

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.92 (ETHICS REVIEW COMMISSION); TO AMEND SECTIONS 2.92.010 (DECLARATION OF POLICY, 2.92.020 (COMMISSION CREATED—MEMBERSHIP—TERMS), 2.92.030 (DEFINITIONS); SECTION 2.92.040 (STANDARDS OF CONDUCT); SECTION 2.92.060 (RESTRICTIONS ON PROVIDING POST-EMPLOYMENT REPRESENTATION OF OTHERS); AND TO ADD SECTION 2.92.052 (REPORTING OF GIFTS) TO CLARIFY THE ETHICAL OBLIGATIONS OF OFFICERS AND EMPLOYEES; TO EXPAND THE APPLICATION OF THE ORDINANCE TO ALL CITY BOARD MEMBERS; AND TO REQUIRE THE REPORTING OF CERTAIN GIFTS; THE PENALTY BEING AS PROVIDED IN SECTIONS 2.92.070 AND 1.08.010 AND 1.08.030 OF THE EL PASO MUNICIPAL CODE.

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

Section 1. That Section 2.92.010 (Declaration of Policy) is amended to read as follows:

**Section 2.92.010 Declaration of Policy**

- A. 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.
- B. Ethical conduct is motivated by sources inside and outside the law. The Texas Penal Code and Elections Code regulate some aspects of the conduct of city officials and employees. However, as ethical conduct is more than complying with the Penal Code and Elections Code, 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.

Section 2. That Section 2.92.020 (Commission created—Membership—Terms) is amended to read as follows:

**Section 2.92.020 Commission created—Membership—Terms**

- A. In order to assist the city council, there is hereby created an ethics review commission of nine 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.
- B. 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 in the following manner. Each member shall serve until his or her successor is appointed.

Mayor's appointee	terms expire in even-number 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
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

The term of office for each ethics review commissioner shall commence on February 21<sup>st</sup> and shall terminate on February 20<sup>th</sup> at the conclusion of the respective term.

- C. 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 to govern its own meetings.

- D. 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.
- E. 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 chapter, including the provisions on governing financial interests, restrictions on post-employment and penalties.

Section 3. 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 article:

- A. "Benefit" means any economic gain or economic advantage to an officer or employee or to a relative, but 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 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.

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

- a. boards whose regulation is pre-empted by state law;
- b. 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 the financial disclosure requirements of this ordinance, and such list 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 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.
- 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 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 who is 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, stepdaughter, 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 related to the duties or activities of office or employment.

Section 4. That Section 2.92.040 (Standards of Conduct) of the El Paso Municipal Code) is amended to read as follows:

**Section 2.92.040 Standards of Conduct**

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.
- 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:

1. 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
  2. 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 clerk 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; and
    - 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. 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:
1. in any quasi-judicial proceeding involving the city; or
  2. in any judicial proceeding to which the city is a party;
- provided that nothing in this subsection shall preclude:
- a. 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;
  - b. any employee from performing the duties of his or her employment;
  - c. 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
  - d. a city council member or an employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding.
- L. In the case of a board member, personally represent or appear in behalf of the private interests of another:
1. before the board of which he or she is a member;
  2. before the city council, unless the board member discloses his 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;
  3. before a board which has appellate jurisdiction over the board of which he or she is a member; or
  4. 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.
- M. 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.

Section 5. That Section 2.92.052 (Reporting of gifts) of the El Paso Municipal Code is added to read as follows:

**Section 2.92.052 Reporting of gifts**

A. Each officer, department head, the chief executive officer, and executive assistants to the mayor shall keep a written record of all reportable gifts received during their term of office or employment.

B. Such record shall be made for each calendar month or applicable portion thereof, during which one or more reportable gifts are received. The records shall be kept and maintained in a form and manner designated by the city clerk, and shall include a description of the reportable gift received; the name of the person or organization giving the reportable gift; the name of the person accepting the reportable gift; the value or estimated value of the reportable gift, or if the value is unknown or cannot reasonably be estimated, a statement that the value is unknown or cannot reasonably be estimated; and the immediate or intended disposition of the reportable gift. Such monthly record, when required, shall be submitted to the city clerk no later than the tenth day of the following month. A reportable gift consisting of a certificate or admission tickets to a future event or activity shall be deemed to have been received on the date on which the certificate or admission tickets were received.

C. Reportable gifts shall mean the following:

1. Any hosting, such as travel and expenses, entertainment, meals or refreshments, that has a value of more than \$50.00, other than hosting provided on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
2. Any honorarium with a value of more than \$50.00; and
3. Any other economic gain or economic advantage that has a value of more than \$50.00 and which was conferred on account of the official status of the recipient or in connection with official city business.

