



Code of Ethics

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SECTION 1 - Declaration of Policy

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

Each official or employee of the City must be constantly on guard against conflicts of interest. No official or employee should be involved in any activity which might be seen as conflicting with his/her responsibilities to the City. The people of Reading have a right to expect that their representatives act with independence and fairness towards all groups and not favor a few individuals or themselves.

The following principles, although not representing substantive rights, are fundamental driving forces for officials and employees of the City of Reading in everything they do¹:

- A. **Public Office as a Public Trust.** Public servants should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.
- B. **Independent Objective Judgment.** Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.
- C. **Accountability and Democratic Leadership.** Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.
- D. **Respectability and Fitness for Public Office.** Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbecoming a public official. In recognition of these aforementioned goals and principles, there is hereby established a Code of Ethics to be administered by the Board of Ethics. The purpose of this Code is to establish ethical standards of conduct for all officials and employees of the City of Reading, its agencies and authorities, whether elected or appointed, paid or unpaid, by providing guidelines to clarify actions or inactions which are incompatible with the best interests of the City and by directing disclosure of private, financial or other interests in matters affecting the City. The provisions

¹Josephson Institute for the Advancement of Ethics, *Preserving the Public Trust*, 1990

and purpose of this Code and such rules, regulations, opinions and disciplinary decisions as may be promulgated by the Board pursuant hereto, and under provisions of Article XII of the Charter, are hereby declared to be in the best interest of the City.

SECTION 2 - Board of Ethics

Reference is made to Section 1201(c) of the Charter of the City of Reading.

A. Composition and Structure of Board.

1. **Composition.** The Board established under Section 1201 of the City of Reading Home Rule Charter shall be composed of five (5) residents of the City of Reading.
2. **Terms of Service.** Members of the Board shall serve for terms of three (3) years, except that members shall continue to serve until their successors are appointed and qualified. The terms of the initial members shall be staggered, with one member serving a term of one year, two members serving for two years, and two members serving for three years.
3. **Vacancy.** An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds and is eligible for appointment thereafter according to the terms herein.
4. **Election of Chairperson and Vice Chairperson.** The Board shall elect a chairperson and a vice chairperson annually at a meeting held in July of each year. The vice chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.
5. **Quorum.** A majority of the members of the Board shall constitute a quorum and, except as provided in Sections 9.C. and 9.D., the votes of a majority of the members present are required for any action or recommendation of the Board.
6. **Staff.** The Board shall appoint a solicitor, a secretary and such other staff as may be deemed necessary. The solicitor, secretary and such other staff as may be necessarily appointed need not be members of the Board.
7. **Meetings.** The Board shall meet at the call of the Chairperson or at the call of a majority of its members.
8. **Investigative Officer.** The Board shall appoint an investigating officer as set forth herein. The Board shall, from time to time, determine an amount

to be paid as reasonable compensation to the investigating officer as payment for such services. The investigative officer shall be a member in good standing of the Berks County Bar and shall have so been for at least five (5) years. The investigative officer need not be a resident of the City of Reading and shall not be a Board member. The investigating officer is authorized to retain the services of investigators and may only delegate non-discretionary functions.

B. Powers and duties: The powers and the duties of the Board of Ethics may be summarized as follows:

1. Give advice as to the application of the ethics provisions of the Charter of the City of Reading and this Code of Ethics.
2. Receive and dispose of complaints of violations of the ethics provisions of the Charter and Code of Ethics, and exercise discretion in declining to pursue an investigation if such a course would be in the best interest of the citizens of the City of Reading or where the activity complained of amounts to no more than a de minimis violation.
3. Appoint an investigating officer to conduct investigations and to issue findings reports where appropriate.
4. Hold hearings, issue subpoenas and compel the attendance of witnesses, administer oaths, take testimony, require evidence on any matter under investigation before the Board, and issue orders, including but not limited to those related to adjudications and penalties.
5. Conduct educational programs to promote the ethical conduct of public officials, City employees, and individuals and groups doing business with the City.
6. Adopt rules and regulations to administer, implement, enforce and interpret the Code of Ethics.
7. Annually review the statements of financial interest filed pursuant to Section 4 of the Code.

C. Prohibitions. Due to their special position, Board members have a higher duty than other public officials to avoid conflicts of interest. Respect for the Code can be maintained only if members are models of ethical behavior. The prohibitions in this section are in addition to the duties, responsibilities or obligations imposed upon the Board members as public officials under other provisions of the Code.

1. No member may hold or campaign for any other public office.

2. No member may hold office in any political party or political organization or political committee.
 3. No member may hold a position of employment or appointment with any municipal government or any board or commission formed by the City of Reading.
 4. No member may actively participate in or contribute to any political campaign in the City of Reading for a candidate running for or from the office of the Mayor, President of Council, Council Member, or Auditor. This does not abridge the right of a member to vote or attend a debate, speech or similar event that is held primarily for the purpose of communicating a candidate's platform or position on issues of public concern.
 5. No member shall receive compensation but shall be reimbursed by the City for documented expenses actually incurred.
- D. **Preservation.** Complaints and proceedings pending before the Board at the time this Code is adopted shall be preserved insofar as they are consistent with recent orders of the Court of Common Pleas of Berks County. The Board shall take any and all steps necessary to adjudicate all pending complaints so as to comply with said orders, including the establishment of a committee of Board members not previously involved in the disposition of said complaints to adjudicate and dispose of the same. Said committee shall consist of at least three (3) Board members and shall act with the authority of the Board in adjudicating said complaints and instituting penalties and restitution where applicable.

