.

8.12 Participation in non-local campaigns permitted for some employees.

In addition to the activities listed in Paragraph 8.11, an appointed officer or employee who is not part of the Police Department, the Board of Ethics, or the Office of the City Commissioners, Sheriff, or District Attorney may volunteer in support of a candidate who is not running for-local elective office, so long as they:

- a. Comply with the restrictions set forth in Subpart B;
- b. Do not participate in any tasks that involve the management, strategy, supervision, or direction of campaign work as set forth in Paragraph 8.7;
- c. Do not seek or accept any compensation for their participation, including:
 - i. Any salary, wages, stipend, or any other payment; or
 - ii. Any clothing, travel, lodging, entertainment, food, beverage, or any similar benefit, or reimbursement for the same, beyond what would reasonably be provided to volunteers by a campaign in the ordinary course of its activities.

Examples for Paragraph 8.12

1) An employee of the Streets Department may volunteer for a canvassing effort organized by a political party in support of a candidate for Attorney General of Pennsylvania.

2) A member of the Free Library Board of Trustees may distribute sample ballots on behalf of a candidate for City Council in Pittsburgh.

3) An employee of the Water Department may participate in a get-out-the-vote drive organized by a candidate for Montgomery County Commissioner.

4) An employee of the Health Department may volunteer to hand out campaign t-shirts at a rally in support of a candidate for United States Senate.

8.1013 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.~~ b. Share, respond to, or follow the social media account, post, or page of a political party, candidate, or political campaign.

If an appointed officer or employee uses a social media platform to engage in political activity, they may not identify their City employment status or title in their profile or posts on that platform.

~~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~~13

- 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~~14 Family member of a candidate.

~~In addition to activity permitted by Paragraphs 8.10 through 8.13, an 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~~14

- 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 for City Council 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~~15 City Council employees.

In addition to activity permitted by Paragraphs 8. ~~8~~10 through 8. ~~11~~14, 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 committee of a national, state, or local committee of a political campaign, political party, or partisan political group.
- ~~d. Use their title while engaging in political activity.~~

Examples for Paragraph 8. ~~12~~15

- 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 D. MEMBERS OF CITY BOARDS AND COMMISSIONS

8. ~~13~~16 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~~17:

- 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~~17 A member of a board or commission not listed in Paragraph 8. ~~13~~16 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. ~~1518~~ 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. ~~1619~~ 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. ~~1619~~

- 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. ~~1316~~.
- 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. ~~417~~.
- 3) A City of Philadelphia elected official serves on a commission listed in Paragraph 8. ~~1316~~. 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.~~

8.20 An appointed officer or employee 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.

8.21 In addition to civil monetary penalties imposed by the Board or a court, an appointed officer or employee who violates any of the restrictions set forth in this Regulation shall, in the case of egregious conduct, as determined by the Board, be subject to removal from office or immediate dismissal.

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

Approved for public comment by Board: June 24, 2020
Public hearing held:
Adopted by Board with modifications:
Effective:

Testimony of Sarah E. Stevenson, Chief Integrity Officer, City of Philadelphia
Philadelphia Board of Ethics, Regulation 8 - Political Activity
Wednesday, July 15, 2020

On behalf of the Kenney administration, thank you for the opportunity to provide comment on the proposed revisions to Regulation 8. I am Sarah Stevenson, Chief Integrity Officer for the City of Philadelphia. Joining me today is Krystle Baker, Deputy Chief Integrity Officer.

First, thank you to the Board and Staff for the tremendous work completed so far so quickly on this project – particularly under the current work conditions.

In general, the proposed revisions to Regulation 8 align with the Charter amendment approved by Philadelphia voters on June 2, 2020 and we generally support the proposed regulation. However, I'd like to offer comment on the following four sections:

- 8.5(d) – the use of an employee's City title in social media profile prohibited
- 8.8 – clarifying temporary assignment to a restricted agency
- 8.7(b) – prohibiting substantial input into strategy
- 8.12(c) – gift/compensation provision

First, the administration suggests amending proposed section 8.5(d) to eliminate the blanket restriction on an employee's title in a social media profile and returning to the Board's existing narrower interpretation. This would still align with the plain language of the recently adopted Charter section 10-107(4)(c).

