



# City Attorney's Office Orientation for Mayor, Council & Staff





STRATEGIC  
PLAN 2019

25 BY 2025

## Strategic Goal 6: Set the Standard for Sound Governance & Fiscal Management



6.3: Implement programs to reduce organizational risk



6.5: Deliver services timely and effectively for achieving quality and performance excellence



6.8: Support Transparent and Inclusive Government



6.10: Enhance the quality of decision making with legal representation and support



# Purpose

- Explain the role of City Council
- Familiarize Council with the laws that affect the City and Council
- Provide an overview and guide for Council to work effectively

# Content

1. Type of City - Home Rule/Council-Manager
2. El Paso City Charter
3. Rules of Order
4. City Code
5. Important Info
6. State Laws



# Type of City : Home Rule/Council-Manager



Authorized by Article XI, Section 5 of Texas Constitution "The Home Rule Amendment"



Can adopt a charter for self-governance



May adopt or amend a charter by election



Charter is the constitution for the City



May act as allowed by the Charter if not prohibited by other law



City Manager is responsible to Council to administer all city affairs

# Laws, Rules, and Policies that Govern the City



# City of El Paso Charter



Established by the voters and amended no more than every two years

Specifies the responsibilities and duties of the Mayor, Council, & City Manager

Establishes procedure for:

- Adopting Ordinances
- Civil Service System
- Fiscal Management & Operations

Find entire Charter online:

<https://www.elpasotexas.gov/municipal-clerk>

# The City Council - Article III



## 20 Sections:

- Creation
- Salaries
- Prohibitions
- Elections/Qualification
- Procedures and Rules
- Legislative committees
- Appointments
- Investigative Powers
- Ordinances in General
- Emergency Ordinances
- Initiative
- Referendum
- Resolutions
- Technical Regulations
- Recording; Codification; Printing
- Conservation
- Border Relations
- Annexation
- Lease, Franchise and Conveyance
- Sale of Alcohol
- Ethics and Accountability





# Governed by Article III of the Charter

- Section 3.1:
  - Council has Legislative powers
  - Council selects, directs, and evaluates the City Manager
  - Each Representative may appoint and remove a Legislative Aide
- Section 3.7:
  - Appoints the City Attorney and members of Boards and Commissions

# Public Utility Regulation

- Section 1.4: The City has authority under Texas law to regulate and fix reasonable rates charged by a public utility corporation (gas, water, electricity, sewer, etc.)
  - Ordinance 9759 requires that:
    - All Communications must be logged
    - All members of Council and the representatives of the utility must maintain a permanent record of all communications between them
    - The logs must be submitted to the City Clerk by the 10th day of each month
    - A violation is a misdemeanor

# Financial Disclosures

- Section 2.2(B)(4): Must file annually with the City Clerk
  - In addition to State mandated Financial Disclosures Loc. Gov't Code Chapter 145
  - Per El Paso City Code 2.92.070:
    - Must file between June 1<sup>st</sup> and June 30<sup>th</sup> of each year while in office

# Ethics & Accountability

- Section 3.20 (A): Council establishes an independent Ethics Review Commission, which administers and enforces the Ethics rules.
- City Code Chapter 2.92 - Must complete ethics training within 60 days of oath of office.

# Prohibitions

- Section 3.3:
  - Other Public Employment: Cannot hold any other compensated public office or public employment
  - Nepotism: Cannot appoint a person who is related to the member of Council
  - Lame Duck: No appointments by Mayor or Council from the general election until the inauguration of those elected.
    - This applies to all representatives regardless of who is being elected.

# Financial Oversight & Audit Committee (FOAC)

- Section 3.6 (B): The Council shall establish a FOAC for the purpose of providing legislative oversight through function of the Internal Auditor
  - Financial Policies
  - Recommendations on City Finances
  - Other matters referred by Council or City Manager
  - Includes 4 members of council
  - Meets quarterly

# El Paso City Charter: Mayor



- City Charter Article IV
  - Member of Council
  - Powers
  - Duties
  - Mayor Pro Tempore

# Mayor – Governed by Article IV of the Charter

- **Section 4.1- Powers of the Mayor:**
  - Head of the government for ceremonial purposes
  - Preside over City Council
  - Propose legislation
  - Represent the City in intra-governmental and intergovernmental relationships;
  - Perform duties pursuant to federal and state law
  - Present an annual state of the City message
  - Break tie votes, veto legislation except action removing the City Manager or City Attorney
  - Call special meetings of the Council
  - Perform other duties specified by the Council
- **Section 4.2 - Duties of the Mayor:**
  - Sign all lawful acts of the Council, including not limited to ordinances, resolutions, conveyances
  - Appoint and remove the Mayor's Executive Secretary and Executive Assistant(s)



# El Paso City Charter: City Manager



- City Charter Article V
  - Appointment and Qualifications
  - Powers and Duties
  - Chief Administrative Officer of the City
  - Responsible to the City Council for the administration of all City affairs placed in the Manager's charge by or under Charter

# City Manager Duties

- Section 5.1-5.4:
  - City Council appoints the City Manager and sets compensation
  - City Manager is the Chief Administrative Officer
    - Responsible for all personnel actions
    - Directs and supervises all administration of departments
    - Prepares and submits annual budget
- Section 5.5 - Council's relationship with employees
  - Council directs all communications with employees through the City Manager
    - Council may not give orders to any employee
  - Council may not control or demand the appointment or removal of any City employee that the City Manager is empowered to appoint
    - Council may discuss with the City Manager views regarding appointment and removal of such employees

# City Manager Examples

- Councilmember cannot direct any city employee under the City Manager to complete a task.
- Councilmember must go through the City Manager via (1) CR process, (2) monthly meetings, or (3) Council action
- Direction that cannot be asked of a City Employee:
  - Pave roads
  - Accelerate a Capital Improvement Project
  - Obtain information for Councilmember on a subject
  - Solve a constituent issue

# City Attorney

- City Charter 3.7
  - Appointed by Council



# City Attorney & City Attorney Office (CAO)

- TX Rules of Professional Conduct Rule 1.12- Organization as Client
  - The City Attorney represents the City as a whole
  - The City Attorney's duty of loyalty and confidentiality is owed to the City and the Council as a whole, rather than to an individual council member
  - The Council majority gives direction to the City Attorney
  - All outside counsel reports to the City Attorney
  - Represents employees when acting within the course and scope of their duties

\*Immediately forward to the City Attorney all information regarding a claim, subpoena, or lawsuit. Do not communicate with the claimant or opposing attorney.

# Rules of Order



- Required by City Charter 3.5
- Procedural guide to allow for productive and efficient Council meetings.



## City Code

- Established by Council and amended by majority vote
- Is the law that governs the City operations and its officials
- Regulates activity within the community
- 21 Titles that include:
  - Personnel
  - Animals
  - Streets and Sidewalks
  - Etc.

# Notable Provisions for Elected Officials

- **Chapter 2.44.050: Courts**

- 2.44.050: It is unlawful to cancel, excuse or impair the operation of a traffic ticket
- Example: As a Representative you cannot dismiss a constituent's or even your own speeding ticket

- **Chapter 2.56: Nepotism**

- 2.56.010: Council member may not appoint or vote for the appointment, or employment of any person related to you within the second degree of affinity or third degree of consanguinity.
- Example: You cannot appoint your parents, aunts, nieces/nephews, parents in-law nor siblings in-law to a board or commission, and you cannot vote to appoint a family member if another member of Council recommends appointment of that person (you must to abstain).



