

CITY OF ABERDEEN CONFLICTS OF INTEREST POLICY

The City of Aberdeen, by and through its City Council, hereby adopts the foregoing policy to comply with the provisions of South Dakota Codified Law, Chapters 3-23 and 6-1; Aberdeen City Charter, Sections 7.01 and 7.02; Aberdeen City Code, Section 2-2; and other applicable laws regarding conflicts of interest and standards of conduct for municipal board members, officers, and employees.

Approved by the City Council at its regular meeting on **April 17, 2017**.


Amendment approved by the City Council at its regular meeting on **May 8, 2017**.

CITY OF ABERDEEN



Mike Levsen, Mayor

ATTEST:



Karl Alberts, Finance Officer

SECTION I.

CITY COUNCIL MEMBERS

1. **DECLARATION OF POLICY.**

(a) All elected and appointed members of the City of Aberdeen city council shall act with integrity, impartiality, and dedication to the best interests of the city and the public trust which they hold. The citizens have a right to expect that council members will conduct themselves in a manner that will tend to preserve public confidence in and respect for the government they represent. Public confidence and respect can best be promoted if council members uniformly treat all citizens with courtesy, impartiality, fairness, and equality under the law and avoid both actual and potential conflicts between their private self-interest and the public trust.

(b) The 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. This policy provides for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters.

(c) The purpose of this policy is to regulate conflicts of interest and standards of conduct for council members by setting forth conduct which is incompatible with the best interest of the city, and by directing disclosure by council members of private financial or other interests in matters affecting the city.

2. **CONSTRUCTION.**

This policy shall be liberally construed to protect the public interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for council members.

3. **DEFINITIONS IN THIS SECTION I.**

For the purposes of this policy, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ADVISORY OPINION. A written opinion offering advice to the requestor in conjunction with interpretation of the city charter and city ordinance on a matter submitted for that purpose. **ADVISORY OPINIONS** may be requested only by a council member seeking advice about his or her current conduct or an anticipated future behavior or activity.

BENEFIT. Anything reasonably regarded as economic gain or economic advance, including **BENEFIT** to any other person in whose welfare the beneficiary is

interested, but does not include a contribution or expenditure made and reported in accordance with law.

BUSINESS ENTITY. A sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business is conducted.

COUNCIL MEMBER. For the purposes of this policy, means every member of the Aberdeen City Council, including the mayor.

COMPLAINT. A formal accusation against a council member alleging unethical or improper actions, behavior, or conduct as defined by city charter or city and state law.

CONFIDENTIAL INFORMATION. Privileged statements or communications, whether expressed or implied, oral or written, between the council member, city employees, and their attorneys; work product of the city attorney, or other attorneys representing the city, its council member, officers, and employees; and city records, documents, and other information not subject to public disclosure or dissemination by law.

FINANCIAL INTEREST. An expectation of receiving a pecuniary benefit. A FINANCIAL INTEREST of an official includes any FINANCIAL INTEREST of a member of that person's immediate family. A person has a FINANCIAL INTEREST in an organization in which that person has an ownership interest, or is a director, officer, or employee. An official has a FINANCIAL INTEREST in a decision if a FINANCIAL INTEREST of that person will vary with the outcome of the decision. A FINANCIAL INTEREST does not include the following:

- (a) A personal or FINANCIAL INTEREST which is not of the magnitude that would exert an influence on an average, reasonable person;
- (b) A personal or FINANCIAL INTEREST of a type which is generally possessed by the public or a large class of persons to which that official belongs; and
- (c) An action or influence which would have an insignificant or conjectural effect on the matter in question.

HOLDING OTHER OFFICE. Holding another elected public office during the term for which the member was elected to the city council, or holding a full-time employment position with the city.

IMMEDIATE FAMILY. Any person related to a council member within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild, or an individual claimed by that individual or their spouse as a dependent for federal income tax purposes.

