

ERC RESOLUTION NO. 2020-2

A RESOLUTION OF THE ETHICS REVIEW COMMISSION OF THE CITY OF SAN MARCOS, TEXAS RECOMMENDING AN AMENDMENT TO THE SAN MARCOS CODE OF ETHICS TO ADD PROVISIONS REQUIRING REGISTRATION OF LOBBYISTS AND REQUIRING REPORTING OF LOBBYING ACTIVITIES

RECITALS:

1. The Ethics Review Commission (the "Commission") is required by Section 2.443 of the San Marcos City Code to meet at least once per year to review the Code of Ethics and is authorized to make recommendations to the city council regarding amendments.

2. The Commission prepared an initial draft of provisions regulating lobbyists and lobbying activities and presented its recommendations on that subject, among others, to the San Marcos City Council in a workshop meeting on March 20, 2018 while William De Soto was the chair of the Commission.

3. On August 6, 2018, the City Council conducted another workshop meeting at which the Commission's recommendations regarding amendments to the San Marcos Code of Ethics, including proposed lobbying provisions, were included on the agenda.

4. At its August 6, 2018 workshop meeting, the City Council did not reach the topic of lobbying, due to the length of discussions of other items on its agenda, and directed that the ERC's recommendations regarding lobbying be placed on another workshop agenda in January of 2019.

5. On January 15, 2019, the City Council discussed the Commission's recommendations regarding provisions to be included in a proposed lobbying ordinance. After discussing the topic in some detail, there was a consensus among a majority of the council to have the Commission continue to work on a revised draft of a proposed lobbying ordinance.

6. After months of additional work in committee, and deliberations by the Commission as whole, a new draft of a proposed lobbying ordinance was prepared and approved by vote of the Commission on September 9, 2019 under the leadership of Arthur Taylor as chair of the Commission.

7. The Commission has recently been informed that its recommendations regarding the adoption of a lobbying ordinance must be formalized by the adoption of a resolution in order to have them discussed or considered by the City Council.

BE IT RESOLVED BY THE ETHICS REVIEW COMMISSION OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The Commission hereby recommends that the City Council discuss and consider adoption of an ordinance amending the San Marcos Code of Ethics to include provisions regarding the registration of lobbyists and the reporting of lobbying activities as set forth in Exhibit A, attached to this resolution.

PART 2. This resolution shall be in full force and effect from and after its passage.

ADOPTED on May 27, 2020.



Lee Garcia
Chair

Attest:



Tina Moreno
Recording Secretary

Lobbying Rules and Requirements for Lobbyists

Purpose of this ordinance:

The lobbying provisions of this ordinance are designed to improve transparency regarding 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

City Official means the same as the definition in Section 2.422.

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 official or city employee, made directly or indirectly by any person for compensation or economic benefit in an effort to influence or persuade an official 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 official;
- (2) Made by a public official or employee (including, but not limited to, an official or employee of the City) 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 Open Meetings Act;
- (6) Made in the form of a written comment filed in the course of 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 official 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 official 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, or
- (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 official or city employee violating Section 2.423.

Municipal question means a public policy issue of a discretionary nature pending or impending before City Council or any board or commission, 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.

II. Action Triggers

Qualifying contracts, applications, and activities that can trigger lobbying registration include but are not limited to:

- (1) Contracts with the city or subcontractors under a city contract,
- (2) Procurements with the city,
- (3) Requests for Proposal (RFP),
- (4) Requests for Information (RFI),
- (5) Applications for zoning changes or preferred scenario amendment requests,
- (6) Requests for special considerations for city services or a change in the Master Plan, or Comprehensive Plan,
- (7) Planned Development Districts applications (PDD),
- (8) Public Improvement Districts (PID),
- (9) Municipal Utility Districts (MUD),
- (10) Conditional Use Permits (CUP),
- (11) Tax Increment Financing,
- (12) Economic Development Incentive Agreements,
- (13) Variances considered by the Planning and Zoning Commission (P&Z) or Zoning Board of Adjustments (ZBOA),
- (14) Warrants,
- (15) Waivers,
- (16) Development Agreements,

- (17) Platting or re-platting of land for a development,
- (18) or any special requests that are a deviation from the comprehensive plan or Land Development Code (LDC)

Instances where the above contracts, applications, and activities are part of a *quid pro quo* agreement or for benefit (as defined in Section 2.422). It may not be necessary to prove the intention to benefit in order to be a qualifying contract, application, or activity for lobbying registration. Not all variances, waivers, or the platting or re-platting of land automatically trigger lobbying registration (see Exceptions to Registration).