The Charter amendment states: "no appointed officer or employee of the City shall *use* a City title when engaged in any political activity." (Emphasis mine.)

Merriam-Webster's first entry for the verb to "use" is "to put into action or service." This clearly suggests prohibiting an employee's *active* employment of his or her title during otherwise permissible political activity. The Charter does not suggest prohibiting a title's passive existence on a static social media profile page. For example, there is a difference between me going door to door stating to voters, or posting on Facebook, "I am Sarah Stevenson, Chief Integrity Officer – Vote for New York Candidate A!" versus me anonymously stating to voters, or posting on Facebook – with my title on a separate page, "Vote for New York Candidate A!"

Social media profiles do not uniformly appear immediately next to posts. In the case where it does not, unless a reader took the extra step of viewing the profile, the reader would be unaware of the City title. Just as a reader could take an extra step to research the author of ANY post, so too must the reader take an additional step to find a City employee's title in the profile. Therefore, we feel this blanket restriction falls outside the plain meaning of the Charter and employees could inadvertently get caught in this restriction.

EXHIBIT

Exhibit-2

exhibits@ckr.com

As addressed in an existing example, the employee may not use his or her City title when signing a letter to the editor. By analogy, it makes sense – practically and legally - that an employee may not sign a social media post using his or her City title. We suggest leaving the existing regulation (and examples) in place and returning to the issue in the future if the Board and/or Staff see a need to impose a broader restriction.

Second, with respect to “temporary assignment,” the administration suggests that the “duration of assignment” be the calendar day in which the employee actually worked in the restricted agency. This clear demarcation allows departments to plan ahead without burdening the rights of those employees otherwise permitted to engage in political activity.

For example, on October 1st, at the request of the City Commissioners, the administration makes a call for volunteer assignment to the City Commissioners for Election Day on November 3rd. A volunteer employee signs up on October 2nd. I am suggesting that the volunteer employee may engage in otherwise permissible political activity except 12:00AM - 11:59PM on November 3rd.

If the assignment period extended too far beyond this time parameter, employee willingness to volunteer might diminish, or result in last minute volunteering - both are problematic for administering the election. Additionally, the calendar day rule allows for some “cooling period” around actual hours worked.

Third, we also recommend that the Board review references to the development of strategy. For example, 8.7(b) prohibits “responsibility for or substantial input into strategy.” This rule makes it sound like *some* participation is permissible, but accompanying Example 4 does not exhibit any flexibility. It states that “an employee may not participate in the development or directing campaign strategies, such as public relations and data analytics.” This conflict continues in 8.12(b) that prohibits a non-local campaign task that involves strategy.

To remedy any confusion, we recommend revising the example along the lines of “an employee may participate in conversations to develop campaign policy positions but may not direct campaign strategies.” Alternatively, the Board could strike the word “substantial” from 8.7(b).

Finally, we recommend including an example that corresponds with 8.12(c)(ii) that does not permit an employee to seek or accept any compensation for his or her participation beyond what would reasonably be provided to volunteers by a campaign in the ordinary course of its activities. It would be helpful to understand what the Board deems as reasonable under the context of this rule. For example, if a campaign provides pizza to a group of volunteers for their work, may the City employee enjoy slice of pizza without running afoul of this provision?

This concludes our prepared remarks. Thank you again for the opportunity to testify today.



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

re: Proposed Revisions to Regulation 8

To the Board:

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

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

My main concern is the one I have expressed at past hearings: the more examples, the better – which City positions, which races, which roles? In particular, in this presidential election year, it would behoove the Board to include as many examples pertinent to that race as possible. Whether these examples live as an evolving appendix to the regulations or within them directly, they really do aid practitioners and principals in understanding what is expected.

My specific comments are as follows:

Proposed Reg 8.7, example 4: I don't think performing data analytics, by itself, is sufficiently substantial to place someone in a managerial role. It's obviously an important *tool* to have, but someone still has to decide how to act upon the data. A person doing data analytics may well be on the outside the core team managing and directing the campaign.

Thank you for your consideration of these comments.

Very truly yours,

ADAM C. BONIN

EXHIBIT

Exhibit-3

exhibitsticker.com