4. CONFLICTS OF INTEREST.

Council members shall not:

(a) Participate or vote in matters in which they have a direct financial interest in any contract with the city;

(b) Participate or vote in matters in which they may be directly financially interested in the sale of land to the city, or in which they may have rights or interests in the sale of any materials, supplies, or services to the city;

(c) Participate or vote in any other matters in which they may have a direct financial interest, or in which an immediate family member has a direct financial interest;

(d) Appear on behalf of any private person before any city agency, except when acting in an official capacity. Council members may appear at any place on behalf of constituents in the course of their duties as representatives of the electorate or in the performance of public or civic obligations. Council members shall not receive compensation for those appearances, unless specifically authorized by action of the city council. However, this section shall not apply to any council member who has fully informed the city agency of his or her private interest in a matter and he or she does not participate in any decision related thereto;

(e) Solicit any gift or accept any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing, or promise, or any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence or could reasonably be expected to influence the council member in the performance of his or her official duties, or was intended as a reward for any official action:

(1) Legitimate political contributions are not gifts under the provisions of this policy; and

(2) It is not a conflict of interest for a council member to receive a gift or gratuity that is an unsolicited item of nominal intrinsic value.

(f) Participate or vote in matters having a financial interest in any property within three hundred (300) feet of property involved in a zoning matter before the city council; and

(g) Participate or vote in matters that come before the city council directly involving the interest of a present business client or customer of any council member or the interest of a person or entity who has been a business client or customer of any council member within the prior twelve (12) months. A business client or customer is any person or entity for which the council member is employed or if in the past twelve (12) months payment has been received by the council member from the person or entity in the amount of \$5,000 or greater and that fact is or should be known by the council member.

5. STANDARDS OF CONDUCT.

Council members shall not take action to:

(a) Disclose confidential information;

(b) Use any confidential information which was gained because of their official position or employment for their own personal gain or benefit or for the benefit of others.

(c) Disclose or reveal any information or the contents of any discussion which took place in executive session under the provisions of the state open meetings law;

(d) Disclose or reveal any information, or the contents of any discussion, considered during an executive session or closed meeting conducted pursuant to the state open meetings law held by the city council and any city agency, board, commission, committee, or department, except as may be authorized by a majority vote of that body;

(e) Grant any special consideration, treatment or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business organization, or group;

(f) Use their elected position to secure special advantages, privileges, or exemptions for themselves or others;

(g) Engage in any conduct which may be directly prejudicial to the government of the city, which reflects discredit or dishonor on the government of the city, or which causes the city substantial monetary damage, or the commission of a criminal act;

(h) Use city supplies, equipment, or facilities for any purpose other than the conduct of official city business, unless otherwise provided for by law, ordinance, or city policy; and

(i) Knowingly perform or refuse to perform any act to deliberately prevent the execution of the city ordinances, rules, or regulations, or the achievement of official city programs.

6. FORMER COUNCIL MEMBERS.

A past council member shall not appear before the city council or any board, commission, or committee of the city and represent any interest on any matter which was pending on file and unresolved with the city during his or her service for a period of one (1) year after the date of termination of the former member's office with the city.

7. DISCLOSURE OF INTEREST.

A council member who has a financial interest in any matter pending before the city shall disclose that interest to other members of the city council, and shall refrain from further discussion of the matter; shall not be physically present when the subject is discussed in an executive session; and shall not vote on or participate further therein in any manner.

8. ADVISORY OPINIONS FOR COUNCIL MEMBERS AND CANDIDATES.

(a) Advisory opinions may be requested by any council member who seeks the board of ethics' opinion to guide that official's own conduct. Only a council member may request an advisory opinion from the board of ethics about his or her conduct or activities, provided that the request is made prior to the filing of a complaint as outlined in this policy.

(b) Declared candidates for a municipal election can seek advisory opinions from the board of ethics about his or her conduct or activities.

(c) A request for an advisory opinion may include the request to review conduct that has already occurred that has not yet been the subject of a formal complaint.

9. COMPLAINT PROCEDURE.

(a) A complaint that a council member has violated the conflicts of interest or standards of conduct outlined in this policy shall be made in accordance with this policy, except that anonymous complaints shall not be considered. All complaints shall be referred to the board of ethics who shall review the complaint in light of the conflicts of interest and standards of conduct as set forth in this policy. A copy of the complaint shall be mailed to the city official against whom a complaint has been filed by certified mail within two (2) business days of the written filing.

