



The Case for Change:

Increasing Flexibility in the Philadelphia Police Department

Executive Summary

The most urgent issue facing Philadelphia is resolving the public safety crisis. If current residents are to stay or new residents are to arrive, if children and teachers are to concentrate on learning, if businesses are to locate in the region, if tourists and conventions are to visit Philadelphia and if our many college graduates are to plant roots here, people must be safe and must feel safe. While Mayor Michael Nutter and Police Commissioner Charles Ramsey are ultimately accountable for reducing violent crime, developing a comprehensive and bold crime-fighting agenda must be the responsibility of everyone who has a stake in the future progress of both the City and the region.

The Committee of Seventy has been a civic force in Philadelphia for over 100 years. A critical component of our mission is to promote effective government. This paper presents four recommendations that we believe are critical to strengthening the Police Department's ability to effectively reverse the wave of violence that has resulted in Philadelphia having the highest homicide rate per capita of any large city in America, in both 2006 (406) and 2007 (392).¹

The purpose of these recommendations is to give Commissioner Ramsey and his successors the necessary flexibility and discretion to manage the 7,500-member police force, which is now heavily influenced by both civil service and union rules. The proposals would increase the number of deputies and high-level managers who can be appointed and assigned by the Commissioner and would expand the number of highly-qualified candidates who can apply to the Department and be considered for promotion to key managerial jobs. Specifically, Seventy is recommending:

1. Increasing the existing Home Rule Charter's limit of two deputies to the Police Commissioner and allowing the Commissioner to choose at least one deputy for each of the police bureaus – there are currently 12 bureaus – plus the three or four top deputies immediately responsible to him or her. (A deputy may be chosen from outside the Philadelphia Police Department, need not have risen through the City's civil service ranks and is not chosen through the civil service process.)
2. Granting the Police Commissioner the authority to make personnel decisions outside of civil service constraints for the rank of Captain and above. This would allow the Commissioner to promote, transfer or demote officers in key management positions. These officers would retain employment and other civil service protections if later reassigned.
3. Increasing the number of candidates the Commissioner can consider when making hiring and promotion decisions. Currently, the Charter's "Rule of Two" allows consideration of only the two job applicants achieving the highest scores on the civil service exam. More candidates who are among the top scorers should be eligible.
4. Making it easier for candidates to join the Philadelphia Police Department by eliminating the requirement that they live in the City for at least one year before they can be hired.

While the magnitude of the crime emergency compels Seventy's immediate focus on the Police Department, structural reforms are equally necessary across the board. The provisions of the 1951 Philadelphia Home Rule Charter do not necessarily work in a 21st century environment. The City has changed. Expert views on what constitutes best management practices have also changed: "The tasks undertaken by government are so complex and varied that it must now embrace the most flexible and progressive human capital management practices that are characteristic of a fast-moving, globally-connected society."²

At this pivotal moment in the City's history, with so many underlying causes of crime that are exceedingly difficult to resolve, such as poverty and unemployment, it makes sense to start with recommendations that can be swiftly enacted and implemented.

Introduction

The Philadelphia Home Rule Charter, the permanent document that establishes the organization, powers and duties of City government, was last revised in 1951 in large part to curb widespread corruption and patronage.

Lincoln Steffens, the early 20th century journalist who once described Philadelphia as “corrupt and contented,” often wrote about police intimidation of voters and the arrests of election officials who tried to get in their way.³ After a 1928 grand jury reported that police officers had taken graft totaling millions of dollars from organized crime and political parties, over 100 officers were dismissed and 63 others were arrested.⁴ In the late 1940s, there were rampant embezzlements in other city departments, several of which led to convictions.⁵

Reformers, including Seventy, often placed blame for corruption on the pre-1951 Civil Service Commission, whose officers were appointed by City Council. One of the goals of the 1951 Charter reform effort was to establish an independent Civil Service Commission that would be committed to populating city government with merit, rather than patronage, employees.⁶

Patronage and corruption continue to plague some parts of City government⁷ and some parts of local government.⁸ However, perhaps the most consistent criticism of the 1951 Charter is its failure, over time, to make City government operate as effectively as possible. City leaders have criticized various Charter provisions for hampering effective governance and limiting the attraction and retention of well-qualified professionals. In fact, a report on the City’s human resource management stated frankly: “[the] city’s official hiring practices remain much more rule-bound than true efficiency would dictate.”⁹

A significant purpose of municipal government is to provide services to city residents.¹⁰ In the context of public safety and policing, the desired outcome is safe streets and neighborhoods. To provide these services effectively, public managers, such as the Police Commissioner, must be given essential tools, including flexibility in hiring and promotion. In fact, “[contemporary] trends have emphasized flexibility, speed, integration of the selection function with other

management responsibilities, and increased employee accountability for productivity.”¹¹ Furthermore, “[managers’] ability to complete their tasks depends, in large measure, on their ability to attract, develop, motivate and retain top-quality employees – the essential functions of human resource management. Reform efforts are designed to help meet these responsibilities.”¹²

With the dawn of what Mayor Nutter has called “a new day” in Philadelphia, all personnel structures and practices should be revisited with an eye towards instituting those reforms that will improve the City’s ability to deliver services more effectively.

With Philadelphia in the throes of a gun violence crisis, Seventy is purposefully limiting its initial recommendations to the Police Department.¹³ As Seventy’s Chairman, Howard L. Meyers, recently stated, “[there] is no fight more important or urgent than ensuring the safety of the people who live, work and visit Philadelphia. All of the progress that has or could be made by government, by business leaders and by the civic community in improving our economy, our schools, our civic institutions and our neighborhoods, and in creating new job opportunities for our citizens, will be of no benefit if government fails to fulfill its first and most basic obligation, which is to ensure the safety of its citizens in their persons and property. Despite the valiant efforts every day of our police force and others involved in law enforcement, there are days when we seem to be losing the battle.”¹⁴

Winning the battle cannot be accomplished by one individual; neither Mayor Nutter nor Commissioner Ramsey can do it alone. It will take courage and commitment by citizens throughout the City and region, in all neighborhoods and across economic, racial and social lines. This collective responsibility is not an option. It is an imperative.