III. Essential Requirements

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 or any board or commission.
- (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.

City Official

- (1) If a city official meets with an individual that identifies themselves as a registered lobbyist, then the city official is required to document the conversation per the requirements for a city official outlined in Section IV (D) of this ordinance.
- (2) If a city official meets with an individual that is a registered lobbyist but does not identify themselves as a registered lobbyist, then the city official may choose to act within accordance with Section IV (D) if they believe that the individual is discussing items that may fall within Section II. However, if a city official speaks with a registered lobbyist that fails to disclose themselves as registered lobbyists, their intentions to engage in actions that would fall under Section II, and the city official does not act within accordance with Section IV (D) because of this lack of disclosure, then they will be exempt from misdemeanor charges for failing to properly comply with a city ordinance.

City Employee

- (1) If a city employee meets with an individual that identifies themselves as a registered lobbyist, then the city employee is required to document the conversation per the requirements for a city employee outlined in Section IV (D) of this ordinance.
- (2) If a city employee meets with an individual that is a registered lobbyist but does not identify themselves as a registered lobbyist, then the city employee may choose to act within accordance with Section IV (D) if they believe that the individual is discussing items that may fall within Section II. However, if a city employee speaks with a registered lobbyist that fails to disclose themselves as registered lobbyists, or their

intentions to engage in actions that would fall under Section II, and the city employee does not act within accordance with Section IV (D) because of this lack of disclosure, then they will be exempt from misdemeanor charges for failing to properly comply with a city ordinance.

IV. 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 Section V Exceptions to Registration). City Officials and City Employees refer to Section IV subsection D.

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 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. 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 March 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.

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 name of the registered 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 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;
- (3) A list of the City officials 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 official 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 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 registered lobbyist.

C. Preservation of records

It may be required for a registered lobbyist or representative of a registered lobbyist to produce certain documentation in the event of a hearing. These records must be provided to the Ethics Review Commission upon request by the Commission. 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) Books;
- (5) Emails or electronic communications with City Officials or City Employees;
- (6) And any related documents;

D. City Official and Employee Disclosure

City Officials and City Employees who have had reportable conversations with a registered lobbyist are required to have reports filed with the City Clerk's Office on or before the 15th day of every other month beginning in March 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. Activity reports made by a City Official or City Employee shall include:

- (1) Date
- (2) Name of City Official or Employee
- (3) Name of registered lobbyist or an individual the City Official or City Employee reasonably believes to be a potential registered lobbyist
- (4) Topic of discussion relevant to potential registered lobbying
- (5) Optional other notes

E. Administration – The City Clerk shall:

- (1) Provide guidance and assistance on the registration and reporting requirements for lobbyists, city officials and city employees, to develop common standards, rules, and procedures for compliance with Section IV;
- (2) Review for completeness and timeliness of registrations and reports;
- (3) Maintain filing, coding, and cross-indexing systems to carry out the purposes of Section IV, 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 Section IV;
- (4) Make available for public inspection and copying at reasonable times the registrations and reports filed under Section IV; and
- (5) Retain registrations and reports in accordance with the Local Government Records Act.

