

City of Gustavus

Policies and Procedures

Title: Conflict of Interest and Competing Interest Policies and Procedures

POLICY:

Public service is the bedrock of local government, and without people willing to step forward and dedicate a portion of their lives to the public sector and for the public good, our community could not exist as it does. However, public servants – whether they be volunteers or paid employees – often have personal interests that may benefit as a result of their activities and actions while in public service. In fact, this is such a common situation that it could be said to form one of the roots of volunteerism – people are willing to dedicate their time and energy to seek outcomes which improve the quality of life or vitality of their community, and if those benefits include them, so be it. Such benefits might consist of tangible results, such as better roads or cleaner air, or intangible results, such as the peace of mind that comes from knowing that a particular vista has been protected. It is a case of people putting their energies into activities that will produce positive results, results which might include them. An individual's personal interests might be seen as competing with the public interests in this regard; the public realm and the private realm might therefore be considered as Competing Interests. For our intents, we will state that it is universally accepted that Competing Interests are a common situation, and in the vast majority of cases people will recognize this and work through the issues in an open, fair and accepting manner.

However, although in most situations it is recognized and accepted that people's volunteer efforts will usually transform equally to all community members, experience has taught us that this is not always the case, and that on occasion, whether intentionally or not, there exist situations wherein individuals, their families or associates might unequally or unfairly derive benefits as a result of their service. We must therefore have a way to manage these Competing Interest situations when they occur, and it is the intent of this policy statement to provide direction in that regard.

When benefits derived from public service involve financial rewards – a substantial financial interest – they are considered a Conflict of Interest. Again, the potential for Conflict of Interest is as common as public service and differs from Competing Interest only in the nature of the reward. It is the intent of this policy statement to recognize this situation, attempt to define the issue, and outline a procedure for dealing with it. In so doing, the City of Gustavus recognizes that this can be a remarkably complex issue, one that vexes all levels of government on a continual basis. But it is an issue that must be addressed if the City of Gustavus is to have a fair, open and effective public process.

It is the intent of this policy statement to serve as a guideline only, as a way to open dialogue, recognizing that there are as many issues as there are public servants, and that ultimately it is only through public discourse that these matters are resolved. These are the guidelines to direct that dialogue.

Competing Interest: There are many instances where people choose to become involved in public service to insure that certain issues are addressed. It might be promotion of an intangible 'quality of life' issue they feel very strongly about, such as preservation of natural darkness, or a public need they see as essential, such as improved waste handling and recycling. Since these are issues that are of particular interest to these individuals, they want to see them resolved to their liking. Otherwise, they would not be volunteering or working to make them happen. Because volunteers or employees have an interest with the outcome of a process, an outcome from which they along with the public might derive benefits, they might be considered to have a Competing Interest. This is the normal state of affairs, and as long as the benefits from the individual's volunteer efforts do not create unfair advantages and flow equally and fairly to all, the public good is served through their efforts. This is a good thing.

However, there are situations when a person's public service could result in, or be perceived by others to result in, unfair advantages or benefits going to that individual, their family or associates, directly as a result of their service. An example of this situation might involve a volunteer serving on a committee because they think it in the public's best interest to construct a boat harbor, but when the facility is built they end up with the best slip in the harbor. Or a public employee might work to develop a project proposal and work plan that would result in a public facility that in the end benefits them and their interests to the exclusion of others. There is an unfair advantage that comes to that individual as a result of their public service. Though not technically a Conflict of Interest (because there is not a financial benefit) an improperly managed Competing Interest can have an equally negative effect on the effectiveness of government in carrying out its function, and in maintaining the public trust. Recognizing that Competing Interests can go astray is the first step toward prevention. It is the intent of this policy to lay out a procedure for addressing Competing Interest issues.

Conflict of Interest: As with Competing Interests, Conflict of Interest is a common issue that exists at all levels of government and in many public and private institutions. It is not a bad thing, and should not be perceived as such; it is simply a situation common to public service. For our purposes a potential for Conflict of Interest exists whenever a person serving the city in any capacity finds themselves in a position to influence the decisions or actions of the city in ways that could lead to personal financial advantage or gain. At its root, a conflict is generally based on a "substantial financial interest" which an individual, their family members or a colleague has in a business or enterprise that could benefit financially from a decision or action of the city.

The existence of a Conflict of Interest does not constitute wrongdoing nor necessarily disqualify an individual from participating in an action, but if inadequately managed an unchecked Conflict of Interest can have a corrupting effect on government and can result in a loss of public trust. It is the city's reaction to the potential conflict-causing situation that must be managed, and done in such a way that an independent observer could not reasonably question the integrity of an individual's actions, nor question their influence in a given outcome. This management need applies to situations where the potential Conflict of Interest may be nothing more than a perception; in these situations it must be the city's intent to avoid even the "appearance of impropriety".

