

ORDINANCE NO. 4422

AN ORDINANCE ESTABLISHING A CODE OF ETHICS FOR ALL CITY OFFICIALS AND EMPLOYEES, THE PURPOSE OF WHICH IS TO ESTABLISH GUIDELINES FOR ETHICAL STANDARDS OF CONDUCT FOR ALL SUCH OFFICIALS AND EMPLOYEES BY SETTING FORTH THOSE ACTS OR ACTIONS THAT ARE INCOMPATIBLE WITH THE BEST INTERESTS OF THE CITY.

BE IT ORDAINED by the Governing Body of the City of Liberal, Kansas:

SECTION 1: Chapter 1 of the Code of the City of Liberal, Kansas, is hereby amended to add a new Article 9, as set forth below.

9-101 Declaration of policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; 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, a code of ethics for all city officials and employees is adopted. The purpose of this code of ethics is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city.

9-102 Definitions.

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

Business means any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income.

Compensation means any money, thing of value or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by that person or another, but shall not mean nor include reimbursement of reasonable expenses if the reimbursement does not exceed the amount actually expended for the expense and it is substantiated by an itemization of expenses.

Contract means agreement, including but not limited to, sale and conveyance of real and personal property, and agreement for the performance of services.

Gift means anything of economic value, regardless of form, without adequate and lawful consideration.

Interest means direct or indirect monetary or material benefit accruing to a public officer or employee as a result of a contract, transaction, zoning decision, or other matter which is or may be the subject of an official act or action by or with the city except for such contracts or transactions which by their terms and by the substance of their provision confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. "Interest" means any of the following:

- (1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000.00 or five percent of any business, whichever is less, the individual has an interest in that business.
- (2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding 12 months compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000.00 from any business or combination of businesses, the individual has an interest in that business or combination of businesses.

- (3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$250.00 or more from a business or combination of businesses, the individual has an interest in that business or combination of businesses.
- (4) If an individual or an individual's spouse holds the position of officer, director, associate, partner, or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10), or (19) of chapter 26 of the United States code, the individual has an interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.
- (5) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has an interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000.00 or more in the preceding 12 months.

As used in this definition, the words "client" or "customer" mean a business or combination of businesses.

Official act or action means any legislative, administrative, appointive, or discretionary act of any public officer or employee of the city or any agency, board, committee, or commission thereof.

Public employee means any employee of the city or any of its agencies.

Public officer means any elected or appointed officer of the city or any of its agencies, including members of advisory boards and commissions.

Transaction means the carrying on or completion of a business deal, including, but not limited to, purchase of goods and services.

9-103 Scope of article.

The requirements set forth in this article shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of public officers and employees of the city.

- (1) *Interest in contract or transaction.* No public officer or employee having the power or duty to perform an official act or action related to a contract, transaction, zoning decision, or other matter, which is or may be the subject of an official act or action of the city, shall:
 - a. Have or thereafter acquire an interest in such contract, transaction, zoning decision, or other matter.
 - b. Have an interest in any business entity representing, advising, or appearing on behalf of, whether paid or unpaid, any person involved in such contract, transaction, zoning decision, or other matter.
 - c. Have solicited or accepted present or future employment with a person or business entity involved in such contract, transaction, zoning decision, or other matter.
 - d. Have solicited, accepted, or granted a present or future gift, favor, service, or thing of value from or to a person involved in such contract, transaction, zoning decision, or other matter.
 - e. The prohibition against gifts or favors shall not apply to:
 1. An occasional non-pecuniary gift, insignificant in value;
 2. An award publicly presented in recognition of public service; or

3. Any gift which would have been offered or given to such person if such person were not an officer or employee.

A public officer or employee does not violate the provisions of subsections (1)a. through (1)d. of this section when such officer or employee has such an interest but abstains from any and all action, participation, or vote involving the contract, transaction, zoning decision, or other matter. Any person abstaining shall, upon realization of such conflict, as soon as reasonably possible, state that a conflict exists, leave the room until all discussion and action on the contract, transaction, zoning decision, or other matter has concluded, and direct the city clerk or any recording secretary to reflect such abstention and departure from the proceedings. A reason for abstaining need not be disclosed.

