

COMPARED VERSION
COMMITTEE SUBSTITUTE TO ORIGINAL ORDINANCE

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 230547

Amending Chapter II, Article XV, Code of Ethics, and Chapter III, Article III, Ethics in Contracting, of the Code of Kansas City, Missouri to amend the individuals and entities whose benefit create a conflict of interest, clarify sick leave donations between subordinates and supervisors are financial transactions, move employee ethics in contracting into the Code of Ethics, and add a new Section 2-2033 to prohibit solicitation by employees of kickbacks and gratuities.

WHEREAS, the City has a Code of Ethics contained in its Code of Ordinances; and

WHEREAS, the Code of Ethics established the Municipal Officials and Officers Ethics Commission; and

WHEREAS, the Municipal Officials and Officers Ethics Commission has the power to recommend changes to the Code of Ethics; and

WHEREAS the Municipal Officials and Officers Ethics Commission has recommended changes to the Code of Ethics based on an overall review and complaints and issues that have been presented; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter II, Article XV, Code of Ethics, of the Code of Kansas City, Missouri is hereby amended by repealing Sections 2-2002, 2-2020, 2-2023, 2-2024, 2-2030, 2-2043, and 2-2051 and enacting in lieu thereof new sections of like numbers and subject matters, and adding a new Section 2-2033, to read as follows:

Sec. 2-2002. Definitions.

As used in this code of ethics, these terms shall have the following meanings unless it is apparent from the context that a different meaning is intended:

Board means any appointive board or commission or other appointive body or authority of the city established by charter, ordinance, resolution or act of the mayor.

Commission means the municipal officials and officers ethics commission, unless the context dictates otherwise.

Contract means any arrangement or agreement pursuant to which any material, service or other thing of value is to be furnished to the city for valuable consideration to be paid by the city or is to be sold or transferred by the city.

Councilmember means any member of the city council, including the mayor.

Domestic partner is an adult, unrelated by blood, with whom an unmarried or separated official or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses. To be a domestic partner within this code of ethics, registration with the city clerk of a domestic partnership is not required.

Elected official means the mayor or any member of the city council.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Household includes anyone whose primary residence is in the official or employee's home.

Immediate family member means a spouse or unemancipated child, or a domestic partner and the domestic partner's unemancipated child.

Interest means a pecuniary, property, or commercial interest, or any other interest the primary significance of which has been, will be, or might be the realization of economic gain or the avoidance of economic loss to an elected official, board member, his or her relative, or his or her designee whether direct or indirect; provided, however, that "interest" shall not include any matter involving the common public good or necessity, or any matter in which a similar benefit is conferred to all persons or property similarly situated; and further, that ownership individually or in a fiduciary capacity of any securities, or of any beneficial interest in securities, of a corporation shall not be deemed to create an "interest" in the corporation unless the aggregate amount of such securities, or interest in such securities, amount to five percent or more of any class of the securities of the corporation then outstanding or constitutes a controlling interest in the corporation.

Official or employee means the mayor and the mayor's assistants; a member of the city council and a member's assistants; a member of any city board, commission, authority, task force, committee or other organized group of people called to serve the city; a member of any other board, commission or other organized group of people appointed to that group to serve as a representative of the city; the city manager and all assistant city managers; department directors, including the city clerk and city auditor, and their deputies; contract employees; and all other employees of the city. Official or employee shall also include all volunteers unless the office or department in which the volunteer service is offered has adopted a special code of ethics applicable to volunteers. Official or employee shall also include the judges of the municipal court insofar as this code of ethics is not inconsistent with the Code of Judicial Conduct promulgated by the Missouri Supreme Court.

Personal benefit includes benefits other than those that are directly financially advantageous. These include financial benefits to relatives, business associates, and others, as

well as non-financial benefits to these people and to oneself, including such things as reputation and the success of one's career.

Relative means any of the following persons related to the employee or official, or the employee's or official's spouse or domestic partner:

- (1) Children, parents;
- (2) Grandchildren, grandparents, brothers and sisters;
- (3) Great-grandchildren, great-grandparents, nephews and nieces, uncles and aunts; or
- (4) Great-great-grandchildren, great-great-grandparents, grand nephews and grand nieces, first cousins, great uncles and great aunts.

Subordinate means another official or employee over whose activities an official or employee has direction, supervision or control.

Sec. 2-2020. Conflict of interest.

