16A

ORDINANCE NO. 16300

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE EL PASO CITY CODE, TO CREATE CHAPTER 2.94 (REGULATION OF LOBBYING ACTIVITIES) AND SECTIONS THEREUNDER; TO CREATE REQUIREMENTS FOR THE REGISTRATION AND REPORTING OF LOBBYISTS; TO RESTRICT CERTAIN ACTIVITIES; AND TO CREATE A PENALTY; THE PENALTY BEING AS IN SECTIONS 1.08.010-1.08-030 AND 2.94.130 OF THE EL PASO CITY CODE.

WHEREAS, it is the City Council's intent to improve the public's trust in their elected leaders and the manner and quality of the business conducted in the public's name and with the public's resources; and

WHEREAS, it is the City Council's intent to clearly define the relationships that exist between those who stand to gain financially or otherwise from decisions made by the City and those entrusted with conducting the City's business; and

WHEREAS, the fee assessed for the registration of lobbyists does not exceed the City's cost to register the lobbyists, accept their quarterly reports and make these documents readily available to the public, and monitor compliance as required; and

WHEREAS, the enactment of this ordinance is done in compliance with applicable laws and regulations and for the purpose stated herein.

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

Section 1. That Chapter 2.94 (Regulation of Lobbying Activities) of the El Paso City Code be created.

Section 2. That Section 2.94.010 (Purpose) of the El Paso City Code be created as follows:

Section 2.94.010. Purpose.

The city council declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any city officials their opinions on pending municipal questions and on current issues; and that to preserve and maintain the

integrity of the governmental decision-making process in the city, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to influence a City official on matters within their official jurisdictions, either by direct communication to the official, or by solicitation of others to engage in such efforts, be regulated and be publicly and regularly disclosed.

Section 3. That Section 2.94.020 (Definitions) of the El Paso City Code be created as follows:

Section 2.94.020. Definitions.

In this chapter:

A. "City official" means the mayor, a council member, a City employee or a member of board, commission, and committee set forth in Section 2.94.030 of this code

B. "Compensation" means money, service, facility or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered. Compensation shall not include compensation paid to an individual regularly employed by a person if the compensation paid to the individual is ordinarily paid regardless of whether the individual engages in lobbying activities and lobbying activities are an incidental part of the individual's regular responsibilities to the person paying the compensation. Compensation shall not include the financial gain that an person may realize as a result of the determination of a municipal question, unless that gain is in the form of a contingent fee. Compensation shall be considered received on the date on which the contract or agreement for the compensation is made or on the date lobbying commences, whichever is later.

C. "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit or gift of money or anything of value, including a contract, promise or agreement to make an expenditure, regardless of whether the promise or agreement is legally enforceable. Expenditure shall not include an expenditure paid to an individual regularly employed by the individual engages in lobbying activities and lobbying activities are an incidental part of the individual's regular responsibilities to the person paying the expenditure.

D. "Discretionary contract means any contract other than those which by law must be awarded on a low bid basis. Discretionary contracts do not include those contracts subject to Section 252.022(a)(7) of the Texas Local Government Code or those contracts not involving an exercise of judgment or choice.

E. "Gift" means the conferring of a benefit as defined in Section 2.92.030 A of this code.

F. "Immediate family" means a spouse residing in the person's household and dependent children.

G. "Lobby" or "lobbying" means the solicitation of a City official, by private interview, postal or telephonic communications, or any other means other than public expression at a meeting of City officials open to the public under Chapter 551 (Open Meetings Act) of

the Texas Government Code, directly or indirectly by a person in an effort to influence or persuade the City official to favor or oppose, recommend or not recommend, vote for or against, or to take action or refrain from taking action on a municipal question. The term lobby or lobbying shall not include a mere request for information or an inquiry about a municipal question, matters, or a procedure or communication to a City official which is incidental to other employment not for purpose of lobbying, nor shall it include contacts with City employees in compliance with section 2.94.090 E of this Code.

H. "Lobby employer" means a person who compensates another person to lobby on a municipal question of interest to the person.

I. "Lobbying entity" means a corporation, association, firm, partnership, committee, club, organization or group of persons who are voluntarily acting in concert that is compensated by a lobby employer to lobby.

