

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 33.57; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 33.57 of the La Vista Municipal Code is amended to read as follows:

§ 33.57 CONFLICT OF INTEREST INVOLVING CONTRACTS.

(A) (1) For purposes of this section, **OFFICER** shall mean:

- (a) Any member of any board or commission of the city;
- (b) Any appointed official, if such city official serves on a board or commission which spends and administers its own funds and is dealing with a contract made by such board or commission; or
- (c) Any elected city official.

(2) Unless specified otherwise, volunteer firefighters and ambulance drivers shall not be considered officers for purposes of this section, with respect to their duties as firefighters and ambulance drivers.

(B) (1) No officer of the city shall be permitted to benefit from any contract to which the city is a party. The existence of such an interest in any contract renders the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the city or by any resident thereof and must be brought within one year after the contract is signed or assigned. Any such decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor or services furnished under the contract, to the extent that the city has benefitted thereby.

(2) The prohibition in this section shall apply only when the officer or his or her parent, spouse or child:

(a) Has a business association with the business involved in the contract. **BUSINESS ASSOCIATION** means a business:

1. In which the individual is a partner, limited liability company member, director or officer; or
2. In which the individual or a member of the individual's immediate family is a stockholder of a closed corporation stock worth \$1,000 or more at fair market value or which represents more than a 5% equity interest or is a stockholder of publicly traded stock worth \$10,000 or more at fair market value or which represents more than 10% equity interest; or

_____ (b) Will receive a direct pecuniary fee or commission as a result of the contract, except that if such officer is an employee of the business involved in the contract and has no ownership interest or will not receive a pecuniary fee, such officer shall not be deemed to have an interest within the meaning of this section.

_____ (3) The provisions of this section shall not apply if the interested officer:

_____ (a) Makes a declaration on the record to the City Council responsible for approving the contract regarding the nature and extent of his or her interest, prior to official consideration of the contract;

_____ (b) Does not vote on the matter of granting the contract, except that if the number of members of the Board declaring an interest in the contract would prevent the Board, with all members present, from securing a quorum on the issue, then all members may vote on the matter; and

_____ (c) Does not act for the city as to inspection or performance under the contract in which he or she has an interest.

_____ (D) The receiving of deposits, cashing of checks and buying and selling of warrants and bonds of indebtedness of any city by a financial institution shall not be considered a contract under the provisions of this section. The ownership of less than 5% of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. Notwithstanding the provisions of division (C), if an officer's parent, spouse or child is an employee of the city, the officer may vote on all issues of the contract which are generally applicable to all employees or all employees within a classification and do not single out his or her parent, spouse or child for special action. If an officer has the power to employ personnel and he or she hires his or her parent, spouse or child, such officer shall disclose the hiring pursuant to division (E), except that if the parent, spouse or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provision of this section, any contract entered into with an interested officer shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the city.

(Neb. RS 49-14,103.01)

_____ (E) (1) The City Clerk shall maintain, separately from other records, a ledger containing the information listed in subdivisions (2)(a) through (e) of this division (E) about every contract entered into by the city in which an officer has an interest as specified above for which disclosure is made as provided in division (C).

_____ (2) Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

_____ (a) Names of the contracting parties;

_____ (b) Nature of the interest of the officer in question;

_____ (c) Date that the contract was approved by the city involved;

_____ (d) Amount of the contract; and

_____ (e) Basic terms of the contract.

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

(Neb. RS 49-14,103.02)

— (G) An open account established for the benefit of any city or entity thereof, with a business in which an officer has an interest, shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to this section shall be filed within ten days after such account is opened. Thereafter, the Clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section.

(Neb. RS 49-14,103.03)

— (H) Notwithstanding divisions (D) through (G) of this section, the City Council may prohibit contracts over a specific dollar amount in which an officer of the City Council may have an interest.

(Neb. RS 49-14,103.05)

— (I) The city may enact ordinances exempting from the provisions of this section contracts involving \$100 or less in which an officer of such city may have an interest.

(Neb. RS 49-14,103.06)

— (J) No officer, including volunteer firefighters and ambulance drivers, shall receive any pay or perquisites from the city other than his or her salary. The City Council shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service, or duty which shall come within the proper scope of the duties of any officer of the city, unless the same is specifically appropriated and ordered by a vote of three fourths of all the members elected to the City Council.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS ASSOCIATION

(a) A business:

1. In which the individual is a partner, limited liability company member, director, or officer, or

2. In which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth \$1,000 or more at fair market value or which represents more than a 5% equity interest or is a stockholder of publicly traded stock worth \$10,000 or more at fair market value or which represents more than 10% equity interest.

(b) An individual who occupies a confidential professional relationship protected by law shall be exempt from this definition. This definition shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockholder.

(Neb. RS 49-1408)

IMMEDIATE FAMILY. A child residing in an individual's household, a spouse of an

individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

(Neb. RS 49-1425)

OFFICER.

(a) Includes:

1. A member of any board or commission of the city which spends and administers its own funds, who is dealing with a contract made by such board or commission; or

2. Any elected city official.

(b) OFFICER does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(B) (1) Except as provided in Neb. RS 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of the contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the County Attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within 1 year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(2) The prohibition in this division (B) shall apply only when the officer or his or her parent, spouse, or child:

(a) Has a business association with the business involved in the contract; or

(b) Will receive a direct pecuniary fee or commission as a result of the contract.

(C) Division (B) of this section does not apply if the contract is an agenda item approved at a meeting of the governing body and the interested officer.

(1) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(2) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(3) Does not act for the governing body which is a party to the contract as to inspection or performance under the contract in which he or she has an interest.

(D) An officer who has no business association with the business involved in the contract, or will not receive a direct pecuniary fee or commission as a result of the contract, shall not be deemed to have an interest within the meaning of this section.

(E) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than 5% of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(F) If an officer's parent, spouse, or child is an employee of the officer's governing body, the officer may vote on all issues of the contract which are generally applicable to all employees, or all employees within a classification, and do not single out his or her parent, spouse, or child for special action.

(G) Neb. RS 49-14,102 does not apply to contracts covered by this section.
(Neb. RS 49-14,103.01)

(H) (1) The person charged with keeping records for the governing body shall maintain separately from other records a ledger containing the information listed in divisions (H)(1)(a) through (H)(1)(e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to division (C) of this section. This information shall be kept in the ledger for 5 years from the date of the officer's last day in office and shall include:

- (a) The names of the contracting parties;
- (b) The nature of the interest of the officer in question;
- (c) The date that the contract was approved by the governing body;
- (d) The amount of the contract; and
- (e) The basic terms of the contract

(2) The information supplied relative to the contract shall be provided no later than 10 days after the contract has been signed by both parties. The ledger kept pursuant to this division (H) shall be available for public inspection during the normal working hours of the office in which it is kept.

(Neb. RS 49-14,103.02)

(I) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to this section. The statement required to be filed by division (H) of this section shall be filed within 10 days after the account is opened. Thereafter, the person charged with keeping records for the governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to this section.

(Neb. RS 49-14,103.03)

(J) Notwithstanding division (A) through (I) of this section, the governing body may prohibit contracts over a specific dollar amount in which an officer of the governing body may have an interest.

(Neb. RS 49-14.103.05)

(K) The governing body may exempt from divisions (A) through (I) of this section, contracts involving \$100 or less in which an officer of that body may have an interest. (Neb. RS 49-14, 103.06

(L) No officer, including volunteer firefighters and ambulance drivers, shall receive any pay or perquisites from the city other than his or her salary. The City Council shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service, or duty which shall come within the proper scope of the duties of any officer of the city, unless the same is specifically appropriated and ordered by a vote of three-fourths of all the members elected to the City Council. (Neb. RS 16-502)

('79 Code, § 1-404) (Am. Ord. 352, passed 11-15-83; Am. Ord. 379, passed 2-5-85; Am. Ord. 421, passed 10-7-86)

Statutory reference:

Private gain by public officers, see Neb. RS 18-305 through 18-312

Holding dual elective offices, see Neb. RS 32-604

Penalty for violation of Neb. RS 49-14,103.01 to 49-14,103.03, see Neb. RS 49-14,103.04

Utility directors and employees permitted to serve in elected office, see Neb. RS 70-624.04

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 1ST DAY OF MAY 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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