



Testimony on Proposed Gifts Ordinance

Philadelphia City Council

Committee on Law and Government

February 24, 2014

I am Ellen Mattleman Kaplan, Vice President and Policy Director of the Committee of Seventy, a non-partisan and not-for-profit watchdog organization fighting for honest and effective government, fair elections and better informed citizens.

The Committee of Seventy applauds City Council for taking up this long overdue reform of Philadelphia's gifts rules. It is not an easy job. Frankly, any gift to a city employee from someone with or seeking city business raises at least the appearance of impropriety. And Philadelphia has had more than its fair share of criminal prosecutions of city employees for accepting cash, Super Bowl tickets, use of apartments and other freebies intended to improperly influence government.

Bad behavior can happen despite the most airtight laws. But clear, tough and enforceable laws decrease the likelihood that rules will be easily circumvented or broken. The public's confidence in proposed solutions to the financial crisis engulfing the public schools, crippling levels of poverty, high unemployment rates or anything else depends on whether they believe the people who work for city government are trustworthy.

You now have a great opportunity to get these gifts rules right. To make sure they are easy-to-understand, easy-to-follow and leave no room for city employees to use their own discretion about what gifts they can, and cannot, accept.

Because this proposal doesn't accomplish this, we urge this Committee not to approve it today.

As impatient as Seventy is for ethics reforms, it would be an enormous mistake to move from one flawed gifts policy to another.

This proposal was just introduced last month. We just received an amendment this past Friday and have had little time to absorb it. We highly doubt most people have even seen it – much less understand the implications of the changes in the gifts rules.

The changes deserve more deliberation and serious conversation. The complexity of the issues were demonstrated over and over in the last few months when the city’s Board of Ethics debated in exquisite detail what a strengthened citywide gifts policy should look like.

In a number of respects, the proposal you are considering today does not reflect the Board’s consensus.

This proposal is also not as strong as Mayor Nutter’s Executive Order. Although people who worked for him were already bound by the city’s gifts rules, the mayor imposed more stringent policies because he believed the city’s rules were not tough enough or clear enough.

Once the mayor leaves office, the Executive Order will go away. The employees who have been living under these more stringent rules will be covered only by the rules you are debating today.

Council should take whatever time it takes to get this right.

Most importantly, we urge you to:

- Set no more than a \$50 annual limit for non-cash gifts from any one individual, as the Ethics Board recommended.
- Extend gifts restrictions to people with a non-financial interest in official action.



- Require public disclosure of recipients of tickets to public events given to members of the public by city elected officers or employees to members of the public.
- Apply gifts restrictions to gifts to city officers and employees from their outside employers if those employers have or are seeking city business.
- Fix provisions that permit city officers and employees to make their own determinations about whether or not they can accept gifts.

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1. An annual non-cash limit of \$99 permits more than minimal gifts. Seventy recommends setting the financial threshold at no more than \$50.

Seventy agrees that a specified financial limit above which gifts cannot be given is vastly preferable to the city’s existing gifts rule, which says employees can’t accept anything of “substantial economic value.”

But *only* if that limit will actually prevent potential abuses.

The city’s Board of Ethics was initially presented with a regulation proposed by its staff that recommended a \$250 annual limit on non-cash gifts. After months of debate, the consensus reached was to restrict non-cash gifts to no more than \$50.

Seventy implores City Council to enact the same limit. A \$50 gift is not so high that it is likely to influence the behavior of city officers and employees. And it is not so low that it would disallow gifts of relatively modest value.

By contrast, gifts above \$50 at least raise a perception that the giver wants something in return.

Frankly, Seventy does not believe an L&I inspector should be permitted to accept a gift of any value from the owner of a restaurant he or she annually inspects. A \$99 meal, which this proposal would authorize, would be extravagant at the best restaurants in town. Just one more dollar and city employees can enjoy

the only city meal to make eater.com’s 2013 list of 18 of the most expensive dishes and drinks in the world: Barclay Prime’s Philly classic cheesesteak with wage ribeye cut down with foie gras and topped with truffled homemade fontina cheese on a sesame roll, plus a glass of Dom Perignon 2000.

We understand that a meal of any price would be unacceptable if given to influence a favorable inspection.

However, in real life, there is a very fine line between a gratuity and a gift. No donor will say he or she is making – and no recipient will ever say he or she is receiving – a gratuity. We take no comfort in the ban on gratuities as an insurance policy against improperly given gifts.

Articles on this proposal after its introduction have quoted Council members pointing to a \$100 limit in “most” other cities. For every city with a \$100 limit, there are two with lower thresholds. And the federal gifts rules limit acceptance to “a gift valued at \$20 or less, provided the total value of gifts from the same person is not more than \$50 in a calendar year.”

There is no reason why city employees should be given, or accept, any gifts of more than \$50.

2. A loophole that allows employees to accept tickets to public events from people with or seeking city business invites non-transparency and potential abuse. Seventy recommends closing the loophole by at least requiring public disclosure.

This proposal would permit city employees to freely accept – even from people who have or are seeking city action – tickets to ... As I understand it, I am free to give a car to every member of City Council who will be voting on this gifts proposal.

I am a registered city lobbyist. As a paid employee of an organization that cares deeply about ethics and transparency, I have a strong “interest” in actions taken by this Council that relate to ethics reforms. In fact, I am passionately interested in how Council members vote on this proposal.

There are a great many people, like me, who have an interest in official action that cannot be measured in economic terms. We should not be permitted to give gifts of unlimited value to people who can take action that impacts those interests.

Speaking about lobbyists, some cities pay particular attention to gifts from lobbyists. For instance, Los Angeles prohibits gifts of any value from any registered city lobbyist or lobbying firm to high-level city officials. The ban applies to non-high-level city officials if the lobbyist or lobbying firm is registered to lobby those officials' particular agency.

Seventy would support a similar rule in Philadelphia. Given that this option is not on the table, we urge Council to expand the category of people whose gifts to city offices and employees subject to financial limits to include those whose interests are more than just financial.

Restricting the gifts rules only to those with a financial interest in official action creates a loophole that severely diminishes the rules' effectiveness in preventing improper gift-giving.

3. Curbing gifts only to city officers and employees able to “substantially affect” an interest through official action is too restrictive. Seventy recommends broadening the class of city personnel eligible to accept gifts to include anyone within a department or agency that can take official action of interest to the gift-giver.

Another ambiguity in the current gifts rules is that city employees and officers have discretion to decide what gifts “might reasonably be expected to influence” them in doing their jobs.

Today's proposal is equally vague in allowing city officers and employees to make their own judgments about whether or not they are in a position to “substantially affect” an official action of interest to the gift-giver. If they determine they are not, it would appear that they are able to accept gifts of unlimited value.

However, the same people may well have the ability to influence official action.

Take, for instance, the staff of a City Council office. Are gifts to staffers who offer guidance and background information on proposed legislation permissible – even though they can’t take “official action” by voting? What about gifts to staffers handling constituent services who investigate a district resident’s problems with L&I – even though it may take an official call from that district Council member to the L&I Commissioner in order to get the issue resolved?

The potential problem is not confined to small offices. A trash collector may not appear to be in a position to “substantially affect” an official action by the Streets Commissioner. But if suddenly the gift-giver’s street is the only one in a neighborhood whose trash gets picked up on a day when cans on adjacent streets are overflowing, is there any assurance that the gift did not impact this outcome?

This particular example may seem far-fetched. But far more improbable episodes of misconduct have plagued city government. And will continue to occur in the absence of the robust rules to prevent them.

Stricter rules to cover most contingencies are far better than lenient rules that allow situations to slip through the cracks. We urge a reasonable rule that would restrict gifts to all employees of the department or agency in which official action of interest to the gift-giver may be taken.

6. Authorizing, without restriction, gifts from a city officer or employee’s outside employer – even if the officer or employee is not able to impact official action – is risky. Seventy recommends applying the financial limits to gifts from outside employers if those employers have, or are seeking, official action.

Many city employees have second jobs. Our earlier recommendation that second job holders register their outside employment with the Ethics Board is not meant to suggest that they should not.

City officers and employees with outside employment already comply with a variety of city rules pertaining to matters involving their non-city jobs. Where conflicts of interest arise, they must not only disclose the conflict, but also recuse themselves from participating in actions in which the conflict exists. City rules also require disclosure and recusal for current financial interests in any legislation including ordinances and resolutions, an award, contract, lease, case, claim, decision, decree or judgment.

Irrespective of any mandatory disclosure and recusal requirements, we do not believe it appropriate for city officer and employees to receive gifts of *unlimited* value from their outside employers if the employee has an interest in, or is seeking, official city action. It cannot be presumed that those gifts are given without any intention of influencing city action – even if the employee or officer is not in a position to take action or even abstains from taking action. In fact, quite the opposite perception is created.

We urge Council to amend the proposed gifts rules to impose limits on the acceptance by city officers and employees of gifts from their non-city employers who have an interest in, or are seeking, city business. For consistency, the financial limits should mirror those set in other sections of the gifts rule.

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For these reasons, Seventy once again urges Council to take more time to work through this proposal.

This effort is too important to risk enacting imperfect legislation.

The Committee of Seventy looks forward to working with you.

Thank you.