

# ORDINANCE NO. 2007-043

Adopted by the Sacramento City Council

May 8, 2007

## AMENDING ARTICLE I OF CHAPTER 2.16 OF TITLE 2 OF THE CITY CODE RELATING TO CONTRACTUAL CONFLICTS OF INTEREST OF CITY EMPLOYEES

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

### **Section 1**

Article I of Chapter 2.16 of Title 2 of the Sacramento City Code is amended to read as follows:

#### 2.16.010 Prohibition on City employee interest in City contract

No City employee shall engage in any employment, activity, or enterprise from which the employee receives compensation or in which the employee has a financial interest and which is funded, all or in part, by the City or any City department through or by a City contract unless the employment, activity, or enterprise is required as a condition of the employee's regular City employment. No City employee shall contract on his or her own individual behalf as an independent contractor with the City or any City department to provide services or goods.

This section shall not prohibit the City from entering into contracts with an entity in which a City employee has a financial interest because of his or her spouse's or dependent's employment with the entity, ownership or control of the entity or other financial interest in the entity, provided that the employee: i) does not participate in the control or operation, or otherwise participate or engage in the business or enterprise of, the entity; ii) abstains from all participation in the making of the contract, pursuant to Government Code Secs. 1090 et seq.; and iii) if required by subsection G-2 of Section 2.16.030 below, provides the notice required by that section.

#### 2.16.020 Employees defined.

For purposes of this article, a person shall be deemed to be an employee of the city only if, during the previous twelve (12) month period, the employee has worked one thousand forty (1,040) hours or more for the city.

#### 2.16.030 Exception--Party to employment and other specified contracts.

Section 2.16.010 shall not prohibit the following contracts:

A. A contract of employment in which the employee agrees to perform services for

- the City as an employee of the City;
- B. A contract in which the employee is a third-party beneficiary of an agreement executed pursuant to the Meyers-Milias-Brown Act;
  - C. A contract in which the employee is to be reimbursed for actual and necessary expenses incurred in the performance of an official duty as an employee of the City;
  - D. A contract affecting retirement benefits paid or to be payable to an employee as a present or future retired employee of the City;
  - E. A contract with the City for the off-duty employment of peace officers;
  - F. A contract with the City pursuant to which the employee pays for and receives public services generally provided by the City to the public at large if the terms and conditions of said contract are the same as if the employee were not an employee of the City;
  - G. A contract in which the employee has only a remote financial interest.
    - 1. Definition: For purposes of this provision, an employee has a remote financial interest in a contract if the employee's interest is one of the following:
      - a. That of a non-salaried officer of a nonprofit corporation or association;
      - b. That of the owner of real property who enters into any agreement with the city concerning that property pursuant to state or local land use regulations;
      - c. That of the owner of real property whose interest is being acquired by the city under the threat of or pursuant to the exercise of the power of eminent domain.
    - 2. The interest of an employee in any contract described in subsection G-1 above shall be considered as being other than a remote interest if the contract is one in which the employee has a supervisory interest. An employee has a supervisory interest in a contract if the employee is directly involved as an employee of the City in any of the following activities in reference to said contract:
      - a. The preparation of contract plans or specifications;
      - b. The solicitation of bids for or the award of the contract;

- c. The supervision or monitoring of performance under the contract.
3. Exception: Notice and Abstention: An employee of the City shall not be considered as having a supervisory interest in a contract if, prior to engaging in any of the activities described in subsection 2 above, the employee has notified his or her immediate city supervisor of the interest in the contract and thereafter abstains from performance of these duties in reference to the contract.

2.16.040 Exception: Contract for public services.

The provisions of this article shall not apply to any contract with the city wherein any employee pays for and receives public services generally provided by the city to the public at large if the terms and conditions of said contract are the same as if the employee were not an employee of the city.

2.16.050: Violation-Penalty.

Any employee who violates this article shall be guilty of a misdemeanor and shall be subject to discipline by the city manager or other official in whom is vested the disciplinary power.

2.16.060 Contracts voidable.

Any contract entered into in violation of this article shall be voidable at the option of the City.

## **Section 2**

The purpose and intent of this ordinance is to clarify that, while Article 1 of Chapter 2.16 of the City Code should be construed to prohibit an employee from personally engaging in any employment, activity or enterprise from which the employee will receive compensation or in which the employee has a financial interest and which is funded by the City through a City contract, it should not be construed to prohibit the City from entering into contracts with entities in which the spouse or dependents of an employee may have a financial interest, provided that the employee does not participate in the contracting process and does not participate in the management, control or operations of the entity contracting with the City. Article 1 of Chapter 2.16 is intended to establish for City employees a restriction similar to that imposed on state employees by Section 10410 of the Public Contracts Code. The California Attorney General has opined that this provision does not prohibit the state from entering into a contract with an entity in which an employee's spouse may have a financial interest, provided that the employee does not play an active role in the business or enterprise of the entity, and abstains from any and all participation in the contracting process. 84 Ops. Cal. Atty Gen. 131 (2002). It is the intent of the Council that Article 1 of Chapter 2.16 should be construed in a manner consistent with the opinion of the Attorney General.

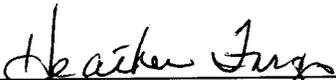
Adopted by the City of Sacramento City Council on May 8, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy,  
Tretheway, Waters and Mayor Fargo.

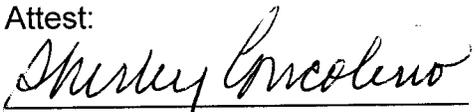
Noes: None.

Abstain: None.

Absent: None.

  
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Mayor Heather Fargo

Attest:

  
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Shirley Concolino, City Clerk

Passed for Publication April 26, 2007  
Published April 27, 2007  
Effective June 7, 2007