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

DEPARTMENT: **Mayor and Council**

AGENDA DATE: **August 15, 2006, for introduction**

CONTACT PERSON/PHONE: **Representative Beto O'Rourke, 541-4268**

DISTRICT(S) AFFECTED: All

SUBJECT: An Ordinance Amending Title 2 (Administration and Personnel) of the El Paso City Code, to amend Chapter 2.94 (Regulation of Lobbying Activities) and Sections thereunder; to amend the requirements for the registration and reporting of lobbyists; and to restrict certain activities; the penalty being as in Sections 1.08.010 – 1.08-030 and 2.94.130 of the El Paso City Code.

BACKGROUND / DISCUSSION: The City Council adopted the Regulation of Lobbying Activities ordinance on March 7, 2006. Subsequent to the adoption of the ordinance, the Rules Legislative Review Committee has met several times to hear public comment regarding the impact and effect of the ordinance. Based on those meetings, the Legislative Review Committee voted to make several amendments and those amendments are now forwarded to the entire City Council for consideration.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
The original ordinance was adopted on March 7, 2006.

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

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

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD:

_____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

#24248

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE EL PASO CITY CODE, TO AMEND CHAPTER 2.94 (REGULATION OF LOBBYING ACTIVITIES) AND SECTIONS THEREUNDER; TO AMEND THE REQUIREMENTS FOR THE REGISTRATION AND REPORTING OF LOBBYISTS; AND TO RESTRICT CERTAIN ACTIVITIES; THE PENALTY BEING AS IN SECTIONS 1.08.010-1.08.030 AND 2.94.130 OF THE EL PASO CITY CODE.

WHEREAS, the City Council adopted the City's first ordinance for the regulation of lobbying activities on March 7, 2006; and

WHEREAS, based on the implementation of this ordinance since its adoption, the City Council has determined that amendments to the ordinance are appropriate to clarify the application and non-application of the ordinance and to reduce the breadth of its application.

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

Section 1. That Section 2.94.020 (Definitions), subsections A and B, of the El Paso City Code be amended as follows, with no changes to the remaining subsections:

Section 2.94.020. Definitions.

In this chapter:

A. "City official" means the mayor, a council member, the City Manager or a member of board, commission, and committee set forth in Section 2.94.030 of this code

B. "Compensation" means money or other tangible thing of value that is received or is to be received in return for or in consideration of lobbying services rendered or to be rendered. Compensation shall not include compensation paid to an individual regularly employed by a person if the compensation paid to the individual is ordinarily paid regardless of whether the individual engages in lobbying activities and lobbying activities are an incidental part of the individual's regular responsibilities to the person paying the compensation. Compensation shall not include the financial gain that a person may realize as a result of the determination of a municipal question, unless that gain is in the form of a contingent fee. Compensation shall be considered received on the date on which the contract or agreement for the compensation is made or on the date lobbying commences, whichever is later.

Section 2. That Section 2.94.030 (Applicability) of the El Paso City Code be amended as follows:

Section 2.94.030. Applicability.

Except as may otherwise specified herein, this chapter applies to a person who lobbies a city official and a member of the following boards, commissions and committees, including any successor board:

A. Building Board of Appeals;

B. Building and Standards Commission;

C. Civil Service Commission;

D. Public Service Board;

E. Historic Landmark Commission;

F. City Plan Commission;

G. Zoning Board of Adjustment; and

H. A retirement board, including the Pension Fund Board of Trustees and the Fire and Police Pension Fund Board of Trustees.

Section 3. That Section 2.94.040 (Persons Required to Register) of the El Paso City Code be amended as follows:

Section 2.94.040. Persons Required to Register and Eligibility.

A. Except as provided in Section 2.94.050, a person must register with the city clerk if the person:

1. receives compensation of $200 or more in a calendar quarter for lobbying or which is attributable to lobbying activities.