- (2) *Preacquisition of interest.* No public officer or employee with respect to any contract, transaction, zoning decision, or other matter which is or may be the subject of an official act or action of the city shall acquire an interest in such contract, transaction, zoning decision, or other matter at a time when the public officer or employee believes or has reason to believe that it will directly or indirectly be affected by an official act or action of the city.
- (3) *Incompatible service.* No public officer or employee shall engage in or accept private employment or render service, for private interest, when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
- (4) *Interest in public contract.* No public officer or employee shall in the capacity as such officer or employee, be a signatory upon, discuss in an official capacity, vote on any issue concerning, or otherwise participate in his or her capacity as a public officer or employee in the making of any contract with any person or business in which the public officer or public employee has a substantial interest, as the same is herein defined. This section shall not apply to:
 - a. A contract awarded through a process of public notice and competitive bidding; or
 - b. Contracts for property or services for which the price or rate is fixed by law.
- (5) *Participation in non-contract transactions.* A public officer or employee shall not participate or take any official act or action on any transaction, zoning decision, or other matter involving the city which is non-contractual in nature when such public officer or employee has an interest in the transaction, zoning decision, or other matter. A public officer or employee does not participate or act if such officer or employee abstains from all participation in the transaction, zoning decision, or other matter.
- (6) *Public property.* No public officer or employee shall request or permit the unauthorized use of city-owned vehicles, equipment, materials, or property for personal convenience or profit.
- (7) *Special treatment.* No public officer or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- (8) *Later case interest.* No public officer or employee shall, after the termination of service or employment with the city, appear before any board, commission, committee, agency, or the municipal court of the city in relation to any case, proceeding or application in which such officer or employee personally participated during the period of service or employment, or which was under active consideration by such officer or employee.
- (9) *Disclosure of confidential information.* No public officer or employee, with respect to any contract, transaction, zoning decision, or other matter which is or may be subject of an official act or action of the city shall, without proper legal authorization, disclose confidential information regarding the property, government, or affairs of the city, or use such information to advance the financial or other private interest of the officer or employee or others.

9-104 Prohibited conduct.

No public officer or employee shall engage in any conduct or act which would be a violation of any federal, state, or municipal statute, law, or ordinance. Any public officer or employee violating federal, state, or municipal laws shall be subject to imposition of all sanctions or discipline authorized by city personnel policy and/or state or municipal law pertaining to termination of employment or removal from elected office. In addition, a determination may be made as to whether there has been a violation of any portion of this article.

State law reference— Prohibited contracts by local government officers or employees, K.S.A. 75-4304.

9-105 Exceptions.

- (a) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of this state to engage in the making of such loans shall not be deemed to create an interest in violation of this division.
- (b) A contract or transaction for a commercial retail sale, even though over the value of \$250.00 shall not be deemed to create an interest in violation of this division.

9-106 Enforcement.

- (a) The city attorney or his or her designee shall have the primary responsibility for the enforcement of this article.
- (b) The governing body may direct the city attorney to investigate any apparent violation of this division or it may employ or appoint any qualified attorney to investigate any violation or series of violations by one or more persons of this article.
- (c) Any person who believes that a violation of any portion of this article has occurred may file a complaint with the city attorney or with the governing body, who may thereafter proceed with appropriate action. However, nothing in this article division shall be construed to prevent complainants from instituting direct legal action through the appropriate judicial authority.
- (d) The city attorney shall present such investigative findings to the city manager and the governing body.
- (e) Where any public officer or employee has a doubt as to the applicability of any provision of this division to a particular situation, or as to the definition of terms used herein, such officer or employee may apply to the city attorney for an advisory opinion. The public officer or employee shall have the opportunity to present an interpretation of the facts at issue and of the applicability of provisions of this division before such advisory opinion is made.

