



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 010744

Introduced December 20, 2001

Councilmember Nutter

**Referred to the
Committee on Finance**

AN ORDINANCE

Amending Chapter 21-1100 of The Philadelphia Code, entitled "Community Development," by requiring recipients of CDBG funds to enter into a contract with the City prior to receipt of such funds; by requiring that certain provisions be included in such contracts, including provisions requiring that the CDBG recipient adopt a conflict of interest policy for its Board of Directors and senior management, provide the City with notice of conflicts, and authorize City Council to hold hearings and, if certain findings are made, order the CDBG recipient to take action to correct a conflict of interest or repay CDBG funds and other funds; and a requirement that the recipient give the City notice before certain changes in ownership or control of the recipient may be effected and, absent Council's consent to such change, requiring the recipient to repay CDBG funds and other funds prior to effecting such change; and requiring persons who have already received CDBG funds to amend existing contracts to include such provisions with retroactive effect; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 21-1100 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 21-1100. COMMUNITY DEVELOPMENT.

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§21-1112. CDBG Recipient Contract Requirements.

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(1) *Contract required. Every recipient of CDBG Program funds (“recipient”) shall enter into a contract (“CDBG Recipient Contract”) with the City prior to receipt of such funds.*

(2) *Required Conflict of Interest Provisions. Every CDBG Recipient Contract shall include provisions requiring the following:*

(a) *The recipient must adopt a written conflict of interest policy consistent with all provisions of applicable law, and file a copy of such policy with the City, the Office of Housing and Community Development, or any successor agency, and the Clerk of Council, prior to receipt of CDBG Program funds. Such conflict of interest policy must require those persons who serve as members of the Board of Directors and senior management of the recipient to disclose to the Board of Directors, in writing, any of the following:*

(i) *whether he or she has a potential conflict of interest with respect to any transaction, business decision or other matter in which the recipient is or has been involved;*

(ii) *whether he or she, or any individual to whom he or she is related, has or has had a financial, business or personal interest in an entity with which the recipient is or will be doing business; and*

(iii) *whether he or she serves or has served as a director, member or employee of either a competitor of the recipient or a business entity with which the recipient is or will be doing business.*

(b) *The recipient must send to the Clerk of Council copies of any disclosure statements received pursuant to the provisions required under subsection (2)(a), and the recipient may include with any such disclosure statements sent to the Clerk of Council*

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any information or details regarding any conflict of interest being completely cured, corrected or removed.

(c) The Clerk of Council shall forward any disclosure statements received pursuant to subsection (2)(a) to the President and all members of Council. At the direction of the President, any committee of Council may hold a hearing to investigate the facts and make a determination of the extent of the conflict of interest set forth in such disclosure. The member of the Board of Directors or senior management who is the subject of the disclosure statement shall be required to attend such hearing. If Council, after such hearing, determines by resolution that a member of the Board of Directors or senior management of a recipient has a conflict of interest that should be corrected, then such member of the Board of Directors or senior management shall take the necessary action to cure, correct or remove such conflict of interest within ten days after receiving notice of such determination by Council. If such member of the Board of Directors or senior management fails to take such necessary action within such ten day period, then the repayment provisions of subsection (3)(c) shall apply to the recipient, and repayment shall be made within thirty days thereafter.

(3) Required Provisions Relating to Certain “Fundamental Changes” in Recipient. Every CDBG Recipient Contract shall include provisions requiring the following:

(a) The recipient shall provide the City, the Office of Housing and Community Development, or any successor agency, and the Clerk of Council at least sixty days notice before entering into any meetings or discussions which may cause or effect any “fundamental change.” For purposes of this subsection, a “fundamental change” is any transfer of ownership or control of all or substantially all the assets of the recipient, regardless of the form of transaction effecting such change (including, but not limited to,

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any sale, merger, consolidation, lease, option, conveyance, exchange, transfer, joint venture, affiliation, management agreement, or collaboration arrangement), but not including: (i) any transfer that is in the usual and regular course of the recipient's activities; or (ii) any merger or similar transaction if the recipient is the surviving entity of such transaction; or (iii) any transfer that is not subject to the review of the Office of the Attorney General of the Commonwealth to ensure that the public interest is protected.

(b) Upon receipt of notice under subsection (3)(a), and at the direction of the Council President, Council or any committee thereof may hold a hearing to investigate the proposed fundamental change.

(c) The CDBG Recipient Contract shall provide that unless Council shall have given prior consent to the fundamental change by resolution after conducting a public hearing, the recipient shall, prior to effecting the fundamental change, repay to the City all CDBG funds received from the City, and shall repay to any other governmental funding source all funds received by the recipient for which the City's CDBG grant was a prerequisite.

(d) The provisions required by this subsection (3) shall remain in effect for a perpetual term, notwithstanding any earlier termination of other provisions of the CDBG Recipient Contract.

(4) Past CDBG Recipients.

(a) The provisions of this Section 21-1112 shall apply to any recipient who receives CDBG funds on or after the date this Section became law, and to any recipient who received CDBG funds during the ten years immediately prior to the date this Section became law.

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(b) *With respect to recipients who received CDBG funds prior to the date this Section became law and previously executed a contract governing receipt of such funds, this Section shall be read as a requirement that such contract be amended to include the provisions required by this Section, within thirty days after this Section became law. Any contract or contract amendment executed with a recipient who received CDBG funds prior to the date this Section became law shall provide that the requirements of this Section shall be of retroactive effect to the date the recipient received CDBG funds.*

(c) *The Office of Housing and Community Development, or any successor agency, shall immediately notify all recipients who received CDBG funds during the ten years immediately prior to the date this Section became law of their obligation to execute a contract or amended contract as required by this Section.*

SECTION 2. Any committee of Council that holds a hearing pursuant to any provision of subsection 21-1112 of The Philadelphia Code, as added by Section 1 of this Ordinance, shall have the power to compel the attendance of witnesses and the production of documents in accordance with the provisions of Section 2-401 of the Philadelphia Home Rule Charter.

Explanation:

Italics indicate new matter added.

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