To that end, the Committee of Seventy commends the crime fighting efforts that are already being undertaken by many individuals, civic and community groups and government officials – most notably the dedicated and hard-working members of the Philadelphia Police Department which has lost several officers to this cause. We urge both Governor Rendell and Mayor Nutter to exercise their leadership by placing the highest priority on coordinating these efforts to ensure that resources are sensibly marshaled. The underlying issues are complex and deep. There is no

single cause and no single cure. However, every constitutional means must be explored to end the carnage that is occurring everyday in our streets.

In addition to the immediacy of the crime epidemic, there are additional factors that lead Seventy to focus on the Police Department at this time.

As will be discussed later in this proposal, former Police Commissioners have publicly complained about the rigidity of the City Charter as a serious impediment to doing their jobs. Although it is reassuring that Charles Ramsey was not dissuaded from accepting the Mayor's offer to head the Police force, now is the time to empower him, and his successors, with the tools to maximize the Department's performance and effectiveness.

Moreover, with a staff of 7,500,¹⁵ the Police Department is the largest City department. It is more than double the size of the next largest departments - the Fire Department and the Prison System – each of which employ approximately 2,400 individuals.¹⁶ Yet, in many respects, the Home Rule Charter does not recognize that the largest and smallest departments may have entirely different needs.

The Police Department is also unique from other City departments in that virtually all of its members – supervisors and subordinates alike – are represented by the same bargaining unit: the Michael G. Lutz Lodge No. 5, Fraternal of Police (FOP). While there is a legitimate question regarding whether individuals at the top levels of the Philadelphia police force and those they are required to command should belong to the same union, there is nothing in Seventy's recommendations that would remove anyone from the FOP.

Finally, through Seventy's long history of involvement in the adoption of civil service reforms and the passage of the 1919 and 1951 Home Rule Charters, we are well aware that political minefields can doom a comprehensive package of systemic governmental reforms. That is why Seventy has decided to prioritize its recommendations, starting with the Police Department.

This decision should in no way be interpreted as a belief that other City departments are not equally in need of greater managerial flexibility and discretion. That we are not recommending across the board reforms now is solely because of our conviction that the City's highest priority must be to resolve the gun violence emergency.

Seventy urges City Council and Mayor Nutter to take the appropriate action on each of Seventy's recommendations immediately after they are sworn into office. For its part, Seventy pledges its energy and resources to mobilizing the support that will facilitate the transformation of these recommendations into law.

The Committee of Seventy's Proposals

I. Increasing the Number of Exempt Deputies

Existing Law

The Philadelphia Home Rule Charter allows each department head, including the Police Commissioner, to appoint two exempt deputies and an exempt executive secretary.¹⁷ Deputies form the top echelon of a Commissioner's leadership team and are responsible for implementing departmental policies. A Commissioner may choose his or her deputies from outside the City workforce; they need not rise through civil service ranks.

The two deputy limit was included in the 1951 Charter to protect the integrity of the fragile civil service system by serving as a check on the rampant political patronage that plagued City government in the decades leading up to reform.¹⁸ While making civil service hiring the rule,¹⁹ the Charter drafters realized that certain exemptions were "necessary for effective municipal administration."²⁰

As the size and responsibilities of local government have grown, the two exempt deputy limit has been increasingly criticized for crippling the ability of City managers to effectively run their departments. It has become common practice to "work-around" the Charter's structural restriction by attaching "deputy commissioners" to the Managing Director's Office, where they are exempt from civil service hiring and promotion rules, and assigning them to various City departments. However, even this "work-around" has limited value.

As of December 1, 2007, the Police Department's Office of Public Affairs reported that two of its deputies are "Charter" deputies (i.e., exempt deputies as allowed by the Home Rule Charter) and two other deputies are on "Managing Director's detail,"²¹ meaning they are assigned through the Managing Director's Office. Therefore, the current Police Department actually has four exempt deputy positions.

Why the Two Deputy Limit Should be Increased

During the summer and fall of 2006, Seventy's Charter Reform Subcommittee conducted a series of interviews of former and then top-level City officials in support of a research project to develop recommendations for improving local government. *Nearly all interviewees cited increasing the two exempt deputy limit as a top priority for creating a more flexible and modern government.* Interviewees identified the limit as a hindrance to City managers' efforts to implement programs and instill their leadership philosophy. Furthermore, the inability to hire a trusted management team, or to remove those who are unwilling or unable to carry out the Commissioner's policies, was seen as a barrier to the recruitment and retention of high-level managers from around the country, especially when most other major cities have more flexible structures.

Criticism of the two deputy limit is not a new phenomenon: arguments in favor of lifting the restriction were raised in the Committee of Seventy's 1986 Personnel Practices Governance Study,²² and a recommendation to accomplish this was proposed by the 1994 Independent Charter Commission.²³

The list of critics includes former Police Commissioners. Kevin Tucker, who was Police Commissioner from 1986 to 1988, "complained about the restrictions,"²⁴ as did John Timoney, Commissioner from 1998 to 2001.²⁵ Outgoing Police Commissioner Sylvester Johnson sees the limitation as a "terrible flaw" in the structure of the Police Department.²⁶

Former and present FOP leaders agree that having more than two exempt deputies in the Police Department makes sense.²⁷ Recently elected FOP President John McNesby was quoted in a November 2007 *Philadelphia Inquirer* article as supporting the Commissioner's ability to pick his own management team.²⁸ Former FOP President Robert V. Eddis has also endorsed the need for more exempt deputies.²⁹

Some may fear that adding additional deputies would result in more patronage appointments. By establishing an official number of appointed deputies per department – and removing the need

for back-door “work-arounds,” the appointment process actually becomes more transparent and less susceptible to patronage.

Other Cities

The Philadelphia Police Department has a national reputation for its inflexible management structure.³⁰ Among the fifteen largest American cities, Philadelphia stands out next to Columbus, Ohio as the second most restrictive in terms of appointed police deputies.³¹

All Deputy Chiefs of Police in the 12,500 member Los Angeles Police Department are exempt from civil service and appointed by the Police Commissioner; there are currently sixteen.³²

The New York City Police Commissioner, who commands a force of nearly 38,000 uniformed officers, has the authority to appoint and remove seven deputies and can also promote and remove all commanders above the rank of captain.³³ This gives the Commissioner the ability to make approximately 200 appointments.³⁴

The Houston Police Chief current commands 13 Assistant Chiefs (the equivalent of deputies) in a department of 5,000 sworn members.³⁵

Seventy’s Recommendation

The Committee of Seventy recommends allowing the Police Commissioner to choose at least one deputy for each of the police bureaus, in addition to the three or four top deputies immediately responsible to him or her.

