

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 2.54 of the Lincoln Municipal Code relating
2 to conflicts of interest of officers and employees by amending section 2.54.010 to declare the policy
3 of the chapter; amending Section 2.54.020 to add the definition of “disclosure statement,” and to
4 revise the definitions of “employee,” “immediate family,” “officer,” and “public body”; adding a
5 new Section 2.54.025 to adopt standards for ethical conduct of officers and employees, including
6 general principals; amending Section 2.54.030 relating to rules of conduct concerning significant
7 financial interests to require candidates for office to disclose existing or pending contractual
8 relationships with the City; amending Section 2.54.040 regarding declarations of interests in
9 contracts to require posting of information regarding contracts with officers and employees on
10 websites, to require additional information on disclosures, to extend bid deadlines if the only bid is
11 that of an officer or employee, to require Council approval of such contract with the agenda
12 specifically identifying the contract as one in which an officer or employee is interested, and to
13 grandfather all existing contracts; amending Section 2.54.070 to make the forfeiture of office
14 applicable to officers only; and repealing Sections 2.54.010, 2.54.020, 2.54.030, 2.54.040, and
15 2.54.070 as hitherto existing.

16 BE IT ORDAINED BY the City Council of the City of Lincoln, Nebraska:

17 Section 1. That Section 2.54.010 of the Lincoln Municipal Code be amended to read
18 as follows:

19 **2.54.010 Declaration of Policy; Public Records.**

20 The proper operation of democratic government requires that public officers and employees
21 be honest, impartial, and responsible to the people; that governmental decisions and policy be made
22 in the proper channels of the governmental structures; that public office not be used for personal

1 gain; and that the public have confidence in the integrity of its government. In recognition of these
2 goals, the following ~~regulations on conflict of interest are~~ code of ethics is established for all City
3 of Lincoln officers and employees, whether elected or appointed, paid or unpaid, including members
4 of all boards; and ~~commissions, and committees~~ of the city. The purpose of ~~these regulations~~ this
5 code is to establish guidelines setting forth those actions ~~which~~ that are incompatible with the best
6 interest of the citizens of the City of Lincoln and directing disclosure by such officers and employees
7 of private financial or other interests in matters affecting city government.

8 In addition to other statements and reports required by law, all correspondence directed to
9 a member of the City Council with regard to the matters pending before the City Council are deemed
10 to be public documents and shall be made a part of the records of the city and as such filed with the
11 City Clerk's office and open to inspection by the public prior to the City Council taking action on
12 the subject, and in addition, any correspondence directed to the Mayor or Mayor's office concerning
13 matters pending before the City Council or under consideration by the Mayor for veto shall likewise
14 be deemed to be public documents and shall be filed with the City Clerk's office and open to
15 inspection by the public prior to the Mayor taking action on the subject.

16 Section 2. That Section 2.54.020 of the Lincoln Municipal Code be amended to read
17 as follows:

18 **2.54.020 Definitions.**

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

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

23 **Disclosure statement** shall mean a statement which includes the officer or employee's name
24 and position held, immediate family members who may have an interest, type of contract involved,

1 the amount and terms of the contract, and the significant financial interest of the officer or employee
2 or immediate family member.

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

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

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

13 **~~Officer or employee~~** shall mean any person ~~elected or appointed to, or employed or retained~~
14 ~~by, any public office or public body of the City of Lincoln, whether paid or unpaid and whether part-~~
15 ~~time or full-time~~ included with the unclassified service of the City of Lincoln except probationary
16 and temporary employees.

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

19 **Immediate family** shall mean an individual's child ~~residing in an individual's household,~~
20 ~~a spouse of an individual,~~ spouse, parents, or an individual claimed by that individual or by that
21 individual's spouse as a dependent for federal income tax purposes.

22 **Remote interest** shall mean:

- 23 (1) that of a nonsalaried officer of a nonprofit corporation;
24 (2) that of a member of a nonprofit cooperative marketing association;

1 (3) the ownership of a legal or equitable interest not exceeding \$5,000.00 or five
2 percent of any business, provided the total annual income derived from such business does not
3 exceed five percent of the total annual income of such officer or employee;

4 (4) that of an officer in being reimbursed for actual and necessary expenses
5 incurred in the performance of official duties;

6 (5) that of a recipient of public services generally provided by the city on the
7 same terms and conditions if such person were not an officer or employee.

8 **Significant financial interest** shall mean any financial interest, other than a remote interest.

9 Section 3. That Chapter 2.54 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 2.54.025 to read as follows:

11 **2.54.025 Standards for Ethical Conduct for Employees and Officers; General Principles.**

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

13 (a) Officers and employees shall not use that person's public office or position or any
14 confidential information received through the holding of a public office or position to obtain
15 financial gain, except compensation provided by law, for himself or herself, a member of his or her
16 immediate family, or a business with which the individual is associated.

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

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

23 (d) Officers and employees shall satisfy in good faith their obligations as citizens,
24 including all just financial obligations, especially those, such as the payment of federal, state, or
25 local taxes, that are imposed by law.

1 Section 4. That Section 2.54.030 of the Lincoln Municipal Code be amended to read
2 as follows:

3 **2.54.030 Rules of Conduct Concerning Significant Financial Interests.**

4 (a) Any officer or employee who has, or a member of whose immediate family has a
5 significant financial interest in any contract, sale, purchase, or service to the city or any public body
6 thereof, or a contractor supplying the city or any public body thereof other than under the
7 circumstances governed by Section 2.54.040, shall make known that interest ~~in the official records~~
8 ~~of the city in the manner hereinafter prescribed~~ by filing a sworn disclosure statement with the City
9 Clerk, and shall refrain from voting upon or otherwise participating in any manner as an officer or
10 employee in such contract, sale or purchase.

11 (b) Any officer or employee who has, or a member of whose immediate family has, a
12 significant financial interest in any decision of any public body of which the officer or employee is
13 a member, or by whom the officer or employee is employed or retained or to which the officer or
14 employee makes recommendations, shall make known such interest ~~in the official records of the city~~
15 ~~in the manner hereinafter prescribed~~ by filing a sworn disclosure statement with the City Clerk and
16 shall refrain from participating in any manner as an officer or employee in such decision. The
17 provisions of this subsection shall not apply to elected officials who are subject to the requirements
18 of the Nebraska Political Accountability and Disclosure Act; provided, however, that copies of the
19 disclosure statements required by said act shall be filed in the office of the City Clerk.

20 (c) Any candidate who has filed for any elected City office and has a significant financial
21 interest as described in subsection (a) above, or who has submitted a bid or proposal on any pending
22 contract or award with the City shall, within two weeks of filing for office or submitting such bid
23 or proposal, submit a sworn disclosure statement to the City Clerk.

24 (ε d) If any officer or employee has any significant financial interest as specified in
25 subsections (a) and (b) of this section, such person shall immediately upon discovery thereof declare

1 such interest by filing a sworn disclosure statement with the City Clerk, ~~which statement shall~~
2 ~~contain the position held with the city by such person and the nature of such person's interest.~~

3 (e) All disclosure statements filed pursuant to this section shall be posted on the City
4 Clerk's website and the statement shall be made available at the City Clerk's office for public
5 inspection.

6 Section 5. That Section 2.54.040 of the Lincoln Municipal Code be amended to read
7 as follows:

8 **2.54.040 Contracts; Declaration of Interest.**

9 (a) Except as provided in this section, No officer or employee or member of the
10 immediate family of an officer or employee of the city may be interested shall have a significant
11 financial interest in any contract to which the city, or anyone for its benefit, is a party for the
12 provision of goods or services (including rentals of property and equipment) to the City or to any
13 entity or political subdivision of which the City is a member. The existence of such an interest in
14 any such contract shall render the contract voidable by decree by a court of proper jurisdiction as
15 to any person who entered into a contract or took assignment thereof with actual knowledge of the
16 prohibited conflict. An action to have a contract declared void under this section may be brought
17 by the city or by any resident thereof and must be brought within one year after the contract is signed
18 or assigned. The prohibition in this section shall apply only when the officer or ~~the officer's parent,~~
19 ~~spouse, or child~~ employee or his or her immediate family (1) has an ~~ownership interest of five~~
20 ~~percent or more in any business involved in the contract~~ significant financial interest, or (2) will
21 receive a direct pecuniary fee or commission as a result of the contract.

22 (b) The provisions in subsection (a) of this section shall not apply if ~~the interested officer~~
23 ~~or employee:~~

24 (1) The contract is noticed and awarded through an open and public process that
25 includes prior public notice and subsequent availability for public inspection of the bids considered

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

5 (4 2) The interested officer or employee files with the City Clerk a sworn
6 disclosure statement indicating the nature and extent of such interest, prior to official consideration
7 of the contract; and

8 (2 3) ~~Does~~ The contract is submitted to the City Council for approval. In the case
9 of a member of the City Council, the interested Council member shall not vote on the matter of
10 granting the contract and must leave the dais during the vote., except that if the number of members
11 of the board declaring an interest in the contract would prevent the board, with all members present,
12 from securing a quorum on the issue, then all members may vote on the matter; The Council agenda
13 shall identify the contract as one in which an officer or employee is an interested party and shall
14 include the officer's or employee's name and business name, the officer's or employee's position,
15 goods or services to be provided, value of the contract, and duration of the contract.

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

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

21 (3 2) The interested officer or employee shall ~~Does~~ not act, directly or indirectly,
22 for the city as to inspection or performance under such contract; and

23 (4 3) An officer who (i) is an employee of the business involved in the contract, and
24 (ii) has no ownership interest or will not receive a pecuniary fee, as prescribed in subdivisions

1 subsections (a)(1) and (a)(2) of this section, shall not be deemed to have an interest within the
2 meaning of this section.

3 (e d) The receiving of deposits, cashing of checks, and buying and selling of warrants and
4 bonds of indebtedness of the city by a financial institution shall not be considered a contract under
5 the provisions of this section. The ownership of less than five percent of the outstanding shares of
6 a corporation shall not constitute an interest within the meaning of this section. Notwithstanding
7 the provision of Subdivision (b)(~~2~~ 3) of this section, if an officer's parent, spouse, or child is an
8 employee of the city, the officer may vote on all issues of the contract which are generally applicable
9 to all employees or all employees within a classification and do not single out his parent, spouse,
10 or child for special action. If an officer has the power to employ personnel and hires the officer's
11 parent, spouse, or child, such officer shall disclose the hiring pursuant to subsection (~~d~~ b), except
12 that if the parent, spouse, or child is already employed in the position at the time the officer takes
13 office and such position does not change, no disclosure need be made. Notwithstanding any other
14 provisions of this section, any contract entered into with an interested officer or employee of the city
15 shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to
16 the city.

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

- 23 (1) Names of the contracting parties;
- 24 (2) Nature of the interest of the officer or employee in question;
- 25 (3) Date that the contract was approved by the city;

1 (4) Amount of the contract;

2 (5) Basic terms of the contract.

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

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

12 (g) Notwithstanding the above, any contract entered into between any officer or
13 employee and the City prior to the time that such officer or employee assumed office or began
14 employment with the City shall not be deemed to violate any provision of this chapter.

15 Section 6. That Section 2.54.070 of the Lincoln Municipal Code be amended to read
16 as follows:

17 **2.54.070 Forfeiture of Office.**

18 Whenever any officer ~~or employee~~ of a public office is found by a court of competent
19 jurisdiction in an action instituted by the City of Lincoln, to have knowingly, willfully, or
20 intentionally concealed or failed to disclose any significant financial interest or is found to have
21 violated any provisions of this chapter, he shall thereupon forfeit his or her office and said office
22 shall, by said court, be declared to be vacant from and after the entry of such judgment.

23 Section 7. That Sections 2.54.010, 2.54.020, 2.54.030, 2.54.040 and 2.54.070 of the
24 Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

1 Section 8. That this ordinance shall take effect and be in force from and after its
2 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2008:

Mayor