SECTION 3 - Definitions

For the purposes of this Code, the following terms shall have the following definitions. All other words and phrases shall have their normal meaning unless further defined herein.

- A. **Appearance of Impropriety.** The perception that wrong-doing or misconduct may have occurred. When a reasonable person could reasonably believe that improper actions have taken or are taking place.
- B. **Board.** The Board of Ethics of the City of Reading.
- C. **Candidate.** An individual who files nomination papers or petitions for City Elected Office or who publicly announces his or her candidacy for City Elected Office.

- D. **Candidate Campaign Contribution.** Money, gifts, forgiveness of debts, loans or things having a monetary value incurred or received by a candidate or his/her agent for use in advocating or influencing the election of the candidate.
- E. **Candidate Political Committee.** The one Political Committee used by a candidate to receive all contributions and make all expenditures.
- F. **Charter.** City of Reading Home Rule Charter.
- G. **City.** The City of Reading, Pennsylvania.
- H. **City Elected Office.** The offices of Mayor, City Council and City Auditor.
- I. **Code.** City of Reading Code of Ethics.
- J. **Conflict of Interest.** Situation(s) or potential situation(s) in which a public official or employee uses or may use his/her office or employment for the private gain of himself/herself, a member of his/her immediate family or a business of any type with which he/she or a member of his/her immediate family has a material interest.
- K. **Contract.** An agreement or arrangement for the acquisition, use or disposal by the City or a City agency or instrumentality of consulting or other services or of supplies, materials, equipment, land or other personal or real property. This term shall not mean an agreement or arrangement between the City or City agency or instrumentality as one party and a City Official or City Employee as the other party, concerning his/her expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his/her current public employment with the City or a City agency or instrumentality.
- L. **Contribution.** Money, gifts, forgiveness of debts, loans or things having a monetary value incurred or received by a Candidate or his/her agent for use in advocating or influencing the election or candidacy of the Candidate.
- M. **Covered Election.** Every primary, general, or special election for City Elected Office.
- N. **Elected Official.** An official elected or appointed to fill a position normally filled by election.
- O. **Employee.** Any individual receiving salary or wages from the City of Reading.
- P. **Gift.**
1. The term "Gift" for the purposes of this Code shall mean: any gratuity,

benefit, or any other thing of value, which is accepted by, paid for, or given to a City Employee or City Official, or by another Individual or Organization on behalf of a City Employee or City Official, either directly or indirectly, without consideration of equal or greater value.

This definition may include, by way of illustration and without limitation to, the following: (i) preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin; (ii) transportation, lodging, or parking; (iii) food or beverage, other than that consumed at a single sitting or event; (iv) membership dues or admissions to cultural or athletic events, which exceed \$250.00 per calendar year in the aggregate and \$100.00 per calendar year from any single person, agent or other interested party; and/or (v) political contributions in excess of those limitations set forth hereinafter or in any other applicable laws or regulations, including but not limited to, the City Codified Ordinances.

2. The term "Gift" for purposes of this Code shall explicitly exclude: (i) gifts from direct family members; (ii) non-pecuniary awards publicly presented, in recognition of public service; (iii) an occasional non-pecuniary gift of nominal value; (iv) complimentary travel for official purposes; and/or (v) admissions to charitable, civic, political or other public events.

- Q. **Immediate Family.** A parent, spouse, living partner, child, brother or sister, natural or adopted.
- R. **Individual.** A person, including a married couple.
- S. **Material Interest.** Direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.
- T. **No-Bid Contract.** A Contract (as defined herein), which is not awarded or entered into pursuant to an open and public process, in accordance with Pennsylvania law, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded related thereto.
- U. **Officer.** Investigating Officer appointed by the Board to oversee the investigative procedures on behalf of the Board. The investigating officer need not be a Board member and may be compensated as any other member of the staff.
- V. **Official.** Any elected or appointed paid or unpaid member of the government of the City of Reading, including without limitation members of any City boards, authorities, and commissions.

- W. **Organization.** An individual, partnership, corporation, sole proprietorship, whether for-profit or not-for-profit, or any other form of business organization.
- X. **Political Activity.** Any activity which promotes the candidacy of any individual seeking elective office, or the advocacy of any political party or position, including but not limited to the circulation of election petitions and the sale or distribution of fund raising items or tickets.
- Y. **Pre-Candidacy Contribution.** A contribution made to a Political Committee that: (a) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City Elective Office; and (b) was made before such candidate became a candidate.
- Z. **Private Gain.** Of personal benefit, whether economic, social, or otherwise.
- AA. **Post-Candidacy Contribution.** A contribution made to a former Candidate or Political Committee for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City Elected Office.
- BB. **Political Committee.** Any committee, club, association, political party, or other group of persons, which receives contributions or makes expenditures for the purpose of influencing the outcome of a Covered Election, including but not limited to: (a) political action committees recognized under Section 527 of the Internal Revenue Code, and (b) the Candidate Political Committee of a Candidate in a Covered Election.
- CC. **Violation.** A violation is any activity that is restricted by the ethics provisions of the Charter and/or the Code.

