

LOCAL GOVERNMENT CODE CHAPTER 161:
EL PASO COUNTY, TEXAS ETHICS COMMISSION
SUMMARY

1) CREATION

- a) An ethics commission may be created by an order adopted by a majority of the commissioners court's full membership; or
- b) An ethics commission may be created by election called by the county commissioners court. If after the ethics commission has been effect for at least one year, 10 percent of the qualified voters of the county petition the commissioner's court to dissolve the commission, the court shall call an election to determine whether the commission will be dissolved.

2) APPOINTMENTS TO COMMISSION

The commission will consist of 10 members: 5 members, one each of whom is appointed by the county judge and county commissioners; and 5 members appointed by the commissioners court from lists of nominees submitted by the county civil service commission; a bar association in the county; the sheriff's civil service commission; a dispute resolution center in the county that is affiliated with a council of governments; and a human resources management association in the county.

3) POWERS

The ethics commission shall have the power to adopt, publish and enforce an ethics code governing county public servants. It may use as a guide ethics codes of other political subdivisions listed in the bill to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county. The county must provide staff and access to county resources to assist the commission with its duties and it must provide the public with certain information and enforce the provisions of the ethics code by issuing appropriate orders or recommendations or imposing appropriate penalties.

4) SAFEGUARDS

- a) **Whistleblower Protection For County Employees.** The county may not suspend, terminate the employment of, or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code. Likewise, the county is prohibited from taking any of those actions against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.
- b) **Frivolous Or Malicious Complaints: Civil Penalty of Up to \$4,000** . A "frivolous complaint" is defined as a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment. The commission may impose a civil penalty of no more than \$4,000 for filing a

frivolous or bad-faith complaint. The person accused in a frivolous complaint may sue the frivolous complainant in district court and the court may award costs and attorney's fees.

- c) **Code Shall Be Interpreted To Harmonize With Law and Agreement.** Chapter 161 cannot be construed to affect the terms of the Sheriff's collective bargaining agreement or civil services statutes applicable to the county employees. In the event of a conflict between Chapter 161 and the agreement or civil service laws, then the collective bargaining agreement or civil service statute will prevail.
- d) **Confidentiality of Information is Protected by both Civil and Criminal Penalties.** A sworn complaint and documents and any other evidence relating to the complaint and hearing process are confidential, with limited exceptions, such as final orders and documents that are already public. A member of an ethics commission is prohibited from discussing a sworn complaint alleging a violation of the ethics code with a member of the commissioners court. The commission staff may, for the purpose of investigating a sworn complaint, disclose otherwise confidential information to the complainant, respondent or a witness if four criteria are met. The commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under the section.
- i) **Civil Penalties For Breach Of Confidentiality.** In addition to other penalties, the respondent may commence a civil action for damages against any person who is alleged to have disclosed confidential information. Such action shall be brought in a district court in the county. The court may award costs and attorney's fees. A county employee can be disciplined or terminated from employment for disclosing confidential information.
- ii) **Criminal Violations For Breach Of Confidentiality - Prosecuted By The District Attorney In Court, Not By The Ethics Commission.**
- (1) A person commits an offense if the person intentionally destroys, mutilates, or alters information obtained under Chapter 161 or removes such information without the required permission. Such an offense is a misdemeanor punishable by a fine of not less than \$25 or more than \$4,000, or confinement in the county jail for not less than three days or more than three months, or both.
- (2) A person commits an offense if the person distributes information considered confidential under the terms of Chapter 161. A person commits an offense if the person obtains confidential information if that person knowingly: 1) uses the confidential information for any purpose other than the purpose for which it was received; 2) permits inspection of the information by an unauthorized person; 3) discloses the information to an unauthorized person. These offenses are misdemeanors and punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or by both.
- (3) If the conduct also constitutes an offense under the Penal Code, the person may be prosecuted by this section or by the Penal Code, as applicable. A violation under this section constitutes official misconduct.

5) CIVIL PENALTIES FOR VIOLATIONS OF THE CODE OR COMMISSION ORDERS

- a) The commission may issue and enforce a cease and desist order to stop a violation; may issue an affirmative order to require compliance with the laws administered and enforced by the commission; and may issue an order of public censure with or without a civil monetary penalty.
- b) The commission may impose a civil monetary penalty of not more than \$500 for each delay in complying with an order. The commission may impose a civil penalty of not more than \$4,000 for a violation of the ethics code. A penalty paid under the section shall be deposited in the general fund of the county. Section 161.202 is cumulative of any other sanctions under this chapter.

6) CRIMINAL PENALTIES ONLY FOR VIOLATIONS OF CONFIDENTIALITY PROVISIONS. See Confidentiality of Information is Protected by both Civil and Criminal Penalties, Section 4)d) above.

7) EDUCATION AND TRAINING

- a) **The General Public.** The ethics commission must develop and distribute plain-language public interest information materials meeting certain criteria. The commission must post the information on the county's Internet website and make the information otherwise available to the public.
- b) **Commission Members.** Members of the ethics commission must complete certain training related to the commission and service on it not later than the 60th day after the date a person is appointed, including certain specified information. Appointees, other than the initial ones, may not participate in an ethics commission's votes, deliberations, or from being counted as a member in attendance at a meeting until the person completes required training.
- c) **County Public Servants.** The ethics commission and its staff must provide ethics training to persons covered by the ethics code adopted by the commission on at least a quarterly basis.
- d) **Vendors/Those doing business with the County.** In addition to the qualifications under Subchapter C, Chapter 262, Local Government Code, before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, an officer, principal, or other person with the authority to bind the vendor shall complete training on the ethics code.
- e) **Lobbyists.** Lobbyists intending to meet with a person covered by the ethics code must complete training on the ethics code.

8) COMPLAINT AND HEARING PROCESS

- a) A person may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. Such a complaint must be in writing and under oath and must set forth certain information in simple, concise, and direct statements.
- b) The complaint must be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred.
- c) The ethics commission may hold a hearing on a sworn complaint and render a decision on a complaint or report of a violation as provided by Chapter 161; and, to the extent possible, to resolve and settle the complaint. The ethics commission may not consider a complaint or vote to investigate a matter outside the commission's jurisdiction; or investigate any matter except in response to a sworn complaint.

9) APPEAL.

A respondent may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision