

1 (Published in the Topeka Metro News July 2, 2008

2
3 **ORDINANCE NO. 19112**

4
5 AN ORDINANCE introduced by Councilmember Jeff Preisner, repealing City of
6 Topeka Code Chapter 2, Article IX, concerning the Code of Ethics,
7 in its entirety.
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9 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

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11 Section 1. That section 2-486, Purpose, of the Code of the City of Topeka,
12 Kansas, is hereby repealed:

13 **Purpose.**

14 ~~(a) — It is the policy of the city to uphold, promote, and demand the highest~~
15 ~~standards of ethics from all of its employees and elected or appointed officials. Elected~~
16 ~~or appointed officials and employees shall maintain the utmost standards of personal~~
17 ~~integrity, truthfulness, honesty, and fairness in carrying out their public duties, avoid any~~
18 ~~improprieties in their roles as public servants including the appearance of impropriety,~~
19 ~~and never use their city position or powers for improper personal gain.~~

20 ~~(b) — It is the intention of the city council that this Code of Ethics is liberally~~
21 ~~construed to accomplish its purpose of protecting the public against decisions that are~~
22 ~~affected by undue influence, conflicts of interest, or any other violation of this Code of~~
23 ~~Ethics. In construing this chapter, employees should be guided by common sense and~~
24 ~~practicality. This Code of Ethics is supplemental to state law, K.S.A. 75-4301 et seq., as~~
25 ~~may be amended.~~

26 Section 2. That section 2-487, Definitions, of the Code of the City of Topeka,
27 Kansas, is hereby repealed:

28 **Definitions.**

29 ~~The following words and phrases as used in this article, unless the context~~
30 ~~clearly indicates otherwise, shall have the following meanings:~~

31 ~~"Business" means any corporation, partnership, sole proprietorship, firm,~~
32 ~~enterprise, franchise, association, organization, self-employed individual, consultant,~~
33 ~~holding company, joint stock company, receivership, trust, or any legal entity organized~~
34 ~~for profit.~~

35 ~~"City officer" or "employee" means every individual elected, appointed, hired, or~~
36 ~~otherwise selected to an office or position with the city, or any of its boards,~~
37 ~~commissions or authorities, whether such individual is paid or unpaid.~~

38 ~~"Compensation" means payment in any form for real or personal property or~~
39 ~~services of any kind.~~

40 ~~"Gift" means a voluntary transfer of real or personal property of any kind without~~
41 ~~consideration of equal or greater value or the voluntary rendition of services of any kind~~
42 ~~without consideration of equal or greater value specifically including but not limited to~~
43 ~~any favor, reward, discount or gratuity.~~

44 ~~"Immediate family" shall have the meaning set forth in the city's personnel code,~~
45 ~~as may be amended.~~

46 ~~"Person" means any individual or corporation, business, or other entity,~~
47 ~~however, organized, or designated.~~

48 ~~"Substantial interest" shall mean the ownership in a business, receipt of~~
49 ~~compensation or other goods or services without compensation, receipt of commission,~~
50 ~~or holding a position of an officer, director or other similar senior position in a business~~
51 ~~as defined under K.S.A. § 75-4301a and any amendments thereto.~~

52 Section 3. That section 2-488, Prohibited conduct, of the Code of the City of
53 Topeka, Kansas, is hereby repealed:

54 **~~Prohibited conduct.~~**

55 ~~The following shall constitute violations of this Code of Ethics:~~

56 ~~(1) *General prohibition against conflicts of interest.* In order to avoid becoming~~
57 ~~involved or implicated in a conflict of interest or impropriety, or an appearance of conflict~~
58 ~~of interest or impropriety, no current city officer or employee should be involved in any~~
59 ~~activity that might be seen as conflicting with the conduct of official city business or as~~
60 ~~adverse to the interests of the city. Even the appearance of the conduct prohibited in~~
61 ~~this Code of Ethics alone may be sufficient to constitute a violation of this Code of~~
62 ~~Ethics.~~

63 ~~(2) *Respect for city officers or employees.* No city officer or employee in a~~
64 ~~public meeting, at a public forum or in the public media shall treat another city officer or~~
65 ~~employee with disrespect or a lack of dignity or courtesy. Further, no city officer or~~
66 ~~employee will engage in false or defamatory speech or remarks concerning another city~~
67 ~~officer or employee, or treat another city officer or employee in an unreasonable,~~
68 ~~abusive or unlawful discriminatory manner.~~

69 ~~(3) *Beneficial interests in contracts prohibited.* No city officer or employee shall~~
70 ~~participate in his or her capacity as a city officer or employee in the making of a contract~~
71 ~~in which he or she has a substantial interest or performs in regard to such a contract~~
72 ~~some function requiring the exercise of discretion on behalf of the city.~~

