

**RESOLUTION NO. R2018.87**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING AND RESTATING THE TEMPE CITY COUNCIL CODE OF CONDUCT.**

WHEREAS, the members of the Tempe City Council desire to conduct their business in a manner that is legally and ethically beyond reproach;

WHEREAS, the Tempe City Council pursuant to Tempe City Charter Section 2.09, is authorized to investigate allegations of violations of the Code of Conduct, and shall establish procedures for conducting such investigations;

WHEREAS, in 2009, the Tempe City Council adopted the Tempe City Council Code of Conduct by way of Resolution No. 2009.126, which includes certain rules and regulations regarding Councilmember conduct and sanctions up to and including censure for violations thereof;

WHEREAS, in 2017, the Tempe City Council adopted Resolution No. R2017.114, revising the Code of Conduct to establish the City Manager or designee as investigator of complaints under the Code of Conduct;

WHEREAS, the Tempe City Council has determined that the updated Personnel Rules and Regulations and Ethics in our Workplace Handbook, both revised in 2018, including the language concerning "Unacceptable Behaviors" in the Ethics in our Workplace Handbook, be incorporated into the Tempe City Council Code of Conduct; and

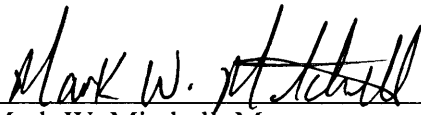
WHEREAS, this restated Tempe City Code of Conduct shall take the place of Resolution Nos. R2017.114 and 2009.126.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

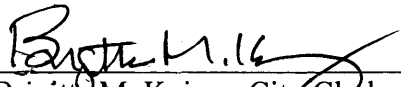
- A. That the City Council hereby amends and restates the Tempe City Council Code of Conduct by adopting the attached Exhibit A, entitled "Council Code of Conduct Complaint Procedure" and Exhibit B, entitled "Personnel Rules 2015 (Revised February 8, 2018)" as its code of conduct to govern the actions of Councilmembers, to the extent that it is consistent with state law, the Tempe City Charter and the Tempe City Code;
- B. That Exhibit A and Exhibit B together shall be known as the "Tempe City Council Code of Conduct";
- C. That the City Council finds that Exhibit A and Exhibit B reflect the updated Personnel Rules and Regulations, Rule 406.C., and the Ethics in our Workplace Handbook, both updated in 2018.

D. That the provisions of Resolution Nos. 2009.126 and R2017.114, shall be replaced in their entirety by this Resolution.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 28th day of June, 2018.

  
\_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

  
\_\_\_\_\_  
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:


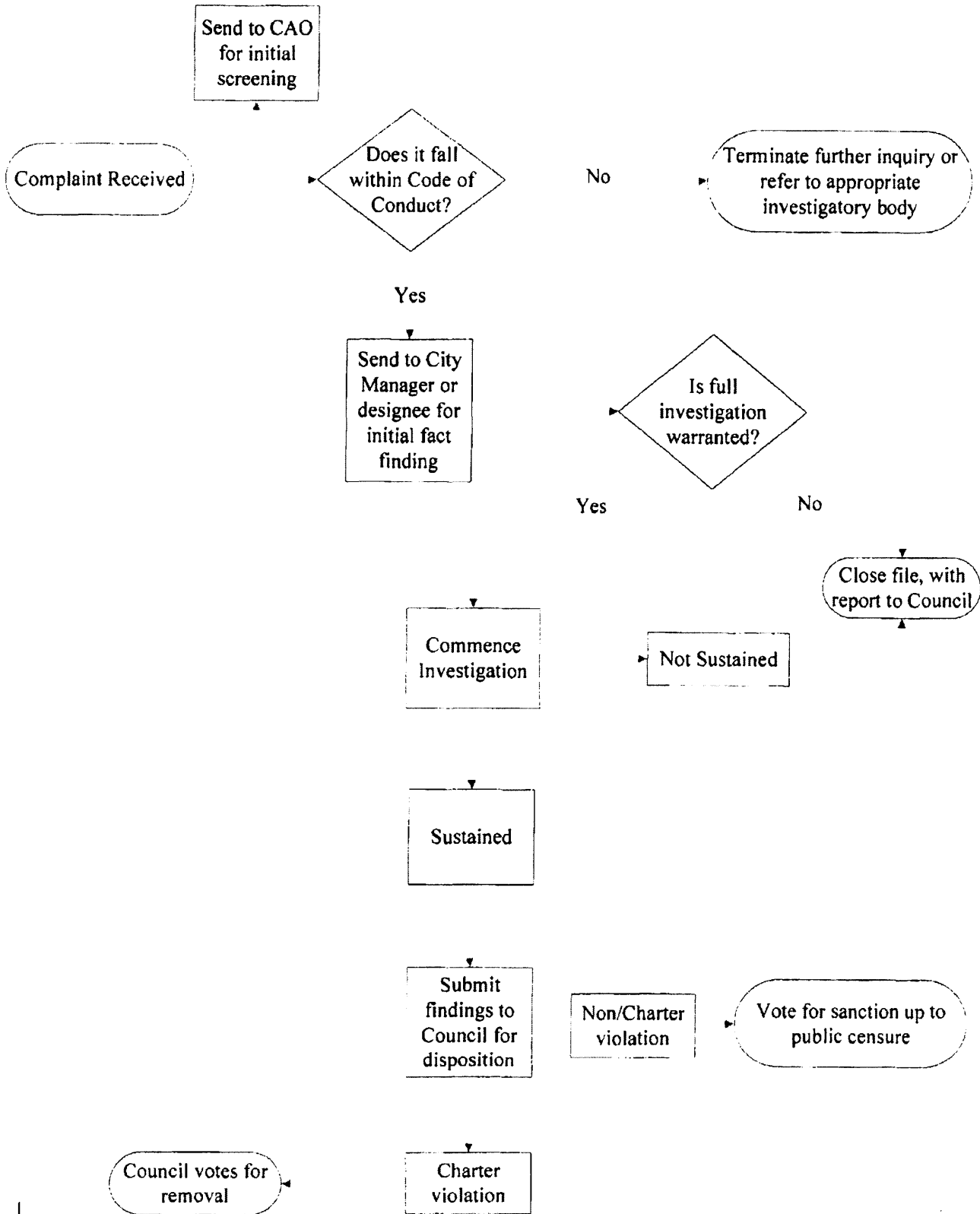
  
\_\_\_\_\_  
Judith R. Baumann, City Attorney

Exhibit A to Resolution No. R2018.87



# Council Code of Conduct Complaint Procedure

Personnel Rules  
2015  
(Revised February 8, 2018)

Section 406: Discipline

C. Grounds for Disciplinary Action

Employees shall face disciplinary action up to and including termination for sustained violations of any provision of any section of these City Personnel Rules or any other written City or Department policy or guideline.

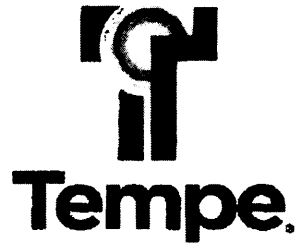
The following reasons constitute grounds for disciplinary action up to and including dismissal: The employee has...

