

Resolution 2016-096

A RESOLUTION ADOPTING A CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS OF THE CITY OF RAPID CITY.

WHEREAS, South Dakota Codified Laws (SDCL) Section § 1-56-10 requires that all non-state agencies receiving state grants and awards from a state agency adopt and enforce a conflict of interest policy; and

WHEREAS, the City of Rapid City receives millions in dollars from the State of South Dakota either directly or through federal pass-through funds which will be subject to the statutory requirement that it enforce a conflict of interest policy; and

WHEREAS, while provisions addressing conflicts of interest for municipal officials currently exist in state law, the Common Council wishes to adopt a conflict of interest policy that incorporates these statutory requirements and assists its elected and appointed officials in recognizing, disclosing, and avoiding conflicts of interests; and

WHEREAS, adopting a conflict of interest policy will clarify expectations from the public when elected and appointed officials are conducting City business; and

WHEREAS, the City of Rapid City deems it is in the best interest of the City to adopt this Conflict of Interest Policy for the Common Council and for all elected and appointed officials of the City.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that there is hereby established the following Conflict of Interest policy, which in its entirety reads as follows:

RAPID CITY CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS

The City of Rapid City seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid the appearance of such conflicts to the public it serves. Each elected and appointed official has the duty to place the interests of the citizens of Rapid City foremost in any dealings on behalf of the City and has a continuing responsibility to comply with this Policy. This policy applies to any elected or appointed official who serves on the Common Council, who serves on any board, committee, or commission of the City, or who is appointed to serve the City in any capacity pursuant to SDCL Chapter 9-14 (collectively referred to as "Official").

Conflicts of interest may exist when an Official, or an immediate family member of such Official, has a personal or financial interest clearly separate from that of the general public on a matter before the Official. An immediate family member for purposes of this policy is any person related to an Official within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild or an individual claimed by the Official or his/her spouse as a dependent for federal income tax purposes. Such conflicts of interest may be financial or personal, direct or indirect, and the existence of a conflict of interest is dependent upon the

unique facts of a particular situation.

It is the policy of the City of Rapid City to follow state law regarding conflicts of interest, and this policy is not intended to be more strict than the applicable requirements of state law. Generally, state law provides that an Official may not have a personal financial interest in any City transaction for the purchase of labor or services, materials or supplies, or real or personal property that belongs to the City. An exception to this general rule may apply if the transaction is reasonable and just, if the contract is made without fraud or deceit, and if the Official discloses the conflict and recuses himself/herself from participation in the decision for which there is a conflict of interest. These exceptions include the following:

- (1) A contract for \$5,000 or less;
- (2) A contract awarded by competitive bidding procedures if more than one competitive bid is submitted or, if only one competitive bid is submitted, the procedures in SDCL 6-1-2.1 have been followed;
- (3) A contract for professional services;
- (4) A contract awarded off of the state contract list at the established price or less;
- (5) A contract that does not require competitive bidding when there is no other source of supply or services and when the total of any such contracts does not exceed \$50,000 for a public improvement or \$25,000 for a contract for supplies or services; or
- (6) A contract with an entity for which competitive bidding is not required unless the majority of the governing body are members or stockholders who collectively have a controlling interest, or any governing board Official is an officer or manager or such entity.

No Department Director who is authorized in his/her official capacity to sell or lease any property or to make any contract may be personally interested, directly or indirectly, in any such sale, lease, or contract.

#### **Procedure When Conflicts of Interest Exist**

If an Official who is a member of the City Council, or a board, committee, or commission has a disqualifying interest in a matter before the body on which the Official serves, he/she shall disclose the conflict to the body prior to its consideration of the matter. Once this disclosure is made, the Official shall not formally participate in the official discussion, any executive session, or any vote on the matter. If the Official has a conflict of interest in the matter and chooses to participate in the discussion, the Official should leave the dais and speak on the item from the audience as a member of the public.

If it is alleged that an Official has a disqualifying conflict of interest in a matter before the City Council, or a board, committee, or commission on which the Official serves, and if the Official

does not voluntarily refrain from participating in the matter, then the Official may be disqualified from officially participating in consideration of the matter upon a two-thirds vote of the Council, board, committee, or commission on which the Official serves. The City Council, or a board, committee, or commission voting to disqualify such Official must make a specific finding of the disqualifying conflict of interest for which it has excluded the Official from participating in the matter under consideration. An Official disqualified in this manner may not participate in the official discussion, any executive session, or any vote on the matter.

If any Official desires assistance to determine if that Official, or another Official, has a disqualifying conflict of interest, the Official may request an advisory opinion from the City Attorney's Office. Such opinion shall be made available to all members of the City Council, or the board, committee, or commission about which the opinion is provided, but shall not be available for public inspection unless a majority of the members of the City Council or the board, committee, or commission to which the opinion is provided votes to make such opinion public.

**Distribution of Policy to Officials**

Upon adoption of this policy, the City Attorney's Office shall distribute this Conflict of Interest Policy and all pertinent state law provisions to all City Officials. The policy and state law provisions shall be timely provided to all newly elected or appointed Officials.

DATED this 20 day of January, 2017.

CITY OF RAPID CITY



Mayor

ATTEST:

  
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Finance Officer

(SEAL)