

ORDINANCE NO. 2022-72

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE 5, CODE OF ETHICS, BY ADDING A NEW DIVISION 5 REQUIRING REGISTRATION OF LOBBYISTS AND PERIODIC REPORTING OF CONTACTS MADE BY LOBBYISTS WITH ELECTED CITY OFFICIALS; ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING CERTAIN EXEMPTIONS FROM LOBBYING REGISTRATION AND REPORTING REQUIREMENTS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 2, Administration, Article 5, Code of Ethics, of the San Marcos City Code is hereby amended to add a new Division 5, Lobbying, to read in its entirety as follows:

DIVISION 5. LOBBYING

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Sec. 2.469. Purpose.

The lobbying provisions of this ordinance are designed to improve transparency regarding city business and services to the public; maintain public confidence and public trust in our city council members when public resources are used and municipal decisions are made; and require certain individuals to register as lobbyists and report exchanges with city council members.

Nothing in this division shall be construed to prohibit or interfere with any individual's rights guaranteed by the United States and Texas Constitutions.

Sec. 2.470. Definitions.

In addition to the terms defined in Section 2.422, the following definitions shall apply to this division:

City Official Officer or official means the mayor or any member of the city council.

Client means any person on whose behalf lobbying is conducted. If a person engages in lobbying

on that person's own behalf, whether directly or through the acts of others, the person is both a client and a lobbyist. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

Employee means any person employed by the city, whether under civil service regulations or not, including those individuals on a part-time basis, and employees of an independent contractor that serve as a staff liaison to a city board or commission.

Lobby or lobbying, except as provided below, means any oral or written communication (including an electronic communication) to a City Council Member, made directly or indirectly by any person for compensation or economic benefit in an effort to influence or persuade a council member to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking action on any municipal question. The term lobby or lobbying does not include a communication or municipal question:

- (1) Merely requesting information or inquiring about the facts or status of any municipal question, matter, or procedure, and not attempting to influence a City Council Member.
- (2) Made by a Council Member acting in his or her official capacity.
- (3) Made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public.
- (4) Made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, or any other medium of mass communication.
- (5) Made at a meeting open to the public under the Texas Open Meetings Act.
- (6) Made in the form of a written comment filed during a public proceeding or any other communication that is made on the record in a public proceeding.
- (7) Made in writing as a petition for official action and required to be a public record pursuant to established City procedures.

- (8) Made in writing to provide information in response to an oral or written request by a City Council Member for specific information.
- (9) The content of which is compelled by law.
- (10) Made in response to a public notice soliciting communications from the public and directed to the Council Member specifically designated in the notice to receive such communications.
- (11) Made on behalf of an individual regarding that individual's employment or benefits.
- (12) Made by a fact witness or expert witness at an official proceeding; or
- (13) Made by a person solely on behalf of that individual, his or her spouse, or his or her minor children.

Lobbying firm means:

- (1) A self-employed lobbyist,
- (2) A person that has one or more employees who are lobbyists on behalf of a client or clients other than that person.

Lobbyist means a person who engages in lobbying for compensation or economic benefit, whether directly or through the acts of another. If an agent or employee engages in lobbying for a principal or employer, both the agent and the principal, or the employee and the employer, are lobbyists. A lobbyist may also include any individual that knows their actions would potentially contribute to a city council member violating Section 2.423.

Municipal question means a public policy issue of a discretionary nature pending or impending before City Council including, but not limited to, proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts.

Person means an individual, corporation, association, firm, partnership, committee, club, organization, or a group of persons voluntarily acting in concert.

Sec. 2.471. Qualifying contracts, applications, and activities that can trigger lobbying registration.

Matters that may require registration of lobbyists and reporting of lobbying activities under this division include but are not limited to:

- (1) Economic Development Incentive Agreements (including but not limited to 380s),
- (2) Procurements with the city,
- (3) Requests for Proposal (RFP),
- (4) Applications for zoning changes or preferred scenario amendment requests,
- (5) Requests for special considerations for city services or a change in a Master Plan, Strategic Plan, or Comprehensive Plan,
- (6) Public Improvement Districts (PID),
- (7) Municipal Utility Districts (MUD),
- (8) Conditional Use Permits (CUP),
- (9) Development Agreements,
- (10) Appeals to the City Council of decisions made by the Planning and Zoning Commission
- (11) Special requests that are a deviation from the comprehensive plan or Land Development Code (LDC) including a request for alternative compliance.
- (12) Alcohol Conditional Use Permits,
- (13) Out of city utilities.

Instances in which the above contracts, applications, and activities are part of a quid pro quo agreement or for benefit (as defined in Section 2.422) will qualify as action triggers. It may not be necessary to prove the intention to benefit in order to be a qualifying contract, application, or activity for lobbying registration.

Sec. 2.472. Disclosure Requirements.

(a) *For Lobbyists*

(1) Lobbyists are required to identify themselves as lobbyists and disclose their principals, or employers and the project, interest, or business they are representing when speaking before the city council.

(2) If a lobbyist fails to comply with any provision of this ordinance, his or her principal shall not be awarded a contract with the city or obtain any land development permit or legislative approval or other similar services from the city until registration as a lobbyist has occurred or other compliance is made. Any failure to comply with registration or ongoing lobbying activity requirements will result in postponement of land development or other services.

(b) For City Council Members

(1) If a city council member meets, or communicates in any manner, with an individual that identifies himself/herself as a registered lobbyist, then the city council member is required to document the conversation per the requirements in Section 2.473 of this ordinance.

(2) If a city council member meets, or communicates in any manner, with an individual that is a registered lobbyist but does not identify himself/herself as a registered lobbyist, then the city council member may choose to act in accordance with Section 2.473 if they believe that the individual is discussing items that may fall within Section 2.471. However, if a city council member speaks with a registered lobbyist that fails to disclose himself/herself as a registered lobbyist, the city council member shall not be deemed to have violated Section 2.473 for failing to report that meeting, conversation, or communication.

Sec. 2.473. Lobbyist Registration and Activity Reporting Requirements

(a) *Registration required.* All lobbyists are required to register with the city clerk's office or online at the city's website prior to engaging in lobbying, unless exempted, under Section 2.474, on a form prescribed by the Ethics Review Commission and available from the

City Clerk. This form shall be used for the initial registration, changes to names and/or address, phone numbers, etc., and to request removal. The prescribed form shall include the following information:

(1) Full name, telephone number, permanent address, and nature of the business for:

- a. The lobbyist.
- b. The client (or principal).
- c. Any person, other than the client, on whose behalf the lobbyist has been engaged by the client to lobby.
- d. Any person, other than the client, who is known by the lobbyist to contribute financially to the compensation of the lobbyist, or which, in whole or in major part, plans, supervises, or controls the lobbyist's lobbying activities on behalf of the client.
- e. Any lobbying firm for which the lobbyist is an agent or employee with respect to the client; and
- f. Each employee or agent of the lobbyist who has acted or whom the lobbyist expects to act as a lobbyist on behalf of the client.
- g. Identification Number - Each registration will receive an identification number which is to be used on all reports and for contacting the city council.
- h. Any campaign contributions given to any current council member during their most recent election or since that election.

(3) A list of any positions held by the lobbyist or its agents or employees as an official or employee of the City, as those terms are defined by the San Marcos Code of Ethics, during the past two (2) years.

(4) If the lobbyist or an agent or employee is a former City official or employee, a statement that the lobbyist's lobbying activities have not violated and will not foreseeably violate former City officials and employees of the Ethics Code.

(b) *Updates to registration information.* Any changes to any items on the registration form must be reported within thirty (30) days of the change on the same registration form and check the CHANGE box.

(c) *Removal from registration.* Anyone who no longer intends to lobby for any reason, must complete the name section of the registration form, provide the identification number, and check the REMOVE box. A final report is required per (d) Activity Reports below.