1. exhibited a lack of sufficient competency or efficiency to perform assigned duties and responsibilities.
2. acted negligently, recklessly, or carelessly in performing his/her duties during a specific incident or incidents.
3. been unacceptably inefficient by loafing, visiting, loitering, lounging, sleeping, or otherwise engaging in non-work related activities during scheduled work hours or has interfered with another employee's efforts to meet work standards.
4. been insubordinate or has failed to follow reasonable direction from a supervisor.
5. violated an applicable safety rule, policy or directive.
6. possessed a weapon while in any City building or workplace, in a City vehicle, or in a personal vehicle which is being used for City business. This excludes police officers or military personnel acting in an official law enforcement or military capacity.
7. caused damage to public property or waste of public supplies through negligence, recklessness, or carelessness.
8. violated City and/or department policies and guidelines regarding access to and use of the City's technology infrastructure.
9. been abusive in attitude, language, behavior, or conduct toward another employee or the public.
10. engaged in behavior that has resulted in physical harm, or threat thereof, to another employee or the public.

11. engaged in behavior that does not meet a reasonable standard of workplace civility and respect in his or her interactions with other employees, or the public.
12. engaged in conduct, on or off duty, that is of such a nature that it causes discredit to the City.
13. violated the City's diversity policy.
14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.
15. failed to notify Human Resources within five days of being charged with a criminal offense while employed by the City.
16. failed to notify Human Resources within five days of being convicted of a criminal offense while employed by the City.
17. lost his or her driving privilege through suspension or revocation of a Commercial Driver's License (CDL) or non-CDL license, and driving is required to perform an essential job function in his or her position with the City.
18. driven a City vehicle or a personal vehicle on City business during a period of driver's license suspension or revocation.
19. stolen public or private property, misappropriated City funds, or has been an accomplice in any of these practices while employed by the City.
20. through action or inaction has failed to reasonably fulfill required responsibilities that has resulted in loss or misuse of public funds and/or public property.
21. made unauthorized use and/or removal of City property
22. violated the City's drug-free workplace rule.
23. violated the City's outside employment rule.
24. violated the City's gift rule.
25. violated the City's strike rule.
26. violated the City's political activity rule.
27. concealed or failed to properly report or document any information or incident required to be reported to federal and/or state agencies, and/or

City management as part of the employee's job duties and responsibilities.

28. knowingly or intentionally engaged in the unauthorized release or improper disclosure of proprietary or confidential information or records.
29. refused to subscribe to any oath or affirmation required in connection with City employment.
30. had excessive absenteeism or tardiness.
31. had unexcused, unpaid absences or has failed to receive prior approval for any paid leave.
32. exceeded the authorized number and/or length of lunch periods and breaks.
33. left the assigned work area while on duty without his or her supervisor's permission.
34. refused to perform reasonable light duty that is assigned because of an illness, injury or disability that resulted from the performance of their assigned duties.
35. violated the City's FMLA policy.
36. failed to adhere to Tempe Police Department Policies and Procedures, Tempe Fire Medical Rescue Department Policies and Procedures, Arizona Code of Conduct for Judicial Employees, Arizona Judicial Code of Conduct, or any other applicable City department written policy or guideline.
37. been involved in any other conduct of equal gravity to the reasons enumerated in this section.



# Ethics in Our Workplace

City of Tempe

Updated 2018

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## Ethics Handbook

Good ethics means good government, a good place to work, and pride in you and our organization. Ethical behavior is more than just doing what is legal. Jimmy Stewart in *Mr. Smith Goes to Washington* may sound corny in the new millennium, but his words still ring true about government:

“I wouldn’t give you two cents for all your fancy rules if, behind them, they didn’t have a little bit of plain, ordinary, everyday kindness and a— a little looking out for the other fella, too.”

The purpose of this handbook is to provide some road signs to guide us along the various paths and around the occasional obstacles encountered in our careers with the City of Tempe. Read it, make notes, and talk about it. Consider if everyone makes the effort for “a little looking out for the other fella”, sometimes that “other fella” will be you.

### **Public Perception**

**“No public servant is better than the worst.”**

## What? Me worry?

Everyone is ethical in their own mind.

- ❖ We are experts in justifying our own behavior.
  - ❖ We are always ethical unless the sacrifice is too great a sacrifice of convenience, ambition, money, or ego.
  - ❖ We judge others more harshly than we judge ourselves, attributing dishonorable motives to their actions.
  - ❖ No one is likely to mistake any of us for Mother Theresa by our actions.
  - ❖ Do you really believe you are as good a person as your dog thinks you are?
- “Always do right. It will surprise some people and astonish the rest.”  
Mark Twain

## Warning Signs

Danger – Ethical Thin Ice Ahead

- |                                      |   |
|--------------------------------------|---|
| “No one will ever know ...”          | (I’m just fighting fire with fire...)”    |
| “I can still be objective...”        | “Don’t tell me. I don’t want to know...”  |
| “I deserve it...” (“They owe me...”) | “It’s okay if I don’t gain personally...” |
| “Let’s keep this under our hats...”  | “Technically, it’s legal...”              |
| “Oh, don’t be such a prude...”       | “Everybody does it...” “Yes, but...”      |
| “They’ll never miss it...”           | “This won’t affect my work...”            |
| “They had it coming...”              |   |

**Doctrine of Relative Filth: “I’m not as bad as everyone else.”**

## Typical Mistakes

- a. Inappropriate expenses
- b. Unfiltered social media
- c. Failure to disclose conflicts of interest
- d. Giving in to the noise
- e. Ignoring established policy, rules or tradition
- f. Personal use of public resources
- g. Ignoring the glare of the public domain
- h. Sending mixed messages
- i. NEW – Outside Employment

## Why do good people do bad things?

- ❖ We overestimate the cost or risk of doing the right thing.
- ❖ We underestimate the cost or risk of the unethical behavior or decision.
- ❖ We fail to check it out with other people. Bad ethical decisions are almost always made alone.
- ❖ We use stress or time pressures to justify unethical behavior.

**"A 'no' uttered from the deepest conviction is better and greater than a 'yes' merely uttered to please, or what is worse, to avoid trouble."  
Mahatma Gandhi**

## Ethics must wear a human face ...

Our ethical choices play out in a staggering range of everyday concerns. How do I break the news about this setback or mistake? How am I going to deal with the personality clash down the hall? How can I get ahead? And so on.

Talking a good ethical game is easy. Practicing it is another matter. Ethical challenges take many forms—and there is no single “right” answer. New issues are emerging every day. Among them are: the need to protect personal privacy when using advanced information technology, problems associated with chemical dependency and substance abuse, understanding the cultural differences that exist today in an international workforce and a global marketplace, and ensuring opportunities for the disadvantaged and disabled.

The difference between proper and improper behavior may not be clear-cut or obvious. And there's no neat set of rules to cover every conceivable situation. You have to grapple with perceptions, incomplete information, and emotion. The pressure to compromise— out of fear, desire, ambition, or other motivation— can be intense.

That's why these ground rules were developed: to share what we in the City of Tempe believe in, to give you behavior guideposts for sorting through all the gray areas, and to make you more sure-footed in choosing among conflicting obligations in order to arrive at an appropriate decision.

Not only are sound ethical values, purposes, and practices the basis for our long-range achievement; they are the strategic key to our survival and growth.