SECTION 4 - Statement of Financial Interests

Any official or employee of the City or authorities or boards with decision-making authority shall file with the City Clerk a Statement of Financial Interests for the preceding calendar year by May 1 of each year, as defined by the State Code of Ethics. Any individual appointed to such a position after May 1 has fifteen working days to file the Statement of Financial Interest. All statements must be made available for public inspection and copying at an amount not to exceed actual costs.

SECTION 5 - Disclosure of Confidential Information

City employees and officials often have access to important non-public information regarding the property, operations, policies or affairs of the City. Such information may concern, among other things, employees and officials, real estate transactions, expansion of public facilities, or other

City projects. Using or furnishing information that would place employees or recipients in an advantageous position over the general public constitutes a violation of public trust. Anyone who is privy to confidential information may not disclose that information to any private citizen and should disclose it to other public employees only if appropriate and in the normal course of their duties as employees or officials of the City of Reading.

Should an official or employee find himself/herself in any direct or indirect financial interest with any person or other entity proposing to contract with the City that individual must fully disclose said interest and refrain from voting upon or otherwise participating in the transaction or the making of such decision, contract or sale. Violation of this section shall render the contract voidable by the decision-making body or upon review and authority of the Board of Ethics.

SECTION 6 - Prohibited Behaviors

A. Conflicts of Interest

1. Employees and officials of the City may not bid on or have a material interest in:
 - a. the furnishing of any materials, supplies or services to be used in the work of the City;
 - b. contracts for the construction of any City facility;
 - c. the sale of any property to the City or the purchase of any property from the city unless said property is offered to the general public at auction or by competitive bid.
2. Employees and officials of the City may not:
 - a. use or attempt to use their official position to secure special privileges or exemptions for themselves or others;
 - b. accept employment or engage in any business or professional activity which might reasonably be expected to require or induce the disclosure of confidential information acquired by the public officer or employee by reason of their official position;
 - c. disclose to others, or use for personal benefit, any confidential information gained by reason of an official position;
 - d. accept other employment which might impair the independence or judgment of the public officer or employee in the performance of public duty;

- e. receive any compensation for official services to the City from any source other than the City;
 - f. transact any business in an official capacity with any other business entity of which the public officer or employee is an officer, director, agent, member, or owns a material interest;
 - g. have personal investments in any enterprise which will create a substantial conflict between any private interest and the public interest.
3. Outside Employment. City officials or employees may accept, have, or hold any employment or contractual relationship with any individual, partnership, association, corporation (profit or non-profit), utility or other organization, whether public or private, but only if the employment or contractual relationship does not constitute a conflict of interest or impair their efficiency.
 4. Officials and employees shall not engage in conduct prohibited under Section 1201(a) of the Charter.

B. Solicitation/Acceptance of Gifts; Rebuttable Presumption

1. A City Employee, City Official, Immediate Family of a City Employee or Official or any for-profit entity in which the City Employee, City Official, or any Immediate Family has a Material Interest, shall neither solicit nor accept any Gift(s) from an offeror or donor based on the offeror's or donor's understanding that any vote, official action or judgment of the City official or City employee would be or could be influenced thereby. City Employees and City Officials are also subject to those related, applicable ordinances of the City Charter, City Codified Ordinances, and the Pennsylvania Public Official and Employee Ethics Act (65 Pa. C.S.A. §§1101.1, et seq.), as amended, and all related statutes and regulations, as applicable. The solicitation or acceptance of Gift(s) shall create a rebuttable presumption that the City Employee or City Official knew or should have known that such solicitation or acceptance was based on an understanding that his/her official actions or judgments would thereby be influenced.
2. In the event that a Candidate for City Elected Office, who is not a City Employee or City Official, solicits or accepts any Gift(s) from any offeror or donor based on the offeror's or donor's understanding that the vote, action or judgment of the Candidate, if and when elected, would be or could be influenced thereby, are subject to those related, applicable ordinances of the City Charter, City Codified Ordinances, and the Pennsylvania Public Official and Employee Ethics Act (65 Pa. C.S.A. §§1101.1, et seq.), as amended, and all related statutes and regulations, as applicable.
3. No person, firm, corporation or other business or professional organization shall

offer, make or render any Gift(s) to any City Employee, City Official, Immediate Family or for-profit entity in which a City Employee or City Official has a Material Interest, which might reasonably be expected to influence such City Employee or City Official in the discharge of his/her official duties.

4. In all but de minimis cases, Gifts received must be publicly recorded and submitted to the City Clerk specifying: (i) the donor; (ii) the address of the donor; (iii) the date received; (iv) a concise description of the gift; and (v) the value of the gift. A gift having a value in excess of \$25.00 may not be considered de minimis.