(a) *Benefits received.* An official or employee may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal or financial benefit, not shared with a substantial segment of the city's population, for any of the following persons or entities:

- (1) Himself or herself;
- (2) His or her employer or business, if employer is not the city;
- (3) A member of his or her household, his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people; or
- (5) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer, director, or board member, or which he or she holds any other position on the organization's administrative or governing body.

(b) *Government employee groups excluded.* No group of government employees may be considered "a substantial segment" of the City's population for the purposes of this section.

(c) *Service on boards or commissions.* An official or employee serving as a member of a board, commission, or any other entity as a representative of the city shall not have a conflict of interest when the business of that entity is before the city. An official or employee serving as a member of a board, commission, or any other entity not as a representative of the city but as a private citizen, even if the board or entity seeks out an official or employee because of their position with the city, shall have a conflict of interest when matters touching upon the business of the board, commission, or any other entity comes before the city.

(d) *Labor contracts.* A council member has a conflict of interest with respect to any labor contract to which he or she, or a member of his or her household, may be a party.

(e) *Private financial transactions.* An official or employee must disclose at the beginning of any transaction, project, or discussions about any transaction or project, if a known person with a substantial financial interest is a customer or client to which an official or employee has supplied goods or services through one or more private transactions during the previous 24 months, having, in the aggregate, a value of or greater than \$1,000.00. Such circumstances must be disclosed to the city clerk. These records shall be available to the internal auditor, ethics compliance officer and director of the department to which assigned, the mayor if assigned to the mayor's office, the mayor pro tem if assigned to a council member or the council office or the city manager if assigned to the city manager's office or not otherwise assigned. Such disclosure will include a statement that in the opinion of the official or employee no conflict of interest exists and the reason why that is stated.

(f) *Contracting.* An official or employee may not participate directly or indirectly in the solicitation or award of any contract when the employee knows that the employee or any person or entity listed in subsection (a) of this section has a financial interest or other personal interest which is incompatible with the proper discharge of the employee's official duties in the public interest or would tend to impair the employee's independence, judgment or action in the performance of official duties, or if the employee or any person or entity listed in subsection (a) of this section is negotiating or has an arrangement concerning employment with any person or entity having submitted a bid proposal.

Sec. 2-2023. Transactions with subordinates.

(a) *Prohibition.* No official or employee may engage in a financial transaction exceeding \$50.00, including the giving of loans or receiving of loans or monetary contributions, including charitable contributions, with a subordinate or person or business over which, in the official or employee's official duties and responsibilities, he or she exercises supervisory responsibility.

(b) *Exception.* This prohibition shall not apply when the financial transaction is in the normal course of a regular commercial business or occupation.

(c) *Sick Leave Donation Program.* Donations of sick leave between employees and any supervisor in their direct line of supervision shall be considered financial transactions.

Sec. 2-2024. Conflict of interest annual report.

(a) *Disclosure to Missouri Ethics Commission.* Members of the council, including the mayor, the city manager and assistants, the city clerk, the city auditor, the internal auditor, the commissioner of purchases and supplies, the city attorney, and the directors of all departments of the city, shall file with the city clerk and the state ethics commission the long form of the state ethics commission's personal financial disclosure statement completed in conformance with state law.

(b) *Disclosure to the supreme court.* Judges of the city municipal division of the circuit court shall file disclosure reports required of judges by the supreme court of the state, and will not be required to duplicate filings with the state ethics commission or the city clerk.

(c) *Disclosure to the city clerk.* Members of all boards, commissions and other entities of the city or who receive substantial funding from the city or which make recommendations on the expenditure of public funds, except members and contractors who are required to file a personal financial disclosure statement under subsection (a) of this section, shall file an annual conflict of interest disclosure report on the form provided by the city clerk or equivalent form provided by the state ethics commission which shall provide the following information, before May 1 of each year:

- (1) Employers who are contractors and/or suppliers of the city, and from whom the appointee received income of \$10,000.00 or more during the period covered by the report;
- (2) Each sole proprietorship who are contractors and/or suppliers of the city, owned by appointee;
- (3) Each general partnership and joint venture who are contractors and/or suppliers of the city, and in which the appointee is a partner or participant;
- (4) Each closely-held corporation, limited partnership, or other closely held entity who are contractors and/or suppliers of the city, and in which the appointee owns ten percent or more of any class of the outstanding stock, units or other equity interests;
- (5) Each publicly-traded corporation, limited partnership or other publicly-traded entity who is a contractor and/or supplier of the city, and which is listed on a regulated stock exchange or automated quotation system in which the appointee owns two percent or more of any class of outstanding stock, units or other equity interests;
- (6) Miscellaneous income of \$9,999.99 or more from any single source who are contractors and/or suppliers to the city, and not otherwise included in the report;
- (7) Each corporation or other entity who is a contractor and/or supplier to the city, and in which the appointee served as a director, officer or receivers;

- (8) Each not-for-profit corporation, association, organization or union in which the appointee served as an officer, director, employee or trustee, except church, fraternal or service organizations where no pay was received; and
- (9) Spouse and children who were employed by the city, and what department they worked for;
- (10) Real property owned and/or managed in whole or in part by member, spouse or dependent children within corporate boundaries.

(d) *Boards, commissions and other entities defined.* Members of boards, commissions and other entities receiving substantial funding by the city or which make recommendations on the expenditure of public funds required to file annual financial disclosure reports with the city clerk shall include those persons who are members of the following boards and commissions:

- (1) American Jazz Museum;
- (2) Board of trustees of city trusts - all members file;
- (3) Board of zoning adjustment;
- (4) Brownfields Commission;
- (5) Building and fire code board of appeals;
- (6) Employees retirement system board of trustees;
- (7) Central city economic development sales tax board;
- (8) City market oversight committee;
- (9) City plan commission;
- (10) Construction workforce board;
- (11) Convention hotel steering committee;
- (12) Convention management advisory authority;
- (13) Downtown economic stimulus authority;
- (14) Economic development corporation;
- (15) Emerging technology board;

- (16) Enhanced enterprise zone board;
- (4617) Environmental management commission;
- (4718) Fairness in construction board;
- (4819) Fairness in city contracts board;
- (4920) Firefighters pension system board of trustees;
- (2021) Global Commission, Kansas City;
- ~~(21)(22) Health Commission;~~
- (23) Healthcare system board of trustees;
- (2224) Historic preservation commission;
- (2325) Housing authority - only mayoral appointees;
- ~~(24)(26) Housing trust fund advisory board;~~
- (27) Houseless Advisory Commission;
- (28) Human resources board;
- (2529) Human rights commission;
- (2630) Impact fee advisory committees;
- (2731) Industrial development authority;
- (2832) Jackson County Board of Equalization - only mayoral appointees;
- (2933) Kansas City Area Transportation Authority - only mayoral appointees;
- ~~(30)(34) Kansas City lesbian, gay, bisexual, trans and queer commission (LGBTQC);~~
- (35) Kansas City, Municipal Assistance Corporation;
- (3436) Kansas City Museum Advisory Board;
- (3237) Kansas City Parking and Transportation Commission;
- (3338) KCTGA Comprehensive HIV Care Plan;

(3439) Land Bank of Kansas City, Missouri - only mayoral appointees;

(3540) Land Clearance for Redevelopment authority;

(3641) Land Trust of Jackson County - only mayoral appointee;

(3742) Liquor control board of review;

~~(38(43)Mayor's Commission on Reparations~~

(44) Municipal art commission;

(3945) Municipal judicial nominating commission;

(4046) Municipal officials and officers ethics commission;

(4147) Neighborhood tourist development fund committee;

(4248) Parks and recreation board of commissioners;

(4349) Planned industrial expansion authority;

(4450) Police retirement board - only mayoral appointees;

(4551) Port KC;

(4652) Property maintenance appeals board;

(4753) Public improvement advisory committee;

~~(48(54) Small business task force;~~

(55) Special review boards and business districts, including Main Street Special Review Board, the Independence Avenue Special Design Review Districts, the Union Hill Special Business District, and the Westport Special Business District;

(4956) Tax increment financing commission; and

(5056) Visit KC;

~~(51) —Kansas City lesbian, gay, bisexual, trans and queer commission (LGBTQC); and~~

~~(52) —Emerging technology.~~

The Ethics Commission shall annually review any new boards, commissions, or other entities formed by the City and make a recommendation to Council on which, if any, shall be included in the list of entities whose members are required to file annual financial disclosure reports.

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(e) *Time for filing.* The first disclosure report required of persons shall be filed with the city clerk prior to assuming a position on the designated entity. An annual revised disclosure report shall be filed by May 1 of each calendar year.