**"To know what is right and not to do it is the worst cowardice." Confucius**

Ethics in our workplace means:

- ❖ Being “downright upright” with our customers, our community, our regulators, and each other. A commitment to do what is right, good, and proper, especially when it’s hard.
- ❖ Treating values such as fairness, honesty, integrity, and trust as ground rules and not “options” in making decisions.
- ❖ Essential decency in our dealings with peers, bosses, and subordinates and all those outside the City with whom we come in contact. Earning the respect and regard of others for what we do and how we do it. Thinking through the implications of our actions, and our lack of action.

**"One problem with the  
rat race—  
even if you win,  
you're still a rat."**

### When "right and wrong" isn't "black-and-white"

If you find yourself in a situation where you are not sure about the right thing to do, ask yourself the following questions. They can help you avoid a serious mistake.

Are my actions legal?

Your answer has to be “yes.” Breaking the law, any law, is never the right course of action. Even if the stakes are high or seemingly no one will get hurt. Even if you believe no one will ever find out. No exceptions, no excuses.

If you aren't sure, ask. Check with your supervisor, the head of your department, or the City Attorney's office or the City Manager. Remember, ignorance is no protection and guessing can be dangerous. Don't take chances. Get the facts so that you know you're on solid legal ground.

Obey the law, completely and willingly. It's not a question of what we might get away with.

We expect that each individual shall conduct the City's business in compliance with the letter and spirit of all applicable laws and regulations.

**Obey the law,  
completely and willingly.  
It's not a question  
of what might we  
get away with.**

That gets us to first base, but it doesn't put any points on the ethical scoreboard. To do that, ethical business conduct should generally exist at a level well above the minimum requirements of the law. Laws are a great start, but they aren't designed to referee all matters of conscience.

The positions we take should be right and fair, and not simply "defensible." Obeying the law is just one page in an ethical play book that also calls for integrity, honesty and, often, plain guts.

### Am I being fair and honest?

Weigh your answer as objectively as possible. Consider not only what you're doing, but how you're doing it. Are you playing by the rules? Is everything aboveboard? What if the tables were turned?

Whether the matter involves fellow employees, citizens, or suppliers, consider all the angles as well as the outcome. If it involves going below the belt, behind the back, or under the table – foul! Rethink the situation and take a different tact. Fair and honest practices signify "you are trustworthy." That's how we need to be viewed, as individuals and as a City, in order to thrive and prosper.

**Don't waste time learning the "tricks of the trade." Instead, learn the trade.**

### Will my action stand the test of time?

The quick fix. The shortcut. The special favor. The loophole. These are some of the ethical temptations that can materialize during the battle of the day or the crisis of the moment. When they do, check your first impulse. You could be setting yourself up for a whopping ethical "hangover."

Take time for an ounce of prevention. Take a hard look at the potential consequences. Be leery of uncomfortable compromises. If what you are trying to achieve violates a rule or calls for questionable practices, you're making the wrong choice. You are also putting your reputation and ours at risk.

If you are confronted with a possible business ethics or conflict of interest problem, immediately request help to determine whether or not a problem does in fact exist and, if so, what steps should be taken to correct or avoid it.

**Think of the path of least resistance as quicksand.**

**Better to stay off than try to get out.**



Like the TV ad says, know when to say when: when it's time to stop worrying about an issue by yourself, when to ask for advice, when to air your questions and concerns with others, and when to seek professional help within your management team.

How will I feel about myself afterwards?

Will I like who I see in the mirror? Or will I cringe with embarrassment and regret? Am I copping out? Or is it my best shot?

Each of us wants to be able to hold our head high when we talk about who we work for and how we make our living.

We want respect. A good name. A sense of pride and accomplishment. Examine these feelings, and steer by them.

Put a hold on any decision or action that you don't feel you could discuss openly and honestly with others. And don't back yourself into a corner: if you can't explain why without getting angry, defensive, or evasive, it's time to regroup and come up with another plan of action. Remember the old saying, "there's more than one way to skin a cat."

**Let people know what you  
stand for—  
and what you  
won't stand for.**

Even though I'm doing nothing wrong, will someone get the wrong idea?

Perceptions of wrongdoing can be almost as damaging as the real thing. Think how easy it is to jump to conclusions, to take things out of context, or to feed a rumor mill. Then picture yourself on the hot seat. It's a sad fact of life that allegations make front page headlines; clearing your name and setting the record straight become uphill battles, and retractions often get lost in the shuffle. Don't leave yourself open. Our work is often controversial. Everything we do is given a thorough going-over by regulators, the media, and the public. Don't be paranoid, but do be well-informed and careful.

**Take care of your  
reputation.  
It's your most  
valuable asset—  
and ours!**

### Am I creating an ethical dilemma for someone else?

Sometimes we inadvertently ask others to violate an ethical standard. We may not realize that what to us is a simple request for information or a small favor may be creating an ethical dilemma for others. The weight of your position or influence may cause the other party to feel compelled to comply even though it breaks a ground rule. This type of stress will soon destroy trust, loyalty, and morale in an organization if employees feel they have no options, and “favors” or special treatments are expected. To avoid putting someone else into an ethical box, ask the following questions:

- ❖ Would this same information, favor, or opportunity be available to anyone who asks? Other employees? The public? Do I have legitimate authority to request this?
- ❖ Ask the other party, “Are you uncomfortable with what I’m asking?” “What would your answer be if someone else asked the same thing?”
- ❖ What will happen if others find out?

**“The master knows the rules  
without suffering them; the  
servant suffers the rules  
without knowing them.”**

**—Old Chinese proverb**

### Will my actions or decisions embarrass others?

Even with the law on our side, innocent people can suffer if there is just a hint of shadiness in our dealings. It is worth the extra effort to make sure that none of our business relationships are jeopardized by well-meaning favors or questionable judgment calls.

Try putting everything you do under the glare of an imaginary spotlight. Be your own toughest critic. If need be, get a second opinion. Then redouble your efforts to win in the way we do it best: through service, quality, and performance!

These questions are designed to help you make ethical choices. Often there’s no single “right” answer, but in the remainder of this booklet you’ll find many practical guidelines for doing the right thing.

**Don’t be fooled.  
If something sounds  
too good to be true,  
it probably is.**

## A helping hand that's always there for you

We have a process to help you with job problems, ethical or otherwise. We want to have clear, open channels of communication between you and the City. Because you genuinely matter to us, and because it's good business to solve problems quickly, before they fester and become even bigger problems, we've pledged to hire the best people, listen to them, challenge them and reward them.

### This is how it works:

- ❖ Recognize a problem when you see it or feel it in your gut.
- ❖ Surface it. Discuss it privately with your immediate supervisor or manager. Believe it or not, they're often in the best position to help you.
- ❖ Take it up the chain. If your immediate supervisor is personally involved in the issue, or you believe the problem still exists, talk to the next level of management.
- ❖ Call upon other specialists. Depending upon what it is, contact the City Auditor, Human Resources, Internal Services Director, the City Attorney, or the City Manager, any one of whom will help you think it through and work it out.

**Nothing is particularly hard  
if you divide it  
into small jobs."**

**-Henry Ford**

## It's a matter of respect

The City isn't a building, a piece of equipment, a form to fill out, or a budget. It's people. A community of people. A team. A family.

We see each other every day, work together closely, share common goals and depend upon each other. We have bad days and good days. We squabble and squirm, fuss and fight, and agree to disagree. We also help each other out, trade confidences, pour on the second effort, and laugh together over coffee. We rise to the occasion, in small and big ways.

