I. Call to Order
II. Roll Call
III. Reorganization
IV. Public Hour - Hearing of Citizens
V. Approval of Minutes
VI. Consideration of Abolishing Civil Service for the Hiring Process
VII. Conflict of Interest Policy
VIII. Any Other Matter
IX. Adjournment

*Documents:*

2019.02.19.webagenda.pdf
Meeting Agenda
Civil Service Commission
February 19, 2019
11:30 AM

I. Call to Order

II. Roll Call

Susan Bardo
Mark H. Bergstrom
James W. Locker, Jr.

III. Reorganization

The Commission is asked to reorganize and select a Chair.

IV. Public Hour - Hearing of Citizens

Anyone wishing to address the Commission with an item that is not on the agenda should ask to be recognized at this time. Each speaker will have up to four minutes to present comments to the Commission.

V. Approval of Minutes

The Commission is asked to approve the minutes from its April 11, 2017 meeting. [Page 3]

VI. Consideration of Abolishing Civil Service for the Hiring Process

There will be a discussion regarding consideration of abolishing Civil Service for the hiring process.

VII. 2019 Conflict of Interest Policy

On April 18, 2005, Borough Council adopted a “Conflict of Interest Policy and Code of Conduct with Regard to HUD Programs”. Elected and appointed officials are to receive a copy of the policy at a regular meeting of their respective council, authority, board, or commission. A copy of the policy is attached for review. [Page 13]

VIII. Any Other Matter

IX. Adjournment
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Meeting Minutes
State College Borough
Civil Service Commission
April 11, 2017

The Civil Service Commission met in a regular meeting on Tuesday, April 11, 2017, at 7:00 p.m. in the State College Municipal Building, 243 South Allen Street, State College, PA. Mr. Locker called the meeting to order at 7:03 p.m.

Members present: Mark Bergstrom, James W. Locker, Jr., and Susan Bardo.

Also present: Cynthia S. Hanscom, Human Resources Director.

Reorganization. The Commission was asked to reorganize and select a Chair. Ms. Bardo nominated Mr. Bergstrom.

Mr. Bergstrom nominated Mr. Locker. Mr. Locker stated he had joined this Commission 30 years ago and participated in the hiring process for many police officers and one grievance. For the first five or six years it was very active. However, as regulations changed and the Board no longer participated in the hiring process. He noted that he had to back out of a number of volunteer efforts for medical reasons. He said he did not want this to hold up the work of this Commission. Therefore, he declined the nomination to chair.

Mr. Bergstrom agreed to chair the Commission. The Board voted on the nomination and it passed all in favor.

Public Hour - Hearing of Citizens. There were no members of the public present.

Approval of Minutes. The Commission asked to approve the minutes from March 18, 2014, at their next meeting.

Conflict of Interest Policy. Ms. Hanscom presented a copy of the Conflict of Interest policy and it was received by the members of the Commission.

Adjournment. There being no further business, Ms. Bardo moved to adjourn the meeting at 7:35 p.m. Mr. Locker seconded the motion, which passed all in favor.

Respectfully submitted,

Cynthia S. Hanscom
Human Resources Director
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With regard to the first issue, I would note that there are no precedential court decisions which squarely address this issue in regard to a municipality like the Borough, a home rule charter municipality that was previously a borough. Accordingly, our analysis is based upon our review of applicable authority and court decisions which provide tangential or indirect guidance to the Borough in this matter. Specifically, the Borough, as a home rule municipality, is vested with broad authority to regulate its own affairs. Section 2961 of the Home Rule Charter and Optional Plans Law ("Home Rule Law") provides that a home rule municipality "may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter." 53 Pa.C.S.A. § 2961. The Home Rule Law further sets forth five (5) particular limitations on the powers of home rule municipalities. See 53 Pa.C.S.A. § 2962. In relevant part, they provide that a municipality shall not:

(2) Exercise powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth.

(5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth.

