

ORDINANCE NO. **019139**

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.92 (ETHICS) OF THE EL PASO CITY CODE IN ITS ENTIRETY TO CLARIFY THE RULES AND PROCEDURES RELATED TO THE ETHICAL REQUIREMENTS OF CITY OFFICERS AND EMPLOYEES BY REORGANIZING THE STRUCTURE TO CREATE THREE ARTICLES: CODE OF ETHICS; STANDARDS OF CONDUCT; AND ETHICS REVIEW COMMISSION; TO AMEND, CLARIFY AND ADD DEFINITIONS, TO DEFINE THE JURISDICTION OF THE ETHICS REVIEW COMMISSION, AND TO STREAMLINE THE COMPLAINT PROCESS. THE PENALTY FOR VIOLATIONS OF CHAPTER 2.92 (ETHICS) OF THE EL PASO CITY CODE IS PROVIDED IN SECTION 2.92.200 (DISPOSITION) AS AMENDED IN THIS ORDINANCE.

WHEREAS, the El Paso City Council has requested the Ethics Review Commission review the current Ethics Ordinance and suggest amendments they deem necessary; and

WHEREAS, on August 21, 2018, January 23, 2019, September 11, 2019, November 14, 2019, and on January 29, 2020 the Ethics Review Commission met and agreed that changes should be made to the Ethics Code;

WHEREAS, the City Council has completed its review of the recommended revised Ethics Code and agrees with the Ethics Review Commission that the following should be adopted.

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

Section 1. Title 2 (Administration and Personnel), Chapter 2.92 (Ethics) of the El Paso City Code shall be amended in its entirety to read as follows:

Chapter 2.92 - ETHICS**Article I: Code of Ethics****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

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

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. The filing of an ethics complaint pursuant to this ordinance does not prohibit a person from availing themselves of the various remedies available to them under state or federal laws.
- D. To ensure and enhance public confidence in the City government, each City Official and employee must not only adhere to the principles of ethical conduct set forth in this Code and compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times. This section shall not be used for the basis of an ethical complaint.

2.92.020 - Definitions.

- A. For the purposes of this chapter, the following definitions shall apply. This section shall not be used for the basis of an ethical complaint. 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.
1. "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 (by marriage). 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.

2. "Board" means a board, commission or committee:
 - a. 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
 - b. 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. "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. Candidate shall not include a city official or employee who is a candidate for any other elected office.
4. "City" means the City of El Paso, Texas.
5. "City resources" means any City asset, including but not limited to facilities, equipment, supplies, software, and personnel services.
6. "Clear and convincing" means a 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.
7. "Conducting business with the City" means any natural person who provides goods and services or seeks to provide goods and services to the City, or received or seeks to receive services from the City. This excludes natural persons seeking open records requests.
8. "Confidential information" includes: (a) all information held by the City that is not available to the public under chapter 552 of the Texas Government Code (Public Information Act); (b) any information from a meeting closed to the public pursuant to chapter 551 of the Texas Government Code (Open Meetings Act); or (c) any information protected by attorney-client, attorney work product, or other applicable legal privilege.
9. "Consanguinity" means that two individuals are related to each other if one is a descendant of the other, or they share a common ancestor (by blood). 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).

019139

ORDINANCE NO.

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

10. "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.
11. "Contributor" means a person making a contribution, including the contributor's spouse.
12. "Days" means calendar days excluding City holidays.
13. "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.
14. "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.
15. "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.
16. "Frivolous complaint" means a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
17. "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.
18. "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.
19. "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.
20. "Mailbox rule" means that a document sent to another person or party by mail is considered served, and a period of limitations begins to run, on the day it is placed, with proper postage and a correct address, into the mailbox. As used in this chapter, the mailbox rule shall apply to the triggering of limitation periods and the calculation of deadlines for providing and responding to written notices.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

