

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: City Manager's Office

AGENDA DATE: March 13, 2012 (Introduction of Ordinance)
March 20, 2012 (Public Hearing of Ordinance)

CONTACT PERSON/PHONE: City Manager Joyce Wilson, 915-541-4844

DISTRICT (S) AFFECTED: ALL

SUBJECT:

An Ordinance amending Title 2 (Administration and Personnel), Chapter 2.92 (Ethics); of the City Code by amending Section 2.92.070 A (Reporting Requirements) to revise the requirements for filing financial disclosure forms by City Board and Commission members; the penalty is as provided in Section 2.92.150 of the El Paso City Code.

BACKGROUND / DISCUSSION:

At the LRC on January 26, 2012, the City Manager requested that the City Council reconsider the annual reporting requirement for city volunteers that serve on board and commissions. This is currently required under the Ethics Ordinance -- Ordinance 017112, Section 2.92.070, Section A. Most board or commission appointments are for a period of 2 to 4 years depending on the legislation governing the particular board/commission. Volunteers who are appointed to these boards are required to complete a financial disclosure form at the time of appointment and then each year while they serve. The annual reporting requirement is tedious and serves little purpose other than to collect a lot of paperwork to file until the next year. While this requirement is appropriate for appointed and elected officials, it is an inconvenience for citizen volunteers and causes staff to spend hundreds of hours chasing down appointees and following up to ensure compliance. The City ends up removing volunteers who simply did not respond, which seems counterproductive when we are always asking for citizens to volunteer to serve on these various bodies.

The City has 387 board and commission positions. All but nine of our boards/commissions are advisory in nature so the purpose of the annual reporting seems moot for these advisory boards. Even with those that have some sort of statutory or adjudicating powers, the annual requirements seem onerous as well. The City Manager is recommending that the City require the financial disclosure at the time of appointment and then make it clear that these same individuals need to self-disclose whenever there is a substantive change. This puts the responsibility and onus on the volunteer. In the case of the nine regulatory bodies with specific powers, we require them to complete the full financial disclosure form at time of appointment but then only require an annual certification of 'no substantive change in status' which we can do with a form they only need to sign. In those instances, the staff serving that particular board would be responsible to secure those signatures and it would limit the volume of work now placed upon the City Clerk's Office.

The boards with specific decision-making authority/powers include:

- Building and Standards Commission
- City Plan Commission
- Civil Service Commission
- Construction Board of Appeals
- Ethics Review Commission
- Historic Landmark Commission
- Parks and Recreation Board
- Public Service Board
- Zoning Board of Adjustment

The Ethics Commission has been briefed on this proposal and has raised no objections to the change in reporting requirements.

The LRC of January 26, 2012, approved that the City Manager draft an ordinance and recommend that board and commission members only need to file financial disclosures upon appointment, reappointment or when there has been a significant change to the information required for disclosure. Member of boards and commissions with specific regulatory powers would have to submit annual affidavits, attesting to the fact that there was no change to the information that they are required to disclose. Upon approval of this Ordinance, protocols will be established for ongoing, independent audits to confirm no change in financial status from time of initial reporting.

Additionally, the City Manager is also requesting a change in the delivery of the notice contained in the current reporting requirements provision. The delivery of the notice will be to the City Manager or the Mayor if the designated employee is an executive assistant to the mayor.

PRIOR COUNCIL ACTION:

The LRC approved this item to move forward to the full council at the January 26, 2012, LRC meeting.

AMOUNT AND SOURCE OF FUNDING:

No direct financial impact

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____
Name Signature Date

EL PASO, TEXAS

DEDICATED TO OUTSTANDING CUSTOMER SERVICE FOR A BETTER COMMUNITY

S E R V I C E • S O L U T I O N S • S U C C E S S



TO: Mayor and City Council

FROM: Joyce Wilson
City Manager *jm*

SUBJ: Proposed Change to Financial Reporting Requirements for Boards and Commission Members

DATE: February 28, 2012

This item was reviewed and recommended for approval by the Finance and Management Services LRC on January 26, 2012, subject to verification that all non-advisory boards were adequately listed in the final report.