This approach will enable the Police Commissioner to choose deputies whom he or she believes have the demonstrated management experience and leadership ability to head each bureau. It will further guarantee that bureau heads will be loyal to the Commissioner and his or her agenda, thereby fostering a greater chance that orders are carried out effectively.

While organizational structures often change with the arrival of a new Police Commissioner, there are currently 12 bureaus in the Police Department. In addition to the bureau heads, the Commissioner should also be permitted to appoint three or four deputies as part of his or her inner circle of top managers.

A Police Commissioner could be tempted to create additional and arguably unnecessary bureaus to manufacture new deputy positions. To prevent this, City Council might consider including in the legislation a provision mandating that the number of exempt deputies can not be more than a designated percentage of the size of the department.

A less appealing option, because it may result in bloating the bureaucracy of the Police Department and raise the possibility of patronage, is to allow the Commissioner to name an unlimited number of deputies.

Seventy has also rejected the possibility of replacing the rigid two deputy rule with an equally rigid rule mandating another “set” number of deputies (i.e., allowing three, five, seven, etc. deputies). The 1994 Independent Charter Commission adopted such a formula by proposing to tie the number of exempt deputies to the size of the City department.³⁶ Under the Commission’s formula, all departments with over 3,000 employees could have seven exempt deputies. In our view, this would continue to hamstring the Commissioner in operating the Police Department. Giving the Commissioner greater flexibility in selecting his or her deputies necessarily contemplates that there may not always be a “set” number of deputies at all times and in all police administrations. Linking the number of deputies to the number of bureaus, as Seventy recommends, is more consistent with modern business management practices.

II. Granting the Police Commissioner the Authority to Make Personnel Decisions Outside of Civil Service Constraints from the Rank of Captain and Above

Existing Law

The City Charter mandates that all City employees, including police personnel, are hired, promoted, demoted and dismissed under civil service regulations with the exception of the Commissioner and his or her deputies.³⁷ The reasoning behind civil service is to ensure that professional, career public employees are chosen because of their qualifications and not to reward political loyalty. As stated earlier, the framers of the 1951 Charter created an independent Civil Service Commission and imposed strict personnel rules specifically in reaction to rampant patronage and corruption in City government.

All police personnel are hired and promoted through the civil service ranks after successfully passing written and/or oral examinations. As noted in Seventy's 1998 Police Department Governance Study, "[for] each of the ranks, ten percent of one's score is awarded by seniority. For the upper ranks of inspector and chief inspector, the remaining ninety percent consists of an oral exam, and for the middle ranks of captain, lieutenant and sergeant, the test is evenly divided between a written and oral exam....For the lowest ranks of corporal and detective, the exam is entirely written."³⁸ These rules result in little weight being given to "aptitude for the job and past performance."³⁹

Why the Police Commissioner Should Choose All Management-Level Employees, Including Police Captains and Above

Imagine a corporate Chief Executive Officer who could not install his or her choices in key management positions, or who was prohibited from reassigning managers who couldn't perform their jobs or who didn't share the same philosophy on how to best run the company. Chances are that CEO would quickly depart or would refuse to take the job in the first place.⁴⁰

Modern municipal management has evolved past strict civil service restrictions into an era where sensible flexibility is the norm,⁴¹ especially when choosing management-level employees. Merit appointments based on objective civil service test results remain the optimal way to ensure that personnel decisions are based on objective criteria. However, they should not be the only factor, particularly with respect to the selection of individuals to fill key management positions. For those positions, it is important for a Commissioner to have discretion.⁴²

Yet in the Philadelphia Police Department, (which, with a workforce of 7,500 and a budget of over a half billion dollars, can be compared to a corporation), the Commissioner can directly choose only a few select individuals to serve on his or her management team. All other police personnel are civil service employees who cannot be freely hired, promoted, demoted or dismissed by the Commissioner. However, many of these employees hold management positions that require them to implement the Commissioner's directives, as well as to command the officers, sergeants and lieutenants who make up the staff-level ranks. Moreover, captains and above are responsible for disciplining subordinates, a particular challenge in Philadelphia where all uniformed personnel are represented by the same collective bargaining unit.

Some may argue that expanding the number of individuals who are subject to personnel decisions made by the Police Commissioner would invite a return to the very patronage the 1951 Charter was enacted to eliminate. However, Seventy believes that the City is increasingly better able to expose, and then to tackle, these abuses: the Philadelphia Board of Ethics, the Office of the Inspector General, the City Controller's Office, the Philadelphia District Attorney's Office and federal and state law enforcement agencies are all involved in this effort.

Other Jurisdictions

In New York City, members of the Police Department above the rank of captain are promoted and removed at the discretion of the commissioner, but retain their civil service ranking.⁴³ This gives the Commissioner flexible appointment power over approximately 200 supervisory-level positions. While this number may seem large, it is only one-half of one percent of the NYPD's 38,000 uniformed members.

A similar system is in place in Chicago. There, sworn members above the rank of captain and below the rank of superintendent are promoted at the discretion of the superintendent (that city's head of the police force).⁴⁴ These individuals retain their civil service ranking in the event they are demoted. Currently, there are about fifty such positions in the Chicago Police Department, which is about .3% of the sworn force of 13,600.

In Dallas's 3,000 uniformed-member Police Department, the Chief of Police and three ranks immediately below the Chief are exempt from civil service provisions.⁴⁵ In other words, everyone above the rank of captain (or approximately twenty individuals) is exempt from civil service.⁴⁶

Only Columbus, Ohio has no positions within the police department that are exempt from civil service provisions. Even the Chief of Police, while appointed, serves in the classified service for a term of five years.⁴⁷ The Columbus police force has just under 2,000 sworn officers compared with Philadelphia's 6,700 uniformed personnel.

