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ORDINANCE NO. 017112

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.92 (ETHICS); TO AMEND SECTIONS 2.92.010 THROUGH 2.92.090 AND SECTION 2.92.150; TO ADD NEW DEFINITIONS AND STANDARDS OF CONDUCT, REVISE THE DUTIES AND PROCEDURES OF THE ETHICS REVIEW COMMISSION, REVISE THE PROCESS FOR RECEIVING AND REPORTING GIFTS, CREATE RESTRICTIONS FOR OFFICERS AND EMPLOYEES LEAVING CITY SERVICE, REVISE THE COMPLAINT PROCESS, AND CREATE ADDITIONAL VIOLATIONS; THE PENALTY BEING AS PROVIDED IN SECTIONS 2.92.150 AND 1.08.010 - 1.08.030 OF THE EL PASO CITY CODE.

WHEREAS, in 2007, the voters of the City added provisions in the Charter relating to the Ethics Review Commission and conferred duties upon the Commission; and

WHEREAS, the City Council requested a complete review of the City's Ethics Ordinance by the Council Rules Legislative Review Committee and the Ethics Review Commission; and

WHEREAS, the Ethics Review Commission presented a draft of extensive revisions to the Council Rules Legislative Review Committee on March 11, 2009, which made a detailed review of the recommendations.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

CITY CLERK DEPT.
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Section 1. That Section 2.92.010 (Policy) of the El Paso City Code, is amended to read as follows:

2.92.010 Policy and Purpose

A. All city officers and employees have a fiduciary duty to the citizens of the city to be ethical in fulfilling the responsibilities of their positions. At the very least, being ethical includes being disposed to comply with all laws that apply to one's position.
B. Ethical conduct is motivated by sources inside and outside the law. The Texas local government, Election and Penal Codes regulate aspects of the conduct of city officers and employees. However, as ethical conduct is more than complying with state codes, the city strongly encourages all of its officers and employees to maintain the highest personal values and standards. While it is impossible to establish specific and exhaustive standards for all situations, the standards established in this chapter are minimum standards below which no city officer or employee's conduct should fall. This chapter has the following purposes:

1. To establish an ethics review commission;
2. To maintain and improve standards of public service;
3. To improve public confidence in the integrity of city government;
4. To provide a process by which officers and employees may identify and resolve ethical issues;
5. To avoid conflicts between the personal interest and the public responsibilities of city officers and employees;
6. To establish minimum standards of conduct to be adhered to by city officers and employees;
7. To require disclosure of private financial interests by certain individuals;
8. To require reporting of certain gifts received by certain individuals;
9. To provide for complaints and resolution of ethical issues and concerns; and
10. To provide penalties for failure to adhere to the minimum standards set forth in this chapter.

C. This chapter is cumulative of and supplemental to all applicable provisions of the city charter, other city ordinances, and state and federal laws and regulations. Compliance with this chapter does not excuse or relieve any person from any obligation imposed by the city charter, other city ordinances, or state or federal laws or regulations.

D. The city attorney's office shall prepare, maintain and make available a chart that summarizes the application of the various obligations imposed by this chapter and the charter on officers and employees.

Section 2. That Section 2.92.020 (Purpose) of the El Paso City Code, is amended to read as follows:

2.92.020 Definitions.

For the purposes of this chapter, the following definitions shall apply. Terms not defined in this chapter, but defined in the Texas Election Code, shall have the meanings assigned to them in the Texas Election Code.

"Affinity" means that two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. An individual's relatives within the third degree by affinity are anyone related by consanguinity to the individual's spouse in one of the ways named in the definition of consanguinity in this section; and the spouse of anyone related to the individual by consanguinity in one of the ways named in the definition of consanguinity in this section.

"Board" means a board, commission or committee:

1. Which is established to participate in some manner in the conduct of city government, including participation which is merely advisory, whether established by city ordinance or city charter, Interlocal contract, state law or any other lawful means; and

2. Any part of whose membership is appointed by the city council, but does not include a board, commission, or committee, which is the governing body of a separate subdivision of the state.
3. The city clerk shall maintain one or more lists of the boards whose members are subject to the various provisions contained in this chapter, and such lists shall be made available to the public during working hours upon request or be posted on the city's website.
"Business days" means the weekdays excluding city holidays.
"Candidate" means a candidate for an elected office of the city of El Paso. All references to candidate shall include the candidate's principal campaign committee, whether or not the candidate acts as treasurer for reporting purposes.
"City resources" means any city asset, including but not limited to facilities, equipment, supplies, software, and personnel services.
"Confidential information" means any written information that could be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized.
"Consanguinity" means that two individuals are related to each other if one is a descendant of the other, or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. An individual's relatives within the third degree by consanguinity are the individual's parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).
"Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit. The term does not include an expenditure required to be reported under Section 35.006(b), Texas Government Code. In-kind expenses, as defined in this section, is not a contribution.
"Contributor" means a person making a contribution and the person's spouse.
"Employee" means a person employed and paid a salary by the city whether under civil service or not, including those individuals on a part-time basis and including those officially selected for employment but not yet serving; but does not include an independent contractor or city council member. For purposes of this ordinance and for no other purpose, the term employee includes volunteers.
"Ex parte communications" means a communication made at a time other than during a public meeting of the ethics review commission, a commission panel, or the city council, excluding documents or information submitted pursuant to the requirements of this chapter and any correspondence or other communications sent to the city attorney.
"Gift" means any gift, benefit or other economic gain or economic advantage to an officer or employee or to a relative of an officer or employee.