53 Pa.C.S.A. § 2962(c).

With regard to the first referenced limitation on the authority of a home rule municipality, whether the civil service provisions of the Borough Code are "applicable in every part" of the Commonwealth, the courts have provided some guidance. In 2009, the Commonwealth Court in an unreported decision specifically held that that the Borough Code was not a law of general applicability statewide and, as a result, a home rule municipality was not restricted from acting contrarily to its provisions on that basis. See In re: Borough of Whitehall 2003 Audit, 2009 WL 9098385, No. 1999 C.D. 2008 (Cmwlth. Nov. 19, 2009). It is important to note that the Commonwealth Court's decision is unreported, which means that it would not hold precedential value. Rather, the decision serves as non-binding guidance. Nonetheless, the Court held that "...since the Borough Code does not apply to cities of the first, second or third class, nor townships of the first or second class, etc., it is not uniform and applicable in every part of this Commonwealth." Id. at *3. Although the Court noted that it had not previously "specifically held that the Borough Code is not generally applicable statewide," this has been at least the essence of the Court's holdings in numerous preceding cases arising under both the Borough Code and other statutory provisions applicable to particular classes of municipalities. See, e.g., Danzilli v. Lomeo, 944 A.2d 813 (Cmwlth. 2008) (Monroeville, a home rule municipality formerly subject to the Borough Code, was not precluded from investing post-retirement benefit funds into a trust which
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would invest in higher return securities by the Borough Code, which limited such investments largely to governmental securities.). *Wecht v. Roddey*, 815 A.2d 1146 (Cmwlth. 2002) (The Second Class County Code did not preclude a home-rule enactment by Allegheny County because it was not a law applicable in every part of the Commonwealth, as it applied to only second-class counties but not other counties.). In the *City of Coatesville* case, the Commonwealth Court stated “[w]e have held that various municipal and county codes are not uniform and applicable to every part of the Commonwealth because, by definition, those codes are not applicable to every part of the Commonwealth and the codes themselves are based on an exception to the uniformity provision contained in the Pennsylvania Constitution.” *In re Condemnation by the City of Coatesville*, 898 A.2d 1186, 1191-92 (Cmwlth. 2006).

We should note that exceptions to this general rule may exist where the statutory provision contravened, though applicable only to a particular class of municipalities, impacts a matter of statewide concern. *See In re District Attorney*, 756 A.2d 711 (Cmwlth. 2000) (An enactment of a home rule county was nullified by a contrary provision of the County Code and the Election Code, when it impacted a matter of statewide concern: the uniformity of filling vacancies for district attorney positions). The question then, is whether civil service provisions of the Borough Code impact a matter of statewide concern or whether they are matters of local concern. In 2002, the Commonwealth Court affirmed and adopted the opinion of the lower court which held that a provision in the Borough of Norristown home rule charter granting the Mayor the sole power to appoint, discipline and remove police officers in the Borough was not an invalid exercise of home rule power. *See Santangelo v. Borough of Norristown*, 789 A.2d 848 (Cmwlth. 2002), appeal denied, 805 A.2d 528 (Pa. 2002). In the *Santangelo* case, the home rule charter provided that the mayor had appointment power over all employees, including police officers, whereas the civil service provisions of the Borough Code provided that the Norristown Borough Council had this authority. *Id.* The trial court explained that the home rule enactments made by Norristown were not precluded by Section 2962(c)(2) of the Home Rule Law because the Borough Code’s civil service provisions did not apply uniformly to every municipality throughout the Commonwealth. *See Santangelo v. Borough of Norristown*, 2001 WL 35906932, No. 00-00747 (C.P. Montgomery Jul. 5, 2001). However, the Court also recognized that the effect of the Home Rule Law is not without limits in the context of civil service requirements, as the Borough could not, for instance, create a five (5) person civil service commission where the Borough Code establishes a commission comprised of three (3) people. Moreover, the Court noted that changes to the hiring process adversely affecting the rights, benefits, or working conditions of existing employees would not be permitted. *See id.* The Court also noted that even after the adoption of a Home Rule Charter, “the Civil Service provisions of the Borough Code remain in force in the Borough of Norristown no matter what municipal legislation has been enacted.” *Id.*

With regard to the second referenced limitation on the authority of a home rule municipality under the Home Rule Law, whether the Borough’s proposal to modify or eliminate
the application of a merit-based testing process to new applicants for employment in the role of police officer, is invalid under the Home Rule Law as enactments affecting the rights, benefits, or working conditions of employees, again the courts do provide some guidance. In 1994, the Commonwealth Court analyzed an ordinance of the City of Pittsburgh, a home rule municipality, which allowed for its Civil Service Commission to certify applicants to entry level police officer positions without regard to the eligibility lists generated through civil service testing. See Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh, 644 A.2d 246 (Cmwlth. 1994), petition for allowance of appeal denied 675 A.2d 1253 (Pa. 1996). The ordinance provided that, at a minimum, police officer positions were to be filled without competition, required the applicants to have at least one year of law enforcement experience, and required applicants to hold a current MPOETC certification as a police officer, or to be able to obtain such certification. Fort Pitt Lodge No. 1, 644 A.2d at 247. This procedure was at odds with the Policemen’s Civil Service Act, which provided that a city of the second class shall fill its entry level police officer positions with the competitive class from civil service exams. Id. at 248. The Court acknowledged that a home rule municipality was precluded from enactments which would affect the rights of public employees, but held that the contested ordinance was not precluded in that case because it affected only applicants for positions with the police force who were not (yet) “employees.” Id. (Emphasis added).

