

Ordinance No. 10-03
An Ordinance Establishing A Conflicts Of Interest Policy
For The City Of Brookings, South Dakota.

Be It Ordained And Enacted By The Council Of The City Of Brookings, State Of South Dakota, As Follows:

I.

Section 1. Authority. The City Council hereby adopts this ordinance pursuant to Article VII of the Brookings City Charter.

Section 2. Purpose and Declaration of Policy. The primary purpose of this Ordinance is to ensure that the use of public office for private gain is prohibited. Moreover, this ordinance is intended to ensure that the business of this municipality will be conducted in such a way that no public official of the municipality will gain a personal or financial advantage as a result of their position with the City and so that the public trust in municipal officials will be preserved. A further purpose of this Ordinance is to avoid the appearance of impropriety, whether or not an actual conflict of interest exists. This Ordinance applies to the mayor and council members, and to city officers, employees and members of all boards, commissions and committees of the city.

Section 3. Definitions. For the purposes of this ordinance, the following definitions shall apply:

Benefit means 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 means 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 means any authority, advisory board, body, commission, committee, department, or office of the city.

Confidential information means privileged statements or communications, whether expressed or implied, oral or written, between the city 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 means an expectation of receiving a financial 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:

- (1) A personal or financial interest which is not of the magnitude that would exert an influence on an average, reasonable person.
- (2) 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.
- (3) An action or influence which would have an insignificant or conjectural effect on the matter in question.

Immediate family means 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.

Officer, official, employee, board, committee or commission member are also referred to in this ordinance as “public official” and “public officers” and include any person elected to, appointed to, or employed or retained by any public office or public body of the city, whether paid or unpaid and whether temporary, part-time, or full-time. Accordingly, the mayor, council members, employees, all board, committee and commission members are officers, employees and officials of the city.

Conflict of Interest means a direct personal or financial interest of a public official, his or her spouse, household member, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the officer or before the public body in which he or she holds office or is employed. “Conflict of Interest” does not arise in the case of votes or decisions on matters in which the public official has a personal or financial interest in the outcome no greater than that of other persons generally affected by the decision, such as adopting a bylaw or setting a tax rate. In addition, a conflict of interest does not arise if the personal or financial interest is permitted by law, such as the exceptions to prohibited contracts set forth in SDCL 6-1-2.

Official act or action means any discretionary legislative, administrative or judicial act performed by any elected or appointed official, officer or employee while acting on behalf of the municipality.

Public body means a municipality and its departments, boards, city council, commissions, committees or other instrumentalities.

Public interest means an interest of the community as a whole, conferred generally upon all residents of the municipality.

Public officer means any person elected to, appointed to, or employed or retained by, any public office or public body of the city, whether paid or unpaid and whether temporary, part-time, or full-time. Accordingly, the mayor, council members, employees, all board, committee and commission members are officers, employees and officials of the city.

Public official means any person elected to, appointed to, or employed or retained by, any public office or public body of the city, whether paid or unpaid and whether temporary, part-time, or full-time. Accordingly, the mayor, council members, employees, all board, committee and commission members are officers, employees and officials of the city.

Section 4. Disqualification.

A public official shall not participate in any official action if he or she has a conflict of interest in the matter under consideration. A conflict of interest includes a Conflict of Interest as defined in Section 3. of this Ordinance and as provided in the following sections of this Ordinance.

Section 5. Disclosure.

(a) A public official who has reason to believe that he or she has or may have a conflict of interest shall, prior to participating in any official action on the matter, identify the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able or unable to act in the matter.

(b) The remaining members of the public body of which such public official is a member and the city manager shall have the authority to inquire of any public official about a possible conflict of interest and to suggest or recommend that the member recuse him or herself from the matter. If the member believes that he or she does not have a conflict of interest, the member shall, prior to participating in the matter, identify the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter.

Section 6. Public Contracts.

(a) No official, officer or employee shall enter into any contract with the City, except as permitted as follows:

(1) An official, officer or employee may enter into a contract with the City involving one thousand dollars (\$1,000.00) or less, provided that the consideration exchanged is fair and just;

(2) An official, officer or employee may enter into a contract with the City involving more than one thousand dollars but less than the amount for which competitive bidding is required if there is no other source of supply or services available within the city, and provided that the consideration exchanged is fair and just, and further provided that the accumulated total of such contracts paid during any calendar year do not exceed the amount for which competitive bidding is required;

(3) Any firm, association, corporation or cooperative association may enter into a contract with the City for which competitive bidding is not required and where other sources of supply and

services are available within the City, and the consideration exchanged is fair and just, unless the majority of the city council are members or stockholders who collectively have controlling interest, or any one of the City Council is an officer or manager of any such firm, association, corporation or cooperative association.