"In-kind expenses" means the value of personal services provided without compensation by any individual who volunteers on behalf of a candidate or political committee and incidental vehicular travel expenses incurred in conjunction with the provision of the personal services.
"Negotiating concerning prospective employment" means a discussion between a city officer or employee and another employer concerning the possibility of the city officer or employee considering or accepting employment with the employer, in which discussion the city officer or employee responds in a positive way.
"Officeholder" means the incumbent holding an elected city office.
"Officer" means a member of the city council and any member of a board appointed by the city council. It includes any member of a board that functions only in an advisory or study capacity.
"Official city business" means a purpose or function related to the duties or activities of office or employment.
"Person" means an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons, excluding a political committee organized pursuant to the Texas Election Code.
"Political committee" means a specific purpose political committee or a general purpose political committee as those terms are defined in the Texas Election Code.
"Public event, appearances or ceremonies" means those functions, activities and ceremonies conducted by or for the benefit of any governmental entity; a function, activity or ceremony conducted by a non-profit corporation or similar organization formed for educational, scientific, community-betterment or economic development purposes which relates to the purpose for which the non-profit corporation or organization was formed; or a function, activity or ceremony which honors or recognizes the accomplishments of a political, prominent or public figure.
"Quasi-judicial proceeding" means by hearing or proceeding held by a public administrative officer, to include but not be limited to a hearing officer, arbitrator or administrative law judge, who is required to hear or investigate facts and to draw conclusions from them as a basis for his or her official action and to exercise discretion of a judicial nature.
"Relative" means a person who is related to an officer or employee as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, step son-in-law, stepdaughter, step daughter-in-law, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.
"Volunteer" means an individual who provides services to the city without any expectation of compensation or financial gain and without receiving any compensation or financial gain.

Section 3. That Section 2.92.030 (Definitions) of the El Paso City Code, is amended to read as follows:

2.92.030 Ethics review commission.

A. Ethics Review Commission Established. In order to assist the city council, an ethics review commission of nine members is hereby established.

B. Mission. The ethics review commission shall serve as an advisory body to the mayor and city council on matters concerning ethics in government of the city.

C. Membership.

1. All members of the ethics review commission shall be residents of the city. No member shall be a city employee, hold any city elected office or be a candidate for any city elected office. A member may contribute to a city political campaign, but to the extent this prohibition is consistent with the charter, no member shall participate in any city political campaign or in a campaign relating to a city referendum or other ballot issue.

2. No member of the ethics review commission shall be related within the third degree of consanguinity or within the third degree of affinity to a member of the city council or the city manager.

3. Members shall be appointed for a two-year period, except that appointments made to fill vacancies created during a term shall be for the remainder of the term. The term of office for each below designated appointee shall commence on February 21st and shall terminate on February 20th at the conclusion of the respective term. Terms shall be staggered in the following manner:

Mayor's appointee	.....terms expire in even numbered years
District 1 appointee	.....terms expire in even-numbered years
District 2 appointee	.....terms expire in odd-numbered years
District 3 appointee	.....terms expire in even-numbered years
District 4 appointee	.....terms expire in odd-numbered years
District 5 appointee	.....terms expire in odd-numbered years
District 6 appointee	.....terms expire in even-numbered years
District 7 appointee	.....terms expire in even-numbered years
District 8 appointee	.....terms expire in odd-numbered years

D. Procedures.

1. The ethics review commission shall each year at the first meeting held on or after April 1st, select from among its members a chair and a vice-chair, and shall adopt, subject to the approval of city council, such rules governing its proceedings as it may deem proper. Such rules and regulations must be consistent with the city charter and ordinances of the city and shall parallel, to the extent possible, the rules adopted by city council to govern its own meetings.

2. Upon the adoption of this ordinance and thereafter each year at the time of the selection of the chair and vice-chair, the chair will make panel assignments. In the event of vacancies or absences on one or more panels, the chair may make reassignments as needed so that each panel has no fewer than three members of the commission. The chair shall designate the order of the rotation of the panels for hearing matters under this chapter.

3. The ethics review commission shall be assigned staff by the city manager to assist in its duties, as the city manager deems necessary. In order to carry out the responsibilities of the office of the city attorney under section 2.92.080 of this code in a situation as to when a complaint will be heard by the ethics commission as a whole, an independent outside attorney shall be retained at the request of the city attorney when the commission will hear an alleged violation of this chapter by a member of the city council, and may be retained when otherwise requested by the city attorney. The city attorney shall review any requests made by the ethics review commission for the appointment of independent legal counsel regarding a particular matter before the commission and when appropriate, seek the retention of such counsel in conformity with the provisions of this code and the obligations placed on the attorney by the Texas Disciplinary Rules of Professional Conduct.

E. Duties. The ethics review commission shall meet as necessary to accomplish the following duties. For the purposes of conducting meetings, a quorum shall consist of five members of the Commission.

