

Ethics Commission Meeting
July 19, 2022
2:00 p.m.

1. Pledge of Allegiance

2. Call to Order

3. Approval of Agenda
Motion _____ Seconded _____ Action _____
Eric Gares, Ben Castleberry, Branden Dross, Megan Lawrenz, John Thissen

4. Approval of Minutes of June ^{21st}, 2022 Meeting
Motion _____ Seconded _____ Action _____
Eric Gares, Ben Castleberry, Branden Dross, Megan Lawrenz, John Thissen

5. Discussion on Revisions to Code of Ethics Policy

6. Adjourn
Motion _____ Seconded _____ Action _____
Eric Gares, Ben Castleberry, Branden Dross, Megan Lawrenz, John Thissen

To join the Ethics Commission meetings from your computer, tablet, or smartphone, go to <https://www.youtube.com/channel/UCbvSBw6l4w85XQHSX0S1BXg>

Public Forum Comments can be dropped in the deposit box or emailed to cityoffice@cityofherington.com. Must be received before 8:00AM the day of the meeting. Please keep statement to a maximum of 3 minutes.

Ethics Commission Meeting
June 21, 2022
2:00 p.m.

The ethics commission met on the above date and time in the commission chambers at City Hall. In attendance were Eric Gares, Ben Castleberry, Branden Dross and Megan Lawrenz. Absent was John Thissen.

The meeting opened with the pledge of allegiance.

The meeting was called to order by Branden Dross.

Eric Gares made a motion to approve the agenda with the addition of 4a to schedule the next meeting time, seconded by Megan Lawrenz. Motion carried 4-0.

Code of Ethics Revisions – Discussion was had between members of the ethics commission on recommended changes to the ethics policy.

4a. – Next meeting time – Megan Lawrenz made a motion to meet again on 7/19/2022 at 2pm, seconded by Eric Gares. Motion carried 4-0.

Eric Gares made a motion to adjourn, seconded by Megan Lawrenz. Motion carried 4-0.

Megan Lawrenz

EXHIBIT A

CITY OF HERINGTON



CODE OF ETHICS

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CITY OF HERINGTON, KANSAS

CODE OF ETHICS

Sec. 1-901. Declaration of policy.

It is the policy of the City of Herington, Kansas that the proper operation of democratic municipal government requires that any and all governmental representatives be independent, impartial, and responsible to the people; that government decisions and policy be made in proper channels of the government structure, that public office not be used for personal or private gain or the gain of another and be above the appearance of conflict or undue influence; and that the public have confidence in the integrity of the municipal government. In recognition of these goals, a code of ethics for all the City of Herington, Kansas government representatives is adopted. (Ord. No. 1862)

Sec. 1-902. Findings and purpose.

(a) *Findings.*

(1) The Herington City Commission recognizes that the representative form of government is dependent on the trust of the people in their public officials.

(2) The citizens of the municipality are dependent on their government representatives to preserve the safety, health, and welfare through the fair and impartial enforcement of laws, imposition of taxes, and expenditure of public funds.

(3) Each citizen of the City of Herington, Kansas has a right to be assured of impartial and independent judgment from government representatives.

(b) *Purpose.*

In order to guard against the undue influence or the appearance of improper influence or impropriety, and ensure public trust in the municipal government, the Mayor and the Herington City Commission adopt this code and its provisions:

(1) To encourage high ethical standards in official conduct by any government representatives;

(2) To establish guidelines for ethical standards of conduct for all such government representatives by setting forth those acts or actions that are incompatible with the best interests of the municipal government; and

(3) To serve as a basis for disciplining those who refuse to abide by its terms. Ord. No.1862

Sec. 1-903. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) Administrator means the ethics administrator as identified as or by the Herington City Commission.

(b) Ad hoc ethics Commission appointment panel means the panel consisting of the Herington City Commission. The panel appoints the five member ethics Commission. Membership on the panel shall be voluntary and only for and during their respective terms in office. Any action by the panel shall require a quorum of three members.

(c) Affected means, in the case of a person, entity or property, reasonably likely to be subjected to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. For instance, a person or entity owning real property, entering into a contract with the municipal government or seeking a permit or franchise is "affected" by a vote or decision such as zoning of property, approval of a contract or granting of a permit. The term "affected" does not include those persons or entities that are subject to an indirect or secondary effect from official action. Creditors, independent contractors, or guarantors of a person "affected" by a vote or decision are not also deemed to be "affected" by virtue of their relationship with the affected person. The vote or decision need not be the only producing cause of the economic effect or consequence reasonably likely to result. In determining whether a person, entity or property is or was "affected" by a vote or decision, it shall not be necessary to prove the actual existence or occurrence of an economic effect or consequence if such effect or consequence would be reasonably expected to exist or occur. Additionally, a vote or decision to place a matter on a ballot is deemed to affect a person, entity or property to the same extent that the results of the election would affect the person, entity or property.

(d) Business entity means any person, corporation, partnership, independent contractor, sole proprietorship or joint venture organized or existing under the laws of

any state, the United States or a foreign country transacting or engaged in commerce, or any type of business operation whether for profit or not for profit.