(4) Any firm, association, corporation or cooperative association whose members include a public official may enter into a contract with the City where competitive bidding procedures are followed and where more than one such competitive bid is submitted;

(5) Any individual, firm, association, corporation or cooperative may enter into a contract with the City for professional services even though the individual or any member of the firm, association, corporation or cooperative is a public official of the City, whether or not other sources of such services are available within the city, provided the consideration exchanged is reasonable and just;

(6) An official, officer or employee may enter into a contract with the City for commodities, materials, supplies, or equipment found in the state price list, at the price there established or below.

(b) Any official, officer or employee who has or may have a personal interest in any public contract shall disclose such interest prior to the first of any of the events set forth below:

(1) The solicitation of a contract;

(2) The bidding of a contract; or

(3) The negotiation of a contract; or

(4) The approval by the governing body of a contract.

(c) Any contract entered into in violation of this section may be voided by the City. This section does not affect the application of any state statute.

Section 7. Acceptance of gifts and other things of value prohibited.

(a) No official, officer or employee shall directly or indirectly 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 chapter.

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

Source: Brookings City Charter, Section 7.01(a)

Section 8. Disclosure of confidential information prohibited. During the period of employment or service and for two years thereafter, no official, officer or employee, with respect to any contract, transaction, 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 such information to advance the financial or other private interest of the officer or employee or others.

Source: Brookings City Charter, Section 7.01(a)

Section 9. Appearances by city officials on behalf of private interests prohibited. No official, 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 official, officer or employee who has fully informed the city agency of the officer's private interest in a matter and the official, officer or employee does not participate in any decision related thereto.

Source: Brookings City Charter, Section 7.01(a)

Section 10. Prohibited conduct after leaving the city.

No present or former official, 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 two years from the date of termination of their office or employment concerning any matter with which such officer or employee was directly concerned and in which such 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 two years thereafter.

Source: Brookings City Charter, Section 7.01(a)

Section 11. Additional Prohibited Activities.

- (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 the City Charter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such charter provisions.
- (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 any test, appointment, proposed appointment 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, directly or indirectly, contribute money or anything of value to or render service in behalf of the candidacy of any candidate for nomination for election to any City office. The expression of private or personal views concerning candidates for political office is not prohibited hereby. Violation of this section shall be grounds for discharge or other disciplinary action.

Source: Brookings City Charter, Section 7.02.

Section 12. Clerk's Duties and Procedure for Informal Resolution of Conflict of Interest or Potential Conflict of Interest by City Manager

After receiving a disclosure of a conflict of interest or potential conflict of interest, the City Clerk shall:

- (1) Maintain a record of such disclosure which shall be open to the public; and
- (2) Promptly forward a copy of the disclosure to the city manager; and
- (3) Promptly forward a copy of the disclosure to any person named in the disclosure as having or potentially having a conflict of interest; and
- (4) Promptly forward a copy of the disclosure to the City Council and to the City Attorney.

After receiving a disclosure of a conflict of interest or potential conflict of interest, the City Manager may attempt to informally resolve the matter before the consideration of the merits of any matter in which the conflict of interest is involved.

Section 13. Violations.

- (a) Violation of this article may be punished under the general penalty provisions of this code.
- (b) In addition, the City Manager may, upon the finding of a violation of this ordinance by an employee, exercise any one or any combination of the following remedies:
 - (1) Reprimand the employee, either privately or publicly, either orally or in writing.
 - (2) Impose other discipline, including, but not limited to, suspension, demotion, and termination of employment.

- (3) Refer to the city attorney to prosecute for violation of city ordinance.
 - (4) Refer to the city attorney to seek civil remedies to enjoin any activity prohibited by this article.
- (c). If the party who is the subject of the complaint is not an employee, the City Council shall have the exclusive authority to:
- (1) Reprimand the public official or officer, either privately or publicly, either orally or in writing.
 - (2) Order the suspension or removal from the committee, board or commission as permitted by law.
 - (3) Refer to the city attorney to prosecute for violation of city ordinance.
 - (4) Refer to the city attorney to seek civil remedies to enjoin any activity prohibited by this article.
 - (5) Defer taking any formal action by imposing a probationary period up to one year.

Section 14. Severability. If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.

Section 15. Effective Date. This ordinance shall become effective 20 days after its publication.

II.

Any or all ordinances in conflict herewith are hereby repealed.

FIRST READING: April 15, 2003
SECOND READING: April 22, 2003
PUBLISHED: April 25, 2003

CITY OF BROOKINGS, SOUTH DAKOTA

Virgil H. Herriott, Mayor

ATTEST:

Shari Thornes, City Clerk