

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 3 (REVENUE AND FINANCE), BY ADDING CHAPTER 3.48 (CITY CONTRACTING REQUIREMENTS); AND SECTIONS THEREUNDER; TO ESTABLISH A PROCESS BY WHICH POTENTIAL CITY CONTRACTORS MUST DISCLOSE FAMILIAL RELATIONSHIPS WITH MEMBERS OF THE NEWS MEDIA.

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

Section 1. That Chapter 3.48 (City Contracting Requirements), be added to the El Paso City Code, along with the following sections.

Section 2. That Section 3.48.010 (Applicability to Certain Vendors), be added to the El Paso City Code to read as follows:

Section 3.48.010 Applicability to Certain Vendors.

- A. This chapter applies to a person who is related to a member of the news media within the third degree of consanguinity or within the third degree of affinity, and who:
1. submits a bid or a response to a request for a proposal or bid to the City, either personally or on behalf of another or an entity;
 2. enters or seeks to enter into any contract with the City, either personally or on behalf of another or an entity; or
 3. is an agent of a person described in subsections A 1 or 2 in the person's business with the City.
- B. A person is not subject to the disclosure requirements of this chapter if the person is:
1. a state, political subdivision of a state, the federal government, or a foreign government; or
 2. an employee of an entity described by subsection B 1, when acting in the employee's official capacity.

Section 3. That Section 3.48.020 (Definitions), be added to the El Paso City Code to read as follows:

Section 3.48.020 Definitions.

For purposes of this chapter:

“Affinity” means that two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. An individual's relatives within the third degree by affinity are anyone related by consanguinity to the individual's spouse in one of the ways named in the definition of consanguinity in this section; and the spouse of anyone related to the individual by consanguinity in one of the ways named in the definition of consanguinity in this section.

“Consanguinity” means that two individuals are related to each other if one is a descendant of the other, or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. An individual's relatives within the third degree by consanguinity are the individual's parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

“Contract” means any contract; agreement; memorandum of understanding; application; or response to a request for qualifications, proposals, or bids or any other competitive process under the Texas Local Government Code; other than an application for or contract for personal employment with the City or an Interlocal Governmental Agreement made pursuant to Chapter 791 of the Texas Government Code.

“Entity” means a corporation, partnership, association or other organization recognized under the law.

“Member of the news media” means any individual who has written or reported on events at a City Council meeting or concerning a member of the City Council, for any television, radio, news print, or electronic media outlet more than three times in the previous twelve months prior to the time that disclosure is required under section 3.48.030 of this code.

“Person” means an individual.

Section 4. That Section 3.48.030 (Contents of Disclosure Statement), be added to the El Paso City Code to read as follows:

Section 3.48.030 Contents of Disclosure Statement.

A. The Chief Financial Officer or his designee shall adopt a disclosure statement form for use under this chapter. The form shall include a requirement for a person to whom this chapter applies to:

1. identify the particular contract that has triggered the filing of the form, including any bid, contract or project numbers or title assigned by the City;
2. identify whether the person seeking the contract is acting on his own behalf, or on behalf of another or an entity and to identify any such person or entity by name;
3. identify all members of the news media to whom the person is related within the

third degree of consanguinity and specify the nature of those relationships to the person; and

4. specify the type of news media or media outlets that have been used and by whom within the past twelve months.

B. The person filing the form shall sign the form and specify the date that he has signed it. Provided, however, if the form is submitted electronically as may be allowed in section 3.48.040 B of this code, the person may substitute a statement of affirmation that the form has been read and personally submitted in lieu of a signature.

Section 5. That Section 3.48.040 (Disclosure Requirements for Vendors and Other Persons), be added to the El Paso City Code to read as follows:

Section 3.48.040 Disclosure Requirements for Vendors and Other Persons.

A. A person described in section 3.48.010 A of this code shall file a completed disclosure statement not later than the seventh business day after the date that the person, either personally or on behalf of another or an entity:

1. begins discussions or negotiations to enter into a contract;
2. submits to the City an application, response, correspondence, or another writing related to a potential contract with the City; or
3. at any point during the contract negotiation or bid or proposal evaluation process that he becomes aware that he is a person described in section 3.48.010 A of this code.

B. A completed disclosure statement when required shall be filed with the Chief Financial Officer for the City or his designee in person or by mail. Additionally, and to the extent practicable, the Chief Financial Officer or his designee shall allow the form to be submitted by facsimile and by electronic means and shall specify the process for such submissions.

Section 6. That Section 3.48.050 (Disclosure of Disclosure Statements), be added to the El Paso City Code to read as follows:

3.48.050 Public Notice of Disclosure Statements.

A. For each item that is placed on the agenda of a City Council meeting noticing or recommending the entry into or award of a contract to a particular proposed vendor, the Chief Financial Officer for the City or his designee shall disclose to the City Council the existence of any disclosure statements that have been filed by the proposed vendor or persons connected with the proposed vendor.

B. Such disclosure to the City Council shall be made at the meeting of the City Council, by a notation posted with the agenda item and disclosed orally during the meeting.

Section 7. That Section 3.48.060 (Requirements Cumulative), be added to the El Paso City Code to read as follows:

Section 3.48.060 Requirements - Cumulative.

The requirements of this chapter are in addition to any other disclosure required by law.

Section 8. That Section 3.48.070 (Effect of Noncompliance), be added to the El Paso City Code to read as follows:

Section 3.48.070 Effect of Noncompliance.

A. When evaluating and making the award of a contract, the City Council may consider evidence of a knowing act or omission of noncompliance with the requirements of this chapter as a factor in making a determination of whether a person is a responsible bidder.

B. When evaluating a bid in accordance with state statutes to determine which bidder provides goods or services at the best value for the City, City staff making such an evaluation may consider evidence of a knowing act or omission of noncompliance with the requirements of this chapter as part of the evaluation of a bidder's past relationship with the City.

ADOPTED this _____ day of _____ 2009.

THE 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