- **Chapter 2.92: Ethics Ordinance**

- 2.92.010: Requires all city officials to be ethical in fulfilling their duties

- **2.92.040-2.92.070: Gifts**

- A City official shall not solicit or accept any gift:
  - Which value exceeds \$75
  - Which may influence improper action
  - Valued at more than \$10 from registered lobbyist
- Some Exceptions
  - Political Contributions (in accordance with law)
  - Awards, plaques, or personalized mementos
  - A ticket or admission pass to a city sponsored event
- Reporting
  - Must maintain a written record of reportable gifts for each calendar month
  - Submit written record to the City Clerk no later than the 10th day of the following month that the gift is received
  - Any gift over \$75 in value shall be turned over to the City Manager within 72 hours of receipt or the gift should be returned to sender if the City does not want to accept it

# Ethics Continued

- **Chapter 2.92: Ethics Ordinance**
  - **2.92.050: Standards of Conduct**
    - Shall not use your position for privileges or exemptions
    - Prohibits unfair or inappropriate decisions
    - Shall not use City Resources for personal benefit
    - Shall not disclose confidential information gained by holding the position
  - **2.92.100: Campaign Finances**
    - Contributions must be made in the name of the individual contributing, and not on behalf of anyone else
    - Any person who is the adverse party in a pending litigation against the city cannot donate funds to a campaign
  - **2.92.110: Disclosure of Campaign Contributions**
    - In addition to the Texas Election Code and the Ethics Ordinance
    - Contributions of \$500 or more must be disclosed to the Council via the Consent Agenda

# Lobbyist Activity

- **Chapter 2.94: Regulation of Lobbying Activities**
  - The solicitation of a City official to influence or persuade the City official to favor or oppose an issue.
  - 2.94.030-060: A lobbyist must register with the City Clerk if they receive compensation of over \$200 in a calendar quarter for lobbying activities
  - 2.94.070: A lobbyist must file an activity report to the City Clerk

# Important Information



- Discretionary Funds
- Code of Conduct
- Administrative Procedures

# Discretionary Funds

- **Use of Discretionary Funds**
  - Resolution by City Council allowing use of discretionary funds
  - Expenditures of funds over \$1,000.00 must be approved by Council. If not through a budget transfer, must be submitted to the City Attorney one week prior to the Wednesday posting deadline.
  - All Public Funds must be expended in accordance with State law
    - Texas Constitution prohibits donation of public funds
    - Must be for a municipal purpose, with a benefit to the City that can be tracked
    - Sometimes a contract may be needed to ensure proper use of funds
    - Expenditures that are not through a City budget transfer must be reviewed by the City Attorney

# Code of Conduct

- **Code of Conduct**

- Elected Officials are required to sign and acknowledge that they have read and understand the Code of Conduct
  - Comply with laws
  - Make decisions and take actions based on fact
  - Never disclose confidential information
  - Respect the City processes
  - Maintain positive workplace environment
- Outlines:
  - Conduct for official and unofficial settings
  - Conduct between Council members
  - Conduct between Council and City Staff
  - Overall behavior and conduct

# Review of Council Items by City Attorney's Office

- **City Code Section 2.06**

- City Council Members may place items on the Agenda and City Clerk must receive items by Wednesday at 12:00PM the week before a Tuesday City Council Meeting.
- Examples:
  - Use of Discretionary Funds
  - Resolutions for Council Action

\* Requests for review from CAO must be received by the Wednesday prior to the agenda posting deadline, requests received after that date will be reviewed for posting on the following agenda.

# State Laws Important to Local Elected Officials



- Government Code
  - Open Meetings Act
  - Public Information Act
- Texas Penal Code
- Local Government Code



# State Law: Government Code – Open Meetings Act

- **Chapter 551: Open Meetings Act**

- All meetings must be held in public
- Meetings must be posted 72 hours in advance
- Meetings that occur with less than quorum of Council to deliberately avoid this chapter are a violation (misdemeanor punishable by fine or 6 months in jail)
- This also applies to email communications and virtual or telephonic meetings
  - Never "Reply all" to messages from staff or members of the public

# State Law: Government Code

- **Chapter 551: Open Meetings Act**

- Things to Avoid:

- Do not communicate electronically with other council members during the meetings
- Do not engage in a "Walking Quorum", meaning do not communicate about city business with members of Council when a Quorum may exist, but you are not in a public meeting (example: Social Gathering, luncheon, ribbon cutting, etc.)
- Do not send someone to speak to another Council Member on your behalf and have them report back to you

- Call to the Public:

- During City Council meetings, Call to the Public allows members of the public to address Council
- Council may not reply to the member of the public or discuss the item not on the agenda, but may request the item be brought forward at a future meeting.

