



MEMORANDUM

December 29, 2011

TO: Budget and Finance Committee of the Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Russell Truell, Assistant City Administrator for Finance and Administration
Shirley Harmon, Human Resources Director
Brian Wilcox, Purchasing Manager

SUBJECT: City policy on the City doing business with employees of the City

Purpose

The purpose of this memorandum is to engage the Board of Mayor and Aldermen's Budget and Finance Committee in discussion on the subject of the City doing business with City employees and certain relatives of City employees.

Background

The Board of Mayor and Aldermen (BOMA) on July 26, 2011 approved Resolution No. 2011-26, a resolution adopting a revised purchasing policy for the City. On the subject of the City doing business with City employees and certain relatives of City employees, Resolution No. 2011-26 implemented the following changes:

- to rename the Purchasing Policy section previously entitled "Purchasing from an Employee" to "City Officer and Employee Business Dealings with the City";
- to delete from the Purchasing Policy the text within the subsection re-titled "City Officer and Employee Business Dealings with the City" (that read "It shall be the policy of the city that an employee shall not knowingly purchase or promote the purchase of any goods or services from any employee or from any employee's immediate family member (as defined in the City of Franklin Human Resources Manual, Rule II) without prior approval of the Board of Mayor and Aldermen");
- to replace that statement with a reference to Article XXII ("General Policies and Procedures"), Section E ("Business Dealings"), of the City of Franklin Human Resources Manual, which reads:

Except for the receipt of such compensation as may be lawfully provided for the performance of City duties, and except as noted below, no City officer or employee shall be privately interested in or profit, directly or indirectly, from business dealings with, of or by the City.

Regular full-time, regular part-time and temporary employees of the City may, subject to the approval of the City Administrator, contract to perform services for the City by meeting the following criteria: (1) the service performed must not be any service which the employee might provide in the normal scope of their regular duties; (2) the employee would be required to bid or submit a proposal in the same manner as any other prospective provider of service; and (3) the service performed must not present a conflict of interest nor a conflict of time with the employee's regular duties.

- and to make reference also to Title 1 ("General Administration"), Chapter 8 ("Ethics"), of the City of Franklin Municipal Code.

The reason for recommending the above changes (all of which were approved) was to address the following apparent contradictions between the then-current purchasing policy and Article XXII, Section E, of the City of Franklin Human Resources Manual:

- The 2004 Purchasing Policy addressed both goods and services while the second paragraph of the HR Manual excerpt focuses on services only.
- The 2004 Purchasing Policy addressed both the employee and the employee's immediate family while the HR Manual excerpt prohibits the City officer or employee from being privately interested in or profiting, directly or indirectly, from business dealings with, of or by the City. That is, both policy statements addressed the subject of relatives of the employee but using different language that could lead to different interpretations.
- The 2004 Purchasing Policy forbade such purchases unless approved in advance by BOMA while the HR Manual excerpt lays out terms and conditions for an employee to do business with the City, subject to the approval of the City Administrator.

At the July 11, 2011 Budget and Finance Committee meeting, the committee expressed interest in revisiting the subject of the City doing business with City employees and certain relatives of City employees. Staff has further considered the matter and sees the Board of Mayor and Aldermen as having two broad choices:

- A. continue to allow the City to do business with City employees and certain relatives of City employees but subject to certain stipulations; or
- B. forbid the City from doing business with City employees and certain relatives of City employees.

If the Board of Mayor and Aldermen chooses to continue to allow the City to do business with City employees and certain relatives of City employees but subject to certain stipulations, then staff would recommend the Board of Mayor and Aldermen consider revising Article XXII ("General Policies and Procedures"), Section E ("Business Dealings"), of the City of Franklin Human Resources Manual by expanding the focus of that provision to include both goods and services instead of only services, as follows (text marked with strikethrough would be deleted; text marked with underline would be added):

Except for the receipt of such compensation as may be lawfully provided for the performance of City duties, and except as noted below, no City officer or employee shall be privately interested in or profit, directly or indirectly, from business dealings with, of or by the City.

Regular full-time, regular part-time and temporary employees of the City may, subject to the approval of the City Administrator, ~~contract to perform services for the City~~ be awarded a purchase by the City for the provision of goods and/or the rendering of services by meeting the following criteria: (1) ~~the service performed must not be~~ purchase must not include any service which the employee might provide in the normal scope of their regular duties; (2) the employee would be required to bid or submit a proposal in the same manner as any other prospective ~~provider of service~~ vendor for the City; and (3) ~~the any~~ any service performed must not present a conflict of interest nor a conflict of time with the employee's regular duties.

If the Board of Mayor and Aldermen chooses to forbid the City from doing business with City employees and any member of a City employee's immediate family, then staff would recommend the Board of Mayor and Aldermen consider revising Article XXII ("General Policies and Procedures"), Section E ("Business Dealings"), of the City of Franklin Human Resources Manual to declare that choice.



HISTORIC
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TENNESSEE

MEMORANDUM

At the September 27, 2011 Budget and Finance Committee meeting, the committee asked staff to determine if the State of Tennessee policy on this subject matter may be one the City wishes to adopt. Tennessee Code Annotated § 12-4-103, entitled “Bidding by state employees prohibited,” reads as follows:

It is hereby declared unlawful for any state official or employee to bid on, sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the state of Tennessee during the tenure of such official's or employee's office or employment, or for six (6) months thereafter, or to have any interest in the selling of the same to the state.

Financial Impact

Staff is not aware that the revisions proposed above would have a significant negative financial impact on the City.

Options

Additional options to those identified above could be explored and brought back for consideration.

Recommendation

Staff recommends that the Board of Mayor and Aldermen continue to allow the City to do business with City employees but subject to the stipulations of Article XXII (“General Policies and Procedures”), Section E (“Business Dealings”), of the City of Franklin Human Resources Manual, including the changes to that provision recommended above. Note that both the Human Resources Manual and the Purchasing Policy would need to be updated in order to reflect any changes to Article XXII, Section E, of the Human Resources Manual.