

Ordinance Regarding Conflicts Approved at First Reading  
followed by  
City Attorney Recommended Amendments at Second Reading

ORDINANCE NO. 19-09-03  
AS APPROVED AT  
FIRST READING  
ON SEPTEMBER 30, 2019

First Reading: September 30, 2019  
Second Reading: \_\_\_\_\_  
Final Adoption: \_\_\_\_\_  
Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**ORDINANCE NO. 19-09-03**

**AN ORDINANCE AMENDING THE ABERDEEN CITY CODE  
REGARDING CONFLICTS OF INTEREST  
AND PROHIBITED ACTIVITIES**

**WHEREAS**, the City Council of the City of Aberdeen declares that the proper operation of a republic requires that elected officials be honest, impartial, and responsible to the people and act with integrity, impartiality, and dedication to the best interests of the city and the public trust which they hold, that governmental decisions and policy be made within the proper channels of the governmental structure, that public office not be used for, or give the appearance of being used for, personal gain, and that the public have confidence in the integrity of its government; and

**WHEREAS**, the Aberdeen City Charter, Sec. 7.01, provides that the use of public office for private gain is prohibited and requires the City Council to adopt regulations that prohibit acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public, the acceptance of gifts and other things of value, acting in a private capacity on matters dealt with as a public official, the use of confidential information, and appearances by city officials before other city agencies on behalf of private interests; and

**WHEREAS**, the City Council has determined that the following addition to the Aberdeen City Code will instill greater confidence by Aberdeen residents in the decisions and actions of their elected officials and improve the fair and orderly administration of city government.

**BE IT ORDAINED BY THE CITY OF ABERDEEN THAT THE FOLLOWING  
CHANGES AND ADDITIONS SHALL BE MADE TO THE ABERDEEN CITY CODE:**

1. Sec. 2-2 of Chapter 2 – *Administration* shall be repealed and replaced as follows:

**~~Sec. 2-2. – Conflicts of interest.~~**

~~(a) — No elected city official may participate in discussing or vote on any issue in which the official has a conflict of interest, nor may any appointed official take or recommend action the result of which is a conflict of interest. Each official shall decide if any potential conflict of~~

interest requires such official to be disqualified from participating in discussion, voting, action, or recommendation. However, no such official may participate in discussing, voting, acting, or recommending action on an issue if the following circumstances apply:

~~(1) The official has a direct pecuniary interest in the matter before the governing body;  
or~~

~~(2) At least two thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.~~

~~(b) If an elected official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.~~

**Sec. 2-2. – Conflicts of interest of mayor or council member.**

(a) The mayor and council members are prohibited under certain circumstances from having interest in or deriving direct benefit from contract. Neither the mayor nor any council members may have an interest in a contract nor receive a direct benefit from a contract in an amount greater than five thousand dollars or multiple contracts in an amount greater than five thousand dollars with the same party within a twelve-month period to which the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person except as provided in subsection (c) is a party except as provided in subsection (e).

(b) Circumstances under which the mayor and council members derive direct benefit from contract. A person described in subsection (a) derives a direct benefit from a contract if the person, the person's spouse, or any other person with whom the person lives and commingles assets:

(1) Is a party to or intended beneficiary of any contract held by the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person;

(2) Has more than a five percent ownership interest in an entity that is a party to any contract held by the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person;

(3) Acquires property under the contract; or

- (4) Will receive compensation, commission, promotion, or other monetary benefit directly attributable to any contract with the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person.

(c) *Circumstances under which the mayor and council members have interest in contract.* A person described in subsection (a) has an interest in a contract if the person, the person's spouse, or any other person with whom the person lives and commingles assets:

- (1) Is employed by a party to any contract with the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person; or
- (2) Receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

(d) *The mayor and council members may derive direct benefit from or have interest in contract under certain circumstances.* A person described in subsection (a) does not derive a direct benefit from or have an interest in a contract:

- (1) Based solely on the value associated with the person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the mayor or council member lives and commingles assets;
- (2) By participating in a vote or a decision in which the person's only interest arises from an act of general application;
- (3) Based on the person receiving income as an employee or independent contractor of a party with whom the city or any person who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person has a contract, unless the person receives compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;

- (4) If the contract is for the sale of goods, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
- (5) If the contract is subject to a public bidding process;
- (6) If the contract is with the official depository as set forth in SDCL § 6-1-3;
- (7) Based solely on the person receiving nominal income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred;
- (8) If the contract or multiple contracts with the same party within a twelve-month period with whom the city or any party who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person contracts in an amount less than five thousand dollars.

(e) *Circumstances under which city or any party who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person may authorize the mayor or any council member to derive direct benefit from contract. The city council may authorize a person described in subsection (a) to derive a direct benefit from a contract if:*

- (1) The person has provided full written disclosure to the city council agency of all parties to the contract, the person's role in the contract, the purpose or objective of the contract, the consideration or benefit conferred or agreed to be conferred upon each party, and the duration of the contract;
- (2) The city council finds that the terms of the contract are fair, reasonable, and not contrary to the public interest; and
- (3) Any request for authorization or city council action are public records. The official minutes of the city council shall include any governing board action on each request for authorization and shall be filed with the city finance department and city attorney.

A person described in subsection (a) who has an interest in a contract pursuant to subsection (c) shall disclose the existence of a contract in which the person has an interest and the person's role in the contract but no city council authorization is required for the person to have an interest in the contract. Disclosure shall also be made annually if the contract extends into consecutive fiscal years. The interest disclosure shall be included in the official minutes of the city council.

Any person receiving a direct benefit from a contract and requesting an authorization pursuant to subsection (e) shall make the request prior to entering into any contract that requires disclosure or within fourteen days after entering into the contract that requires disclosure. Any authorization by the city council requires no further disclosure or authorization unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure shall be made annually but no new authorization is required. If the entity rejects any request for authorization, the contract is voidable and subject to disgorgement pursuant to subsection (f) or the person may resign from the city council.

Neither the mayor nor any city council member may participate in or vote upon a decision of the city council relating to a matter in which the member derives a direct benefit.

(f) *Written conflict of interest policy.* The city council shall develop a written conflict of interest policy, including any disclosure and authorization form that includes the list of any disclosable interest in contracts or direct benefits covered by this chapter.

(g) *Violation.* A violation of this section shall be determined by the city council. Any such determination constitutes a breach of the conflicts of interest policy adopted by the city council and a breach of the express prohibitions of the Charter. Any benefit to a person derived from the person's knowing violation of subsections (a) to (e), inclusive, is subject to disgorgement.

2. Sec. 2-5 of Chapter 2 – *Administration* is hereby created as follows:

**Sec. 2-5. – Private gain prohibited.**

(a) Neither the mayor nor any council member may use his or her public office for private gain.

(b) Use of an official's public office for private gain includes but is not limited to the following:

- (1) Acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public;
- (2) The acceptance of gifts and other things, other than nominal items not to exceed a cumulative value of \$25.00 in a calendar year;
- (3) Acting in a private capacity on matters dealt with as a public official;
- (4) The use of confidential information or of information acquired in the performance of official duties that was not made available to the public in accordance with public procurement, open records, or open meeting laws of the state; or

(5) Appearances by such official before other city agencies on behalf of private interests.

(c) Violation. A violation of this section shall be determined by the city council. Any such determination constitutes a breach of the conflicts of interest policy adopted by the city council and a breach of the express prohibitions of the Charter.