Some state governments have enacted even more radical reforms by exempting large numbers of employees from civil service altogether. Georgia state employees hired in 1996 or later are without merit protection, while in Florida, all managerial employees are at-will.⁴⁸

The federal government has been modernizing its civil service system for some time. In fact, "a growing number of agencies or bureaus in agencies [have opted out of] the traditional ("competitive") civil service system. This parallel system...is still required to follow the broad traditions of merit, which include "notifications of open positions, reliance on technical merit through minimum established standards, and due process for employees."⁴⁹ However, "it allows far more management flexibility and control over selection and employee appraisal."⁵⁰

Seventy's Recommendation

The Committee of Seventy recommends allowing the Police Commissioner to promote, transfer or demote officers in key management positions holding the rank of captain and above.

Philadelphia's Police Commissioner should have the authority to make personnel decisions regarding all management personnel: captains, inspectors, staff inspectors and chief inspectors. According to the most recent numbers provided by the Police Department, there are 92 captains, 20 inspectors, 6 staff inspectors and 12 chief inspectors currently serving. If all of these individuals are exempted, it would total 130 individuals. This recommendation would make Philadelphia less restrictive than other cities.

As in New York and Chicago, Seventy's recommendation would guarantee that the officers from captain and above would retain employment and other civil service protections if later reassigned. This will also help prevent the Commissioner from abusing his or her increased role in personnel decisions. Furthermore, Seventy is confident that transparency in identifying police managers, coupled with more aggressive strategies designed to combat patronage and corruption, will significantly diminish any potential for personnel decisions based on factors unrelated to qualifications.

III. Giving the Police Commissioner and His or Her Representatives Greater Flexibility in Hiring and Promoting Police Officers

Existing Law

The City Charter mandates that only the two candidates achieving the highest scores on a civil service exam can be interviewed, and subsequently hired, for jobs within City government, including the Philadelphia Police Department.⁵¹ This rule is commonly known as the "Rule of Two." If two candidates earn the same score, rank is then determined by the order in which the candidates applied for the opening.⁵² If a military veteran is one of the top two (on an entry level test), he or she must be appointed over the non-veteran.⁵³ If there is more than one vacancy, the Personnel Director may certify two candidates for each vacancy.⁵⁴ The same rules apply to

promotional exams, except for the mandate that the hiring authority must choose a veteran of the armed services over a non-veteran. Like the two deputy limit, the “Rule of Two” was included in the 1951 Home Rule Charter to prevent patronage jobs and ensure the merit-based selection of City employees.

Why the Rule of Two Should be Expanded to Allow More Police Personnel to Qualify for Vacant Positions

Like the Charter’s overly-restrictive two deputy limit, the Rule of Two has been criticized for decades as an impediment to modern personnel practices.⁵⁵ After interviewing the two top scorers on the civil service test, a supervisor may not believe that either candidate is well suited for the available position. Test scores alone may not predict how well a candidate fits within a particular job or department; nor do they measure work ethic, motivation, or communication skills. As a result, critics characterize the narrow reliance on test scores as a straitjacket that prevents them from making the best possible hires. This is precisely the argument that colleges use to explain their reliance on factors other than the SAT in making admissions decisions.

The rigidity of the Rule of Two impacts not only supervisors making hiring decisions, but also current employees. If a supervisor is reluctant to hire one of the top two certified candidates, often the vacancy is left open and the workload intended for the new hire shifts to other employees within the department. Allowing supervisors to reach deeper into the applicant pool would increase the odds of filling a vacancy.

Potential job applicants are also adversely affected by the Rule of Two. Sometimes two or more candidates end up with equal scores, yet they must be ranked. In such instances, the Civil Service Regulations enable the Personnel Director to develop “tie-breaker” procedures, which are necessarily arbitrary.⁵⁶ Expanding the number of candidates to be considered, or allowing all those receiving the same scores to be included in the certified applicant pool, would obviate the need for such decisions.

The Rule of Two affects promotions as well as hiring. With respect to the Police Department, increasing the number of officers who can be considered for advancement would inject

competition into the process, which often drives individuals to function at a higher level. Allowing supervisors to consider more than two candidates will increase the chances that the chosen applicant is the best match for the job.

It is likely that widening the pool of applicants that can be considered both for initial hires and for promotions will help ensure a more diverse police force. Indeed, “[diversity] is particularly important in law enforcement...Because of the visibility of police officers in American communities, a diverse agency publicly displays its equal treatment in law enforcement.”⁵⁷ Interestingly, one of Charles Ramsey’s initiatives as the Police Chief in Washington, D.C. was to increase the number of Hispanic police officers.⁵⁸

In sum, increasing the Rule of Two would permit supervisors in the Police Department greater flexibility in making personnel decisions generally, particularly during this very critical time for the City. Such modernized human resources practices will bring greater fairness, efficiency and effectiveness to the Department.⁵⁹

Other States/Cities

Compared to other cities, Philadelphia’s Rule of Two stands out as excessively rigid. A 1994 study of the top U.S. cities by population found only Philadelphia has such a restrictive rule.⁶⁰

Civil service rules in both New York City⁶¹ and Los Angeles⁶² provide for a more flexible “Rule of Three.” Furthermore, these cities also require certification of all individuals who score equally, on both entry level and promotional exams. In other words, the *scores* are ranked, and *all* applicants achieving the top three scores are eligible for consideration by the hiring authority. In practice, calling this the Rule of Three is somewhat of a misnomer because, in New York and Los Angeles, many more than three individuals can be certified for a job opening.

The Commonwealth of Pennsylvania has a more flexible system than Philadelphia. Pennsylvania Civil Service Rules⁶³ mandate recording final scores as whole numbers, that tie scores must not be broken, and that all applicants with equal scores are certified according to a Rule of Three.⁶⁴

Again, this allows all candidates receiving the top three scores to be certified, even if it results in an applicant list of more than three people.

To complement the Rule of Three, the New York State Department of Civil Service System uses band scoring (as opposed to point scoring) to further widen the pool of available applicants: “[First] the raw score is determined, which is generally the number of questions the candidate answers correctly. After the results are analyzed, a band score table is constructed for the test. The band score table is then applied to the raw score to determine the final score. Typically, a band score covers a range of scores and bands are reported in five point increments.”⁶⁵ In other words, raw scores within a certain range, or band, are all ranked equally.⁶⁶ Therefore, all candidates of equal rank would be eligible for consideration under this scoring system.⁶⁷

Seventy’s Recommendation

The Committee of Seventy recommends implementing a broadly-interpreted “Rule of Three” within the Philadelphia Police Department that permits all candidates who achieve the top three scores on the civil service exam to be eligible for hiring.