1. Oversee all ethics matters and assist the city council in resolving ethical issues.
2. Review, evaluate and provide recommendations on issues as requested by the city council.
3. Provide recommendations for the city council regarding orientation programs or procedures for officers and volunteers focusing on education of the importance of ethics in city government and on the provisions of this chapter.
4. Provide information to the community on ethics in city government, as may be necessary for the promotion of the public trust.
5. Issue advisory opinions, as provided by charter in the manner set forth in subsection F below.
6. Review, evaluate and issue determinations, impose sanctions and provide recommendations to the city council on complaints.
7. Provide information on the disposition of specific issues by referring to minutes of commission meetings and ethics review commission reports.
8. Periodically review and propose changes to this chapter and the forms utilized pursuant thereto.
9. Develop guidelines and procedures to promote compliance with this chapter.
10. Prepare written annual reports for the city council. Submit additional reports as needed.

F. Advisory opinions.

1. By written request to the city attorney, any officer may request an advisory opinion regarding whether his own proposed actions or conduct would violate this chapter. The city manager may also request an advisory opinion regarding the proposed actions or conduct of one or more employees. Such requests shall be submitted in writing to the city attorney. Within 30 days of receipt, the city attorney shall call a meeting of a panel of the ethics review commission in the same manner as provided in section 2.92.080 H of this code, for the purpose of addressing the request. The panel shall, with all due diligence, meet and confer to issue an advisory opinion; provided however, the panel may, for good cause shown, decline to issue an advisory opinion, or the panel may refer the matter to the commission as a whole.

2. Reliance. A person who reasonably and in good faith acts in accordance with a written advisory opinion issued by the ethics review commission or one of its panels may not be found to have violated this chapter by engaging in conduct approved in the advisory opinion, if:

a. the person requested the issuance of the opinion; or
b. the city manager disseminated the advisory opinion to city employees with the intention that employees may rely on the opinion with respect to the identical conduct or actions addressed in the opinion; and
c. the request for an opinion fairly and accurately disclosed all relevant facts necessary to render the opinion.

Section 4. That Section 2.92.040 (Ethics review commission) of the El Paso City Code, is amended to read as follows:

2.92.040 Gifts.

A. General Rule. An officer or employee shall not solicit, accept, or agree to accept for themselves or a relative, the following:

1. any gift, of which the known or readily apparent value for each separate gift, exceeds seventy-five ($75) dollars in value;
2. any gift that might reasonably tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct; or
3. any gift from any lobbyist registered under chapter 2.94 of this code, of which the known or readily apparent value for each separate gift exceeds ten ($10) dollars in value.

B. Special Applications. Subsection A above does not include:

1. Political contributions made or received and reported in accordance with law;
2. Awards, such as plaques, certificates, trophies or personalized mementos, which are reasonable in light of the occasion and publicly presented in recognition of public service;
3. A gift conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
4. Gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities which are accepted for the city or in conjunction with the officeholder duties of an elected official;
5. Commercially reasonable loans made to an officer or employee in the ordinary course of the lender's business;
6. Complimentary copies of trade publications;
7. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with attending seminars or workshops, speaking engagements,

teaching, or rendering other public assistance to an organization or another governmental entity;

8. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
9. A ticket or admission pass, regardless of the actual or fact value of the ticket or admission pass, to an event that is sponsored or conducted by the City;
10. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event in which the officer or employee is participating in connection with official duties or in which the officer or employee is participating in connection with his spouse's or child's position or duties, provided that the receipt of such ticket is reported as a reportable gift if such reporting is required under section 2.92.070 B 2 of this code; and
11. Any solicitation for civic or charitable causes, or admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the officer or employee.

Section 5. That Section 2.92.050 (Standards of conduct) of the El Paso City Code, is amended to read as follows:

2.92.050 Standards of conduct.

Officers or employees:
A. Shall not solicit, accept, or agree to accept any gift contrary to the provisions contained in section 2.92.040 of this code;
B. Shall not use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them;
C. Shall not participate in making or influencing any city governmental decision or action in which they know that they have any financial interest distinguishable from that of the public generally or from that of other city officers or employees generally;
D. Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person;
E. Shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities;
F. Shall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions. This provision applies to former officers and employees as well as to current ones;
G. Shall not knowingly perform or refuse to perform any act in order to deliberately thwart the execution of the city ordinances, rules or regulations or the achievement of official city programs;
H. Shall not utilize city resources or by omission allow city resources to be utilized for

personal benefit or the personal benefit of any other person or entity, except to the extent that the benefit received is strictly incidental to the performance of official duties, or to the extent that the person is entitled by law to obtain public services from the city;

I. Shall not transact any business (other than ministerial acts) on behalf of the city with any business entity of which they are officers, agents or members, or in which they have a financial interest. In the event such a circumstance arises, then they shall make known their interest, and:

1. In the case of an officer, abstain from voting on the matter and refrain from discussion of the matter at any time with the other members of the body of which he or she is a member and with any other person or body in city government which may consider the matter; and

2. In the case of an employee, disclose the matter to an appropriate administrative authority within city government so that reassignment or other suitable action may be taken to remove the employee from any further involvement in the matter;

J. Shall not personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation, or determination from the body or department of which the officer or employee is a member. This restriction does not apply to outside employment of an officer if the employment is the officers primary source of income;

K. Shall not accept other employment or engage in outside activities incompatible with the full and proper discharge of their duties and responsibilities with the city, or which might impair their independent judgment in the performance of their public duty;

