



City of San Marcos

Regular Meeting Agenda

Ethics Review Commission

Tuesday, October 12, 2021

5:30 PM

City Hall Conference Room

630 E. Hopkins

This will be a hybrid (in-person/virtual) meeting.

To view the meeting, please go to <https://us02web.zoom.us/j/88192928696> or
Dial in at: 888 788 0099 (toll free) or 877 853 5247 (toll free) **Webinar ID:** 881 9292 8696 or
iPhone one-tap: US: +13462487799,,88192928696# or +12532158782,, 88192928696#

I. Call To Order

II. Roll Call

III. 30 Minute Citizen Comment Period

Persons wishing to participate (speak) during the Citizen Comment portion of the meeting must submit their comments or request to speak to tmoreno@sanmarcostx.gov no later than 12:00 p.m. the day of the meeting. Comments shall have a time limit of three (3) minutes each. Please indicate if you would like to speak in person.

1. Consider approval, by motion, of the August 10, 2021 regular meeting minutes.
2. Review, discuss, and take action, as appropriate, on amending the Annual Financial Disclosure Form, including but not limited to, defining the term "fair market value."
3. Discuss and take action, as appropriate, on possible Resolution to send to City Council recommending amendments to Sec. 2.463 – Information required on financial disclosure statement, under Code of Ethics.

IV. Discussion and Recommendations for Future Agenda Items

Board Members may provide requests for discussion items for future agenda in accordance with the board's approved bylaws. No further discussion will be held related to topics proposed until they are posted on a future agenda in accordance with the Texas Open Meetings Act.

V. Question and Answer Session with Press and Public

This is an opportunity for the Press and Public to ask questions related to items on this agenda. Persons wishing to participate remotely in the Q&A session must email tmoreno@sanmarcostx.gov no later than 12:00 p.m. the day of the meeting. Each speaker will be provided up to three (3) minutes to speak.

VI. Adjournment

Notice of Assistance at the Public Meetings

The City of San Marcos is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. If requiring Sign Language Interpreters or alternative formats, please give notice at least 2 days (48 hours) before the meeting date. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855.461.6674 or sent by e-mail to ADArequest@sanmarcostx.gov.

For more information on the Ethics Review Commission, please contact Tina Moreno at 512.393.8151 or tmoreno@sanmarcostx.gov.



City of San Marcos

Meeting Minutes Ethics Review Commission

Tuesday, August 10, 2021

5:30 PM

Virtual Meeting

I. Call To Order

With a quorum present, the regular meeting of the Ethics Review Commission was called to order by Chair Lollar at 5:30 p.m. on Tuesday, August 10, 2021.

II. Roll Call

Present: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Absent: 3 - Commissioner Chavez (resigned July 20, 2021), Commissioner Chandler, and Commissioner Rhodes

Others Present: 3 - Jacque Cullom, Stan Standridge, and Chase Stapp

III. 30 Minute Citizen Comment Period

There were no speakers.

1. Executive Session under the authority of Section 2.444 of the San Marcos City Code to review Complaint 2021-1.

A motion was made by Commissioner Walden, seconded by Commissioner Rowe, to enter into Executive Session at 5:34 p.m. to review Complaint 2021-1. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

The Commission reconvened into Open Session at 6:28 p.m.

2. Action, as appropriate, on Complaint 2021-1.

A motion was made by Commissioner Teehan, seconded by Commissioner Walden, that Complaint 2021-1 be deemed not a violation of Section 2.424 (b)(4) as alleged. The Commission, after careful review and discussion, concludes that it fails to allege facts, which if true, would constitute a prima facie violation of Sec. 2.424 (b)(4). The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

3. Consider approval, by motion, of the June 8, 2021 regular meeting minutes.

A motion was made by Commissioner Teehan, seconded by Commissioner Rowe, to approve the minutes. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

4. Review, discuss and take action, as appropriate, on Ethics Review Commission recommendations to Council.

This item was discussed and no action taken.

5. Review and discuss amended 2020 Annual Financial Disclosure Forms from Council and Planning & Zoning Commission.

Council:

A motion was made by Commissioner Rowe, seconded by Commissioner Teehan, to accept the amended AFD form for Council Member Garza. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

A motion was made by Commissioner Teehan, seconded by Commissioner Rowe, to accept the amended AFD Form for Council Member Scott. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

Planning & Zoning Commission:

A motion was made by Commissioner Rowe, seconded by Commissioner Walden, to accept the amended AFD Form for P&Z Commissioner Costilla. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

A motion was made by Commissioner Walden, seconded by Commissioner Teehan, to accept the amended AFD Form for P&Z Commissioner Kelsey. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

A motion was made by Commissioner Teehan, seconded by Commissioner Rowe, to accept the amended AFD Form for P&Z Commissioner McCarty. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

6. Review, discuss, and take action, as appropriate, on amending the Annual Financial Disclosure Form, including but not limited to, defining the term “fair market value.”

A motion was made by Commissioner Walden, seconded by Commissioner Rowe, to postpone this item to the next ERC meeting. The motion carried by the following vote:

For: 4 - Chair Lollar, Commissioner Rowe, Commissioner Teehan, and Commissioner Walden

Against: 0

Absent: 2 - Commissioner Chandler and Commissioner Rhodes

IV. Discussion and Recommendations for Future Agenda Items.

ERC regular meeting on October 12, 2021:

- review, discuss, and take action, as appropriate, on amending the Annual Financial Disclosure Form, including but not limited to, defining the term “fair market value”
- discuss and take action, as appropriate, on possible Resolution to send to City Council recommending amendments to Sec. 2.463 – Information required on financial disclosure statement, under Code of Ethics

V. Question and Answer Session with Press and Public.

None were present for questions and answers from press and public.

VI. Adjournment

The Regular Meeting of the Ethics Review Commission meeting was unanimously adjourned at 7:23 p.m.

Michael Cosentino, Staff Liaison

Jonathan Lollar, Chair

DRAFT

**City of San Marcos
City Council/Council Appointee/P&Z Commissioner
Annual Financial Disclosure Form**

NOTES

1. This report covers the reporting period from: _____
2. Do **not** leave items blank. If item is not applicable, mark NA or NONE.
3. Attach information on additional pages, if necessary.

Name: _____

Residence address: _____

Title of position held with the City: _____

Name of spouse: _____ **NA or NONE**

Names of all dependent children: _____ **NA or NONE**

Names under which you, your spouse, or any of your dependent children do business: **NA or NONE**

1. _____

2. _____

3. _____

NOTE – You may use the following reporting categories to describe amounts and values:

- Category I** – At least \$100.00 but less than \$10,000.00
- Category II** – At least \$10,000.00 but less than \$20,000.00
- Category III** – At least \$20,000.00 but less than \$50,000.00
- Category IV** – At least \$50,000.00 but less than \$75,000.00
- Category V** – At least \$75,000.00 but less than \$100,000.00
- Category VI** – \$100,000.00 or more – **MUST** report to nearest \$100,000.00
(For example: \$125,000 would be reported to \$100,000)

1. Identify each source of income amounting to more than \$100.00 received in the reporting period by you, your spouse, or any of your dependent children: **NA or NONE**

Name & full address of income source	Nature of income [e.g., salary, dividends, rent, etc.]	Amount of income [by reporting category]	Income of [e.g., self, spouse, or dependent child]

2. Identify each option held, owned, acquired or sold by you, your spouse, or any of your dependent children during the reporting period: **NA or NONE**

Nature of option [real estate, stock, etc.]	Amount of transaction [by reporting category]	Name & full address of other parties to the transaction

3. Identify each business entity, nonprofit entity or union in which you, your spouse, or any of your dependent children was a partner, manager, officer, member of the board of directors, proprietor or beneficiary during the reporting period: **NA or NONE**

Name & full address of business or nonprofit entity or union	Position held

4. Identify each business entity, nonprofit entity or union in which you, your spouse, or any of your dependent children had an ownership interest with a fair market value of more than \$100.00 at any time during the reporting period: **NA or NONE**

Name & full address of business or nonprofit entity or union	Description of ownership interest [e.g., owner, partner, stockholder]	Value of ownership interest [by reporting category]	Number of shares held/shares issued [if applicable]	Net gain or loss from sale of stock [by reporting category]

5. Identify any real property in the City or ETJ in which you, your spouse, or any of your dependent children had an interest as owner, beneficial owner (holder of a mortgage), business owner (partner in a partnership; or board member, officer or owner of more than 5% of stock of a corporation), or a leaseholder:

NA or NONE

Full address or legal description	Name & full address of owner(s) [if other than you, your spouse or children]	Fair market value [by reporting category] and present use	For leased property, annual rental amount [by reporting category]	Homestead exemption on this property?

6. Identify persons, business entities or guarantors to whom you, your spouse, or any of your dependent children owed a debt of more than \$100.00 during the reporting period (not including debts owed to persons related within the second degree of consanguinity or affinity, or loans to a political campaign which were reported as required by law):

NA or NONE

Name & full address of person, business entity or guarantor to which debt was owed	Amount of debt [by reporting category]	Amount of repayment during reporting period [by reporting category]

7. Provided this information is not privileged by law, identify persons, business entities or guarantors who owed you, your spouse, or any of your dependent children a debt of more than \$100.00 during the reporting period (not including debts owed by persons related within the second degree of consanguinity or affinity):

NA or NONE

Name & full address of person, business entity or guarantor that owed the debt	Amount of debt [by reporting category]	Amount of repayment during reporting period [by reporting category]

Name & full address of person, business entity or guarantor that owed the debt	Amount of debt [by reporting category]	Amount of repayment during reporting period [by reporting category]

