

## **CITY OF EL PASO EMPLOYEES RETIREMENT TRUST**

### **Questions received regarding a Request for Proposals for Lobbying Services**

#### **Question 1:**

Please clarify the meaning of Section 4.1, specifically "...particularly defined benefit public pension plan governance to include costs and investments."

#### **Answer Question 1:**

We place value on your firm's knowledge of how defined benefit public pension plans operate to include how they are governed and managed. This knowledge would typically include general knowledge of costs and investments made by public defined benefit pension plans in their normal operation.

#### **Question 2:**

Section 4.2. Is previous experience with the House Committee on Pension and Investments required? Is similar relevant experience with legislative committees acceptable?

#### **Answer Question 2:**

While previous experience with the House Committee on Pension and Investments is strongly preferred it is not required. Please note other relevant experience.

#### **Second Question labeled as 2:**

Section 5.1 paragraph 3. Is previous experience required? Is relevant experience with other Texas State Boards, commissions, agencies or other entities acceptable? If so will it count the same on the scoring matrix (1.C) as defined benefit plan experience.

#### **Answer to second question labeled as 2:**

We assume you are referring to Section 5.1 entitled "Proposal Submission: Required Information" and are identifying number 3 listed therein.

While previous experience is not required it has been deemed to be important. Similar relevant experience with other Texas State Boards, Commissions, agencies or other entities will be considered. It is in the sole discretion of the evaluation committee how such experience will be evaluated.

#### **Question 3:**

Section 5.1 paragraph 4. Is previous experience required? Is relevant experience as described in #2 above acceptable? Same question as above regarding counting in the scoring at 1.C.

#### **Answer to question 3:**

Please see the prior response to question 2 above.

**Question 4:**

Section 5.1 paragraph 7. Is current or past representation of defined benefit public pension plan clients required? Is relevant experience as described in #2 above acceptable? Same question as above regarding scoring at 1.C.

**Answer to question 4:**

Please refer to the answer to question 2 above.

**Question 5:**

Is the submission to the RFP to be electronically submitted and mailing in a hardcopy by the 24<sup>th</sup> or is it either or?

**Answer to question 5:**

The hard and electronic copies must be received in our office no later than 5 PM (MDT) on June 24, 2024. The requirement was **not** intended to be "either or."

**CITY OF EL PASO EMPLOYEES RETIREMENT TRUST**

**LOBBYIST REQUEST FOR PROPOSALS**

**June 3, 2024**

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## **Section 1.0: General Overview**

The City of El Paso Employees Retirement Trust is issuing a Request for Proposals (RFP) for the services of an experienced firm, individual(s), or joint ventures to serve as the Trust's professional lobbyist(s). The services provided by the selected firm or individuals shall include, but not be limited to providing representations, timely information, professional advice, performing research, establishing legislative contact with key individuals at the local and state level, developing plans and processes for either promoting or objecting to specific legislation and providing support to the Board and staff of the retirement trust.

The information in this RFP indicates the process by which the RFP should be submitted and how the Trust will evaluate any proposals submitted by proposing firms.

The Trust expects to select the highest-scoring firm based upon the evaluation criteria identified in the proposals. The scoring will involve each firm's ability to perform the required work, experience, cost, personnel who will be assigned to our account, approach to the lobbying efforts, responsiveness to take actions, reference checks, and the clarity of the submission in relation to the scoring matrix will be considered. Please refer to "Table 1: Scoring Matrix", which is attached, for specific scoring criteria.

## **Section 2.0: Organization**

The City of El Paso Employees Retirement Trust ("the Trust") is located in El Paso, Texas. The Trust operates one of the defined benefit retirement plans offered by the City of El Paso. The participants of the Trust are most employees of the City of El Paso excluding certified Fire Fighters and Police Officers. The Trust has been in continuous existence for about 75 years.

The Trust is created by and governed by an ordinance of the City of El Paso and is managed by a Board of Trustees. The Board consists of five members appointed by the City Council and four members elected by employees who may participate in the Trust. The Board of Trustees hires a staff of employees who work to provide services related to the administration of the Trust as directed by the Board of Trustees in compliance with the ordinance that serves as the plan document. The Trust hires professional accountants, actuaries, and attorneys to assist in the effective administration of the Trust.

The Trust has to comply with many laws including Federal, State, and local laws. The primary emphasis of the relationship will be related to state legislation and interactions with the state agency, Texas State Pension Review Board, that regularly provides reports and testimony before the Texas legislature and provides for reporting requirements and rules for the operations of public pension plans in the State of Texas. Since the Board's authority is derived from a local ordinance, found in Chapter 2.64 of the El Paso Municipal Code, it is possible that some efforts may be required by the proposing firm related to possible changes to the Trust's governing ordinance.

The Trust relies upon the cooperation of the City of El Paso in completing service goals and assignments. A Memorandum of Understanding exists between the Trust and the City of El Paso. The Trust relies in part upon certain City operations in completing its service requirements. In addition, the Trust hires outside professional firms to augment the Trust staffing for purposes of meeting its administrative requirements.

In the past the Trust has relied upon the legislative efforts of the Texas Association of Public Employee Retirement Systems (TEXPERS) and the City of El Paso, through the Texas Municipal League (TML), to assist in providing input regarding pending state legislation. However, the Trust now seeks representation by a lobbyist firm that will work directly for the Trust in its legislative efforts while maintaining effective and cooperative relationships with TEXPERS and the City of El Paso.

### **Section 3.0: Scope of Work**

#### **Section 3.1: Purposes of Representation**

The purpose of hiring a lobbyist firm is to more effectively engage legislative-related parties and legislators in either proposing local or state legislation or opposing proposed local or state legislation. In addition, the lobbyist firm should alert the Trust to any proposed legislation that may affect public pension plans generally and define and develop strategies to either promote or defeat proposed legislation or rule-making by the State Pension Review Board. The selected firm shall establish and maintain key contacts at the local and state level to assist with their work on behalf of the Trust. The Trust's focus is in legislation that may specifically affect the City of El Paso Employee Retirement Trust, its employees, sponsor, and beneficiaries as well as legislation that may generally impact Trust operations or public retirement systems in Texas.

#### **Section 3.2: Type of Representation**

The selected firm, individual, or joint venture shall act in good faith to achieve the objectives of the Scope of Work listed herein. Communication and responsiveness are an important aspect of this relationship. It is imperative that the selected firm, be available and able to respond quickly when exigencies require a rapid response.

##### **Section 3.2.1: Proposed Scope of Work**

The term "firm" in this RFP shall be interpreted to include sole proprietors and their subcontractors, individuals, joint ventures, companies, partnerships, and corporations. For this RFP, a lobbyist shall function as the Trust's representative when engaging key contacts at the state and local levels and with private organizations. The Scope of Work involves providing research and statistical data and reports. It is a requirement that the lobbyist be available and provide periodic and unscheduled reports to the Trust to assist the Board in making policy decisions, developing strategies, and providing information to interested and related parties.

##### **Section 3.2.2: Process**

The selected lobbyist firm will meet with the Board before each state legislative session where public pension legislation may be proposed. The Trust will work with the lobbyist to develop a legislative agenda before an upcoming legislative session. If legislation proposed during the legislative session was not identified as part of the legislative agenda, but which the lobbyist believes may impact the Trust, the lobbyist will timely request an amendment to the legislative agenda.

The Trust will let the lobbyist firm know of any local legislation which is known by the Board. The Board will work with the lobbyist firm to identify lobbying assignments. It is understood that the lobbyist firm will use considerable independence in the application of research methods and

techniques. The Trust will provide the lobbyist firm with specific Trust-related information to assist them with their representation.

### **Section 3.2.3: Essential Functions**

In performing the essential functions of lobbying the selected firm will engage with a variety of individuals and offices. Those individuals and offices would include, but not be limited to, the Office of the Governor, Office of the Lieutenant Governor, members of the House of Representatives and Senate (especially the El Paso delegation), Chairs of the House Pension and Investment and Senate State Affairs Committees, the Mayor and City Manager of the City of El Paso and current City Council Representatives for the City of El Paso, Texas.

The lobbyist shall secure sponsorship of legislation and shall monitor and advocate for the enactment of legislation as identified by the Trust.

The lobbyist shall monitor all legislation that may impact the duties and responsibilities of the Trust, its Board, its officers, and employees and any legislation that may impact expenses paid by the Trust.

The lobbyist shall act as an advocate to defeat legislation identified by the Trust as detrimental to the interest of the Trust.

The lobbyist shall monitor state departments, agencies, and legislative activities daily as necessary and as requested by the Trust.