L. Shall not personally participate in a decision in a matter if the officer or employee is negotiating or has an arrangement concerning prospective employment with a person or organization that has a financial interest in a matter under consideration by or within the jurisdiction of the city, and in the case of an employee if it has been determined by the city manager that a conflict of interest exists. For purposes of this section, the term "decision" shall mean a decision, approval, disapproval, recommendation, investigation or rendering of advice, and the term "matter" shall include but not be limited to a matter, proceeding, application, request for ruling or determination, contract or claim which involves the city. In such instance, the officer or employee shall:

1. In the case of an employee, immediately notify the official responsible for appointment to his or her position of the nature of the negotiation or arrangement and, if the city manager determines that a conflict of interest exists, follow the instructions of the city manager with regard to further involvement in the matter; or

2. In the case of a board member, immediately notify the board of which he or she is a member of the nature of the negotiation or arrangement and:

   a. Refrain from discussing the matter at any time with other board members or members of the city council if the city council will also consider the matter; and

   b. Abstain from voting on the matter; or

3. In the case of a member of the city council, file an affidavit with the city clerk describing the nature of the negotiation or arrangement and:

   a. Refrain from discussing the matter at any time with other council members or members of a board that will consider the matter; and

   b. Abstain from voting on the matter;

M. Shall not receive any fee or compensation for their services as officers or employees of the city from any source other than the city, except as may be otherwise provided by law. This shall not prohibit their performing the same or other services for a public or private organization that they perform for the city if there is no conflict with their city duties and responsibilities;

N. Shall not, in the case of an employee, recklessly disregard the established practices or policies of the city relating to the duties assigned to the employee;

O. Shall not, in the case of a member of the city council or an employee, personally represent or appear in behalf of the private interest of another before the city council, or any city board or department; or, if the represented person's interest is adverse to that of the city, represent any person:

1. In any quasi-judicial proceeding involving the city; or
2. In any judicial proceeding to which the city is a party; provided that nothing in this subsection shall preclude:
    a. A city council member from speaking or appearing without compensation before the city council or any board or department on behalf of constituents in the course of his or her duties as an elected official;
    b. Any employee from performing the duties of his or her employment;
    c. Any employee from appearing before the city council or any city board or department, in a manner consistent with other city policies and rules, to discuss any general city policies or public issues, including the presentation of viewpoints or petitions of other employees; or
    d. A city council member or an employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding; and

P. Shall not, in the case of a board member, personally represent or appear in behalf of the private interests of another:

1. Before the board of which he or she is a member;
2. Before the city council unless the board member discloses his or her status as a board member to the council and the representation or appearance does not relate to a matter that was heard or decided by the board of which the board member is a member or a board that has appellate jurisdiction over the board of which the board member is a member;
3. Before a board which has appellate jurisdiction over the board of which he or she is a member; or
4. In a judicial or quasi-judicial proceeding to which the city or an employee of the city is a party, if the interest of the person being represented is adverse to that of the city or an employee of the city and the subject of the proceeding involves the board on which the board member is serving or the department providing support services to that board.

Section 6. That Section 2.92.060 (Restrictions) of the El Paso City Code, is amended to read as follows:

2.92.060 Restrictions.

A. An officer, or an employee in a position which involves significant reporting, decision-making, advisory, or supervisory responsibility, who leaves the service or employment of the city shall not, during the twenty-four months after leaving the service or employment of the city, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any other person or organization in any formal or informal appearance before the city council or a city board or department. Provided however, the prohibition in this subsection pertaining to appearances before the city council or a city board or department shall not apply to a former board member except when the former board member represents any other person or organization before the board of which he had been a member and any subsequent appearance before a board with appellate jurisdiction or the city council on the same matter or issue.

B. Former officers and employees shall not use for their personal benefit and shall not disclose, except as may be required by law, confidential information gained in the course of or by reason of their positions. This provision shall not prohibit the disclosure of any such information to incumbent city officers or employees to whose duties such information may be pertinent.

C. A person shall not, during the twelve (12) months after having served on and left the Civil Service Commission, represent any classified employee of the City before the Civil Service Commission or before a Hearing Officer appointed by the Civil Service Commission on a disciplinary matter or grievance. Further, a person after leaving the Civil Service Commission, shall not represent an employee on any matter before the Civil Service Commission or a Hearing Officer appointed by the Civil Service Commission that was before the Civil Service Commission during the time that such person served on the Civil Service Commission.

D. A person shall not, during the twelve (12) months after having served on and left the Civil Service Commission, be appointed as a Hearing Officer for the Civil Service Commission.

E. A person appointed as a Hearing Officer for the Civil Service Commission shall not during the time of service and for twelve (12) months after having so served represent any classified employee of the City before the Civil Service Commission or before a Hearing Officer appointed by the Civil Service Commission on a disciplinary matter or grievance. A former Hearing Officer appointed by the Civil Service Commission shall not represent a classified employee on any matter before the Civil Service Commission or a Hearing Officer appointed by the Civil Service Commission that was before such person during the time he served as a Hearing Officer.