2. receives salary or other employment compensation of $200 or more in a calendar quarter and such person conducts lobbying activities as a regular part of his assigned duties or responsibilities;

3. receives reimbursement of $200 or more in a calendar quarter for lobbying;

4. expends $200 or more in a calendar quarter for lobbying;

5. lobbies as the agent or employee of a person who:

    a. receives compensation of $200 or more in a calendar quarter for lobbying;

b. receives reimbursement of $200 or more in a calendar quarter for lobbying; or

c. expends $200 or more in a calendar quarter for lobbying; or

6. enters into an agreement to provide lobbying services on a contingent fee basis.

B. No person who is an appointed member of the following ~~a~~ City boards and commissions, including any successor board or a public nonprofit corporation, the creation of which was authorized or recognized by resolution of the Council as required by state law, to include but not be limited to the Housing Finance Corporation and the Industrial Development Board, as of March 7, 2006 shall be eligible to register under this chapter on or after October 1, 2006.

1. Building Board of Appeals;

2. Building and Standards Commission;

3. Civil Service Commission;

4. Public Service Board;

5. Historic Landmark Commission;

6. City Plan Commission; ~~and~~

7. Zoning Board of Adjustment; and

8. A retirement board, including the Pension Fund Board of Trustees and the Fire and Police Pension Fund Board of Trustees.

Section 4. That Section 2.94.050 (Exceptions) of the El Paso City Code be amended as follows:

Section 2.94.050. Exceptions.

The following persons are not required to register under this chapter:

A. A person who owns, publishes or is employed by a newspaper, another regularly published periodical, a radio station, a television station, a wire service or another bona fide news medium that in the ordinary course of business disseminates news, letters to the editor, editorial or other comment or paid advertisement that directly or indirectly oppose or promote municipal questions if the person does not engage in further or other activities that require registration under this chapter and does not represent another person in connection with influencing municipal questions. This subsection does not exempt a person whose relation to the news media is only incidental to a lobbying effort or when a position taken or advocated by a media outlet directly impacts, affects, or seeks to influence a municipal question in which the media outlet has a direct or indirect financial interest.

B. A person whose only activity is to speak or otherwise provide input or influence regarding a municipal question by attendance and participation at a meeting or other event attended by one or more City officials which:

1. is a publicly-posted meeting;
2. has been scheduled or planned by the City; or
3. is held for the specific purpose of obtaining the attendance and participation of the person at such City meeting or event, at the request of an authorized representative of the City.

C. A governmental entity, its officers and employees, provided they are solely engaged in matters of governmental interest concerning their respective governmental bodies and the City.

D. A person who engages in lobbying, but who neither receives compensation nor expends monies for lobbying with respect to any client or person. The term "expends does not include the costs of photocopying documents, purchasing copies of City documents and information, or creating other informational material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family or members of their household.

E. A person who does not know and has no reason to know whether a municipal question is pending at the time of contact with a City official. This subsection shall not apply if the existence of a municipal question is discovered during contact with a City official and the person then engages in additional lobbying of the same or other City officials.

F. A person who is performing an act that may be performed only by a licensed attorney or a person whose contact with a City official is made solely as part of the process of resolution of a dispute or other matter that is primarily legal in nature between a person and the City and if the person is an attorney, so long as he complies with Rule 4.02 of the Texas Disciplinary Rules of Professional Conduct, as amended.

G. A person whose only activity is contact with City staff including the City Manager as a business prospect or the representative thereof, to meet or confer regarding a project and/or activity seeking/reasonably expected to seek economic development incentives during the time period prior to the presentation of a recommendation by City Staff to the City Council in an official meeting of the Council.

H. A person who is a representative of a city employee union and whose only direct communications concerning a municipal question are with the City Manager and made as an authorized representative of the union or made on behalf of an individual member of the union.

I. A lobby employer who would only be required to register under Section 2.94.040 of this code because of an expenditure to compensate a registrant to lobby on a municipal question of interest to the lobby employer.

Section 5. That Section 2.94.060 (Registration) of the El Paso City Code be amended as follows:

Section 2.94.060. Registration.

