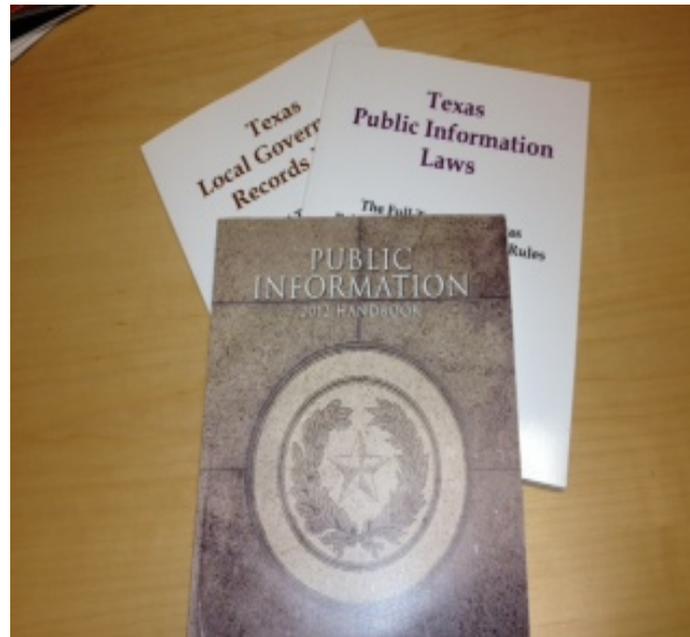
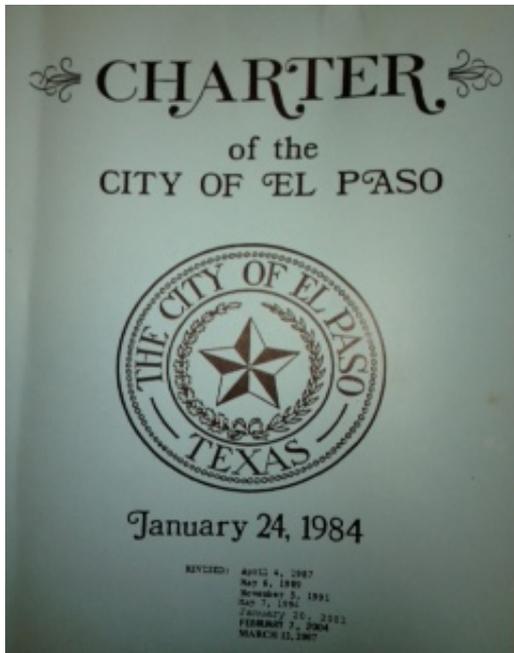




# City of El Paso City Council Orientation

June 25, 2013





## Purpose of Presentation

- **Introduction to body of laws which affect the City of El Paso and elected officials in specific.**
- **Not in depth treatise on the issue.**
- **Things you need to know to get started.**
- **Red flags for when issues come up you will know to ask for more guidance.**
- **More training at TML and with staff will follow.**



## **SUMMARY OF PRESENTATION**

**El Paso is a home rule city**

**Introduction to the Charter**

**Items of note in the Municipal Code**

**State laws of particular interest**

**Texas Penal Code**

**Texas Government Code – Public Information  
Act & Open Meetings Act**

**Texas Local Government Code**



## **TYPE OF CITY**

- ❖ **The City of El Paso is a Home Rule City**
- ❖ **Authorized by Article XI, Section 5 of the Texas Constitution**
- ❖ **A home rule city may do anything authorized by its Charter not specifically prohibited to preempted by state or federal law**



## **CHARTER**

### **The “Constitution” of the City**

**Current Charter was adopted in 1984**

**Amended 8 times**

**Most recent amendment May 2013**

**May only be amended with approval of the voters**

**May only be amended every two years**

**Next Charter amendment may take place in 2015**



## **HIGHLIGHTS OF THE CHARTER**

**Specifies the powers and duties of the Mayor,  
Council and City Manager**

**Establishes procedures for adopting ordinances**

**Provides for the Civil Service System**

**Sets forth fiscal management and operations**



## CHARTER SECTIONS OF NOTE

**Section 2.2(B)(4) – Elected Officials must file Financial Disclosure forms annually with the City Clerk (in addition to the State mandated financial disclosure form required by Chapter 145 of the Local Government Code).**

**Section 3.3(A) – Prohibition against dual office holding**

**Section 3.3(B) – Prohibition against appointing relatives to boards or commissions or as City Manager**



## **CHARTER SECTIONS OF NOTE-Con't**

### **Section 5.5 – Interference with Personnel or Administration**

**“Except for the purposes of investigations under Section 3.8 and inquiries, the members of the Council shall deal with City employees who are subject to the directions and supervision of the City Manager solely through the City Manager, and neither the Council nor any of its members shall give orders to any such employee, either publicly or privately. Neither the Council nor any of its members shall in any manner control or demand the appointment or removal of any City employee whom the City Manager is empowered to appoint, but the Council may express its views and freely and discuss with the City Manager anything pertaining to appointment and removal of such employees.”**



## **CHARTER SECTIONS OF NOTE-Con't**

### **Section 3.7(B) – The City Attorney**

**“Whenever a vacancy in the position of the City Attorney or any Assistant City occurs, the Mayor shall appoint a successor with a majority vote of the entire Council. Candidates for this position may be nominated by any member of the Council. The City Attorney or any Assistant City Attorney may be removed by the Mayor with the majority vote of the entire Council.”**



## **ROLE OF THE CITY ATTORNEY**

**The City Attorney handles all legal matters for the City including traffic tickets and civil lawsuits. We act as general counsel and provide legal advice for the city departments, boards and commissions. We draft all codes and ordinances and, either prepare or review, all contracts signed on behalf of the City.**

- ❖ Client is the entity**
- ❖ Direction – Entire Mayor and Council and sometimes the Mayor and City Manager as provided for in the Charter**
- ❖ No attorney/client relationship with the Mayor, individual council members, City Manager or any other City employee**
- ❖ No attorney/client relationship with individual citizens or members of the public**
- ❖ Legal representation for the boards and commissions only to the extent they are acting within the scope of powers specifically granted by council, or applicable laws**



## **ROLE OF THE CITY ATTORNEY – Con’t**

- ❖ **Legal representation for Mayor and council when acting within the course and scope of duties as elected officials**
  - ❖ **Legal representation for employees only when acting within the course and scope of their duties as City employees**
  - ❖ **All outside council report to City Attorney**
  - ❖ **“Approved as to Form” - - complies with all applicable law**
  - ❖ **Texas Rules of Professional Conduct – Rule 1.12**
- “Organization as Client”**

**Claims and litigation: If you receive information regarding a claim, subpoena, or are served with a lawsuit, immediately forward it to the City Attorney.**

**Communication with claimant or opposing attorney should be avoided.**



## EL PASO MUNICIPAL CODE

**Municipal Prosecutions Section 2.44.050: “...it is unlawful for any city official or employee or any other person, to solicit of any police officer or other city employee or official the dismissal, cancellation, taking up or other disposition of any such ticket, citation, notice, summons or process issued by a member of the police force of the city in any manner within the jurisdiction of the municipal court of the city.”**



## **EL PASO MUNICIPAL CODE – Con’t**

**Nepotism Section 2.56. 010: No officer of the City, nor any member of any city board, committee or commission, shall appoint or vote for, or confirm the appointment to any nonpaid or non-salaried office, position, employment or duty with the city, of any person related within the second degree of [consanguinity].**



## **EL PASO MUNICIPAL CODE – Con’t**

**Ethics Ordinance 2.92: The City Ethics Ordinance applies to all city officers, board and commission members and employees. It is intended to be “minimum standards” below which no city officer or employee’s conduct should fall. You have been provided a copy. There is an ethics commission in place to review any complaints received with regard to any elected official’s conduct. The City’s Internal Auditor will also investigate any alleged violations reported. I encourage you to read it and ask questions when they arise. Highlights include:**