21. "Ministerial act" means an act performed in a prescribed manner and does not require the exercise of any judgement or discretion.
22. "Newly discovered evidence" means evidence that was in existence at the time of the hearing, but was unknown to the parties involved and could not have been discovered with reasonable diligence before the hearing
23. "Officeholder" means the incumbent holding an elected City office.
24. "Officer" means a member of the City Council any member of a board appointed by the City Council, and Municipal Court judges. It includes any member of a board that functions only in an advisory or study capacity.
25. "Official City business" means a purpose or function related to the duties or activities of office or employment.
26. "Political committee" means a specific purpose political committee or a general purpose political committee as those terms are defined in the Texas Election Code.
27. "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.
28. "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.
29. "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.
30. "Resident" means any natural person that resides within the City limits for 14 or more consecutive days and can provide proof such as a state issued identification card.
31. "Substantial interest in business entity" means the definition provided in Texas Local Government Code Section 171.002 as may be amended.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

32. "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.

Article II: Standards of Conduct

2.92.030 – General Provisions.

A. Officers or employees:

1. 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;
2. A City Officer or employee shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the City;
3. 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;
4. 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;
5. 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 and duties;
6. 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;
7. 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;
8. 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:
 - a. 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
 - b. 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;

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

9. 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;
10. 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;
11. 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:
 - a. 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
 - b. 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:
 - i. 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
 - ii. Abstain from voting on the matter; or
 - c. 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:
 - i. Refrain from discussing the matter at any time with other council members or members of a board that will consider the matter; and
 - ii. Abstain from voting on the matter;
12. 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;
13. Shall not recklessly disregard the established practices or policies of the City relating to the duties assigned to the Officer or employee;

019139

ORDINANCE NO.

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

14. 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:

- a. In any quasi-judicial proceeding involving the City; or
- b. In any judicial proceeding to which the City is a party; provided that nothing in this subsection shall preclude:
 - i. 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;
 - ii. Any employee from performing the duties of his or her employment;
 - iii. 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
 - iv. A City Council member or an employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding; and

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

- a. Before the board of which he or she is a member;
- b. 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;
- c. Before a board which has appellate jurisdiction over the board of which he or she is a member; or
- d. 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.

16. An Officer or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate the provisions in this Chapter.

2.92.040 - Gifts.

A. 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;

ORDINANCE NO. 019139

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

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 the Texas Election Code;
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 from a relative 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. 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;
7. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
8. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event that is sponsored or conducted by the City;
9. 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
10. Any solicitation for civil 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.
11. Items received that are of nominal value (less than \$10).

2.92.050 - Reporting requirements.

A. Financial disclosure.

1. Each Officer, excluding elected officials whose financial disclosure requirements are governed by City Charter, and each designated employee, shall file with the City Clerk, within ten business days after the date of his appointment, selection or approval by the City Council, a statement disclosing:

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

- 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. 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 identity and the accuracy of the statements made therein.
3. No person submitting such a statement of financial disclosure must indicate therein the extent of financial involvement in any investments.
4. The members of the boards and commissions identified below and every designated employee 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. Each person subject to this section shall file a revised financial disclosure form at any time in which the person changes his 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.
 - a. Building and Standards Commission.
 - b. City Plan Commission.
 - c. Civil Service Commission.
 - d. Construction Board of Appeals.
 - e. Ethics Review commission.
 - f. Historic Landmark Commission.
 - g. Parks and Recreation Board.
 - h. Public Service Board.
 - i. Zoning Board of Adjustment.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

5. Each candidate for elective office and each candidate for appointment to the boards and commissions identified or as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.
6. Each year, by August 15th, the City Clerk shall prepare a report noting whether each person, who is required to file a financial disclosure statement has done so as of the date of the City Clerk's report. If the person has not filed their required financial disclosure statement upon the time the City Clerk finished the report or the person fails to file their financial disclosure statement within 14 days of their appointment and they do not already have a current financial disclosure statement 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 them that they have not filed a financial disclosure statement as required by this section and that they have 14 days from the date of the letter to file his or her financial disclosure statement. If the person is a board member covered under section 2.92.050(A)(9)(e), 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. In the event of an unforeseen circumstance, including but not limited to, military service or acute illness or leave without pay under the Family Medical Leave Act, the deadline for receipt by the City Clerk is extended until such time as the board member or employee resumes his or her City duties.
7. In the event that a designated employee that reports to the City Manager, fails to file a required financial disclosure report, or had filed incomplete or unresponsive information by the deadlines calculated under 2.92.050(A)(1) of this section, the City Clerk shall notify the individual that the matter is being forwarded to the City Manager for appropriate action.
8. In the event that a board member fails to file his or her financial disclosure statement or has filed incomplete or unresponsive information by the deadlines calculated under section 2.92.050(A)(1), (4), or (9) 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

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

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.
9. The removal provision established in section 2.92.050(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.
 10. Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.