(b) All complaints, subsequent filings and proceedings of the board shall remain confidential unless otherwise provided herein. The accused may choose to waive confidentiality and make the complaint public. Upon such election by the accused, any subsequent filings and proceedings with the board become public. If the accused chooses to waive confidentiality, then the board has the right to make a public statement limited to that information as reasonably necessary to mitigate any adverse publicity resulting from a public statement by the accused.

(c) The board of ethics shall have all the powers of investigation as are afforded the city council by the city charter. The board performing the review of the complaint shall report to the city council in writing not more than sixty (60) days after the day of assignment, unless an extension is granted by a majority of the eligible council members. For purposes of this section, an ELIGIBLE COUNCIL MEMBER means any council member who is not named in the complaint. If the board determines that the facts as alleged do not establish probable cause that there has been a violation of this policy or otherwise dismisses a complaint under this policy, a report of the board's findings shall be given to the city council, and the matter shall be considered concluded. If the board determines that the facts as alleged establish probable cause that there has been a violation of this policy, the report containing the board's findings and recommended sanctions shall be given to the city council.

(d) The board's report to the city council shall be a public record, but all filings and proceedings prior to the report shall remain confidential unless the accused had elected to make the complaint public. Until a time as the board issues its report to the city council or the accused elects to make the complaint public, no complainant, board member, nor any person who has access to any confidential information related to the functions or activities of the board shall divulge that information to any person who is not authorized to have it.

(e) Upon receiving a report from the board of ethics that there is probable cause to believe that a violation of the conflicts of interest or standards of conduct by a council member may exist, the eligible members of the city council shall schedule a public hearing to be held within thirty (30) days of receipt of that report.

(f) All hearings of the city council under this policy shall be conducted as follows:

- (1) The city council shall have all the powers of investigation including subpoena power as are given to it by reason of the city charter;
- (2) A council member against whom a complaint has been filed may elect to be represented by outside legal counsel of his or her own choosing and at his or her own expense. A council member has the right to a full and complete hearing with the opportunity to call witnesses and present evidence;
- (3) The board of ethics chairperson or his or her designee shall present the evidence and examine witnesses in support of the board's report with the board bearing the burden of proof by clear and convincing evidence on behalf of the city;
- (4) The city attorney shall act as legal advisor to the eligible council members conducting the hearing, unless there is a conflict of interest for the city attorney;
- (5) The city council shall first receive evidence from the board of ethics and from the person making the complaint, then from the council member complained against, and then from any other person as the city council deems necessary;
- (6) The city council may request and, if necessary, subpoena witnesses, books, records, or any documents which relate to the allegations or complaint;
- (7) The eligible council members, upon completion of a public hearing, shall render a decision in the form of a resolution and, in addition, the eligible council members shall thereafter have prepared findings of fact, conclusions of law, and a final order to be filed within twenty (20) days with both the finance officer and the council member against whom a complaint has been filed either determining no violation occurred or, if supported by clear and convincing evidence, the order shall set forth the remedy as provided by this policy to be complied with in order that voluntary compliance may be had and final determination obtained. In the event that voluntary compliance is not obtainable, action consistent with the city charter may be taken; and
- (8) All decisions and orders rendered by the city council shall be made public.

SECTION II.

CITY OFFICERS AND EMPLOYEES

1. DECLARATION OF POLICY FOR CITY OFFICERS AND EMPLOYEES.

(a) The proper operation of a republic requires that public officers and employees be honest, impartial, and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

(b) The 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. This policy provides for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters.

(c) This policy applies to city officers and employees, whether appointed, paid, or unpaid, including members of all boards, commissions, and committees of the city, who have or may have a financial interest clearly separate from that of the general public in any contract, transaction, spending decision, zoning decision, or other matter which is subject to an official act or services from the city by such person. The purpose of these regulations is to establish guidelines setting forth those actions which are incompatible with the best interests of the citizens of the city and directing disclosure by those officers and employees of private financial or other interests in matters affecting city government. This section does not apply to the council members.