(e) Business with the municipal government means any one or any combination of sales, purchases, leases contracts or grants to, by, from, or with the municipal government, or any agency thereof, involving disbursement of \$5,000.00 or more on a cumulative basis during any 12 month period. As of the awarding or execution of a contract or lease, the total then ascertainable consideration thereby committed to be paid, regardless of the period of time over which such payments are to be made, shall be included.

(f) Child means and shall include a child, adopted child, stepchild or foster child, of whatever age.

(g) Commission member means any member of the City Commission, including the mayor.

(h) Contribution means any advance, conveyance, deposit, distribution, gift, loan, or payment of money or any other thing of value but does not include services.

(i) Decision means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the municipal government City Commission, any municipal government board or Commission or the ethics Commission, as well as the discussion or deliberations thereof that can or may lead to a vote or formal action by that body. A "decision" of a municipal government employee means any action in which the employee exercises discretionary authority, including, but not limited to, the issuance of permits, imposition or collection of fines or fees, authorizations for expenditures, and other non-ministerial acts.

(j) Domestic partner is an adult, unrelated by blood, with whom an unmarried or separated official or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses. To be a domestic partner within this code of ethics, registration with the city clerk of a domestic partnership is not required.

(k) Elected official means the municipal government city Commission.

(l) Ethics Commission means the five-member board appointed by majority vote of the Herington City Commission.

(m) Financial benefit includes any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

(n) Financial interest means:

(1) Ownership of any interest as the result of which the owner has received within the past three years, or is presently receiving, or is entitled to receive in the future more than \$1,000.00 per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than five percent of a business entity.

(o) Gift means the transfer of anything of economic value regardless of the form without adequate and lawful consideration. The term "gift" does not include the solicitation, acceptance, receipt or disposition of political campaign contributions regulated in accordance with the provisions of federal, state or local law regulating the conduct of elections or the receipt of political campaign contributions. Complimentary admissions to special events, including dinners, athletic, charitable, cultural or political events, or any other occasion or entertainment, when furnished or available to be furnished to all similarly situated municipal government representatives are excluded from this definition. The term "gift" does not include gifts from a family member or other relative within the fourth degree of consanguinity or affinity.

(p) Household includes anyone whose primary residence is in the official or employee's home.

(q) Interest means any legal or equitable pecuniary interest, whether or not subject to an encumbrance or a condition, which was owned or held, in whole or in part, jointly or severally, directly or indirectly, at any time during each municipal government fiscal year (January 1 through December 31). However, "interest" shall not include an interest held solely in the capacity of a personal representative, agent, custodian, fiduciary or trustee, nor an interest in a time or demand deposit in a financial institution, nor an interest in an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars, either in a lump sum or periodically for life or some other specific period.

(1) *Also* means a pecuniary, property, or commercial interest, or any other interest the primary significance of which has been, will be, or might be the realization of economic gain or the avoidance of economic loss to an elected official, board member, his or her relative, or his or her designee whether direct or indirect; provided, however, that "interest" shall not include any matter involving the common public good or necessity, or any matter in which a similar benefit is conferred to all persons or property similarly situated; and further, that ownership individually or in a fiduciary capacity of any securities, or of any beneficial interest in securities, of a corporation shall not be deemed to create an "interest" in the corporation unless the aggregate amount of such securities, or interest in such securities, amount to five percent or more of any class of the securities of the corporation then outstanding or constitutes a controlling interest in the corporation.

(r) Immediate family member means a spouse or unemancipated child, or a domestic partner and the domestic partner's unemancipated child.

(s) **Ministerial act** means an act performed in a prescribed manner and not requiring the exercise of any judgment or discretion.

(t) **Regulate or regulated** means subject to the control or governed by the rules and regulations of a municipal government agency or required to have a license, permit, or other written authorization from a municipal government agency.

(u) **Substantial interest** means an interest in another person or business entity if:

(1) The interest is ownership of five percent or more of the voting stock, shares or market value of the equity of the entity or ownership of \$5,000.00 or more of the equity of the entity;

(2) Funds received from the other person or entity either during the previous 12 months or the previous calendar year equal or exceed \$5,000.00 in salary, bonuses, Commissions, or professional fees or \$20,000.00 in payment for goods, products, or nonprofessional services, or ten percent of the person's gross income during that period, whichever is less;

(3) The person serves as a corporate officer or member of the board of directors or other governing body for the for-profit business entity other than a corporate entity owned or created by the municipal government City Commission, or

(4) The person is a creditor, debtor, or guarantor of the other person or business entity in an amount of \$5,000.00 or more.

(v) **Substantial interest in real property** means an interest in real property that is an equitable or legal ownership with a market value of \$5,000.00 or more.

(w) **Municipal government agency** means all departments, bureaus, boards, and Commissions and persons, including any and all volunteers, reserves, or part-time employees not embraced in a department who exercise authority comparable to that of heads of departments and bureaus.