Section 7. That Section 2.92.070 (Reporting requirements) of the El Paso City Code, is amended to read as follows:

2.92.070 Reporting requirements.

A. Financial Disclosure

1. Each officer, excluding elected officials whose financial disclosure requirements are governed by city charter, and each designated employee as defined in subsection A 2 of

this section, shall file with the city clerk, within 10 business days after the date of his or her appointment, selection or approval by the city council, a statement disclosing:

a. Where, by whom and in what specific capacity that person is employed or self-employed;
b. Membership on boards of directors of corporations, whether organized for profit or not;
c. Partnership interests; and
d. The name and address of any business in which the person has a financial investment, and in the case of mutual funds and other similar pooled investments, the name of the fund or investment. For purposes of this subsection, a financial investment shall not include funds on deposit with financial institutions such as checking and savings accounts, investments in United States savings bonds, and similar investments that earn simple, compounded or money-market interest rates;

unless the person has previously been appointed to a position that requires the filing of a financial disclosure form and the person already has a current financial disclosure form on file with the city clerk.

2. "Designated employee" for purposes under this section, means the city manager, deputy city managers, all city department heads or directors, and the executive assistants to the mayor.

3. Each person submitting a statement of financial disclosure required under this section shall utilize a form provided by the city clerk, which shall be signed and submitted in hard copy, or submitted electronically or by facsimile as may be provided by the city clerk. The form or submission process shall provide a means by which the submitter affirms his or her identity and the accuracy of the statements made therein.

4. No person submitting such a statement of financial disclosure must indicate therein the extent of financial involvement in any investments.

5. Each person subject to this section shall thereafter file with the city clerk a financial disclosure statement, between June 1st and June 30th of each year while in office or employed by the city, or at any other time in which the person changes his or her primary employment or has made changes in financial investments which cumulatively total more than thirty five percent of the person's total investments. Those persons who have no changes to report regarding the information required to be reported, may, in lieu of filing a complete financial disclosure form, file a short form annual report, provided that they have filed a complete financial disclosure form within the previous five years.

6. Each candidate for elective office and each candidate for appointment as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.

7. The following types of boards are exempt from the financial disclosure requirements of this chapter:

a. boards whose regulation is pre-empted by federal or state law;
b. boards expressly exempted by the city council for reasons to be stated by the city council upon granting such exemption.

8. The city clerk shall, no later than August 15th of each year, prepare a report which notes whether each person subject to the filing requirement of this section has filed the required financial disclosure statement as of the date of the report. In the event that a

person subject to the filing requirement has not filed his or her financial disclosure statement by the date of the completion of the report or in the event that a person fails to file his or her financial disclosure form within ten business days after the date of their appointment and they do not already have a current financial disclosure form on file, the city clerk shall send a written notice by certified mail, return receipt requested, with a copy sent by regular mail, to the person to advise the person that the clerk's records indicate that the person is subject to the requirement of this section, the person has not filed a financial disclosure statement as required by this section and that the person has fifteen days from the date of the letter to file his or her financial disclosure statement. If the person is a board member covered under subsection (A)(9)(e) of this section, the city clerk will also advise the board member that the failure to timely file the financial disclosure statement will result in the automatic removal of that board member from his or her office. If the person is a designated employee, the city clerk may hand-deliver the notice required under this section in lieu of mailing it and shall provide a copy of the notice to the mayor.

9. In the event that a board member fails to file his or her financial disclosure statement by the deadlines calculated under subsections (A)(1) or (8) of this section, the following actions will be taken:

a. In the event that the board member is a member of the civil service commission, the city clerk shall prepare and send a notice of the failure of the civil service commission member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the civil service commission member from office in accordance with Section 6.1-10 of the city charter.

b. In the event that the board member is a member of the zoning board of adjustment, the city clerk shall prepare and send a notice of the failure of the zoning board of adjustment member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the zoning board of adjustment member from office in accordance with Section 211.008, Texas Local Government Code.

c. In the event that the board member is a member of the public service board other than the mayor, the city clerk shall prepare and send a notice of the failure of the public service board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the public service board member from office in accordance with the applicable removal provisions contained in any pertinent ordinance adopted by the city for the issuance of water or sewer revenue bonds.

d. In the event that the board member is a member of the El Paso Housing Finance Corporation, the industrial development authority, or other similar corporation organized pursuant to state law, the city clerk shall prepare and send a notice of the failure of the board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the board member from office in accordance with the applicable removal provisions contained in any articles of agreement or bylaws of the corporation or statutory provisions.

e. In the event that the board member is a member of any other city board subject to the requirement of this section, that board member shall be deemed removed from office without action or review by the city council. The city clerk shall prepare and send a notice of the removal to the board member and to the city council member who had appointed the board member. The removal shall be effective on the date that the notice is deposited in the United States mail or if not mailed, upon delivery to the board member.

10. The removal provision established in subsection (A)(9)(e) of this section for the failure of a board member to file a financial disclosure statement shall be in addition to and shall be controlling over any other city ordinance or city council resolution that establishes procedures for the removal of board members.

B. Reporting of Gifts.

1. Each officer and designated employee shall keep a written record of all reportable gifts received during his or her term of office or employment.

2. Such record shall be made for each calendar month. The record shall include a description of the reportable gift received; the name of the person and organization giving the reportable gift; the relationship of the donor to the reporter; the value or estimated value of the reportable gift; and the immediate or intended disposition of the reportable gift. A reportable gift consisting of a certificate or admission ticket or pass to a future event or activity shall be deemed to have been received on the date on which the certificate or admission ticket or pass was received, and if such certificate or admission ticket or pass must be reported under subsection B 4 d, a statement as to the duties performed.

3. Such monthly record shall be submitted to the city clerk on the form she provides no later than the tenth day of the following month for each month during which a reportable gift is received.

4. "Reportable gifts" for purposes under this section shall mean the following:

a. Any gift that is not covered by the special applications under section 2.92.040 B of this code, has a value of more than ten ($10) dollars, and was conferred on account of the official status of the recipient or in connection with official city business, except as provided below in subsections b, c and d;

b. Any hosting, such as travel and expenses, entertainment, meals or refreshments, that has a value of more than fifty ($50) dollars, other than hosting provided on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

c. Any award presented in recognition of public service, or an honorarium, with a value of more than fifty ($50) dollars; and

d. Any tickets or other admission passes to an event with an actual or face value of more than ten ($10) dollars for all tickets or admission passes to the same event received at the same time, except for tickets or admission passes provided by the City for an event that is sponsored or conducted by the City.

5. Any gift, benefit, hosting, honorarium or other economic gain or economic advantage that is refused and returned to the sender within seventy-two hours of receipt shall not constitute a reportable gift under this section.

6. Any gift which exceeds seventy-five ($75) dollars in value, which is not covered by the special applications under Section 2.92.040 B of this code and which is turned

over to the city manager within seventy-two hours of receipt for acceptance as a gift to the city, shall not constitute the acceptance of a gift in violation of section 2.92.050 A of this code, provided that the disposition of such gift is reported on a timely filed reportable gift form.

7. The city manager, on a monthly basis, shall prepare a report which shall be made available to the public of all gifts that have been turned over to his office for acceptance as a gift to the City.

8. For purposes of this section, "honorarium" shall mean a payment, other than reimbursement for meals, travel or lodging expenses, for services provided in connection with addressing an audience or engaging in a seminar.

Section 8. That Section 2.92.080 (Complaints—filing—review) of the El Paso City Code, is amended to read as follows:

2.92.080 Complaints—filing—review.

A. Any person (including a member of the ethics review commission) who believes that there has been a violation of this chapter may file a sworn complaint with the city clerk to allege such violations.

B. A person who knowingly makes a false statement in a complaint, or in proceedings before the ethics review commission, is subject to criminal prosecution for perjury.

C. A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

1. The name of the complainant;
2. The street or mailing address and the telephone number of the complainant;
3. The name of each person complained about;
4. The position or title of each person complained about;
5. The nature of the alleged violation, including whenever possible, the specific provision of this chapter alleged to have been violated;
6. A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
7. All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

D. The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of this chapter. If the complaint is based on information and belief, the complainant shall state the source and basis of the information and belief. Each complainant, other than a member of the ethics review commission, shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

The complaint must state on its face an allegation that, if true, constitutes a violation of this chapter that is administered and enforced by the commission.

E. A complaint shall be promptly forwarded by the city clerk to the city attorney's office for review to determine whether the matter described is within the purview of the ethics review commission; provided however, that a complaint that is not sworn as required by this section shall not be forwarded by the city clerk to the city attorney's office, but shall be returned to the complainant.

F. Within fourteen days of the filing of the complaint, the city attorney's office shall provide a copy of the complaint, this ordinance, and any rules of the ethics review commission to the respondent and advise the respondent that he may, within seven days of receipt, respond by sworn writing filed with the city clerk, a copy of which shall be provided to the respondent and the city attorney's office.

G. Within twenty days of the filing of the complaint, the city attorney's office shall take one of the following actions:

1. Refer the matter to the ethics review commission if the complaint is filed in conformity with the requirements of this section and the matter is within the purview of the ethics review commission;
2. In the event that deficiencies in the complaint are identified that prevent the city attorney's office from making a meaningful review of and determination regarding the appropriate disposition of the complaint, the city attorney's office may notify the complainant in writing of such deficiencies that could be capable of correction and request such correction within fifteen days of the date of the communication to the complainant. The time for action under this section shall be tolled while the city attorney's office awaits the complainant's response, up to a maximum of fifteen days;
3. Dismiss any complaint that does not relate to a person subject to the jurisdiction of the ethics review commission, or any complaint, that if true as alleged, would not as a matter of law constitute a violation of this chapter; or
4. Refer complaints that cannot be readily assigned to the ethics review commission because of deficiencies, complaints that lack specificity in identifying the alleged violations of this chapter, and complaints that appear to have been frivolously filed to a panel of the commission.

