

Investigative Report

Parks and Recreation Manager Accepted Favors

October 2021



We found evidence that Nick Smitham, Golf Complex Superintendent for the Parks and Recreation Department, accepted favors from his direct report.

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Cover: Aerial view of downtown Austin, iStock.com/RoschetzkyStockPhoto

Allegation

The Office of the City Auditor received an allegation that Nick Smitham misused Parks and Recreation (PARC) facilities for personal use and directed a PARC employee he supervised to repair his personal vehicles. At the time of our investigation, PARC management was reviewing the potential personal use of City facilities, so our investigation focused on the repair of Smitham's personal vehicles.

Background

The mission of the Parks and Recreation Department is to provide diverse programs and experiences to the public by creating sustainable natural spaces and public places. As a Golf Complex Superintendent for PARC, Nick Smitham oversees golf course operations including purchasing, contract management, and managing golf course staff. Smitham has seven employees that report directly to him.

Investigation Results Summary

We found evidence that Golf Complex Superintendent, Nick Smitham, accepted favors from a PARD employee that he directly supervises. Specifically, Smitham accepted mechanical repair work on three of his personal vehicles from a direct report who is a staff mechanic for PARD. These incidents occurred between 2012 and 2019.

Finding 1 Accepting favors from a subordinate

Smitham has seven direct reports, one of whom is a staff mechanic. The initial allegation our office received alleged that Smitham directed a PARD employee to perform work on his personal vehicles. During an interview with our office, the mechanic confirmed that they performed repair work on Smitham's personal vehicles on at least 8 occasions and potentially on as many as 15.

Smitham, who lives on site, has at least two vehicles and a boat. When interviewed, Smitham admitted that one of his direct reports, the mechanic, performed repairs on several of his personal vehicles. During our investigation, we identified ten separate incidents where Smitham's direct report worked on his vehicles. Both Smitham and the direct report told our office that the incidents did not happen during work hours and that Smitham did not pay the direct report for their services, though he stated he would have been willing to pay them for the repair work. Smitham estimated that his direct report spent between 3 and 4 hours working on his personal equipment. The direct report estimated he spent between 8 and 15 hours on Smitham's personal equipment.

Among the specific favors we identified, Smitham and the direct report both admitted the direct report worked on a fuel pump on Smitham's boat, and the water pump and the brakes on Smitham's personal cars. We were not able to determine specific dates for these instances. However, the direct report noted that they had not done any personal favors for Smitham since approximately September 2019.

We also identified at least two incidents in which the mechanic worked on Smitham's personal vehicles prior to the employee working for the City. During the time of these favors, the mechanic worked for a vendor with an ongoing City contract. Additionally, Smitham was the primary point of contact for that vendor at the golf course he managed.

Besides directly supervising the mechanic, Smitham also participated in the hiring process for the employee, including by sitting on the interview panel.

On December 24, 2018, a new gift policy went into effect for City employees. Although Smitham may have accepted some favors after this date, the majority of the instances we identified took place before the policy change. Given that timeline, the previous gift policy applies to the majority of these favors. The previous policy prohibits any gift or favor

that may reasonably tend to influence the receiver in the discharge of their official duties.

Smitham, as the direct supervisor of the mechanic, has official City duties that include completing the employee's performance reviews and managing the employee's day to day work. It is reasonable that receiving at least 8 incidents of free repair work, which have more than a nominal value, could improperly influence a supervisor when assigning work to their direct report or evaluating that employee's work performance.

The updated gift policy put in place after the majority of these favors expressly accounted for the inherent problems associated with supervisors receiving favors from those they supervise. While allowing for some employee gifts and favors, it explicitly prohibits supervisors from accepting favors from those they supervise. The only exception to this prohibition is gifts or favors voluntarily given at times of personal significance or at a time when gifts are traditionally given, and the value is fairly appropriate for the occasion.

At no point during the investigation did Smitham or the direct report describe the vehicle repair work as being related to a time of personal significance or a time when gifts or favors are traditionally given.

The updated policy also prohibits gifts or favors valued at more than \$50. Based on cost estimates from the mechanic and industry data, it appears that these gifts of service would violate the new policy's threshold of \$50.

Given the reporting relationship between Smitham and the mechanic, one could reasonably expect at least 8 incidents of repair work provided at no cost to Smitham to influence him in the discharge of his duties as the mechanic's supervisor.

When we spoke with the staff mechanic, they stated that they did not feel any pressure or obligation to help because of the direct report-supervisor relationship and added that they most likely offered to help or provide advice. PARD management did not believe the employee received any special treatment from Smitham as a result of helping on his personal equipment.

The above acceptance of favors appears to be a violation of the following criteria:

- City Code § 2-7-62 – Standards of Conduct (G) (Prior to 12/24/2018)
- City Code § 2-7-62 – Standards of Conduct (G)

Appendix A - Subject Response

Smitham did not provide a response.

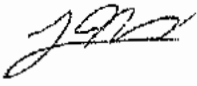
Appendix B - Management Response



MEMORANDUM

TO: Office of the City Auditor

THRU: Kimberly McNeeley, CPRP, Director
Austin Parks and Recreation Department

FROM: Lucas Massie, M.Ed., CPRP, Assistant Director 
Austin Parks and Recreation Department

DATE: October 19, 2021

SUBJECT: Golf Employee – Audit Response

As requested, this memo is to serve as a response on behalf of the Austin Parks and Recreation Department to the Office of the Auditor in regard to audit findings that Golf Complex Superintendent, Nick Smitham accepted favors from his direct report.

Management Response

As the current Assistant Director over the Golf Division, I concur with the findings presented by the Office of the Auditor. The Austin Parks and Recreation Department is preparing to address these findings with the employee and the Parks and Recreation Department Human Resources Division will be assisting in this process.

In addition, The Parks and Recreation Department is currently undertaking efforts to ensure all employees have taken and passed the most recent City of Austin Ethics Training.

Investigation Criteria

Finding 1

City Code § 2-7-62 – Standards of Conduct (Prior to 12/24/2018)

(G) No City official or employee shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the official or employee knows or should know has been offered with the intent to influence or reward official conduct.

City Code § 2-7-62 – Standards of Conduct

(G) (1) General Rule. No City official or employee shall accept or solicit the following:

(a) Any gift or favor, that might reasonably tend to improperly influence that individual in the discharge of official duties or that the official or employee knows or should know has been offered with the intent to improperly influence or improperly reward official conduct; or

(b) Any gift or favor of which the known or apparent value exceeds \$50 or any gift of cash or a negotiable instrument.

Methodology

We completed the following investigative steps:

- Reviewed applicable City Code and policy
- Conducted background research
- Interviewed City staff
- Interviewed the subject

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the general and ethics standards, procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to the quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and to City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

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