73 ~~(4) *Beneficial influence in contract selection prohibited.* No city officer or~~
74 ~~employee shall influence the city's selection of, or its conduct of business with, a~~

75 ~~corporation, person, or firm having or proposing to do business with the city if the city~~
76 ~~officer or employee has a substantial interest in or with the corporation, person, or firm.~~

77 ~~(5) Representation of private person at city proceeding prohibited. No city~~
78 ~~officer or employee shall appear on behalf of a private person, other than himself or~~
79 ~~herself or an immediate family member or except as a witness under subpoena, before~~
80 ~~any regulatory governmental agency or court of law in an action or proceeding to which~~
81 ~~the city or a city officer in an official capacity is a party, or accept a retainer or~~
82 ~~compensation that is contingent upon a specific action by the city.~~

83 ~~(6) Employment of relatives. No immediate family member of a city officer or~~
84 ~~employee shall be hired, promoted or transferred to or within a department when, as a~~
85 ~~result, an employee would be directly supervising a member of his or her immediate~~
86 ~~family or if the employee would supervise another employee who supervises the family~~
87 ~~member, and/or working with a member of his or her immediate family in the same unit~~
88 ~~having the same immediate supervisor. Further, no immediate family of a city~~
89 ~~councilmember may be hired by the city during that councilmember's term of office. This~~
90 ~~provision shall not effect the employment of a councilmember's immediate family who~~
91 ~~was hired by the city prior to the councilmember taking office.~~

92 ~~(7) Beneficial interest in legislation prohibited. No city officer or employee, in~~
93 ~~appearing before the city council or when giving an official opinion before the city~~
94 ~~council, shall have a substantial interest in any legislation coming before the city council~~
95 ~~and participate in discussion with or give an official opinion to the city council. Provided,~~
96 ~~however, this section shall not prohibit elected officials, city manager or the head of any~~
97 ~~department from presenting, discussing or voting upon legislation approving the city's~~

98 ~~annual budget which contains the salaries of the elected officials or said employees.~~

99 ~~(8) *Disclosure of confidential information prohibited.* No city officer or employee~~
100 ~~shall disclose or use any confidential, privileged, or proprietary information gained by~~
101 ~~reason of his or her official position for a purpose which is for other than a city purpose;~~
102 ~~provided, that nothing shall prohibit the disclosure or use of information which is a~~
103 ~~matter of public knowledge, or which is available to the public on request.~~

104 ~~(9) *Impermissible disclosure of information after leaving city service.* No former~~
105 ~~officer or employee shall disclose or use any privileged, confidential, or proprietary~~
106 ~~information gained because of his or her city employment.~~

107 ~~(10) *Improper use of position prohibited.* No city officer or employee shall~~
108 ~~knowingly use his or her office or position to secure personal benefit, gain or profit, or~~
109 ~~use his or her position to secure special privileges or exceptions for himself, herself, or~~
110 ~~for the benefit, gain, or profits of any other persons. Provided, however, nothing~~
111 ~~contained in this section shall prohibit a member of the police department from working~~
112 ~~for a private security firm in accordance with the rules and regulations promulgated by~~
113 ~~the chief of police and approved by the city council.~~

114 ~~(11) *Improper use of city personnel prohibited.* No city officer or employee shall~~
115 ~~employ or use any person under the officer's or employee's official control or direction~~
116 ~~for the personal benefit, gain, or profit of the officer or employee, or another.~~

117 ~~(12) *Improper use of city property prohibited.* No city officer or employee shall~~
118 ~~use city-owned vehicles, equipment, materials, money, or property for personal or~~
119 ~~private convenience or profit. Use is restricted to such services as are available to the~~
120 ~~public generally, for the authorized conduct of official business, and for such purposes~~

and under such conditions as are approved by the city manager.

~~(13) Acceptance of compensation or gifts prohibited.~~ No city officer or employee may, directly or indirectly, give or receive, or agree to give or receive, from any person, business, for profit or not-for-profit groups which receive funding from the city or any person or business which directly or indirectly contracts to provide goods or services to the city, any compensation or gift for a matter connected with or related to the officer's or employee's services with the city, except this prohibition shall not apply to:

a. Attendance of a city officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of city business or where official attendance by the officer or employee as a city representative is appropriate;

b. An award publicly presented in recognition of public service; or

c. Any single gift valued at fifty dollars (\$50.00) or less, or an aggregate of fifty dollars (\$50.00) or less, in a calendar year, or such other amount which cannot reasonably be presumed to influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction. Provided, however, no elected official, city manager, head of any department, or any other employee who exercises discretion or influence in awarding a contract for services or the purchase of goods shall accept a gift of any value from any person or business which may contract with or vend to the city.

d. A discount for the purchase of goods or services provided the vendor offers, advertises or otherwise makes the discount available to all city

employees.