## **Ethics Ordinance 2.92 – Con’t**

**Gifts- Section 292.040: The general rule is that no officer or employee shall solicit or accept or agree to accept for themselves or a relative:**

- Any gift valued at more than \$75**
- Any gift that would influence improper action**
- Any gift valued at more than \$10 from a registered lobbyist**



## **Gifts- Section 292.040 – Con't**

### **Exceptions:**

- **Political contributions**
- **Awards and personalized mementos**
- **Personal matters: gifts and commercially reasonable loans**
- **Official tokens of recognition**
- **Reasonable hosting in connection with certain public events**
- **Allowable honorariums (Texas Penal Code 36.07 & 36.08)**
- **Tickets to city sponsored events, events attended as part of official duties, or in connections with a spouse's or child's events**
- **Attendance at most charity events – invited and not solicited**
- **Complimentary copies of trade publications**



## **Gifts- Section 292.040 – Con't**

### **Reporting Requirements:**

- **Form must be filed no later than the 10<sup>th</sup> of the month**
- **Most gifts over \$10**
- **Hosting with a value of over \$50**
- **Awards, honorariums, recognitions over \$50**
- **Tickets or admissions over \$10. If the value is over \$75, state the official purpose for attending that made the acceptance permissible.**
- **Report accepted/unreturned gifts and state the value and any applicable exception**
- **Do not state the value is unknown**
- **If a gift has a value of over \$75 contact the City Manager to see if it can be accepted by the City**
- **Return gift to sender within 72 hours**



**Standards of Conduct Section - 292.050: Applies to all officers, city manager and all employees and members of city boards and commissions**

- **Prohibits unfair and inappropriate decision making**
- **Requires exercise of independent judgment in performance of official duties**
- **Prohibits financial or other personal gains from the transaction of City business**
- **Prohibits the misuse or improper release of confidential business**
- **Prohibits inappropriate use of city resources**
- **Prohibits appearance before a city board or department to represent the interests of another**



## **Standards of Conduct Section - 292.050 – Con't**

- Regulates other employment and conflicting and incompatible activities**
- Prohibits the transaction of business with entities in which the officer has a financial interest**
- If the matter involves a business entity for which you are an officer, agent or member or if you have a financial interest, you must abstain from voting and refrain from discussing the matter**
- Includes all types of membership on the board of a nonprofit**



**Campaign Finances – Section 292.100:** All elected officials are required to comply with the Texas Election Code. The Ethics Ordinance requirements are in addition to those in the Texas Election Code.

- **Contributions of \$500 or more must be reported by an item for notation on the consent agenda within 30 days of the date of the contribution.**
- **Contributions of \$500 or more must be disclosed before any deliberation or vote of the city council regarding any matter on a meeting agenda that relates to the contributor, or when the contributor appears before council; provided however, the obligation ceases when the member files a campaign finance report that includes the contribution.**



**Regulation of Lobby Activities – Section 2.94:** In the interest of transparency, City council has required individuals who represent the interests of others before the City Council and City Boards and Commissions to register and file activity reports.

- Applicable to those who receive compensation, reimbursement or expends \$200 or more a calendar quarter for lobbying
- Registration fee of \$100 annually
- Quarterly activity reports, expenditures, list of issues, contacts, etc.
- No gifts in excess of \$10
- No contact with regard to pending procurement matters



**Utility Regulations – Ordinance 9759:** The ordinance was passed to insure that the principal avenue for communications intended to affect or influence the decisions of Council regarding the regulation of public utility rates and services occur in open session.