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Second Reading: \_\_\_\_\_

Final Adoption: \_\_\_\_\_

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Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Travis Schaunaman, Mayor

ATTEST:

\_\_\_\_\_  
Karl Alberts, Finance Officer

CITY ATTORNEY  
RECOMMENDED  
AMENDMENTS TO  
ORDINANCE NO. 19-09-03  
TO BE PROPOSED AT  
SECOND READING

## CITY ATTORNEY RECOMMENDED AMENDMENTS TO SEC. 2-2

1. Insert a new (a) as follows: “(a) *Definitions.* The following definition shall apply to this section unless the context requires otherwise: The term “grant” means city funds allocated to a person for the calendar year of the commencement of a contract subject to this section, without consideration and as a gift or bestowal, in an amount exceeding \$100,000 or which amount represents more than 50% of the total revenues of such person, and for which no contractual or other legal rights or obligations to complete the transfer are created or established.” and conform the subsections and references thereafter.
2. Replace the phrase “an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person” wherever it appears in Sec. 2-2 with the phrase “a grant”.
3. Delete the sentence “If the entity rejects any request for authorization, the contract is voidable and subject to disgorgement pursuant to subsection (f) or the person may resign from the city council.” wherever it appears in Sec. 2-2.
4. Delete the sentence “Any benefit to a person derived from the person's knowing violation of subsections (a) to (e), inclusive, is subject to disgorgement.” wherever it appears in Sec. 2-2.
5. Replace the phrase “person described in subsection (a)” with the phrase “mayor or council member” wherever it appears in Sec. 2-2.
6. Replace the phrase “the person, the person’s spouse, or any other person with whom the person lives” with the phrase “the official, the official’s spouse, or any other person with whom the official lives” wherever it appears in Sec. 2-2.
7. Replace dollar amounts and percentages that are spelled out with the corresponding symbol and number wherever they appear in Sec. 2-2.
8. Reformat (e) (which will be renumbered as (f)) and assign a numbered sub-subsection to each paragraph but create a new subsection (g) with the last paragraph: “Neither the mayor nor any city council member may participate in or vote upon a decision of the city council relating to a matter in which the member derives a direct benefit.”
9. Create a new (g) that includes the last paragraph from (f) and adds the following language:
  - “(g) *No participation in discussion or vote if a conflict of interest exists.*
  - (1) Neither the mayor nor any city council member may participate in or vote upon a decision of the city council relating to a matter in which the

member derives a direct benefit or otherwise has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion, voting, action, or recommendation. However, no such official may participate in discussing, voting, acting, or recommending action on an issue if the following circumstances apply:

- a. The official derives a direct benefit or has a direct pecuniary interest in the matter before the city council; or
- b. At least two-thirds of the city council votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

- (2) If an official with a direct pecuniary interest or otherwise has a conflict of interest participates in discussion or votes on a matter before the city council, the legal sole remedy regarding the matter is to invalidate that official's vote."

and conform the subsections and references thereafter.

10. In renumbered (b), replace "council members" with "council member".

11. Make the following changes in renumbered (e):

- In (1), replace "person's" with "official's" and "mayor or council member" with "official".
- In (2), replace "person's" with "official's".
- In (3), replace "person receiving" with "official receiving", "person receives" with "official receives", and "person is" with "official is".
- In (7), replace "person" with "official".
- In (8), add "is" before the phrase "in an amount less than \$5,000."

12. Make the following changes in renumbered (f):

- In the header, replace "*or any party who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person*" with "*council*".
- In (1)a., replace "person" with "official", "agency" with "city council", and "person's" with "official's".
- In (1)c., delete "of the city council", replace "governing board" with "city council", and replace "city finance department" with "finance officer".
- In (2), replace "person has" with "official has", "person's" with "official's", and "person to" with "official to".
- In (3), replace "Any person" with "A mayor or council member".

REDLINED DRAFT OF  
RECOMMENDED CHANGES  
TO ORDINANCE  
TO BE PROPOSED AT  
SECOND READING

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**WHEREAS**, the Aberdeen City Charter, Sec. 7.01, provides that the use of public office for private gain is prohibited and requires the City Council to adopt regulations that prohibit acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public, the acceptance of gifts and other things of value, acting in a private capacity on matters dealt with as a public official, the use of confidential information, and appearances by city officials before other city agencies on behalf of private interests; and

**WHEREAS**, the City Council has determined that the following addition to the Aberdeen City Code will instill greater confidence by Aberdeen residents in the decisions and actions of their elected officials and improve the fair and orderly administration of city government.

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**~~Sec. 2-2. – Conflicts of interest.~~**

~~(a) — No elected city official may participate in discussing or vote on any issue in which the official has a conflict of interest, nor may any appointed official take or recommend action the result of which is a conflict of interest. Each official shall decide if any potential conflict of~~

interest requires such official to be disqualified from participating in discussion, voting, action, or recommendation. However, no such official may participate in discussing, voting, acting, or recommending action on an issue if the following circumstances apply:

(1) ~~The official has a direct pecuniary interest in the matter before the governing body;~~  
~~or~~

(2) ~~At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.~~

(b) ~~If an elected official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.~~

**Sec. 2-2. – Conflicts of interest of mayor or council member.**

(a) Definitions. The following definition shall apply to this section unless the context requires otherwise:

The term “grant” means city funds allocated to a person for the calendar year of the commencement of a contract subject to this section, without consideration and as a gift or bestowal, in an amount exceeding \$100,000 or which amount represents more than 50% of the total revenues of such person, and for which no contractual or other legal rights or obligations to complete the transfer are created or established.

(ba) The mayor and council members are prohibited under certain circumstances from having interest in or deriving direct benefit from contract. Neither the mayor nor any council members may have an interest in a contract nor receive a direct benefit from a contract in an amount greater than ~~five thousand dollars~~\$5,000 or multiple contracts in an amount greater than ~~five thousand dollars~~\$5,000 with the same party within a ~~twelve-month~~12-month period to which the city or any person who received a grant, ~~an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person~~ except as provided in subsection (de), is a party except as provided in subsection (fe).

(cb) Circumstances under which the mayor and council members derive direct benefit from contract. A ~~mayor or council member~~person described in subsection (a) derives a direct benefit from a contract if the ~~official~~person, the ~~official's~~person's spouse, or any other person with whom the ~~official~~person lives and commingles assets:

(1) Is a party to or intended beneficiary of any contract held by the city or any person who received a ~~grant~~an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person;

- (2) Has more than a ~~five percent~~5% ownership interest in an entity that is a party to any contract held by the city or any person who received a ~~grantan allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person;~~
- (3) Acquires property under the contract; or
- (4) Will receive compensation, commission, promotion, or other monetary benefit directly attributable to any contract with the city or any person who received a ~~grantan allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person.~~

(de) *Circumstances under which the mayor and council members have interest in contract.* A ~~mayor or council member~~person described in subsection (a) has an interest in a contract if the ~~official~~person, the ~~official's~~person's spouse, or any other person with whom the ~~official~~person lives and commingles assets:

- (1) Is employed by a party to any contract with the city or any person who received a ~~grantan allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person;~~ or
- (2) Receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

(ed) *The mayor and council members may derive direct benefit from or have interest in contract under certain circumstances.* A ~~mayor or council member~~person described in subsection (a) does not derive a direct benefit from or have an interest in a contract:

- (1) Based solely on the value associated with the ~~official's~~person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the ~~official~~mayor or council member lives and commingles assets;
- (2) By participating in a vote or a decision in which the ~~official's~~person's only interest arises from an act of general application;
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~~the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person~~ has a contract, unless the ~~official person~~ receives compensation or a promotion directly attributable to the contract, or unless the ~~official person~~ is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;

- (4) ~~If the contract is for the sale of goods, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;~~
- (5) ~~If the contract is subject to a public bidding process;~~
- (6) ~~If the contract is with the official depository as set forth in SDCL § 6-1-3;~~
- (7) ~~Based solely on the official person receiving nominal income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred;~~
- (8) ~~If the contract or multiple contracts with the same party within a twelve-month 12-month period with whom the city or any party who received a grantan allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person contracts is in an amount less than five thousand dollars \$5,000.~~

~~(fe) Circumstances under which city council or any party who received an allocation of municipal funds, for the calendar year of the commencement of the contract, in an amount exceeding \$100,000 or which allocation represents more than 50% of the total revenues of such person may authorize the mayor or any council member to derive direct benefit from contract.~~

