ORDINANCE NO. 16301

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.92 (ETHICS), OF THE EL PASO CITY CODE; TO AMEND SECTION 2.92.030 (DEFINITIONS); TO ADD SECTION 2.92.100 (CAMPAIGN FINANCES) AND 2.92.110 (DISCLOSURE OF CAMPAIGN CONTRIBUTIONS); TO CREATE REQUIREMENTS APPLICABLE TO THE MAKING, RECEIVING AND DISCLOSING OF CAMPAIGN CONTRIBUTIONS; AND TO CHANGE THE SECTION NUMBER FOR THE PENALTY SECTION TO 2.92.150; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010-1.08-030 AND SECTION 2.92.150 OF THE 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, it is the finding of the City Council that it is in the best interests for the fair and open operation of City government that requirements and obligations relating to matters of campaign finances be imposed upon persons running for or holding the position of elected official in the City of El Paso; and

WHEREAS, it is the finding of the City Council that the proper operation of a representative democracy requires that elected public officials exercise independent judgment, act impartially and remain responsible to the people; and that the city election process and city government should be protected from potential undue influence and the appearance of undue influence by individuals and groups making large contributions to city election campaigns; and

WHEREAS, the enactment of this ordinance is done in compliance with the state Election Code and other applicable laws and regulations.

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

Section 1. That the text contained in Section 2.92.090 (Penalty) of the El Paso City Code is repealed and that the publisher of the City Code hold this section open and mark it as "reserved for future expansion."

Section 2. That Section 2.92.030 (Definitions) of the El Paso Municipal Code is amended to read as follows:

Section 2.92.030 Definitions

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

A. "Benefit" means any economic gain or economic advantage to an officer or employee or to a relative of an officer or employee. "Benefit" does not include:
   1. Political contributions made or received and reported in accordance with law;
   2. Awards, such as plaques, certificates, trophies or similar mementos, publicly presented in recognition of public service;
   3. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
   4. Gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities;
   5. Commercially reasonable loans made to an officer or employee in the ordinary course of the lender's business;
   6. Complimentary copies of trade publications;
   7. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity;
   8. Any economic gain or economic advantage, excluding cash or a negotiable instrument as described by Section 3.104, Texas Business and Commerce Code, conferred by any one person or organization if the economic value totals less than fifty dollars per calendar year; or
   9. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code.

B. "Board" means a board, commission or committee:
   1. which is established to participate in some manner in the conduct of city government, including participation which is merely advisory, whether established by city ordinance, city charter, interlocal contract, state law or any other lawful means; and
   2. any part of whose membership is appointed by the city council, but does not include a board, commission, or committee, which is the governing body of a separate subdivision of the state.

3. the city clerk shall maintain one or more lists of the boards whose members are subject to the various provisions contained in this chapter, and such lists shall be made available to the public during working hours upon request.

C. "Confidential information" means any written information that could be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized.

D. "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.

E. "Negotiating concerning prospective employment" means a discussion between a city officer or employee and another employer concerning the possibility of the city officer or employee considering or accepting employment with the employer, in which discussion the city officer or employee responds in a positive way.

F. "Officer" means a member of the city council and any member of a board appointed by the city council. It includes any member of a board that functions only in an advisory or study capacity.

G. "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.

H. "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.

I. "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.

J. "Official city business" means a purpose or function related to the duties or activities of office or employment.

K. "City resources" means any city asset, including but not limited to facilities, equipment, supplies, software, and personnel services.

L. "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.

M. "Business days" means the weekdays excluding city holidays.

M. "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.

N. "Contributor" means a person making a contribution and the person's spouse.

O. "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.

P. "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.

Q. "Officeholder" means the incumbent holding an elected City office.

R. "Person" means an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons, excluding a political committee organized pursuant to the Texas Election Code.

S. "Political Committee" means a specific purpose political committee or a general purpose political committee as those terms are defined in the Texas Election Code.

Section 3. That Section 2.92.100 (Campaign Finances) of the El Paso Municipal Code shall be created to read as follows:

Section 2.92.100 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 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. Use of Legal Name. 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. Making of Contributions. 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. Prohibition of Contributions by Litigants. 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 ten percent 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 $25,000.00, 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 this chapter.
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.

E. Complaints

1. Individuals may file a complaint alleging non-compliance with this section by an officeholder by submitting the matter to the ethics review commission in the same manner as provided in Section 2.92.080 of this Code.
2. If the City Clerk receives a written complaint alleging non-compliance 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.

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.

Section 4. That Section 2.92.110 (Disclosure of Campaign Contributions) of the El Paso City Code be created as follows:

Section 2.92.110. Disclosure of Campaign Contributions.

A. If a member of the City Council has received campaign contributions from a contributor totaling five hundred dollars ($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 contributions to the Council before any deliberation or vote of the City Council regarding any matter on a meeting agenda which concerns or relates to the contributor, a business entity owned in whole or in part or operated by the contributor or which employs the contributor, or any other time that the contributor 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 five hundred dollars ($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.

Section 5. That Sections 2.92.120, 2.92.130 and 2.92.140 of the El Paso Municipal Code shall be established and that the publisher of the City Code hold the sections open and mark them as "reserved for future expansion."

Section 6. That Section 2.92.150 (Penalty) of the El Paso Municipal Code shall be created to read as follows:

Section 2.92.150 Penalty

A. The failure of any officer or employee to comply with this chapter or the violation of one or more of the standards of conduct set forth in this article, which apply to him or her, shall constitute grounds for expulsion, reprimand, removal from office or discharge. In the case of an employee of the city, disciplinary action and appeals therefrom shall be in conformance with procedures established by the city charter and personnel rules and regulations. In the case of a council member, the matter shall be decided by a vote of the city council in accordance with the charter. In the case of board members, the matters shall be decided by the city council. The decision of these bodies shall be final.

B. It shall be unlawful for any person to knowingly violate any provision under Section 2.92.050 F, Section 2.92.060 or Section 2.92.100 of this Code.

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

Section 7. Except has herein amended, Title 2 (Administration and Personnel) shall remain in full force and effect.

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

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