H. If the matter is referred to a panel under subsection G 4 above, at least three eligible members of the panel shall meet as soon as practicable to review the complaint. In the event that at least three eligible members of the panel are unable to schedule and hold a meeting within thirty days, the city attorney's office shall rotate the panels and schedule the meeting with the next panel on the list, continuing until such time as the meeting is scheduled and held. The panel, by majority vote, shall take one of the following actions, which shall be reported to the ethics review commission at the commission's next following meeting or at a meeting scheduled pursuant to section 2.92.090 A of this code, with such report to be reflected in the minutes of the meeting:

1. Review complaints that facially appear to be questionable or deficient for a determination as to whether just cause exists to proceed with a hearing before the ethics review commission. "Just cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and

prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter;

2. Review complaints which do not clearly state alleged violations of this chapter and make a determination as to the specific identification of the alleged violations, and if none exist, dismiss the complaint; or
3. Review complaints for a determination as to whether a complaint was frivolously filed, and if so, dismiss the complaint and refer the matter to the entire commission, who may issue an appropriate sanction to the complainant of the type provided for in Section 2.92.090 I 1, 2 or 3 of this code.
    a. For purposes of this subsection, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
    b. In deciding if a complaint is frivolous, the members will determine if the complaint is groundless, brought in bad faith, or brought for the purpose of harassment, and may consider:
        (1) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the city;
        (2) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
        (3) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
        (4) any evidence of the complainant's motives in filing the complaint.

Section 9. That Section 2.92.090 (Complaints—hearing—disposition) of the El Paso City Code, be added to read as follows:

Section 2.92.090 Complaints—hearing—disposition.

A. If the matter is referred to the ethics review commission as a whole, the commission will schedule a review of the matter as soon as practicable and shall without delay, provide copies of the complaint and all relevant documentation to the members of the commission, the complainant and the respondent. If the matter was referred to the commission by a panel, the relevant documentation shall include any findings and determinations of the panel, to include the provisions of this chapter, if any, that were identified by the panel as having been allegedly violated.

B. For all hearings of either a panel or the entire commission, the person submitting the complaint and any persons named in the complaint will be sent written notice of the date, time and place of the meeting by the city attorney's office so that these persons may have the opportunity to attend the meeting at which the review will take place.

C. In the event that either the complainant or the respondent, or their attorneys if any, are unavailable to attend any scheduled hearing of the ethics review commission, they may request a continuance of the hearing by submitting a written request for a continuance to the city attorney. The complainant and the respondent (including their attorneys if any) shall each be entitled to receive one automatic continuance as a matter of right. Thereafter, any written requests for additional continuances shall be forwarded to the chair of the commission, who may either make a determination and decision regarding the request, or submit the request to the commission for the commission's determination and decision at a scheduled meeting of the commission. The decision to grant a continuance shall be made upon good cause shown and in the interest of promoting fairness to all parties, based on the available information.

D. The complainant or respondent or their attorneys, or any witnesses requested to appear at a hearing, who have questions regarding the conduct of any proceeding before the ethics review commission or who need to raise any preliminary issue concerning the conduct of a scheduled hearing, may bring such matters to the attention of the city attorney. The city attorney or his designee shall resolve such matters to the extent possible, and if necessary, consult the chair of the commission to determine the appropriate resolution, or bring the matter forward to the commission at a scheduled meeting for a resolution.

E. Only eligible members of the ethics review commission or a panel thereof will hear the matters presented before them. A member shall not be eligible to hear the issues under this section or as a member of a panel under section 2.92.080 of this code, and shall recuse himself in the following situations:

1. Where, because of familial relationship, employment, investments, or otherwise, his impartiality might reasonably be questioned;
2. When the member initiated the complaint;
3. When the complaint involves the member of the city council who nominated him for a seat on the ethics review commission;
4. When the complaint involves a member of another city board or commission on which the ethics review commission member also sits;
5. When the member is not present during one hearing of an investigation or disposition of a complaint, the member shall recuse himself from further hearings and matters regarding the complaint and shall cease to be eligible to participate in the disposition of the complaint.

In the case of a recusal, the ethics review commission member shall abstain from voting on the matter and refrain from discussion of the matter at any time with the other members of the ethics review commission.

F. General rules for the conduct of a hearing.

1. The ethics review commission may at the start of a hearing establish time limits and other rules relating to the participation of any person in the hearing, subject to the provisions set forth herein. Such time limits and rules shall be created for the purpose of establishing an orderly and fair hearing process for all participants, and shall include a determination of the parameters of opening and closing statements, the roles of the complainant and the respondent, limitations regarding testimony from non-relevant or cumulative witnesses, and the presentation and direct questioning of witnesses by the respondent,

complainant or any attorneys who may be in attendance and representing the complainant and/or respondent.

2. The person charged in the complaint (respondent) has the right to attend the hearing, the right to make a statement, the right to present witnesses pursuant to the parameters set by the commission for the hearing, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the respondent may advise the respondent during the course of the hearing, but may not speak on behalf of the respondent, except to represent the respondent while testifying. The respondent, or his legal counsel or other advisor, may not personally question or cross-examine witnesses, except with the permission of the commission.
3. The complainant has the right to attend the hearing, the right to make a statement and offer witnesses, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except to represent the complainant while testifying. The complainant, or his legal counsel or other advisor, may not personally question or cross-examine witnesses, except with the permission of the commission.
4. As provided by the city charter, the ethics review commission shall have the authority to request witness testimony and production. The chair or his designee on behalf of the commission, shall have the authority to request any and all necessary assistance from the City Council for the purposes of compelling testimony, including the subpoenaing of witnesses in accordance with procedures authorized in the city charter and city ordinances, to include authority to bring such matters forward to the City Council through the placement of agenda items, as drafted in the proper form by the city attorney or his designee.
5. The city attorney and his designees shall disclose to the ethics review commission and provide to the person charged in the complaint evidence actually known to the attorneys tending to negate guilt or mitigate the seriousness of the offense (exculpatory evidence).
6. All witnesses must be sworn, and the members of the ethics review commission or their designees shall conduct questioning of witnesses, or allow questioning pursuant to the rules created under subsection F 1 above.
7. The ethics review commission is not bound by the rules of evidence, but shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The commission shall hear evidence relevant to the allegations and shall not consider hearsay unless it finds the nature of the information if reliable and useful.
8. A determination that a violation of this chapter has occurred can be made only upon an affirmative vote of a majority of the ethics review commission members present and voting; otherwise the complaint must be dismissed. A finding that a violation occurred must be supported by clear and convincing evidence. "Clear and convincing evidence" means that measure or degree of

proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.

