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4 **ORDINANCE NO. 18836**
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6 AN ORDINANCE introduced by Councilmembers John Nave, Brett Blackburn and Lana
7 Kennedy, sitting as the Economic and Community Development
8 Committee, repealing City of Topeka Code § 2-494 and amending City
9 of Topeka Code, §§ 2, Article IX and 2-486, 2-487, 2-488, 2-489, 2-
10 490, 2-491, 2-492, and 2-493 establishing a Code of Ethics for elected
11 and appointed officials and employees for the City of Topeka, and
12 specifically repealing said original sections.
13

14 WHEREAS, the Council of the City of Topeka passed Resolution No. 7473 which
15 established a Code of Ethics for the City of Topeka, its elected officials and its employees;
16 and

17 WHEREAS, Resolution No. 7473 applies to the public officials and employees of the
18 City of Topeka; and

19 WHEREAS, the special Council committee on diversity recommended, among other
20 things, that all elected and appointed leaders of the City of Topeka agree to conform to an
21 ethics policy; and

22 WHEREAS, the Council believes that all employees and all elected and appointed
23 officials of the City of Topeka should be bound by a specific Code of Ethics.

24 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, that all
25 employees and all elected and appointed officials shall be required to receive a copy of this
26 Ordinance and certify that they will conform to these ethics rules in performing their elected
27 or appointed positions.

28 Section 1. City of Topeka Code, Article IX, Prohibited Acts and Practices, is
29 hereby amended to read as follows:

30 **~~PROHIBITED ACTS AND PRACTICES~~**

31 **CODE OF ETHICS.**

32 Section 2. City of Topeka Code § 2-486, Employee reporting; notification of
33 elected official, department head or supervisor, is hereby amended to read as follows:

34 ~~Employee reporting; notification of elected official, department head or~~
35 ~~supervisor.~~

36 No elected official, department head or supervisor of any city department shall:

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

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

42 **Purpose.**

43 (a) It is the policy of the City to uphold, promote, and demand the highest
44 standards of ethics from all of its employees and elected or appointed officials. Elected or
45 appointed officials and employees shall maintain the utmost standards of personal integrity,
46 truthfulness, honesty, and fairness in carrying out their public duties, avoid any
47 improprieties in their roles as public servants including the appearance of impropriety, and
48 never use their City position or powers for improper personal gain.

49 (b) It is the intention of the city council that this Code of Ethics is liberally
50 construed to accomplish its purpose of protecting the public against decisions that are
51 affected by undue influence, conflicts of interest, or any other violation of this Code of
52 Ethics. In construing this chapter, employees should be guided by common sense and

53 practicality. This Code of Ethics is supplemental to state law, K.S.A. 75-4301 et seq., as
54 may be amended.

55 Section 3. City of Topeka Code § 2-487, Exceptions, is hereby amended to read
56 as follows:

57 **Exceptions.**

58 ~~This section shall not be construed as:~~

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

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

67 ~~(3) Authorizing an employee to represent the employee's personal opinions as~~
68 ~~the opinions of the city department; or~~

69 ~~(4) Prohibiting disciplinary action of an employee who discloses information~~
70 ~~which:~~

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

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

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

76 **Definitions.**

77 The following words and phrases as used in this Article, unless the context clearly
78 indicates otherwise, shall have the following meanings:

79 “Business” means any corporation, partnership, sole proprietorship, firm, enterprise,
80 franchise, association, organization, self-employed individual, consultant, holding company,
81 joint stock company, receivership, trust, or any legal entity organized for profit.

82 “City officer or employee” means every individual elected, appointed, hired, or
83 otherwise selected to an office or position with the City, or any of its boards, commissions
84 or authorities, whether such individual is paid or unpaid.

85 “Compensation” means payment in any form for real or personal property or services
86 of any kind.

87 “Gift” means a voluntary transfer of real or personal property of any kind without
88 consideration of equal or greater value or the voluntary rendition of services of any kind
89 without consideration of equal or greater value specifically including but not limited to any
90 favor, reward, discount or gratuity.

91 “Immediate family” shall have the meaning set forth in the City’s personnel code, as
92 may be amended.

93 “Person” means any individual or corporation, business, or other entity, however
94 constituted, organized, or designated.

95 “Substantial Interest” shall mean the ownership in a business, receipt of
96 compensation or other goods or services without compensation, receipt of commission, or
97 holding a position of an officer, director or other similar senior position in a business as
98 defined under K.S.A. 75-4301a and any amendments thereto.

99 Section 4. City of Topeka Code § 2-488, Making or participating in certain
100 contracts prohibited, is hereby amended to read as follows:

101 ~~**Making or participating in certain contracts prohibited.**~~

102 ~~The following contractual arrangements are prohibited, except as specifically~~
103 ~~provided in this division:~~

104 ~~(a) No elected official or city employee, in such capacity, shall make or participate~~
105 ~~in the making of a contract with any person or business which employs the elected official~~
106 ~~or employee or any business in which the elected official or employee has a substantial~~
107 ~~interest.~~

108 ~~(b) No person or business shall enter into any contract where any elected official~~
109 ~~or employee, acting in such capacity, is a signatory to or a participant in the making of the~~
110 ~~contract and such official or employee is employed by the person or business or has a~~
111 ~~substantial interest in the business.~~

112 ~~(c) No city employee, on behalf of the city, shall make or participate in the making~~
113 ~~of a contract with another city employee for the purpose of allowing such employee to sell~~
114 ~~or vend commodities, services, or equipment, or construction to the city.~~

115 ~~(d) An elected official or employee does not make or participate in the making of~~
116 ~~a contract if the elected official or employee abstains from any action in regard to the~~
117 ~~contract.~~

118 **Prohibited conduct.**

119 The following shall constitute violations of this Code of Ethics:

120 (a) **General Prohibition Against Conflicts of Interest.** In order to avoid
121 becoming involved or implicated in a conflict of interest or impropriety, or an appearance of

122 conflict of interest or impropriety, no current City officer or employee should be involved in
123 any activity that might be seen as conflicting with the conduct of official City business or as
124 adverse to the interests of the City. Even the appearance of the conduct prohibited in this
125 Code of Ethics alone may be sufficient to constitute a violation of this Code of Ethics.

126 (b) **Respect for City Officers or Employees.** No City officer or employee in a
127 public meeting, at a public forum or in the public media shall treat another City officer or
128 employee with disrespect or a lack of dignity or courtesy. Further, no City officer or
129 employee will engage in false or defamatory speech or remarks concerning another City
130 officer or employee, or treat another City officer or employee in an unreasonable, abusive
131 or unlawful discriminatory manner.

132 (c) **Beneficial Interests in Contracts Prohibited.** No City officer or employee
133 shall participate in his or her capacity as a City officer or employee in the making of a
134 contract in which he or she has a substantial interest or performs in regard to such a
135 contract some function requiring the exercise of discretion on behalf of the City.

136 (d) **Beneficial Influence in Contract Selection Prohibited.** No City officer or
137 employee shall influence the City's selection of, or its conduct of business with, a
138 corporation, person, or firm having or proposing to do business with the City if the City
139 officer or employee has a substantial interest in or with the corporation, person, or firm.

140 (e) **Representation of Private Person at City Proceeding Prohibited.** No City
141 officer or employee shall appear on behalf of a private person, other than himself or herself
142 or an immediate family member or except as a witness under subpoena, before any
143 regulatory governmental agency or court of law in an action or proceeding to which the City
144 or a City officer in an official capacity is a party, or accept a retainer or compensation that is

145 contingent upon a specific action by the City.

146 (f) **Employment of Relatives.** No immediate family member of a City officer or
147 employee shall be hired, promoted or transferred to or within a department when, as a
148 result, an employee would be directly supervising a member of his or her immediate family
149 or if the employee would supervise another employee who supervises the family member,
150 and/or working with a member of his or her immediate family in the same unit having the
151 same immediate supervisor. Further, no immediate family of a City councilmember may be
152 hired by the City during that councilmember's term of office. This provision shall not effect
153 the employment of a councilmember's immediate family who was hired by the City prior to
154 the councilmember taking office.

155 (g) **Beneficial Interest in Legislation Prohibited.** No City officer or employee,
156 in appearing before the city council or when giving an official opinion before the city council,
157 shall have a substantial interest in any legislation coming before the city council and
158 participate in discussion with or give an official opinion to the city council. Provided,
159 however, this section shall not prohibit elected officials, city manager or the head of any
160 department from presenting, discussing or voting upon legislation approving the City's
161 annual budget which contains the salaries of the elected officials or said employees.

162 (h) **Disclosure of Confidential Information Prohibited.** No City officer or
163 employee shall disclose or use any confidential, privileged, or proprietary information
164 gained by reason of his or her official position for a purpose which is for other than a City
165 purpose; provided, that nothing shall prohibit the disclosure or use of information which is a
166 matter of public knowledge, or which is available to the public on request.

167 (i) **Impermissible Disclosure of Information After Leaving City Service.** No

168 former officer or employee shall disclose or use any privileged, confidential, or proprietary
169 information gained because of his or her City employment.

170 (j) **Improper Use of Position Prohibited.** No City officer or employee shall
171 knowingly use his or her office or position to secure personal benefit, gain or profit, or use
172 his or her position to secure special privileges or exceptions for himself, herself, or for the
173 benefit, gain, or profits of any other persons. Provided, however, nothing contained in this
174 section shall prohibit a member of the police department from working for a private security
175 firm in accordance with the rules and regulations promulgated by the chief of police and
176 approved by the City Council.

177 (k) **Improper Use of City Personnel Prohibited.** No City officer or employee
178 shall employ or use any person under the officer's or employee's official control or direction
179 for the personal benefit, gain, or profit of the officer or employee, or another.

180 (l) **Improper Use of City Property Prohibited.** No City officer or employee shall
181 use City-owned vehicles, equipment, materials, money, or property for personal or private
182 convenience or profit. Use is restricted to such services as are available to the public
183 generally, for the authorized conduct of official business, and for such purposes and under
184 such conditions as are approved by the city manager.

185 (m) **Acceptance of Compensation or Gifts Prohibited.** No City officer or
186 employee may, directly or indirectly, give or receive, or agree to give or receive, from any
187 person, business, for profit or not-for-profit groups which receive funding from the City or
188 any person or business which directly or indirectly contracts to provide goods or services to
189 the City, any compensation or gift for a matter connected with or related to the officer's or
190 employee's services with the City, except this prohibition shall not apply to:

191 (1) Attendance of a City officer or employee at a hosted meal when it is
192 provided in conjunction with a meeting directly related to the conduct of City
193 business or where official attendance by the officer or employee as a City
194 representative is appropriate;

195 (2) An award publicly presented in recognition of public service; or

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

205 (4) A discount for the purchase of goods or services provided the vendor
206 offers, advertises or otherwise makes the discount available to all City
207 employees.

208 (5) Campaign contributions made in accordance with Kansas law.

209 (6) An honoraria received by a municipal court judge for performing a
210 wedding ceremony conducted outside of working hours.

211 (n) **Employment Restriction During and/or After Leaving City Service.**

212 (1) A City officer or employee shall not be employed at the same time as
213 he or she is employed by the City or within one (1) year of terminating

- 214 employment with the City by:
- 215 a. Any business entity regulated by or subject to the authority of
- 216 that official or employee, or regulated by or subject to the
- 217 authority of the City agency with which such person is affiliated;
- 218 or
- 219 b. Any business entity, which is negotiating or has entered a
- 220 contract to do business with a City agency with which the City
- 221 officer or employee is affiliated.

222 This prohibition does not apply to a City officer or employee who is appointed

223 pursuant to a statutory requirement that persons subject to the jurisdiction of

224 the authority be represented in appointments to it.

225 (2) A former City officer or employee shall not assist or represent a party

226 other than the City in a case, contract, claim, charge, or controversy or other

227 specific matter involving the City if that matter is one in which the City officer

228 or employee personally and significantly participated as a City officer or

229 employee.

230 (3) A City officer or employee shall not assist or represent a party for

231 contingent compensation in any matter before or involving any City agency

232 other than in a judicial or quasi-judicial proceeding.