9-107 Penalties; forfeited position; exemptions; injunction.

- (a) Any public officer or employee who willfully and knowingly violates any of the provisions of this article may be subject to any one or more of the following penalties, listed in no particular order of intended application by the governing body and/or the city manager:
 - (1) In the case of appointed members of a city board or agency; warning, reprimand, or removal from such position;
 - (2) In the case of city employees, initiation of discipline pursuant to city personnel rules and regulations;
 - (3) In the case of elected or appointed members of the governing body, submission to the state attorney general or the county attorney of a request for review, investigation, and appropriate action pursuant to state law.
- (b) Any person who is the subject of an alleged violation shall have the right to present evidence on such person's behalf before the governing body. Nothing in this article shall be construed or operate to eliminate any of the procedures or rights afforded to city employees pursuant to the city personnel rules and regulations.
- (c) Any contract, transaction, zoning decision, or other matter which was the subject of an official act or action of the city in which there is an interest prohibited by this article, or which involved the violation of a provision of this article, shall be voidable at the option of the city.
- (d) The city attorney, as authorized by the governing body and/or city manager, shall have the power, where a violation of the provisions of this article is threatened or has occurred, to bring a civil action or proceeding at law or in equity for a judgment enjoining any violation of the provisions of this article or the voiding of any such contract, transaction, zoning decision, or

other matter, taking into account the interests of the city and any third persons who may be injured thereby. Where the city attorney determines that the public interest may best be served by not voiding a contract, transaction, zoning decision, or other matter, entered into in violation of this article, such contract, transaction, zoning decision, or other matter may be enforced and an action or proceeding may be brought against any public officer or employee found in violation of provisions of this article for damages not to exceed twice the damages suffered by the city or twice the profit or gain realized by the public officer or employee, whichever is greater.

9-108 Distribution.

The city clerk shall cause a copy of this article to be distributed to every public officer and employee of the city within 30 days after enactment of this article. Each public officer and employee elected, appointed, or engaged thereafter shall be furnished a copy before entering upon the duties of an office or employment.

9-109 Provisions supplemental.

The provisions of this article are supplemental to any and all applicable federal, state, county and city laws or regulation and shall not be construed to relieve the public officer or employee from compliance with any such laws or regulations.

PASSED by the Governing Body of the City of Liberal, Kansas and signed by the Mayor on February 25, 2014.

ATTEST:

Dave Harrison, Mayor

Debra S. Giskie, City Clerk

ADDENDUM A

Model of Excellence Liberal City Commission

As an expression of the standards of conduct for City Commissioners expected by the public, this Code of Public Ethics is intended to be self-enforcing. It therefore becomes most effective when City Commissioners are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for newly elected or appointed City Commissioners. Every year, the meeting during which the Commission elects the Mayor and Vice Mayor, each City Commissioner shall sign a statement affirming that they have read and understand the Code of Public Ethics for Liberal City Commissioners. The statement signed by each Commissioner shall be collected and retained by the City Clerk's Office.

COMMISSIONER STATEMENT

As a member of the Liberal City Commission, I agree to uphold the Code of Public Ethics adopted by the City Commission and conduct myself by the following model of excellence. I will:

- **Recognize the worth of individual members and appreciate their individual talents, perspectives, and contributions;**
- **Help create an atmosphere of respect and civility where individual members, City staff, and the public are free to express their ideas and work to their full potential;**
- **Respect the dignity and privacy of individuals and organizations;**
- **Respect and maintain the nature of confidential and privileged information and opinions acquired as a result of my position;**
- **Conduct my public affairs with honesty, integrity, fairness, and respect for others;**
- **Avoid and discourage conduct that is divisive or harmful to the best interests of Liberal; and**
- **Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit.**

I affirm that I have read and fully understand the Code of Public Ethics for the City of Liberal.

Signature/Date

Name/Office