(x) **Municipal government official** unless otherwise expressly defined, includes the Mayor, municipal government City Commission, clerks, department heads, deputy departments, deputy department heads, municipal court judges, (including substitute judges), city attorney whether such a person is salaried, hired or elected, individuals appointed by the Mayor or members of the municipal government.

(y) **Municipal government representative** means elected officials, municipal government officials and employees. Commissioners and members of all municipal government committees, boards, task forces, or other municipal government bodies unless specifically exempted from this Code by the municipal government City Commission, and all other persons holding positions designated by the municipal government consolidation plan as it may be amended from time to time.

(z)

(aa) **Official or employee** means the mayor and the mayor's assistants; a member of

the City Commission and a member's assistants; a member of any city board, commission, authority, task force, committee or other organized group of people called to serve the city; a member of any other board, Commission or other organized group of people appointed to that group to serve as a representative of the city; the city manager and all assistant city managers; department directors, including the city clerk and city auditor, and their deputies; contract employees; and all other employees of the city. Official or employee shall also include all volunteers unless the office or department in which the volunteer service is offered has adopted a special code of ethics applicable to volunteers. Official or employee shall also include the judges of the municipal court insofar as this code of ethics is not inconsistent with the Code of Judicial Conduct promulgated by the Kansas Supreme Court.

(bb) Personal benefit includes benefits other than those that are directly financially advantageous. These include financial benefits to relatives, business associates, and others, as well as non-financial benefits to these people and to oneself, including such things as reputation and the success of one's career.

(cc) Relative means any of the following persons related to the employee or the employee's spouse or domestic partner:

- (1) Children, parents;
- (2) Grandchildren, grandparents, brothers and sisters;
- (3) Great-grandchildren, great-grandparents, nephews and nieces, uncles and aunts; or
- (4) Great-great-grandchildren, great-great-grandparents, grand nephews and grand nieces, first cousins, great uncles and great aunts.

(dd) Subordinate means another official or employee over whose activities an official or employee has direction, supervision or control.

(Ord. No. 1862)

Cross references: Definitions generally, § ____.

Sec. 1-904. Ethics Commission.

(a) The purpose of the ethics commission shall be to ensure proper implementation of the code of ethics and to review and report on any and all other violations of the code of ethics.

(b) The ethics commission is responsible for conducting meetings as needed and deliberating on ethical issues, and rendering advisory opinions to the ethics administrator. The ethics Commission shall be composed of five members residing in the city appointed by the ad hoc ethic Commission appointment panel. Two of the Herington city commissioners shall be appointed to serve two-year terms and shall be eligible for reappointment to one four-year term. The remaining three members of the ethics commission shall consist of the City Clerk as Human Resources Director, the

City Manager, and a city community member at large who shall be appointed to serve a one single nonconsecutive four-year term. Starting in January 2024 all appointments thereafter shall be for a single nonconsecutive four-year term. The panel shall select one member of the ethics commission to serve as chairperson of the commission for a two-year renewable term. Any action of the ethics commission shall require a quorum of three members.

(c) In selecting candidates for membership on the commission, the panel shall establish procedures relating to selection which at a minimum provide as follows:

(1) Acceptance of letters or applications of interest from anyone.

(2) Eliminates from consideration persons convicted of a felony or crime or moral turpitude; and

(3) Persons appointed to the ethics commission shall be of good moral standing and reputation.

(d) Persons appointed to the ethics commission shall have no conflicts of interest as defined in section 1-908 and shall be broadly representative of the diverse populace of the City of Herington, Kansas.

(e) The ethics commission shall have the powers to recommend ways to improve the ethics code to the municipal government City Commission.

(f) The ethics commission, through the office of the municipal court, may subpoena documents and witnesses before the ethics commission or to assist the ethics administrator in the investigation and resolution of complaints.

(g) Whenever requested by a municipal government representative, or whenever it deems it in the public interest, the ethics commission shall render advisory opinions, in writing, concerning questions of ethics, conflicts of interest, and the applicability of the code of ethics. Copies of the opinion will be made available to the ethics administrator, and the municipal government City Commission. Such opinion will also be released to the public at the discretion of the ethics commission with such omissions as will be necessary to protect the confidence and privacy of a municipal government representative.

(h) The ethics commission shall have the power to make recommendations to the district attorney who may initiate and investigate matters deemed appropriate.

(i) All persons covered by the jurisdiction of the ethics commission shall receive training to include familiarization with the ethics oath, the ethics handbook, and the code of ethics and the general subject of local governmental ethics to be administered by the ethics administrator under the direction of the ethics commission.

(j) All municipal government representatives, except employees shall, in a public place, take an ethics oath to be administered by a person authorized by law to administer an oath and sign the ethics pledge.

(k) Members of the ethics commission shall be subject to the ethics code. (Ord.

Sec. 1-905. Ethics administrator.

(a) The ethics administrator shall be the City Manager unless otherwise designated by the Herington City Commission on the basis of an approved agreement with the City of Herington and shall function on as needed basis. The ethics administrator shall serve pursuant to a job description established by the City of Herington City Commission. At the direction of the ethics Commission, the ethics administrator may conduct all investigations of an alleged violation of the ethics code.