- All communication must be logged
- Violation is a misdemeanor
- All members of council must maintain a permanent record of all communications between themselves and employees and representatives of a public utility or its affiliates regarding rates and services
- The log must be submitted to the City Clerk by the 10<sup>th</sup> day of each month
- The utilities are also required to keep logs on the communications



**Discretionary Funds – City Council Resolution: All public funds must be expended in accordance with State law.**

- **Texas Constitution prohibits the donation of municipal funds**
- **Funds must be used for a municipal purpose**
- **Expenditures of \$1000 or more must be reviewed by the City Attorney and be placed on the City Council agenda for a finding of municipal purpose**
- **It may be necessary to have a contract in place to insure proper use of funds**



**STATE LAWS OF INTEREST  
AND  
IMPORTANCE TO MUNICIPAL  
OFFICIALS**



**Texas Penal Code Sec. 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:**

- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;**
- (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;**
- (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or**



## **Texas Penal Code Sec. 36.02. BRIBERY. – Con't**

**(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.**



## **Sec. 36.07. ACCEPTANCE OF HONORARIUM.**

- (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.**
- (b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.**
- (b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.**
- (c) An offense under this section is a Class A misdemeanor.**



## **Texas Local Government Code Chapter 171 – Conflicts of Interest**

- **Prohibited from voting or participating in a decision in which you have a “substantial interest” in the involved property of business**
- **Applies if 10% or more of income comes from the entity; own 10% or \$15K of FMV of the entity or have \$2,500 interest in FMV of the real property**
- **Conflict extends to relatives in the 1<sup>st</sup> degree of consanguinity (spouse, parents and children)**
- **File affidavit with City Clerk prior to the time in which the matter would first come before council**
- **Must abstain from participation and voting**
- **Attorney General “2012 Conflicts of Interest Laws Made Easy”**



## **Texas Local Government Code Chapter 176 – Disclosure of Relationships**

- **Disclosure statement must be filed if the city is entering into a contract with a person who has an employment or other business relationship with you or a family member that results in you or your family member receiving taxable income, other than investment income, that exceeds \$2,500, or if you have received a \$250 gift from the person within the previous 12 months**
- **7 days after you learn of the situation**



## **Texas Government Code Chapter 551- Open Meetings Act**

- **All meetings must be conducted in public**
- **Liberally construed in favor of open government**
- **Meetings must be posted 72 hours in advance**
- **Meetings in groups of less than quorum of council in a deliberate attempt to avoid the Open Meetings Act are a violation**
- **Violation is a misdemeanor punished by a fine and one to six months in jail**
- **The Act applies to telephonic and email communications**
- **Do not send email messages to the other members of the council or “reply to all” to messages from staff or members of the public**
- **Do not electronically communicate with other council members during meetings**



## **Texas Government Code Chapter 551- Open Meetings Act – Con’t**

- **Do not engage in a “walking quorum”**
- **Do not send anyone else to speak to council members and report back to you about matters that will be before council**
- **“Call to the Public” is for the purpose of the public addressing you but the Open Meetings Act does not allow you to discuss the item. You may request that the item the member of the public presented be placed on a future agenda for discussion or to provide specific factual information or existing policy.**
- **Attorney General Publication – “2012 Open Meetings Act Made Easy”**
- **Required Training within 90 days - - AG website**
- **Certificate on file with City Clerk**



## **Texas Government Code Chapter 552 – Texas Public Information Act**

- Gives the public access to most information with some very narrow exceptions**
- If the city believes one of the exceptions applies we must write to the Texas Attorney General within 10 business days for ruling**
- If the City improperly withholds, either the requestor or the Office of the Attorney General can file a civil lawsuit to compel release**
- Assume all documents and written communications are a public record and subject to release.**



## **Texas Government Code Chapter 552 – Texas Public Information Act – Con't**

- **If you receive a request for documents, emails, etc. promptly forward it to the City Manager's Office. Irma Lopez is responsible for coordinating responses to the public. The legal department will only be involved if we are claiming an exception**
- **Be aware that the following types of information are considered to be public and releasable:**
  - **Emails and texts relating to City business whether on your city email or on a personal account**
  - **Text messages on your city or personal phone relating to City business**
  - **Calendar and appointment books**
  - **Personal notes**



## **Texas Government Code Chapter 552 – Texas Public Information Act – Con’t**

- **By City Ordinance the City Manager is the City’s Officer for Public Information**
- **You have required training on the issue within 90 days and are required to file on-line verification**



# QUESTIONS/COMMENTS