The lobbyist shall perform additional legislative services on behalf of the Trust including but not limited to the following:

1. Work with the Board to develop legislative initiatives. The lobbyist will follow through to secure support and passage or defeat of legislation for which the Board is in favor or opposed.
2. Work with the Trust to develop a proposed legislative agenda.
3. Draft or assist in drafting proposed legislation and amendments to existing law.
4. Draft or assist in drafting written amendments to defeat or reduce the impact of proposed legislation.
5. Draft a written summary of positions taken with regard to proposed legislation and a brief rationale for supporting or objecting to the proposed legislation.
6. The lobbyist will work with stakeholders to include TEXPERS and the City's legislative delegation in the performance of their work with the goal is increasing leverage and the effectiveness of the lobbying effort.
7. Attending and testifying at hearings, scheduling witnesses, and providing charts and diagrams for such witness testimony.
8. Advocate on behalf of the legislative agenda adopted by the Trust to include preparation, communication, and coordination with the El Paso delegation and other members of the legislature.
9. Assistance in prioritizing legislative efforts on behalf of the Trust.
10. Provide regular written and verbal reporting to the Board and the Executive Committee of the Trust as well as the Executive Director. This will include at least three in-person meetings with the Board unless the Board requests additional in-person meetings.
11. Provide at least weekly written updates and track during the legislative session regarding pending legislation related to the public pension funds. Monthly written reports are expected in months when the state legislature is not in session.

12. Provide a final written report at the conclusion of each legislative session which entails the work performed and the outcome achieved.
13. Review interim legislative charges identifying any assigned studies and any impact to the Trust either positive or negative.
14. Be aware of the efforts of the State Pension Review Board and initiatives made by the state agency and inform the Board of any pension rule or reporting changes.

### **Section 3.3: Communication**

Communication is a very important aspect of any representation. As previously identified in the scope of work it is expected that open lines of communication be provided not only when the legislature is in session but also when the session is not in session. As noted in Section 3.2 above, communication and responsiveness are an important aspect of this relationship. Section 3.2.3 entitled "Essential Functions" also identifies reporting expectations.

The selected lobbyist will consult with the Board and its staff should information be needed by the lobbyist for the effective discharge of their contractual duties.

The lobbyist shall appear before the legislature, establish and maintain close contact with TEXPERS and the City's legislative team and its lobbyists and other interested parties and stakeholders to include legislators and officials in the executive branch of state and local government in order to influence, inform, and assure the full communication of ideas, interests, and favored outcomes.

The proposing firm is expected to utilize modern communication software and technology for reporting and conducting lobbying efforts.

Critical in the engagement of a lobbyist will be for them to perform independent research and analyze proposed legislation, prepare summaries and briefings, and document communications with the stakeholders identified above.

The selected lobbyist shall recommend action(s) to the Board, legislature, or City Council and maintain a flow of information to the Board and its staff regarding state and federal government trends, attitudes, and programs to include reporting and required additional costs to be borne by the City of El Paso or the Trust.

The selected lobbyist firm is expected to perform other related duties as needed or as the situation dictates within the Scope of Work identified in the contract documents.

### **Section 3.4: Term**

The proposed term of any resulting contract is expected to be for a term of 2-years but may be extended with the consent of the parties.

## **Section 4.0: Qualifications: Experience, Abilities, and Skills**

### **Section 4.1: Knowledge and Skills**

Proposing firms should know the principles and practices of public pension administration and particularly defined benefit public pension plan governance to include costs and investments.



Proposing firms should have knowledge of City and state government operations and be able to be effective in researching and reporting the results of testimony or data related to proposed or anticipated legislation.

Proposing firms must provide evidence of establishing and maintaining effective working relationships with state and local administrative officers, staff, other lobbyists, identified stakeholders, the public, and legislative representatives.

Proposing firms must be able to work independently and be creative in designing and implementing methods for obtaining results within legal and ethical limitations.

Proposing firms must conduct original research and conduct routine investigations. As a product of this research, they must produce and articulate logical arguments and administrative analysis related to legislation and prepare and effectively present oral and written reports and recommendations to groups and individuals.

#### **Section 4.2: Experience**

Proposing firms must have been in the business of providing lobbying services for state and local governments for at least 5-years.

Proposing firms shall be registered with the State of Texas for providing lobbyist services for at least the last 5-years.

Proposing firms shall identify individuals who may be assigned to work on our account that have at least 6-years of proven lobbyist experience at the state and local levels.

Proposing firms shall be able to document their past experience with the groups, individuals, and stakeholders identified in this RFP.

Proposing firms shall identify four recent pieces of legislation for which they took a representation position with another client and detail how they were effective in the legislative process to include at least one bill they supported, one bill they worked to defeat, and one bill they worked to modify during the legislative process.

Proposing firms shall have demonstrated experience before the House Committee on Texas Pension and Investment and the Senate Committee on State Affairs.

Proposing firms shall document experience related to prior legislative activity with the legislators from the City of El Paso at the local and state levels.

Proposing firms shall be able to document experience related to prior legislative interactions with the legislative staff from the City and El Paso state delegation.

Proposing firms shall have experience in planning and coordinating meetings between their clients and identified parties listed in this RFP.

#### **Section 4.2.1: Certifications**

Proposing firms will certify that information obtained from the Trust will not be reproduced, sold, distributed, published, or made available to any person or entity except as necessary to perform services required by this RFP.

Proposing firms certify that any resulting contract will be governed by the laws of the State of Texas with jurisdiction for any legal action to be brought in Federal or State court in El Paso County, Texas.

Proposing firms certify that they will comply with the Code of Ethics of the City of El Paso, Texas. The ordinance is attached as "Exhibit A".

## **Section 5.0: Information Required**

### **Section 5.1: Proposal Submission: Required information**

Proposals shall not exceed 20 pages in total, excluding resumes. If your submittal exceeds 20 pages in length it may be subject to disqualification and may not be considered. Each proposing firm shall respond to each information requirement clearly and comprehensively.

Each proposing firm shall provide the following information in a clear and comprehensive manner and include the following:

1. A transmittal letter, signed by someone in the firm who has the legal capacity to bind the firm, which expresses an interest in representing the Trust and a list of the personnel who will be assigned to fulfill the requirements of the Scope of Work identified in this RFP.
2. A brief history of the firm, its officers and employees, the principles of the firm, and if any subcontractors will be used in the performance of any resulting contract.
3. A brief explanation of how the firm has experience in legislative efforts related to defined benefit public pension plans in the state of Texas and local governments.
4. A brief explanation of your firm's experience in working with the State Pension Review Board.
5. A listing of individuals who will be assigned to work with the Trust, and their years of experience in providing local and state legislative support for clients before the legislative and executive branches of state and local government.
6. For the individuals identified in 4 above, please list the number of clients they represent and the anticipated number of hours you expect they will spend representing the Trust per month and per year during and outside of the legislative session.
7. A list of defined benefit public pension plan clients, similar to the Trust, for which your firm currently provides lobbying services and a list of past defined benefit public pension plan clients whom you have in the past provided lobbying services in the state of Texas during the past 7-years.
8. For the list of past plan clients identified in 6 above, please provide reference information for three past public pension plan clients who utilized your services for at least 3-years who we may contact as a reference. Please provide their name, address, contact individual, phone number, and email address.
9. Please identify and describe any specific interactions over the past three state legislative sessions where your firm worked with TEXPERS or TML.
10. Please identify and describe any specific interactions with the El Paso state delegation over the past 3 legislative sessions.
11. Please list ties with local organizations, partnerships, and engagement in local issues in El Paso, Texas.
12. Please list any affiliations or areas of expertise that would demonstrate that your firm is best to represent the Trust.

13. Please provide a detailed description of the firm’s technological capabilities involving the use of software to track legislation, communication tools for efficient and transparent reporting to the Trust, and include any innovative technology solutions that can enhance their lobbying effectiveness.
14. Please respond to the attached “Statement Regarding Legal or Disciplinary Actions Taken Against Proposer” attached as “Exhibit B”.
15. Please include a statement that affirms that the performance of any resulting contract and the obligations made there will not be assigned or conveyed in part or in full for the duration of the contract.
16. Please submit your fee for providing the services outlined in this RFP. The Trust is only interested in a fixed fee contract to include all costs of each and every type.
17. Please provide any examples or case studies of how your firm has successfully integrated technology in past lobbying efforts. This could include the use of social media for advocacy campaigns, innovative software for analysis or tracking legislation, or innovative communication strategies for engaging stakeholders.

**Section 5.1.1: Fees and Costs:**

The Trust is only interested in receiving proposals for a fixed price fee. The fixed price fee shall include all costs of any type to include any and all expenses you will incur in providing the services identified herein. The fixed price shall be a yearly total fee for your firm’s services for a period of two years. Fees should be identified by year with also a total fee for two years.

**Section 5.2: Submission Instructions**

Please submit one original and one electronic copy no later than 5 PM (MDT) local time on June 24, 2024, as follows:

**By mail:**

City of El Paso Employees Retirement Trust  
 c/o Ms. Karina Chavez: Administrative Assistant  
 1039 Chelsea St.  
 El Paso, Texas 79903

**Electronically:**

[Chavezkx2@elpasotexas.gov](mailto:Chavezkx2@elpasotexas.gov)

Any proposals received after the date and time listed above will not be considered.