On this basis, the Court distinguished two of its prior decisions which impacted not just applicants, but also, current employees. See id. in Fire Fighters, Local Union, No. 1 v. Civil Service Com’n of Pittsburgh, 545 A.2d 487 (Cmwlth. 1988), the Court held that Pittsburgh’s creation of two assistant director positions immediately below the fire chief as non-civil service positions was an invalid home rule enactment. Id. The Court’s holding was based on the fact that city firefighters were previously (potentially) entitled to promotion to all fire positions other than the fire chief, and by creating two (2) new positions below the chief outside of the civil service system, employees were no longer entitled to promotion to these positions based on objective civil service standards. Id. In other words, rights of current employees were affected because their promotional opportunities were curtailed. See id. The same result was reached in 1992, when the Commonwealth Court held that the Borough of Norristown, a home rule municipality, had acted improperly under the Home Rule Law when the mayor and the chief of police unilaterally appointed several police officers to higher-ranking positions. See Norristown Fraternal Order of Police, Lodge 31 v. DeAngelis, 611 A.2d 322 (Cmwlth. 1992). The Court held that civil service regulations remain applicable to home rule municipalities, but it did so specifically in the context of present employees. See id. Although the Commonwealth Court in neither case distinguished between changes affecting employees versus changes affecting applicants, this distinction formed the basis of the Court’s 1994 Fort Pitt Lodge decision. See Fort Pitt Lodge No. 1, 644 A.2d 246; DeAngelis, 611 A.2d 322; Fire Fighters, Local Union, No. 1, 545 A.2d 487.

1 Affirmed 571 A.2d 377 (Pa. 1990).
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I am unaware of any case subsequent to the Fort Pitt Lodge No. 1 decision which discusses the distinction between employees and job applicants in a manner different than what is set forth in that case by the Commonwealth Court. Though not quite an explicit reaffirmation, the Commonwealth Court in 2002 wrote that one of the litigants involved in the case then before the Court cited the Fort Pitt Lodge No. 1 for an incorrect proposition. See Brotherhood of West Chester v. Borough of West Chester, 798 A.2d 797 (Cmwlth. 2002). In that case, the Court explained the meaning of the Fort Pitt Lodge No. 1 case as follows:

Fort Pitt addressed the question of whether an ordinance of the City of Pittsburgh that governed hiring procedures for police officers violated a provision of the Home Rule Charter and Optional Plans Law that prohibited certain ordinances that affected current employees. We held that the hiring ordinance did not violate the Home Rule Charter Law provision because the ordinance applied only to procedures affecting prospective employees and that Section 2962(c)(5) applied to current employees.

Id. at 799-800 (emphasis in original).

Consequently, we are of the opinion that this distinction remains good law. We note again, however, that the case law developed in this area does not include any decisions issued by the Pennsylvania Supreme Court. Although our Commonwealth’s highest court has refused to hear these cases on appeal, that action is not the same as an affirmation of the Commonwealth Court’s holding and analysis. So, we have no definitive word from the highest appellate court on these issues. While it appears clear that the changes contemplated are consistent with the law that has developed in this area, our analysis lacks the benefit of a binding Supreme Court precedent.

Based upon the foregoing, we believe that if the Borough were inclined to curtail or eliminate the current merit-based testing process as outlined in the Borough Civil Service Commission’s “Standards and Procedures for Testing and Appointment of Police Officers,” it could do so. It is our understanding that the Borough has not fully determined what types of changes it desires to make in its hiring process for police officer candidates. However, it is our understanding that any changes it desires to make would only affect prospective employees and not those who are currently employed by the Borough. Should this understanding change, please advise us accordingly as this understanding is vitally important to our analysis of this issue. This is due to the limitations outlined both in the Home Rule Law itself as well as the court decisions regarding existing employees of home rule municipalities, whose rights, benefits, or working conditions cannot be adversely affected.

2 The union apparently argued, incorrectly, that a home rule municipality could take any action so long as it did not contravene or have an adverse impact on statutory rights. See id.
2. Veterans’ Preference Act

The Pennsylvania Veterans’ Preference Act (hereinafter “the Act”) applies to any “soldier” as that term is defined thereunder. 51 Pa.C.S.A. § 7101. It applies in both civil service and non-civil service hiring contexts for both the Commonwealth and political subdivisions thereof. Under the heading “Credits in Civil Service Examinations,” the Act states, in pertinent part:

When any soldier shall take any civil service appointment...examination for a public position under...any political subdivision..., he shall be given credit in the manner hereinafter provided; for the discipline and experience represented by his military training and for the loyalty and public spirit demonstrated by his service for the preservation of his country, as provided in this chapter.

51 Pa.C.S.A. § 7102.

The credit which a “soldier” is to be accorded in a civil service examination process includes that:

...such soldier’s examination shall be marked or graded an additional ten points above the mark or grade credited for the examination, and the total mark or grade thus obtained shall represent the final mark or grade of such soldier, and shall determine his standing on any eligible or promotional list, certified or furnished to the appointing or promoting power.

51 Pa.C.S.A. § 7103.

The Act further states:

(a) Non-civil service.--Whenever any soldier possesses the requisite qualifications and is eligible to appointment to or promotion in a public position, where no such civil service examination is required, the appointing power in making an appointment or promotion to a public position shall give preference to such soldier.

(b) Name on civil service list.--Whenever any soldier possesses the requisite qualifications, and his name appears on any eligible or promotional list, certified or furnished as the result of any such civil service examination, the appointing or promoting power in making
an appointment or promotion to a public position shall give preference to such soldier, notwithstanding that his name does not stand highest on the eligible or promotional list.

51 Pa.C.S.A. § 7104.

Following an examination of these provisions, it is clear that the Act currently applies to the Borough in its appointment of new police officers under the Borough’s civil service examination process and it is also apparent that, should the Borough eliminate or curtail the civil service examination process for newly-hired police officers, the Act would still apply to the Borough as it considers whom to appoint for the same positions, albeit under a different process. 51 Pa.C.S.A. § 7104(a).

The courts have interpreted these provisions in a manner which provides some guidance to the Borough should it change its hiring process for new police officers. Specifically, in Merrell v. Chartiers Valley Sch. Dist., the Commonwealth Court considered the appeal of an applicant who was a “soldier” as defined under the Act who had applied for a position as a social studies teacher and was not offered the position. Merrell v. Chartiers Valley Sch. Dist., 51 A.3d 286 (Cmwlth. 2012). The Court engaged an in-depth review of the hiring process used by the school. Under the school’s own criteria, applicants receiving a rating of 3 in the interview process “meets criteria for successful job performance” and a rating of 4 “exceeds criteria for successful job performance.” Merrell, 51 A.3d at 294. The applicant who was passed over, Merrell, had a received an overall rating of 4 in the interview process and the high school principal at the time testified that Merrell had the requisite qualifications for the job. Id. Nonetheless, Merrell was not permitted to advance to the final three applicants the school would consider for hire and was, therefore, not offered the position. Instead, the position was offered to an applicant who also met the minimum qualifications but had less teaching experience and a less impressive collegiate academic record, but who scored very highly on other factors and who was a former student of the school, having been a star football player during his time there.

The Court affirmed the trial court’s findings that Merrell possessed the requisite qualifications for the position but he was prevented from reaching the final step of being selected, the point where veterans’ preference rights would have ripened, due to a flaw in the school’s hiring process. Id. at 295. In reaching its decision, the Court indicated that per Pennsylvania Supreme Court precedent, it is clear that a veteran seeking to take advantage of the preference mandated by the Act must be able to demonstrate the ability to perform the job at the level of skill and with the expertise demanded by the employer. See id at 290 citing Brickhouse v. Spring-Ford Area Sch. Dist., 656 A.2d 483, 486-87 (Pa. 1995). Once a veteran applicant satisfies that burden, then “the burden falls to the employer to establish that the veteran was not qualified.” Id. at 294. Nonetheless, the Court also recognized that a public employer might be able to formulate job qualifications in
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such a way as to defeat veterans’ preference. However, where doing so is undertaken in bad faith without regard to legitimate need, they must fail, according to the Court, and determining whether that is the case must be done on a case by case basis. *Id.* The Commonwealth Court also cited one of its prior decisions in reaching its decision, *Rasmussen v. Borough of Aspinwall*, where the Court rejected the argument that the Borough Council had discretion under the Borough Code to hire any of the three final applicants recommended to it by the Borough Commission.” *Id.* at 295 citing *Rasmussen v. Borough of Aspinwall*, 519 A.2d 1074 (Cmwlth. 1987).

In light of the foregoing authority, several things stand out as being important to the Borough’s plans as it considers its course of action. First, Veterans’ Preference will apply to its hiring process even if it curtails or eliminates its civil service examination process for identifying prospective candidates for police officer positions. Second, if it does eliminate the civil service examination process and, instead, just sets forth minimum qualifications for consideration for hire by the Borough, any soldier who meets those minimum qualifications identified by the Borough will have a claim that Veterans’ Preference should apply to them in the Borough’s hiring. As we discussed, depending on how the process is changed the net effect could result in more soldiers, not less being required to be considered for appointment. This result could occur because ranking applicants based upon test scores and the “rule of three” for consideration for appointment, requirements inherent to the current, merit-based testing process, would potentially no longer apply. Third, it is also clear that in order to be eligible for Veterans’ Preference, a soldier still must meet all of the minimum qualifications set forth by the employer (provided those qualifications are not being formulated as a means of defeating the preference). Due to this requirement, the Borough could set forth minimum qualifications that require a combination of minimum age, education, training, years of experience, etc. Even if a soldier were to apply under these qualifications yet not meet the minimum qualifications, their failure to do so would mean that they would have no right to Veterans’ Preference.

If you have any questions or would like to discuss any of these matters further, please contact either me or Mike Palombo at your convenience.

Very truly yours,

Shon K. Worner

SKW:

cc: Leann Shaw, Human Resources Director
BOROUGH OF STATE COLLEGE

Conflict of Interest Policy and Code of Conduct
With Regard to HUD Programs

SECTION 1 NON-PROCUREMENT CONFLICTS OF INTEREST

A. COVERED INDIVIDUALS:

Any employee, agent, officer, elected official, appointed official or consultant of the Borough of State College (Participating Jurisdiction) or; any member of an employee’s, agent’s, officer’s, elected official’s or appointed official’s immediate family; an employee’s, agent’s, officer’s, elected official’s or appointed official’s partner; or an organization that employs or is about to employ any of the above.

CONFLICTS PROHIBITED:

No person(s) described in Paragraph 1 of section 1 who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME Investment Partnerships Program (HOME) or Community Development Block Grant (CDBG) or other U.S. Department of Housing and Urban Development (HUD) funds, or who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a real or apparent financial interest or financial benefit from a HOME, CDBG, or other HUD-assisted activity, or has a real or apparent financial interest in any contract, subcontract, or agreement with respect to HOME, CDBG, or other HUD-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild and in-laws of a covered person. Occupancy of a HOME-assisted unit by a covered person constitutes a financial interest.

EXCEPTIONS:

Threshold Requirements – Upon the written request of the participating jurisdiction, the U.S. Housing and Urban Development (HUD) or its successor, may grant an exception to the provisions of the CONFLICTS PROHIBITED of section 1 on a case-by-case basis when it determines that the exception will serve to further the purpose of the HOME, CDBG or other HUD program and the effective and efficient administration of the Borough’s program or project. An exception may be considered only after the participating jurisdiction has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure* of the conflict and a description of how the public disclosure was made; and

2. An opinion from the Borough’s attorney that the interest for which the exception is sought would not violate state or local laws.

*The requirements for public disclosure include publication in a local newspaper or disclosure during an advertised public hearing.
Factors to be considered for Exceptions – In determining whether to grant a requested exception after
the participating jurisdiction has satisfactorily met the requirements of paragraphs a. and b. above,
HUD, or its successors, will consider the cumulative affect of the following factors, where applicable:

1. Whether the exception would provide a significant cost benefit or an essential
degree of expertise to the program or project which would otherwise not be
available;
2. Whether the person affected is a member of a group or class of low-income
persons intended to be the beneficiary of the assisted activity, and the exception
will permit such person(s) to receive generally the same interests or benefits as
are being made available or provided to the group or class;
3. Whether the affected person(s) has withdrawn from his/her functions or
responsibilities or the decision-making process with respect to the specific
assisted activity in question;
4. Whether the interest or benefit was present before the affected person was in a
position as described in the COVERED PERSONS Paragraph of this section
5. Whether undue hardship will result either to the participating jurisdiction or the
person affected when weighed against the public interest served by avoiding the
prohibited conflict; and
6. Any other relevant considerations.