(b) Compensation to the ethics administrator shall be determined by the Herington City Commission and such administrator may serve without compensation as the circumstances may dictate or in the form of billable hours not to exceed the amount usually budgeted for this purpose.

(c) The ethics administrator shall have the authority to recommend to the ethics Commission to censure those in violation of the ethics code. Censure proceedings shall include, but not be limited to:

(1) A memorandum of private censure from the ethics Commission to the municipal government representatives which shall be given to the municipal government representative and a copy placed in a personal file of the official maintained in the ethics Commission's records or, in the case of an employee, in the personnel file of the employee with the municipal government;

(2) A memorandum of public censure from the ethics Commission to the municipal government representative which shall be given to the municipal government representative and a copy posted on the municipal government ethics website.

(3) The authority to recommend demotion or other administrative steps

(4) Upon belief that the factual allegations support the reasonable belief that a crime may have been committed, refer the matter to the district attorney of the county for review and further action.

(d) The ethics administrator shall be responsible for ethics training for all municipal government representatives. Training shall be mandatory for all new municipal government representatives. All representatives shall undergo "refresher" ethics training at least once every three years at the direction of the ethics administrator.

(e) Matters assigned to or investigated by the ethics administrator shall be deemed personal matters and not disclosed to any person except the accused, the legislative auditor, the county administrator, the ethics Commission and when appropriate, the district attorney. (Ord. 1862)

Sec. 1-906. Advisory opinions.

(a) Where a member of the public or municipal government representative has a doubt as to the applicability of any provision of this division to a particular situation, or as to the definition of terms used here, he or she may apply in writing to the ethics administrator for an advisory opinion. The requesting party shall have the opportunity to present the facts at issue and the applicability of provisions of the division before such advisory opinion is made. The ethics administrator may seek the advice and assistance of the municipal government attorney where interpretation of the law is required and input, review and approval from the municipal government ethics Commission. The ethics administrator and the municipal government attorney shall each respond within a reasonable period of time.

(b) No person who relies upon an advisory opinion rendered pursuant to this division may be found in violation of this division except where the person relying on failed to produce or omitted material facts in the request for the advisory opinion.

(c) Such opinion, unless amended or revoked by the ethics administrator, shall be binding on the municipal government in any subsequent actions concerning the municipal government representative who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion.

(d) Any advisory opinion issued at the direction of the ethics administrator shall be in writing and made available to the public upon request. However, the name of the person requesting the opinion, the names of the person or business entities mentioned in the opinion, and any factual information that would tend to identify the person or business entities shall be deemed confidential information and shall not be disclosed by the ethics administrator or ethics Commission.

(Ord. No. 1862)

Sec. 1-907. Distribution of ordinance/advisory opinions.

(a) The ethics administrator shall cause a copy of this division to be made available to every municipal government representative and candidate for a municipal government office. Each department head, at the direction of the ethics administrator, shall provide each employee with information about the provisions contained in this division or provide the employee with directions on obtaining a copy of it from the municipal government ethics website.

(b) Each new municipal government representative shall be furnished a copy of this division and required to read and sign a statement indicating that he has read or has had the opportunity to read the same.

(c) A copy of these signed statements shall be kept by the city clerk for the elected officials, except that human resources shall keep them in the personnel files of each municipal government employee. An executive summary shall be published and made available to the public.

(Ord. No. 1862)

Sec. 1-908. Conflicts of interest; prohibited interests.

(a) Except as provided in this section, no municipal government representative shall have a substantial interest in or engage in any of the following activities unless such activity is fully disclosed and such representative recuses himself or herself as to matters related to the activity giving rise to the conflict:

(1) Any business entity regulated by or subject to the authority of that municipal government representative regulated by or subject to the authority of the municipal government agency with which the municipal government representative is affiliated;

(2) Any business entity that is negotiating or has entered into a contract to do business with the municipal government;

(3) Any business entity that is receiving public grant money or funds directly from the municipal government or as a pass through from state or federal agencies; or

(4) Solicit any funds or services from any known municipal government vendor or contractor for any business entity in which the municipal government representative has a substantial interest.

(b) The prohibition of subsection (a) of this section shall not apply to or prevent any municipal government representative from:

(1) Having a substantial interest in a business entity that enters into a contract that is awarded as a result of competitive bidding or sealed bids under the ordinances and policies of the municipal government or a contract between the successful bidder and its subcontractors, when the municipal government representative's responsibilities and actions do not include participating on behalf of the municipal government in any manner in the awarding, approval, formulation, or preparation of any such contract; or

(2) Having a substantial interest in a business entity or being associated with or employed by a business entity that represents or is employed by clients or others in transactions or matters before the municipal government where the business entity is composed solely of members of a particular profession, including the municipal government representative, which are regulated by a code of ethics formally adopted by that profession; or

(3) Entering into contracts with the municipal government pertaining to the acquisition of real estate or real estate interests by the municipal government for any public purpose, when the amount of money to be paid by the municipal government for the property involved does not exceed the value of the property as established by not less than two competent real estate appraisers appointed by the municipal government; or

(4) Appearing, without compensation, before any municipal government agency or the municipal government Commission on behalf of constituents or in the performance of any public, official, or civic obligation or duty; or

(5) Accepting or receiving any benefit or facility which is provided for or made available to all citizens or residents or classes of citizens or residents under any housing or other general welfare legislation or in the exercise of the police power; or

(6) Holding stock or investing in or holding any investment in any business entity whose stock is owned or held on a broad basis by the general public, as long as such an interest constitutes less than three percent of the ownership or investment in the entity; or

(7) Having deposits of money in any banking institution made in the ordinary course of business.