**Section 6.0: Proposal Timetable**

Request for Proposal issued:	June 3, 2024
Question deadline for proposing firms:	June 17, 2024
Request for Proposal Submission Date:	June 24, 2024

Selection Committee Interviews, optional:	July 8-12, 2024
Recommendation of Proposing Firm:	July 15, 2024
Board action to select a firm for contract negotiations:	July 17, 2024, or August 21, 2024

The outside of the envelope and/or email subject line must be clearly marked “Lobbyist Request for Proposal - City of El Paso Employees Retirement Trust” together with the firm’s name and delivery address.

Any proposals received after the above deadline will not be considered.

**Section 7.0: Terms and Conditions:**

The Trust makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the information in the RFP and nothing contained herein is or shall be relied upon as a promise or representation, whether as to the past or the future. The RFP does not purport to contain all of the information that may be required to evaluate the RFP and the data contained or referenced herein. The Trust does not anticipate updating or otherwise revising the RFP. However, this RFP may be withdrawn, modified, or re-circulated at any time at the sole discretion of the Trust.

The Trust reserves the right, at its sole discretion and without providing reasons or notice, at any time and in any respect, to alter the procedures detailed in the RFP, to change and alter any criteria, to terminate discussions, to accept or reject any Response or Proposal, in whole or in part, to negotiate modifications or revisions to a Response and to negotiate with any one or more respondents to the RFP.

The Trust is not and will not be under any obligation to accept, review, or consider any Response to the RFP, and is not and will not be under any obligation to accept the lowest proposal submitted or any proposal at all. The Trust is not and will not be under any obligation to any recipient of, or any respondent to, the RFP except as expressly stated in any binding agreement ultimately entered into with one or more of the parties, either as part of this RFP process, or otherwise.

This RFP is not an offer but a request to receive qualifications and proposals from potential firms. Proposing firms agree that the contents of their Responses are valid for one year from the date of submission. The Trust will not be liable for any cost incurred in the preparation of a Response and will not reimburse any firm for their submission. Expenses related to the production and submission of a Response to this RFP are the sole responsibility of the proposing firm.

Any Response submitted will become the property of the Trust. The Trust reserves the right to retain all Responses submitted, and to use any information contained in a Response except as otherwise prohibited by law. All Responses and the contents thereof will be deemed to be a public record open to public inspection. Any exceptions to public disclosure under the Texas Public Information Act, Texas Government Code Section 552, should be clearly disclosed.

**Section 7.1: Cone of Silence:**

Proposing firms shall not contact any member of the Board of Trustees or the Trust staff, except as identified to ask specific questions related to the submittal process. No proposing firm shall be

allowed to lobby directly or indirectly in an attempt to contact any Board member or staff member of the Trust while this RFP is in the process of being awarded. Any violation of this provision will result in the disqualification of the proposing firm.

### **Section 8.0: Proposal Evaluation:**

A Committee designated by the Trust's Board of Trustees is expected to make a recommendation to the Board of Trustees and will complete the preliminary evaluation of responses to the RFP. Firms will be evaluated based upon the point system identified in Table 1, attached. Failure to provide relevant information may result in penalties being assessed and included in the evaluation score.

In addition, and at the sole discretion of the evaluating Committee, an interview/presentation may be required. It is expected that any proposing firms be available to participate in such an interview/presentation at their sole expense. The purpose of this interview would be to clarify the qualifications and methodology of the firm and their proposal.

The selected firm will be contacted by the Trust and provided with a proposed contract which will incorporate this RFP, the firm's response to this RFP, and other contract terms.

### **Section 9.0: Pre-Submission and Other Information**

If any firm has questions concerning this RFP, finds discrepancies or omissions in this document, or requires clarifications, such matters shall be submitted before June 17, 2024, in writing to:

Ms. Karina Chavez, via email at [ChavezKX2@elpasotexas.gov](mailto:ChavezKX2@elpasotexas.gov)

Questions received concerning this RFP by proposing firms after the RFP question deadline will not be answered.

The Trust reserves the right to request additional data or information after the Proposal submission date, if such data or information is considered pertinent, in the Trust's sole view, to aid the review and evaluation process.

The Trust reserves the right to supplement, add to, delete from, and change this solicitation document. Proposing firms will be advised by fax or email of any changes that are made.

The Trust reserves the right to reject any portion of the RFP and/or reject all proposals, to waive any informalities or irregularities in the RFP, or to re-invite, or to re-advertise.

**Table 1: Scoring Matrix**

<b><u>Criteria</u></b>	<b><u>Maximum Points</u></b>
<b>1. Firm and Key Personnel:</b>	
A. Firm and principal staff experience with relevant experience:	10
B. The experience of the members of the firm that are specifically assigned to the Trust:	10
C. Past experience with defined benefit public pension plan stakeholders:	15
	<b><u>Section Subtotal: 35</u></b>
<b>2. Lobbying Approach and Communications:</b>	
A. Proposed methodology to achieve the Statement of Work:	15
B. Communication strategy:	15
	<b><u>Section Subtotal: 30</u></b>
<b>3. Consulting Services Cost:</b>	
A. Fixed Cost of lobbying services as fixed price to include all costs:	35
	<b><u>Section Subtotal: 35</u></b>
	<b><u>Total Possible Points: 100</u></b>

Cost will be an important factor in the evaluation of this RFP. However, the Trust is not required to choose the lowest-cost proposal. The Trust will select the firm that, in the Board’s sole discretion, best serves the overall needs of the plan based upon the above criteria. Fees for the services related to RFP should be quoted as a fixed fee, on an all-inclusive basis, including travel, lodging, meals, and other out-of-pocket expenses. Included in the fees is the cost to attend any meetings with the Board and staff.

## EXHIBIT A

### Chapter 2.92 ETHICS<sup>1</sup>

#### *Article I. Code of Ethics*

##### **2.92.010 Policy and purpose.**

- A. All city officers and employees have a fiduciary duty to the citizens of the city to be ethical in fulfilling the responsibilities of their positions. At the very least, being ethical includes being disposed to comply with all laws that apply to one's position.
- B. Ethical conduct is motivated by sources inside and outside the law. The Texas Local Government, Election and Penal Codes regulate aspects of the conduct of city officers and employees. However, as ethical conduct is more than complying with state codes, the city strongly encourages all of its officers and employees to maintain the highest personal values and standards. While it is impossible to establish specific and exhaustive standards for all situations, the standards established in this chapter are minimum standards below which no city officer or employee's conduct should fall. This chapter has the following purposes:
  - 1. To establish an ethics review commission;
  - 2. To maintain and improve standards of public service;
  - 3. To improve public confidence in the integrity of city government;
  - 4. To provide a process by which officers and employees may identify and resolve ethical issues;
  - 5. To avoid conflicts between the personal interest and the public responsibilities of city officers and employees;
  - 6. To establish minimum standards of conduct to be adhered to by city officers and employees;
  - 7. To require disclosure of private financial interests by certain individuals;
  - 8. To require reporting of certain gifts received by certain individuals;
  - 9. To provide for complaints and resolution of ethical issues and concerns; and
  - 10. To provide penalties for failure to adhere to the minimum standards set forth in this chapter.
- C. This chapter is cumulative of and supplemental to all applicable provisions of the City Charter, other city ordinances, and state and federal laws and regulations. Compliance with this chapter does not excuse or relieve any person from any obligation imposed by the City Charter, other city ordinances, or state or federal laws or regulations. The filing of an ethics complaint pursuant to this chapter does not prohibit a person from availing themselves of the various remedies available to them under state or federal laws.
- D. To ensure and enhance public confidence in the city government, each city official and employee must not only adhere to the principles of ethical conduct set forth in this Code and compliance therewith, but

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<sup>1</sup>Ord. No. 19139, § 1, adopted Feb. 16, 2021, repealed the former Ch. 2.92, §§ 2.92.010—2.92.120, 2.92.150, and enacted a new Ch. 2.92 as set out herein. The former Ch. 2.92 pertained to similar subject matter and derived from Ord. 10663; Ord. 10976; Ord. 13880; Ord. 15030; Ord. 15293, §§ 2—6, 8, 10, adopted in 2002; Ord. 15855 § 1, adopted in 2004; Ord. 16301 §§ 2—4, 6, adopted in 2006; Ord. No. 17112, §§ 1—8, 10, adopted April 21, 2009; Ord. No. 17579, § 1, adopted June 14, 2011; Ord. No. 17752, § 1, adopted March 20, 2012; and Ord. No. 17949, § 1, adopted Feb. 19, 2013.

Cross reference(s)—Compliance with Ethics Ordinance, § 2.34.030.

they must scrupulously avoid the appearance of impropriety at all times. This section shall not be used for the basis of an ethical complaint.