(f) *Failure to file.* Any member of a city board, commission or other entity who is appointed by the mayor or one or more members of the city council who fails to report by June 1 of each year shall be deemed to have resigned membership, and this resignation shall be deemed accepted as of June 1 of the respective year. Any entity listed in subsection (d) with a member not appointed by the mayor or one or more members of the city council failing to file the required disclosure report shall be subject to termination or suspension of any funding or other assistance provided by the city until all required disclosures are made.

(g) *City clerk's responsibility.* The city clerk will distribute to members of the entities named in subsection (d) forms on which they may make the required filing by February 1 of each year. The failure of a person required to file a disclosure report to receive a form shall not be an excuse for the failure to file the required report. The city clerk will have available copies of appropriate forms in the office of the city clerk for persons to obtain.

Sec. 2-2030. Acceptance of gifts.

(a) *Definitions.* Unless the context specifically indicates otherwise, the terms as used in this division are defined as follows:

- (1) Gift means anything of more than \$200.00 of value accepted by a person whether tangible or intangible, which would reasonably be considered of worth, use or service to the person to whom it is conferred. The term gift includes but is not limited to:
 - a. Money;
 - b. Products or merchandise;
 - c. Works of art or collectibles;
 - d. Stocks, bonds, notes or options;
 - e. An interest in real property;
 - f. Contracts or a promise of a future interest in a contract;
 - g. An interest or a promise of a future interest in a business;

- h. Meals, beverages or lodging;
- i. Transportation for noncity purposes;
- j. Services, including loaned employees;
- k. Loans, loan guarantees, cosigning;
- l. Forgiveness of a debt;
- m. Discounts or rebates not extended to the public generally;
- n. Preferential treatment;
- o. Tickets or admissions to events, concerts or performances, other than those provided by the city;
- p. Free or discounted use of office facilities;
- q. Loan of office equipment;
- r. Promise or offer of present or future employment;
- s. Use of autos, boats, apartments or other recreational or lodging facilities;
- t. Intangible rights such as cause of action;
- u. Licenses, patents, copyrights or any interest therein;
- v. Fees and honorariums for an appearance or speech, or for participation at any event, in his or her official capacity; excluding payment or reimbursement for reasonable and necessary expenses related to any such activity; and
- w. Any other items tangible or intangible having economic value.

(2) A gift for purposes of this section does not include:

- a. Anything of value accepted by a person whether tangible or intangible from any immediate family member, parent, emancipated child, grandparent, grandchild, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, great uncle, great aunt, first cousin, second cousin, or the spouse or domestic partner of any of these persons, including the transfer or co-mingling of assets or liabilities between spouses or domestic partners;

- b. Campaign contributions which are reported under RSMo Ch. 130, as amended;
 - c. Contributions to any cause or organization, including a bona fide charity, made in response to a direct solicitation from an officer or employee;
 - d. Wages or salary paid for work or services from outside employment; or
 - e. Compensation paid for goods or services to self-employed individuals; or
 - f. Travel, expenses, registrations, and similar items provided to a person by a city department or affiliated entity such as the Economic Development Corporation or any of its agencies, Port Authority, or as a result of their membership in a not-for-profit organization existing to assist local governments, such as the National League of Cities, National Black Caucus, Missouri Municipal League, and the Mid-America Regional Council, and other similar groups; or
 - g. Sick leave donations between employees who are not within direct lines of supervision with each other.
- (3) Gifts totaling in value more than \$200.00 accepted by the official or employee or a member of his or her immediate family at the same or substantially the same time shall be deemed a single gift to the officer or employee.
- (4) Substantial interest in legislative or administrative action means persons or organizations which:
- a. Are regulated by the city;
 - b. Provide goods and services to the city for compensation or profit;
 - c. Seek employment with the city or any agency thereof;
 - d. Will be directly and substantially affected, either financially or personally, by any contemplated legislative or administrative action; or
 - e. Have or seek contracts for goods or services with any department or agency of the city.

(b) *Acceptance of gifts.*

- (1) No official or employee or an immediate family member of an official or employee shall knowingly accept any gift having a value in excess of \$200.00 but less than, or equal to, \$1,000.00 or the maximum allowed by Missouri law, whichever is less, from any person or business entity having a substantial interest

in any legislative or administrative action of the city, unless such gift is disclosed as required in this article.