(Ord. No. 1862)

Sec. 1-909. Conflicts of interest; disqualification.

(a) Except as permitted by state law or a municipal government ordinance, the municipal government representative shall be disqualified and shall not participate in any matter before the municipal government agency with which municipal government representative is affiliated, except in the exercise of an administrative duty or ministerial act which does not affect the disposition or decision, if, to the municipal government representative's knowledge, the municipal government representative's spouse, parent, child, brother, or sister may be affected by the result or if any of the following may be affected by the result:

(1) Any business entity in which the municipal government representative has an interest;

(2) Any business entity in which the municipal government representative is an officer, director, trustee, partner or employee or in which the municipal government representative knows any of the relatives listed in this section holds such position;

(3) Any business entity with which the municipal government representative or, to the municipal government representative's knowledge, any of the relatives listed in this section is negotiating or has any arrangement concerning prospective employment;

(4) Any business entity which is party to an existing contract with such a municipal government representative, or which the municipal government representative knows is a party to a contract with any of the relatives listed in this section, if the contract could reasonably be expected to result in a conflict between the private interests of a municipal government representative and his or her official duties;

(5) Any business entity, either engaged in a transaction with the municipal government regulated by or subject to the authority of a municipal government agency with which the municipal government representative is affiliated, or in which a direct financial interest is owned by another business entity in which the municipal government representative has a direct financial interest;

(6) Any business entity which is a creditor or obligee of the municipal government representative, or which the municipal government representative knows is a creditor or obligee of any of the relatives listed in this section, with respect to a thing or economic value and which is in a position to affect directly and substantially the interest of the municipal government representative or any of the relatives listed in this section.

(b) If a disqualification pursuant to subsection (a) of this section leaves anybody with less than a quorum capable of acting, or if the disqualified municipal government representative is required by law to act or is the only person authorized to act, the disqualified person shall publicly disclose the nature and circumstances of the conflict and may participate or act, provided that such action is first approved by the municipal government Commission, a municipal government agency, or ethics administrator as under the circumstances may be appropriate. (Ord. No. O-75-09, § 1, 10-1-2009)

Sec. 1-910. Employment restrictions.

(a) A municipal government representative (except a member of the municipal government City Commission serving as a volunteer firefighter or reserve police officer), shall not be employed at the same time as the municipal government representative is employed by the municipal government by:

(1) Any business entity regulated by or subject to the authority of that, municipal government representative or regulated by or subject to the authority of the municipal government agency with which such person was affiliated; or

(2) Any business entity that is negotiating or has entered a contract to do business with a municipal government agency with which the municipal government representative is affiliated.

This prohibition does not apply to an official who is appointed pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to it.

(b) A former municipal government representative, except a former member of the municipal government City Commission, shall not assist or represent a party other than the municipal government in a case, contract, claim, charge, or controversy or other specific matter involving the municipal government if that matter is one in which the municipal government representative personally and significantly participated as a municipal government representative.

(c) A municipal government representative shall not assist or represent a party for contingent compensation in any matter before or involving any municipal government agency other than in a judicial or quasi-judicial proceeding.

(d) A former municipal government representative, unless the former municipal government representative's last annual salary did not exceed \$25,000.00, shall not sell or attempt to sell supplies, services, or construction to the municipal government for one year following the date employment ceased. The term "sell," as used in this subsection, means signing a bid, proposal, or contract, negotiating a contract, contacting any

municipal government representative for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract, settling disputes concerning performance of a contract, or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this section is not intended to preclude a former municipal government representative from accepting employment with private industry solely because the former municipal government representative's new employer is a contractor with the municipal government, nor shall a former municipal government representative be precluded from serving as a consultant to the municipal government. (Ord. No.1862)

Sec. 1-911. Solicitation or acceptance of gifts.

(a) A municipal government representative shall not solicit any gift or knowingly accept any gift, directly or indirectly, from any person that the municipal government representative knows or has reason to know:

(1) Is doing business with the municipal government representative, the municipal government City Commission or a member thereof, or as to the municipal government representative, with their agency; or

(2) Has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the municipal government representative's duty.