233 (4) A former City officer or employee, unless the former employee's last

234 annual salary did not exceed Twenty-Five Thousand Dollars (\$25,000.00)

235 shall not sell or attempt to sell supplies, services, or construction to City for

236 one (1) year following the date employment ceased. The term "sell" as used

237 herein means signing a bid, proposal, or contract; negotiating a contract;
238 contacting any City officer or employee for the purpose of obtaining,
239 negotiating, or discussing changes in specifications, price, cost allowances,
240 or other terms of a contract; settling disputes concerning performance of a
241 contract; or any other liaison activity with a view toward the ultimate
242 consummation of a sale although the actual contract therefore is
243 subsequently negotiated by another person; provided, however, that this
244 section is not intended to preclude a former City officer or employee from
245 accepting employment with private industry solely because the former City
246 officer or employee's new employer is a contractor with the City, nor shall a
247 former City officer or employee be precluded from serving as a consultant to
248 the City subject to the requirement set forth in subsection 5 below.

249 (5) Whenever a City officer or employee wishes to contract with a former
250 City officer or employee for expert or consultant services within one (1) year
251 of the latter's leaving City service, the contract shall only be entered into with
252 approval of the city manager and city attorney and notice of such action is
253 given to the City council.

254 (6) **Exceptions.** The prohibitions of subsection (n)(1) shall not apply to a
255 former officer or employee acting on behalf of a governmental agency, unless
256 such assistance or representation is adverse to the interest of the City.

257 a. When any department deems it necessary and advisable for
258 the city to enter into a contract with a current employee, the
259 department director shall submit to the city manager the

260 substance of the contract, including the proposed parties,
261 subject matter, and proposed price or amount. The director
262 shall also state the reasons for the necessity and advisability of
263 entering into the contract with the particular employee.

264 b. No contract between the city and a City officer or employee
265 shall be entered into unless and until the contract is approved
266 by the city manager and city attorney and notice of such action
267 is given to the council.

268 Section 5. City of Topeka Code § 2-489, Accepting gratuities prohibited, is hereby
269 amended to read as follows:

270 **Accepting gratuities prohibited.**

271 ~~All city employees are expressly prohibited from accepting directly or indirectly from~~
272 ~~any person or business to which any purchase order or contract is or might be awarded any~~
273 ~~rebate, gift, money or anything of value whatsoever except where given for the use and~~
274 ~~benefit of the city.~~

275 **Statement of substantial interest.**

276 (a) Elected Officials. All elected officials shall on or before April 30 of every year
277 complete and submit to the City clerk a statement of substantial interest on forms provided
278 by the Kansas Governmental Ethics Commission.

279 (b) Appointed Officials. All officials appointed to a City board, commission or
280 authority shall on or before April 30 of every year complete and submit to the City clerk a
281 statement of substantial interest on a form provided by the City clerk. The intentional failure
282 to file the statement or the intentional filing of a false statement may be grounds for removal

283 of the appointed official from the board, commission or authority.

284 (c) Prohibition. No elected or appointed official shall participate in any action,
285 decision or contract with a person, business or entity in which the elected or appointed
286 official has a substantial interest. Violation of this subsection by an appointed official may
287 be grounds for removal for cause of the appointed official.

288 Section 6. City of Topeka Code § 2-490, Restrictions on former employees;
289 former duties, is hereby amended to read as follows:

290 **Restrictions on former employees; former duties.**

291 ~~Regarding matters which include: (a) judicial or other proceeding, application,~~
292 ~~request for ruling, or other determination, (b) contract, (c) claim, (d) charge or controversy:~~

293 ~~(1) It is a violation of this Code for any former employee knowingly to act as a~~
294 ~~principal, or as an agent for anyone other than the city in connection with the above~~
295 ~~described matters in which the employee participated personally and substantially through~~
296 ~~investigation, or otherwise while employed by the city; provided that the city is a party or~~
297 ~~has a direct and substantial interest;~~

298 ~~(2) It is a violation of this Code for any former employee, within one year after~~
299 ~~completion of the former employee's official responsibility, knowingly to act as a principal,~~
300 ~~or as an agent for anyone other than the city in connection with the above described~~
301 ~~matters which arose during the employment of the former employee which were within the~~
302 ~~official responsibility of the former employee; provided that the city is a party or has a direct~~
303 ~~or substantial interest in the matter.~~

304 **Retaliation for reporting violation.**

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

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

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

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

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

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

321 (3) Authorizing an employee to represent the employee's personal
322 opinions as the opinions of the City department; or

323 (4) Prohibiting disciplinary action of an employee who discloses
324 information which:

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

327 b. The employee knows to be exempt from required disclosure
328 under the open records act; or

329 c. Is confidential under any other provision of law.