A “Rule of Three” is consistent with the recommendation of the 1994 Independent Charter Commission and would bring Philadelphia in line with New York City, Los Angeles and also with Pennsylvania. It would provide greater flexibility in hiring and promoting police personnel and would help cure the imprecision in testing that can fail to accurately or meaningfully distinguish candidates with virtually identical test scores.⁶⁸ Moreover, it would retain the current preference for rewarding high scorers on the civil service exam, because only candidates receiving among the top three scores can be interviewed, and subsequently hired. For this reason, Seventy does not believe that its recommendation would invite patronage into the civil service hiring and promotion system that the Rule of Two was enacted to prevent.

Among the possibilities raised during confidential interviews of experts on Philadelphia’s personnel practices conducted by Seventy during research for its 1986 Personnel Practices Governance Study⁶⁹ was to replace the Rule of Two with another “set” number, e.g., the Rule of

Six, Seven or Eight. Because Seventy's recommendation will result in the consideration of an increased number of candidates, it is not necessary to consider this option.

Nor would Seventy recommend eliminating Rules of Two, Three or Five altogether, as some experts suggest.⁷⁰ While this option would give hiring authorities the most discretion, concerns about a return to patronage would certainly gain more credibility if this approach was adopted. Furthermore, removing all barriers to selection would be impractical and time-consuming in large City departments that receive hundreds of applications for one job opening.

IV. Increasing the Pool of Applicants to the Philadelphia Police Force

Existing Law

Since 1953, Philadelphia's Civil Service Regulations have required that all civil service applicants, including police recruits, reside in the City for one year prior to being hired.⁷¹ Employees must then maintain residency in Philadelphia for the duration of their employment.

Under certain circumstances, the Civil Service Commission may waive the residency requirement.⁷² For example, active duty or recently discharged members of the United States Armed Forces are currently waived from the pre-hiring residency requirement when seeking employment with the Police Department. However, those individuals must establish residency in the City of Philadelphia within six months of being hired.⁷³ Appointed officials who are exempt from civil service also need not live within the City at the time they are hired. However, they too must move into the City within six months of their appointment.

The requirement that civilian candidates cannot be hired by the Police Department without living in Philadelphia for one year was "a deliberate policy decision emanating from a belief that city jobs should be for city residents,"⁷⁴ however it has come under fire in recent years.⁷⁵

How Eliminating the One Year Residency Requirement Would Increase the Pool of Police Applicants

There are viable arguments both in favor of, and in opposition to, the residency requirement. Often the resolution requires balancing the benefits of giving City jobs to City residents against the practical reality that the pool of interested candidates is greatly diminished when they can only come from within Philadelphia's borders.

In confidential interviews conducted for Seventy's 1998 Philadelphia Police Department Governance Study, the predominant view was that the pre-employment residency requirement should be eliminated.⁷⁶ The current restriction is considered to be a genuine deterrent to attracting candidates, particularly for specialized positions within the Department. While some non-resident applicants may be granted a waiver, allowing non-Philadelphians to be hired in the first instance will widen the pool of qualified candidates to other parts of the region and the country.

Widening the applicant pool will result in a more competitive, and possibly a better qualified and more diverse, police force. If the Mayor is permitted to look outside the city limits for his or her top appointees, the same logic should apply to the civil service applicants as well. Allowing qualified candidates from around the country seek employment with the City of Philadelphia will only strengthen the City's workforce and improve the delivery of services to its residents.

The wisdom of residency requirements, both before and during employment, has been challenged in other employment sectors. In 2001, the Pennsylvania Legislature passed Senate Bill 485, which eliminated residency requirements for teachers in Pennsylvania in order to assist municipalities (particularly Philadelphia) in attracting new teachers. Critics of the residency requirement for police officers have pointed to the unfairness of relaxing the rules for teachers and not for police.

Council has indicated its support for removing the one year residency requirement for all civil service jobs in the past. Bill #010493, sponsored by Councilmembers Kenney, DiCicco, Goode and then-Councilmember Nutter, was passed by Council 17-0 in December 2001, but was vetoed

by Mayor John Street in January 2002. Councilmembers Kenney and DiCicco reintroduced the legislation (Bill #060432) in May 2006 but the bill expired in December 2007 with the end of the Council term.

Other Cities

Philadelphia joins Boston⁷⁷ as the only major city to require Police Department recruits to live within the City for one year before joining the force.

In Chicago, there is no residency requirement during the application and testing process; however, as in Philadelphia, officers must become City residents once employed.⁷⁸ The New York Police Department requires officers to live within the City limits or in a surrounding county only after being hired.⁷⁹ In Pittsburgh, recruits are obligated to become residents only at the start of the training academy.⁸⁰ Los Angeles does not have a residency requirement at all,⁸¹ nor does Baltimore,⁸² Atlanta,⁸³ or Dallas.⁸⁴

Seventy's Recommendation

The Committee of Seventy recommends eliminating the one-year residency requirement for hiring police officers.

Seventy has consistently testified in favor of eliminating the one year pre-hiring residency requirement for all civil service job applicants, including members of the Philadelphia Police Department.⁸⁵

We believe that the requirement does deter police applicants. The City wage tax and the public school system are two obvious factors that might sway would-be non-Philadelphia applicants from moving to the City without the *guarantee* of a permanent position. While, in the past, there have been widespread abuses of the residency requirement, the Office of the Inspector General has been increasingly vigorous in locating, investigating and disciplining City workers who are violating the residency rules.⁸⁶

Seventy is not calling on Council to eliminate the residency requirement altogether. However, we urge Council to allow police officers up to six months to move into the City subsequent to their hiring. The Police Department already allows this flexibility for veterans of the armed forces.⁸⁷ There is no logical reason for not extending this to all officer candidates, irrespective of prior military service.

Legal/Logistical Steps to Implementing Seventy's Recommendations

Three of Seventy's recommendations – increasing the number of appointed deputies, increasing the number of police personnel that can be promoted, transferred and demoted by the Police Commissioner and implementing a broadly-interpreted “Rule of Three” for hiring and promotion – require amendments to the Philadelphia Home Rule Charter that must be approved by the voters. The Charter amendment process is dictated by state law. To be placed on a ballot for voter approval, a proposed amendment must be passed by two-thirds of City Council's 17 members.⁸⁸ This must happen at least forty-five days before the primary or November election at which the question will be voted on by the public.⁸⁹

Therefore, for any of Seventy's recommendations to appear on the April 22, 2008 primary ballot, each must be passed by 12 members of Council by March 7, 2008. The recommendations will become law if approved by a majority of Philadelphia voters.

Amending the Philadelphia Code – which is required in order to eliminate the one year pre-hiring residency requirement – is a less onerous process than amending the Home Rule Charter. First, a Councilmember must introduce the bill, which is then referred to the appropriate committee.⁹⁰ The committee is required to hold a public hearing and public meeting. If the bill is reported out favorably, it is sent to the entire Council where it must be considered in open session more than five days after being reported from the committee.⁹¹

For a bill to pass Council, it must be passed by a majority of its members (9 of 17).⁹² The bill is then sent to the Mayor for his or her approval.⁹³

There are no time restrictions governing the process of amending the Philadelphia Code because voter approval is not required. Therefore, a bill can be introduced at the beginning of City Council's next term in January 2008. Civil service regulations must then be amended to reflect these changes.⁹⁴

Conclusion

Seventy's decision to push for these four reforms was not made lightly. The Charter recommendations, in particular, represent a departure from long-standing personnel practices and from some of our own core beliefs. We expect opposition.

However, no public emergency since the gang wars of the 1970s threatens Philadelphia as deeply as today's gun violence crisis. Gang deaths ended when every element in the community finally decided to do what it could.

We know that these four changes – standing alone – will not solve the crime epidemic, but we are determined to do what we can.

We urge Mayor Nutter and City Council to swiftly pass these four recommendations.

¹ See *Philly Homicides Fall, But Rate Still High Among U.S. Cities*, ASSOCIATED PRESS, Jan. 1, 2008, available at <http://www.philly.com/philly/wires/ap/news/state/pennsylvania/12956852.html>.

² JONATHAN D. BRUEL, NICOLE WILLENZ GARDNER & MARK A. ABRAMSON, *THE CHALLENGE OF HUMAN CAPITAL MANAGEMENT: A CULTURE IN TRANSITION* 6 (2004).

³ LINCOLN STEFFENS, *THE SHAME OF THE CITIES* 134, 140 (Hill & Wang 1993) (1904).

⁴ THE COMMITTEE OF SEVENTY, *PHILADELPHIA POLICE DEPARTMENT GOVERNANCE STUDY* 6 (1998) [hereinafter *SEVENTY'S POLICE STUDY*]

⁵ EDWIN ROTHMAN, MARJORIE L. JACOB & PHILIP L. DEATON, *PHILADELPHIA GOVERNMENT* 28 (1963).

⁶ *Id.* at 26.

⁷ In the wake of a federal probe of municipal corruption that dominated Mayor John Street's two terms in office, Mayor Nutter recently created a new position of Chief Integrity Officer to "...make sure that some of the things that have happened over the past few years never happen again...that contracting policies and procedures are examined . . . and that there's someone who has the specific job of making sure we're doing the right thing." Dave Davies, *Nutter Taps Trio to Be His Ethics Sentinels*, PHILA. DAILY NEWS, Nov. 30, 2007, available at http://www.philly.com/philly/hp/news_update/11962132.html.

⁸ See, e.g., Patrick Kerkstra, *Philadelphia Parking Authority is a Money Machine*, PHILA. INQUIRER, Oct. 27, 2007, available at <http://www.philly.com/philly/news/breaking/10839742.html>.

⁹ THE GOVERNMENT PERFORMANCE PROJECT, CAMPBELL PUBLIC AFFAIRS INSTITUTE, SYRACUSE UNIVERSITY, *CITY GRADE REPORT 2000*, <http://governing.com/gpp/2000/gp0phil.htm> (in association with *Governing Magazine*) (last visited Dec. 27, 2007).

¹⁰ See, e.g., Richard J. Stillman II, *The Study of Public Administration in the United States: "The Eminently Practical Science,"* in *PUBLIC ADMINISTRATION: CONCEPTS AND CASES* 26 (8th ed. 2005).

¹¹ Evan M. Berman, et al., *HUMAN RESOURCE MANAGEMENT IN PUBLIC SERVICE* 96 (2d ed. 2006).

¹² *Id.* at 22.

¹³ According to an October 2007 Philadelphia *Daily News/Keystone* poll of Philadelphia voters conducted by Franklin & Marshall College's Center for Opinion Research, 70% of respondents said that crime was the most important issue facing Philadelphia today. See *OCTOBER 2007 PHILADELPHIA MAYORAL KEYSTONE POLL, SUMMARY OF FINDINGS 7*, available at http://edisk.fandm.edu/FLI/keystone/pdf/keyoct07_1.pdf.

¹⁴ This paragraph is excerpted from Mr. Meyers's remarks at Seventy's "Next Mayor Speaks" breakfast, held November 7, 2007, where Mayor Michael Nutter made his first official address on the morning after his election. See Howard L. Meyers, Chairman, The Committee of Seventy, *Opening Remarks at The Next Mayor Speaks Breakfast* (Nov. 7, 2007), <http://www.seventy.org/participate/events/the-next-mayor-speaks/hlms-remarks/>.

¹⁵ According to an October 2007 Audit Report prepared by the Office of the City Controller, at the close of fiscal year 2005, the Police Department had a staff of 7,500 employees, 6,700 of whom were uniformed personnel. All but a handful of its employees are hired and promoted through the civil service system. See *OFFICE OF THE CONTROLLER, CITY OF PHILADELPHIA, POLICE DEPARTMENT AUDITOR'S REPORT FISCAL 2005 1*, available at http://www.philadelphiacontroller.org/publications/audits/01_police_2005.pdf.

¹⁶ See *CITY OF PHILADELPHIA FISCAL YEAR 2008 OPERATING BUDGET 113* available at http://www.phila.gov/pdfs/FY_08_Budget.pdf.