(b) Unless a gift of any of the following would tend to call into question the impartiality and the independence of judgment of the municipal government representative receiving it or, if of significant value, would give the appearance of doing so, or, if of significant value, the recipient municipal government representative believes, or has reason to believe, that it is designed to do so, subsection (a) of this section does not apply to:

(1) Meals and beverages;

(2) Ceremonial gifts or awards;

(3) Unsolicited gifts of nominal value or trivial items of informational value the value of which shall not exceed \$25.00 in average cost;

(4) Reasonable expenditures for food, travel, lodging, and scheduled entertainment of the municipal government representative and spouse for a meeting, that are made in return for participation in a panel or speaking engagement at the meeting;

(5) Gifts of tickets or free admission extended to a municipal government representative to attend a professional or intercollegiate sporting event or charitable, cultural, or political event, if the purpose of such gift or admission is a courtesy or ceremony extended to the municipal government representative's office;

(6) A specific gift or class of gifts which the ethics administrator exempts from the operation of this section upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the municipal government and that the gift is purely personal and private in nature;

(7) Gifts from a person related by blood, marriage, or a member of the household; or

(8) Honoraria.

(c) The ethics administrator may by advisory opinion define further exemptions from this section as necessary or that are consistent with business practices generally. (Ord. No. 1862)

Sec. 1-912. Gratuities and kickbacks.

(a) *Gratuities.* In addition to violating any other ordinance or any state or federal criminal statute, it shall be a violation of this division and a breach of ethical standards for any person to offer, give, or agree to give any municipal government representative or former municipal government representative or for any municipal government representative or former municipal government representative to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase requisition, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, proceeding, or application, request for ruling, determination of any claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(b) *Kickbacks.* In addition to violating any other ordinance or any state or federal criminal statutes, it shall be a violation of this division and a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a contractor, a subcontractor under a contract or order to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a contract, subcontract, or order.

(c) *Contract clause.* The prohibition against gratuities and kickbacks contained in this section shall be conspicuously set forth in every contract and solicitation, therefore.

(Ord. No. 1862)

Sec. 1-913. Prohibition against contingent fees.

(a) *Contingent fees.* In addition to violating any other ordinance or any state or federal criminal statutes, it shall be a violation of this division and a breach of ethical standards for any person to be retained, or to retain a person, to solicit or secure a municipal government contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) *Representation of contractor.* Every person, before being awarded a municipal government contract, shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards and of this division.

(c) *Contract clause.* The representation prescribed in subsection (b) of this section shall be conspicuously set forth in every contract and solicitation therefore unless waived by the Herington City Commission where not applicable. (Ord. No. 1862)

Sec. 1-914. Confidential information.

Other than in the discharge of the municipal government representative's official duties, a municipal government representative may not disclose or use for the municipal government representative's own economic benefit or that of another party, information acquired in an executive session lawfully called unless authorized to do so expressly by the Herington City Commission, or confidential information which the municipal government representative has acquired by reason of the municipal government representative's public position, and which is not available to the public.

(Ord. No.1862)

Sec. 1-915. Prestige of office.

(a) A municipal government representative shall not intentionally use the prestige of the municipal government representative's office for the municipal government representative's own private gain or that of another except as may be permitted under this division.

(b) The performance of usual and customary constituent services, without additional compensation, does not constitute the use of the prestige of office for a municipal government representative's private gain or that of another.
(Ord. No. 1862)

Sec. 1-916. Nepotism.

No person shall be employed by the municipal government, serve as a paid volunteer, a reserve, or serve on its elected city Commission if a member of that person's household, including spouse, child (including step or foster children), sibling, or parent is an immediate supervisor, the currently serving mayor, a municipal government City Commission member, or an employee in or assigned to work directly under the supervision of the mayor or Herington City Commission, except that no person employed by the municipal government prior to the adoption or substantive amendment of this provision shall be terminated for a violation of this section and, provided further, that no person employed by the municipal government and becoming the spouse of another municipal government employee after employment of both by the municipal government shall be terminated for a violation of this section. Further, for good cause shown, any such relationship noted herein may be reviewed for purpose of a waiver of this policy by the Herington City Commission with advice from the ethics Commission of the City of Herington. (Ord. No. 1862)

Sec. 1-917. Permitted and prohibited political activities.

(a) *Application to municipal government representatives.*

(1) The provisions of this section apply to all full-time, part-time, and temporary municipal government representatives in both classified and unclassified positions, except that the provisions of subsections (c)(2), (c)(3), (c)(5) and (c)(7) shall not apply to any person employed pursuant to the authority of the mayor (CEO) as an administrative assistant.

(2) Employees in activities which are funded in whole or in substantial part by federal funds have the additional restrictions of federal law pursuant to 5 USC 1501 et seq. (hereafter referred to as the "Hatch Act") and may be prohibited from taking an active part in the municipal government, county, state or national elections. The municipal government's City Clerk, or other official as designate by the Herington City Commission, shall maintain a listing of positions subject to the Hatch Act.

(b) *Permitted political activities.* Activities listed in this section are permitted for the municipal government representatives on their own time or in

accordance with declared policies of the municipal government. These activities apply to county, state, and national elections and to municipal elections outside the municipal government.