- (1) ~~The city council may authorize a mayor or council member person described in subsection (a) to derive a direct benefit from a contract if:~~
  - a. ~~(1)~~ ~~The official person~~ has provided full written disclosure to the city council ~~agency~~ of all parties to the contract, the ~~official's person's~~ role in the contract, the purpose or objective of the contract, the consideration or benefit conferred or agreed to be conferred upon each party, and the duration of the contract;
  - b. ~~(2)~~ ~~The city council finds that the terms of the contract are fair, reasonable, and not contrary to the public interest; and~~
  - c. ~~(3)~~ ~~Any request for authorization or city council action are public records. The official minutes of the city council shall include any city council governing board action on each request for~~

authorization and shall be filed with the ~~finance officer~~city finance department and city attorney.

~~(2) A mayor or council member~~person described in subsection (a) who has an interest in a contract pursuant to subsection ~~(de)~~ shall disclose the existence of a contract in which the ~~official~~person has an interest and the ~~official's~~person's role in the contract but no city council authorization is required for the ~~official~~person to have an interest in the contract. Disclosure shall also be made annually if the contract extends into consecutive fiscal years. The interest disclosure shall be included in the official minutes of the city council.

~~(3) Any person~~ mayor or council member receiving a direct benefit from a contract and requesting an authorization pursuant to subsection ~~(fe)~~ shall make the request prior to entering into any contract that requires disclosure or within fourteen days after entering into the contract that requires disclosure. Any authorization by the city council requires no further disclosure or authorization unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure shall be made annually but no new authorization is required. ~~If the entity rejects any request for authorization, the contract is voidable and subject to disgorgement pursuant to subsection (f) or the person may resign from the city council.~~

~~(g) No participation in discussion or vote if a conflict of interest exists.~~

~~(1) Neither the mayor nor any city council member may participate in or vote upon a decision of the city council relating to a matter in which the member derives a direct benefit or otherwise has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion, voting, action, or recommendation. However, no such official may participate in discussing, voting, acting, or recommending action on an issue if the following circumstances apply:~~

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(hf) Written conflict of interest policy. The city council shall develop a written conflict of interest policy, including any disclosure and authorization form that includes the list of any disclosable interest in contracts or direct benefits covered by this chapter.

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Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Travis Schaunaman, Mayor

ATTEST:

\_\_\_\_\_  
Karl Alberts, Finance Officer

CLEAN VERSION OF  
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RECOMMENDED CHANGES  
ARE APPROVED AT  
SECOND READING

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~~(2) At least two thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.~~

~~(b) If an elected official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.~~

**Sec. 2-2. – Conflicts of interest of mayor or council member.**

(a) Definitions. The following definition shall apply to this section unless the context requires otherwise:

The term “grant” means city funds allocated to a person for the calendar year of the commencement of a contract subject to this section, without consideration and as a gift or bestowal, in an amount exceeding \$100,000 or which amount represents more than 50% of the total revenues of such person, and for which no contractual or other legal rights or obligations to complete the transfer are created or established.

(b) The mayor and council members are prohibited under certain circumstances from having interest in or deriving direct benefit from contract. Neither the mayor nor any council member may have an interest in a contract nor receive a direct benefit from a contract in an amount greater than \$5,000 or multiple contracts in an amount greater than \$5,000 with the same party within a 12-month period to which the city or any person who received a grant, except as provided in subsection (d), is a party except as provided in subsection (f).

(c) Circumstances under which the mayor and council members derive direct benefit from contract. A mayor or council member derives a direct benefit from a contract if the official, the official’s spouse, or any other person with whom the official lives and commingles assets:

(1) Is a party to or intended beneficiary of any contract held by the city or any person who received a grant;

(2) Has more than a 5% ownership interest in an entity that is a party to any contract held by the city or any person who received a grant;

(3) Acquires property under the contract; or

- (4) Will receive compensation, commission, promotion, or other monetary benefit directly attributable to any contract with the city or any person who received a grant.