330 Section 7. City of Topeka Code § 2-491, Restriction of former employees in
331 selling to the city, is hereby amended to read as follows:

332 **Restriction of former employees in selling to the city.**

333 ~~A former employee is prohibited from selling or attempting to sell commodities,~~
334 ~~services, equipment, or construction to the city for one year following the date of the~~
335 ~~employee's termination of employment.~~

336 (1) ~~"Sell" means signing a bid, proposal, or contract, negotiating a contract,~~
337 ~~contacting any employee for the purpose of obtaining, negotiating, or discussing changes in~~
338 ~~specifications, price, cost allowances, or other terms of a contract; settling disputes~~
339 ~~concerning performance of a contract; or any other liaison activity with a view toward the~~
340 ~~ultimate consummation of a sale although the actual contract therefore is subsequently~~
341 ~~negotiated by another person; provided, however, that this section not intended to prevent~~
342 ~~a former employee from accepting employment with private industry solely because the~~
343 ~~former employee's new employer is a contractor doing business with the city, nor shall a~~
344 ~~former employee be prevented from serving as a consultant to the city.~~

345 **Complaint process.**

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

348 (1) city manager;

349 (2) deputy mayor;

350 (3) city attorney; or

351 (4) human resources director.

352 (b) No person shall knowingly file a false complaint or report of a violation of this
353 Code of Ethics.

354 (c) Any individual receiving a complaint that this Code of Ethics has been violated
355 by an employee has an obligation to promptly forward the complaint, in writing, to the city
356 manager. The city manager shall promptly designate an individual to conduct an
357 investigation of the complaint. If the complaint alleges that the city manager or an elected
358 or appointed official violated this Code of Ethics, then the individual receiving the complaint
359 has an obligation to promptly forward the complaint, in writing, to the city council, who shall
360 as a body conduct an investigation.

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

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

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

374 (f) Investigation and disposition of alleged ethical violations of this Code of Ethics

375 by the city manager and elected or appointed officials shall be conducted by the city
376 council.

377 (1) Upon conclusion of the investigation by the city council it shall within
378 ten (10) days prepare a written recommendation for disposition of the
379 complaint. A copy of the written recommendation shall be forwarded by
380 certified mail and a copy by 1st class mail to the party complained against.
381 The recommended disposition shall not be imposed by the city council until
382 the time for a formal hearing pursuant to subsection (f)(2) has lapsed and no
383 such hearing is required.

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

390 Section 8. City of Topeka Code § 2-492, Exception to prohibitions, is hereby
391 amended to read as follows:

392 **Exception to prohibitions.**

393 ~~(a) A city employee may make small purchases with personal funds which~~
394 ~~specifically benefit the city and for which the employee may subsequently be reimbursed.~~

395 ~~(b) When any department deems it necessary and advisable for the city to enter~~
396 ~~into a contract with an employee, the department director shall submit to the city manager~~
397 ~~the substance of the contract, including the proposed parties, subject matter, and proposed~~

398 price or amount. The director shall also state the reasons for the necessity and advisability
399 of entering into the contract with the particular employee.

400 (c) ~~No contract between the city and an employee of the city shall be entered into~~
401 ~~unless and until the contract is approved by the city manager and city attorney and notice~~
402 ~~of such action is given to the council.~~

403 **Penalties for noncompliance.**

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

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

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

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

411 Section 9. City of Topeka Code § 2-493, Disclaimer of liability, is hereby amended
412 to read as follows:

413 **Disclaimer of liability.**

414 ~~Any purported contract made in contravention of or without full compliance with the~~
415 ~~provisions of this division shall be illegal and void and the city shall incur no liability for the~~
416 ~~performance of such a purported contract.~~

417 **Severability.**

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