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.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

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 72 hours of receipt for acceptance as a gift to the City, shall not constitute the acceptance of a gift in violation of this Code, provided that the disposition of such gift is reported on a timely filed reportable gift form.
7. The 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.

2.92.060 – Restrictions for Former City Officers and Employees.

- A. All executive staff or salaried professional employees reporting directly to the City Manager as described in Section 6.2-2(H) - Unclassified Services of the City Charter, are prohibited during the 12 months after leaving the service or employment of the City, to 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.
- B. An Officer or other 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 24 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.

019139

or represent any other person or organization in any formal or informal appearance before the City Council or a City board or department. For purposes of this subsection only the term "Officers" excludes members of boards and commissions of the City.

- C. No former members of the Building and Standards Commission, City Plan Commission, Civil Service Commission, Construction Board of Appeals, Ethics Review Commission, Historic Landmark Commission, Parks and Recreation Board, Public Service Board, the Zoning Board of Adjustment, or any other board or commission of the City, shall, during the 12 months after leaving the board or commission, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any person or organization in any formal or informal appearance before their former respective board or commission.
- D. 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.
- E. No person shall, 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. Additionally, 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 went before the Civil Service Commission during the time that such person served on the Civil Service Commission.
- F. No person shall, during the 12 months after having served on and left the Civil Service Commission, be appointed as a Hearing Officer for the Civil Service Commission.
- G. No person appointed as a Hearing Officer for the Civil Service Commission shall, during the time of service and for 12 months after having 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 went before such person during the time he or she served as a Hearing Officer.

2.92.070 - Campaign finances.

- A. Conformity with Texas Election Code. Pursuant to this chapter, candidates, officeholders and political committees participating in City elections may be required to make additional disclosures, to file additional notices, and to comply with certain restrictions not set out in the Texas Election Code. It is not the intent of the City to enact any provision in conflict with or in derogation of the Texas Election Code. The requirements set out in this section are

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

cumulative of those in the Texas Election Code, and nothing in this section shall be construed to limit obligations imposed by the Texas Election Code.

B. Applicability of section.

1. The provisions of this section pertaining to candidates and officeholders shall apply to all persons who have an active appointment of a campaign treasurer by a candidate form on file with the City Clerk.
2. Officeholders are subject to the regulations applied to candidates for the office he or she holds.

C. Campaign contributions.

1. An individual shall not make a contribution in support of, or opposition to, a candidate for City office under a name other than the name by which the individual is identified for legal purposes.
2. A contribution must be made in the name of the individual who owns and is contributing the thing of value, and one individual shall not make a contribution on behalf of another individual.
3. It shall be unlawful for any person who is an adverse party in any pending litigation against the City, or who has an ownership interest of 10% or more in any entity that is an adverse party to the City in any pending litigation to contribute or donate any funds to any candidate for City office if the litigation seeks recovery of an unspecified amount or of an amount in excess of twenty-five thousand dollars, exclusive of costs of court and attorneys' fees. Such restriction shall not be applicable to attorneys representing a person or entity in pending litigation against the City. It shall be the duty of any candidate to refuse to accept any contribution that may be offered by a person who is known to the candidate to have a litigation interest described in this section. In the event that any candidate unknowingly accepts a contribution in contravention of the foregoing provision, then it shall be the duty of the candidate to return the contribution within ten days after the candidate becomes aware of the litigation.

D. Required filings.

1. Each candidate shall file with his application, consent and affidavit of candidate, a written statement acknowledging that he or she has received a copy of the City's Campaign finance regulations.
2. A political committee which makes contributions or expenditures in connection with advocating or opposing a position or issue in a City election must file with the City Clerk a copy of each contribution and expenditure report filed with the Texas Ethics Commission. The filing date for filing with the City Clerk shall be the date established under the Texas Election Code for filing with the Texas Ethics Commission.
3. The starting and ending dates of reporting periods and the due dates of contribution and expenditure reports by candidates for City elections, officeholders and by political committees shall be governed by the Texas Election Code.