(d) Circumstances under which the mayor and council members have interest in contract. A mayor or council member has an interest in a contract if the official, the official's spouse, or any other person with whom the official lives and commingles assets:

- (1) Is employed by a party to any contract with the city or any person who received a grant; or
- (2) Receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

(e) The mayor and council members may derive direct benefit from or have interest in contract under certain circumstances. A mayor or council member does not derive a direct benefit from or have an interest in a contract:

- (1) Based solely on the value associated with the official's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the official lives and commingles assets;
- (2) By participating in a vote or a decision in which the official's only interest arises from an act of general application;
- (3) Based on the official receiving income as an employee or independent contractor of a party with whom the city or any person who received a grant has a contract, unless the official receives compensation or a promotion directly attributable to the contract, or unless the official is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;
- (4) If the contract is for the sale of goods, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
- (5) If the contract is subject to a public bidding process;
- (6) If the contract is with the official depository as set forth in SDCL § 6-1-3;
- (7) Based solely on the official receiving nominal income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred;

(8) If the contract or multiple contracts with the same party within a 12-month period with whom the city or any party who received a grant is in an amount less than \$5,000.

(f) Circumstances under which city council may authorize the mayor or any council member to derive direct benefit from contract.

(1) The city council may authorize a mayor or council member to derive a direct benefit from a contract if:

a. The official has provided full written disclosure to the city council of all parties to the contract, the official's role in the contract, the purpose or objective of the contract, the consideration or benefit conferred or agreed to be conferred upon each party, and the duration of the contract;

b. The city council finds that the terms of the contract are fair, reasonable, and not contrary to the public interest; and

c. Any request for authorization or city council action are public records. The official minutes shall include any city council action on each request for authorization and shall be filed with the finance officer and city attorney.

(2) A mayor or council member who has an interest in a contract pursuant to subsection (d) shall disclose the existence of a contract in which the official has an interest and the official's role in the contract but no city council authorization is required for the official to have an interest in the contract. Disclosure shall also be made annually if the contract extends into consecutive fiscal years. The interest disclosure shall be included in the official minutes of the city council.

(3) A mayor or council member receiving a direct benefit from a contract and requesting an authorization pursuant to subsection (f) shall make the request prior to entering into any contract that requires disclosure or within fourteen days after entering into the contract that requires disclosure. Any authorization by the city council requires no further disclosure or authorization unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure shall be made annually but no new authorization is required.

(g) No participation in discussion or vote if a conflict of interest exists.

(1) Neither the mayor nor any city council member may participate in or vote upon a decision of the city council relating to a matter in which the member derives a direct benefit or otherwise has a conflict of interest.

Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion, voting, action, or recommendation. However, no such official may participate in discussing, voting, acting, or recommending action on an issue if the following circumstances apply:

- a. The official derives a direct benefit or has a direct pecuniary interest in the matter before the city council; or
- b. At least two-thirds of the city council votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

(2) If an official with a direct pecuniary interest or otherwise has a conflict of interest participates in discussion or votes on a matter before the city council, the legal sole remedy regarding the matter is to invalidate that official's vote.

(h) Written conflict of interest policy. The city council shall develop a written conflict of interest policy, including any disclosure and authorization form that includes the list of any disclosable interest in contracts or direct benefits covered by this chapter.

(i) Violation. A violation of this section shall be determined by the city council. Any such determination constitutes a breach of the conflicts of interest policy adopted by the city council and a breach of the express prohibitions of the Charter.

2. Sec. 2-5 of Chapter 2 – *Administration* is hereby created as follows:

**Sec. 2-5. – Private gain prohibited.**

(a) Neither the mayor nor any council member may use his or her public office for private gain.

(b) Use of an official's public office for private gain includes but is not limited to the following:

- (1) Acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public;
- (2) The acceptance of gifts and other things, other than nominal items not to exceed a cumulative value of \$25.00 in a calendar year;
- (3) Acting in a private capacity on matters dealt with as a public official;
- (4) The use of confidential information or of information acquired in the performance of official duties that was not made available to the public in