2. CONSTRUCTION.

This section shall be liberally construed to protect the public interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for municipal officers, employees, members of city agencies, and all advisory boards.

3. DEFINITIONS IN THIS SECTION II.

For the purposes of this policy, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ADVISORY OPINION. A written opinion offering advice to the requestor in conjunction with interpretation of the city charter and ordinances on a matter submitted for that purpose. **ADVISORY OPINIONS** may be requested by a person subject to Section II seeking advice about his or her current conduct or an anticipated future behavior or activity.

BUSINESS. A corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity, or entity.

CITY AGENCY. Any authority, advisory board, body, commission, committee, department, unit, division, or office of the city.

COMPLAINT. A formal accusation against a person(s) alleging unethical or improper actions, behavior, or conduct as defined by city charter or city and state law.

CONFIDENTIAL INFORMATION. All information, including information described in this policy whether transmitted verbally or in writing, which is not, at the time, a public record pursuant to law.

FINANCIAL INTEREST. An expectation of receiving a pecuniary benefit. A FINANCIAL INTEREST of a person includes any FINANCIAL INTEREST of a member of that person's immediate family. A person has a FINANCIAL INTEREST in an organization in which that person has an ownership interest, or is a director, officer or employee. A person has a FINANCIAL INTEREST in a decision if a financial interest of that person will vary with the outcome of the decision. A FINANCIAL INTEREST does not include the following:

- (a) A personal or FINANCIAL INTEREST which is not of the magnitude that would exert an influence on an average, reasonable person;
- (b) A personal or FINANCIAL INTEREST of a type which is generally possessed by the public or a large class of persons to which that official or employee belongs; or
- (c) An action or influence which would have an insignificant or conjectural effect on the matter in question.

IMMEDIATE FAMILY. Any person related to an officer or employee within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild, or an individual claimed by that individual or the spouse as a dependent for federal income tax purposes.

INCOME. Any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or capital gain and shall include all INCOME from whatever source derived.

OFFICER or EMPLOYEE. Any person appointed to, employed by, or retained by any public office or public body of the city, whether paid or unpaid, and whether temporary, part-time, or full-time, who has a financial interest clearly separate from that of the general public in any contract, transaction, spending decision, zoning decision, or other matter which is subject to an official act or services from the city by such person.

4. ACTING IN AN OFFICIAL CAPACITY ON MATTERS IN WHICH AN OFFICIAL OR EMPLOYEE HAS A PRIVATE FINANCIAL INTEREST CLEARLY SEPARATE FROM THAT OF THE GENERAL PUBLIC.

(a) No officer or employee of the city shall knowingly have a financial interest clearly separate from that of the general public in any contract, transaction, spending decision, zoning decision, or other matter which is subject to an official act or services from the city. This provision shall not apply if the interested officer or employee discloses the financial interest by written communication to his or her immediate supervisor, director, and the city council or city manager and receives unanimous consent from such persons to the financial interest or if the person serves on a lay board and discloses to the city council or the city manager the full nature and extent of that interest and disqualifies and/or removes himself or herself from consideration or future participation in the matter in any respect.

(b) The foregoing conflict of interest prohibition shall not apply if an interested officer or employee does not or will not act in the regular course of his or her duties and responsibilities for the city as to inspection, any related performance issues, or any operational oversight or work with the matter in question. Also, this prohibition may not apply if the interested officer or employee is an employee of a business involved in the matter in question and the officer or employee has no ownership interest in the matter and will not receive a fee or compensation related thereto.

5. ACCEPTANCE OF GIFTS AND OTHER THINGS OF VALUE.

(a) No officer or employee shall solicit any gift, or accept any gift whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee, in the performance of official duties, or was intended as a reward for any official action.

(b) Legitimate political contributions are not gifts under the provisions of this policy.

(c) It is not a conflict of interest for any official or employee to receive a gift or gratuity that is an unsolicited item of nominal intrinsic value.