019139

4. Contribution and expenditure reports required to be filed with the City Clerk's office under the Texas Election Code must be filed and updated electronically except as provided in Section 2.92.070(D)(4)(b).
 - a. The City will provide access to computer equipment for candidates to file the electronic reports.
 - b. A candidate, officeholder, or political committee that is required to file electronic reports under this chapter may apply for an exemption with the City Clerk if:
 - i. The candidate, officeholder, or campaign treasurer of the committee files with the City Clerk's office an affidavit stating that the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and
 - ii. The candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed the greater of \$20,000 or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended, or make political expenditures that in the aggregate exceed the greater of \$20,000 or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended.
 - c. The City will post the contribution and expenditure reports through the City's website. A paper copy of any report will be made available, upon written request.
 - d. Failing to timely file a report required by this section is a violation hereof, as is the filing of a report with incorrect, misleading, or incomplete information. If an individual inadvertently files an incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible, though no later than 14 days after discovery of the error or after the error should have reasonably been discovered.

E. Complaints.

1. Individuals may file a complaint alleging noncompliance with this section by an officeholder by submitting the matter to the ethics review commission in the same manner as provided in Section 2.92.160 of this chapter.
2. If the City Clerk receives a written complaint alleging noncompliance with this section or if the City Clerk determines that a required report of a candidate, officeholder or political committee has not been filed by the deadline imposed by this section or state law, the City Clerk shall forward this information to the City Attorney for investigation and appropriate enforcement action or submission to the ethics review commission, if warranted.

019139

- F. Severability. It is the intent of the City that this section shall comply in all respects with applicable provisions of the United States Constitution, the Texas Constitution, and the charter of the City. If any provision of this section is declared by a court of law to be illegal, void, invalid, or unconstitutional or in violation of the City Charter, such holding shall not affect the validity of the remaining portions of this section, and such remaining portions shall remain in full force and effect.

2.92.080 - Disclosure of campaign contributions.

- A. If a member of the City Council has received campaign contributions from a contributor totaling \$500 or more subsequent to the date that the member last filed a campaign finance report pursuant to state law, such member shall disclose the receipt of such contribution(s) to the City Council before any deliberation or vote of the City Council regarding any matter on a meeting agenda which concerns or relates to the contributor (s), a business entity owned in whole or in part or operated by the contributor(s) or which employs the contributor(s), or any other time that the contributor(s) appears to address the council during the meeting.
- B. This requirement shall apply to all meetings of the City Council.
- C. Such disclosure shall be orally made by the member and shall be recorded in the minutes of the meeting.
- D. If a member of the City Council accepts a campaign contribution from a contributor of \$500 or more, he shall report the amount and the donor by an item for notation on the consent agenda of a City Council meeting within thirty days of the date of such contribution.
- E. No action of the council which is otherwise legal shall be invalidated merely by reason of the disclosure of a campaign contribution by a member of the City Council or the failure of a member to disclose a campaign contribution.

2.92.090 - Ethics training.

- A. This subsection applies to all City Officers.
1. Each Officer shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
 2. Each Officer shall complete an initial course of training within 90 days after the effective date of this ordinance.
 3. Each board, committee and commission member shall complete an initial course of training within 90 days after the effective date of this ordinance.
 4. Each Officer taking office for the first time on and after shall complete the course of training within 60 days after taking the oath of office.

