

CHAPTER 2.54

CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

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2.54.010 Declaration of Policy; Public Records.

The proper operation of democratic government requires that public officers and employees be honest, impartial, and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structures; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, the following code of ethics is established for all City of Lincoln officers and employees, whether elected or appointed, paid or unpaid, including members of all boards and commissions of the city. The purpose of this code is to establish guidelines setting forth those actions that are incompatible with the best interest of the citizens of the City of Lincoln and directing disclosure by such officers and employees of private financial or other interests in matters affecting city government.

In addition to other statements and reports required by law, all correspondence directed to a member of the City Council with regard to the matters pending before the City Council are deemed to be public documents and shall be made a part of the records of the city and as such filed with the City Clerk's office and open to inspection by the public prior to the City Council taking action on the subject, and in addition, any correspondence directed to the Mayor or Mayor's office concerning matters pending before the City Council or under consideration by the Mayor for veto shall likewise be deemed to be public documents and shall be filed with the City Clerk's office and open to inspection by the public prior to the Mayor taking action on the subject. (Ord. 19075 §1; April 28, 2008: prior Ord. 15399 §1; January 8, 1990: P.C. §2.08.015: Ord. 12251 §1; April 10, 1979: Ord. 6899 §1; April 13, 1959).

2.54.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

Business shall mean a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity, or entity.

Disclosure statement shall mean (1) a statement which includes the officer or employee's name and position held, immediate family members who may have an interest, type of contract involved, the amount and terms of the contract, and the significant financial interest of the officer or employee or immediate family member, or (2) any disclosure statement required by the Nebraska Political Accountability and Disclosure Act.

Employee shall mean any person included within the classified service of the City of Lincoln including probationary and temporary employees.

Financial interest shall mean any interest which shall yield directly or indirectly a monetary or other material benefit (other than the duly authorized salary or compensation for his services to the city) to the officer or employee or to any person employing or retaining the services of the officer or employee, or to the immediate family of the officer or employee.

Income shall mean any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, and shall include all income from whatever source derived.

Officer shall mean any person included with the unclassified service of the City of Lincoln as defined in Section 2.76.065, except probationary and temporary employees.

Public body shall mean the City Council, or any agency, authority, board, commission, department, division, or public office of the City of Lincoln.

Immediate family shall mean an individual's child, spouse, parents, or an individual claimed by that individual or by that individual's spouse as a dependent for federal income tax purposes.

Remote interest shall mean:

- (1) that of a nonsalaried officer of a nonprofit corporation;
- (2) that of a member of a nonprofit cooperative marketing association;
- (3) the ownership of a legal or equitable interest not exceeding \$5,000.00 or five percent of any business, provided the total annual income derived from such business does not exceed five percent of the total annual income of such officer or employee;
- (4) that of an officer in being reimbursed for actual and necessary expenses incurred in the performance of official duties;
- (5) that of a recipient of public services generally provided by the city on the same terms and conditions if such person were not an officer or employee.

Significant financial interest shall mean any financial interest, other than a remote interest. (Ord. 19075 §2; April 28, 2008: prior Ord. 15399 §2; January 8, 1990: P.C. §2.08.025: Ord. 13732 §1; November 14, 1983: Ord. 12251 §2; April 10, 1978: Ord. 6899 §2; April 13, 1959).

2.54.025 Standards for Ethical Conduct for Employees and Officers.

The following shall apply to every officer and employee of the City:

(a) Officers and employees shall not use that person's public office or position or any confidential information received through the holding of a public office or position to obtain financial gain, except compensation provided by law, for himself or herself, or any other person or business.

(b) Officers and employees shall not solicit or accept for themselves or their immediate family, anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

(c) Officers and employees shall protect and shall not use government property for other than authorized activities.

(d) Officers and employees shall satisfy in good faith their legal obligations as citizens, including all just financial obligations, especially those, such as the payment of federal, state, or local taxes, that are imposed by law. (Ord. 19075 §3; April 28, 2008).

2.54.030 Rules of Conduct Concerning Significant Financial Interests.

(a) Any officer or employee who has, or a member of whose immediate family has a significant financial interest in any contract, sale, purchase, or service to the city or any public body thereof, or who is a contractor supplying the city or any public body thereof other than under the circumstances governed by Section 2.54.040, shall make known that interest by filing a sworn disclosure statement with the City Clerk, 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 officer or employee who has, or a member of whose immediate family has, a significant financial interest in any decision of any public body of which the officer or employee is a member, or by whom the officer or employee is employed or retained or to which the officer or employee makes recommendations, shall make known such interest by filing a sworn disclosure statement with the City Clerk and shall refrain from participating in any manner as an officer or employee in such decision. The provisions of this subsection shall not apply to elected officials who are subject to the requirements of the Nebraska Political Accountability and Disclosure Act; provided, however, that copies of the disclosure statements required by said act shall be filed in the office of the City Clerk.