A. Each registrant shall file annually with the city clerk a registration form signed under oath not later than two business days after becoming a lobbyist and meeting the requirements to register set forth in section 2.94.040 of this code. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a registration schedule for each person from whom he receives compensation or reimbursement. The registration shall be on a form prescribed by the city clerk and shall include:

1. the registrant's full name, permanent street address and mailing address, if different;

2. the name and address and nature of business of each lobby employer or lobbying entity on whose behalf the registrant will lobby; and

3. a statement of all municipal questions on which the registrant has lobbied for each client in the year preceding the filing of the registration and the municipal questions or subjects on which the registrant foreseeably will lobby during the registration period.

B. A registrant who is an attorney shall not be required to report under this section or under section 2.94.070 of this code, specific facts or information that would cause the attorney to violate the Texas Disciplinary Rules of Professional Conduct; provided however, that the ability to exclude certain privileged or confidential information under this subsection shall not constitute nor be interpreted to constitute a complete exception to the registration or activity reporting requirement for an attorney who is required to register under this chapter.

C. Each registrant shall file a notice of termination within 30 days after the registrant ceases the activity that required registration; however, this will not relieve the registrant of the reporting requirement of Section 2.94.070 for that reporting period.

D. At the time of registering, a registrant shall pay to the City and the city clerk shall collect an annual registration fee in the amount of $100.00. Effective September 1, 2006, a registrant shall pay to the City and the city clerk shall collect an annual registration fee in the amount set by the budget or other appropriate resolution of the City Council, provided however, that is such fee is not contained in such a resolution as of September 1, 2006, the fee set herein in the amount of $100.00 shall continue until such time as the fee is established in the budget or other appropriate resolution of the City Council.

E. A registration expires on the last day of the month of filing of the following year.

Section 6. That Section 2.94.090 (Restricted Activities) of the El Paso City Code be amended as follows:

Section 2.94.090. Restricted Activities.

A. No person who lobbies or engages another person to lobby, nor any other person acting on behalf of the person, shall give any gift to a City official or a member of his or her immediate family, except as permitted by and in accordance with the requirements of chapter 2.92 of this code.

B. No person who lobbies or engages another person to lobby, nor any other person acting on behalf of such persons shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts to a City official, or knowing a document to contain a false statement, cause a copy of the document to be received by a City official without notifying the official in writing of the truth.

C. No person who lobbies or engages another person to lobby, or any person acting on behalf of such person, shall represent, either directly or indirectly, orally or in writing, that that person can control or obtain the vote or action of any city official.

D. No person, at any time prior to the presentation of a recommendation by City staff to the City Council in an official meeting of the Council regarding a project and/or activity seeking/reasonably expected to seek economic development incentives, shall contact any elected official or employees assigned to work in the office of the Mayor and Council, by any means including but not limited to oral, written and electronic communications, regarding such project and/or activity. Provided, however, this prohibition shall not prohibit the participation and communication with members of the City Council in public activities proactively initiated by City staff and/or authorized City agents to attract new businesses, and to retain and/or expand existing businesses.

E. During the period of solicitation for requests for proposal (RFP), qualifications (RFQ), highest qualified bid (best value), source selection, or the giving of a notice of a proposed project, which shall begin on the day that it is advertised and end on the date that the notice of the award has been sent to the City Clerk for placement on the agenda, no person or registrant shall engage in any lobbying activities with city officials and employees. If contact is required with city employees, such contact will be done in accordance with procedures incorporated into the solicitation document and the city's contracting policies. Any person or entity that violates this provision may be disqualified in accordance with Section 2.94.130 of this code.

F. Except as provided in Section 2.94.040 B of this code, no registrant shall be eligible for or accept appointment to any City board or commission listed in that subsection or a public nonprofit corporation, the creation of which was authorized or recognized by resolution of the Council as required by state law, to include but not be limited to the Housing Finance Corporation and the Industrial Development Board,

G. No person who is ineligible to register as a lobbyist under Section 2.94.040 B of this code shall conduct lobbying activities for which they, or their principal or employer, have received compensation or reimbursement of $200 or more in a calendar quarter for lobbying.

Section 7. Except as herein amended, Title 2 (Administration and Personnel) shall remain in full force and effect.

ADOPTED this 29th day of August 2006.

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