C. Nepotism

Hiring a relative is a special type of a conflict of interest that should be avoided. No public official or employee shall appoint, hire, advance or advocate the appointing, hiring or advancing of a member of his/her immediate family or household member to a city position, as provided in the City of Reading Personnel Code.

D. Whistle Blowing

Employees are expected to expose a violation of the Code of Ethics by any employee or business entity with which the City is doing business if such a violation creates a serious and specific danger to the public's health, safety or welfare.

Employees are expected to expose improper use of public office or any other abuse or neglect on the part of a city employee or public official. An employee with knowledge of actions or activities of ethical concern shall report them to the Board of Ethics. The identity of the employee will be confidential information of the Board of Ethics until a full investigation is initiated.

Retaliation against an employee who reports any violation, abuse or other improper action is strictly prohibited. Any such action will be a violation of the Code of Ethics and subject to the disciplinary and corrective action as ordered by the Board of Ethics.

E. Fraudulent or Other Activity

City employees or officials are expected to act ethically in the performance of all duties and responsibilities and avoid any involvement with, or any appearance of, behavior constituting fraud, misappropriation or other inappropriate conduct while carrying out the duties and obligations of their employment or office.

City employees or officials may not willfully or deliberately act, attempt to act, conspire to act, or solicit with the intent to act, carry out, or participate in any of the following activities:

- a. Embezzlement of money or resources for private purposes or use, from

any City official, City employee, City department, City contractor or subcontractor, or third party agent doing business with the City government;

- b. Misappropriation of City funds, supplies, assets or resources;
- c. Falsification of any City record, including personnel records;
- d. Forgery or alteration of any check, bank draft, bank account, or other financial document;
- e. Forgery or alteration of timecard data and/or information;
- f. Receipt of a bribe or kickback, or willing participation in a scheme of bribery;
- g. Impropriety in the handling or reporting of money or financial transactions;
- h. Using insider knowledge of City activities to earn or generate any gift, profit or pecuniary benefit;
- i. Accepting, requesting, or seeking any material item or pecuniary benefit from contractors, vendors or parties providing services or materials to the City;
- k. Unauthorized destruction, removal or inappropriate use of City property, including data records, furniture, fixtures and equipment;
- l. Making false or intentionally misleading written or oral statements or representations in carrying out any official or employment duty or obligation; or
- m. Participation in any willful or deliberate act carried out with the intention of obtaining an unearned or unauthorized benefit by way of deception or other unethical means.

City employees or officials are to be familiar with the types of fraud and the potential activities and circumstances that may give rise to a fraudulent activity within his or her department, bureau, and area of responsibility.

City employees or officials are charged with the duty to be alert for any indication of fraudulent activity and all City employees or officials have a duty to report immediately any suspected fraudulent activity to the City Board of Ethics.

F. Use of City Property and Personnel

City employees or officials may not use any personnel, equipment, supplies, facilities, vehicles, or any other property owned and belonging to the City for their private purposes, use, enjoyment, or benefit. City employees or officials who hold a supervisory position may not use the time, effort and resources of any subordinate City employees or official for their private purposes, use, enjoyment, or benefit. The provisions of this Section 6(F) are to be read together and with any related provision of the City of Reading Personnel Code.

G. Political Activities

Section 605A and 707 of the City Charter and Section 1.08 of the City of Reading Personnel Code are incorporated herein by reference and made a part hereof. City employees or officials are to adhere to the sections restricting involvement in political activities as set forth in Sections 605A and 707 of the City Charter and Section 1.08 of the City of Reading Personnel Code. In the event that the City or City Council has failed to take appropriate action in enforcing the aforementioned provisions, then the Board of Ethics shall have jurisdiction to adjudicate any violation thereof.

H. Awarding Contracts

1. To the extent that it is not inconsistent with federal or state law: (i) a City Employee, (ii) a City Official, (iii) any Immediate Family of a City Employee or City Official; or (iv) any for-profit business entity in which the City Employee, City Official, or any Immediate Family has a Material Interest, shall not enter into any Contract valued at Five Hundred Dollars (\$500.00) or more with the City or any City agency or instrumentality, unless the Contract has been awarded through an open and public process, in accordance with Pennsylvania law, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the City Official or City Employee shall not have any supervisory or overall responsibility for the implementation or administration of the Contract. Any Contract or subcontract made in violation of this subsection may be subject to further penalties, pursuant to the terms and provisions of the Pennsylvania Public Official and Employee Ethics Act (65 Pa. C.S.A. §1101.1, et. seq.).
2. Prior to entering into or awarding any No-Bid Contract, the City Employee, Official, agent or instrumentality entering into such No-Bid Contract on behalf of the City, must immediately provide the Board of Ethics with the following information:
 - i. The name and address of all contracting parties;
 - ii. A draft copy of the contract to be entered into;
 - iii. A report, in compliance with 25 P.S. §3260a (Section 1641 of the Pennsylvania Election Code), as amended, which shall provide the following:
 - a. An itemized list of all political contributions known to each contracting party by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

1. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family of the aforementioned parties when the contributions exceed an aggregate of One Thousand Dollars (\$1,000.00) by any individual during the preceding year; or
 2. Any employee or members of his or her immediate family whose political contribution exceeded One Thousand Dollars (\$1,000.00) during the preceding year.
- iv. Any other information that the Board of Ethics may require.
3. In the event that the intended recipient of a City No-Bid Contract or any officer, director, associate, partner, limited partner, individual owner, member, employee, or Immediate Family of any of the aforementioned parties has made a donation to a political committee of a City Employee, City Official, agent or instrumentality, in excess of the contribution limitations set forth in Section 1-199.22 during any of the preceding two (2) calendar years from the date the draft copy of the proposed contract is submitted to the Board of Ethics, then and in that event the City is prohibited from awarding that No-Bid Contract to that intended party.
 4. For purposes of this Section, the office that is considered to have ultimate responsibility for the award of the Contract shall be as provided for by the established purchasing policies of the City of Reading.

SECTION 7 - Penalties; Restitution

A. Penalties.

Upon any violation of the city provisions, including the undertaking of wrongful acts as described above or in the City of Reading Home Rule Charter, any of the following penalties shall be available to the Ethics Board for imposition:

1. **Admonition.** In compliance with existing personnel practices, collective bargaining agreements and/or statutes, a letter to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, indicating that the respondent has been found to have violated the City provisions;
2. **Public Censure.** In compliance with existing personnel practices, collective bargaining agreements and/or statutes, notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, and the news media indicating that a violation of the City provisions took place and that the board strongly disapproves of the actions of the public official or public employee;

3. **Recommendation to the Managing Director of Suspension**, without compensation for a stated period of time not to exceed thirty (30) days, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant. If any such suspension is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;
4. **Recommendation to the Managing Director of Termination** in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification going to the respondent, the Managing Director, the Mayor, the Director of the Department in which is respondent is employed, if any, and the complainant, if any. If any such termination is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;
5. **Referral** to the appropriate authorities for criminal prosecution in cases where a violation of this ordinance is also a violation of federal or state law;
6. **Ineligibility** for holding any office or position within the City for a period of up to five years, as set forth in Section 1202 (b) of the Charter of the City of Reading;
7. **Impose a fine**, not to exceed one thousand dollars (\$1,000.00) per violation;
8. **Imposition of an administrative fine** of not more than one thousand dollars (\$1,000.00) to defray the actual cost and expense of investigating any violation; and
9. Any person who realizes financial gain by way of a violation of any provisions of this ordinance, in addition to any other penalty provided by law or this ordinance, shall pay into the Treasury of the City, a sum of money up to the financial gain resulting from the violation. The Board shall determine the amount of financial gain realized; and
10. Any public official, public employee, person, corporation, company or other entity found to have participated in or benefited from a violation of this ordinance, may be barred from participating in business dealings with the City for a period of time not to exceed five (5) years, said period of time to be determined by the Board, in addition to being subject to any other penalty (prescribed by this ordinance) deemed appropriate by the Board.

B. Restitution; Other penalties and remedies.

After finding that an individual has violated any provision of the Charter or this Code within the jurisdiction of the Board as provided for in this Code, the Board may take one or more of the following actions, if appropriate, in addition to penalties described in Section 7(a):

1. Order the subject to make restitution to those incurring damage or injury as a direct result of the actions of the subject that have been adjudicated as a violation of the Code or Charter;
2. Order the subject to cease and desist from engaging in a particular activity that is in violation of the Code, Charter, or any order issued by the Board;
3. Order the subject to take specified action to bring him/her into compliance with Board directives;
4. Refer the matter for review or with specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction of the matters;
5. Institute appropriate civil or equitable action to enforce the order and decision of the Board; and
6. Recommend to City Council the forfeiture of the office or position held by the subject with the City and recommend that the subject be ineligible to hold any City office or position for a period of up to five (5) years following such decision.

SECTION 8 - Advisory Opinions

Upon the written request of any public official or city employee, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this ordinance, and shall issue an advisory opinion in writing as to any such question. The Board may in its discretion publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion.

An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the official or employee who sought the opinion did so in good faith and only to the extent material facts were not misrepresented in the request for the opinion.

SECTION 9 - Complaint and Investigation Procedure

A. Who May File

Any person may file a complaint about alleged ethics violations of the Reading Code of Ethics or the City Charter. In addition, the Board may initiate proceedings. A person signing a complaint shall:

1. Reasonably believe in the existence of facts upon which the claim is based; and
2. Reasonably believe that the complaint may be valid under the ethics provisions of the Code of Ethics and the City Charter.

B. How to File

Complaints must be submitted on forms provided by the Board. The Board shall make available this form upon request. The complaint shall state the name, job or office held by the alleged violator and a description of the facts that are alleged to constitute a violation. It must contain a notarized signature subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. The Board shall establish a separate P.O. Box through which to receive complaints. This P.O. Box shall be generally accessible by the investigative officer and/or the secretary, provided that the secretary is not a Board member.