(c) Any candidate who has filed for any elected City office and who has, or a member of whose immediate family has, a significant financial interest in any contract or will receive a direct pecuniary fee or commission as a result of a contract for the provision of goods or services (including rentals of property and equipment) to the City or to any entity or political subdivision of which the City is a member; or who has submitted a bid or proposal on any pending contract or award with the City shall, within two weeks of filing for office or submitting such bid or proposal, submit a sworn disclosure statement to the City Clerk.

(d) If any officer or employee has any significant financial interest as specified in subsections (a) and (b) of this section, such person shall immediately upon discovery thereof declare such interest by filing a sworn disclosure statement with the City Clerk.

(e) All disclosure statements filed pursuant to this section shall be posted on the City Clerk's website and the statement shall be made available at the City Clerk's office for public inspection. (Ord. 19075 §4; April 28, 2008; prior Ord. 15399 §3; January 8, 1990: P.C. §2.08.035: Ord. 13732 §2; November 14, 1983: Ord. 12251 §3; April 10, 1978).

2.54.040 Contracts; Declaration of Interest.

(a) Except as provided in this section, no officer or employee or member of the immediate family of an officer or employee shall have a significant financial interest in any contract or receive a direct pecuniary fee or commission as the result of a contract for the provision of goods or services (including rentals of property and equipment) to the City or to any entity or political subdivision of which the City is a member. The existence of such an interest in any such contract shall render the contract voidable by decree by a court of proper jurisdiction as to any person who entered into a contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the city or by any resident thereof and must be brought within one year after the contract is signed or assigned. The prohibition in this section shall apply only when the officer or employee or his or her immediate family (1) has

a significant financial interest, or (2) will receive a direct pecuniary fee or commission as a result of the contract.

(b) The provisions in subsection (a) of this section shall not apply if:

(1) The contract is noticed and awarded through an open and public process that includes prior public notice and subsequent availability for public inspection of the bids considered and the contract awarded. If the contract is part of a Request For Proposal process, it must also involve prior public notice and subsequent availability for public inspection of the executed contract. All contracts shall be posted on the City Clerk's official website. Such contracts shall be posted within fifteen (15) days of the City Council's final approval of the contract;

(2) The interested officer or employee files with the City Clerk a sworn disclosure statement prior to official consideration of the contract; and

(3) The contract is submitted to the City Council for approval. In the case of a member of the City Council, the interested Council member shall not vote on the matter of granting the contract and must leave the room during the deliberation and the vote. The Council agenda shall identify the contract as one in which an officer or employee is an interested party and shall include the officer's or employee's name and business name, the officer's or employee's position, goods or services to be provided, value of the contract, and duration of the contract.

(c) All contracts and bid processes affected by subsection (b) shall be subject to the following:

(1) If, at twenty-four hours before the bid deadline, the Purchasing Division has received a bid only from an officer or employee, the Purchasing Division shall extend the deadline for which bids may be submitted by one week or shall issue a new solicitation;

(2) The interested officer or employee shall not act, directly or indirectly, for the city as to inspection or performance under such contract; and

(3) An officer who (i) is an employee of the business involved in the contract, and (ii) has no significant financial interest in the business or contract or will not receive a pecuniary fee or commission, as a result of the contract, shall not be deemed to have a significant financial interest within the meaning of this section.

(d) The ownership of less than five percent of the outstanding shares of a corporation shall not constitute a significant financial interest within the meaning of this section.

(e) If an officer's parent, spouse, or child is an employee of the city, the officer may participate on all issues of the employment contract involving the officer's parent, spouse, or child which are generally applicable to all employees or all employees within a classification and do not single out his parent, spouse, or child for special action. If an officer has the power to employ personnel and hires the officer's parent, spouse, or child, such officer shall disclose the hiring pursuant to subsection (b), except that if the parent, spouse, or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provisions of this section, any contract entered into with an interested officer or employee of the city shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the city.