V. Exceptions to Registration

The following persons and entities are not required to register under Section II (Action Triggers) or act in accordance with Section IV (Registration and Disclosures). Any individual regardless of their registration status who engages in sanctionable action(s) referenced in Section VI (Sanctionable Action) will still be subject to their respective sanctions:

- (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 Officials or City Employees, 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 official is made solely as part of resolving a dispute with the City, provided that the contact is solely with City officials 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 who engages in lobbying but who does not receive an economic benefit or compensation or expend monies for lobbying with respect to any client. The term "expend" does not include the cost of photocopying documents, or creating other informational material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family members of their household.
- (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 officials to influence municipal questions. This exception is intended to apply to neighborhood associations and not-for-profit organizations. 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 official. This subsection does not apply if the existence of a municipal question is discovered during on-going contacts with a City official and the person then engages in additional lobbying of the same official or other City officials with respect to that municipal question.

VI. Sanctionable Actions

- (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 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 registered lobbyist, lobbyist, or person.

(4) Improper influence.

A city official or city employee 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 official 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 official.

(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 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.

(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 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.

VII. Complaints, Enforcement, and Sanctions

There will be a six-month grace period that will go into effect upon the passing of this ordinance. During this six-month grace period no sanctions will be administered for violations of the lobbying ordinance. A remediation letter will be sent delineating the violation that occurred and instructions will be given on how to remedy or

prevent future violations. Once this six-month grace period has ended, all potential sanctions may be imposed for violations.

A. Complaints

- (1) Contested status of registered 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.
- (2) Complaint procedure.
 - a. Any resident or employee of the city who believes a person has violated a provision of this article or a state conflict of interest law may file a written complaint with the city attorney. The complaint must:
 - i. Identify the complainant and the person who allegedly committed the violation;
 - ii. Provide a sufficient statement of the facts which if true would constitute a prima facie violation of a provision of this article or a state conflict of interest law;
 - iii. Specify the provision of this article or a state conflict of interest law which is alleged to have been violated;
 - iv. Identify sources of evidence, if any, that the complainant recommends should be considered by the commission;
 - v. Be filed on a form prescribed by the commission available on the City of San Marcos website and from the city attorney's office; and
 - vi. No complaints shall be filed within a period beginning on the 60th day prior to the first day of early voting for any city election and ending on the later of the regular election day or runoff election day.
 - b. The city attorney will acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the commission and to the person accused within seven business days of accepting the complaint form.

B. Review

- (1) The commission shall review each complaint in executive session prior to conducting a hearing to determine whether the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law.
- (2) If the commission determines that the complaint is defective in form or does not allege sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law, the commission shall dismiss the complaint, and provide notice, including the reasons for the dismissal, to the complainant and to the person accused.
- (3) If the commission determines that the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this lobbying ordinance, if a

letter of notification or admonition is appropriate the commission may move to impose these letters immediately. If any other sanction is going to be considered, then the commission shall schedule a hearing on the complaint.

C. Hearings

- (1) The commission will adopt rules of procedure to govern hearing on complaints. The rules will allow for the presentation of evidence by the complainant and the person accused, and cross examination of witnesses.
- (2) The chair of the commission or any person acting in that capacity, and the recording secretary of the commission, are authorized to administer oaths to persons who testify at hearings conducted by the commission.

D. Ex parte communications

- (1) It is unlawful for a person who has filed a complaint alleging a violation of this article or a state conflict of interest law by a city officer or employee, or a person against whom such a complaint has been filed, to communicate verbally or in writing about the subject matter of the complaint with a member of the ethics review commission at any time other than during a public meeting of the commission. All such communications by such persons to the commission outside of a public meeting of the commission must be directed to the city attorney. The city attorney will collect all such communications and provide them to the commission with the agenda materials for the meeting at which the complaint is considered. The city attorney will make copies of these communications available to interested persons in accordance with state law.

E. Sanctions for Violations

- (1) City Officials and City Employees
Sanctions. If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the following sanctions per Section 2.444, subsection (e).
- (2) Lobbyists or Others That Have Committed Restricted Activities as Defined in Section VI
If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the following sanctions:
 - a. A letter of notification, if the individual in question's action was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the individual in question of any steps to be taken to avoid future violations.
 - b. Suspension of Lobbying Privileges for a determined period of time.
 - c. Indefinite revocation of registered lobbying privileges.
 - d. Any business brought before the city or currently being processed by the registered lobbyists or the people they represent may be suspended.