J. "Municipal question" means a public policy issue of a discretionary nature pending or impending before the city council, a legislative review committee of the council, or any board, commission or committee set forth in Section 2.94.030 of this code, including but not limited to a proposed or proposal for an ordinance, resolution, motion, recommendation, report, regulation, policy, appointment, sanction, bid, a request for proposal, including the development of specifications, an award, grant, or contract, and all matters before the boards, commissions or committees listed in Section 2.94.030 B, C, D, K and L of this code.

K. "Person" means an individual, corporation, association, firm, partnership, committee, club, organization including nonprofit organizations, or group of persons who are voluntarily acting in concert, including but not limited to a registrant.

L. "Registrant" means a person required to register under Section 2.94.060 of this code.

M. "Substantial economic interest" means holding stock worth $5,000 or more in, or five percent or more ownership of any business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity which is not publicly traded.

Section 4. That Section 2.94.030 (Applicability) of the El Paso City Code be created as follows:

Section 2.94.030. Applicability.

Except as otherwise specified herein, this chapter applies to a person who lobbies the mayor, a council member, a city employee, and a member of the following boards, commissions and committees:

A. Airport Board;

B. Architect and Engineer Selection Committee

C. Building Board of Appeals;

D. Building and Standards Commission;

E. Civil Service Commission;

F. Community Development Steering Committee;

G. Public Service Board;

H. Ethics Review Commission;

I. Historic Landmark Commission;

J. Parks and Recreation Advisory Board;

K. City Plan Commission;

L. Zoning Board of Adjustment; and

M. A retirement board, including the Pension Fund Board of Trustees and the Fire and Police Pension Fund Board of Trustees.

Section 5. That Section 2.94.040 (Persons Required to Register) of the El Paso City Code be created as follows:

Section 2.94.040. Persons Required to Register and Eligibility.

A. Except as provided in Section 2.94.050 (Exceptions), a person must register with the city clerk if the person:

1. receives compensation, including salary, of $200 or more in a calendar quarter for lobbying or which is attributable to lobbying activities;

2. receives reimbursement of $200 or more in a calendar quarter for lobbying;

3. expends $200 or more in a calendar quarter for lobbying;

4. lobbies as the agent or employee of a person who:

    a. receives compensation of $200 or more in a calendar quarter for lobbying;

    b. receives reimbursement of $200 or more in a calendar quarter for lobbying; or

    c. expends $200 or more in a calendar quarter for lobbying; or

5. enters into an agreement to provide lobbying services on a contingent fee basis.

B. No person who is an appointed member of a City board, commission or committee or a public nonprofit corporation recognized by resolution of the Council as of March 7, 2006 shall be eligible to register under this chapter on or after October 1, 2006.

Section 6. That Section 2.94.050 (Exceptions) of the El Paso City Code be created as follows:

Section 2.94.050. Exceptions.

The following persons are not required to register under this chapter:

A. A person who owns, publishes or is employed by a newspaper, another regularly published periodical, a radio station, a television station, a wire service or another bona fide news medium that in the ordinary course of business disseminates news, letters to the editor, editorial or other comment or paid advertisement that directly or indirectly oppose or promote municipal questions if the person does not engage in further or other activities that require registration under this chapter and does not represent another person in connection with influencing municipal questions. This subsection does not exempt a person whose relation to the news media is only incidental to a lobbying effort or when a position taken or advocated by a media outlet directly impacts, affects, or seeks to influence a municipal question in which the media outlet has a direct or indirect financial interest.

B. A person whose only activity to influence legislation or administrative action is attendance at a meeting or other event attended by one or more City officials if the cost of the meeting or event is not paid, in whole or in part, by the person or anyone on whose behalf the person is lobbying.

C. A governmental entity, its officers and employees, provided they are solely engaged in matters of governmental interest concerning their respective governmental bodies and the City.

D. A person whose only expenditure is the cost of purchasing copies of City documents and information.

E. A person who does not know and has no reason to know whether a municipal question is pending at the time of contact with a City official. This subsection shall not apply if the existence of a municipal question is discovered during contact with a City official and the person then engages in additional lobbying of the same or other City officials.

F. An attorney or other person whose contact with a City official is made solely as part of the process of resolution of a dispute or other matter that is primarily legal in nature between a person and the City, provided that the contact is solely with City officials who do not vote on or have final authority over any municipal question involved and if the person is an attorney, so long as he or she complies with Rule 4.02 of the Texas Disciplinary Rules of Professional Conduct, as amended.

G. A lobby employer who would only be required to register under Section 2.94.040 of this code because of an expenditure to compensate a registrant to lobby on a municipal question of interest to the lobby employer.

Section 7. That Section 2.94.060 (Registration) of the El Paso City Code be created as follows:

Section 2.94.060. Registration.

A. Each registrant shall file annually with the city clerk a registration form signed under oath not later than two business days after becoming a lobbyist and meeting the requirements to register set forth in section 2.94.040 of this code. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a registration schedule for each person from whom he receives compensation or reimbursement. The registration shall be on a form prescribed by the city clerk and shall include:

1. the registrant's full name, permanent street address and mailing address, if different;

2. the name and address and nature of business of each lobby employer or lobbying entity on whose behalf the registrant will lobby; and

3. a statement of all municipal questions on which the registrant has lobbied for each client in the year preceding the filing of the registration and the municipal questions or subjects on which the registrant foreseeably will lobby during the registration period.

B. Each registrant shall file a notice of termination within 30 days after the registrant ceases the activity that required registration; however, this will not relieve the registrant of the reporting requirement of Section 2.94.070 for that reporting period.

C. At the time of registering, a registrant shall pay to the City and the city clerk shall collect an annual registration fee in the amount of $100.00. Effective September 1, 2006, a registrant shall pay to the City and the city clerk shall collect an annual registration fee in the amount set by the budget or other appropriate resolution of the City Council, provided however, that is such fee is not contained in such a resolution as of September 1, 2006, the fee set herein in the amount of $100.00 shall continue until such time as the fee is established in the budget or other appropriate resolution of the City Council.

D. A registration expires on the last day of the month of filing of the following year.

Section 8. That Section 2.94.070 (Activity Reports) of the El Paso City Code be created as follows:

Section 2.94.070. Activity Reports.

A. Each registrant shall file with the city clerk between the first and tenth day of April, July, October and January, an activity report signed under oath concerning the registrant's lobbying activities during the previous quarter. If a registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom the registrant receives compensation or reimbursement. The report shall be on a form prescribed by the city clerk and shall include to the extent applicable:

1. any changes or updates to the information required to be supplied pursuant to Section 2.94.060;

2. in the case of a registrant engaged in lobbying activities on his own behalf, a good faith estimate of the total expenditures as defined in Section 2.94.020 of this code that the registrant and its agents or employees incurred in connection with lobbying activities;

3. a list of the specific issues upon which the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of specific legislative proposals and other proposed, pending or completed official actions;

4. a list of the city officials contacted by the registrant on behalf of the client with regard to a municipal question;

5. each business entity in which the registrant knows or should know that a City official is a proprietor, partner, director, officer, manager, employer, employee, or has a substantial economic interest and with which the registrant has engaged in an exchange of money, goods, services, or anything of value if the total of the exchanges is $500 or more in a calendar quarter shall be identified by its name and address, the official, the date, amount and nature of each exchange under this paragraph;

6. the names of the mayor, a council member, or member of their immediate family who are employed by the registrant and the nature of employment; and

7. a list of all gifts given to a Council Member, department head and executive assistant to the Mayor which must be reported pursuant to section 2.92.070 B of this code.

B. Each registrant shall maintain on a daily basis, a log of contacts with city officials, from which the registrant shall compile the information to be reported under subsection 4 above.

C. Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, logs and documents necessary to substantiate the activity reports required to be made under this section for two years from the date of filing of the report containing the items.

D. Each person about whose activities a registrant is required to report by Subsection A of this section shall provide a full account of the activities to the registrant at least five days before such registrant's report is due to be filed.

E. All reports filed under this chapter are public records and shall be made available for public inspection during regular business hours.