¹⁷ See Philadelphia City Charter §§ 7-301(b), (c).

¹⁸ See THE COMMITTEE OF SEVENTY, *THE CHARTER: A HISTORY* 33 (1980).

¹⁹ "Exempted employment is carefully limited so that it shall not serve as an avenue for evading the civil service requirements of the Charter." Philadelphia Home Rule Charter § 7-301 annotation 3.

²⁰ Philadelphia Home Rule Charter § 7-301 annotation 2.

²¹ Pat Giorgio-Fox, First Deputy, and John Gaittens, Deputy Commissioner of Administration and Technology, are "Charter" deputies. Richard Ross, Deputy Commissioner of Internal Affairs and Gun Control, and Charlotte Council, Deputy Commissioner of Training and Staff Services are assigned to the Police Department through the Managing Director's Office. Kimberly Byrd serves as Executive Officer, which is also an exempt position.

²² THE COMMITTEE OF SEVENTY, *PERSONNEL PRACTICES GOVERNANCE STUDY* 47 (1986) [hereinafter *SEVENTY'S PERSONNEL STUDY*].

²³ This Commission, which was appointed by former Mayor Edward G. Rendell and then-Council President John F. Street, proposed a package of 62 amendments to the Philadelphia Home Rule Charter. The package was

overwhelmingly rejected by the voters in May 1994 following a vigorous anti-Charter change campaign by labor unions and community organizations.

²⁴ Andrew Maykuth, *Johnson Sees “Terrible Flaw” in Force*, PHILA. INQUIRER, Nov. 27 2007, available at <http://www.philly.com/philly/news/homepage/11849077.html>.

²⁵ *Id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ Conversation with Sarah Stevenson of the Committee of Seventy, October 8, 2007. Mr. Eddis’s statement is not the official position of the FOP.

³⁰ In a recent article, Chuck Wexler, President of the Washington D.C.-based Police Executive Research Forum, is quoted as saying that “the restrictions of the Philadelphia charter are ‘very well known’ among the nation’s police chiefs.” Andrew Maykuth, *Johnson Sees “Terrible Flaw” in Force*, PHILA. INQUIRER, Nov. 27 2007, available at <http://www.philly.com/philly/news/homepage/11849077.html>.

³¹ *See* SEVENTY’S POLICE STUDY, *supra* note 4, at 17. The City of Los Angeles has since amended its Charter to exempt all deputy chiefs of police. *See also* Charter of the City of Columbus §§ 101-1, 148.

³² Los Angeles City Charter, Article 10 § 1001(a)(5). According to an organizational chart of the LAPD, there are 13 individuals holding the rank of Deputy Chief and 3 Assistant Chiefs, which is equal in rank to Deputy at a higher pay grade. *See* The Los Angeles Police Department, http://www.lapdonline.org/search_results/content_basic_view/1063 (last visited Dec. 27, 2007). *See also* LAPD Recruiting, Career Ladder http://www.joinlapd.com/career_ladder.html (last visited Dec. 27, 2007).

³³ New York City Charter § 432. Information also obtained from the New York Police Department’s Office of Public Inquiry.

³⁴ *See* Andrew Maykuth, *Johnson Sees “Terrible Flaw” in Force*, PHILA. INQUIRER, Nov. 27 2007, available at <http://www.philly.com/philly/news/homepage/11849077.html>.

³⁵ Houston Police Department, Organizational Chart, http://www.houstontx.gov/police/contact/images/org_chart.pdf (last visited Jan. 3, 2008).

³⁶ PHILADELPHIA INDEPENDENT CHARTER COMMISSION, BRIEFING MATERIALS 59 (1994).

³⁷ Exceptions include department commissioners, two “Charter” deputies and an executive secretary in each department, as well as any deputies assigned to a particular department through the Managing Director’s Office. Other exempt employees include all elected officials and their deputies, City Council staff, members of City Boards and Commissions and their Executive Directors, as well as contract, temporary and emergency employees. Philadelphia City Charter §7-301.

³⁸ SEVENTY’S POLICE STUDY, *supra* note 4, at 15.

³⁹ *Id.*

⁴⁰ An analogy to a Mayor’s need to select his or her leadership team is made in Seventy’s 1986 Personnel Practices Governance Study: “[our Mayors’] policies do not take effect magically when they are sworn into office. Those policies must be implemented – by people, not obscure proclamations and pronouncements. Generally, those chosen to implement must agree with these policies if they are to do their jobs effectively. They also need the confidence and support of the Mayor if they are to turn campaign promises into concrete city practices....Some, however, maintain that not enough senior-level city employees are exempt from civil service and that this lack of flexibility hinders the ability of Philadelphia’s mayors to implement their policies effectively and completely.” SEVENTY’S PERSONNEL STUDY, *supra* note 22, at 41.

⁴¹ *See, e.g.*, BERMAN, ET AL., *supra* note 11, at 22.

⁴² As we noted in our 1998 Police Governance Study, however, the Commissioner or an appointee may serve on oral examination boards. *See* SEVENTY’S POLICE STUDY, *supra* note 4, at 15.

⁴³ Information provided by the New York City Police Department, Office of Public Inquiry.

⁴⁴ Information provided by the Chicago Police Department, Recruitment Team.

⁴⁵ *See* Dallas City Charter, Chapter XII § 1.

⁴⁶ *See* DALLAS POLICE DEPARTMENT MANAGEMENT AND EFFICIENCY STUDY VII-1 (2004), available at <http://www.dallascityhall.com/pdf/police/OfficeChief.pdf>.

⁴⁷ Charter of the City of Columbus, § 101-1.

⁴⁸ *See* BERMAN, ET AL., *supra* note 11, at 22.

⁴⁹ *Id.* at 96.