6. DISCLOSURE OF CONFIDENTIAL INFORMATION.

During the period of employment or service and for one (1) year thereafter, no officer or employee, with respect to any contract, transaction, spending decision, zoning decision, or other matter which is or may be the subject of an official act or action of the city shall, without appropriate authorization, disclose confidential information concerning the property, government, or affairs of the city. In addition, no officer or employee shall use this information to advance the financial or other private interest of the officer or employee or others.

7. DISCLOSURE OF CONFIDENTIAL OR PRIVILEGED INFORMATION PROHIBITED.

No member of any city agency may publicly disclose information received, discussed, or decided in executive session held pursuant to law or in conference with legal counsel which is protected by the attorney/client privilege or has been confidentially disclosed at an executive session, unless a majority of the members of the city agency has authorized that disclosure or unless a disclosure is authorized by a court of competent jurisdiction.

8. APPEARANCES BY CITY OFFICIALS ON BEHALF OF PRIVATE INTERESTS.

No officer or employee, except when acting in an official capacity, shall appear on behalf of any private person before any city agency. This section shall not apply to any officer who has fully informed the city agency of the officer's private interest in a matter and the officer does not participate in any decision related thereto.

9. PROHIBITED CONDUCT AFTER LEAVING THE CITY.

No present or former officer or employee may represent another person for compensation before the city or any public body thereof while in office or employed for a period of one (1) year from the date of termination of their office or employment concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the employment or service by a substantial and material exercise of administrative discretion either during their holding of office or employment or for a period of one (1) year thereafter. This section shall not prohibit any former employee from acting as a paid private consultant for any person so long as the former officer or employee does not appear on behalf of that person before the city or any public body thereof, either personally or by communication of any kind, for a period of one (1) year from the date of termination of their office or employment and that former officer or employee does not disclose confidential information at any time.

10. ADVISORY OPINIONS.

An advisory opinion may be requested from the board of ethics by any city officer and employee whether appointed, paid or unpaid, including members of all boards, commissions and committees of the city who seek the board of ethics' opinion to interpret the law as it applies to himself or herself. A request for an advisory opinion may include the request to review conduct that has already occurred that has not yet been the subject of a complaint. The "self-reporting" of past incidents shall not act as a bar against possible sanctions for conduct, but may be considered in mitigation of any possible penalties otherwise imposed.

11. COMPLAINT PROCEDURE.

A complaint that a city officer or city employee, whether appointed, paid, or unpaid, or a member of a city board, city commission, or city committee has violated the conflicts of

interest or standards of conduct outlined in this section shall be made in accordance with the provisions of this section, except that anonymous complaints shall not be considered. All complaints shall be referred to the board of ethics who shall review the complaint in the light of the conflicts of interest and standards of conduct as set forth in this section. A copy of the complaint shall be mailed to the city employee or officer against whom a complaint has been filed by certified mail within two (2) business days of the filing of the complaint. All complaints and any subsequent filings and proceedings of the board shall remain confidential unless otherwise provided herein. No board member, complainant, nor any person who has access to any confidential information related to the functions or activities of the board shall divulge that information to any other person who is not authorized to have it. The person accused may choose to waive confidentiality and make public the complaint. Upon such election by the accused, any subsequent filings and proceedings before the board become public. If the accused chooses to waive confidentiality, then the board has the right to make a public statement limited to that information as reasonably necessary to mitigate any adverse publicity resulting from the public statement by the accused person.

12. COLLECTIVE BARGAINING AGREEMENTS.

Nothing in this policy shall be enforced contrary to the provisions of any collective bargaining agreements between the city and its employees.

SECTION III.

GENERAL PROVISIONS

1. JUDICIAL REVIEW.

Pursuant to Article IX of the South Dakota Constitution, any final order by the city council is subject to judicial review as provided by SDCL Ch. 21-31 within twenty (20) days of the filing with the finance officer of the city council's final order.

2. PENALTY FOR VIOLATIONS OF POLICY.

(a) Violations of Section I:

(1) Violations of Section I may be remedied by the eligible council members by any one or any combination of the following punishments:

(i.) Public reprimand;

(ii.) Administrative fine not to exceed \$500; and/or

(iii.) Removal from office only for the causes set forth in Section 2.06 of the City Charter or Section 2-22 of the City Code.