D. Any 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.

E. For purposes of this section, "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.

Section 6. That Section 2.92.060 (Restrictions on providing post-employment representation of others) of the El Paso Municipal Code is amended to read as follows:

**Section 2.92.060      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 the city council or a city board or department, provided however, this subsection shall not apply to a former board member except when the former board member appears to represent any other person or organization before the board of which he or she had been a member and any subsequent appearance before a board with appellate jurisdiction or the city council on the same matter or issue.
- 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.

Section 7. That Section 2.92.070 (Penalty) of the El Paso Municipal Code is amended to read as follows:

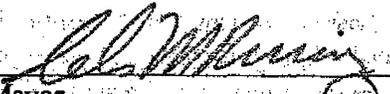
**Section 2.92.070      Penalty**

- 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 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. Any person violating Section 2.92.040 (E) or Section 2.92.060 of this chapter shall be deemed guilty of a misdemeanor as set forth in Section 1.08.010 of the city code.

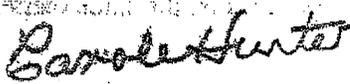
Section 8. Except has herein amended, Title 2 (Administration and Personnel) shall remain in full force and effect.

PASSED AND APPROVED this 24<sup>th</sup> day of November, 1998.

CITY OF EL PASO

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Elaine S. Hengen  
Assistant City Attorney

AMENDMENT TO THE  
RULES OF ORDER FOR ETHICS REVIEW COMMISSION  
OF THE CITY OF EL PASO

SECTION 12. RIGHT OF CITIZENS TO BE HEARD

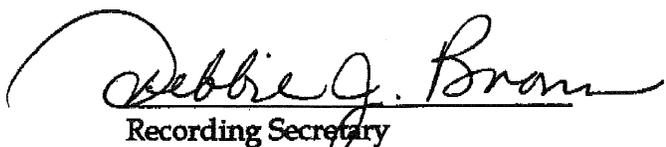
Any citizen of the City of El Paso shall have a reasonable opportunity to be heard at all public meetings of the Commission in regard to any and all matters to be considered at such meetings that are germane and relative to any subject matter of City affairs or business which is within the scope of the authority of the Commission. The Commission will establish a procedure by which citizens present their concerns.

The time allowed for each citizen's appearance before Commission may be limited to a fixed number of minutes at the discretion of the presiding officer. No person may speak a second time except by permission of the presiding officer, and further, no person shall be heard a second time until all persons desiring to speak once have been given the opportunity to do so.

THIS AMENDMENT TO SECTION 12 OF THE RULES WAS PRESENTED TO CITY COUNCIL AND APPROVED ON THIS 3<sup>rd</sup> DAY OF November 1998. A COPY OF THE RESOLUTION APPROVING THIS AMENDMENT IS ATTACHED.

ADOPTED by the Commission this 16th day of July, 1998.

ATTEST:

  
Recording Secretary

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the Rules of Order for the Ethics Review Commission, adopted by the Commission on February 19, 1998, and attached as Exhibit "A," be approved by the City Council.

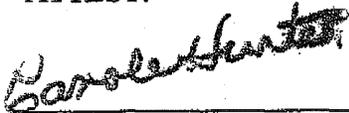
**PASSED AND APPROVED** this 10<sup>th</sup> day of March, 1998.

CITY OF EL PASO



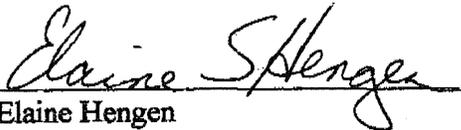
Mayor

**ATTEST:**



City Clerk

**APPROVED AS TO FORM:**



Elaine Hengen  
Assistant City Attorney

**RESOLUTION**

WHEREAS, the Ethics Review Commission of the City of El Paso, in the course of their review of matters concerning ethics in government of the City, has made a finding that education relating to ethics issues and availability of information relating to the ethics ordinance is important to officers and employees of the City as well as to persons serving on the various boards, commissions and committees of the City; and

WHEREAS, the Ethics Review Commission of the City of El Paso has voted to recommend to the City Council that the City, as a way of furthering the availability of information relating to matters of ethics, furnish a copy of the ethics ordinance to all persons serving on the various boards, commissions and committees of the City at the time of their appointment or reappointment.

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

That the City Clerk of the City of El Paso provide a copy of the ethics ordinance to all persons serving on the various boards, commissions and committees of the City of El Paso at the time of their appointment or reappointment.

ADOPTED this 3rd day of November, 1998.

CITY OF EL PASO

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Elaine S. Hengen  
Assistant City Attorney

RULES OF ORDER FOR ETHICS REVIEW COMMISSION  
OF THE CITY OF EL PASO

**SECTION 1. PURPOSE OF RULES**

These rules are adopted pursuant to Section 2.92.C of the El Paso Municipal Code as a procedural guide for the benefit of the Commission and for the general information of the public. These rules shall apply to regular or special meetings at which action is to be taken, but shall not apply to informational gatherings of the Commission.

**SECTION 2. EFFECT OF FAILURE TO FOLLOW THESE RULES**

No action of the Commission which is otherwise legal shall be invalidated merely by reason of the Commission's failure to follow these Rules of Order, unless the majority of the Commission agrees that such action shall be invalidated.

**SECTION 3. STANDING**

No one other than a member of the Commission shall have standing to assert before the Commission that any action taken by the Commission is invalid by reason of the Commission's failure to comply with these Rules of Order.

**SECTION 4. SUSPENSION OF RULES**

These rules may be suspended temporarily by a majority of the Commission members present, except as they pertain to a quorum, or to the majority required for any motion, or to other matters pre-empted by laws other than those Rules of Order.

## **SECTION 5. PRESIDING OFFICER**

The Commission Chair shall preside at all meetings of the Commission, but if for any reason he is absent from the meeting, then the Vice-Chair shall preside at such meetings. In the absence or inability of both the Chair and the Vice Chair to preside over the meeting, the members may elect, by a majority vote, an acting Chair to preside over the meeting. Upon the arrival of the Chair or Vice Chair, the acting chairman shall immediately relinquish the chair upon the conclusion of the business immediately pending before the Commission.

The presiding officer shall preserve strict order and decorum at all regular and special meetings of the Commission, and shall state questions coming before the Commission as necessary for clarity, and shall announce the decision of the Commission on all subjects.

## **SECTION 6. QUESTIONS OF ORDER**

All questions of order shall be decided by the presiding officer with the right of appeal from his decision to the Commission that is present, the majority of whom may override the decision.

## **SECTION 7. VOTING**

The recording secretary shall call the roll beginning with the member seated furthest to the Chair's right and continuing in that order. Records of such roll call vote shall be incorporated in the Minutes of the meeting.

## **SECTION 8. RECORDED DEBATE**

A commission member may request, through the presiding officer, to have an abstract of his statement on any subject under consideration by the Commission entered in the Minutes. The recording secretary may be directed by the presiding officer to enter in the Minutes a synopsis of the discussion on any question coming before the Commission.

## **SECTION 9. ORDER OF PRECEDENCE OF MOTIONS**

A motion to adjourn shall take precedence over all other motions and shall be non-debatable; however, if such a motion is made prior to the disposition of all agenda items, the motion to adjourn must be approved by two-thirds of all Commission members present.

A motion to postpone shall take precedence over all other motions except the motion to adjourn, and shall be non-debatable.

## **SECTION 10. MOTION TO RECONSIDER**

A motion to reconsider any action taken by the Commission may be made at any time prior to adjournment of the same meeting at which such action was taken.

## **SECTION 11. OBTAINING THE FLOOR**

Every person desiring to speak shall address the presiding officer, shall be recognized by the presiding officer, and shall confine himself to the question under consideration.

SECTION 12. RIGHT OF CITIZENS TO BE HEARD

Any citizen of the City of El Paso shall have a reasonable opportunity to be heard at all public hearings of the Commission in regard to any and all matters to be considered at such hearings that are germane and relative to any subject matter of City affairs or business which is within the scope of the authority of the Commission. Provided, however, that the time allowed for each citizen's appearance before Commission may be limited to a fixed number of minutes at the discretion of the presiding officer.

No person may speak a second time except by permission of the presiding officer, and further, no person shall be heard a second time until all persons desiring to speak once have been given the opportunity to do so.

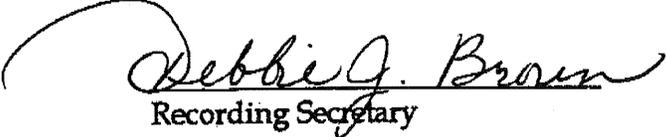
SECTION 13. PARLIAMENTARIAN

The Assistant City Attorney is confirmed to serve as Parliamentarian.

THESE RULES WERE PRESENTED TO CITY COUNCIL AND APPROVED ON THIS 10th DAY OF March, 1998. A COPY OF THE RESOLUTION APPROVING THESE RULES IS ATTACHED.

ADOPTED by the Commission this 19 day of February, 1998.

ATTEST:

  
Recording Secretary