It is the purpose of the policy to provide guidelines for identifying potential Conflicts of Interest and outline the procedures for reviewing and addressing them. This policy will apply to all members of the Gustavus City Council, all city employees and community volunteers. This issue is particularly relevant and sensitive at the committee level, where contracts for City services are regularly compiled, and at the level of City Council, where those contracts are approved. But from the outset it must be recognized that City Council members have a statutory obligation to serve the public and participate in all matters before the City, and this Policy and Procedure document will reflect that requirement in such a way that Council members will be excused from voting only when there is a clear and valid reason to do so. In many instances Conflicts of Interest can be resolved by simple disclosure while in others they must be managed or eliminated. As stated even perceived conflicts must be evaluated and managed with the same intensity as clear Conflicts of Interest. Ultimately the goal of the process is to insure that all individuals act in the best interest of the City without favor, bias or preference, and without prejudice to any of the parties involved, and that the public is assured that such is the case.

Though Conflict of Interest is common it can be a complicated process to navigate, and Alaska State law does not chart a clear path, nor even attempt to entirely define what actually constitutes a conflict of interest – for example, the financial threshold of what constitutes 'substantial' is nowhere comprehensively defined. It is the intent of this policy, and an associated ordinance, to help the City of Gustavus to navigate this complex terrain. As the City has learned from direct experience, even if dealt with sincerely, though ineffectively – failing to create a public record in our case – conflict of interest can erode the ability of municipal government to fulfill its responsibilities. This policy will help chart a clear course to avoid such situations in the future.

The existence of a substantial financial interest and a recognized Conflict of Interest on the part of an individual does not necessarily mean that the individual cannot participate in discussion or decisions about a particular issue, but simply that the potential conflict is declared, discussed by those present, and made known to the public. It is a necessary process of dialogue, transparency, and getting everything out on the table. For individuals it is a process that allows them to protect themselves from negative perceptions about their involvement in a matter, and a way to avoid any appearance of impropriety. For municipal government it is a way to insure that its processes are clear, open and transparent, and to insure that the public has an understanding and access to the processes. Foremost, it is a way for municipal government to ensure a totally fair and equitable environment – to create a level playing field where all parties have equal access to process, resources, and opportunities. It is a necessary mechanism for maintaining the public trust.

PROCEDURE:

Competing Interests: The recognition and identification of Competing Interests should become a part of everyday City business. Since it is so inherent in everything we do, all City volunteers and employees are encouraged to declare their interest early and often. We encourage all to make this a part of our public discourse. By declaring what a person's interests are from the outset, the chances for misperceptions are reduced and the chances that Competing Interests misuse the system will be greatly reduced or eliminated.

At the committee level, committee bylaws, policies, processes and operating procedures should be written and implemented in a way that restrict or prohibit the ability of Competing Interests to direct benefits their way, be they unintentional or intentional. For example, rules might be written that prohibit a committee member from directing public service delivery specifically to their residence or neighborhood at the exclusion of others, or a policy and procedure established that insures that once a facility is constructed, all citizens and users will have fair and equal access to it. Competing Interest issues should be dealt with at the committee level, and only in extreme circumstances – the refusal of an individual to accept that they are using a public process to their sole benefit – should a matter be referred to the City Council. It is the City Council's responsibility to insure that all City policies, procedures and operating plans are designed in a way to insure that the City's goods and services are available to all citizens in a fair and equitable manner.

Conflict of Interest Deliberations: At the beginning of discussions on any topic before the City Council or a City Committee in which the City has or may have in the future a financial interest, be it through contract, grant or any form of monetary exchange, or in which a City action has the potential to influence financial matters such as the granting of licenses or permits, any member of the Council or Committee who finds themselves in a position in which they could benefit financially from transactions in the matter or if there is a potential for public perception that they might benefit, it is foremost the responsibility of that individual to declare a potential conflict of interest. Absent such a declaration, it is the responsibility for the presiding officer, or any other member of the governing body, based on personal knowledge to point out to any other member the possibility of a potential conflict of interest on their part, this in order that no doubt remains as to the financial interests of all present. Furthermore, in order to maintain the public trust, and so as to remove any appearance of impropriety, members are encouraged to declare a possible Conflict of Interest at the earliest possible opportunity so that the matter might be discussed and made known in a public forum. It is always better to err on the side of caution in these matters.

Conflict of Interest at the Committee level: The most acute potential for Conflict of Interest exists at the committee level whenever a committee is preparing a contract, bid package or project plan. Experience has taught us that in almost all cases committee members readily recognize this situation and identify their interests and ask to be recused from discussions, or sometimes dismissed from the meeting altogether is knowledge of the matter being discussed might give them an unfair advantage. This is usually self evident and is actually a fairly common occurrence. When this occurs the issue can be dealt with expeditiously at the Committee level without need for involvement on the part of the City Council.