( Ord. No. 19139 , § 1, 2-16-2021)

## **2.92.020 Definitions.**

- A. For the purposes of this chapter, the following definitions shall apply. This section shall not be used for the basis of an ethical complaint. Terms not defined in this chapter, but defined in the Texas Election Code, shall have the meanings assigned to them in the Texas Election Code.
1. "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 (by marriage). 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.
  2. "Board" means a board, commission or committee:
    - a. Which is established to participate in some manner in the conduct of city government, including participation which is merely advisory, whether established by city ordinance or City Charter, interlocal contract, state law or any other lawful means; and
    - b. Any part of whose membership is appointed by the city council, but does not include a board, commission, or committee, which is the governing body of a separate subdivision of the state.
  3. "Candidate" means a candidate for an elected office of the City of El Paso. All references to candidate shall include the candidate's principal campaign committee, whether or not the candidate acts as treasurer for reporting purposes. Candidate shall not include a city official or employee who is a candidate for any other elected office.
  4. "City" means the City of El Paso, Texas.
  5. "City resources" means any city asset, including but not limited to facilities, equipment, supplies, software, and personnel services.
  6. "Clear and convincing" means a measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.
  7. "Conducting business with the city" means any natural person who provides goods and services or seeks to provide goods and services to the city, or received or seeks to receive services from the city. This excludes natural persons seeking open records requests.
  8. "Confidential information" includes: (a) all information held by the city that is not available to the public under Chapter 552 of the Texas Government Code (Public Information Act); (b) any information from a meeting closed to the public pursuant to Chapter 551 of the Texas Government Code (Open Meetings Act); or (c) any information protected by attorney-client, attorney work product, or other applicable legal privilege.
  9. "Consanguinity" means that two individuals are related to each other if one is a descendant of the other, or they share a common ancestor (by blood). 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).
10. "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit. In-kind expenses, as defined in this section, is not a contribution.
  11. "Contributor" means a person making a contribution, including the contributor's spouse.
  12. "Days" means calendar days excluding city holidays.
  13. "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.
  14. "Employee" means a person employed and paid a salary by the city whether under civil service or not, including those individuals on a part-time basis and including those officially selected for employment but not yet serving; but does not include an independent contractor or city council member. For purposes of this chapter and for no other purpose, the term employee includes volunteers.
  15. "Ex parte communications" means a communication made at a time other than during a public meeting of the ethics review commission, a commission panel, or the city council, excluding documents or information submitted pursuant to the requirements of this chapter and any correspondence or other communications sent to the city attorney.
  16. "Frivolous complaint" means a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
  17. "Gift" means any gift, benefit or other economic gain or economic advantage to an officer or employee or to a relative of an officer or employee.
  18. "Honorarium" shall mean a payment, other than reimbursement for meals, travel or lodging expenses, for services provided in connection with addressing an audience or engaging in a seminar.
  19. "In-kind expenses" means the value of personal services provided without compensation by any individual who volunteers on behalf of a candidate or political committee and incidental vehicular travel expenses incurred in conjunction with the provision of the personal services.
  20. "Mailbox rule" means that a document sent to another person or party by mail is considered served, and a period of limitations begins to run, on the day it is placed, with proper postage and a correct address, into the mailbox. As used in this chapter, the mailbox rule shall apply to the triggering of limitation periods and the calculation of deadlines for providing and responding to written notices.
  21. "Ministerial act" means an act performed in a prescribed manner and does not require the exercise of any judgement or discretion.
  22. "Newly discovered evidence" means evidence that was in existence at the time of the hearing, but was unknown to the parties involved and could not have been discovered with reasonable diligence before the hearing.
  23. "Officeholder" means the incumbent holding an elected city office.
  24. "Officer" means a member of the city council any member of a board appointed by the city council, and municipal court judges. It includes any member of a board that functions only in an advisory or study capacity.
  25. "Official city business" means a purpose or function related to the duties or activities of office or employment.

26. "Political committee" means a specific purpose political committee or a general purpose political committee as those terms are defined in the Texas Election Code.
27. "Public event, appearances or ceremonies" means those functions, activities and ceremonies conducted by or for the benefit of any governmental entity; a function, activity or ceremony conducted by a non-profit corporation or similar organization formed for educational, scientific, community-betterment or economic development purposes which relates to the purpose for which the non-profit corporation or organization was formed; or a function, activity or ceremony which honors or recognizes the accomplishments of a political, prominent or public figure.
28. "Quasi-judicial proceeding" means by hearing or proceeding held by a public administrative Officer, to include but not be limited to a hearing officer, arbitrator or administrative law judge, who is required to hear or investigate facts and to draw conclusions from them as a basis for his or her official action and to exercise discretion of a judicial nature.
29. "Relative" means a person who is related to an officer or employee as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, step son-in-law, stepdaughter, step daughter-in-law, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.
30. "Resident" means any natural person that resides within the city limits for fourteen or more consecutive days and can provide proof such as a state issued identification card.
31. "Substantial interest in business entity" means the definition provided in Texas Local Government Code Section 171.002 as may be amended.
32. "Volunteer" means an individual who provides services to the city without any expectation of compensation or financial gain and without receiving any compensation or financial gain.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 7, 12-12-2023)

## ***Article II. Standards of Conduct***

### **2.92.030 General provisions.**

#### **A. Officers or employees:**

1. Shall not use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them;
2. A city officer or employee shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the city;
3. Shall not participate in making or influencing any city governmental decision or action in which they know that they have any financial interest distinguishable from that of the public generally or from that of other city officers or employees generally;
4. Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person;
5. Shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities and duties;

6. Shall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions. This provision applies to former officers and employees as well as to current ones;
7. Shall not utilize city resources or by omission allow city resources to be utilized for personal benefit or the personal benefit of any other person or entity, except to the extent that the benefit received is strictly incidental to the performance of official duties, or to the extent that the person is entitled by law to obtain public services from the city;
8. Shall not transact any business (other than ministerial acts) on behalf of the city with any business entity of which they are officers, agents or members, or in which they have a financial interest. In the event such a circumstance arises, then they shall make known their interest, and:
  - a. In the case of an officer, abstain from voting on the matter and refrain from discussion of the matter at any time with the other members of the body of which he or she is a member and with any other person or body in city government which may consider the matter; and
  - b. In the case of an employee, disclose the matter to an appropriate administrative authority within city government so that reassignment or other suitable action may be taken to remove the employee from any further involvement in the matter;
9. Shall not personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation, or determination from the body or department of which the officer or employee is a member. This restriction does not apply to outside employment of an officer if the employment is the officers primary source of income;
10. Shall not accept other employment or engage in outside activities incompatible with the full and proper discharge of their duties and responsibilities with the city, or which might impair their independent judgment in the performance of their public duty;
11. Shall not personally participate in a decision in a matter if the officer or employee is negotiating or has an arrangement concerning prospective employment with a person or organization that has a financial interest in a matter under consideration by or within the jurisdiction of the city, and in the case of an employee if it has been determined by the city manager that a conflict of interest exists. For purposes of this section, the term "decision" shall mean a decision, approval, disapproval, recommendation, investigation or rendering of advice, and the term "matter" shall include but not be limited to a matter, proceeding, application, request for ruling or determination, contract or claim which involves the city. In such instance, the officer or employee shall:
  - a. In the case of an employee, immediately notify the official responsible for appointment to his or her position of the nature of the negotiation or arrangement and, if the city manager determines that a conflict of interest exists, follow the instructions of the city manager with regard to further involvement in the matter; or
  - b. In the case of a board member, immediately notify the board of which he or she is a member of the nature of the negotiation or arrangement and:
    - i. Refrain from discussing the matter at any time with other board members or members of the city council if the city council will also consider the matter; and
    - ii. Abstain from voting on the matter; or
  - c. In the case of a member of the city council, file an affidavit with the city clerk describing the nature of the negotiation or arrangement and:
    - i. Refrain from discussing the matter at any time with other council members or members of a board that will consider the matter; and
    - ii. Abstain from voting on the matter;
12. Shall not receive any fee or compensation for their services as officers or employees of the city from any source other than the city, except as may be otherwise provided by law. This shall not

- prohibit their performing the same or other services for a public or private organization that they perform for the city if there is no conflict with their city duties and responsibilities;
13. Shall not recklessly disregard the established practices or policies of the city relating to the duties assigned to the officer or employee;
  14. Shall not, in the case of a member of the city council or an employee, personally represent or appear in behalf of the private interest of another before the city council, or any city board or department; or, if the represented person's interest is adverse to that of the city, represent any person:
    - a. In any quasi-judicial proceeding involving the city; or
    - b. In any judicial proceeding to which the city is a party; provided that nothing in this subsection shall preclude:
      - i. A city council member from speaking or appearing without compensation before the city council or any board or department on behalf of constituents in the course of his or her duties as an elected official;
      - ii. Any employee from performing the duties of his or her employment;
      - iii. Any employee from appearing before the city council or any city board or department, in a manner consistent with other city policies and rules, to discuss any general city policies or public issues, including the presentation of viewpoints or petitions of other employees; or
      - iv. A city council member or an employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding; and
  15. Shall not, in the case of a board member, personally represent or appear in behalf of the private interests of another:
    - a. Before the board of which he or she is a member;
    - b. Before the city council unless the board member discloses his or her status as a board member to the council and the representation or appearance does not relate to a matter that was heard or decided by the board of which the board member is a member or a board that has appellate jurisdiction over the board of which the board member is a member;
    - c. Before a board which has appellate jurisdiction over the board of which he or she is a member; or
    - d. In a judicial or quasi-judicial proceeding to which the city or an employee of the city is a party, if the interest of the person being represented is adverse to that of the city or an employee of the city and the subject of the proceeding involves the board on which the board member is serving or the department providing support services to that board.
  16. An officer or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate the provisions in this chapter.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.040 Gifts.**

