

**BILL NO. XXXX**

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING CHAPTER 100 OF THE CAMELOT CITY CODE RELATING TO SUSPENSION AND DEBARMENT OF VENDORS.**

**WHEREAS**, the City of Camelot expends great effort to be sure that public money is expended efficiently and in a manner which reflects the ideals and standards fitting of our residents; and

**WHEREAS**, the Board of Aldermen finds and declares that the requirements, procedures and remedies hereinafter enacted will promote the safety and welfare of the community and assure Camelot citizens that those with whom the City does business are capable and responsible;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CAMELOT, MISSOURI, AS FOLLOWS:**

**Section 1.** Chapter 100 of the Code of Ordinances of the City of Camelot, Missouri, is hereby amended by the addition of one new Section, initially to be designated as Section 100.013, to read as follows:

**Chapter 100. General Provisions.**

**Section 100.013 Debarment**

A. *Policy.* It is the City of Camelot intent to give the public assurance that public money is expended efficiently and in a manner which is consistent with highest ideals and standards in the conduct of public business, and the Board of Aldermen enacts these regulations for the purpose of promoting the safety and welfare of the community and assuring the public that those with whom the City does business are capable and responsible. In order to protect the public interest, it is the policy of the City to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with this Section, are appropriate means to implement this policy. Debarment and suspension are serious actions which shall be used only in the public interest and for the City's protection and not for purposes of punishment.

B. *Definitions.* For the purposes of this Section, unless the context requires otherwise, the following terms shall mean:

AFFILIATE means persons related to one another in such a manner that directly

**Commented [K01]:** Prefatory clauses of an ordinance are a good place to set out the legislative purpose and provide context and "legislative intent" for the benefit of future judicial review. But if the ordinance is one which enacts a city code provision there is a risk that the prefatory language of the enacting ordinance may be forgotten or overlook when everyone is just working with the city code. Codifying that contextual material in the city code assures it will be accessible when administrators and courts are called upon to address the code provision.

**Commented [K02]:** The definition section of an ordinance is worth spending considerable effort. Include what you want to reach and exclude what you cannot or should not touch upon. By drafting good definitions and articulating them up front the regulatory and operational portions of the ordinance become easier to draft since nuances articulated in the definitions need not be expressed again when the defined terms are used. On another note, the definition section is NOT the place to "legislate." Define the term here and later lay out the language that says doing this or allowing that result is illegal. Among other things, separating definition from regulation simplifies charging a violation by just citing to the regulatory provision.

or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension, debarment or voluntary exclusion of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, or voluntarily excluded person.

DEBARMENT means an action taken by the City in accordance with these regulations to exclude a person from participating in transactions with the City. A person so excluded is "debarred".

PARTICIPANT means any person who submits a proposal or bid for, or enters into, or reasonably may be expected to enter into, a transaction with the City. This term also includes any person who acts on behalf of or is authorized to commit a participant in a transaction as an agent or representative of another participant.

PERSON means any individual, corporation, partnership, association, unit of government or legal entity, however organized and.

PRINCIPAL means an officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence or substantive control over a covered transaction, whether or not employed by the participant.

PROPOSAL means a solicited or unsolicited bid, application, request, offer, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a transaction.

SUSPENSION means an action taken in accordance with this article that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

TRANSACTION means any transaction between the City and a person for procurement of goods and/or services, or public works contracts and any contract for goods or services between a participant and a person, whose goods or services are to be employed in a transaction with the City.

VOLUNTARY EXCLUSION or VOLUNTARILY EXCLUDED means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

C. **Grounds for Debarment.** A person may be debarred from consideration for award of contracts for any of the following reasons:

**Commented [K03]:** When the legislative body delegates administrative discretion the criteria and standards to be used in the exercise of that discretion must be specified.

- (1) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty which currently, seriously and directly affects responsibility as a city contractor or vendor.
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Failure without good cause to perform in accordance with contract specifications or within the time limit provided in the contract.
- (5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor or vendor shall not be considered a basis for debarment.
- (6) The person is in arrears on any debt owed the city or has a history of being chronically in arrears on debts owed the city or attempting to obtain excessive or unwarranted payment or preference from the City.
- (7) Any other cause so serious and compelling as to affect responsibility as a city contractor or vendor, including debarment by another governmental entity.