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# Texas Government Code Chapter 552

## Texas Public Information Act

- Requires the Attorney General to construe the TPIA **liberally** in favor of open government
- States information must be produced **promptly**
- Establishes presumption that information is open to the public
- Triggers mandatory time deadlines for taking required action
- Establishes penalties for noncompliance



# Important Definitions

## PROMPTLY

As soon as possible under the circumstances, within a reasonable time, without delay.

## TEMPORARY CUSTODIAN

An officer or employee of a governmental body. **Required** to forward or transfer public information to the City or its server to be preserved.

## PUBLIC INFORMATION

- All information, in any media or format, that we create, maintain, own, and to which we have access.
- Expressly includes any electronic communications on any personal device if in connection with the transaction of official business.

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# The City's Responsibility

Within ten business days, the City must either:

1. Promptly release the records to requestor
2. Give the requestor written notice of a set date and time the City will have the records.
3. Seek to withhold the records by asking for a ruling from the Attorney General.
4. Withhold the records based on a prior determination.



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# Next Steps

- Members of a multimember governmental body must complete an open records training course within 90 days of taking the oath of office
  - Available through the Attorney General's Office



# State Law: Training

- **Texas Public Information Act Training**
  - Video: <https://texasattorneygeneral.gov/og/pia-training>
  - Handbook: [https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA\\_handbook\\_2018\\_0.pdf](https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA_handbook_2018_0.pdf)
- **Texas Open Meetings Act Training**
  - Video: <https://texasattorneygeneral.gov/og/oma-training>
  - Handbook: [https://www.texasattorneygeneral.gov/sites/default/files/2018-06/OMA\\_handbook\\_2018.pdf](https://www.texasattorneygeneral.gov/sites/default/files/2018-06/OMA_handbook_2018.pdf)

# State Law: Texas Penal Code - Bribery

- **Section 36.02 - Bribery:** A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another or solicits, accepts, or agrees to accept from another
  - Any benefit for consideration of the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
  - Any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
  - Any benefit that is:
    - a political contribution
    - an expenditure made and reported by a registered lobbyist
    - AND the benefit was offered pursuant to an express agreement to take or withhold a specific action if, such action would have been taken or withheld except for the benefit



# State Law: Texas Penal Code – Honorarium

- **Section 36.07 - Acceptance of Honorarium**
  - An honorarium is a payment of money or anything of value for an appearance, speech, or article
  - It is an offense to accept an honorarium
  - You can accept transportation, lodging, meals, and plaques

# State Law: Local Government Code – Substantial Interest in Business Entity

- **Section 171.002** - Prohibits you from voting or participating in a decision in which you have "Substantial Interest" in the involved property or business
  - A person has a substantial interest in a business entity if:
    - The person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
    - The funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
    - The person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
    - The local public official is considered to have a substantial interest under this section if a person is related to the official in the first degree by consanguinity or affinity such as a parent, husband, wife, or a child

# State Law: Local Government Code

- **Section 176.003 Conflicts Disclosure Statement Required:**
  - A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
    - If the city is entering into a contract with a person who has an employment or other business relationship with you or a family member that results in you or your family member
      - receiving taxable income that exceeds \$2,500
      - or if you have received a \$250 gift from the person within the previous 12 months
  - A conflicts disclosure statement shall be filed 7 days after you learn of the situation

# Questions?





## Mission

Deliver exceptional services to support a high quality of life and place for our community



## Vision

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government



## Values

Integrity, Respect, Excellence, Accountability, People