- A. An officer or employee shall not solicit, accept, or agree to accept for themselves or a relative, the following:
  1. Any gift, of which the known or readily apparent value for each separate gift, exceeds seventy-five dollars in value;

2. Any gift that might reasonably tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct; or
  3. Any gift from any lobbyist registered under Chapter 2.94 of this Code, of which the known or readily apparent value for each separate gift exceeds ten dollars in value.
- B. Special applications. Subsection A above does not include:
1. Political contributions made or received and reported in accordance with the Texas Election Code;
  2. Awards, such as plaques, certificates, trophies or personalized mementos, which are reasonable in light of the occasion and publicly presented in recognition of public service;
  3. A gift from a relative or a personal, professional, or business relationship independent of the official status of the recipient;
  4. Gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities which are accepted for the city or in conjunction with the officeholder duties of an elected official;
  5. Commercially reasonable loans made to an officer or employee in the ordinary course of the lender's business;
  6. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with attending seminars or workshops, speaking engagements, teaching, or rendering other public assistance to an organization or another governmental entity;
  7. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
  8. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event that is sponsored or conducted by the city;
  9. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event in which the officer or employee is participating in connection with official duties or in which the officer or employee is participating in connection with his spouse's or child's position or duties, provided that the receipt of such ticket is reported as a reportable gift if such reporting is required under Section 2.92.070 B.2. of this Code; and
  10. Any solicitation for civil or charitable causes, or admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the officer or employee.
  11. Items received that are of nominal value (less than ten dollars).

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.050 Reporting requirements.**

- A. Financial disclosure.
1. Each officer, excluding elected officials whose financial disclosure requirements are governed by City Charter, and each designated employee, shall file with the city clerk, within ten 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. 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.
3. No person submitting such a statement of financial disclosure must indicate therein the extent of financial involvement in any investments.
4. 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 1<sup>st</sup> and June 30<sup>th</sup> 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.
5. Each candidate for elective office and each candidate for appointment to the boards and commissions identified or as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.
6. Each year, by August 15<sup>th</sup>, the city clerk shall prepare a report noting whether each person, who is required to file a financial disclosure statement has done so as of the date of the city clerk's report. If the person has not filed their required financial disclosure statement upon the time the city clerk finished the report or the person fails to file their financial disclosure statement within fourteen days of their appointment and they do not already have a current financial disclosure statement 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 them that they have not filed a financial disclosure statement as required by this section and that they have fourteen days from the date of the letter to file his or her financial disclosure statement. If the person is a board member covered under Section 2.92.050(A)(9)(e), 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. In the event of an unforeseen circumstance, including but not

limited to, military service or acute illness or leave without pay under the Family Medical Leave Act, the deadline for receipt by the city clerk is extended until such time as the board member or employee resumes his or her city duties.

7. In the event that a designated employee that reports to the city manager, fails to file a required financial disclosure report, or had filed incomplete or unresponsive information by the deadlines calculated under Section 2.92.050(A)(1) of this section, the city clerk shall notify the individual that the matter is being forwarded to the city manager for appropriate action.
  8. In the event that a board member fails to file his or her financial disclosure statement or has filed incomplete or unresponsive information by the deadlines calculated under Section 2.92.050(A)(1), (4), or (9) 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.
  9. The removal provision established in Section 2.92.050(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.
  10. Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.
- B. Reporting of gifts.
1. Each officer and designated employee shall keep a written record of all reportable gifts received during his or her term of office or employment.

2. Such record shall be made for each calendar month. The record shall include a description of the reportable gift received; the name of the person and organization giving the reportable gift; the relationship of the donor to the reporter; the value or estimated value of the reportable gift; and the immediate or intended disposition of the reportable gift. A reportable gift consisting of a certificate or admission ticket or pass to a future event or activity shall be deemed to have been received on the date on which the certificate or admission ticket or pass was received, and if such certificate or admission ticket or pass must be reported under subsection (B)(4)(d), a statement as to the duties performed.
3. Such monthly record shall be submitted to the city clerk on the form she provides no later than the tenth day of the following month for each month during which a reportable gift is received.
4. "Reportable gifts" for purposes under this section shall mean the following:
  - a. Any gift that is not covered by the special applications under Section 2.92.040 B of this Code, has a value of more than ten dollars, and was conferred on account of the official status of the recipient or in connection with official city business, except as provided below in subsections b, c and d;
  - b. Any hosting, such as travel and expenses, entertainment, meals or refreshments, that has a value of more than fifty dollars, other than hosting provided on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
  - c. Any award presented in recognition of public service, or an honorarium, with a value of more than fifty dollars; and
  - d. Any tickets or other admission passes to an event with an actual or face value of more than ten dollars for all tickets or admission passes to the same event received at the same time, except for tickets or admission passes provided by the city for an event that is sponsored or conducted by the city.
5. Any gift, benefit, hosting, honorarium or other economic gain or economic advantage that is refused and returned to the sender within seventy-two hours of receipt shall not constitute a reportable gift under this section.
6. Any gift which exceeds seventy-five dollars in value, which is not covered by the special applications under Section 2.92.040 B of this Code and which is turned over to the city manager within seventy-two hours of receipt for acceptance as a gift to the city, shall not constitute the acceptance of a gift in violation of this Code, provided that the disposition of such gift is reported on a timely filed reportable gift form.
7. The manager, on a monthly basis, shall prepare a report which shall be made available to the public of all gifts that have been turned over to his office for acceptance as a gift to the city.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.060 Restrictions for former city officers and employees.**

- A. All executive staff or salaried professional employees reporting directly to the city manager as described in Section 6.2-2(H), Unclassified Services of the City Charter, are prohibited during the twelve months after leaving the service or employment of the city, to engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any other person or organization in any formal or informal appearance before the city council or a city board or department.
- B. An officer or other employee in a position which involves significant reporting, decision-making, advisory, or supervisory responsibility who leaves the service or employment of the city shall not, during the twenty-four months after leaving the service or employment of the city, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any other



person or organization in any formal or informal appearance before the city council or a city board or department. For purposes of this subsection only the term "Officers" excludes members of boards and commissions of the city.

- C. No former members of the 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, the zoning board of adjustment, or any other board or commission of the city, shall, during the twelve months after leaving the board or commission, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any person or organization in any formal or informal appearance before their former respective board or commission.
- D. Former officers and employees shall not use for their personal benefit and shall not disclose, except as may be required by law, confidential information gained in the course of or by reason of their positions. This provision shall not prohibit the disclosure of any such information to incumbent city officers or employees to whose duties such information may be pertinent.
- E. No person shall, during the twelve months after having served on and left the civil service commission, represent any classified employee of the city before the civil service commission or before a hearing officer appointed by the civil service commission on a disciplinary matter or grievance. Additionally, a person after leaving the civil service commission, shall not represent an employee on any matter before the civil service commission or a hearing officer appointed by the civil service commission that went before the civil service commission during the time that such person served on the civil service commission.
- F. No person shall, during the twelve months after having served on and left the civil service commission, be appointed as a hearing officer for the civil service commission.
- G. No person appointed as a hearing officer for the civil service commission shall, during the time of service and for twelve months after having served, represent any classified employee of the city before the civil service commission or before a hearing officer appointed by the civil service commission on a disciplinary matter or grievance. A former hearing officer appointed by the civil service commission shall not represent a classified employee on any matter before the civil service commission or a hearing officer appointed by the civil service commission that went before such person during the time he or she served as a hearing officer.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.070 Campaign finances.**

- A. Conformity with Texas Election Code. Pursuant to this chapter, candidates, officeholders and political committees participating in city elections may be required to make additional disclosures, to file additional notices, and to comply with certain restrictions not set out in the Texas Election Code. It is not the intent of the city to enact any provision in conflict with or in derogation of the Texas Election Code. The requirements set out in this section are cumulative of those in the Texas Election Code, and nothing in this section shall be construed to limit obligations imposed by the Texas Election Code.
- B. Applicability of section.
  - 1. The provisions of this section pertaining to candidates and officeholders shall apply to all persons who have an active appointment of a campaign treasurer by a candidate form on file with the city clerk.
  - 2. Officeholders are subject to the regulations applied to candidates for the office he or she holds.
- C. Campaign contributions.
  - 1. An individual shall not make a contribution in support of, or opposition to, a candidate for city office under a name other than the name by which the individual is identified for legal purposes.