(1) Each municipal government representative, including an official or employee subject to the Hatch Act, may:

- a. Register and vote in any election;
- b. As an individual, privately and publicly express an opinion on political subjects and candidates;
- c. Be a member of a political party and participate in its activities consistent with this division;
- d. Sign a political nomination or recall petition as an individual;
- e. Make a financial contribution to a political party or candidate;
- f. Participate in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, referendum, or issue of similar character; or
- g. Display bumper stickers, posters, banners or pamphlets on private property for the endorsement of candidates or issues.

(2) In addition, except as otherwise provided in this division, municipal government representative who is not subject to the Hatch Act may:

- a. Take an active part in the work and management of any political campaigns;
- b. Solicit, receive, or account for funds for a political purpose;
- c. Solicit votes in support of, or in opposition to, a political party's office;
- d. Initiate or circulate nominating or recall petitions;

- e. Serve as a delegate, alternate, or proxy to a political party convention;
- f. Drive voters to the polls on behalf of a political party or candidate;
- g. Endorse or oppose a candidate for public or political office in a political advertisement, broadcast, campaign literature, or similar material;
- h. Seek election to political office as provided in subsection (d) of this section.

(c) *Prohibited political activities.*

(1) *Compelled or coerced political activity.* No municipal government representative shall be required to participate in or contribute to any political campaign. A municipal government representative shall not be subject to direct or indirect political influence or coercion, and political affiliation or support is not a condition of employment with the municipal government.

(2) *Prohibited voluntary political activity--Employment related practices.* No municipal government representative while utilizing equipment or materials of the municipal government, while in a uniform normally identified with the municipal government or while representing himself or herself as an employee of the municipal government, except insofar as such representation is necessary for a candidate for public office to disclose a past and current employment status with the municipal government shall:

- a. Distribute campaign literature;
- b. Give, solicit or receive contributions or subscriptions;
- c. Promise or perform political services; or
- d. Sign or circulate petitions for or on behalf of or in opposition to any candidate for public office.

(3) *Prohibited voluntary political activity--Elections.* No official or employee of the municipal government shall do any of the following:

- a. Be a candidate for elective office as Mayor or Commission Member on the

City Commission on the municipal government unless that person resigns from employment prior to filing or declaring a candidacy for said elective office with the municipal government or be a member of the ethics Commission upon filing or declaring a candidacy for said elective office. Exempted from the application of this provision is any person appointed as an official to all other municipal government Commissions, committees, boards, task force, or other municipal government bodies or agencies and all persons holding positions designated by the municipal government.

b. Circulate petitions initiating a referendum adopting, altering, or repealing a form of government of the municipal government, providing for municipal government officers, their manner of selection or term of office, electing to be or not to be a particular form of government, or otherwise mandating or advising elected representatives of the municipal government.

c. Contribute more than \$25.00 to the primary campaign or the general campaign of any candidate for elected municipal government office or in support of or opposition to any referendum of the type described in subsection (c)(3)b of this section.

(4) *Use of official authority, solicitation of funds.* No municipal government representative may use his or her official authority to solicit funds or receive contributions from other officials or employees for political purposes.

(5) *Bumper stickers, posters, banners or pamphlets, buttons.* Bumper stickers, posters, banners, pamphlets, and buttons may not be displayed on municipal government vehicles, property, or by an individual on a municipal government work site, or in a uniform normally identified with the municipal government. However, such articles may be displayed on private vehicles parked in employee parking areas.

(6) *Activities prohibited on duty, on municipal government property, and/or in uniform.* Activities permitted in subsection (b)(2) of this section are prohibited when municipal government representative is on duty, including break periods. Such activities are also prohibited on municipal government property and when municipal government representative is in a uniform normally identified with the municipal government.

(7) *Use of official title or designation of employment.* A municipal government representative shall not use an official municipal government title or designate employment with the municipal government in political advertisements, endorsements, or speeches. Nothing in this section shall be construed to limit the Mayor or any other employee acting at the direction of the Commission from making statements on behalf of the municipal government to local, regional, state or federal legislative, executive, or administrative bodies,

media representatives, or other interested persons or groups. Further, nothing herein shall be construed as prohibiting any person from performing a service on behalf of a person holding elective office in connection with the performance of that elected official's public duties.

(d) *Candidate for elective office.*

(1) A municipal government representative may seek election to a political office. During this campaign, the municipal government representative shall not use an official municipal government title in the political campaign, nor shall the person's official authority be used to affect the result of the election. If elected to political office, and such office is clearly inconsistent, incompatible, in conflict with, or inimical to the municipal government representative duties as a municipal government employee, the municipal government representative shall terminate his or her municipal government position prior to assuming the elected position.

(2) A municipal government representative may be a candidate for a board such as, but not limited to, a school board or a library board while retaining active municipal government employment and, if elected, may retain the municipal government position unless such election gives rise to incompatibility of office which shall necessitate resignation from municipal government.

(3) An official or employee who becomes a candidate for Mayor or Commission Member on the City Commission of the municipal government shall be terminated upon the declaration of candidacy or filing of candidacy, whichever occurs first, unless said employee or official resigns prior thereto.

(4) A municipal government representative subject to the Hatch Act may not be a candidate for elective office unless permitted under federal law.

