

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2, ARTICLE V (CODE OF ETHICS) OF THE SAN MARCOS CITY CODE; REQUIRING ETHICS COMPLAINTS TO BE SWORN BEFORE A NOTARY PUBLIC; ESTABLISHING A **TWELVE MONTH TIME PERIOD TO FILE A COMPLAINT REGARDING AN ALLEGED VIOLATION; REQUIRING CITY EMPLOYEES AND OFFICIALS TO COOPERATE IN HEARINGS BEFORE THE ETHICS REVIEW COMMISSION; PROHIBITING THE USE OF INTIMIDATION TO DISCOURAGE EMPLOYEES FROM FILING ETHICS COMPLAINTS OR TESTIFYING AT HEARINGS BEFORE THE COMMISSION; PROHIBITING RETALIATION IN THE FORM OF ADVERSE PERSONNEL ACTION AGAINST CITY EMPLOYEES WHO FILE ETHICS COMPLAINTS OR TESTIFY AT COMMISSION HEARINGS ON PENDING COMPLAINTS; AND PROVIDING AN EFFECTIVE DATE.**

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

SECTION 1. Chapter 2, Article V, Section 2.444 of the San Marcos City Code is amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by strikethroughs.

Sec. 2.444. – Complaints; review and hearings; sanctions for violations.

(a) Complaint procedure.

- (1) 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:
 - (A) Identify the complainant and the person who allegedly committed the violation;
 - (B) Provide a sufficient sworn 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;
 - (C) Specify the provision of this article or a state conflict of interest law which is alleged to have been violated;
 - (D) Identify sources of evidence, if any, that the complainant is relying on to support the alleged violation ~~recommends should be considered by the commission;~~ any subsequent evidence including documents or witnesses that come to the complainant's knowledge must also be filed in a sworn statement;
 - (E) 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

- (F) No complaints shall be filed within a period beginning on the 60th day ~~prior to~~ before the first day of early voting for any city election and ending on the later of the regular election day or runoff election day.
- (G) A complaint alleging a violation within the commission's jurisdiction must be filed with the city attorney's office **within twelve (12) months** of the complainant becoming aware of the act or omission that constitutes an alleged violation of this Code.
- (H) The code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. Complainants who submit frivolous complaints are hereby notified that their actions may subject them to criminal prosecution for perjury, or civil liability for the torts of defamation or abuse of process. For purposes of this section a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
- (I) The complainant shall swear to the facts by oath, under penalty of perjury, before a notary public or other person authorized by law to administer oaths. A complaint that is not sworn as required shall not be forwarded by the city attorney's office to the ethics review commission but shall be returned to the complainant.
- (2) 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. **A copy of any complaint filed against a city employee shall also be forwarded by the city attorney to the city manager within seven business days.**
- (3) City officials and employees shall not use or threaten to use official authority or influence to intimidate or discourage any person from filing an ethics complaint or testifying at a hearing before the ethics review commission regarding a pending ethics complaint.
- (4) City officials and employees shall not take action as a reprisal against any other city official or employee who in good faith reports or initiates a complaint regarding an alleged violation of this Code or who participates in the complaint process by providing testimony or producing documents at a hearing before the ethics review commission regarding a pending complaint.
- (5) A City of San Marcos official or employee may not suspend or terminate the employment of, or take other adverse personnel action against a city employee who in good faith files an ethics complaint or who provides testimony or produces documents at a hearing before the ethics review commission regarding a pending complaint. "Adverse personnel action" means an action that affects a city employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

(b) *Review of complaints by commission.*

- (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 article or a state conflict of interest law, 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.
 - (3) All city officials and employees shall comply with requests from the ethics review commission to appear and provide testimony at hearings to assist the commission in carrying out its duties to resolve a pending complaint. Failure to comply with the obligations imposed by this subsection is a violation of this Code.
- (d) *Ex parte communications.* 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.* 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:
- (1) A letter of notification, if the violation is clearly unintentional, or when the official or employee's action was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the official or employee of any steps to be taken to avoid future violations.
 - (2) A letter of admonition, if the commission finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.
 - (3) A reprimand, if the commission finds that the violation:

- (A) Was minor and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or
- (B) Was serious and may have been unintentional.

A copy of any reprimand directed to an official shall be sent to the city council. A copy of any reprimand directed to an employee shall be sent to the city manager and included in the employee's personnel file.

- (4) A recommendation of suspension from office or employment, if the commission finds that the violation:
 - (A) Was serious and that was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or
 - (B) Was minor but similar to a previous violation by the person, and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law.

A recommendation of suspension of an official appointed by the city council shall be transmitted to the city council, and the council will have final authority on whether to impose a suspension. A recommendation of suspension of an employee shall be directed to the city manager, who will have final authority on whether to impose a suspension.

- (5) A recommendation for recall or removal from office or employment, if the commission finds that the violation was serious and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law. A recommendation for recall of a city council member or removal of an official appointed by the city council will be forwarded to the city council. A recommendation for removal of an employee will be forwarded to the city manager.
- (6) In addition to a sanction under subdivisions (1) through (5) above, the commission may recommend to appropriate authorities that a person be prosecuted for a violation of this article or a state conflict of interest law.

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 after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on January 19, 2021.

PASSED, APPROVED AND ADOPTED on second reading on February 2, 2021.

Jane Hughson
Mayor

Attest:

Approved:

Tammy K. Cook
Interim City Clerk

Michael J. Cosentino
City Attorney