ORDINANCE NO. 18836

AN ORDINANCE introduced by Councilmembers John Nave, Brett Blackburn and Lana Kennedy, sitting as the Economic and Community Development Committee, repealing City of Topeka Code § 2-494 and amending City of Topeka Code, §§ 2, Article IX and 2-486, 2-487, 2-488, 2-489, 2-490, 2-491, 2-492, and 2-493 establishing a Code of Ethics for elected and appointed officials and employees for the City of Topeka, and specifically repealing said original sections.

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

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

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

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

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

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

PROHIBITED ACTS AND PRACTICES
CODE OF ETHICS.

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

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

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

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

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

Purpose.

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

(b) It is the intention of the city council that this Code of Ethics is liberally construed to accomplish its purpose of protecting the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of this Code of Ethics. In construing this chapter, employees should be guided by common sense and
practicality. This Code of Ethics is supplemental to state law, K.S.A. 75-4301 et seq., as may be amended.

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

**Exceptions.**

This section shall not be construed as:

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

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

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

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

   a. The employee knows to be false or which the employee discloses with reckless disregard for its truth or falsity;
   b. The employee knows to be exempt from required disclosure under the open records act; or
   c. Is confidential under any other provision of law.
Definitions.

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

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

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

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

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

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

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

“Substantial Interest” shall mean the ownership in a business, receipt of compensation or other goods or services without compensation, receipt of commission, or holding a position of an officer, director or other similar senior position in a business as defined under K.S.A. 75-4301a and any amendments thereto.
Section 4. City of Topeka Code § 2-488, Making or participating in certain contracts prohibited, is hereby amended to read as follows:

Making or participating in certain contracts prohibited.
The following contractual arrangements are prohibited, except as specifically provided in this division:

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

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

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

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

Prohibited conduct.
The following shall constitute violations of this Code of Ethics:

(a) General Prohibition Against Conflicts of Interest. In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of
conflict of interest or impropriety, no current City officer or employee should be involved in any activity that might be seen as conflicting with the conduct of official City business or as adverse to the interests of the City. Even the appearance of the conduct prohibited in this Code of Ethics alone may be sufficient to constitute a violation of this Code of Ethics.

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

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

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

(e) **Representation of Private Person at City Proceeding Prohibited.** No City officer or employee shall appear on behalf of a private person, other than himself or herself or an immediate family member or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City officer in an official capacity is a party, or accept a retainer or compensation that is
(f) **Employment of Relatives.** No immediate family member of a City officer or employee shall be hired, promoted or transferred to or within a department when, as a result, an employee would be directly supervising a member of his or her immediate family or if the employee would supervise another employee who supervises the family member, and/or working with a member of his or her immediate family in the same unit having the same immediate supervisor. Further, no immediate family of a City councilmember may be hired by the City during that councilmember’s term of office. This provision shall not effect the employment of a councilmember’s immediate family who was hired by the City prior to the councilmember taking office.

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

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

(i) **Impermissible Disclosure of Information After Leaving City Service.** No
former officer or employee shall disclose or use any privileged, confidential, or proprietary information gained because of his or her City employment.

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

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

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

(m) **Acceptance of Compensation or Gifts Prohibited.** No City officer or employee may, directly or indirectly, give or receive, or agree to give or receive, from any person, business, for profit or not-for-profit groups which receive funding from the City or any person or business which directly or indirectly contracts to provide goods or services to the City, any compensation or gift for a matter connected with or related to the officer’s or employee’s services with the City, except this prohibition shall not apply to:
(1) Attendance of a City officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the officer or employee as a City representative is appropriate;

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

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

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

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

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

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

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

a. Any business entity regulated by or subject to the authority of that official or employee, or regulated by or subject to the authority of the City agency with which such person is affiliated;

or

b. Any business entity, which is negotiating or has entered a contract to do business with a City agency with which the City officer or employee is affiliated.

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

(2) A former City officer or employee shall not assist or represent a party other than the City in a case, contract, claim, charge, or controversy or other specific matter involving the City if that matter is one in which the City officer or employee personally and significantly participated as a City officer or employee.

(3) A City officer or employee shall not assist or represent a party for contingent compensation in any matter before or involving any City agency other than in a judicial or quasi-judicial proceeding.

(4) A former City officer or employee, unless the former employee’s last annual salary did not exceed Twenty-Five Thousand Dollars ($25,000.00) shall not sell or attempt to sell supplies, services, or construction to City for one (1) year following the date employment ceased. The term “sell” as used
herein means signing a bid, proposal, or contract; negotiating a contract; contacting any City officer or employee 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 City officer or employee from accepting employment with private industry solely because the former City officer or employee’s new employer is a contractor with the City, nor shall a former City officer or employee be precluded from serving as a consultant to the City subject to the requirement set forth in subsection 5 below.

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

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

a. When any department deems it necessary and advisable for the city to enter into a contract with a current employee, the department director shall submit to the city manager the
substance of the contract, including the proposed parties, subject matter, and proposed price or amount. The director shall also state the reasons for the necessity and advisability of entering into the contract with the particular employee.

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

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

Accepting gratuities prohibited.

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

Statement of substantial interest.

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

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

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

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

Restrictions on former employees; former duties.

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

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

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

Retaliation for reporting violation.

(a) No elected official, department head or supervisor of any City employee shall:
Prohibit any employee of the department from reporting to any person, agency or organization any violation of state or federal laws or rules and regulations or City ordinances or rules and regulations; or

Require any such employee to give notice to an elected official, department head or supervisor prior to making such report.

(b) This section shall not be construed as:

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

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

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

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

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

b. The employee knows to be exempt from required disclosure under the open records act; or
Section 7. City of Topeka Code § 2-491, Restriction of former employees in selling to the city, is hereby amended to read as follows:

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

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

(1) “Sell” means signing a bid, proposal, or contract, negotiating a contract, contacting any employee 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 not intended to prevent a former employee from accepting employment with private industry solely because the former employee's new employer is a contractor doing business with the city, nor shall a former employee be prevented from serving as a consultant to the city.

**Complaint process.**

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

(1) city manager;

(2) deputy mayor;

(3) city attorney; or

(4) human resources director.
(b) No person shall knowingly file a false complaint or report of a violation of this Code of Ethics.

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

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

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

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

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

BORD/CODEOFETHICS 3/26/07 (as amended for publication) 16
by the city manager and elected or appointed officials shall be conducted by the city
council.

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

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

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

Exception to prohibitions.

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

(b) When any department deems it necessary and advisable for the city to enter
into a contract with an employee, the department director shall submit to the city manager
the substance of the contract, including the proposed parties, subject matter, and proposed
price or amount. The director shall also state the reasons for the necessity and advisability of entering into the contract with the particular employee.

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

Penalties for noncompliance.

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

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

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

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

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

Disclaimer of liability.

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

Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.
Section 10. That City of Topeka Code § 2-494, Penalty for violation of division, is specifically repealed.

Penalty for violation of division.

It shall be unlawful for any elected official or city employee to knowingly and willfully violate any of the provisions of this division. An elected official who violates this section shall forfeit the office. Any employee who violates this section shall be subject to discharge.

Section 11. That City of Topeka Code, §§ 2, Article IX and 2-486, 2-487, 2-488, 2-489, 2-490, 2-491, 2-492, 2-493 and 2-494 are hereby specifically repealed.

Section 12. This Ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council March 27, 2007.

CITY OF TOPEKA, KANSAS

____________________________
William W. Bunten, Mayor

ATTEST:

____________________________
Brenda Younger, City Clerk

*This ordinance shall become effective without signature of the Mayor on August 8, 2007.*