(5) A municipal government representative may be a candidate for precinct committee positions or officer of a political party without taking an unpaid leave. (Ord. No. O-75-09, § 1, 10-1-2009)

Sec. 1-918. Contractual violations and recovery.

(a) If any court of competent jurisdiction or the ethics commission determines that any contract with the municipal government involves acts or omissions on the part of any person in violation of any provision of this division, the contract may be terminated upon such terms and conditions as may be approved by the municipal government Commission.

(b) A municipal government representative who is subject to the provisions of this article and who is found by the ethics commission to have violated its provisions is subject to disciplinary action by the ethics commission in accordance with personnel policies, this division, contracts with designated bargaining units, or applicable laws.

(c) Value transferred or received in breach of ethical standards may be recovered as follows:

(1) *Recovery of value transferred or received in breach of ethical standards; general provisions.* The value of anything transferred or received in breach of this division or regulations promulgated hereunder by municipal government representative may be recovered from the municipal government representative.

(2) *Recovery of kickbacks by the municipal government.* Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order hereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the municipal government and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(Ord. No. 1862)

Sec. 1-919. Municipal government representatives violating code.

Any municipal government representative found by any court to have violated the provisions of this division may be subject to discipline as determined by the ethics commission in accordance with the provisions of this article. (Ord. No. 1862)

Sec. 1-920. Whistleblowing.

(a) No municipal government representative shall retaliate against any employee or any other person for making a good faith report of violation of state or federal law, rules, or regulations, or other misconduct by municipal government representatives, including violations of this division.

(b) No municipal government representative shall prohibit municipal government representative from reporting any violation of law or rules or regulations to any person, agency, or organization.

(c) No municipal government representative shall require any municipal government representative to give notice to any other municipal government representative before reporting a violation of law or rules or regulations or misconduct by municipal government representatives, including violations of this division.

(d) This section shall not be construed as:

(1) Permitting a municipal government representative to leave the municipal government representative's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to absences;

(2) Authorizing a municipal government representative to represent the municipal government representative's personal opinions as the opinions of the municipal government; or

(3) Prohibiting disciplinary action of a municipal government representative who discloses information which:

- a. The municipal government representative knows to be false or which the municipal government representative discloses with reckless disregard for its truth or falsity;
- b. The municipal government representative knows to be prohibited from disclosure under state law or in violation of privacy rights; or
- c. Is confidential or privileged under statute or court rule.

(e) Nothing in this division shall be construed to add to, diminish, or otherwise modify rights or remedies available under the law.

(f) Any violation of this section by a municipal government employee shall be addressed as a violation of the human resources guide or other policies governing personnel.

(g) Any employee who alleges that disciplinary action was taken against him in violation of this section shall be entitled to file a grievance under the human resources guide or other policies governing personnel. (Ord. No. 1862)

Sec. 1-921. Ethics pledge for municipal government representatives of the municipal government of the City of Herington, Kansas.

**ETHICS PLEDGE FOR ELECTED OFFICIALS, CANDIDATES, AND EMPLOYEES
OF THE MUNICIPAL GOVERNMENT OF
HERINGTON, KANSAS**

I hereby pledge to adhere, to the best of my ability, to the following code of ethics.

1. I will perform all of my ethical and legal duties, including those specified in this code of ethics in good faith, interpreting them with integrity, sincerity, and a commitment to advance rather than evade or circumvent their spirit and purposes.
2. I will treat my office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.
3. I will not reveal confidential or sensitive governmental information, either anonymously or with personal attribution, unless I have good faith belief that there is a compelling public interest in revealing the information.
4. I will neither seek nor accept any form of personal benefit for performing my duties promptly, efficiently or fairly, or for the exercise of appropriate but discretionary representational authority.
5. I will take steps to assure that constituents and others who may be affected by public policies have a fair and equal opportunity to express their concerns, grievances and ideas without regard to their willingness or ability to provide me with personal benefits or political support.
6. I will not use public employees on governmental time or government property for private benefit.
7. I will not use, or allow others to use, the authority, title, or prestige of my office for the attainment of private financial, social or political benefits in any manner that is inconsistent with public interests.
8. I will not, during or after the term of my office, engage in any act or transaction which reasonably appears to sell or lend the stature and prestige of my office or

otherwise creates a general perception that I have exploited my public position for private gain, or the gain of another.

9. I will not use or seek to use public facilities or employees, on government time, for political party activities, campaigning, fund raising, or other partisan or personal political activities.

10. I will not accept gratuities or engage in financial relationships that might reasonably be construed to affect my judgment or actions.

Signed: _____

Dated: _____

(Ord. No.1862)

Sec. 1-922. Ethics oath.

**ETHICS OATH OF THE MUNICIPAL GOVERNMENT OF THE CITY OF
HERINGTON, KANSAS**

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Kansas, and faithfully discharge the duties of _____, and to abide by and adhere to the provisions of the Code of Ethics of the City of Herington, Kansas. So help me God.

Signed: _____

Dated: _____

(Ord. No.1862)

Secs. 1-921. Reserved.

DRAFT