- (1) In the event of a formerly registered lobbyist returning to lobby within the City of San Marcos, upon registration they will be given the same identification number with which they were previously recognized.

(d) *Activity reports.* Each registered lobbyist shall file with the City Clerk a separate report signed under oath concerning the registered lobbyist's registered lobbying activities. A firm, entity, or individual that employs agents or employees who lobby on behalf of that organization's or employer's clients may file activity reports regarding registered lobbying activities on behalf of all the organization's or employer's clients, so long as all activities by agents and employees that must be disclosed are reported on consolidated reports to be filed on or before the 15th day of every other month beginning in January of each year. Each report shall list registered lobbying activities for the preceding two (2) calendar months. These activity reports shall then be made available to the public by the City Clerk's office, which will have two weeks to process and post reports. Activity reports shall be filed for every reporting period whether or not registered lobbying activities occurred. When a registered lobbyist files an activity report disclosing the registered lobbying activities of its agents or employees, the registered lobbyist's agents and employees are not required to file separate activity reports. If the registered lobbyist is not an individual, an authorized officer or agent of the registered lobbyist shall sign the form. The report shall be on the form prescribed by the Ethics Review Commission and available from City Clerk and shall include, with respect to the previous reporting period, the following information:

- (1) The identification number assigned by the City, name of the registered lobbyist, and the name of the client.

- (2) A list of the specific issues upon which the registered lobbyist or its agents or employees engaged in registered lobbying activities, including, to the maximum extent practicable, a list of specific legislative proposals and other proposed, pending, or completed official actions. If there is an identifying number or code assigned by the city, such as a zoning change (ZC-year-xxx), it should be included.
- (3) A list of the City Council Members contacted by the registered lobbyist or its agents or employees on behalf of the client with regard to a municipal question.
- (4) A list of the employees or agents of the registered lobbyist who acted as registered lobbyists on behalf of the client.
- (5) The dollar amount of each gift, benefit, or expenditure greater than fifty dollars (\$50) or in a cumulative amount greater than two hundred dollars (\$200) per reporting period made to, conferred upon, or incurred on behalf of a City Council Member or his or her immediate family by the registered lobbyist, or by anyone acting on behalf of the registered lobbyist, shall be itemized by date, City Council Member, actual cost, entity and address, and circumstances of the transaction. . For purposes of this Section 2.473, a political contribution to an elected city council member is considered a gift and must be reported as a lobbying activity.
- (6) The name and position of each City council member or member of a City Council member's immediate family who is employed by the registered lobbyist.

(e) *Production of records.* It may be required for a registered lobbyist or representative of a registered lobbyist to produce certain documentation in the event of an ethics hearing. These records must be provided upon request by the Ethics Review Commission. Only records directly related to lobbying activities provided in a report apply. Examples of items that may be requested by the Ethics Review Commission include but are not limited to:

- (1) Accounts.
- (2) Bills.
- (3) Receipts.
- (4) Emails or electronic communications with City Council Members.
- (5) And any related documents.

(f) *City Council Members.* City Council Members who have had reportable conversations with a registered lobbyist will be required to file reports with the City Clerk's Office on or before the 15th day of every other month beginning in December of each year. Each report shall list registered lobbying activities for the preceding two (2) calendar months. These activity reports shall then be made available to the public by the first of the following month on the City website by the City Clerk's office. Activity reports made by a City Council Member shall include:

- (1) Date
- (2) Name of City Council Member
- (3) Name of registered lobbyist or an individual the City Council Member reasonably believes to be a potential registered lobbyist
- (4) Topic of discussion relevant to potential registered lobbying
- (5) Lobbying identification number
- (6) Optional other notes

In the event a lobbyist meets with multiple City Council Members in a single meeting, it shall be the responsibility of the City staff liaison present at the meeting to report the reportable conversation or action trigger.

(g) *Guidance provided to potential lobbyists.* The City Attorney's Office will be responsible for assistance with inquiries regarding who must register and who does not need to register.

