

ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2, ARTICLE 5, CODE OF ETHICS, SECTION 2.423 OF THE SAN MARCOS CITY CODE, TO REQUIRE CITY OFFICIALS TO PUBLICLY DISCLOSE THE BASIS FOR THEIR RECUSAL FROM DISCUSSION AND CONSIDERATION OF ITEMS ON BOARD, COMMISSION, AND CITY COUNCIL AGENDAS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Chapter 2, Article 5, Code of Ethics, Section 2.423, of the San Marcos City Code is hereby amended to read in its entirety as follows: (added text is underlined; deleted text is shown with strikethroughs)

Sec. 2.423. - Prohibition against involvement in actions affecting economic interests.

(a) *General rule.* It is unlawful for a city official or employee to take any official action that he or she knows is likely to:

(1) Affect an economic interest of:

- a. The official or employee;
- b. His or her immediate family member;
- c. A member of his or her household;
- d. An outside employer of the official or employee or of his or her immediate family member;
- e. A business entity in which the official or employee or his or her immediate family member holds an economic interest; \
- f. A business entity for which the city official or employee serves as an officer or director or in any other policy making position; ~~or~~
- g. A person or business entity from whom the official or employee, or his or her immediate family member, has solicited, received and not rejected, or accepted any benefit or an offer of employment within the past twenty-four months; or
- h. A person, business entity, or association from whom the official has received a campaign contribution in an amount exceeding \$300.00. This provision does not apply to campaign contributions received prior to November 7, 2018. This provision does not apply in circumstances where four or more council members would be prohibited from voting on a matter.

(2) Confer a benefit on the official or employee, or deprive the official or employee of a benefit, where the effect of the action on the official or employee is

distinguishable from the effect of the action on members of the public in general or a substantial segment of the public.

(b) *Meaning of "affect"*.

- (1) In subsection (a)(1) above, an action is likely to affect an official's or employee's economic interest if it meets all of the following:
 - a. The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public.
 - b. The effect of the action on that interest is direct, and not secondary or indirect. However, the action need not be the only producing cause of the effect in order for the effect to be direct.
 - c. The effect on the interest must be more than insignificant or de minimis in nature or value.
 - (2) In determining whether a person, entity or property is or was affected by a vote or decision, it will not be necessary to prove the actual existence or occurrence of an economic effect or consequence if the effect or consequence would be reasonably expected to exist or occur.
- (c) *Recusal and disclosure.* A city official or employee whose conduct would otherwise violate subsection (a), or a state conflict of interest law, if he or she took an action must abstain from participation in the action in accordance with the following:
- (1) Immediately refrain from further participation in the matter, including communications with any persons likely to consider the matter, such as any department, agency, commission or board of the city, from the time he or she discovers or reasonably should have discovered the matter triggering the recusal and until a decision regarding the matter has been made by the council, board or commission having final approval authority.
 - (2) Promptly file a form for disclosing the nature and extent of the interest triggering the recusal with the city clerk, if the person is an official, or with the person's supervisor, if the person is an employee;
 - (3) Promptly notify the person's supervisor of the nature and extent of the interest triggering the recusal, if the person is a city employee, so that the supervisor can reassign responsibility for handling the matter to another person; and
 - (4) Promptly Publicly disclose the interest triggering the recusal; immediately after the agenda item has been called up for discussion or action, if the person is a member of a city board, or commission, or city council, to other members of the board or commission, and leave the room while in which the board, or commission, or city council is meeting during the board or commission's discussion of, discussing or voting on, the matter.

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 October 16, 2018.

PASSED AND APPROVED on first reading on October 1, 2018.

PASSED, APPROVED AND ADOPTED on second reading on October 16, 2018.

John Thomaides
Mayor

Attest:

Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney