



City of San Marcos

Meeting Minutes City Council

Tuesday, September 15, 2020

3:00 PM

Virtual Meeting

This meeting was held using conferencing software due to Covide-19 rules.

I. Call To Order

With a quorum present, the work session of the San Marcos City Council was called to order by Mayor Hughson at 3:04 p.m. Tuesday, September 15, 2020. The meeting was held virtually.

II. Roll Call

Present: 7 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Council Member Joca Marquez, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

PRESENTATIONS

1. Receive a presentation and update by Chamber President, Jason Mock regarding the San Marcos Area Chamber of Commerce.

Mayor Hughson stated per the request of the San Marcos Area Chamber of Commerce this item will be postponed for a couple of months.

2. Receive a presentation from the Ethics Review Commission and hold discussion regarding proposed amendments to the Code of Ethics to require registration of lobbyists and requiring lobbyists to provide periodic reports of lobbying activities; and provide direction to staff.

Michael Cosentino, City Attorney provided a brief introduction and stated that the Ethics Review Commission passed a resolution on this topic May 27 2020, however, Council has discussed this previously in March of 2018 along with Campaign Finance which has been adopted. In January 2019 Council discussed during a work session. There were concerns and Ethics Review Committee (ERC) created a committee on the lobbying issues which completed their work in Sep 2019. The ordinance draft presented requires registrations, restrictions and reporting for lobbyist.

Jonathan Lollar, Vice-Chair of the Ethics Review Commission (ERC) and Tammy Walden, ERC Commissioner provided the presentation regarding

proposed amendments to the Code of Ethics to require registration of lobbyists and requiring lobbyists to provide periodic reports of lobbying activities.

Mr. Lollar stated the reasoning for lobbying is to ensure a government is accountable to its citizens and whose actions demonstrate a willingness to govern on behalf of them, not special interest groups or for personal agendas (Open San Marcos). Mr. Lollar mentioned the following cities: Austin, Denton, Kyle, San Antonio, New Braunfels, and Buda all have anti-lobbying ordinances in place. This is to enhance the trust of constituents. The Department of Purchasing and Contracting already has an Anti-Lobbying clause, and the ERC thinks an expanded ordinance should be in place for all city employees/officials.

The Department of Purchasing and Contracting adheres to a set of ethical standards which includes an anti-lobbying clause, outlined below:

V. Anti-Lobbying

Vendors are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of Contract. Vendors are prohibited from contacting City staff or committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member. Any violation of this provision will result in immediate disqualification of the Vendor from the selection process.

Mr. Lollar noted a few ethics complaints in the recent past including the recent firing and charging of a city employee.

Draft Purpose of the Ordinance:

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.

Mr. Lollar presented the definition of *Lobby or lobbying*, which 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. And very important to the definition are the exceptions to lobbying which include municipal questions, statements made at public meetings, matters of public record.

Mayor Pro Tem Mihalkanin asked for clarification regarding a person may not need compensation to register as a lobbyist. Mr. Lollar stated that it may not be necessary to prove the intention to benefit in order to be a contract application or lobbyist administration. Mr. Lollar noted that the types of questions posed could determine if the person is acting as a lobbyist.

Mayor Pro Tem Mihalkanin asked if a citizen contacts a council member and states they are against a rezoning request near their house, does that person have to register before reaching out to council members. Mr. Lollar stated that anybody could do it at a public meeting. Mr. Lollar stated there could not be grievances or complaints on a project as that could be a First Amendment infraction. Mr. Cosentino noted that the Action Triggers an Exception List.

Council Member Derrick stated sometimes it is a group of people, perhaps who have signed a petition, who want the council to vote their way and we need to consider groups.

Mayor Hughson asked about the cases where the possible rezoning could result in a change of property value for those wishing to express an opinion which mean financial implications. Mr. Cosentino stated the exceptions of lobbying regarding rezoning.

Council consensus is to add provisions to address an exception for an individual to speak against the rezoning change or alcohol conditional use permit near their property regardless of if they live there.

Mr. Cosentino pointed out that in rezoning cases, those who live within 400' of the affected property receive a notice. Council consensus is to have city staff provide the reporting on behalf of the council subcommittee.

Council Member Derrick asked about the Council Affordable Housing committee, noting that often those who wish to build apartment complexes will address that committee. The question is the same regarding other committees who may be lobbied. Who files the report? The staff who support that committee or each individual council member? Mr. Cosentino verified that this

is a reportable lobbying activity. The consensus is to ensure the staff member files the report. If a council member discusses the issue outside of a committee meeting, that would be the individual council member's responsibility to report.

Council Member Baker inquired if a lobbyist must disclose the organizations of which they are a member. Mr. Lollar responded that a lobbyist would have to disclose the organization or whose behalf they are lobbying. Mr. Cosentino noted that this is covered in the Registration Required section (1) d. which states "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."

Deputy Mayor Pro Tem Rockey Moore noted that during his tenure on the Ethics Review Commission, he worked on this proposal. He inquired about how this ordinance compares to ordinances in other cities nearby. Mr. Lollar noted the committee looked at ordinances in Austin and San Antonio to start. They also looked at New Braunfels and Kyle. Those were not as specific. They were concerned about more and more student housing and decided to use text from the larger cities since San Marcos is growing. He noted that we need this ordinance.

Mayor Hughson asked the following questions, what is the point of the ordinance? Is it more for employees or elected officials? What is the problem they are trying to solve? Mr. Lollar stated people are often worried about how the developments and new businesses are being approved. We are trying to prioritize transparency to ensure we have the trust of constituents. Mr. Lollar stated when accusations of mistrust are made, that reporting will be available and the city will be in a state to show who we are dealing with. Ms. Walden stated when complaints come in, the city is protected and the lobbyists are responsible for the paperwork. He noted that there have been four ethics complaints in 2020 so far.

Mayor Hughson read the definition of Municipal Question which states: "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.” She inquired at what point does a concept or idea rise to this? After application is filed, once it’s on an agenda? It appears to hold city council members responsible for what may be on non-council agendas. Mr. Cosentino stated there is a pre-development meeting with staff, that would fit under “impending” and anything further could be “pending” and noted that staff may make recommendations as to which zoning might be approved prior to an application. All of these would be covered.

Mayor Hughson stated under Action Triggers “(6) Requests for special considerations for city services or a change in the Master Plan, or Comprehensive Plan,” to strikethrough the word “the” and add “a”. The new section will read as follows: (6) Requests for special considerations for city services or a change in a Master Plan, or Comprehensive Plan,

Mayor Hughson mentioned that the following sentence is incomplete under numeral II, Action Triggers and asked staff to correct it. “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).” We need this completed. Mayor Hughson noted that she served on the ERC in the past and a year was spent on “gifts” and who could receive what type of gift, be it a bouquet of flowers or other item. She is concerned that there are possible “gotchas” in the ordinance, as well-written as it may be, and that it could be used in a way that was not intended. She thanked the ERC for their time and work on this ordinance. Mayor Hughson inquired when this will come back to Council. Mr. Cosentino asked Council if they want to see this come back and provided a summary of what council would like to see included within the Ordinance.

Mayor Hughson asked Council if Greater San Marcos Partnership (GSMP) is to be considered a lobbying effort. Council Member Marquez stated yes to consider GSMP as a lobbyist.

Council Member Derrick doesn’t feel GSMP should be considered as a lobbyist due to employment with the city to bring in prospect information and they provide recommendations to the city. She is concerned about the Chamber of Commerce, as they are not employed by the city and they do often lobby for or against the efforts of the city.

Council Member Baker stated GSMP is shifting their funding is now more private sector than public and he feels that they do count as a lobbying group.

Deputy Mayor Pro Tem Rockeymoore, Council Member Gonzales, Mayor Hughson and Mayor Pro Tem Mihalkanin stated GSMP should not to be included as a lobbyist.

Council Member Baker asked if the GSMP has to follow the lobbying reporting as an employee when GSMP is being lobbied since they are employed by us. This would be when they are lobbied by others. Mayor Hughson stated they are not employees but do contract with the city. Mr. Cosentino stated that we have a definition for “city official” in Section 4.222. GSMP is the main liaison representing the city but will bring back the interpretation of the definition and with council consensus to exclude GSMP from this ordinance and such language will be added.

Mayor Pro Tem Mihalkanin inquired about a whole range of organizations in our community as some are advocacy groups. This includes social service and non-profit organizations including the Chamber of Commerce. Mayor noted that most of these are working in the community’s interest and there is no personal benefit to the members. This appears to be covered in the ordinance. Mr. Cosentino noted that if the lobbying is to benefit the organization, they might be considered a lobbyist. Mr. Cosentino and the ERC will review and provide clarification when this item is returned to a council agenda.

EXECUTIVE SESSION

- 3. Executive Session in accordance with §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas.**

A motion was made by Council Member Derrick, seconded by Deputy Mayor Pro Tem Rockeymoore, to enter into Executive Session at 4:52 p.m. The motion carried by the following vote:

For: 7 - Council Member Derrick, Mayor Hughson, Mayor Pro Tem Mihalkanin, Council Member Marquez, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales

Against: 0

III. Adjournment.

Executive Session was concluded at 5:22 p.m.

Mayor Hughson adjourned the work session of the City Council on September 15, 2020 at 5:22 p.m.

Tammy K. Cook, Interim City Clerk

Jane Hughson, Mayor