**"What is moral is what you  
feel good about after."**

**Ernest Hemingway**

The only way the relationship works is to treat one another with fairness, dignity, and respect. We insist!

Our City is not only obligated, but committed, to provide you with a work environment that is safe, fulfilling, and dignified. Intimidation, coercion, and harassment of any kind have no place here.

We respect and honor your right to job opportunity, personal privacy, and individual dignity.

But here's a "gray" area. At times, the City has a legitimate interest in your personal conduct to the extent that inappropriate conduct affects job performance or our reputation. Then you can count on our interest and attention, and a helping hand.

Just like in any family!

### Our way:

Recruit, hire, and promote in all job classifications without regard to race, creed, color, national origin, religion, sex, age, disability or sexual orientation.

Base employment decisions solely on the qualifications of the individual and his or her interest in the position being filled.

Make promotion decisions on the basis of the individual's qualifications.

Ensure that all job actions are administered fairly and equitably, and in full compliance with equal opportunity requirements

### No way!

- ❖ Allowing job practices that discriminate.
- ❖ Tolerating racist or bigoted remarks or actions.

**"The world cares very little about what a man or woman knows; it is what the man or woman is able to do that counts."**

**Booker T. Washington**

**It's easier to behave your way into a new way of thinking than to think your way into a new way of behaving.**

- ❖ Treating fellow workers with disrespect.

## Showing your “true” colors

It’s a question of *loyalty*. Loyalty, in City terms, has three very important aspects.

- ❖ The City expects that you will not engage in any outside activity that competes or conflicts with the job you’re receiving a paycheck to do.
- ❖ The City expects that you will not use the influence of your position for personal gain.
- ❖ And the City expects that you will protect, and refrain from acting on, privileged information.

**Common sense is the least common of all the senses.**

To do otherwise creates a divided loyalty, sometimes known as a “conflict of interest.” It means that you’d have a personal stake in something that could influence or appear to influence your judgment or action in conducting the City’s business. And it’s out of bounds for the City Manager, the newest person hired by our smallest division, and everyone in between.

## If you think you may have conflicting interests ...

Raise the question with your supervisor and share the facts of the situation.

Disclose your outside business ventures or activities to your management, who may approve it or disapprove it, or ask more senior management to review the matter.

Refuse to accept and do not give anything which could interfere with, or appear to impair your ability to perform, your duties or to exercise judgment in a fair and unbiased manner.

Ask your supervisor if you’re not sure whether you possess confidential or inside information, or whether any actions by you are prohibited because of your job.

**“Nine-tenths of wisdom consists in being wise in time.”**

**Theodore Roosevelt**

## Flying colors

**Loyalty.** Your undivided, undiluted efforts on behalf of the City; your motivation, your creativity, your enthusiasm, and your commitment.

**Discretion.** Your safeguarding of privileged information.

**Integrity.** Your fair, unbiased performance and inability to be corrupted.

## Colorless

"Moonlighting" or running a "business on the side" that interferes with doing your job for the City.

Accepting or giving gifts or allowing members of your family to accept them.

Cheating on expense accounts.

Making false or misleading entries in City books and records.

**Spend less time worrying  
who is right, and more time  
deciding what's right.**

## It's OK to show our appreciation!

- ❖ Novelties or trinkets like pens, luggage tags, coffee mugs, and T-shirts.
- ❖ Annual holiday tokens.

## And to be appreciated!

- ❖ Inexpensive mementos.
- ❖ Nominal "community gifts" shared equally by the members of your office, group, or team.
- ❖ Promotional premiums and discounts offered by transportation companies, hotels, auto rental agencies, and restaurants if they are also available to others and not just to our people.

**There's always free cheese in  
a mousetrap. Confine gift  
giving and receiving to items  
of nominal value.**

Discretion and good judgment are required.

## Even when no one's watching

- ❖ Treat your work areas, equipment, and materials with care and consideration. The City puts these tools of your trade at your disposal to make your job easier. What better way to show your appreciation?
- ❖ Obey security and safety procedures at your workplace. After all, they have been instituted for your protection.
- ❖ Don't abuse City privileges by "borrowing" City property for personal use. That would be a violation of our trust in you.
- ❖ Be truthful and accurate when filling out your leave slips and expense reports, as well as when doing other City paperwork.

**Keep ethically fit by treating  
the little things as  
conditioning exercises for the  
big workouts.**



## When the tables are turned – and we are the customer

From pencils and paper clips to specialty equipment and services, we depend on our vendors, suppliers, and subcontractors to come through for us. And we seek the same ethical business values in these relationships as we strive to deliver to our own customers. While the vendors, suppliers, and subcontractors must perform to our high product and service standards if they want our business, we must hold up our end of the bargain and build their confidence in our integrity.

If you buy things for the City  
or have a say in the decision,  
keep every transaction  
friendly, but at arms-length.

It's our responsibility to pinpoint our needs, to identify and recruit competent suppliers, to set a level playing field for competitive bidding, and to work out the terms of the relationship. To get the best possible deal for the City, it is proper to use our clout as a large customer for such legitimate purchasing advantages as volume discounts and competitive prices in all that we buy, checking deliveries, monitoring performance, and following-up to make sure our suppliers follow through.

**"Darkness cannot  
drive  
out darkness;  
only light can do that.  
Hate cannot  
drive out hate;  
only love can do that."**

**Martin Luther King, Jr.**

### Supplier "smarts"

#### **Communication.**

Your ability to convey our expectations, head off problems, and resolve any complaints.

#### **Courtesy.**

Your politeness and good manners, cooperation and helpfulness.

#### **Fairness.**

Your impartiality in the selection process and in making purchasing decisions.

#### **Caution.**

Your refusal to do business if the business is illegal or shady.

### Supplier abuses

- ❖ Accepting favors or gifts.
- ❖ Taking bribes or kickbacks in any form.
- ❖ Acting rude or disrespectful.
- ❖ Passing the blame when it's really our fault.
- ❖ Wasting time and money, theirs or ours.
- ❖ Using strong-arm tactics to "get our way."

**Don't expect others to listen  
to your advice and ignore  
your example.**

### You bet it's important

- ❖ To treat customers, citizens, vendors, co-workers, and others with fairness, honesty, integrity, and trust in all dealings;
- ❖ To protect the City's assets and its reputation through professional and personal conduct that is above reproach;
- ❖ To keep all of our promises and meet all of our obligations to other people and organizations;
- ❖ To steer clear of conflicts of interest; and,
- ❖ To obey all the laws.

### Crossing the abyss— safely

Imagine yourself driving on a one-lane bridge across a canyon one-mile deep. The bridge is safely enclosed with steel girders and safety rails. You may feel some apprehension and slow down as you cross, but you will manage it without breaking into a sweat.

Change the picture: Now you are crossing the same deep canyon on a one-lane bridge with no side structure, no guard rails, no guide wires, no side girders. How do you feel? Most of us would feel fear, maybe even panic. Our stress level would increase significantly.

As we maneuver the occasional deep canyons of our lives and jobs, our ethics are the guard rails and safety barriers on that bridge. Knowing the limits (even if we never need them) allows us to make decisions, and behave with courage and confidence.

Lose the fear of falling into the abyss and reduce your stress.

**"Goodness is the only  
investment that never fails."  
Henry D. Thoreau Walden;  
Higher Laws**

## Conflict of Interest

Arizona statutes deal with conflicts of interest at state and local levels. These statutes apply to all officers and employees of every incorporated city and town. The statutes define "Remote Interest," (see appendix page 39), and if one has a "Remote Interest" one does not have a conflict of interest. The statutes also define a "Substantial Interest," which is any pecuniary or proprietary interest, either direct or indirect, other than a "Remote Interest."

As well, you may not supply the City with equipment, materials, or services unless you are awarded a fully disclosed contract after a public bidding process. The only exceptions to this rule are transactions under \$300, and only if these individual transactions do not to exceed \$1,000 annually. See A.R.S. §38-501 to 503, inclusive (reprinted in appendix).

**"A people that values its  
privileges above its principles  
soon loses both."**

**President Dwight D.  
Eisenhower**

**The conflict of interest statute also lists certain "Prohibited Acts" which are as follows:**

### Representing private interests before city agencies

- A. A public officer or employee shall not represent another person(s) for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned, and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion. See A.R.S. §38-504(A) (reprinted in appendix).

Non-disclosure of confidential information

- B. During the period of a public officer's or employee's employment or service, and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information of a confidential nature acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the Proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law. See A.R.S. §38-504(B) (reprinted in appendix).

**"Moral indignation is  
jealousy with a halo."**

**H.G. Wells**

No gifts, favors, or extra compensation

- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties, if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties. See A.R.S. §38-504(C) (reprinted in appendix).

**The world is full of cactus,  
but we don't have to sit on it."**

**Will Foley**

*Additional income prohibited for services*

- D. No public official or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him/her personally in any case, proceeding, application, or other matter which is pending before the public agency of which he/she is a public officer or employee. See A.R.S. §38-505(A) (reprinted in appendix).

If these conflict of interest statutes prevent an appointed public officer or public employee from acting as required by law in his/her official capacity, such public officer or employee shall notify his/her superior authority of the conflicting interest. The superior authority may empower another to act, or such authority may act, in the capacity of the public officer or employee on the conflicting matter.

The penalties for violating these conflict of interest statutes are very significant. Intentionally or knowingly violating these statutes is a Class 6 felony; recklessly or negligently violating these statutes is a Class 1 misdemeanor. In addition, a person found guilty of either one of these offenses shall forfeit his/her public office or employment. See A.R.S. §38-510 (reprinted in appendix).

Special conflict of interest statutes apply to housing projects and slum clearance and redevelopment projects. They generally prohibit any interest, direct or indirect, in such a project. These statutes are far-reaching and serve to prohibit the acquisition of any property in a redevelopment or housing project by any public employee who arguably had any contact with such housing or redevelopment project. If contemplating the acquisition of an interest in such housing or redevelopment projects, please contact your supervisor and the City Attorney's office immediately. See A.R.S. §36-1477 (reprinted in appendix).

**"The first great gift we can  
bestow on others is a good  
example."**

**Morell**

## Political Activity

Tempe's Charter prohibits elected and appointed City officials from soliciting assessments, subscriptions, or contributions for any political parties or political purposes from any person holding any compensated appointive City position. Additionally, no person may solicit for such purposes from City employees during working hours.

The Charter also prohibits the making, solicitation, or receipt of any contributions to the campaign funds of any candidate for municipal office or taking part in the management affairs or political campaign of any such candidate for a municipal office. No paid employee shall use his/her position to introduce, guide, or recommend a candidate for public office on City property. See Tempe Charter, Section 9.01 (reprinted in appendix).

Tempe's personnel rule Section 401.B: Political Activity of the City further emphasizes the fact that involvement in local politics must not be greater than passive involvement.

Obviously, employees may not use their positions to sell, solicit, or distribute any campaign materials during working hours and/or wear any City uniform used by or identified with the City government. No paid employee shall use his/her position to introduce, guide, or recommend a candidate for public office on City property. However, employees may exercise their rights as citizens to vote and to express opinions as an individual citizen, but not as a representative of the City of Tempe. See Tempe Charter, Section 9.01 (reprinted in appendix). City Personnel Rules and Regulations, Section 603.

**"A quiet conscience  
makes  
no one so serene."**

**Byron**

These charter and personnel rule provisions cannot possibly provide guidelines to cover every conceivable fact situation. The major theme or message conveyed by these documents is passive involvement on the part of City employees. Passive involvement is allowed; active involvement is not. If there is any question concerning this area, please contact the Human Resources Department or the City Attorney's Office.

## Outside Employment

Tempe's Personnel Rules Section 401.D specifies the parameters for employees wishing to obtain outside employment. City employees may have outside employment so long as it does not interfere with City employment and is approved in writing by the department director. As a general rule, you must avoid engaging in or accepting private employment or rendering service for a private interest when such employment or service is incompatible with the proper discharge of your official duties or would tend to impair your independence or judgment or action in the performance of those official duties.

Additional prohibitions include the hiring of relatives of City Council, board, or commission members and City employees as temporary employees; the giving or receipt of gifts in return for, or in relation to, employment; and the representation of another person by a former employee for compensation before a public agency by which he/she was employed within the preceding twelve months concerning any matter in which he/she personally participated by a substantial and material exercise of administrative discretion.

## Public Access

### Open Meetings

State public policy is that proceedings and meetings of public bodies be conducted openly and publicly. The law provides that all meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A meeting is defined broadly to include the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action. The law does contain an exception to the general requirement that all meetings must be open to the public. That section provides that in seven specific instances a public body may discuss matters in an Executive (closed) Session without the public being allowed to attend and listen to the deliberations.

**"The man who will use his  
skill and constructive  
imagination to see how much  
he can give for a dollar,  
instead of how little he can  
give for a dollar, is bound to  
succeed."**

**Henry Ford**

**"Little progress can be made  
by merely attempting to  
repress what is evil; our great  
hope lies in developing what  
is good."**

**Calvin Coolidge**





An Executive Session may be convened solely for the purposes of discussion, and no final action may be taken in an Executive Session. Whether the meeting is an open public meeting or an Executive Session, the law requires that certain notices be posted as a condition of such meeting. See A.R.S. §38-431 et. seq.

### Public Records

The law requires public records and other matters in the office of any officer to be available for inspection by any person at all times during office hours. There is a strong presumption in Arizona law as to the openness and public nature of most government records. The burden is on the public official to show cogent reasons why such records should not be open to inspection. Reasons for confidentiality may be conferred by a statute or where the countervailing interest of confidentiality, privacy, or the best interests of the state (the City) should be appropriately invoked to prevent inspection. This often involves a delicate balance between the public's right to know and the countervailing interest suggesting confidentiality, privacy, or the best interest of the state. All doubts should be resolved in favor of access and openness of such public records.

The scope of this handbook does not permit a thorough analysis of this rather complicated area of the law. Therefore, it is strongly suggested that any outside request for documents, other than routine documents, be forwarded to the City Attorney's office for legal advice. See A.R.S. §39-121 et. seq.

### Discrimination

Federal, state, and local laws prohibit discrimination of any sort based on race, color, creed, national ancestry, sex, age, or physical disability. In addition, in 2016 the Tempe City Council adopted Ordinance No. 02016.25, which further strengthens the City's anti-discrimination policy (reprinted in Appendix). The Ordinance can be found online:

<http://www.tempe.gov/DocumentCenter/View/1000/Ordinance-02016.25-Anti-Discrimination-Policy-Updated-2016>

### Sexual Harassment

It's not cute or funny; it's illegal; it destroys morale; it damages our reputation, and it is grounds for disciplinary action, including dismissal.

Our policy is to "maintain a workplace free of sexual harassment by any co-worker, supervisor, or other person, and an environment free of sexual overtones and intimidation."



## Unacceptable Behaviors

- ❖ Physical assault, including rape, sexual battery or molestation.
- ❖ Using sexual conduct as a “weapon” in hiring, keeping a job, advancement or termination.
- ❖ Unwanted sexual advances or propositions, including bodily contacts and verbal remarks.
- ❖ Sexually suggestive, demeaning or pornographic displays (e.g., photographs, posters, cartoons, calendars, or graffiti).
- ❖ Retaliating against anyone who raises an issue of sexual harassment.

**“Obedience of the law  
is demanded;  
not asked as a favor.”**

**Theodore Roosevelt**

If you believe you are being sexually harassed, bring your complaint forward immediately to your supervisor or the Human Resources Director. They are obligated to investigate your complaint promptly and thoroughly, and take corrective steps as quickly as possible.

# Appendix



**Appendix 1: Arizona Statutes  
Re: Conflict of Interest of Officers and  
Employees.**

*§38-501. Application of Article.*

A. This article shall apply to all public officers and employees of incorporated cities or towns, political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

C. Other prohibitions in the state statutes against any specific conflict of interests shall be in

*§38-502. Definitions.*

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are

employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies, or boards for remuneration.

3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to §38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
  - a. All courts.
  - b. Any department, agency, board, commission, institution, instrumentality, legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.
  - c. The state, county, and incorporated cities or towns

and any other political subdivisions.

7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, or procedures substantially equivalent to such method of purchasing or as provided by local charter or ordinance.
  8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
  9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
  10. "Remote interest" means:
    - a. That of a non-salaried officer of a nonprofit corporation.
    - b. That of a landlord or tenant of the contracting party.
    - c. That of an attorney of a contracting party.
    - d. That of a member of a nonprofit cooperative marketing association.
    - e. The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.
- f. That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
  - g. That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
  - h. That of a public school board member when the relative involved is not a dependent, as defined in §43-1001, or a spouse.
  - i. That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his

relative, of any of the following:

- i. Another political subdivision.
  - ii. A public agency of another political subdivision.
  - iii. A public agency except if it is the same governmental entity.
- j. That a member of a trade, business, occupation, profession, or class of persons consisting of at least 10 members which is no greater than the interest of the other members of that trade business, occupation, profession or class of persons.
- k. That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.
- l. The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment

professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

§§8-503. Conflict of Interest;  
Exemptions; Employment  
Prohibition.

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section,



no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:

1. A school district governing board may purchase, as provided in § 15-213 and 15-323, supplies, materials and equipment from a school board member.
2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

D. Notwithstanding subsections A and B of this section and as provided in § 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

#### §38-504. Prohibited Acts.

- A. A public officer or employee shall not represent another person(s) for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned, and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- B. During the period of a public officer's or employee's employment or service, and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information of a confidential nature acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its

confidentiality is necessary to the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties, if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

#### §38-505. Additional Income Prohibited for Services.

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

- B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

#### §38-507. Opinions of the Attorney General, County Attorneys, and City or Town Attorneys and House and Senate Ethics Committee.

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

#### §38-508. Authority of Public Officers and Employees to Act.

- A. If the provisions of §38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior

authority of the conflicting interest.  
The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

- B. If the provisions of §38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

§38-509. Filing of Disclosures.

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

§38-510. Penalties.

- A. A person who:
  - 1. Intentionally or knowingly violates any provisions of § 38-503 through 38-505 is guilty of a class 6 felony.
  - 2. Recklessly or negligently violates any provision of § 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- C. It is no defense to a prosecution for a violation of § 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- D. It is a defense to a prosecution for a violation of § 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

§38-511. Cancellation of Political Subdivision and State Contracts; Definition.

- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing,

drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

- B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by §37-289 and other lawful provisions of the lease.
- C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.
- D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.
- E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or

agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.\

- F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.
- G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.

## Appendix 2: Arizona Statutes

### Re: Employment of Relatives.

§38-481. Employment of Relatives;

Violation; Classification;

Definition.

- A. It is unlawful, unless otherwise expressly provided by law, for an executive, legislative, ministerial or judicial officer to appoint or vote for appointment of any person related to him by affinity or consanguinity within the third degree to any clerkship, office, position, employment or duty in any department of the state, district,

county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages or compensation of such appointee is to be paid from public funds or fees of such office, or to appoint, vote for or agree to appoint, or to work for, suggest, arrange or be a party to the appointment of any person in consideration of the appointment of a person related to him within the degree provided by this section.

- B. Any executive, legislative, ministerial or judicial officer who violates any provision of this section is guilty of a class 2 misdemeanor
- C. The designation executive, legislative, ministerial or judicial officer includes all officials of the state, or of any county or incorporated city within the state, holding officer either by election or appointment, and the heads of the departments of state, county or incorporated cities, officers and boards or managers of the universities.

### **Appendix 3: Arizona Statutes Re: Conflict of Interest in Redevelopment Areas.**

#### **§36-1477. Interest of Public Officials, Commissioners or Employees in Project Prohibited.**

- A. A public official of a municipality, commissioner or employee of a housing authority or slum clearance and redevelopment commission to which the powers of a municipality have been delegated pursuant to this article, shall not voluntarily acquire any interest, direct or indirect, in a redevelopment project or in any property included or planned to be included in a redevelopment project of the municipality or in any contract or proposed contract in connection with a redevelopment project. If an acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body.**
- B. If any official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which the person knows is included or planned by the municipality to be included in any redevelopment project, the person**

**shall immediately disclose this fact in writing to the local governing body, and this disclosure shall be entered upon the minutes of the governing body. The person shall not participate in any action by the municipality, housing authority or commission affecting the property. Any violation of this section shall constitute misconduct in office.**

## Appendix 4:

### Tempe City Charter

#### Re: Prohibitions.

#### Section 9.01. Prohibitions and Penalties.

##### (a) Activities prohibited.

- 1) No person shall be appointed to, removed from, favored in any way, or discriminated against with respect to any city position because of race, sex, political or religious affiliations.
- 2) In regard to any test, certification or appointment, no person shall willfully make any false statement, certificate, mark, rating or report, or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personnel provisions, rules and regulations.
- 3) No person who seeks appointment or promotion to any city position or administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, promotion or proposed promotion. Nor shall any city officer or employee ask or receive anything of value for aid or offer of aid in

connection with any city appointment, employment or promotion.

- 4) No person elected or employed by the city shall orally, by letter or otherwise, solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatever from any person holding any compensated appointive city position. No person shall solicit for such purposes from compensated city personnel during their working hours.
- 5) No person who holds any compensated appointive city position shall make, solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any such candidate, but he may exercise any other rights of a qualified elector.

##### (b) Penalties.

Any person who by himself or with others willfully violates any of the provisions of section 9.01 shall upon conviction thereof be guilty of a misdemeanor, and be punished as specified by city ordinance.

Appendix 5:

Ordinance No. O2016.25

ORDINANCE NO. 02016.25  
AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF TEMPE, ARIZONA, AMENDING  
CHAPTER 2, TEMPE CITY CODE, RELATING TO  
ADMINISTRATION, BY AMENDING ARTICLE  
VIII RELATING TO HUMAN RELATIONS.

WHEREAS, the City of Tempe is comprised of various and diverse individuals and groups of people; and

WHEREAS, the City of Tempe values this diversity and wishes to encourage all persons to contribute to, fully participate in and contribute to the cultural, social, spiritual and commercial life and activities in Tempe; and

WHEREAS, existing practices in the City of Tempe already reflect antidiscriminatory practices among and toward its employees, contractors and vendors; and

WHEREAS, the City of Tempe desires to improve upon its existing process concerning City contractors and vendors, that will observe and protect the dignity, rights and privacy, and interests of all parties involved to the maximum extent possible; and

WHEREAS, the purpose of this Ordinance is to make the appropriate conforming changes to the Tempe City Code;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE,  
ARIZONA, as follows:

**Section 1.** That Chapter 2, Administration, Article VIII- Human Relations of the Tempe City Code is hereby amended to read:



ARTICLE VIII  
HUMAN RELATIONS

**Sec. 2-600. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adult* means a person who has attained eighteen (18) years of age.

**State law reference**-similar provisions, A.R.S., § 1-215(3).

*Contractor* means ~~any person who has a contract with the city~~ A PERSON OR FIRM IN THE BUSINESS OF SELLING OR OTHERWISE PROVIDING PRODUCTS, MATERIALS OR SERVICES, THAT HAS GONE THROUGH A COMPETITIVE SOLICITATION PROCESS WITH THE CITY OF TEMPE, AND BEEN AWARDED A CONTRACT WITH THE CITY OF TEMPE THROUGH A FORMAL AWARD BY THE CITY COUNCIL. THIS DOES NOT INCLUDE A COOPERATIVE PROCUREMENT CONDUCTED BY, OR ON BEHALF OF, MORE THAN ONE ELIGIBLE PUBLIC PROCUREMENT UNIT.

Cross reference-Procurement, Ch. 26a.

*Discrimination* means to exclude individuals from an opportunity or participation in any activity because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, and occurs whenever similarly situated individuals of a different group are accorded different and unequal treatment in the context of a similar situation.

*Employee* means an individual employed for pay to perform services for an employer covered by this article and whose activities are controlled and directed by the employer, for whom services are being performed.

*Employer* means a person doing business within the city who has one ( 1) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person. This definition excludes:

- (1) The United States or any department or agency thereof, a corporation wholly owned by the United States or any Indian tribe;
- (2) The State of Arizona or any department or agency thereof, except for any political subdivision of the State of Arizona, including any community college district or high school or elementary school district;

(3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time);

(4) A religious organization; or,

(5) An expressive association whose employment of a person protected by this article would significantly burden the association's rights of expressive association.

**State law reference**--similar provisions, A.R.S., § 23-613.

*Familial status* means the state of having one or more minor children under the age of eighteen ( 18) being domiciled with: a parent, guardian or another person having legal custody; the designee of such parent, guardian or another person having legal custody with written permission; or, a foster parent or other person with whom a minor child is placed by court order. This definition includes pregnant women and people securing custody of children under the age of eighteen (18) or disability.

**Cross reference**--Fair housing, Ch. 22, Art. V.

*Gender identity* means an individual's various attributes as they are understood to be masculine or feminine and shall be broadly interpreted to include pre- and post-operative gender individuals, as well as other persons who are or are perceived to be transgendered, as well as gender expression, including external characteristics and behaviors that are socially defined as either masculine or feminine.

**MEMBERSHIP CLUB OR BONA FIDE MEMBERSHIP CLUB MEANS A PRIVATE CLUB NOT OPEN TO THE PUBLIC THAT IS SUPPORTED BY MEMBERSHIP FEES, DUES, AND ASSESSMENTS, AND QUALIFIES FOR EXEMPTION BY THE INTERNAL REVENUE SERVICE; AND, THAT IS NOT ORGANIZED FOR THE PURPOSE OF EV AD ING COMPLIANCE WITH THIS ARTICLE.**

*Place of public accommodation* means facilities, establishments, accommodations, services, commodities, or use offered to or for use by the general public, including public places where food or beverages are offered for sale, public places operated for temporary lodging, use or accommodation of those seeking health or recreation and all establishments offering such goods or facilities, and entities soliciting patronage from the general public, except for religious organizations or expressive associations whose inclusion of a person protected by this article would significantly burden the association's rights of expressive association. This does not include any private club or any place which is in its nature distinctly private.

*Sexual orientation* means an enduring pattern of emotional, romantic, or sexual attractions to men, women, or both sexes, as well as the genders that accompany them, including the perception or status of an individual's same sex, opposite sex, or bisexual orientation.

*Social club* means an organization composed of people who voluntarily meet on a regular basis for a mutual purpose other than for educational, religious, charitable, or financial pursuits. This includes any group that has members who meet for a social, literary, or political purpose. This definition does not include any club conducted for the purpose of evading this article.

*Vendor* means a person or firm in the business of selling or otherwise providing products, materials or services, THAT HAS GONE THROUGH A COMPETITIVE SOLICITATION PROCESS WITH THE CITY OF TEMPE, AND BEEN AWARDED A CONTRACT WITH THE CITY OF TEMPE THROUGH A FORMAL AWARD BY THE CITY COUNCIL. THIS DOES NOT INCLUDE A COOPERATIVE PROCUREMENT CONDUCTED BY, OR ON BEHALF OF, MORE THAN ONE ELIGIBLE PUBLIC PROCUREMENT UNIT.

**Sec. 2-601. Policy.**

It is declared to be the policy for the citizens of Tempe, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, in places of public accommodation, employment, and housing; and contrary to the policy of the city and unlawful for vendors and contractors doing business with the city to discriminate, as set forth in this article. (Ord. No. 02014.10, 2-27-14)

**Sec. 2-602. Administrative provisions.**

(a) *Powers and duties.* Administration, authority and responsibility for administering this article shall rest with the city manager.

(1) The city manager or designee may delegate functions, duties and responsibilities for investigation, mediation, and conciliation and may otherwise act to assist the city in the administration of this article;

(2) The city manager or designee shall administer programs and activities as authorized herein to further the purposes of this article, in compliance

with federal, state and local laws, and shall work with and enter into agreements as approved by the city council, with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and other agencies of the United States or State of Arizona that govern or affect discriminatory practices as defined by this article, including the acceptance of funds from such agencies and the carrying out of such covenants and conditions of such agreements, in compliance with this article; and

(3) The city manager or designee shall cooperate with and render assistance to, as reasonably requested, other public or private agencies, organizations and entities, to formulate or carry out programs to further the prevention or elimination of discriminatory practices as defined in this article.

(b) The city attorney shall be authorized to take such actions as authorized herein to carry out the duties as set forth in this article.

(Ord. No. 02014.10, 2-27-14)

#### **Sec. 2-603. Unlawful practices.**

The following shall constitute a violation of this article:

(1) For any owner, operator, lessor, manager, agent or employer of any place of public accommodation to discriminate against any person, including to restrict or refuse access on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;

(2) For an employer, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment;

(3) For a labor organization, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to exclude, expel, limit or restrict from its membership any person, or to provide segregated membership or otherwise discriminate in any manner against any of its members, applicants or employers;

(4) For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the

provision of services or facilities therewith, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;

(5) For a city vendor or city contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. City vendors and contractors OF FIFTEEN (15) EMPLOYEES OR MORE, shall provide a copy of its antidiscrimination policy to the city's procurement officer, to confirm compliance with this article. EMPLOYERS HAVING FOURTEEN (14) OR LESS EMPLOYEES MAY & attest in writing to compliance with this article; or

(6) For any person to coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of any aid or encouragement of any right granted or protected under this article.

(Ord. No. 02014.10, 2-27-14)

#### **Sec. 2-604. Exclusions.**

This article shall not apply to:

- ( 1) A religious organization;
- (2) An expressive organization whose employment of a person protected by this article would significantly burden the association's rights of expressive association;
- (3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time), as defined in this article; or
- ( 4) A social club, as defined in this article.

(Ord. No. 02014.10, 2-27-14)

#### **Sec. 2-605. Fair housing.**

(a) It shall constitute a violation of this article to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(b) It shall constitute a violation of this article to refuse any provision of services

or facilities, privileges or conditions of the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(c) Nothing in this article shall exclude or deny housing designated for senior living or for the disabled, or as otherwise designated or directed by the united states department of housing and urban development or the State of Arizona.  
(Ord. No. 02014.10, 2-27-14)

**Sec. 2-606. Penalties, process and appeals.**

(a) Any person found responsible of violating any section or subsection of this article shall be punished by the imposition of a civil sanction of a fine of one thousand five hundred dollars (\$1,500) and not more than two thousand five hundred dollars (\$2,500) plus applicable surcharges, for each violation.

(b) Any person claiming to be aggrieved of a violation of this article may file with the city manager or his designee of the city, a written charge signed by the complainant and verified by such signature, within forty-five ( 45) CALENDAR days of the alleged violation occurring. The charge shall set forth facts upon which it is based and shall identify the person charged (hereinafter "respondent"). The city manager or designee shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations of the discriminatory practices set forth in the charge.

(c) The respondent may file, no later than twenty (20) CALENDAR days following receipt of the charge, a written verified answer to the charge. Failure to answer or participate in the process will be considered an admission.

(d) The city manager or designee shall render written findings as to whether there may be reasonable cause to substantiate the charge no later than one hundred twenty (120) CALENDAR days from the filing of the charge. The city manager or designee shall furnish a copy of its report of findings to the charging party and to the respondent.

(e) If the city manager or designee finds that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice that is prohibited by this article, the city manager or designee may attempt to eliminate the alleged discriminatory practice by conference, conciliation, and discussion. The terms of any agreement between the parties may require the respondent to refrain from or engage in certain actions to carry out the purposes of this article in the future. If an agreement is reached, the city manager or designee shall issue an order stating the terms of the agreement and furnish a copy to each party.

(f) No actions or omissions undertaken pursuant to this article, shall give rise to liability or legal responsibility on the part of the city or any of its employees, agents or officials.

(g) In connection with the investigation of any charge filed under this article, the city manager or designee shall seek the voluntary cooperation of any person to: obtain access to premises, records, documents, individuals and other possible sources of information; examine, record and copy any materials; and take and record testimony and obtain statements as reasonably necessary to further the investigation.

(h) Charges may be dismissed for reasons including: the complaint was untimely filed; the location of the alleged practice was outside of the city's jurisdiction; insufficient evidence exists to conclude that the violation occurred; or a conciliation agreement has been executed by the parties.

(i) If upon completion of the investigation, the city manager or designee has concluded that a violation of this article occurred, but is unable to obtain a conciliation agreement, refer the charge to an appropriate federal or state agency, or otherwise dispose of the violation, it shall impose a fine of one thousand five hundred dollars (\$1,500) per civil violation. A person found responsible for the same civil infraction shall be fined no more than two thousand five hundred dollars (\$2,500). In addition, the city manager or designee may refer the matter to the city attorney's office, who shall determine how best to pursue further action, if any, on the violation.

G) The city attorney's office will determine whether sufficient facts and evidence exist in order to warrant the initiation of an action in a court of competent jurisdiction. If the city attorney's office determines that the facts or evidence are insufficient to warrant the initiation of an action, the city attorney will provide written notification to the parties, and the charge will be dismissed.

(k) Failure to remit payment of a fine imposed under this article shall result in collection efforts as any other civil judgment.  
(Ord. No. 02014.10, 2-27-14)

**Sec. 2-607. Severability and legal effect.**

(a) Nothing contained in this article shall be deemed or interpreted to alter, contravene, or supersede state or federal laws, including privacy laws.

(b) Nothing in this article shall be deemed to confer rights or benefits in addition to what is described herein.

(c) Nothing in this article shall be construed to give rise to civil or legal liabilities greater than those already existing under law or to create private causes of action, other than to be remedied as set forth herein.

(d) If any provision, section or subsection of this article is held to be invalid by a court of competent jurisdiction, then such provision, section or subsection shall be considered separately and apart from the remaining provisions or sections, which shall remain in full force and effect.

(Ord. No. 02014.10, 2-27-14)

### Sec. 2-608. Appeals.

The following is the process for appeals of any action under this article:

(1) If either party is dissatisfied with the findings of a violation under this article, the party may administratively appeal the decision to the city manager or designee, within ~~five (5)~~ TEN (10) CALENDAR days of receipt of the findings. The city manager or designee shall render a decision within ten (10) ~~Working~~ CALENDAR days of the receipt of request for review;

(2) If any fines are levied pursuant to this article, the party may appeal the decision and resulting fine in writing to the city manager within five (5) ~~working~~ TEN (10) CALENDAR days of the receipt of the imposition of the fine. Such appeal shall contain the factual basis for the party's position and the reasons why the decision is incorrect and should be overturned;

(3) If either party is dissatisfied with the administrative review by the city manager, the party may file an appeal in writing with the city clerk to be heard by a hearing officer. Such appeal shall be filed within ten (10) CALENDAR days of the receipt of a decision by the city manager, setting forth the reasons why the decision is incorrect and should be overturned;

(4) The hearing officer shall consider all facts relating to the issuance of the charge and resulting fine, if any, and may uphold the penalty imposed, eliminate it or modify it;

(5) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties, in the



event the charge is upheld; and

( 6) If either party is dissatisfied with the review by the hearing officer, the party may file an appeal in writing with the city clerk to be heard by the city council. Such appeal shall be filed within ten (10) CALENDAR days of the receipt of a decision by the hearing officer, setting forth the reasons why the decision is incorrect and should be overturned. The decision of the city council shall constitute the final decision.

(Ord. No. 02014.10, 2-27 -14)

**Section 2.** Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 12th day of May, 2016.

  
Mark W. Mitchell, Mayor

ATTEST:

  
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

  
Judith R. Baumann, City Attorney

## References

This handbook includes material adapted from the following sources with written permission:

**ETHICS IN OUR WORKPLACE**, WMX Technologies, Inc., Oak Brook, IL.

**"ORGANIZATIONAL ETHICS PROGRAM LEADERS COURSE,"** Mark Pastin, Ph.D., 1987-1992.