B. OWNERS AND DEVELOPERS:

Any owner, developer or sponsor of a project assisted with HOME, CDBG or other HUD funds (or officer,
employee, agent, elected or appointed official or consultant of the owner, developer or sponsor or
immediate family member of an officer, employee, agent, elected or appointed official, or consultant of
the owner, developer or sponsor) whether private, for-profit or non-profit (including a community
development organization (CHDO) when acting as an owner, developer or sponsor)

CONFLICTS PROHIBITED:

No person(s) described in Paragraph 2.A of section 2 may occupy, or appear to occupy, a HOME, CDBG
or other HUD-assisted affordable housing unit in a project during the required period of affordability
specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives
HOME, CDBG or other HUD funds to acquire or rehabilitate his or her principal residence or to an
employee or agent to the owner or developer of a rental housing project who occupies a housing unit as
the project manager or maintenance worker.

EXCEPTIONS:

Upon written request of a housing owner or developer, the Borough may grant an exception to the
provisions of the above paragraph of this section on a case by case basis when it determines that the
exception will serve to further the purposes of the HOME, CDBG or other HUD program and the
effective and efficient administration of the owner’s or developer’s HOME, CDBG or other HUD-assisted
project. In determining whether to grant a requested exception, the Borough shall consider the
following factors:

1. Whether the person receiving the benefit is a member of a group or class of low-
income persons intended to be the beneficiaries of the assisted housing, and the
exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class:

2. Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;

3. Whether the tenant protection requirements of Sec. 92.253 are being observed;

4. Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and

5. Any other factor relevant to the Borough’s determination, including the timing of the requested exception.

SECTION 2 PROCUREMENT CONFLICT OF INTEREST

COVERED INDIVIDUALS:

Any employee, officer, or agent of the Borough of State College (Participating Jurisdiction).

CONFLICTS PROHIBITED:

The CDBG, HOME and other HUD Programs follow the procurement policy of the Borough of State College located in the Borough of State College Code of Ordinances, Chapter 1, Part N. If any provisions of 2 CFR 200.318, 24 CFR 570.611, and 24 CFR 92.356 are not included or conflict with the Borough’s Procurement Policy, the provisions of 2 CFR 200.318, 24 CFR 570.611, and 24 CFR 92.356 shall supersede the Borough’s Procurement Policy.

No Covered Individuals in section 2 may participate in the selection, award or administration of a contract supported by HOME, CDBG or other HUD Program if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for award:

- employee, agents, or officer of the Borough of State College;
- any member of an employee’s, agent’s or officer’s immediate family;
- an employee’s, agent’s or officer’s partner; or
- an organization that employs or is about to employ any of the above

No employee, officer, or agent of the Borough or subrecipient may solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements.

EXCEPTIONS:

There are no exceptions for real or apparent procurement conflicts of interest.
A request for a regulatory waiver can be submitted pursuant to 24 C.F.R. § 5.110
Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).
SECTION 3 CODE OF CONDUCT:

Persons covered in section 2, paragraph 1, are expressly forbidden from soliciting or accepting money, gifts, gratuities, services, favors, or anything of monetary value (excepting unsolicited calendars, pens, or other items of nominal value used as an advertising medium) from any person, company, firm, or corporation to which any purchase order or contract is, or might, be awarded or from a party to any potential subcontract.

The Borough shall also take disciplinary action in accordance with the Borough Personnel Rules and Regulations against any covered persons in section 2 paragraph 1 who violate this conflict of interest policy.

Employees will receive a copy of the conflict of interest policy on an annual basis as a mailer included in a paycheck. Elected and appointed officials will receive a copy of the policy at a regular meeting of their respective council, authority, board or commission. Distribution of the policy will be noted in the minutes of the meeting. Members who are absent will receive a copy by mail. Consultants and agents will be provided a copy of the policy as part of their contracts.

SECTION 4 SUB-RECIPIENTS:

Applicable Conflict of Interest and Procurement Policies for the Borough’s subrecipients are covered under CFR 200.318, 24 CFR 570.611 and 24 CFR 92.356. Each subrecipient has developed its own Conflict of Interest Policy and Procurement Policy in accordance with the applicable regulations.

Authorized Official: Ed LeClear, Director of Planning and Community Development
243 S. Allen Street
State College, PA 16801
814-234-7109

Summary of Revisions:
Adopted by the State College Borough Council on April 18, 2005.
Revised by staff on April 30, 2015.
Revised policy adopted by the State College Borough Council on November 6, 2017.