(h) *Administration.* The City Clerk shall:

- (1) Provide assistance on the registration and reporting requirements for lobbyists, city council members and city employees, to develop common standards, rules, and procedures for compliance with this section.
- (2) Review the completeness and timeliness of registrations and reports.
- (3) Maintain filing, coding, and cross-indexing systems to carry out the purposes of this section, including:

- a. A publicly available list of all registered lobbyists, registered lobbying firms, and their clients; and
 - b. Computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this section;
- (4) Make available for public inspection and copying at reasonable times the registrations and reports filed under this section; and
- (5) Retain registrations and reports in accordance with the Local Government Records Act.

Sec. 2.474. Exceptions to Registration.

The following persons and entities are not required to disclose their status as lobbyists under Section 2.472, or to register as lobbyists and file activity reports or under Section 2.473. Any individual, even if exempt under this Section 2.474, who engages in a prohibited act referenced in Section 2.475 will be subject to the penalties provided in that section.

- (1) Agent or employee. An agent or employee of a registered lobbying firm or other registrant that has a registration statement on file does not have to register as a lobbyist again after subsequent registered lobbying interactions with City Council Members unless the agent or employee of a registered lobbying firm or other registrant at some point begins to represent a new client or registered lobbying firm. Activity reports for the period in question fully disclosing all relevant information known to the agent or employee must still be filed, as necessary.
- (2) Attorneys. A licensed attorney who is performing an act that may be performed only by a licensed attorney.
- (3) Dispute resolution. An attorney or other person whose contact with a City Council Member is made solely as part of resolving a dispute with the City, provided that the contact is solely with City Council Members who do not vote on or have final authority over any municipal question involved and so long as such an attorney complies with Rule 4.02 of the Texas Disciplinary Rules of Professional Conduct, as amended.

- (4) Governmental entities. Governmental entities and their officials and employees, provided the communications relate solely to subjects of governmental interest concerning the respective governmental bodies and the City.
- (5) Individual. An individual(s) or group(s) of individuals who communicate with public officials to express personal opinions on behalf of themselves or any other individual(s) or group(s) of individuals, if neither the individual(s) nor group(s) of individuals receive an economic benefit or compensation.
- (6) Media outlets. A person who owns, publishes, or is employed by:
 - a. A newspaper.
 - b. Any other regularly published periodical.
 - c. A radio station.
 - d. A television station.
 - e. A wire service; or
 - f. Any other bona fide news medium that in the ordinary course of business disseminates news, opinions, or paid advertisements that directly or indirectly oppose or promote municipal questions or seek to influence official action relating thereto if the person does not engage in other activities that require registration under Division 5 (Lobbyists). This subsection does not exempt the news media or a person whose relation to the news media is only incidental to a registered lobbying effort or if a position taken or advocated by a media outlet directly impacts, affects, or seeks to influence a municipal question in which the media outlet has a direct or indirect economic interest.
- (7) Mobilizing entity constituents and not-for-profit organizations. A person whose only lobbying activity is to encourage or solicit the members, employees, or owners (including shareholders) of an entity by whom the person is compensated to communicate directly with one or more City Council Members to influence municipal questions. This exception is intended to apply to neighborhood associations and not-for-profit organizations.
- (8) Unknown municipal questions. Any person who neither knows nor has reason to know that a municipal question is pending at the time of contact with a City Council Member. This subsection does not apply if the existence of a municipal question is

- discovered during on- going contacts with a City Council Member and the person then engages in additional lobbying of the same council member or other council members with respect to that municipal question.
- (9) Individual(s), group(s), or entities contracted by the City of San Marcos to conduct research or gather information on behalf of the City.
 - (10) Citizens opposed to an alcohol conditional use permit, a zoning, or other land use decision in order to avoid a detriment to themselves, their property, or their neighborhood.
 - (11) Social Service corporations and their representatives while generally exempt, shall nonetheless be subject to all disclosure, registration, and lobbying activity reporting requirements of this division if they contact city council members s or employees to solicit public funding from the city.
 - (12) The Greater San Marcos Partnership (GSMP) and entities that lobby the GSMP are exempt from the disclosure, registration, and lobbying activity reporting requirements of this division.