However, some Conflicts of Interest are not so readily evident, or the potentially conflicted party might fail to recognize the Conflict of Interest, or on rare occasions simply refuse to acknowledge it. These situations should be the exception, but when they do happen they must be dealt with effectively. But because such situations can be very challenging for any Presiding Officer to manage, even those with considerable experience, and because the consequences of failing to manage them effectively can have such dire consequences – invalidation of contracts, legal proceedings and loss of public trust – the Gustavus City Council requires that all Conflict of Interest matters

ultimately rests with the City Council. This is particularly so for disputed Conflict of Interest situations. To accomplish this, the following procedure is outlined.

Should a Conflict of Interest situation occur at the Committee level in which the Presiding Officer does not know how to conduct the proceeding, or the potentially conflicted member refuses to acknowledge the conflict, then the Committee Presiding Officer will state that it is in the best interest of City that the issue be tabled, and ask for any member of the committee for a motion to that effect. If a motion is made and the Committee approves, the Committee will then table it and move on to the next item on the agenda. The matter of Conflict of Interest on that agenda item will be passed along to the City Council to be dealt with at their next regularly scheduled meeting. However, if the motion to table does not carry, out of respect for the Committee's processes discussion on the matter can continue through to whatever conclusion is appropriate on the agenda. Allowing the process to continue in this way may also diffuse a public spectacle, as tensions in such matters can run high. But the Presiding Officer is instructed to enter into the record that the discussion continued under these circumstances. The Committee's Presiding Officer shall then refer the matter, along with the public record of the preceding, to the City Council to be dealt with at its next regularly scheduled general meeting. Ultimately, all matters passing from committees to the City Council are recommendations, not decisions and ultimately it is the City Council's responsibility to make final determinations and take action. This is particularly relevant for all financial actions and in the matter of Conflict of Interest; the reason to proceed with caution is based on legal precedent: courts have found that individuals can sway decision-making bodies to their benefit through force of argument on matters of Conflict of Interest.

The Gustavus City Council would review the recommendations of the committee and make the final determination. If the City Council determines that a formal Conflict of Interest hearing is in order, it is its prerogative to hold one. Based on its findings, the council can accept the committee recommendation as is, reject it, refer it back to the committee for further consideration, require that the conflicted member be recused from further discussions, or whatever means it determines necessary for it to carry out its responsibilities.

Throughout the course of these proceedings, both at the Committee as well as City Council levels, if the potentially conflicted member chooses to argue their situation outside of the formal agenda, such as the public comment period at any Committee or City Council meeting, they are free to exercise that right. However, as with all public comments, they will not be entered as part of a public decision making process, and do not constitute a vote on the matter.

Conflict of Interest at the City Council level: At the City Council level, if a conflict of interest is declared by a council member at a work session, the declaration shall be acknowledged by the presiding officer and the council member shall be asked at that time to recues themselves from further deliberations on the issue. Discussion, debate and deliberation on matters before the body at the work session must be limited to those members who have no substantial finance interests in the outcome of the issue, as potentially conflicted members might tend to sway other members of a body through forceful discussion, superior knowledge, or undue influence. Their participation must be limited until such time as a formal determination has been made. At times – for example when contracts are being discussed – it may even e

necessary for an individual to leave the room. Formal determinations of conflict of interest shall not be made at work sessions, as no formal actions can be taken by the City Council at work sessions, and no public record is created. The formal determination of conflict of interest shall be postponed until the next regularly scheduled City Council General Meeting, at which time the presiding officer(r) will hear the matter and render a decision. That decision will determine whether the member can participate in the matter in the future, or it may recommend restrictions that would allow the member to participate. Importantly, the entire proceeding will be entered into the public record so that the public can be assured that their interests have been properly served in a fair and equitable manner.

Hearing Procedure: The presiding officer at the City Council General Meeting will conduct the hearing. If the presiding officer is the individual with the possible conflict of interest, then another Council member will be appointed as presiding officer for purposes of conducting the hearing. The presiding officer will ask the individual declaring the conflict of interest to make a statement detailing the nature of the conflict. In the event that an individual is accused of having a conflict of interest by another person, statements will be taken from both persons to insure that both sides of the issue are fairly represented. The presiding officer can also take statements from the public, at his or her discretion. Having heard the statements of the conflict of interest, the presiding officer will then take comment from the City Council. Having heard Council comments, the presiding officer will then make a determination as to whether there exists a conflict of interest, and recommend an action. At that point, if any City Council member does not agree with the decision of the presiding officer, or of the recommended action, they may make a motion to overturn the decision or recommended action. If the motion sustains a second, following Robert's Rules of Order, the motion will be put to a vote and the outcome will be the final decision by the City Council on the matter.

Ordinance: To eliminate as much vagueness as possible, the City of Gustavus shall adopt an Ordinance that will, to the greatest extent possible, define what constitutes a Conflict of Interest, and how, in the most fair and effective way possible, such conflict shall be dealt with. Such Ordinance shall be adopted and passed according to public procedures established by Alaska statute and City of Gustavus Code. This ordinance applies only to conflict of interest.

No ordinance shall be passed to address Competing Interests. Competing Interests shall be dealt with through public forums and procedures.

Signed

Mayor of the City of Gustavus