019139

5. Each board, committee and commission member who is appointed to any board, committee or commission on and after January 1, 2013, and who has not completed the initial course of training or a refresher training course within the three years prior to the date the person takes the oath of office, shall complete the initial course of training within 90 days after the date the person takes the oath of office.
 6. Each Officer shall thereafter complete refresher training courses as provided in subsection (C).
- B. This subsection applies to all City employees.
1. Each City employee shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
 2. All employees shall complete an initial course of training as part of each employee's participation in a new employee orientation, as established by the City Manager or his designee.
 3. Each employee shall thereafter complete refresher training courses as provided in subsection (C), or as otherwise directed by the City Manager.
- C. The courses of training required under this section shall be provided and completed as follows:
1. Each Officer and employee shall complete the initial course of training as provided in subsections (A) and (B), as applicable.
 2. Each Officer shall thereafter complete a refresher training course that will be offered during every third year subsequent to the initial course of training provided during calendar year 2020, with the first refresher course of training to be offered during calendar year 2023.
 3. Each employee shall thereafter complete a refresher training course as provided in subsection (C)(2), or as otherwise directed by the City Manager.
 4. An Officer or employee who has completed his initial course of training within the 12 months prior to the start of a calendar year in which refresher training is required is not required to complete the refresher training offered during that immediately-following calendar year, but shall be required to complete all subsequent refresher training courses, as provided herein.
- D. The City Manager shall ensure that the training required by this section is made available.
1. The training course and refresher training courses shall be developed and provided by the City Manager or his designees, and be subject to approval as to form by the City Attorney or his designees.
 2. The training courses must include instruction in:
 - a. Requirements relating to the standards of conduct imposed under this chapter, including, but not limited to, the acceptance of gifts;
 - b. State penal and other laws that relate to ethical conduct;
 - c. Reporting and disclosure requirements of the ethics ordinance and state law;

- d. Basic requirements of the lobbying ordinance and facilitating compliance by others with that chapter;
 - e. Penalties and other consequences for failure to comply with the ethics and lobbying ordinances; and
 - f. The application of the ethics ordinance to unique situations relating to the board, commission or committee that the Officer has been appointed to, or the application of the ethics ordinance to unique situations relating to the type of work that an employee does or the department he/she is assigned to.
3. The courses of training required under this section may be offered through live instruction or through the use of a video-recorded presentation.

Article III: Ethics Review Commission

2.92.100 - Purpose and Mission.

- A. In order to assist the City Council, an Ethics Review Commission of nine members is hereby established.
- B. 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.

2.92.110 ~ Membership

- A. All members of the Ethics Review Commission shall be residents of the City. Members cannot be City employees, hold any City elected office, or be a candidate for any City elected office. A member may contribute to a City political campaign as long as they are compliant with the City Charter.
- B. 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.
- C. Members shall be appointed for a two-year period, except that appointments made to fill vacancies created during a term shall only serve for the remainder of the term. The term of each 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

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

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

2.92.120 – Jurisdiction

The Ethics Review Commission shall have jurisdiction to review alleged violations of Article II (Standards of Conduct) of this chapter by Officers that occurred within 2 years of the complaint being filed.

2.92.130 – Duties

- A. The ethics review commission shall meet as necessary to accomplish the following duties. In order to conduct a meeting there must be a quorum of 5 members of the Ethics Review Commission.
1. Review, evaluate and provide recommendations on issues as requested by the City Council.
 2. 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.
 3. Provide information to the community on ethics in City government, as may be necessary for the promotion of the public trust.
 4. Issue advisory opinions in the manner set forth in section 2.92.150 below.
 5. Review, evaluate and issue determinations, impose sanctions and provide recommendations to the City Council on complaints regarding Officers.
 6. Provide information on the disposition of specific issues by referring to minutes of commission meetings and ethics review commission reports.
 7. Periodically review and propose changes to this chapter and the forms utilized pursuant thereto.
 8. Develop guidelines and procedures to promote compliance with this chapter.
 9. Prepare written annual reports for the City Council. Submit additional reports as needed.
 10. Any other duties or assignments that may be directed by City Council.

2.92.140 – Procedures

- A. The Ethics Commission will hold their first meeting every year on or about the first business day after April 1st. At this meeting, they will select a chair and vice chair and adopt rules for their proceedings, which shall be subject to approval by City Council. The rules that are adopted must be consistent with the City Charter, City ordinances, and the Ethics Code, and shall, to the extent possible, be like the rules set up by City Council for its own meetings.
- B. The Chair of the Ethics Review Commission shall make appointments to the Advisory Opinion Panel as needed to issue advisory opinions to Officers upon written request. The

Advisory Opinion Panel shall never have less than 3 members of the Ethics Review Commission.

- C. The Ethics Review Commission shall be assigned staff by the City Manager to assist in its duties, as the City Manager and City Council deems necessary. In the case that the Ethics Review Commission is hearing a complaint against a member of City Council or the City Manager, outside legal counsel may be retained when requested by the City Attorney at any time during the ethics proceedings to perform his or her duties under section 2.92.170 of this code and any other duties for the remainder of the ethics proceeding.
- D. The Ethics Review Commission may consolidate into one complaint the following:
 - 1. Multiple complaints against the same Officer that involve the same incident; or
 - 2. Multiple complaints against the same Officer that involve the same alleged misconduct.

2.92.150 – Advisory Opinions

- A. By written request to the City Attorney, any Officer may request an advisory opinion regarding whether his or her proposed conduct would violate this chapter. Within 30 days of receiving the written request, the City Attorney shall call a meeting of the Advisory Opinion Panel to review the request. The panel shall meet to confer and issue an advisory opinion. The panel, however, showing a good cause, may decline to issue an advisory opinion or refer the matter to the whole Ethics Review Commission.
- B. The City Manager may request an advisory opinion regarding the proposed action or conduct of one or more employees by submitting a written request to the City Attorney. The City will issue an opinion within 30 days of receiving the advisory opinion request, unless the City Attorney, showing good cause, declined to issue an advisory opinion.
- C. A person who in good faith acts in accordance with a written advisory opinion issued by the Advisory Opinion Panel or Ethics Review Commission cannot be found to have violated this chapter by engaging in conduct approved in the advisory opinion if:
 - 1. the person requested the issuance of the opinion; or
 - 2. the request for an opinion fairly and accurately disclosed all relevant facts necessary to render an opinion.

2.92.160 – Filing a Complaint

- A. Any resident of the City (including a member of the Ethics Review Commission), or natural person conducting business with a City who believes a City employee has violated Article II of this chapter may file a sworn complaint to the City's Human Resources department or to the employee's supervisor.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

- B. Any resident of the City (including a member of the Ethics Review Commission) or natural person conducting business with the City who believes an Officer has violated Article II of this chapter may file a sworn complaint with the City Clerk.
- C. Any resident of the City (including a member of the Ethics Review Commission) or natural person conducting business with the City who believes the City Attorney or the City Manager has violated Article II of this chapter may file a sworn complaint with the Mayor and the Mayor pro temp.
- D. A complaint filed under this section must be in writing and under oath and must include:
 - 1. The name of the complainant;
 - 2. The telephone number and the mailing address and/or electronic mail address of the complainant.
 - 3. Proof of residence or that the complainant is conducting business with the City;
 - 4. The name of each person complained about;
 - 5. The position or title of each person complained about;
 - 6. The nature of the alleged violation, including the specific provisions of this chapter alleged to have been violated.
 - 7. A statement of the facts explaining the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
 - 8. All other documents or material relating to the alleged violation that the complainant can provide; a list of the documents or materials that are relevant to the alleged violation but are not in possession of the complainant or are unavailable to the complainant, including the location of such documents or materials.
 - 9. 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 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.

2.92.170 – Complaint Review

- A. The City Clerk will review a filed complaint to ensure it is properly sworn and complete. If the complaint is missing required information, the City Clerk will send the complaint back to the complainant through regular mail and/or electronic mail, and the complainant will have 21 days to correct the complaint and refile it otherwise the City Clerk may reject the complaint. If the complaint is complete the City Clerk will forward the complaint to the City Attorney and the respondent within 7 days. Respondant has 14 days from receipt of the complaint to file a response with the City Clerk.
- B. Within 21 days of receiving the complaint from the City Clerk, the City Attorney will either:

1. Dismiss the complaint because it falls outside the Ethics Review Commission's jurisdiction. If a complaint is dismissed in this manner the decision of the City Attorney will be final. The City Attorney shall provide a copy of the dismissal to the Ethics Review Commission and to the complainant through regular mail or electronic mail; or
2. Refer the complaint to the Ethics Review Commission. Once this occurs, the City Attorney may confer with the chair of the Ethics Review Commission and vice-versa about any procedural matters regarding the complaint.

2.92.180 – Ex Parte Communications

- A. It shall be unlawful to engage in any of the following ex parte communications regarding a complaint that has been filed pursuant to this chapter:
 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 (A)(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.
- B. The City Attorney or his/her designee conferring with the chair or members of the Ethics Review Commission on procedural matters regarding a complaint shall not be considered prohibited ex parte communications.
- C. If a member of the Ethics Review Commission violates this section of the chapter, they shall recuse themselves from any further proceedings regarding the complaint. Should the Commission not reach a quorum because members recused themselves, then the City Council shall appoint temporary members to the Commission to hear the complaint or the Chair of the Ethics Review Commission shall appoint a panel with the remaining eligible members to complete the hearing and disposition process. Temporary membership to the Ethics Review Commission expires upon the disposition of a complaint and may only be reinstated by City Council if the complaint is to be reconsidered pursuant to the provisions in this Chapter.

2.92.190– Hearing

- A. If a complaint is referred to the Ethics Review Commission, the Commission must schedule a hearing and provide copies of all relevant documentation to the members of the commission, the complainant, and the respondent within 30 days of being referred the complaint. While the complaint is pending members of the Ethics Review Commission are prohibited from discussing the complaint or matters of the hearing with any Officer, the City Manager, or other employees of the City, or any other person whether that person is associated with the complaint or not.

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

- B. For all hearings, 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 hearing by the Ethics Review Commission through regular mail and/or electronic mail so each party may attend.
- C. If either the complainant or the respondent, or their attorneys, if any, are unable to attend any scheduled hearing, they may request a continuance of the hearing by submitting a written request for continuance to the Ethics Review Commission through regular mail and/or electronic mail at least 5 days before the scheduled hearing. The complainant and the respondent, including their attorneys, shall receive one automatic continuance. Any other requests for continuance shall be delivered in writing to the Ethics Review Commission through regular mail and/or electronic mail, and the chair will determine if a continuance will be granted at the next scheduled meeting. The request for continuance must be received at least 5 days before the scheduled hearing. The Commission shall consider if granting continuance promotes fairness to all parties and if there is good cause shown in the request for continuance.
- D. The complainant, respondent, either of their attorneys, or any witnesses that have been requested to appear at the hearing may raise questions regarding the proceedings before the Ethics Review Commission or any preliminary issues regarding the scheduled hearing to the attention of the City Attorney. The City Attorney or his or her designee shall resolve the matters to the extent possible, and if necessary, consult with the Commission to determine the appropriate resolution at the Commission's scheduled meeting.
- E. Only eligible Commissioners of the Ethics Review Commission will hear matters referred to the Commission as a whole. If a Commissioner recuses himself or herself, they will refrain from voting on the matter and from discussing the matter at any time with other Commissioners of the Ethics Review Commission. A Commissioner shall not be eligible to hear issues under this chapter and shall recuse himself or herself in the following situations:
1. Where, because of familial relationship, employment, investments, or otherwise, his or her impartiality might be questioned;
 2. When the Commissioner issued the complaint;
 3. When the complaint involved the member of City Council who nominated him or her for a seat on the Ethics Review Commission;
 4. When the Commissioner is not present during any portion of the hearing of the complaint. The Commissioner shall recuse himself or herself from further hearing and matters regarding the complaint and will no longer be eligible to participate in the disposition of the complaint; or
 5. When the complaint involved the member of the City Council in whose campaign the Commissioner, if during the last 12 months substantially participated by acting as a fundraiser or leader in the campaign, or contributing \$500 or more .
- F. General rules for the hearing.
1. The Ethics Review Commission may establish time limits and other rules relating to the participation of any person in the hearing for the purpose of establishing an orderly and fair hearing process for all participants. Such rules shall include determining parameters for opening and closing statements, the roles of the complainant and the respondent,

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

limitations regarding testimony for non-relevant or cumulative witnesses, and the presentation and direct questioning of witnesses by the respondent, complainant, or their attorneys.