- (2) No official or employee or an immediate family member of an official or employee shall knowingly accept any gift having a value in excess of \$1,000.00 or the maximum allowed by Missouri law, whichever is less, from any person or business entity having a substantial interest in any legislative or administrative action of the city.
- (3) No official or employee or an immediate family member of an official or employee shall knowingly accept gifts during a calendar year having a cumulative value in excess of \$1,000.00 or the maximum allowed by Missouri law, whichever is less, from any person or business entity having a substantial interest in any legislative or administrative action of the city.

(c) *Disclosure.* Any official or employee who accepts a gift having a value of more than \$200.00 but less than, or equal to, \$1,000.00 or the maximum allowed by Missouri law, whichever is less shall disclose the acceptance of that gift within 15 days of the end of the quarter in which the gift was accepted on a disclosure form provided by the city clerk by filing the original disclosure form with the city clerk. These records shall be available to the internal auditor, ethics compliance officer and director of the department to which assigned, the mayor if assigned to the mayor's office, the mayor pro tem if a council member or the council office or the city manager if assigned to the city manager's office or not otherwise assigned. Failure to file this gift disclosure form when required to do so shall be reported by the internal auditor to the city clerk, ethics compliance officer and director of the department to which assigned, the mayor if assigned to the mayor's office, the mayor pro tem if a council member or assigned to the council office or to the city manager if assigned to the city manager's office or not otherwise assigned.

Sec. 2-2033. Gratuities and kickbacks prohibited.

No official or employee may solicit, demand, accept or agree to accept from another person, any payment, gratuity or an offer of employment or other personal or financial benefit in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor, or in connection with any other act of discretion as a public servant.

Sec. 2-2043. Nepotism.

(a) *Hiring, appointing, accepting volunteers.* Except as provided for in subsection (c)(3) below, no official or employee may appoint or hire, accept as a volunteer or participate in influencing the appointment or hiring of any disqualified person for any type of employment, including by contract, with the city.

(b) *Disqualified person.* The following persons are disqualified persons for purposes of subsection (a):

- (1) *Spouse or domestic partner.* Spouse or domestic partner of the official or employee;
- (2) *Relatives.* The following persons related to the official or employee or the official's or employee's spouse or domestic partner:
 - a. Children, parents;
 - b. Grandchildren, grandparents, brothers and sisters;
 - c. Great-grandchildren, great-grandparents, nephews and nieces, uncles and aunts; and
 - d. Great-great-grandchildren, great-great-grandparents, grand nephews and grand nieces, first cousins, great uncles and great aunts.
- (3) *Members of household.* Members of the official's or employee's household.

(c) *Supervision.*

- (1) *Prohibited.* No official or employee may supervise or be in a direct line of supervision over his or her spouse or domestic partner, child or step-child, sibling or step-sibling, parent, or member of his or her household.
- (2) *Waiver.* If an official or employee comes into a direct line of supervision over one of these persons, he or she will have six months to come into compliance or to obtain a waiver from the municipal officials and officers ethics commission.
- (3) *Direct chain of command in the fire department.* The following provisions of this subdivision (3) shall apply to all members of the fire department:

- a. ~~Except as provided for in subsection (a) above, no.~~ No member of the fire department shall be in the direct chain of command of an immediate family member, as defined in section 2-2002, unless there is one level within the chain of command and separating such member and the employee; and
- b. Nothing in this subdivision shall prohibit an immediate family member from being within the chain of command of another immediate family member if all authority and responsibility for personnel actions are delegated in writing to a higher level within the chain of command.

Sec. 2-2051. Use of confidential information.

It shall be unlawful for any official or employee or former official or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 2. That Chapter III, Article III, Ethics in Contracting, of the Code of Kansas City, Missouri, is hereby amended by repealing Sections 3-301 and 3-303, and enacting in lieu thereof new sections of like numbers and subject matters to read as follows:

Sec. 3-301. Employee conflict of interest.

Employee conduct in the solicitation, negotiation, approval, or disapproval for any part of a contract requirement or purchase request shall be governed by the Code of Ethics, Sec. 2-2001 through 2-2129.

Sec. 3-303. Gratuities and kickbacks prohibited; recoverable.

(a) No person shall offer, give or agree to give any city employee any payment, gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.

(b) No payment, gratuity or offer of employment shall be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Upon a showing that a subcontractor, or someone acting on behalf of a subcontractor, made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and shall be recoverable under this section from the recipient or party making such kickback.

Approved as to form:

Katherine Chandler
Senior Associate City Attorney