We are asking for your reconsideration of the annual financial reporting requirement for city volunteers who serve on boards and commissions. This is currently required under the Ethics Ordinance -- Ordinance 017112, Section 2.92.070, A.5 on page 12. Most board or commission appointments are for a period of 2 to 4 years depending on the legislation governing the particular board/commission. Volunteers who are appointed to these boards are required to complete a financial disclosure form at the time of appointment and then every year while they serve. The annual reporting requirement is tedious and serves little purpose other than to collect a lot of paperwork to file until the next year. While this requirement is appropriate for appointed and elected officials, it is an inconvenience for citizen volunteers and causes staff to spend hundreds of hours chasing down appointees and following up to ensure compliance. Typically, we end up removing volunteers who simply did not respond, which seems counterproductive when we are always asking for citizens to volunteer to serve on these various bodies.

We have 387 board and commission positions. All but nine of our boards/commissions are advisory in nature so the purpose of the annual reporting seems moot for these advisory boards. Even with those that have some sort of statutory or adjudicating powers, the annual requirements seem onerous as well.

I am recommending that we require the financial disclosure at the time of appointment and then make it clear that these same individuals need to self-disclose whenever there is a substantive change. This puts the responsibility and onus on the volunteer. In the case of the nine regulatory bodies with specific powers, we require them to complete the full financial disclosure form at time of appointment but then



only require an annual certification of 'no substantive change in status' which we can do with a form they only need to sign. In those instances, the staff serving that particular board would be responsible to secure those signatures and it would limit the volume of work now placed upon the City Clerk's Office.

The boards with specific decision-making authority/powers include:

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- Construction Board of Appeals
- Ethics Review Commission
- Historic Landmark Commission
- Parks and Recreation Board
- Public Service Board
- Zoning Board of Adjustment

If there are concerns about potential abuses because of less oversight, we can impose a random audit requirement and routinely contact a random sample of board members to confirm no change in financial status from the time of initial reporting. That might be more effective than making nearly 400 people fill out paperwork each year.

We also are developing a program to allow completion of the financial disclosure requirements electronically; however, the program would be different if the filing is annual or only at the time of appointment, according to IT staff. So we are hoping to secure Council's support for this adjustment in order to proceed with the appropriate new program to simplify the completion electronically. If modified an incumbent could go in an update only if need be instead of filing a new form annually.

The Ethics Commission has been briefed on this proposal and has raised no objections to the change in reporting requirements. My staff and I will be available to discuss this in greater detail at the Council meeting when the formal amendment is brought forward.

A copy of the current form is enclosed as part of this document.

ANNUAL FINANCIAL DISCLOSURE STATEMENT FOR
JUNE 1, 2011-MAY 31, 2012
BOARD/ COMMITTEE/ COMMISSION MEMBERS

I _____ a Board/ Committee/ Commission member of
(Board Member's Name)
the City of El Paso, certify:

a. I am employed by _____ in the
capacity of _____ and my
employer's address is: _____

b. The following is a list of all the corporations, whether organized for profit or not, of which I am
a member of the board of directors:

c. The following is a list of all partnerships in which I have a partnership interest:

d. The names and addresses of all businesses in which I have a financial investment
are: _____

I hereby swear or affirm that I am the person named on this form, and that all answers to the
foregoing questions and statements are true and correct to the best of my knowledge and belief,
and that I have not withheld any information on myself that would in anyway affect my qualifications.

Board Member
City of El Paso

(Board Member's Signature)

Board/Committee/Commission Name:	
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ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.92 (ETHICS); OF THE CITY CODE BY AMENDING SECTION 2.92.070 A (REPORTING REQUIREMENTS) TO REVISE THE REQUIREMENTS FOR FILING FINANCIAL DISCLOSURE FORMS BY CITY BOARD AND COMMISSION MEMBERS; THE PENALTY IS AS PROVIDED IN SECTION 2.92.150 OF THE EL PASO CITY CODE.