2. The respondent and the complainant have the right to attend the hearing, the right to make a statement and present witnesses pursuant to the rules set by the Commission for the hearing, and the right to be accompanied by legal counsel or advisor. The respondent and the complainant may be advised by their legal counsel or advisor during the course of the hearing. The legal counsel or advisor of the complainant may not speak on behalf of the complainant, except to represent the complainant while testifying. The respondent, the complainant, or their legal counsel or advisor, may not personally question or cross-examine witnesses, except if the Commission has granted them permission to do so.
3. As provided by the City Charter, the Ethics Review Commission shall have the authority to request witness testimony and production. The Commission chair or his/her designee on behalf of the Commission, shall have the authority to request any and all necessary assistance from City Council for the purpose of compelling testimony, including subpoenaing witnesses in accordance with the procedures set out by the City Charter and City ordinances. The Commission will have the authority to bring matters to City Council through agenda items properly drafted by the City Attorney or his/her designee.
4. The City Attorney and his/her designee will disclose any information or evidence actually known to them that would validate and/or negate the alleged violation of this chapter to the Ethics Review Commission and to the respondent.
5. The Ethics Review Commission is not bound by the rules of evidence, but will rely on evidence that a reasonably prudent person commonly relies on in the conduct of their personal affairs. The Commission shall hear relevant evidence, but shall not rely on hearsay.

2.92.200– Disposition

- A. After hearing the complaint, the ethics review commission will issue a decision within 30 days based on the information available to the Commission through the hearing process. The ethics review commission will:
 1. Dismiss a complaint because no violation of this chapter has occurred; or
 2. Find that a violation of this chapter has occurred and either find that a sanction is not appropriate, or issue a sanction.
- B. 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 sent to the parties associated with the complaint by regular mail and/or electronic mail.
- C. At this time, the Commission may determine if the complaint was frivolous. If the Commission determines that a complaint is frivolous, they may issue a sanction provided in subsection D below. If within one year, a complainant is found to have filed more than one frivolous complaint, the complainant will not be able to file further complaints for the

019139

ORDINANCE NO. _____

19-1020-1221 | 1052048

2020 Ethics Ordinance Amendment-updated 1/26/2021

KMN

following 2 years. If a complainant who is banned from filing a complaint does so within their prohibited period, the City Clerk may refuse to accept the complaint and will notify the Commission so an additional 2 years can be added to the current prohibition.

D. If after hearing the issues, the ethics review commission determines through clear and convincing evidence that a violation of this chapter has occurred, then the Ethics Review Commission may issue on of the following sanctions:

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. 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. Recommend removal from office. In addition to a letter of reprimand, 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.

E. 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. The City Attorney shall draft the letter of sanction per the direction of the commission, file a copy of the letter in the employment file of the person receiving the sanctions where it shall remain as a permanent record, and send a copy of the letter to said person by both regular mail and certified mail, return receipt requested, and/or by electronic mail.

F. 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 14 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 recommendation(s) of the Ethics Review Commission may be accepted, rejected, modified or recommitted to the Commission for further action or clarification by City Council. The City Clerk shall, within 14 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.

2.92.210- Reconsideration

- A. If the Ethics Review Commission determines a violation of this chapter has occurred and imposes sanctions, the person who has received the sanctions may petition the Ethics Review Commission to reconsider the matter only if there is newly discovered evidence which was not presented to the Ethics Review Commission during the original proceedings. The person who was sanctioned may request the reconsideration by providing written notice to the City Clerk within 14 days of the date on the Ethics Review Commission's written notice regarding the sanctions. If the sanctioned party does not provide written notice to the City Clerk on or before the expiration of the 14th day following the date of the written notice of the sanctions, the decision of the Ethics Review Commission shall be final and no longer eligible for reconsideration.

Section 2. Except as herein amended, Title 2 (Administration and Personnel) of the El Paso City Code remains in full force and effect.

ADOPTED this 11th day of February 2021.

CITY OF EL PASO


Oscar Looser, Mayor

ATTEST:


Laura D. Prine, City Clerk

APPROVED AS TO FORM:


Karla M. Nieman, City Attorney

APPROVED AS TO CONTENT:


Cary Westin, Senior Deputy City Manager
Economic Development & Tourism

019139

