AN ORDINANCE CREATING AN ETHICS REVIEW COMMISSION AND ESTABLISHING STANDARDS OF ETHICS FOR CITY OFFICIALS AND EMPLOYEES. THE PENALTY AS PROVIDED IN SECTION 1.08.010 OF THE CITY CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. DECLARATION OF POLICY

All City officials and employees have a fiduciary duty to 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 which apply to one's position.

In the first instance, ethical conduct is motivated by sources outside the law. Therefore, the City strongly encourages all its officers and employees to continue their efforts to develop the highest personal values and standards. Any specific standards established in this ordinance are merely minimum standards below which no one's conduct should fall. Since it is impossible to establish specific standards for all situations, this ordinance has the following purposes:

(1) to provide a process by which officers and employees may identify and resolve ethical issues;

(2) to avoid conflicts between the personal interest and the public responsibilities of City officials and employees;

(3) to provide penalties for failure to adhere to these minimum standards;

(4) to improve standards of public service;

(5) to increase pride and improve morale among public servants;

(6) to require disclosure by such officials and employees of private financial interests in matters affecting the City; and

(7) to help improve public confidence in the integrity of City government.

2. ETHICS REVIEW COMMISSION

In order to assist the City Council, there is hereby created an Ethics Review Commission of seven members. All members shall be residents of the City. No member shall hold any City elected office or be appointed to any position governed by this ordinance or be a candidate for any such office or position. A member may contribute to a City political campaign, but to the extent this prohibition is consistent with the Charter, no member shall participate in any City political campaign or in a campaign relating to a referendum or other ballot issue in the City.

Members shall be appointed for a two-year period, except that appointments made to fill vacancies created during a term shall be for the remainder of the unexpired term. Terms shall be staggered, selected by lot at the first board meeting. Four of the initial regular members shall have two-year terms and three of the initial regular members shall have one-year terms. All future appointments shall be for two-year terms. Each member shall serve until his or her successor is appointed.

The Ethics Review Commission shall select from among its members a Chair and a Vice-Chair and shall adopt, subject to the approval of City Council, such rules governing its proceedings as it may deem proper. Such rules and regulations must be consistent with the City Charter and Ordinances of the City and shall parallel, to the extent possible, the rules adopted by City Council

010663

to govern its own meetings.

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 of El Paso.

The Commission shall be assigned staff by the City Council to assist in its duties as the City Council deems it to be necessary. The Ethics Review Commission appointees are subject to this Ethics Ordinance, including the provisions on governing financial interests, restrictions on post-employment and penalties.

3. CODE OF ETHICS

A. Definitions

For the purposes of this article:

(1) **BENEFIT** means any economic gain or economic advantage to an officer or employee or to a relative of an officer or employee, but does not include:

(a) political contributions made and reported in accordance with law;

(b) awards publicly presented in recognition of public service;

(c) gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities;

(d) commercially reasonable loans made in the ordinary course of the lender's business;

(e) complimentary copies of trade publications;

(f) 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.

(g) any economic gain or economic advantage conferred by any one person or organization if the economic value totals less than $50.00 per calendar year.

(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, 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.

The following types of boards are exempt from the financial disclosure requirements of this ordinance:

(a) boards, whose functions are solely advisory;

(b) boards whose regulation is pre-empted by state law;

(c) boards expressly exempted by the City Council for reasons to be stated by the City Council upon granting such exemption.

The City Clerk shall maintain a list of the boards whose members are subject to this ordinance, and such list shall be made available to the public during working hours upon request.

(3) **CONFIDENTIAL INFORMATION** means any written information that could be excepted from disclosure pursuant to the Texas Open Records Act, if such disclosure has not been authorized pursuant to law; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized pursuant to law.

(4) **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 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.

(5) **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.

(6) **OFFICER** means a member of the City Council and any member of a board who is appointed by the City Council. It does not include any member of a board that functions only in an advisory or study capacity and which does not have the power to make findings as to the rights of specific parties.

(7) **RELATIVE** means a person who is related to an official 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, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.

(8) **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.

B. Standards of Conduct

(1) Officers or employees shall not:

(a) Accept or solicit, for personal financial gain, any benefit that might reasonably tend to influence them to act improperly in the discharge of official duties;

(b) Use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them.

(c) 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.

010663

(d) By their conduct give reasonable basis for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person.

(e) 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.

(f) 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:

(i) 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

(ii) 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.

(g) 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 officer's primary source of income.

(h) 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.

(i) Personally participate in a decision, approval, disapproval, recommendation, investigation, or rendering of advice in a proceeding, application, request for ruling or determination, contract, claim, or other matter under the jurisdiction of the City, if the officer or employee is negotiating or has an arrangement concerning prospective employment with a person or organization

which has a financial interest in the matter, and, in the case of an employee, it has been determined by the Chief Administrative Officer that a conflict of interest exists. If an officer or employee begins negotiation or enters an arrangement concerning prospective employment with a person or organization that has a financial interest in a matter in which the officer or employee has been participating, the officer or employee shall:

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

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

(a) refrain from discussing the matter at any time with other board members or members of the City Council if the City Council will also consider the matter; and

(b) abstain from voting on the matter; or

(3) in the case of a member of the City Council, file an affidavit with the City secretary describing the nature of the negotiation or arrangement and:

(a) refrain from discussing the matter at any time with other Council members or members of a board that will consider the matter;

(b) abstain from voting on the matter.

(j) 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.

(k) (1) 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 (K)(1) 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.

(2) 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;

(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

010663

department providing support services to that board.

(L) Knowingly perform or refuse to perform any act in order to deliberately thwart the execution of the city ordinances, rules or regulations or the achievement of official City programs.

4. FINANCIAL INTERESTS (Board member appointed by City Council)

A. Each officer, excluding the elected officials whose financial disclosure requirements are governed by City Charter, and each department head shall file with the City Clerk, immediately upon beginning service, a signed, sworn statement disclosing:

(1) Where, by whom and in what specific capacity that person is employed or self-employed;

(2) Membership on boards of directors of corporations, whether organized for profit or not;

(3) Partnership interest;

(4) The name and address of any business in which the person has a financial investment; and

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

C. Each person subject to this provision shall file with the City Clerk a signed, sworn, updated revision of this statement, annually, while in office or employed.

D. Each candidate for elective office, and each candidate for a department head position, shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.

010663

5. RESTRICTIONS ON PROVIDING POST-EMPLOYMENT REPRESENTATION OF OTHERS

A. An officer or employee in a position which involves significant reporting, decision-making, advisory, or supervisory responsibility who leaves the service or employment of the City shall during the 12 months after leaving the service or employment of the City, disclose his previous position and responsibilities with the City whenever he represents any other person or organization in any formal or informal appearance before a City agency.

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

6. PENALTY

A. The failure of any officer or employee to comply with this article 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 City

010663

Representative, the matter shall be decided by a vote of the City Council in accordance with the Charter. In the case of members of boards or commission, the matters shall be decided by the City Council. The decision of these bodies shall be final.

B. Any person violating Section 5 or Section 3B(e) of this ordinance shall be deemed guilty of a misdemeanor as set forth in 1.08.010 of the City Code.

PASSED AND APPROVED this 20th day of August, 1991.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Ethics.Fin

010663