WHEREAS, on January 26, 2012, the Finance, Internal Audit, Engineering/CIP and Management Services Legislative Review Committee recommended that the Ethics Ordinance be revised to remove the requirement that the members of City Boards and Commissions that only have an advisory function annually file a financial disclosure form and to provide that these members shall file a financial disclosure form only upon appointment or reappointment or when necessary to report a significant change.

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

Section 1. That Section 2.92.070 (Reporting requirements), Section A (Financial Disclosure), of the El Paso City Code is amended as follows:

2.92.070 Reporting requirements, Section A.

A. Financial Disclosure

1. Each officer, excluding elected officials whose financial disclosure requirements are governed by city charter, and each designated employee as defined in subsection A 2 of this section, shall file with the city clerk, within 10 business days after the date of his appointment, selection or approval by the city council, a statement disclosing:

- a. Where, by whom and in what specific capacity that person is employed or self-employed;
- b. Membership on boards of directors of corporations, whether organized for profit or not;
- c. Partnership interests; and
- d. The name and address of any business in which the person has a financial investment, and in the case of mutual funds and other similar pooled investments, the name of the fund or investment. For purposes of this subsection, a financial investment shall not include funds on deposit with financial institutions such as checking and savings accounts, investments in United States savings bonds, and similar investments that earn simple, compounded or money-market interest rates;

unless the person has previously been appointed to a position that requires the filing of a financial disclosure form and the person already has a current financial disclosure form on file with the city clerk.

2. "Designated employee" for purposes under this section, means the city manager, deputy city managers, all city department heads or directors, and the executive assistants to the mayor.

3. Each person submitting a statement of financial disclosure required under this section shall utilize a form provided by the city clerk, which shall be signed and submitted in hard copy, or submitted electronically or by facsimile as may be provided by the city clerk. The form or submission process shall provide a means by which the submitter affirms his identity and the accuracy of the statements made therein.

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

5. The members of the boards and commissions identified below and every designated employee shall thereafter file with the city clerk a financial disclosure statement, between June 1st and June 30th of each year while in office or employed by the city. Each person subject to this section shall file a revised financial disclosure form at any time in which the person changes his primary employment or has made changes in financial investments which cumulatively total more than thirty five percent of the person's total investments. Those persons who have no changes to report regarding the information required to be reported, may, in lieu of filing a complete financial disclosure form, file a short form annual report, provided that they have filed a complete financial disclosure form within the previous five years.

- a. Building and Standards Commission
- b. City plan Commission
- c. Civil Service Commission
- d. Construction Board of Appeals
- e. Ethics Review commission
- f. Historic Landmark Commission
- g. Parks and Recreation Board
- h. Public Service Board
- i. Zoning Board of Adjustment

6. Each candidate for elective office and each candidate for appointment as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.

7. The following types of boards are exempt from the financial disclosure requirements of this chapter:

- a. boards whose regulation is pre-empted by federal or state law;
- b. boards expressly exempted by the city council for reasons to be stated by the city council upon granting such exemption.

8. The city clerk shall, no later than August 15th of each year, prepare a report which notes whether each person subject to the filing requirement of this section has filed the required financial disclosure statement as of the date of the report. In the event that a person subject to the filing requirement has not filed his financial disclosure statement by the date of the completion of the report or in the event that a person fails to file his financial disclosure form within ten business days after the date of their appointment and they do not already

have a current financial disclosure form on file, the city clerk shall send a written notice by certified mail, return receipt requested, with a copy sent by regular mail, to the person to advise the person that the clerk's records indicate that the person is subject to the requirement of this section, the person has not filed a financial disclosure statement as required by this section and that the person has fifteen days from the date of the letter to file his financial disclosure statement. If the person is a board member covered under subsection A 9 e of this section, the city clerk will also advise the board member that the failure to timely file the financial disclosure statement will result in the automatic removal of that board member from his or her office. If the person is a designated employee, the city clerk may hand-deliver the notice required under this section in lieu of mailing it and shall provide a copy of the notice to the city manager or the mayor if the designated employee is an executive assistant to the mayor.