~~e. Campaign contributions made in accordance with Kansas law.~~

~~f. An honoraria received by a municipal court judge for performing a wedding ceremony conducted outside of working hours.~~

~~(14) Employment restriction during and/or after leaving city service.~~

~~a. A city officer or employee shall not be employed at the same time as he or she is employed by the city or within one (1) year of terminating employment with the city by:~~

~~1. Any business entity regulated by or subject to the authority of that official or employee, or regulated by or subject to the authority of the city agency with which such person is affiliated; or~~

~~2. Any business entity, which is negotiating or has entered a contract to do business with a city agency with which the city officer or employee is affiliated.~~

~~This prohibition does not apply to a city officer or employee who is appointed pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to it.~~

~~b. A former city officer or employee shall not assist or represent a party other than the city in a case, contract, claim, charge, or controversy or other specific matter involving the City if that matter is one in which the city officer or employee personally and significantly participated as a city officer or employee.~~

~~c. A city officer or employee shall not assist or represent a party for contingent compensation in any matter before or involving any city agency other~~

167 than in a judicial or quasi-judicial proceeding.

168 ~~d. A former city officer or employee, unless the former employee's last~~
169 ~~annual salary did not exceed twenty-five thousand dollars (\$25,000.00) shall not~~
170 ~~sell or attempt to sell supplies, services, or construction to city for one year~~
171 ~~following the date employment ceased. The term "sell" as used herein means~~
172 ~~signing a bid, proposal, or contract; negotiating a contract; contacting any city~~
173 ~~officer or employee for the purpose of obtaining, negotiating, or discussing~~
174 ~~changes in specifications, price, cost allowances, or other terms of a contract;~~
175 ~~settling disputes concerning performance of a contract; or any other liaison~~
176 ~~activity with a view toward the ultimate consummation of a sale although the~~
177 ~~actual contract therefore is subsequently negotiated by another person; provided,~~
178 ~~however, that this section is not intended to preclude a former city officer or~~
179 ~~employee from accepting employment with private industry solely because the~~
180 ~~former city officer or employee's new employer is a contractor with the city, nor~~
181 ~~shall a former city officer or employee be precluded from serving as a consultant~~
182 ~~to the city subject to the requirement set forth in subsection e. below.~~

183 ~~e. Whenever a city officer or employee wishes to contract with a former~~
184 ~~city officer or employee for expert or consultant services within one (1) year of~~
185 ~~the latter's leaving city service, the contract shall only be entered into with~~
186 ~~approval of the city manager and city attorney and notice of such action is given~~
187 ~~to the city council.~~

188 ~~f. Exceptions. The prohibitions of subsection (14)a. shall not apply to a~~
189 ~~former officer or employee acting on behalf of a governmental agency, unless~~

190 ~~such assistance or representation is adverse to the interest of the city.~~

191 ~~g. 1. When any department deems it necessary and advisable for the~~
192 ~~city to enter into a contract with a current employee, the department director shall~~
193 ~~submit to the city manager the substance of the contract, including the proposed~~
194 ~~parties, subject matter, and proposed price or amount. The director shall also~~
195 ~~state the reasons for the necessity and advisability of entering into the contract~~
196 ~~with the particular employee.~~

197 ~~2. No contract between the city and a city officer or employee shall be entered~~
198 ~~into unless and until the contract is approved by the city manager and city attorney and~~
199 ~~notice of such action is given to the council.~~

200 Section 4. That section 2-489, Statement of substantial interest, of the Code of
201 the City of Topeka, Kansas, is hereby repealed:

202 **~~Statement of substantial interest.~~**

203 ~~(a) *Elected officials.* All elected officials shall on or before April 30 of every year~~
204 ~~complete and submit to the city clerk a statement of substantial interest on forms~~
205 ~~provided by the Kansas Governmental Ethics Commission.~~

206 ~~(b) *Appointed officials.* All officials appointed to a city board, commission or~~
207 ~~authority shall on or before April 30 of every year complete and submit to the city clerk a~~
208 ~~statement of substantial interest on a form provided by the city clerk. The intentional~~
209 ~~failure to file the statement or the intentional filing of a false statement may be grounds~~
210 ~~for removal of the appointed official from the board, commission or authority.~~

211 ~~(c) *Prohibition.* No elected or appointed official shall participate in any action,~~
212 ~~decision or contract with a person, business or entity in which the elected or appointed~~

official has a substantial interest. Violation of this subsection by an appointed official may be grounds for removal for cause of the appointed official.