(2) In addition to the penalties listed above, the city council may refer the matter to the city attorney:

(i.) To prosecute for violation of city ordinance; and/or

(ii.) To seek civil remedies to enjoin any activity prohibited by Section I.

(b) Violations of Section II:

(1) Violations of Section II of this policy may be punished under the general penalty provisions of this policy. Board recommendations regarding a city employee shall be in writing and given to the city manager or, if the employee is subject to the authority of the city council, to the city council. In addition, upon the finding of a violation of Section II by four board members, the board of ethics may exercise any one or any combination of the following remedies:

(i.) Recommend a reprimand for the officer or employee in writing, either privately or publicly;

(ii.) Recommend the suspension or removal of an officer that is subject to the mayor or that is subject to the council from service on a lay board;

(iii.) Recommend the suspension, demotion or termination of employment of any compensated employee of the city;

- (iv.) Recommend an administrative fine not to exceed \$500;
 - (v.) Refer to the city attorney to prosecute for violation of city ordinance;
and
 - (vi.) Refer to the city attorney to seek civil remedies to enjoin any activity prohibited by Section II.
- (2) Any finding from the board resulting in a recommended suspension, demotion, termination of employment, or an imposed fine shall be considered good cause if final action is taken thereon by the city council or the city administration.

3. ANNUAL DISCLOSURE OF CONFLICTS OF INTEREST.

Every council member subject to Section I of this policy and every city officer or employee subject to Section II of this policy shall at least once annually disclose on forms provided by the finance officer any actual or potential conflict of interest. A completed Conflict Disclosure Form as set forth in the appendices hereto shall be provided to the finance officer on or before February 28th of each year or, if a person is elected, appointed, or hired with the City after January 2nd, within sixty (60) days of the date such person was elected, appointed, or hired with the City. The Conflict Disclosure Form is in addition to the statement of financial interest council members are required to file annually with the finance office, pursuant to SDCL 3-1A-4.

4. RECEIPT AND ACKNOWLEDGMENT OF POLICY.

Every person subject to this policy shall be provided a copy of this policy and execute the form Receipt And Acknowledgement Of Policy within thirty (30) days of entering into service for or on behalf of the City or within sixty (60) days of the date of adoption of this policy, whichever is later.

SECTION IV.

LAWS GOVERNING CONFLICTS OF INTEREST

1. SOUTH DAKOTA STATUTES

SDCL 22-30A-__. [Senate Bill No. 27, § 2, Session Laws 2017]

Any public official who knowingly uses funds or property that has been entrusted to the public official in violation of the public trust and that results in a direct financial benefit to the public official commits a direct criminal conflict of interest.

Any public official who commits a direct criminal conflict of interest is guilty of theft.

SDCL 3-23-6. Board members, fiscal agents, officers, and executives of local service agencies, school districts, cooperative education service units, and education service agencies and entities prohibited from having interest in or deriving direct benefit from contract.

No board member, fiscal agent, officer, or executive of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity that receives money from or through the state may have an interest in a contract nor receive a direct benefit from a contract that the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity is a party to the contract except as provided in § 3-23-8.

SDCL 3-23-7. Circumstances under which board members, fiscal agents, officers, and executives of local service agencies, school districts, cooperative education service units, and education service agencies and entities derive direct benefit.

A person described in § 3-23-6 derives a direct benefit from a contract if the person, the person's spouse, or other persons the person lives with and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of an entity that derives income directly from the contract or acquires property under the contract.

A person does not derive a direct benefit from a contract based solely on the value associated with the person's investments or holdings, or the investments or holdings of other persons the state officer or employee lives with and commingles assets.

SDCL 3-23-8. Conditions under which local service agency, school district, cooperative education service unit, or education service agency or entity may authorize member to have interest in or derive direct benefit from contract.

A local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may authorize a board member, fiscal agent, officer, or executive to have an interest in a contract or derive a direct benefit from a contract if:

- (1) The person has provided full written disclosure to the agency, district, or unit governing board;
- (2) The governing board has reviewed the essential terms of the transaction or contract and the person's role in the contract or transaction; and
- (3) The transaction or the terms of the contract are fair, reasonable, and not contrary to the public interest.

