

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL PASO, TEXAS; DEFINING COMMUNICATIONS THAT CONSTITUTE THE TRANSACTION OF OFFICIAL BUSINESS OF THE CITY OF EL PASO, TEXAS; CLARIFYING THE DUTIES OF THE PUBLIC INFORMATION OFFICER, THE AGENTS OF THE PUBLIC INFORMATION OFFICER, THE CUSTODIANS OF LOCAL GOVERNMENTAL RECORDS AND THE DUTIES OF EMPLOYEES, VOLUNTEERS AND OFFICIALS OF THE CITY AS THOSE DUTIES RELATE TO THE ASSEMBLY, COLLECTION, MAINTENANCE AND RETENTION OF LOCAL GOVERNMENT RECORDS; DECLARING CERTAIN COMMUNICATIONS ARE LOCAL GOVERNMENTAL RECORDS PURSUANT TO THE TEXAS LOCAL GOVERNMENT RECORDS ACT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council finds the City of El Paso, Texas is a Home Rule Municipal Corporation as that term is defined in Texas law;

WHEREAS, the City Council finds the City of El Paso, Texas is a governmental body pursuant to the Texas Public Information Act Section 552.003, making the Act applicable to it as an organization;

WHEREAS, the City Council finds the Texas Public Information Act Section 552.002 defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- 1) by a governmental body; or
- 2) for a governmental body and the governmental body owns the information or has a right of access to it”;

WHEREAS, the City Council finds Texas Local Government Code Sections 201-205 is referred to as the Local Government Records Act and is applicable to it as a Local Government organization;

WHEREAS, the City Council finds Local Government Records are defined by Texas Local Government Code Section 201.003(8); the term Custodian for purposes of the Act is defined by Section 201.003(2) and the preservation, maintenance, management and destruction of Local Government Records are to be conducted pursuant to the Act;

WHEREAS, Texas Local Government Code Section 201.005(a) statutorily declares that Local Government Records that are “created or received in the transaction of official business” or, in the creation or maintenance of which were paid for by public funds are public property;

WHEREAS, the City Council finds that “the transaction of official business” as used in the Texas Public Information Act and the Texas Local Government Records Act is not defined by Texas law; that the term is ambiguous, can cause confusion as to the duties of City representatives and, alternative definitions may result in the illegal intrusion into individual privacy rights of all city employees, volunteers and/or officials; that such conflicts can interfere

ORDINANCE NO. _____
12-1001-034/159788/Ord. Defining Official Business

with and impede city business by raising questions regarding the authenticity and authority of City representatives' communications; thereby, shaking the faith in official city communications, resulting in a need to define the term for our municipality and clarify the duties of the representatives of the City; and

WHEREAS, the City Council finds that defining certain terms is necessary to clarify the duties of the City's Public Information Officer, Agents of the Public Information Officer (as those terms are defined by the Texas Public Information Act) and to clarify the duties of all Custodians (as defined by the Texas Local Government Records Act), employees, volunteers and elected/appointed officials, to ensure compliance with the Texas Public Information Act and the Texas Local Government Records Act and other laws.

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

- 1) That the facts and recitations set forth in the preamble of this Resolution are hereby declared true and correct.
- 2) Definitions:
 - a. All capitalized terms defined by the Texas Public Information Act or Texas Local Records Act law shall have the definitions provided by state law.
 - b. "Communications" as the term is used in this ordinance includes any information to and/or from two distinct parties, recorded on any form of media, including paper, film, a magnetic, optical, or solid state device that can store an electronic signal, including tape, mylar, linen, silk, vellum, book, letter, document, photograph, microfiche, microfilm, Photostat, sound recording, map, drawing, voice, data, or video held in computer memory or other electronic storage device, including text messages, electronic mail and/or social media or other similar electronic communication and incorporates the definition of Local Government Record as provided by Texas law.
 - c. The "transaction of official business" for purposes of this ordinance are only those communications conducted between an employee, volunteer or elected/appointed official of the City while the employee, volunteer or elected/appointed official is performing part of the employee's, volunteer's or elected/appointed official's duties to the City of El Paso, Texas and another party.
 - i. An example of communications that are not the transaction of official business are:
 1. Political communications by an employee, volunteer or elected/appointed office holder;

2. Communications by and between employees related to personal employee involvement in union related affairs;
 3. Other communications by an employee, volunteer or elected/appointed official, had on behalf of another organization or entity while or in connection with transacting business on that organization's behalf, whether the business is a for-profit, non-profit, or other governmental or quasi-governmental entity; or,
 4. Personal communications made in the individual's personal capacity that are not communications made in the official capacity held by the person engaged in the communication.
- 3) All employees, volunteers, and elected/appointed officials who come into possession of Local Government Records of the City of El Paso shall deliver any such record to the City within a reasonable time after becoming aware of its existence.
 - 4) Any person in the private possession of a Local Government Record of the City of El Paso, Texas, where that possession is not authorized by law, is hereby ordered and shall immediately return and/or surrender any said record to Records Retention personnel of the City of El Paso, Texas, pursuant to Texas Local Government Code Section 202.005(a). Any person who seeks and follows documented instructions from retention personnel of the City, are deemed to have satisfied any and all duties created by this ordinance and State law.
 - 5) In the event that a dispute arises between a person in private possession of communications purported to be Local Government Record of the City, the City of El Paso, in accordance with Texas Local Government Code Section 202.005(b)-(h) may petition a District Court, for a determination as to whether the purported Local Government Record is the property of the City.
 - 6) Any Custodian of Local Government Records who becomes aware of purported Local Government Records not collected, assembled, maintained or accessible to the City fulfills their duties to the City of El Paso, by making a request to the Public Information Officer that a civil action be filed on behalf of the City to have a determination made pursuant to Texas Local Government Code Chapter 201-205.
 - 7) The Public Information Officer and agents thereof are to diligently protect, preserve and when appropriate, destroy information which is "public information" and "Local Government Records" as those terms are independently defined by Texas law within the time periods provided by Texas law.
 - 8) Any information in the possession of a private person that is unassembled, uncollected, unmaintained and inaccessible to the City is not information accessible to the City until such time a District Court order is issued declaring it a Local Governmental Record.

9) The City shall communicate the obligations placed upon all current and future City employees, volunteers and elected/appointed officials upon passage of this Ordinance.

10) This Ordinance is effective upon passage by City Council.

ADOPTED THIS _____ day of March 2013.

THE CITY OF EL PASO, TEXAS

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
City Attorney's Office

ORDINANCE NO. _____
12-1001-034/159788/Ord. Defining Official Business



City of El Paso

Agenda Item 11 A

City Attorney's Office





**AN ORDINANCE OF THE CITY OF EL PASO, TEXAS;
DEFINING COMMUNICATIONS THAT CONSTITUTE THE
TRANSACTION OF OFFICIAL BUSINESS OF THE CITY OF EL
PASO, TEXAS; CLARIFYING THE DUTIES OF THE PUBLIC
INFORMATION OFFICER, THE AGENTS OF THE PUBLIC
INFORMATION OFFICER, THE CUSTODIANS OF LOCAL
GOVERNMENTAL RECORDS AND THE DUTIES OF
EMPLOYEES, VOLUNTEERS AND OFFICIALS OF THE CITY
AS THOSE DUTIES RELATE TO THE ASSEMBLY,
COLLECTION, MAINTENANCE AND RETENTION OF LOCAL
GOVERNMENT RECORDS; DECLARING CERTAIN
COMMUNICATIONS ARE LOCAL GOVERNMENTAL
RECORDS PURSUANT TO THE TEXAS LOCAL
GOVERNMENT RECORDS ACT; AND PROVIDING AN
EFFECTIVE DATE**



Objectives & Goals of the Local Legislation

- **Create an uniformly applied ordinance of the City of El Paso exercising the City's authority under existing state and federal law to:**
 - **Require the collection of non-city held electronic communications which fall within the definition of Local Government Records that are not currently accessible to the City of El Paso, Texas;**
 - **Respect the clearly established privacy rights and free speech rights of city representatives;**
 - **Provide clarity to the City PIO and Custodians as to what is expected of them; and,**
 - **Improve governmental transparency and public access to Local Government Records**



Public Information Law

- The Texas Public Information Act (“TPIA”) defines “public information” as certain information that is collected, assembled, or maintained under a law, or ordinance, or in connection with the transaction of official business by a governmental body or for a governmental body and the governmental body owns, or has a right of access to it. TPIA §552.002(a).
- The TPIA applies only to the governmental body. TPIA §552.003(1)(A). The TPIA does not grant the city access to privately held communications, regardless of content.
- The Texas Local Government Records Act’s recovery procedure is unused.



Assessment of Current State of the City

- **City does not currently use authority under Local Government Records Act to compel city representatives to collect non-city held electronic communications which are Local Government Records from city representatives.**
- **City does not clarify or provide direction to City staff regarding related statutory duties.**



Proposed Ordinance

- **Designed by applying state & federal laws, and state and federal legal decisions.**
- **Intended to improve transparency of government while avoiding conflicts with established constitutional rights of free speech and privacy held by city representatives.**
- **Exercises the state law provided power of the governing body to create a legal duty upon all city representatives to turn over to the city all electronic communications sent or received in the transaction of official city business, including those now held outside of and legally inaccessible to the city, so that those communications may be included, managed, preserved and made available to the public as provided for by Texas law.**
- **Exercises the power of the governing body to use the existing Right of Recovery procedure within the Texas Local Government Code to recover disputed Local Government Records withheld from the city by city representatives.**
- **Establishes and clarifies the related expectations of the City PIO and Custodians.**



Unintended Consequences

- **Confusion**
- **Fear of Reduced Transparency**
- **Allegations of improper motives behind the ordinance**



Presented for Collaboration & Guidance

- **The passage of this type of Ordinance by the City of El Paso will:**
 - **Establish the most aggressive local approach to capturing Local Government Records using existing Texas law absent probable cause and a search warrant which are unavailable.**
 - **Place the burden of disclosure of all non-city held Local Government Records upon the City Representative in possession of the information, without invading free speech or privacy rights, making more information available to the public.**
 - **Achieve the Objectives & Goals presented.**



Questions / Comments