C. Jurisdiction; Preliminary Investigation

1. Each complaint filed with the Board shall be immediately directed to and preliminarily reviewed by an investigating officer appointed by the Board (the "Officer") to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determinations shall be made within 30 days of the filing of the complaint. If the Officer determines that the Board does not have jurisdiction over the matter underlying the complaint, the complainant will be notified and no further action will be taken with regard to the complaint. If, however, the Officer determines that the complaint falls within the jurisdiction of the Board, the Officer shall authorize a preliminary investigation.
2. The preliminary investigation shall be initiated and accomplished at the sole direction of the Officer. If the Officer, in his/her sole discretion, finds that the violation(s), as alleged in the complaint, would, if proved, constitute a de minimis infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint, if to do so would be in the best interest of the citizens of the City of Reading.
3. At the onset of the preliminary investigation, the Officer shall notify both the complainant and the subject of the investigation of the filing of the

complaint, the nature of the same, and the initiation of a preliminary investigation.

4. The preliminary investigation shall be completed within 60 days of the Officer's finding of jurisdiction.
5. If at any time during the preliminary investigation, an extension is necessary and justified, the Officer shall have additional time in 30-day segments. The Officer shall timely notify both the complainant and the subject of the investigation of each such extension.
6. At the conclusion of the preliminary investigation, the Officer shall determine whether there may exist facts to support the complaint. If the inquiry fails to establish such facts, the Officer shall dismiss the complaint and notify both the complainant and the subject of the complaint of the dismissal of the complaint. If, however, at the conclusion of the preliminary investigation the Officer determines that there may exist facts to support the complaint, the Officer shall authorize a full investigation.

D. Full Investigation

If a preliminary investigation uncovers facts to support the complaint, the Officer shall authorize a full investigation. The complainant and the subject of the investigation shall be notified within three (3) days of the initiation of a full investigation and the subject shall be notified of the identity of the complainant. Until the investigation is concluded or terminated, the Officer will notify both the complainant and the subject of the investigation of the status of the investigation at least every ninety (90) days. Within one hundred eighty (180) days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report to the subject.

E. Findings Report

The findings report shall set forth the pertinent findings of fact as determined by the Officer. The Officer shall deliver the findings of fact to the complainant and the subject of the investigation. The subject of the investigation may, within 30 days of the report, request an evidentiary hearing, unless an extension is obtained from the Officer. When such a request is received by the Officer, the Officer shall immediately notify the Board of the request for a hearing, and the names of the parties involved. The Board shall upon receipt of such notice engage two attorneys: one to represent the facts in support of the complaint; and one to advise the Board in matters related to the evidentiary hearing. The Board solicitor shall not have any involvement in a particular matter once the findings report has been issued.

F. Evidentiary Hearing

1. **Timing.** An evidentiary hearing must be held within forty-five (45) days of the filing of a request for the same.
2. **Evidence.** The subject of the investigation shall have reasonable access to any evidence intended to be used at a hearing. The subject of the investigation shall have the opportunity to be represented by counsel and to subpoena witnesses, present evidence, cross examine witnesses against him/her, submit argument and shall be entitled to exercise all rights of confrontation and the like afforded him/her by the United States Constitution and the Pennsylvania Constitution.
3. **Closed Hearing.** The hearing shall be closed to the public unless the subject requests an open hearing in writing to the Board at least five (5) days before the hearing.

G. Decision by the Board; Final Order.

At the conclusion of the evidentiary hearing, the Board will determine by majority vote of those members presiding whether the evidence supports a finding that the subject of the complaint violated provision(s) of either the Charter or the Code.

Upon reaching a determination on the complaint, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint.

H. Petition for Reconsideration.

A subject, having been found to have violated a provision of the Charter or Code, may file a petition for reconsideration of the Board's decision. Such petition shall be filed with the Board within ten (10) days of the day the Board issues its final order.

I. Protection of Complainant

No person may be penalized, nor any employee of the City be discharged, suffer change in his/her official rank, grade or compensation, denied a promotion, or threatened, for a good faith filing of a complaint with the Board, or providing information or testifying in any Board proceeding.

SECTION 10 - Confidentiality of Board Information

All Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board, except as may be required to affect due process. The final

order shall become a public record once the subject has exhausted all appeal rights or has failed to timely exercise such rights. All other file material shall remain confidential.

SECTION 11 - Wrongful Use of Board of Ethics

The purpose of the Board of Ethics is to endeavor to maintain a high standard of ethical behavior by City employees and officials. This will be most effective when City employees, officials and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact. Those filing complaints must have the intent to improve the ethical climate of the City. Wrongful use of the Code is prohibited and those individuals engaged in such conduct may be subject to penalties as set forth in Section 7.

Wrongful use of the Code of Ethics is defined as either:

1. Filing an unfounded, frivolous or false complaint. A complaint is unfounded, frivolous or false if it is filed in a grossly negligent manner without a basis in law or fact and was made for a purpose other than reporting a violation of this Code. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this Code or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.
2. Publicly disclosing or causing to be disclosed information regarding the status of proceedings before the Board and facts underlying a complaint before the Board, including the identity of persons involved and that a complaint has been filed.