G. After hearing the complaint, the ethics review commission will issue a decision or recommendation based on the information available to the commission. The ethics review commission must:

1. Dismiss the complaint or find that no violation of the ordinance occurred, with the grounds for such dismissal or finding set forth in the report;
2. Find that a violation of this chapter occurred and either find that a sanction is not appropriate, or take action in accordance with subsections I or J below and identify the particular provision or provisions determined to have been violated; or
3. Recommend to the city council that the city council take up the matter in lieu of a recommendation for a specific action from the ethics review commission and identify the reasons for such recommendation in the report. In such case, the city council may exercise any and all of the duties and responsibilities of the commission.

H. If after hearing the issues, the ethics review commission dismisses the complaint or finds that no violation of the ordinance occurred, the commission shall create a written report of their findings or dismissal, and such report shall be filed with the minutes of the meeting in the office of the city clerk, and a copy of the report shall be mailed to those persons who were provided notice of the hearing and be made available on the city's website for a period of one year.

I. If after hearing the issues, the ethics review commission determines that a violation of this chapter has occurred, commission may issue any of the sanctions in subsections 1, 2 or 3 below, or recommend the issuance the sanction of removal from office.

1. Letter of Notification. A letter of notification may be issued when the ethics review commission finds that a violation of this chapter was clearly unintentional or when the action or conduct found to have been a violation of this chapter was performed by the official in reliance on a written opinion of the city attorney. A letter of notification may advise the person to whom the letter is directed of any steps to be taken to avoid future violations.
2. Letter of Admonition. A letter of admonition may be issued when the ethics review commission finds that the violation of this chapter was minor and/or may have been unintentional, but where the circumstances call for a more substantial response than a letter of notification.
3. Letter of Reprimand. A reprimand may be issued when the ethics review commission finds that a violation of this chapter was committed intentionally or through disregard of this chapter.
4. Removal from Office. Removal from office may be recommended to the city council for action when the ethics review commission finds that a serious or repeated violation of this chapter was committed by an officer intentionally or through culpable disregard of this chapter.

If the ethics review commission votes to impose a sanction of a letter of notification, a letter of admonition, or a letter of reprimand, the commission shall prepare a written report of their findings, which shall be filed with the minutes of the meeting in the office of the city clerk and be made available on the city's website for a period of one

year. The city attorney shall draft the letter of sanction per the direction of the commission and mail a copy of the letter to the person receiving the sanction, certified, return receipt requested.
J. If the ethics review commission recommends the imposition of the sanction of removal from office, it shall prepare a written report containing its recommendation. The report will be sent to the city clerk who shall, within fourteen days of receipt, place the matter on the city council agenda for discussion and action by the city council regarding the recommendation of the ethics review commission. The final authority to carry out a recommendation for removal from office shall be with the city council and shall take place in conformity with any other law or requirements for such removal. The city clerk shall, within fourteen days of the date of any city council action taken on a complaint, forward a copy of such action to the chair of the ethics review commission.

Section 10. That Section 2.92.150 (Penalty) of the El Paso City Code, is amended to read as follows:

2.92.150 Penalty.

A. The failure of any officer or employee to comply with this chapter or the violation of one or more of the standards of conduct set forth in this article, which apply to him or her, shall constitute grounds for expulsion, reprimand, removal from office or discharge. In the case of an employee of the city, disciplinary action and appeals therefrom shall be in conformance with procedures established by the city charter and personnel rules and regulations. In the case of an officer, the matter shall be decided by the ethics review commission in accordance with the provisions in Section 2.92.080 or by a vote of the city council in accordance with the charter or in accordance with applicable state law. The decision of these bodies shall be final.
B. It shall be unlawful for any person to knowingly violate any provision under Sections 2.92.050(F), 2.92.060 or 2.92.100 of this chapter.
C. It shall be unlawful to engage in any of the following ex parte communications regarding a complaint filed pursuant to section 2.92.080 of this code:

1. For the complainant, the respondent, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a complaint in ex parte communication with a member of the ethics review commission, a member of the city council, or any known witness to the complaint; or
2. For a member of the ethics review commission, to knowingly entertain an ex parte communication prohibited by subsection C 1 above, or to communicate about any issue of fact or law relating to the complaint directly or indirectly with any person other than a member of the ethics review commission or the city attorney's office.

D. Any offense for a violation of a criminal provision of this chapter shall be separate from and in addition to any criminal offense under the Texas Election Code.

Section 11. That, except as herein amended, Chapter 2.92 (Ethics), shall remain in full force and effect.

ADOPTED this 21st day of April 2009.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Elaine S. Hengen
Senior Assistant City Attorney