9. In the event that a board member fails to file his or her financial disclosure statement by the deadlines calculated under subsections A 1 or 8 of this section, the following actions will be taken:

- a. In the event that the board member is a member of the civil service commission, the city clerk shall prepare and send a notice of the failure of the civil service commission member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the civil service commission member from office in accordance with Section 6.1-10 of the city charter.
- b. In the event that the board member is a member of the zoning board of adjustment, the city clerk shall prepare and send a notice of the failure of the zoning board of adjustment member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the zoning board of adjustment member from office in accordance with Section 211.008, Texas Local Government Code.
- c. In the event that the board member is a member of the public service board other than the mayor, the city clerk shall prepare and send a notice of the failure of the public service board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the public service board member from office in accordance with the applicable removal provisions contained in any pertinent ordinance adopted by the city for the issuance of water or sewer revenue bonds.
- d. In the event that the board member is a member of the El Paso Housing Finance Corporation, the industrial development authority, or other similar corporation organized pursuant to state law, the city clerk shall prepare and send a notice of the failure of the board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the board member from office in accordance with the applicable removal provisions contained in any articles of agreement or bylaws of the corporation or statutory provisions.
- e. In the event that the board member is a member of any other city board subject to the requirement of this section, that board member shall be deemed removed from office without action or review by the city council. The city clerk shall prepare and send a notice of the removal to the board member and to the city council member who had appointed the board member. The removal shall be effective on the date that the notice

is deposited in the United States mail or if not mailed, upon delivery to the board member.

10. The removal provision established in subsection A 9 e of this section for the failure of a board member to file a financial disclosure statement shall be in addition to and shall be controlling over any other city ordinance or city council resolution that establishes procedures for the removal of board members.

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

ADOPTED this 20th day of March 2012.

CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elaine S. Hengen
Senior Assistant City Attorney

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Section 1. That Section 2.92.070 (Reporting requirements), Section A (Financial Disclosure), of the El Paso City Code is amended as follows:

2.92.070 Reporting requirements, Section A.

A. Financial Disclosure

1. Each officer, excluding elected officials whose financial disclosure requirements are governed by city charter, and each designated employee as defined in subsection A 2 of this section, shall file with the city clerk, within 10 business days after the date of his ~~or her~~ appointment, selection or approval by the city council, a statement disclosing:

- a. Where, by whom and in what specific capacity that person is employed or self-employed;
- b. Membership on boards of directors of corporations, whether organized for profit or not;
- c. Partnership interests; and
- d. The name and address of any business in which the person has a financial investment, and in the case of mutual funds and other similar pooled investments, the name of the fund or investment. For purposes of this subsection, a financial investment shall not include funds on deposit with financial institutions such as checking and savings accounts, investments in United States savings bonds, and similar investments that earn simple, compounded or money-market interest rates;

unless the person has previously been appointed to a position that requires the filing of a financial disclosure form and the person already has a current financial disclosure form on file with the city clerk.

2. "Designated employee" for purposes under this section, means the city manager, deputy city managers, all city department heads or directors, and the executive assistants to the mayor.

3. Each person submitting a statement of financial disclosure required under this section shall utilize a form provided by the city clerk, which shall be signed and submitted in hard copy, or submitted electronically or by facsimile as may be provided by the city clerk. The form or submission process shall provide a means by which the submitter affirms his ~~or her~~ identity and the accuracy of the statements made therein.

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

5. The members of the boards and commissions identified below and every designated employee ~~Each person subject to this section~~ shall thereafter file with the city clerk a financial disclosure statement, between June 1st and June 30th of each year while in office or employed by the city. Each person subject to this section shall file a revised financial disclosure form ~~or~~ at any ~~other~~ time in which the person changes his ~~or her~~ primary employment or has made changes in financial investments which cumulatively total more than thirty five percent of the person's total investments. Those persons who have no changes to report regarding the information required to be reported, may, in lieu of filing a complete financial disclosure form, file a short form annual report, provided that they have filed a complete financial disclosure form within the previous five years.

a. Building and Standards Commission

b. City plan Commission

c. Civil Service Commission

d. Construction Board of Appeals

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f. Historic Landmark Commission

g. Parks and Recreation Board

h. Public Service Board

i. Zoning Board of Adjustment

6. Each candidate for elective office and each candidate for appointment as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.

7. The following types of boards are exempt from the financial disclosure requirements of this chapter:

a. boards whose regulation is pre-empted by federal or state law;

b. boards expressly exempted by the city council for reasons to be stated by the city council upon granting such exemption.

8. The city clerk shall, no later than August 15th of each year, prepare a report which notes whether each person subject to the filing requirement of this section has filed the required financial disclosure statement as of the date of the report. In the event that a person subject to the filing requirement has not filed his ~~or her~~ financial disclosure statement by the date of the completion of the report or in the event that a person fails to file his ~~or her~~ financial disclosure form within ten business days after the date of their appointment and they do not

already have a current financial disclosure form on file, the city clerk shall send a written notice by certified mail, return receipt requested, with a copy sent by regular mail, to the person to advise the person that the clerk's records indicate that the person is subject to the requirement of this section, the person has not filed a financial disclosure statement as required by this section and that the person has fifteen days from the date of the letter to file his or her financial disclosure statement. If the person is a board member covered under subsection A 9 e of this section, the city clerk will also advise the board member that the failure to timely file the financial disclosure statement will result in the automatic removal of that board member from his or her office. If the person is a designated employee, the city clerk may hand-deliver the notice required under this section in lieu of mailing it and shall provide a copy of the notice to the city manager or the mayor if the designated employee is an executive assistant to the mayor.

9. In the event that a board member fails to file his or her financial disclosure statement by the deadlines calculated under subsections A 1 or 8 of this section, the following actions will be taken:

- a. In the event that the board member is a member of the civil service commission, the city clerk shall prepare and send a notice of the failure of the civil service commission member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the civil service commission member from office in accordance with Section 6.1-10 of the city charter.
- b. In the event that the board member is a member of the zoning board of adjustment, the city clerk shall prepare and send a notice of the failure of the zoning board of adjustment member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the zoning board of adjustment member from office in accordance with Section 211.008, Texas Local Government Code.
- c. In the event that the board member is a member of the public service board other than the mayor, the city clerk shall prepare and send a notice of the failure of the public service board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the public service board member from office in accordance with the applicable removal provisions contained in any pertinent ordinance adopted by the city for the issuance of water or sewer revenue bonds.
- d. In the event that the board member is a member of the El Paso Housing Finance Corporation, the industrial development authority, or other similar corporation organized pursuant to state law, the city clerk shall prepare and send a notice of the failure of the board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the board member from office in accordance with the applicable removal provisions contained in any articles of agreement or bylaws of the corporation or statutory provisions.
- e. In the event that the board member is a member of any other city board subject to the requirement of this section, that board member shall be deemed removed from office without action or review by the city council. The city clerk shall prepare and send a notice of the removal to the board member and to the city council member who had appointed the board member. The removal shall be effective on the date that the notice

is deposited in the United States mail or if not mailed, upon delivery to the board member.

10. The removal provision established in subsection A 9 e of this section for the failure of a board member to file a financial disclosure statement shall be in addition to and shall be controlling over any other city ordinance or city council resolution that establishes procedures for the removal of board members.

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

ADOPTED this 20th day of March 2012.

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APPROVED AS TO FORM:



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