SECTION 12 - Campaign Contributions and Reporting Requirements

1. Campaign Contribution Limitations.

A. During a Calendar Year in which a Covered Election is Held.

- i. To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D, Pre-Candidacy Contributions, hereinafter, no Individual shall make, and no Candidate and/or no Candidate Political Committee shall accept, a Candidate Campaign Contribution, including those contributions made to or through one or more Political Committees by such Individual, in excess of Two Thousand Six Hundred Dollars (\$2,600.00).
- ii. To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D, Pre-Candidacy Contributions, hereinafter, no Organization (excluding Individuals covered by the Code of Ethics as part

of the Administrative Code, as amended, shall make, and no Candidate and/or no Candidate Campaign Committee shall accept, a Candidate Campaign Contribution, including those contributions made to or through one or more Political Committees by such Organization, in excess of Ten Thousand Dollars (\$10,000.00).

- iii. To the extent that it is not inconsistent with federal or state law and except as provided in Subsection D hereinafter, no Political Committee (excluding Candidate Political Committees) shall make, and no Candidate and/or no Candidate Campaign Committee shall accept, a Candidate Campaign Contribution, in excess of Ten Thousand Dollars (\$10,000.00).

B. During a Calendar Year in which a Covered Election is Not Held.

- i. Candidates for Mayor may receive Candidate Campaign Contributions totaling no more than Two Hundred and Fifty Thousand Dollars (\$250,000.00) per year.
- ii. Candidates for Auditor may receive Candidate Campaign Contributions totaling no more than One Hundred Thousand Dollars (\$100,000) per year.
- iii. Candidates for City Council may receive Candidate Campaign Contributions totaling no more than One Hundred Thousand Dollars (\$100,000.00) per year.

C. Post Election Intervals.

- i. During the interval between the general election (or primary/special election, with respect to Candidates who were not nominated) and the end of the calendar year in which the election occurred, and in each calendar year thereafter, no Individual shall make total Post-Candidacy Contributions, including those contributions made to or through one or more Political Committees by such Individual, of more than Two Thousand Six Hundred Dollars (\$2,600.00).
- ii. During the interval between the general election (or primary/special election, with respect to Candidates who were not nominated) and the end of the calendar year in which the general election occurred, and in each calendar year thereafter, no Organization shall make total Post-Candidacy Contributions, including those contributions made to or through one or more Political Committees by such Organization, of more than Ten Thousand Six Hundred Dollars (\$10,600.00).

D. Pre-Candidacy Contributions.

- i. No Candidate or Candidate Political Committee may spend any excess Pre-Candidacy Contributions for the purpose of influencing the outcome of a Covered Election in which he or she is a Candidate.
- ii. No Candidate or Candidate Campaign Committee may spend any excess Pre-Candidacy Contributions or excess Post-Candidacy Contributions for the purposes of:
 - a. Transition or inauguration expenses; or
 - b. Retiring debt that was incurred to influence the outcome of an already completed Covered Election, or cover transition or inauguration expenses related to an already completed Covered Election.
- iii. A Pre-Candidacy Contribution made in the same calendar year that a person becomes a Candidate shall count toward those limitations on contributions set forth in the Code of Ethics as part of the Administrative Code, as amended.

E. Candidate's Personal Resources. The limitations imposed by the Code of Ethics as part of the Administrative Code, as amended shall not apply to contributions from a Candidate's personal resources to his or her Candidate Political Committee. However, if such contributions from a Candidate's personal resources shall exceed \$250,000.00 (regardless of the time period over which such contributions were made), then the contribution limits set forth in the Code of Ethics as part of the Administrative Code, as amended, for that City Elected Office, other than those listed above, shall double.

F. Volunteer Labor. The limitations imposed by this Section shall not apply to volunteer labor.

G. Adjustments.

- i. On January 1, 2016 and on every January 1 every four (4) years thereafter, the maximum contribution amounts set forth in Code Section 12 shall be adjusted, as follows: on the December 15 immediately preceding the adjustment, the City Administrative Services Director shall calculate the "CPI Multiplier" by dividing the average consumer price index for Reading, Pennsylvania during the then-current calendar year by the average consumer price index for Reading, Pennsylvania during the calendar year of 2011. To determine the average consumer price index for

Reading, Pennsylvania, the City Administrative Services Director shall use the latest available figures for the Consumer Price Index for all Urban Consumers (CPI-U), Reading, Pennsylvania, as measured by the United States Department of Labor, Bureau of Labor Statistics. After calculating the CPI Multiplier, the City Administrative Services Director shall calculate the new maximum amounts as follows:

- a. The maximum amount for purposes of Code Section 12 (1) (A) (i) shall equal \$2,500.00, multiplied by the CPI Multiplier, rounded to the nearest \$100.00.
 - b. The maximum amount for purposes of Code Section 12 (a) (A) (ii) shall equal \$10,000.00, multiplied by the CPI Multiplier, rounded to the nearest \$100.00.
- ii. The City Administrative Services Director shall certify the new maximum amounts in writing to the Mayor, the City Auditor, the City Council President, and the City Clerk.

H. Candidate Political Committees

- i. A Candidate shall have no more than one (1) Candidate Political Committee and one (1) checking account for the City Elected Office sought, into which all Contributions and Post-Candidacy Contributions for that sought office shall be made, and out of which all expenditures for that sought office shall be made, including expenditures for retiring debt and for transition or inauguration to that office. If the Candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in these accounts shall not be used for the purpose of influencing the outcome of a Covered Election, or to retire debt that was incurred to influence the outcome of that Covered Election, or to cover transition or inauguration expenses.
- ii. Upon the formation of a Candidate Political Committee, the Candidate shall immediately file with the Board of Ethics a statement identifying:
 - a. The name and address of the committee;
 - b. The bank account information of the committee;
 - c. The treasurer of the committee; and
 - d. Any other information that the Board of Ethics may require.