(f) The City Clerk shall maintain, separately from other records, a ledger containing the information listed in subdivisions (1) through (5) of this subsection about every contract entered into by the city in which an officer or employee of the city has an interest as specified in subsection (a) of this section and for which disclosure is made as provided in subsection (b) of this section. Such information shall be kept in the ledger, in the case of an officer, for five years from the date of the officer's last day in office; in the case of an employee for five years, and shall include:

- (1) Names of the contracting parties;
- (2) Nature of the interest of the officer or employee in question;
- (3) Date that the contract was approved by the city;
- (4) Amount of the contract;
- (5) Basic terms of the contract.

The information supplied relative to the contract shall be provided to the City Clerk not later than ten days after the contract has been signed by both parties. The ledger kept by the Clerk shall be available for public inspection during the normal working hours of the office in which it is kept.

(g) An open account which is established for the benefit of the city with the business in which an officer or employee has an interest shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to Section 2.54.030 shall be filed within ten days after such account is opened. Thereafter, the City Clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section.

(h) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of the city by a financial institution shall not be considered a contract under the provisions of this section.

(i) Notwithstanding any other provision of this Code, contracts involving \$100.00 or less in which an officer or employee of the City has an interest shall be exempt from the provisions of Section 2.54.040, and pursuant to Neb. Rev. Stat. Section 49-14,103.06, contracts involving \$100.00 or less in which an elected official who is subject to the requirements of the Nebraska Political Accountability and Disclosure Act has an interest, including contracts with nonprofit organizations in which such official serves as an unpaid officer or director, shall also be exempt from the provisions of Sections 49-14,103.01 to 49-14,103.03.

(j) Notwithstanding the above, any contract entered into between any officer or employee and the City prior to the time that such officer or employee assumed office or began employment with the City shall not be deemed to violate Section 2.54.040(a). (Ord. 19542 §1; May 16, 2011: prior Ord. 19075 §5; April 28, 2008: Ord. 15399 §4; January 8, 1990: P.C. §2.08.040: Ord. 13881 §1; July 2, 1984: Ord. 13732 §3; November 14, 1983).

2.54.050 Prohibited Acts.

(a) No present or former officer or employee may represent another person for compensation before the city or any public body thereof while in office or employed for a period of one year from the date of termination of their office or employment concerning any matter with which such officer or employee was directly concerned and in which such officer or employee personally participated during their employment or service by a substantial and material exercise of administrative discretion either during their holding of office or employment or for a period of one year thereafter.

(b) During the period of employment or service and for two years thereafter, no officer or employee may disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired in the course of their official duties which has been clearly designated 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. No officer or employee shall disclose or use, without appropriate authorization, any information acquired in the course of their official duties which is declared confidential by law.

(c) No officer or employee may use or attempt to use their official position to secure any valuable thing or valuable benefit for themselves that would not ordinarily accrue to them in the performance of their official duties, which thing or benefit is of such character as to manifest a substantial and improper influence. (Ord. 15399 §5; January 8, 1990: P.C. §2.08.045: Ord. 12251 §4; April 10, 1978).

2.54.060 Additional Income Prohibited for Services.

(a) No 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 such officer or employee personally in any case, proceeding, application, or other matter which is pending before any public body of which he or she is an officer or employee.

(b) This section shall not be construed to prohibit the rendering of any service seeking the performance of ministerial action by the city or any public body thereof, including but not limited to, the filing of applications for permits, licenses, and other documents. For the purposes of this subsection, "ministerial action" means any action to be taken on a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of judgment by an officer or employee upon the propriety of the action being taken. (Ord. 15399 §6; January 8, 1990: P.C. §2.08.055: Ord. 12251 §5; April 10, 1978).

2.54.070 Forfeiture of Office.

Whenever any officer of a public office is found by a court of competent jurisdiction in an action instituted by the City of Lincoln, to have knowingly, willfully, or intentionally concealed or failed to disclose any significant financial interest or is found to have violated any provisions of this chapter, he shall thereupon forfeit his or her office and said office shall, by said court, be declared to be vacant from and after the entry of such judgment. (Ord. 19075 §6; April 28, 2008: prior Ord. 15399 §7; January 8, 1990: P.C. §2.08.065: Ord. 12251 §6; April 10, 1978).

2.54.080 Penalty.

Any officer or employee who knowingly, willfully, or intentionally conceals or fails to disclose any significant financial interest or who violates any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$100.00 recoverable with costs. (Ord. 15399 §8; January 8, 1990: P.C. §2.08.075: Ord. 13732 §4; November 14, 1983: prior Ord. 12251 §7; April 10, 1978).