D. *Procedure.*

- (1) Debarment shall be initiated by serving written notice of the debarment to the person intended to be debarred. The notice shall set forth the specific grounds for the debarment and advise the person of the right to appeal. The notice shall be served by registered or certified mail or by delivering a copy of the notice to the person subject to debarment or the person's agent or employee. The debarment shall take effect ten (10) days after service of the notice unless an appeal is taken to the city administrator. If an appeal is taken, the debarment shall not take effect until a final order upholding the debarment is entered by the city administrator or until the appeal is dismissed by the appellant.

- (2) Within ten (10) days after service of a written notice of debarment, the person affected by the notice may file a written request for a hearing before the city administrator contesting the debarment.
- (3) The city administrator shall give the appellant at least ten (10) day notice of a hearing. At the hearing, the City and the appellant shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses and impeach any witness. Oral evidence shall be taken on oath or affirmation. All evidence shall be suitably recorded and preserved. The technical rules of evidence shall not apply, but the city administrator may exclude evidence which is irrelevant or repetitious. The City and appellant shall be entitled to present oral arguments or written briefs at or after the hearing.
- (4) The city administrator shall make written findings of fact and conclusions of law and issue a final order. Findings of fact shall be based upon competent and substantial evidence found in the record as a whole. A copy of the city administrator's order, findings of fact and conclusions of law, shall be delivered or mailed to the appellant.
- (5) An appellant aggrieved by the decision of the city administrator may, within five (5) days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decisions of the city administrator under this Section. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error. The request for reconsideration and appeal must be filed with the City Clerk within five (5) days of the date of the city administrator's decision. A copy of the request and any supporting documents or materials filed by the appellant must be served by the appellant party on the city administrator within three (3) days of filing with the City Clerk. The Board of Aldermen may consider the appeal on the record of the prior decision by the city administrator or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.
- (6) Any appellant aggrieved by the final determination of the City may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of Lowe County. Such petition shall be filed within ten (10) days after the final determination.

E. *Effect of Debarment.* Except to the extent prohibited by law, persons who are debarred or suspended by the City or by the State of Missouri and their affiliates shall be excluded from transactions with the City as either participants or principals for the period of their debarment or suspension. Accordingly, the City shall not enter into transactions with or involving such debarred or

**Commented [K04]:** I am a big proponent of giving those whose interests may be impacted by an administrative action all the due process they can handle. By being procedurally expansive now, and making the other side play their hand and "make their case", you increase the chance of avoiding - or shortening - more expensive litigation later.

Also, by giving the other side full due process hearing rights, the administrative proceeding will be subject to review as a contested case. The parties are then bound by the record and facts in evidence before the city, a more favorable standard of review than for non-contested cases.

**Commented [K05]:** Making additional administrative remedies available at the city level opens a failure-to-exhaust argument for the city if litigation is filed. And short time frames for exercising those remedies can be beneficial (e.g. 10 days to request a hearing before the city administrator in (3), above, and 5 days for appeal here).

suspended persons or their affiliates during such period.

- F. *Length of Debarment.* Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Debarment generally should not exceed three years; however, where circumstances warrant, a longer period of debarment may be imposed.
- G. *Voluntary exclusion.* The City may, at any time, settle a debarment or suspension action when it determines that such settlement is in the best interest of the City. Persons who accept voluntary exclusion are excluded in accordance with the terms of their settlements.

**Section 2.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**Section 3.** The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**Section 4.** This Ordinance shall be in full force and effect from and after the date of its passage by the Board of Aldermen and approval according to law.

**PASSED BY THE BOARD OF ALDERMEN THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023.**

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

**Commented [K06]:** Declaring a legislative intent for severability as a matter of routine may help you preserve the bulk of a regulatory scheme even if some element is found problematic later.

\_\_\_\_\_  
Arthur D. Lancelot, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**Commented [K07]:** In cities where the mayor has veto authority it is best to have separate signature blocks for attestation to passage by the legislative body and approval by the executive, even if the mayor is the presiding officer and both signatures are the same.