Section 5. That section 2-490, Retaliation for reporting violation, of the Code of the City of Topeka, Kansas, is hereby repealed:

~~Retaliation for reporting violation.~~

~~(a) No elected official, department head or supervisor of any city employee shall:~~

~~(1) Prohibit any employee of the department from reporting to any person, agency or organization any violation of state or federal laws or rules and regulations or city ordinances or rules and regulations; or~~

~~(2) Require any such employee to give notice to an elected official, department head or supervisor prior to making such report.~~

~~(b) This section shall not be construed as:~~

~~(1) Prohibiting an elected official, department head or supervisor from requiring that an employee inform the elected official, department head or supervisor about requests from the city council for information or the substance of such information to be communicated to the city council by such employee on behalf of the department;~~

~~(2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a member of the city council to appear before the city council;~~

~~(3) Authorizing an employee to represent the employee's personal~~

236 ~~opinions as the opinions of the city department; or~~

237 ~~(4) Prohibiting disciplinary action of an employee who discloses~~
238 ~~information which:~~

239 ~~a. The employee knows to be false or which the employee~~
240 ~~discloses with reckless disregard for its truth or falsity;~~

241 ~~b. The employee knows to be exempt from required disclosure~~
242 ~~under the open records act; or~~

243 ~~c. Is confidential under any other provision of law.~~

244 Section 6. That section 2-491, Complaint process, of the Code of the City of
245 Topeka, Kansas, is hereby repealed:

246 **Complaint process.**

247 ~~(a) A complaint that this Code of Ethics has been violated may be filed with any~~
248 ~~one of the following officers, or his or her designee(s):~~

249 ~~(1) City manager;~~

250 ~~(2) Deputy mayor;~~

251 ~~(3) City attorney; or~~

252 ~~(4) Human resources director.~~

253 ~~(b) No person shall knowingly file a false complaint or report of a violation of this~~
254 ~~Code of Ethics.~~

255 ~~(c) Any individual receiving a complaint that this Code of Ethics has been~~
256 ~~violated by an employee has an obligation to promptly forward the complaint, in writing,~~
257 ~~to the city manager. The city manager shall promptly designate an individual to conduct~~
258 ~~an investigation of the complaint. If the complaint alleges that the city manager or an~~

~~elected or appointed official violated this Code of Ethics, then the individual receiving the complaint has an obligation to promptly forward the complaint, in writing, to the city council, who shall as a body conduct an investigation.~~

~~(d) — (1) For allegations of ethical violations by an employee, the individual designated to conduct the investigation shall complete the investigation and prepare written findings and conclusions and provide them to the city manager within sixty (60) days of the date the complaint was received by the city manager.~~

~~(2) For allegations of ethical violations by the city manager or elected or appointed officials, the city council shall within sixty (60) days of receipt of the complaint, investigate and prepare written findings and conclusions which shall be provided to all councilmembers except those against whom an allegation has been made.~~

~~(e) Investigation and disposition of alleged ethical violations of this Code of Ethics by city employees shall be in accordance with the city's personnel code and collective bargaining agreements as applicable.~~

~~(f) Investigation and disposition of alleged ethical violations of this Code of Ethics by the city manager and elected or appointed officials shall be conducted by the city council.~~

~~(1) Upon conclusion of the investigation by the city council it shall within ten (10) days prepare a written recommendation for disposition of the complaint. A copy of the written recommendation shall be forwarded by certified mail and a copy by 1st class mail to the party complained against. The recommended disposition shall not be imposed by the city council until the time for a formal~~

hearing pursuant to subsection (f)(2) has lapsed and no such hearing is required.

~~(2) The party complained against may within ten (10) business days following the date of service of the written recommendation, request a formal hearing before the city council. The party requesting the hearing may present his or her case to the city council and may present such evidence and witnesses as necessary. Upon conclusion of the hearing, the city council shall by majority vote decide the disposition of the matter.~~

Section 7. That section 2-492, Penalties for noncompliance, of the Code of the City of Topeka, Kansas, is hereby repealed:

~~Penalties for noncompliance.~~

~~(a) Any elected or appointed official or employee found, by a preponderance of the evidence, to have violated any provision of this Code of Ethics may be subject to any combination of the following penalties:~~

~~(1) Private admonition or public censure for elected or appointed officials.~~

~~(2) Removal of the person from the board, commission or authority for appointed officials.~~

~~(3) Discipline, up to and including termination for employees.~~

Section 8. That section 2-493, Severability, of the Code of the City of Topeka, Kansas, is hereby repealed:

~~Severability.~~

~~If any section, subsection, paragraph, sentence, clause, or phrase of this article is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.~~

Section 9. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council June 24, 2008.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk