

City of San Luis Conflict of Interest Procedures

A. POLICY

It is the policy of the City of San Luis to uphold, promote, and demand the highest standards of ethics from all of its employees. Accordingly, all employees shall do their utmost to maintain the highest standards of personal integrity in carrying out their public duties and avoid conflicts with the City's interests. Use of an employee's official position or duties with the City of San Luis for that employee's own or family member's personal interest, benefit, gain, or inappropriate influence is strictly prohibited.

No public officer or employee of the City shall supply any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that the total transaction is below \$300, and only if these individual transactions do not exceed \$1,000 annually. (This policy for purchases must be approved annually by City Council. If not approved by the City Council for that year, such purchase would be prohibited.)

At all times, the appearance of impropriety or the appearance of a conflict is to be avoided. As a result, transparency is encouraged at all times. If one has doubts, consultation with appropriate department heads or City officials is encouraged.

(See A.R.S. § 38-503 and City of San Luis Policy HR-5-01)

1. Definitions.

A. For purposes of this policy, family member means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouse and the parent, brother, sister or child of the spouse.

B. "Substantial interest" means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest as defined by state law. "Pecuniary" means money, and "proprietary" means property. To be a "substantial interest," one must "gain something or lose something." (See *Hughes v. Jorgenson*, 203 Ariz. 71, 74, 50 P.3d 821(2003); *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252 (Div. 2 1972); A.R.S. § 38-502.11).

2. Prohibited Activity.

a. For the purposes of this policy, a conflict of interest occurs when an interest particular to an employee or to that of an employee's family member influences, or has the potential to influence, the ability of that employee to exercise objectivity and/or act in the City's best interest. While not intended to be all-inclusive, the actions listed below are considered a conflict of interest when carried out by an employee and are strictly prohibited:

- i. Participation, including but not limited to, research, advice, negotiation, or decision making, at any stage in the process, of any business transaction of the City such as contracting, sales, procurement, or provision of services, when the employee, or the employee's family member, has a nonspeculative substantial interest in the transaction.
- ii. Participation in another business, organization, or activity that may compromise City relationships, disadvantages, or competes with the City or its interests;
- iii. Any employment activity or enterprise involving the use of any City resource such as time, facilities, equipment, supplies, badge, uniform, prestige, or influence of the office of employment for private gain (e.g., an employee using a City computer to operate a personal business; using City tools, supplies, or equipment to improve one's property; using City vehicles to attend to personal business, etc.);
- iv. Receipt or acceptance of financial compensation or other consideration from anyone other than the City for the performance of an act which would be required or expected as part of their duties as an employee (e.g., a solid waste employee accepting cash from a resident to replace a trash bin) (See A.R.S. § 38-505);
- v. Representation of another person for compensation in any transaction with the City, or matter pending before the City, in which the employee participated in the course of performance of the employee's official duties. This includes actions in violation of A.R.S. § 38-504 which prohibit representing another person for compensation before the City or from using information that was acquired during one's employment with the City for two calendar years, without proper authorization.
- vi. Disclosure or use of confidential or privileged information acquired by the employee in the course of performance of the employee's official duties to advance personal interests or the interests of family members or personal or professional associates (e.g., using knowledge of a City project to buy a piece of real property that the City intends to acquire). This prohibition is governed by A.R.S. § 38-504.
- vii. Preferential treatment is given or appears to be given to any family members, friends, or business associates or to anyone else that would advance the personal interest of an employee (e.g., hiring your spouse to provide a service to the City). (See A.R.S. § 38-481);
- viii. Securing any valuable thing or benefit for the employee, or the employee's family member, that would not ordinarily accrue to the employee or family member in the performance of the employee's official duties (e.g., accepting, whether solicited or not, cash, cash equivalent, gifts, meals, travel, or entertainment from a potential vendor) (See A.R.S. § 38-505).

3. Responsibilities.

a. Each employee is individually responsible for prospectively identifying and avoiding any conflict of interest. Employees must immediately disclose any potential or apparent conflicts of interest in writing to their immediate supervisor. Additionally, the employee must refrain, at the earliest stage possible, from any participation in City transactions where a conflict of interest exists. Supervisory personnel, through their department heads, may seek an opinion of the City Attorney regarding whether a conflict of interest exists.

b. A supervisor who has received a written conflict of interest disclosure is responsible for documenting the actions he/she will take to monitor the situation regarding the conflict of interest disclosure, such as monitoring Purchasing Card (P card) activity and direct payments. Further, the supervisor is responsible for forwarding the disclosure to the Human Resources Department. If the conflict is in any way related to a potential procurement activity, a copy must also be forwarded to the Finance Department.

c. Department heads are responsible for communicating the requirements of this policy to their staff and instituting proper controls to monitor and address conflicts of interest. Department heads may seek opinions of the City Attorney's Office regarding issues of conflict of interest.

d. The City Attorney's Office is responsible for interpretation or clarification of legal and regulatory requirements. Employees, through supervisory personnel, are encouraged to seek advice from the City Attorney's Office as needed.

e. The Human Resources Department is responsible for training new employees on the requirements of this policy and retaining conflict of interest disclosures.

4. Procurement Activity.

a. Pursuant to applicable state law, the City may, within three years of its execution, cancel the contract, without penalty or further obligation, if any employee significantly involved in initiating, negotiating, securing, drafting or creating the said contract is found to be employed by, consulting with, or otherwise involved with the vendor without having complied with the requirements of this policy. (See A.R.S. § 38-511).

b. As part of the City's procurement process, past performance verifications for current or potential vendors will be solicited and/or provided using standard forms established by the Finance Department.

c. Employees shall not, in the context of dealing with a person who is transacting or anticipated to transact business with the City, provide to that person any referral, solicited or unsolicited, of third parties to provide any assistance related to that transaction.

B. PROCEDURE

1. Disclosure.

a. Employees must utilize the Conflict of Interest Form to provide a conflict of interest disclosure immediately, in writing, to his/her supervisor. The employee must disclose the conflict of interest and not participate in the matter even if the employee is confident that he/she can be objective in the matter and that the public interest would not be harmed by his/her participation.

b. Upon receipt, the supervisor will document the steps which will be taken to monitor the potential conflict on the Conflict of Interest Form. Once the Conflict of Interest Form is complete, one copy must be forwarded to the Human Resources Department and one copy to the Office of the City Clerk for inclusion in the City's conflict of interest file pursuant to A.R.S. § 38-509. If the conflict is related to a procurement activity, the supervisor must also forward a copy of the Conflict of Interest Form to the Finance Department. The Conflict of Interest Form will be a public record.

c. The Finance Department will attach the Conflict of Interest Form to the appropriate vendor record within the City's financial system.

2. Audit.

a. On an annual basis, the Finance Department will perform an audit of the Conflict of Interest Forms received by the H.R. Department and/or Clerk's Office to verify that conflicts were properly avoided as it relates to procurement activity.

b. On an annual basis, the Finance Department will cross-reference employee data (address, phone numbers, etc.) with vendor payment data to identify situations in which an employee or the employee's dependent may be receiving payment from the City for goods or services. All findings will be investigated for potential conflicts of interest.

i. Concerns identified as part of this audit process will be elevated to the Finance Director to be addressed on a case-by-case basis in conjunction with the Human Resources Department and City Attorney's Office.