

Lobbying Rules and Requirements for Lobbyists

Purpose of this ordinance:

The lobbying provisions of this ordinance are designed to improve transparency with regard to city business and services to the public. To maintain public confidence and public trust in our city officials and employees when public resources are used and municipal decisions are made, this lobbying ordinance requires certain individuals to register and report exchanges with city officials and city employees.

I. Definitions.

Lobbying means any communication (oral or written or electronic) by a lobbyist for the purpose of influencing a municipal decision on behalf of that person or another person, company, corporation, partnership, or group. It may include an attempt to introduce, pass, defeat, or amend any local legislation, resolution, or decision. Any communication with city staff or employee, city officials, appointed city officials (permanent or temporary), or contracted employees of the city for the purpose of influencing a municipal decision is included.

Lobbyist is any person, including an attorney, who engages in lobbying, whether directly or through the act(s) of another. If an agent or employee engages in lobbying for a principal or employer or owner of a business, both the agent and principal, or the employee and employer, are lobbyists.

Qualifying contracts, applications, and activities that trigger lobbying registration include but are not limited to: Contracts with the city or subcontractors under a city contract, Procurements with the city, Requests for Proposal (RFP), Requests for Information (RFI), Applications for zoning changes or preferred scenario amendment requests, requests for special considerations for city services or a change in the Master Plan, or Comprehensive Plan, Planned Development Districts applications (PDD), Public Improvement Districts (PID), Municipal Utility Districts (MUD), Conditional Use Permits (CUP), Tax Increment Financing, Economic Development Incentive Agreements, Variances considered by the Planning and Zoning Commission (P&Z) or Zoning Board of Adjustments (ZBOA), Warrants, Waivers, Development Agreements, Platting or re-platting of land for a development, or any special requests that are a deviation from the comprehensive plan or Land Development Code (LDC) for the purpose of increasing or acquiring profit or avoiding loss. It may not be necessary to prove the intention of increasing or acquiring profit or avoiding loss in order to be a qualifying application. Not all variances, waivers, or the platting or re-platting of land automatically trigger lobbying registration (see Exceptions to lobbying).

Exceptions to lobbying: individuals whose communications represent their own interests for their homestead, or family other than business, or other matters that do not involve possible personal financial benefit or detriment are not required to register as lobbyists. Individuals who file a complaint or seek information or advice, regarding a matter that does not involve possible financial benefit to a business with which the individual is involved or whose interest the individual is

representing are also exempted.

II. General requirements.

(a) Initial compliance and continued adherence to lobby ordinance required.

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) Contested status of lobbyists or registration information.

Requests for determinations regarding requirements to register as a lobbyist or complaints regarding an individual's failure to register as a lobbyist shall be referred to the Ethics Review Commission for a final decision to be made within thirty (30) days. During the Ethics Review Commission's review process, any contract awards, activities, and applications that require a determination regarding the lobbyist registration requirement shall not be considered or approved.

(c) Lobbyists.

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 or any board or commission.

III. Registration and disclosures.

All lobbyists are required to register prior to applying for qualifying applications with the city clerk's office or online at the city's website unless exempted (see exceptions to lobbying).

(a) Registration required.

Initial or subsequent registration shall be on a form prescribed by the Ethics Review Commission and available from the City Clerk and 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;
- (2) A statement of all municipal questions on which the lobbyist or its agents or employees have lobbied for the client in the year preceding the filing of the registration or foreseeably will lobby;
 - (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 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) Activity reports.

Each lobbyist shall file with the City Clerk a separate report signed under oath concerning the lobbyist's 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 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 March of each year. Each report shall list lobbying activities for the preceding two (2) calendar months. Activity reports shall be filed for every reporting period whether or not lobbying activities occurred. When a lobbyist files an activity report disclosing the lobbying activities of its agents or employees, the lobbyist's agents and employees are not required to file separate activity reports. If the lobbyist is not an individual, an authorized officer or agent of the 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 name of the lobbyist, the name of the client, and any changes or updates in the information provided in the most recent registration statement filed;
- (2) A list of the specific issues upon which the lobbyist or its agents or employees engaged in lobbying activities, including, to the maximum extent practicable, a list of specific legislative proposals and other proposed, pending, or completed official actions;
- (3) A list of the City officials contacted by the 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 lobbyist who acted as 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 official or his or her immediate family by the lobbyist, or by anyone acting on behalf of the lobbyist, shall be itemized by date, City official, actual cost, entity and address, and circumstances of the transaction;

- (6) The name and position of each City official or member of a City official's immediate family who is employed by the lobbyist.

(c) Preservation of records.

Each lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the activity reports required to be made pursuant to this section for seven (7) years from the date of filing of the report containing such items. These records must be provided to the Ethics Review Commission upon request by the Commission.

V. Restricted activities.

(a) 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.

(b) Failure to correct erroneous statement.

A 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.

(c) Personal obligation of City officials.

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 official under a personal obligation to such lobbyist or person.

(d) Improper influence.

A lobbyist—(City official?) 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 lobbyist to secure its granting, denial, confirmation, rejection, passage, or defeat.

(e) 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 official in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

(f) 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 official.

(g) 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 official or a City employee 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.

(h) 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 officials and employees regarding a contract after a Request for Proposal (RFP), a Request for Qualifications (RFQ) or other solicitation has been issued. If contact is required with City officials and employees, 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.**

VI. Enforcement and Sanctions.

The Ethics Review Commission will hear complaints on Lobbying.

(a) Three (3) violations of this lobbying ordinance requirements, as determined by the Ethics Review Commission, within five (5) years, will bar the individual lobbyist and/or the principal from engaging in lobbying activities with the City of San Marcos for one (1) year.

(b) Each violation of this ordinance may be prosecuted as a separate offense.