No member of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may participate in or vote upon a decision of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity relating to a matter in which the member has an interest or derives a direct benefit.

The authorization shall be in writing. Any authorization given pursuant to this section is a public record. Each authorization shall be filed with the auditor-general. The auditor-general shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee. A board member, fiscal agent, officer, or executive of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may comply with this section if: the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity puts on its regular meeting agenda an inquiry for conflicts disclosure prior to the consideration of any substantive matters; the person subject to this chapter publicly discloses his or her interest in a contract, direct benefit, or other conflict with any matter on the agenda; the person is excused from discussion and consideration of such matters; the board determines the matter underlying the conflict is fair, reasonable, and not contrary to the public interest; and the disclosure is included in the minutes which are publicly available.

SDCL 3-23-9. Removal of board member, fiscal agent, officer, or executive of local service agency, school district, cooperative education service unit, or education service agency or entity for violation--Misdemeanor--Forfeiture--Voidable contract.

Any person who knowingly violates §§ 3-23-6 to 3-23-8, inclusive, shall be removed from office or employment and is guilty of a Class 1 misdemeanor. Any benefit to a person derived from the person's knowing violation of §§ 3-23-6 to 3-23-8, inclusive, is subject to forfeiture. Any contract made in violation of §§ 3-23-6 to 3-23-8, inclusive, is voidable by the governing body of the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity.

SDCL 6-1-1. Local officer's interest in public purchase or contract unlawful--Contract void.

It shall be unlawful for any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services to be rendered, or for the purchase of commodities, materials, supplies, or equipment of any kind, the expense, price, or consideration of which is paid from public funds or from any assessment levied by said county, municipality, township, or school district, or in the purchase of any real or personal property belonging to the county,

municipality, township, or school district or which shall be sold for taxes or assessments or by virtue of legal process at the suit of such county, municipality, township, or school district. Such contract shall be null and void from the beginning.

SDCL 6-1-2. Conditions under which contract with local officer permitted--Contract voidable if conditions not fully met.

The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit. However, the contract is voidable if the provisions of the applicable subdivision are not fully satisfied or present at the time the contract was entered into:

(1) Any contract involving five thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;

(2) Any contract involving more than five thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in § 5-18A-14;

(3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;

(4) Any contract for which competitive bidding procedures are followed pursuant to chapter 5-18A or 5-18B, and where more than one such competitive bid is submitted;

(5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;

(6) Any contract for commodities, materials, supplies, or equipment found in the state contract list established pursuant to § 5-18D-6, at the price there established or below;

(7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a public postsecondary educational institution if an employee of the Board of Regents serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement; and

(8) Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter 5-18A, and where only one such competitive bid is submitted, provided the procedures established in § 6-1-2.1 are followed.

2. ABERDEEN CITY CHARTER

Sec. 7.01. - Conflicts of Interest.

The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to: 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. This ordinance shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations. Municipal officials shall be, at a minimum be [sic] restricted from conflict of interest to the same extent that state public officials are bound by state law; provided however, that the city council may adopt an ordinance setting a stricter standard.

Sec. 7.02. - Prohibitions.

- (a) Activities prohibited.
 - (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation.
 - (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made hereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
 - (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.
 - (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city employee.
 - (5) No city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support for opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.
- (b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any city office or position and, if no officer or employee of the city [sic], shall immediately forfeit his or her office or position.

The city council shall establish by ordinance such further penalties, as it may deem appropriate.

3. ABERDEEN CITY CODE (REVISED ORDINANCES OF ABERDEEN)

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.

**CITY OF ABERDEEN
Receipt and Acknowledgement of Policy**

I acknowledge that I have read and understand the City of Aberdeen Conflicts of Interest Policy. I agree to conform to the policy and standards of conduct while performing my duties for and on behalf of the City of Aberdeen and to be bound thereafter upon the termination or cessation of such duties.

Date: _____

Print Name: _____

EXAMPLE