Sec. 2.475. Prohibited Acts

- (1) False statements. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such persons, shall not intentionally or knowingly make any false, misleading, or incomplete statement of fact to any City official, or, knowing a document to contain a false statement, cause a copy of such document to be received by a City official without notifying such official in writing of the truth.
- (2) Failure to correct erroneous statement. A registered lobbyist who learns that a statement contained in a registration form or activity report he or she filed during the past three (3) years is false shall correct that statement by written notification to the City Clerk within thirty (30) days of learning of the falsehood.
- (3) Personal obligation of City Council Members. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not do any act, or refrain from doing any act, with the express purpose and intent of placing any City

Council Member under a personal obligation to such registered lobbyist, lobbyist, or person.

- (4) Improper influence. A city council member shall not cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination, or amendment thereto for the purpose of thereafter being employed as a registered lobbyist to secure its granting, denial, confirmation, rejection, passage, or defeat.
- (5) Use of false identification. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not cause any communication to be sent to a City Council Member in the name of any fictitious person or in the name of any real person, except with the consent of such real person.
- (6) Prohibited representations. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, shall not represent, either directly or indirectly, orally or in writing, that he or she can control or obtain the vote or action of any City Council Member.
- (7) Limitations on gifts. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such persons, shall not give gifts to a City Council Member or his or her immediate family, with the exception of an individual meal or gift with a cost or value of fifty dollars (\$50) or less, and not more than a cumulative value of five hundred dollars (\$500) in a single calendar year, on behalf of a single principal.
- (8) Prohibited lobbying or anti-lobbying clause. A person who lobbies or engages another person to lobby, or any other person acting on behalf of such person, is prohibited from lobbying activities with City Council Members regarding a contract after an Invitation For Bids (IFB), Request for Proposal (RFP), a Request for Qualifications (RFQ) or other solicitation has been issued. If contact is required with City Council Members, such contact will be made in accordance with procedures incorporated into the solicitation document. Violation of this provision by respondents or their agent(s) shall lead to disqualification of their offer from consideration at the time of the award. Violations of this clause shall be enforced by the Purchasing Department head or city manager.

Sec. 2.476. Complaints, review and hearings; sanctions for violations.

- (a) During the first six-months following the effective date of the ordinance adopting this division, no sanctions will be administered for violations. Once this six-month grace period has ended, complaints alleging a violation of this division may be filed and considered by the Ethics Review Commission in accordance with the procedures set forth in Section 2.444 of this Article.
- (b) Complaints must be filed within 90 days of the alleged failure of registration or reporting.**
- (c) Requests for determinations regarding requirements to register as a lobbyist or complaints regarding an individual's failure to register a lobbyist shall be referred to the Ethics Review Commission for a final decision to be made within thirty (30) days. During the review process, any contract awards, activities, and applications that require a determination regarding the lobbyist registration requirement shall not be considered or approved.
- (d) In addition to the sanctions listed in Section 2.444, subsection (e), if the Ethics Review Commission determines at the conclusion of a hearing that a violation of Section 2.475 has occurred, it may also impose or recommend:
 - 1. Suspension of lobbying privileges for a determined period of time.
 - 2. Indefinite revocation of registered lobbying privileges.
 - 3. Suspension of any city business brought before the city or currently being processed by the registered lobbyists or the people or entities they represent.

Sec. 2.477. Criminal Penalties.

A person who violates any provision of this division shall be punished, upon conviction thereof, by a fine not to exceed \$500.00. Each day in which a violation occurs is punishable as a separate offense. During the first six months following the effective date of the ordinance adopting this division, no criminal penalties will be administered for violations.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect on January 1, 2023.

PASSED AND APPROVED on first reading on August 16, 2022.

PASSED, APPROVED AND ADOPTED on second reading on September 6, 2022.

Jane Hughson
Mayor

Attest:

Approved:

Elizabeth Trevino
Interim City Clerk

Michael J. Cosentino
City Attorney