2. A contribution must be made in the name of the individual who owns and is contributing the thing of value, and one individual shall not make a contribution on behalf of another individual.
3. It shall be unlawful for any person who is an adverse party in any pending litigation against the city, or who has an ownership interest of ten percent or more in any entity that is an adverse party to the city in any pending litigation to contribute or donate any funds to any candidate for city office if the litigation seeks recovery of an unspecified amount or of an amount in excess of twenty-five thousand dollars, exclusive of costs of court and attorneys' fees. Such restriction shall not be applicable to attorneys representing a person or entity in pending litigation against the city. It shall be the duty of any candidate to refuse to accept any contribution that may be offered by a person who is known to the candidate to have a litigation interest described in this section. In the event that any candidate unknowingly accepts a contribution in contravention of the foregoing provision, then it shall be the duty of the candidate to return the contribution within ten days after the candidate becomes aware of the litigation.

D. Required filings.

1. Each candidate shall file with his application, consent and affidavit of candidate, a written statement acknowledging that he or she has received a copy of the city's campaign finance regulations.
2. A political committee which makes contributions or expenditures in connection with advocating or opposing a position or issue in a city election must file with the city clerk a copy of each contribution and expenditure report filed with the Texas Ethics Commission. The filing date for filing with the city clerk shall be the date established under the Texas Election Code for filing with the Texas Ethics Commission.
3. The starting and ending dates of reporting periods and the due dates of contribution and expenditure reports by candidates for city elections, officeholders and by political committees shall be governed by the Texas Election Code.
4. Contribution and expenditure reports required to be filed with the city clerk's office under the Texas Election Code must be filed and updated electronically except as provided in Section 2.92.070(D)(4)(b).
  - a. The city will provide access to computer equipment for candidates to file the electronic reports.
  - b. A candidate, officeholder, or political committee that is required to file electronic reports under this chapter may apply for an exemption with the city clerk if:
    - i. The candidate, officeholder, or campaign treasurer of the committee files with the city clerk's office an affidavit stating that the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and
    - ii. The candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed the greater of twenty thousand dollars or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended, or make political expenditures that in the aggregate exceed the greater of twenty thousand dollars or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended.
  - c. The city will post the contribution and expenditure reports through the city's website. A paper copy of any report will be made available, upon written request.
  - d. Failing to timely file a report required by this section is a violation hereof, as is the filing of a report with incorrect, misleading, or incomplete information. If an individual inadvertently files an incorrect or incomplete report, it is his or her responsibility to file an amended

report as soon as possible, though no later than fourteen days after discovery of the error or after the error should have reasonably been discovered.

- E. Complaints.
1. Individuals may file a complaint alleging noncompliance with this section by an officeholder by submitting the matter to the ethics review commission in the same manner as provided in Section 2.92.160 of this chapter.
  2. If the city clerk receives a written complaint alleging noncompliance with this section or if the city clerk determines that a required report of a candidate, officeholder or political committee has not been filed by the deadline imposed by this section or state law, the city clerk shall forward this information to the city attorney for investigation and appropriate enforcement action or submission to the ethics review commission, if warranted.
- F. Severability. It is the intent of the city that this section shall comply in all respects with applicable provisions of the United States Constitution, the Texas Constitution, and the charter of the city. If any provision of this section is declared by a court of law to be illegal, void, invalid, or unconstitutional or in violation of the City Charter, such holding shall not affect the validity of the remaining portions of this section, and such remaining portions shall remain in full force and effect.

( Ord. No. 19139 , § 1, 2-16-2021)

## **2.92.080 Disclosure of campaign contributions and donations.**

- A. The following definition applies to these terms as used in this section: "Contribution" and "contributor" are as defined in this chapter, and shall include, but not be limited to cash, loans, offsets to expenditures, in-kind contributions, donations, and gifts. "Donation" means cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district. The term "donor" includes an individual and spouse, a business entity, or and individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item. "Benefiting" as used in this section shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.
- B. Reporting of Contributions and Donations by Council Member. Council members must verbally disclose the amount of any contributions or donations received totaling an aggregate of five hundred dollars or more prior to discussion or vote on any council item benefiting the contributor or donor. This requirement includes any contribution received at any time during the council member's campaign(s) or term(s) of office for city council. Such member shall file a written notation with the city clerk to be included with the agenda backup documentation. This disclosure shall be recorded in the minutes of the meeting.
- C. Reporting of Contributions and Donations by Contributors. No later than one week prior to the relevant council meeting, a donor or contributor benefiting from an agenda item, and who has contributed or donated an accumulated total of five hundred dollars or more to any current member of city council or to the city through their office for use by the member's office or in their district at any time during their campaign(s) or term(s) of city office shall notify the city of the amount and to whom. It shall be the responsibility of the contributor or donor to report the contribution so the notice of the contribution is posted on the city council agenda with the posting for the relevant item.
- D. These requirements shall apply to all meetings of the city council.
- E. If a member of the city council accepts a campaign contribution from a contributor of five hundred dollars or more, he shall report the amount and the donor by an item for notation on the consent agenda of a city council meeting within thirty days of the date of such contribution.
- F. No later than thirty calendar days after the end of each fiscal year, each member of council shall file a report listing all campaign contributions and donations to the city for use by their office received during

that fiscal year, to include the identity and address of each contributor or donor, and the total amount received from each contributor or donor.

- G. No action of the council which is otherwise legal shall be invalidated merely by reason of the disclosure of a campaign contribution by a member of the city council or the failure of a member to disclose a campaign contribution or donation.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 1, 12-12-2023)

## **2.92.090 Ethics training.**

- A. This subsection applies to all city officers.
1. Each officer shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
  2. Each officer shall complete an initial course of training within ninety days after the effective date of this chapter.
  3. Each board, committee and commission member shall complete an initial course of training within ninety days after the effective date of this chapter.
  4. Each officer taking office for the first time on and after shall complete the course of training within sixty days after taking the oath of office.
  5. Each board, committee and commission member who is appointed to any board, committee or commission on and after January 1, 2013, and who has not completed the initial course of training or a refresher training course within the three years prior to the date the person takes the oath of office, shall complete the initial course of training within ninety days after the date the person takes the oath of office.
  6. Each officer shall thereafter complete refresher training courses as provided in subsection (C).
- B. This subsection applies to all city employees.
1. Each city employee shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
  2. All employees shall complete an initial course of training as part of each employee's participation in a new employee orientation, as established by the city manager or his designee.
  3. Each employee shall thereafter complete refresher training courses as provided in subsection (C), or as otherwise directed by the city manager.
- C. The courses of training required under this section shall be provided and completed as follows:
1. Each officer and employee shall complete the initial course of training as provided in subsections (A) and (B), as applicable.
  2. Each officer shall thereafter complete a refresher training course that will be offered during every third year subsequent to the initial course of training provided during calendar year 2020, with the first refresher course of training to be offered during calendar year 2023.
  3. Each employee shall thereafter complete a refresher training course as provided in subsection (C)(2), or as otherwise directed by the city manager.
  4. An officer or employee who has completed his initial course of training within the twelve months prior to the start of a calendar year in which refresher training is required is not required to complete the refresher training offered during that immediately-following calendar year, but shall be required to complete all subsequent refresher training courses, as provided herein.
- D. The city manager shall ensure that the training required by this section is made available.

1. The training course and refresher training courses shall be developed and provided by the city manager or his designees, and be subject to approval as to form by the city attorney or his designees.
2. The training courses must include instruction in:
  - a. Requirements relating to the standards of conduct imposed under this chapter, including, but not limited to, the acceptance of gifts;
  - b. State penal and other laws that relate to ethical conduct;
  - c. Reporting and disclosure requirements of the ethics ordinance and state law;
  - d. Basic requirements of the lobbying ordinance and facilitating compliance by others with that chapter;
  - e. Penalties and other consequences for failure to comply with the ethics and lobbying ordinances; and
  - f. The application of the ethics ordinance to unique situations relating to the board, commission or committee that the officer has been appointed to, or the application of the ethics ordinance to unique situations relating to the type of work that an employee does or the department he/she is assigned to.
3. The courses of training required under this section may be offered through live instruction or through the use of a video-recorded presentation.

( Ord. No. 19139 , § 1, 2-16-2021)

### ***Article III. Ethics Review Commission***

#### **2.92.100 Purpose and mission.**

- A. In order to assist the city council, an ethics review commission of nine members is hereby established.
- B. The ethics review commission shall serve as an advisory body to the mayor and city council on matters concerning ethics in government of the city.

( Ord. No. 19139 , § 1, 2-16-2021)

#### **2.92.110 Membership.**

- A. All members of the ethics review commission shall be residents of the city. Members cannot be city employees, hold any city elected office, or be a candidate for any city elected office. A member may contribute to a city political campaign as long as they are compliant with the City Charter.
- B. No member of the ethics review commission shall be related within the third degree of consanguinity or within the third degree of affinity to a member of the city council or the city manager.
- C. Members shall be appointed for a two-year period, except that appointments made to fill vacancies created during a term shall only serve for the remainder of the term. The term of each appointee shall commence on February 21<sup>st</sup> and shall terminate on February 20<sup>th</sup> at the conclusion of the respective term. Terms shall be staggered in the following manner:

Mayor's appointee	Terms expire in even numbered years
District 1 appointee:	Terms expire in even-numbered years
District 2 appointee:	Terms expire in odd-numbered years

District 3 appointee:	Terms expire in even-numbered years
District 4 appointee:	Terms expire in odd-numbered years
District 5 appointee:	Terms expire in odd-numbered years
District 6 appointee:	Terms expire in even-numbered years
District 7 appointee	Terms expire in even-numbered years
District 8 appointee	Terms expire in odd-numbered years

( Ord. No. 19139 , § 1, 2-16-2021)

**2.92.120 Jurisdiction.**

The ethics review commission shall have jurisdiction to review alleged violations of Article II (Standards of conduct) of this chapter by officers, candidates, and political committees that occurred within two years of the complaint being filed. Additionally, the ethics review commission shall have jurisdiction over contributors and donors only to review alleged violations of Section 2.92.080 by contributors or donors who have obligations under that section.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 2, 12-12-2023)

**2.92.130 Duties.**

- A. The ethics review commission shall meet as necessary to accomplish the following duties. In order to conduct a meeting there must be a quorum of five members of the ethics review commission.
  - 1. Review, evaluate and provide recommendations on issues as requested by the city council.
  - 2. Provide recommendations for the city council regarding orientation programs or procedures for officers and volunteers focusing on education of the importance of ethics in city government and on the provisions of this chapter.
  - 3. Provide information to the community on ethics in city government, as may be necessary for the promotion of the public trust.
  - 4. Issue advisory opinions in the manner set forth in Section 2.92.150 below.
  - 5. Review, evaluate and issue determinations, impose sanctions and provide recommendations to the city council on complaints regarding officers, candidates, political committees, and for compliance with City Code Section 2.92.080, donors or contributors described therein.
  - 6. Provide information on the disposition of specific issues by referring to minutes of commission meetings and ethics review commission reports.
  - 7. Periodically review and propose changes to this chapter and the forms utilized pursuant thereto.
  - 8. Develop guidelines and procedures to promote compliance with this chapter.
  - 9. Prepare written annual reports for the city council. Submit additional reports as needed.
  - 10. Any other duties or assignments that may be directed by city council.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 3, 12-12-2023)

### **2.92.140 Procedures.**

- A. The ethics commission will hold their first meeting every year on or about the first business day after April 1<sup>st</sup>. At this meeting, they will select a chair and vice chair and adopt rules for their proceedings, which shall be subject to approval by city council. The rules that are adopted must be consistent with the City Charter, city ordinances, and the ethics code, and shall, to the extent possible, be like the rules set up by city council for its own meetings.
- B. The chair of the ethics review commission shall make appointments to the advisory opinion panel as needed to issue advisory opinions to officers upon written request. The advisory opinion panel shall never have less than three members of the ethics review commission.
- C. The ethics review commission shall be assigned staff by the city manager to assist in its duties, as the city manager and city council deems necessary. In the case that the ethics review commission is hearing a complaint against a member of city council or the city manager, outside legal counsel may be retained when requested by the city attorney at any time during the ethics proceedings to perform his or her duties under Section 2.92.170 of this Code and any other duties for the remainder of the ethics proceeding.
- D. The ethics review commission may consolidate into one complaint the following:
  - 1. Multiple complaints against the same officer that involve the same incident; or
  - 2. Multiple complaints against the same officer that involve the same alleged misconduct.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.150 Advisory opinions.**

- A. By written request to the city attorney, any officer may request an advisory opinion regarding whether his or her proposed conduct would violate this chapter. Within thirty days of receiving the written request, the city attorney shall call a meeting of the advisory opinion panel to review the request. The panel shall meet to confer and issue an advisory opinion. The panel, however, showing a good cause, may decline to issue an advisory opinion or refer the matter to the whole ethics review commission.
- B. The city manager may request an advisory opinion regarding the proposed action or conduct of one or more employees by submitting a written request to the city attorney. The city will issue an opinion within thirty days of receiving the advisory opinion request, unless the city attorney, showing good cause, declined to issue an advisory opinion.
- C. A person who in good faith acts in accordance with a written advisory opinion issued by the advisory opinion panel or ethics review commission cannot be found to have violated this chapter by engaging in conduct approved in the advisory opinion if:
  - 1. The person requested the issuance of the opinion; or
  - 2. The request for an opinion fairly and accurately disclosed all relevant facts necessary to render an opinion.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.160 Filing a complaint.**

- A. Any resident of the city (including a member of the ethics review commission), or natural person conducting business with a city who believes a city employee has violated Article II of this chapter may file a sworn complaint to the city's human resources department or to the employee's supervisor.

- B. 1. Any resident of the city (including a member of the ethics review commission) or natural person conducting business with the city who believes an officer, candidate, political committee, has violated Article II of this chapter within the last two years, may file a sworn complaint with the city clerk.
  - 2. Any resident of the city (including a member of the ethics review commission) or natural person conducting business with the city who believes a contributor, donor, individual, or business entity has violated City Code Section 2.92.080 within the last two years, may file a sworn complaint with the city clerk.
- C. Any resident of the city (including a member of the ethics review commission) or natural person conducting business with the city who believes the city attorney, the city manager or the chief internal auditor has violated Article II of this chapter within the last two years, may file a sworn complaint with the mayor and the mayor pro tempore.
- D. A complaint filed under this section must be in writing and under oath and must include:
  - 1. The name of the complainant;
  - 2. The telephone number and the mailing address and/or electronic mail address of the complainant;
  - 3. Proof of residence or that the complainant is conducting business with the city;
  - 4. The name of each person complained about;
  - 5. The position or title of each person complained about;
  - 6. The nature of the alleged violation, including the specific provisions of this chapter alleged to have been violated;
  - 7. A statement of the facts explaining the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
  - 8. All other documents or material relating to the alleged violation that the complainant can provide; a list of the documents or materials that are relevant to the alleged violation but are not in possession of the complainant or are unavailable to the complainant, including the location of such documents or materials;
  - 9. An affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts constitute a violation of this chapter. If the complaint is based on information and belief, the complainant shall state the source and basis of the information and belief. Each complainant, other than a member of the ethics review commission, shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. The complaint must state on its face an allegation that, if true, constitutes a violation of this chapter that is administered and enforced by the commission.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 4, 12-12-2023)

### **2.92.170 Complaint review.**

- A. The city clerk will review a filed complaint to ensure it is properly sworn and complete. If the complaint is missing required information, the city clerk will send the complaint back to the complainant through regular mail and/or electronic mail, and the complainant will have twenty-one days to correct the complaint and refile it otherwise the city clerk may reject the complaint. If the complaint is complete the city clerk will forward the complaint to the city attorney and the respondent within seven days. If the city attorney refers the complaint to the ethics review commission under subsection 2.92.170(B)(2) below, respondent has fourteen days from notice to respondent of such to file a response with the city clerk.
- B. Within twenty-one days of receiving the complaint from the city clerk, the city attorney will either:



1. Dismiss the complaint because it falls outside the ethics review commission's jurisdiction. If a complaint is dismissed in this manner the decision of the city attorney will be final. The city attorney shall provide a copy of the dismissal to the ethics review commission and to the complainant through regular mail or electronic mail; or
2. Refer the complaint to the ethics review commission. Once this occurs, the city attorney may confer with the chair of the ethics review commission and vice-versa about any procedural matters regarding the complaint.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 5, 12-12-2023)

### **2.92.180 Ex parte communications.**

- A. It shall be unlawful to engage in any of the following ex parte communications regarding a complaint that has been filed pursuant to this chapter:
  - 1. For the complainant, the respondent, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a complaint in ex parte communication with a member of the ethics review commission, a member of the city council, or any known witness to the complaint; or
  - 2. For a member of the ethics review commission, to knowingly entertain an ex parte communication prohibited by subsection (A)(1) above, or to communicate about any issue of fact or law relating to the complaint directly or indirectly with any person other than a member of the ethics review commission.
- B. The city attorney or his/her designee conferring with the chair or members of the ethics review commission on procedural matters regarding a complaint shall not be considered prohibited ex parte communications.
- C. If a member of the ethics review commission violates this section of the chapter, they shall recuse themselves from any further proceedings regarding the complaint. Should the commission not reach a quorum because members recused themselves, then the city council shall appoint temporary members to the commission to hear the complaint or the chair of the ethics review commission shall appoint a panel with the remaining eligible members to complete the hearing and disposition process. Temporary membership to the ethics review commission expires upon the disposition of a complaint and may only be reinstated by city council if the complaint is to be reconsidered pursuant to the provisions in this chapter.

( Ord. No. 19139 , § 1, 2-16-2021)

### **2.92.190 Hearing.**

- A. If a complaint is referred to the ethics review commission, the commission must schedule a hearing and provide copies of all relevant documentation to the members of the commission, the complainant, and the respondent within thirty days of being referred the complaint. While the complaint is pending members of the ethics review commission are prohibited from discussing the complaint or matters of the hearing with any officer, the city manager, or other employees of the city, or any other person whether that person is associated with the complaint or not.
- B. For all hearings, the person submitting the complaint and any persons named in the complaint will be sent written notice of the date, time, and place of the hearing by the ethics review commission through regular mail and/or electronic mail so each party may attend.
- C. If either the complainant or the respondent, or their attorneys, if any, are unable to attend any scheduled hearing, they may request a continuance of the hearing by submitting a written request for continuance to the ethics review commission through regular mail and/or electronic mail at least five days before the scheduled hearing. The complainant and the respondent, including their attorneys, shall receive one automatic continuance. Any other requests for continuance shall be delivered in writing to the ethics review commission through regular mail and/or electronic mail, and the chair will determine if a continuance will be granted at the next scheduled meeting. The request for continuance must be received at least five days before the scheduled hearing. The commission shall consider if granting continuance promotes fairness to all parties and if there is good cause shown in the request for continuance.
- D. The complainant, respondent, either of their attorneys, or any witnesses that have been requested to appear at the hearing may raise questions regarding the proceedings before the ethics review commission or any preliminary issues regarding the scheduled hearing to the attention of the city attorney. The city attorney or his or her designee shall resolve the matters to the extent possible, and if

necessary, consult with the commission to determine the appropriate resolution at the commission's scheduled meeting.

- E. Only eligible commissioners of the ethics review commission will hear matters referred to the commission as a whole. If a commissioner recuses himself or herself, they will refrain from voting on the matter and from discussing the matter at any time with other commissioners of the ethics review commission. A commissioner shall not be eligible to hear issues under this chapter and shall recuse himself or herself in the following situations:
1. Where, because of familial relationship, employment, investments, or otherwise, his or her impartiality might be questioned;
  2. When the commissioner issued the complaint;
  3. When the complaint involved the member of city council who nominated him or her for a seat on the ethics review commission;
  4. When the commissioner is not present during any portion of the hearing of the complaint. The commissioner shall recuse himself or herself from further hearing and matters regarding the complaint and will no longer be eligible to participate in the disposition of the complaint; or
  5. When the complaint involved the member of the city council in whose campaign the commissioner, if during the last twelve months substantially participated by acting as a fundraiser or leader in the campaign, or contributing five hundred dollars or more.
- F. General rules for the hearing.
1. The ethics review commission may establish time limits and other rules relating to the participation of any person in the hearing for the purpose of establishing an orderly and fair hearing process for all participants. Such rules shall include determining parameters for opening and closing statements, the roles of the complainant and the respondent, limitations regarding testimony for non-relevant or cumulative witnesses, and the presentation and direct questioning of witnesses by the respondent, complainant, or their attorneys.
  2. The respondent and the complainant have the right to attend the hearing, the right to make a statement and present witnesses pursuant to the rules set by the commission for the hearing, and the right to be accompanied by legal counsel or advisor. The respondent and the complainant may be advised by their legal counsel or advisor during the course of the hearing. The legal counsel or advisor of the complainant may not speak on behalf of the complainant, except to represent the complainant while testifying. The respondent, the complainant, or their legal counsel or advisor, may not personally question or cross-examine witnesses, except if the commission has granted them permission to do so.
  3. As provided by the City Charter, the ethics review commission shall have the authority to request witness testimony and production. The commission chair or his/her designee on behalf of the commission, shall have the authority to request any and all necessary assistance from city council for the purpose of compelling testimony, including subpoenaing witnesses in accordance with the procedures set out by the City Charter and city ordinances. The commission will have the authority to bring matters to city council through agenda items properly drafted by the city attorney or his/her designee.
  4. The city attorney and his/her designee will disclose any information or evidence actually known to them that would validate and/or negate the alleged violation of this chapter to the ethics review commission and to the respondent.
  5. The ethics review commission is not bound by the rules of evidence, but will rely on evidence that a reasonably prudent person commonly relies on in the conduct of their personal affairs. The commission shall hear relevant evidence, but shall not rely on hearsay.

( Ord. No. 19139 , § 1, 2-16-2021)

## **2.92.200 Disposition.**

- A. After hearing the complaint, the ethics review commission will issue a decision within thirty days based on the information available to the commission through the hearing process. The ethics review commission will:
  - 1. Dismiss a complaint because no violation of this chapter has occurred; or
  - 2. Find that a violation of this chapter has occurred and either find that a sanction is not appropriate, or issue a sanction.
- B. If after hearing the issues, the ethics review commission dismisses the complaint or finds that no violation of the ordinance occurred, the commission shall create a written report of their findings or dismissal, and such report shall be filed with the minutes of the meeting in the office of the city clerk, and a copy of the report shall be sent to the parties associated with the complaint by regular mail and/or electronic mail.
- C. At this time, the commission may determine if the complaint was frivolous. If the commission determines that a complaint is frivolous, they may issue a sanction provided in subsection D below. If within one year, a complainant is found to have filed more than one frivolous complaint, the complainant will not be able to file further complaints for the following two years. If a complainant who is banned from filing a complaint does so within their prohibited period, the city clerk may refuse to accept the complaint and will notify the commission so an additional two years can be added to the current prohibition.
- D. If after hearing the issues, the ethics review commission determines through clear and convincing evidence that a violation of this chapter has occurred, then the ethics review commission may issue one of the following sanctions:
  - 1. Letter of notification. A letter of notification may be issued when the ethics review commission finds that a violation of this chapter was clearly unintentional. A letter of notification may advise the person to whom the letter is directed of any steps to be taken to avoid future violations.
  - 2. Letter of admonition. A letter of admonition may be issued when the ethics review commission finds that the violation of this chapter was minor and/or may have been unintentional, but where the circumstances call for a more substantial response than a letter of notification.
  - 3. Letter of reprimand. A reprimand may be issued when the ethics review commission finds that a violation of this chapter was committed intentionally or through disregard of this chapter.
  - 4. Recommend removal from office. In addition to a letter of reprimand, removal from office may be recommended to the city council for action when the ethics review commission finds that a serious or repeated violation of this chapter was committed by an officer intentionally or through culpable disregard of this chapter.
  - 5. Issue a fine not to exceed five hundred dollars payable to the city comptroller within thirty days of such order by the ethics review commission.
- E. If the ethics review commission votes to impose a sanction of a letter of notification, a letter of admonition, or a letter of reprimand, the commission shall prepare a written report of their findings, which shall be filed with the minutes of the meeting in the office of the city clerk. The city attorney shall draft the letter of sanction per the direction of the commission, file a copy of the letter in the employment file of the person receiving the sanctions where it shall remain as a permanent record, and send a copy of the letter to said person by both regular mail and certified mail, return receipt requested, and/or by electronic mail.
- F. If the ethics review commission recommends the imposition of the sanction of removal from office, it shall prepare a written report containing its recommendation. The report will be sent to the city clerk who shall, within fourteen days of receipt, place the matter on the city council agenda for discussion and action by the city council regarding the recommendation of the ethics review commission. The final authority to carry out a recommendation for removal from office shall be with the city council and shall

take place in conformity with any other law or requirements for such removal. The recommendation(s) of the ethics review commission may be accepted, rejected, modified or recommitted to the commission for further action or clarification by city council. The city clerk shall, within fourteen days of the date of any city council action taken on a complaint, forward a copy of such action to the chair of the ethics review commission.

( Ord. No. 19139 , § 1, 2-16-2021; Ord. No. 019581 , § 6, 12-12-2023)

### **2.92.210 Reconsideration.**

If the ethics review commission determines a violation of this chapter has occurred and imposes sanctions, the person who has received the sanctions may petition the ethics review commission to reconsider the matter only if there is newly discovered evidence which was not presented to the ethics review commission during the original proceedings. The person who was sanctioned may request the reconsideration by providing written notice to the city clerk within fourteen days of the date on the ethics review commission's written notice regarding the sanctions. If the sanctioned party does not provide written notice to the city clerk on or before the expiration of the 14<sup>th</sup> day following the date of the written notice of the sanctions, the decision of the ethics review commission shall be final and no longer eligible for reconsideration.

( Ord. No. 19139 , § 1, 2-16-2021)

**EXHIBIT B**

**STATEMENT REGARDING LEGAL OR DISCIPLINARY ACTIONS TAKEN AGAINST PROPOSER**

Each prospective lobbyist or lobbying firm will certify that it, its principals, or any of its officers or employees assigned to this project:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or sentenced to a denial of Federal or State benefits.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

2. Have not, within the last three-year period preceding this application:
  - a) To have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - b) Entered into a settlement agreement, consent decree, or similar arrangement regarding the above;
  - c) Been a target, a subject, or currently under investigation by a federal or state law enforcement or regulatory agency, or Self-Regulatory Organization for any of the above, or for any dealing, including, but not limited to, any lobbying contracts.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offenses; and have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

If you disagree with any of the above statements, provide a written explanation as to why you are unable to certify the Statement.

Company Name: \_\_\_\_\_

Company Address \_\_\_\_\_

Printed Name of Signer: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_