

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE 5, CODE OF ETHICS, BY ADDING A NEW DIVISION 5 REQUIRING REGISTRATION OF LOBBYISTS AND PERIODIC REPORTING OF CONTACTS MADE BY LOBBYISTS WITH ELECTED CITY OFFICIALS, CITY BOARD AND COMMISSION MEMBERS, AND CITY EMPLOYEES; ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING CERTAIN EXEMPTIONS FROM LOBBYING REGISTRATION AND REPORTING REQUIREMENTS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Chapter 2, Administration, Article 5, Code of Ethics, of the San Marcos City Code is hereby amended to add a new Division 5, Lobbying, to read in its entirety as follows:

DIVISION 5. LOBBYING

Sec. 2.469. Purpose.

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

Sec. 2.470. Definitions.

In addition to the terms defined in Section 2.422, the following definitions shall apply to this division:

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 Texas Open Meetings Act.
- (6) Made in the form of a written comment filed during 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, or
- (3) The San Marcos Police Officers Association and the San Marcos Professional Firefighter's Local No. 3963.

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. The term lobbyist includes representatives of the San Marcos Police Officers Association and the San Marcos Professional Firefighter's Local No. 3963.

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.

Sec. 2.471. Qualifying contracts, applications, and activities that can trigger lobbying registration.

Matters that may require registration of lobbyists and reporting of lobbying activities under this division include but are not limited to:

- (1) Contracts with the city or subcontracts 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 a Master Plan, Strategic 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) including a request for alternative compliance.

Instances in which the above contracts, applications, and activities are part of a quid pro quo agreement or for benefit (as defined in Section 2.422) will qualify as action triggers. 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).

Sec. 2.472. Disclosure Requirements.

(a) For 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.

(b) For City Officials and City Employees

- (1) If a city official or city employee meets, or communicates in any manner, with an individual that identifies himself/herself as a registered lobbyist, then the city official or employee is required to document the conversation per the requirements in Section 2.473 of this ordinance.
- (2) If a city official or employee meets, or communicates in any manner,

with an individual that is a registered lobbyist but does not identify himself/herself as a registered lobbyist, then the city official or employee may choose to act in accordance with Section 2.473 if they believe that the individual is discussing items that may fall within Section 2.471. However, if a city official or employee speaks with a registered lobbyist that fails to disclose himself/herself as a registered lobbyist, the city official or employee shall not be deemed to have violated Section 2.473 for failing to report that meeting, conversation, or communication.

Sec. 2.473. Lobbyist Registration and Activity Reporting Requirements

- (a) *Registration required.* All lobbyists are required to register with the city clerk's office ~~prior~~ or online at the city's website prior to engaging in lobbying, unless exempted, under Section 2.474, on a form prescribed by the Ethics Review Commission and available from the City Clerk. The prescribed form 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 **December** 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. **For purposes of this Section 2.473, a political contribution to an elected city official is considered a gift and must be reported as a lobbying activity.**
 - (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~~ Production of records. It may be required for a registered lobbyist or representative of a registered lobbyist to produce certain documentation in the event of an ethics hearing. These records must be provided upon request by

the Ethics Review 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)~~(4) Emails or electronic communications with City Officials or City Employees.

~~(6)~~(5) 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 **December** 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

In the event a lobbyist meets with multiple City officials or employees in a single meeting, it shall be the responsibility of the City staff liaison present at the meeting to report the reportable conversation or action trigger.

(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 this section.

(2) Review the completeness and timeliness of registrations and reports.

(3) Maintain filing, coding, and cross-indexing systems to carry out the purposes of this section, 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 this section;

- (4) Make available for public inspection and copying at reasonable times the registrations and reports filed under this section; and
- (5) Retain registrations and reports in accordance with the Local Government Records Act.

Sec. 2.474. Exceptions to Registration.

The following persons and entities are not required to disclose their status as lobbyists under Section 2.472, or to register as lobbyists and file activity reports or under Section 2.473. Any individual, even if exempt under this Section 2.474, who engages in a prohibited act referenced in Section 2.475 will be subject to the penalties provided in that section.

- (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(s) or group(s) of individuals who communicate with public officials to express personal opinions on behalf of themselves or any other individual(s) or group(s) of individuals, if neither the individual(s) nor group(s) of individuals receive an economic benefit or compensation.
- (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.
- (8) 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.
- (9) Individual(s), group(s), or entities contracted by the City of San Marcos to conduct research or gather information for on behalf of the City.
- (10) Citizens opposed to a zoning or other land use decision in order to avoid a detriment to themselves, their property, or their neighborhood.
- (11) Non-profit corporations and their representatives while generally exempt, shall nonetheless be subject to all disclosure, registration, and lobbying activity reporting requirements of this division if they contact city officials or employees to solicit public funding from the city.
- (12) The Greater San Marcos Partnership (GSMP) and entities that lobby the GSMP are exempt from the disclosure, registration, and lobbying activity reporting requirements of this division.

Sec. 2.475. Sanctionable Actions Prohibited Acts

- (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 an **Invitation For Bids (IFB)**, 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.

Sec. 2.476. Complaints, review and hearings; sanctions for violations.

- (a) During the first six-months following the effective date of the ordinance adopting this division, no sanctions will be administered for violations. **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, complaints alleging a violation of this division may be filed and considered by the Ethics Review Commission in accordance with the procedures set forth in Section 2.444 of this Article.

- (b) Requests for determinations regarding requirements to register as a lobbyist or complaints regarding an individual's failure to register a lobbyist shall be referred to the Ethics Review Commission for a final decision to be made within thirty (30) days. During the review process, any contract awards, activities, and applications that require a determination regarding the lobbyist registration requirement shall not be considered or approved.
- (c) In addition to the sanctions listed in Section 2.444, subsection (e), if the commission determines at the conclusion of a hearing that a violation of Section 2.475 has occurred, it may also impose or recommend:
1. Suspension of lobbying privileges for a determined period of time.
 2. Indefinite revocation of registered lobbying privileges.
 3. Suspension of any business brought before the city or currently being processed by the registered lobbyists or the people or entities they represent.

Sec. 2.477. Criminal Penalties.

A person who violates any provision of this division shall be punished, upon conviction thereof, by a fine not to exceed \$500.00. Each day in which a violation occurs is punishable as a separate offense. During the first six months following the effective date of the ordinance adopting this division, no criminal penalties will be administered for violations.

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 August 3, 2021.

PASSED AND APPROVED on first reading on June 1, 2021.

PASSED, APPROVED AND ADOPTED on second reading on July 6, 2021.

Jane Hughson

Mayor

Attest:

Approved:

Tammy K. Cook
Interim City Clerk

Michael J. Cosentino
City Attorney