I. Enforcement; Injunctive Relief

- i. The provisions of this Section shall be enforced by the City of Reading Board of Ethics, in accordance with the Code of Ethics (of the City Administrative Code, as amended), including but not limited to the complaint, investigation, restitution and penalties provisions thereof.
- ii. In addition to the provisions of the Code of Ethics, any person residing in the City of Reading, including the City Solicitor, may bring an action for injunctive relief in any Court of competent jurisdiction to enjoin any violations of, or to compel compliance with, the provisions of this Section in accordance with the Code of Ethics as part of the Administrative Code, as amended. The Court may award to a prevailing plaintiff in any such action his or her costs of litigation, including reasonable attorney's fees.

2. Reporting Requirements.

A. Statement of Financial Interests.

- i. Any City Employee or City Official must be in compliance with Code Section 4 ("Statement of Financial Interests") prior to filing any nomination papers or petitions for City Elected Office or publicly announcing his or her candidacy for City Elected Office.

B. Campaign Finance Disclosure

- i. Whenever a Candidate, treasurer of a Candidate Political Committee, or other representative of a Candidate Political Committee files a required report of receipts and expenditures with the Berks County Board of Elections and/or Secretary of the Commonwealth as required by the Pennsylvania Election Code (25 P.S. §§3241, et seq.), or other applicable laws or regulations, such person shall at the same time file with the City Clerk, a copy of all information set forth in such report(s), in that format mandated by the Board of Ethics. Such filing with the City Clerk shall be accompanied by a written statement, signed by the person making the filing that subscribes and swears to the information set forth in such filing.

3. Required Notice of Contribution Limits.

- A. The Board of Ethics shall, at least every six (6) months, arrange for publication in the newspaper with the largest circulation in the City and on the City website, a notice setting forth the contribution limits set forth in this Code together with a plain English explanation of the provisions of this Section and the penalties and remedies for violations thereof. Such notice shall remain posted and available for



Memorandum

TO: Members of City Council

FROM: City Solicitor's Office

DATE: August 20, 2015

SUBJECT: Anti- "Pay- to- Play" Lehigh County Ordinance Outline Review (Legal Service Request 2015-076)

We reviewed Lehigh County's Anti- "Pay-to-Play" Ordinance Outline, dated August 2015, and find that there appear to be no constitutional, state law or Home Rule Charter impediments to its introduction, consideration and passage.

We make the following observations and suggestions:

- A. Constitutionality: Pennsylvania has Anti-Pay-to- Play laws and regulations in the fields of casino gambling and the engagement of investment managers for municipal pensions. In a challenge to the Race Horse Development and Gaming Act, the Supreme Court held in DePaul v. Commonwealth 600 Pa. 573, 969 A.2d 536 (2009) that a complete ban on individuals affiliated with licensed gaming, namely casinos, from state political contributions violated the state Constitution's protection of freedom of expression and association. Since the proposed Ordinance sets reasonable time and manner restrictions on political contributions, there would be no violation of the right to free speech.
- B. State Law Preemption: The Supreme Court held in Nutter v Dougherty 595 Pa. 340, 938 A.2d 401 (2007) that the Philadelphia Ordinance which limits campaign contributions to candidates for municipal office was not preempted by the state Election Code.
- C. Home Rule Charter: A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter... whether in the form of a specific enumeration or general terms, shall be liberally construed in favor of the municipality. 53 Pa.C.S.A. § 2961. Section 815 (Bidding Process), Paragraph b (Competitive Policies Code) specifically contemplates that City Council may, by Ordinance, amend, by its Purchasing Code, to administer a system of competitive purchasing for City government, including bidding.
- D. Recommendations: As with Chapter 17-1406 (Non-Competitively Bid Contracts; Financial Assistance) of the Philadelphia Code, we suggest that Council and/or the Purchasing Agent have the ability to waive the requirements of the Anti- "Pay-to-Play" Ordinance in the following circumstances: (1) in the case where compliance with its provisions may lead to the loss of federal, state or similar grant funding, (2) where the purchase is for unique articles that cannot be obtained in the open market, (3) where a delay in the award of a contract would cause a threat to public safety (an emergency situation), (4) where the Solicitor certifies that a contract must be awarded immediately to

avoid material damage to the legal interests of the City and (5) in the case of a contract with a governmental agency.

As with Section 17-1407 of the Philadelphia Code, we suggest, rather than having a violation of the Anti "Pay-to-Play" Ordinance automatically void a contract, that the violation render a no-bid contract "voidable", with the vendor given the opportunity to appeal to an appropriate City forum and to defend against the alleged violation at a due process hearing.

Finally, the Ordinance should be fashioned accordingly as to apply to the City of Allentown. In its current form, the Ordinance applies to Lehigh County.

Thank you.