F. The city clerk shall review each report for compliance and maintain a record of all registrations and activity reports. Complaints of violations of this chapter will be forwarded to the city clerk for review. If investigation determines a violation may have occurred, the complaint will be forwarded to the city attorney for appropriate action.

G. No quarterly activity report will be required if there is no activity during the preceding quarter and there are no other changes to items required to be reported, provided however

that the registrant timely files a written statement with the City Clerk that he or she has no activity or changes to report.

Section 9. That Section 2.94.080 (Timeliness of Filing Registrations and Reports) of the El Paso City Code be created as follows:

Section 2.94.080. Timeliness of Filing Registrations and Reports.

A registration or report filed by first-class United States mail or by common or contract carrier is timely if:

A. it is properly addressed with postage or handling charges prepaid; and

B. it bears a post office cancellation mark or a receipt mark from a common or contract carrier indicating a time within the applicable filing period or before the applicable filing deadline, or if the person required to file furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period or before that deadline.

Section 10. That Section 2.94.090 (Restricted Activities) of the El Paso City Code be created as follows:

Section 2.94.090. Restricted Activities.

A. No person who lobbies or engages another person to lobby, nor any other person acting on behalf of the person, shall give any gift to a City official or a member of his or her immediate family, except as permitted by and in accordance with the requirements of chapter 2.92 of this code.

B. No person who lobbies or engages another person to lobby, nor any other person acting on behalf of such persons shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts to a City official, or knowing a document to contain a false statement, cause a copy of the document to be received by a City official without notifying the official in writing of the truth.

C. No person who lobbies or engages another person to lobby, or any person acting on behalf of such person, shall represent, either directly or indirectly, orally or in writing, that that person can control or obtain the vote or action of any city official.

D. During the period of solicitation for requests for proposal (RFP), qualifications (RFQ), highest qualified bid (best value), source selection, or the giving of a notice of a proposed project, which shall begin on the day that it is advertised and end on the date that the notice of the award has been sent to the City Clerk for placement on the agenda, no person or registrant shall engage in any lobbying activities with city officials and employees. If contact is required with city employees, such contact will be done in accordance with procedures incorporated into the solicitation document and the city's contracting policies. Any person or entity that violates this provision may be disqualified in accordance with Section 2.94.130 of this code.

E. Except as provided in Section 2.94.040 B of this code, no registrant shall be eligible for or accept appointment to any City board, committee or commission or a public nonprofit corporation recognized by resolution of the Council.

Section 11. That Section 2.94.100 (Appearance) of the El Paso City Code be created as follows:

Section 2.94.100. Appearance.

Each person or registrant appearing before any city official shall orally identify himself and the person or interest the person represents before beginning the person's address.

Section 12. That Section 2.94.110 (Chapter Construction) of the El Paso City Code be created as follows:

Section 2.94.110. Chapter Construction.

A. Nothing in this chapter shall be construed to prohibit or interfere with any person's rights guaranteed by the United States and Texas Constitutions.

B. Nothing in this chapter shall supersede or preempt the stricter provisions of state or federal law or other ordinance, or any applicable city or departmental policy with respect to the conduct of city employees.

Section 13. That Section 2.94.120 (Penalty) of the El Paso City Code be created as follows:

Section 2.94.120. Penalty.

A person who knowingly or intentionally lobbies in violation of a provision of this chapter, or who shall knowingly obstruct or prevent compliance with this chapter, or who shall knowingly or intentionally fail to meet the reporting provisions of this chapter shall be guilty of a misdemeanor.

Section 14. That Section 2.94.130 (Disqualification from Contracting) of the El Paso City Code be created as follows:

Section 2.94.130. Disqualification from Contracting.

Any person who knowingly or intentionally violates the provisions in section 2.94.090 D of this code, with respect to the solicitation or award of a discretionary contract may be prohibited by the city council from entering into any contract with the city for a period not to exceed three years.

Section 15. Except as herein amended, Title 2 (Administration and Personnel) shall remain in full force and effect.

Section 16. This ordinance shall take effect on April 1, 2006, provided however, that section 2.94.040B shall be effective immediately.

ADOPTED this 7th day of March 2006.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Elaine S. Hengen
Assistant City Attorney