⁵⁰ *Id.*

-
- ⁵¹ Philadelphia Home Rule Charter § 7-401(h).
- ⁵² Philadelphia Civil Service Regulations § 9.067
- ⁵³ Philadelphia Civil Service Regulations § 11.102.
- ⁵⁴ Philadelphia Civil Service Regulations § 11.04.
- ⁵⁵ *See, e.g.*, SEVENTY'S PERSONNEL STUDY, *supra* note 22, at 47.
- ⁵⁶ *See* Philadelphia Civil Service Regulations § 9.067.
- ⁵⁷ Alexa Kasdan, *Increasing Diversity in Police Departments: Strategies and Tools for Human Rights Commissions and Others*, Harvard University, John F. Kennedy School of Government Executive Session on Human Rights Commissions and Criminal Justice 1 (October 2006).
- ⁵⁸ Petula Dvorak, *D.C. Police Hire 60 From Puerto Rico*, WASH.POST, June 24, 2002.
- ⁵⁹ While it is arguable that expanding the Rule of Two too broadly would reintroduce patronage into hiring decisions, on balance it is far preferable than the rigid practice that exists today.
- ⁶⁰ PHILADELPHIA INDEPENDENT CHARTER COMMISSION, BRIEFING MATERIALS 56 (1994).
- ⁶¹ Personnel Rules and Regulations of the City of New York §§ 4.4.11, 12, *available at* http://home2.nyc.gov/html/dcas/html/resources/prr_rule4.shtml.
- ⁶² *See* Los Angeles City Charter § 10-1010.
- ⁶³ Pennsylvania uses a Rule of Three combined with equal scoring. Pennsylvania Rules of the Civil Service Commission, §§ 97.11, 95.47 (2004), *available at* <http://www.scsc.state.pa.us/scsc/lib/scsc/Igl-scsc-rules.pdf>.
- ⁶⁴ Pennsylvania Rules of the Civil Service Commission, § 95.47 (2004).
- ⁶⁵ New York State Department of Civil Service, Questions and Answers about Municipal Civil Service Examinations, <http://www.cs.state.ny.us/jobseeker/local/qanda.cfm> (last visited Dec. 27, 2007).
- ⁶⁶ Another version of banding is to certify all candidates scoring within in particular percentage of the highest score. This will help to eliminate variations in the difficulty of exams given on different dates.
- ⁶⁷ Municipalities under New York State Civil Service Rules (other than New York City) may choose to give preference points to differentiate between candidates with a tie score. For example, county residents may receive local preference points. *See* New York State Department of Civil Service, Questions and Answers about Municipal Civil Service Examinations, <http://www.cs.state.ny.us/jobseeker/local/qanda.cfm> (last visited Dec. 27, 2007).
- ⁶⁸ *See, e.g.*, New York State Department of Civil Service, Questions and Answers about Municipal Civil Service Examinations, <http://www.cs.state.ny.us/jobseeker/local/qanda.cfm> (last visited Dec. 27, 2007).
- ⁶⁹ *See* SEVENTY'S PERSONNEL STUDY, *supra* note 22, at 47.
- ⁷⁰ *See, e.g.*, Steven W. Hays, *Trends and Best Practices in State and Local Human Resource Management: Lessons to be Learned?*, 24 REV. PUB. ADMIN. 256, 265 (2004).
- ⁷¹ Philadelphia Civil Service Regulations § 30.01, enacted pursuant to Section 7-401(u) of the Home Rule Charter.
- ⁷² Philadelphia Code §20-101(3). *See also* Civil Service Regulations § 30.
- ⁷³ *See* Philadelphia Police Department, Career Opportunities, Veterans Preference, http://www.ppdonline.org/career/career_vets.php (last visited Dec. 28, 2007).
- ⁷⁴ SEVENTY'S PERSONNEL STUDY, *supra* note 22, at 49.
- ⁷⁵ *See, e.g.*, SEVENTY'S POLICE STUDY, *supra* note 4, at 9.
- ⁷⁶ *Id.*
- ⁷⁷ Boston is even more restrictive because police candidates must reside in the City for one year prior to taking the entrance exam.
- ⁷⁸ *See* Chicago Police Department, Chicago Police Officer Career Information, <http://egov.cityofchicago.org/city/webportal/portalEntityHomeAction.do?entityName=Police&entityNameEnumValue=33> (last visited Dec. 28, 2007).
- ⁷⁹ *See* NYPD Recruitment, <http://www.nypd2.org/html/recruit/requirements.html> (last visited Dec. 28, 2007).
- ⁸⁰ *See* Pittsburgh Personnel & Civil Service Commission, Police Officer Recruitment, http://www.city.pittsburgh.pa.us/personnel/html/police_officer_recruitment.html (last visited Dec. 28, 2007).
- ⁸¹ *See* Join LAPD, <http://www.joinlapd.com/qualifications.html> (last visited Dec. 28, 2007).
- ⁸² *See* Baltimore Police Department, Recruiting, <http://www.baltimorepolice.org/> (last visited Dec. 28, 2007).
- ⁸³ *See* Atlanta Police Department, Career with APD, <http://www.atlantapd.org/index.asp?nav=Career> (last visited Dec. 28, 2007).
- ⁸⁴ *See* Dallas Police, Minimum Qualifications, http://recruiting.dallaspolice.net/index.cfm?page_ID=7006&subnav=0 (last visited Dec. 28, 2007).
- ⁸⁵ Seventy testified in 2001 and 2006 before City Council's Committee on Labor and Civil Service in support of changing the one year pre-hiring residency requirement across the board.

⁸⁶ See, e.g., Marcia Gelbart, *Phila. Targets Employees Living Outside The City; The Inspector General's Operation Border Control Hits Nonresident Municipal Workers Where They Live*, PHILA. INQUIRER, June 23, 2006.

⁸⁷ The Department's rationale for the preference is to identify "the candidates that are best able to complete their Academy training and who are most likely to perform at the highest levels of operational proficiency in the shortest time." Veterans also are given ten additional points to their raw score on the entrance examination. See Philadelphia Police Department, Veterans Preference, http://www.ppdonline.org/career/career_vets.php (last visited Dec. 28, 2007).

⁸⁸ 53 P.S. § 13106.

⁸⁹ 53 P.S. § 13110.

⁹⁰ See Philadelphia City Charter § 2-201(2).

⁹¹ See Philadelphia City Charter § 2-201(5).

⁹² See Philadelphia City Charter § 2-201(7).

⁹³ Council members can override a mayoral veto by a two-thirds vote. See Philadelphia City Charter § 2-202.

⁹⁴ In particular, Civil Service Regulations §§ 4, 11 and 30.