8. Identify the source of each gift or accumulation of gifts from one source of more than \$100.00 in value received during the reporting period by you, your spouse, or any of your dependent children, or received by another person for the use and benefit of you, your spouse, or any of your dependent children (not including (1) a gift received from a relative if given because of kinship, or (2) a gift received by will, by intestate succession or as distribution from an inter vivos or testamentary trust established by a spouse or ancestor): NA or NONE

Name & full address of source of gift(s)	Description of gift(s)	Amount or value of gift(s) [by reporting category]

9. Provided this information is not privileged by law, if you were the owner of 5% or more of any business entity during the reporting period, list all customers from whom the entity received at least 10% of its gross income during the reporting period: NA or NONE

Name & full address of customer

10. Identify any financial interest in any franchisee of the City held during the reporting period by you, your spouse, or any of your dependent children [note: franchise holders are A)Time Warner Cable, B) Pedernales Electric Cooperative, C) Bluebonnet Electric Cooperative, and D) CenterPoint Energy Entex]:
NA or NONE

Name of franchise holder	Description of financial interest held [stock, mortgage, note etc.]	Value of financial interest [by reporting category]

11. Identify any transaction during the reporting period by you, your spouse, or any of your dependent children with any holder of any franchise issued by the City, other than as a customer or patron:
NA or NONE

Name of franchise holder	Description of transaction	Value of transaction [by reporting category]

AFFIDAVIT I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

 Signature of Local Government Officer/Appointed Official

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath

 Printed name of officer administering oath

 Title of officer administering oath

ARTICLE 5. CODE OF ETHICS¹

DIVISION 1. GENERALLY

Sec. 2.421. Policy and purposes.

- (a) *General policy statement.* It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds.
- (b) *Appearance of impropriety.* Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.
- (c) This code of ethics has five purposes:
 - (1) To encourage ethical conduct on the part of city officials and employees;
 - (2) To encourage public service with the city;
 - (3) To establish standards for ethical conduct for city officials and employees by defining and prohibiting conduct that is incompatible with the interests of the city;
 - (4) To require disclosure by city officials and employees of their economic interests that may conflict with the interests of the city; and
 - (5) To serve as a basis for disciplining those who fail to abide by its terms.
- (d) This code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. The officials charged with administration of this code of ethics shall administer it in a manner that avoids any such use of this code of ethics.
- (e) This section is intended only to set forth the policy and purposes for adoption of the San Marcos Code of Ethics; it shall not be cited, used, or considered by a citizen or by the ethics review commission as the basis of an ethics complaint filed against any officer or employee of the city.

(Ord. No. 2017-20 , § 1, 11-21-17; Ord. No. 2020-44 , § 1, 6-16-20)

¹Editor's note(s)—Ord. No. 2017-20 , § 1, adopted November 21, 2017, amended article 5 in its entirety to read as herein set out. Former article 5, §§ 2.421—2.465, pertained to Code of Ethics. See Code Comparative Table for complete derivation.

Charter reference(s)—Personal interest and code of ethics, § 12.02.

State law reference(s)—Code of ethics, V.T.C.A., Local Government Code, § 171.001 et seq.

Sec. 2.422. Definitions.

In this article:

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value. Benefit includes a pecuniary gain or pecuniary advantage to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law, including a nonprofit organization or governmental entity.

Economic interest includes a legal or equitable interest in real property, personal property, or intangible property, or a contractual right. Service by a city official or employee as an officer, director, advisor, or other active participant in a nonprofit educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in the securities or other assets unless the person in question participates in the management of the fund.

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.

Immediate family means the spouse, children, brothers, sisters and parents of an officer or employee.

Officer or official means the mayor or any member of the city council and any appointive member of a city board, commission or committee established by ordinance, charter or state law on a permanent basis, and members of temporary boards and commissions.

(Ord. No. 2017-20 , § 1, 11-21-17)

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;
 - 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

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- (2) Misuse any official information obtained from the member's relative, who is a city officer or employee, to which the relative has access by virtue of the relative's office or employment and that has not been made public, in a manner prohibited as to the relative under state law; or
 - (3) Misuse, as defined in V.T.C.A., Penal Code § 39.01, any city property, services, personnel or any other thing of value belonging to the city that has come into the member's custody or possession by virtue of the office or employment of the member's relative who is a city officer or employee.
- (b) *Representation and appearance at meetings.* No city officer or employee shall knowingly:
- (1) Appear before the body of which the officer or employee is a member, as a representative for any private person, including the officer or employee or any immediate family member, or any group or interest;
 - (2) Represent, directly or indirectly, any private person, including the officer or employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party;
 - (3) Accept other employment or engage in outside activities incompatible with the full and proper discharge of city duties or that might impair independent judgment in the performance of city duties; or
 - (4) Make a false statement of material fact at a public meeting.

This subsection shall not be construed to deprive an officer or employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

- (c) *Representation by council members.* No city council member shall knowingly represent any private person, including the city council member or any immediate family member, or any group or interest in any matter before any department, agency, commission or board of the city, except that city council members may represent their interests in their owner-occupied homesteads before a board, agency, commission or department of the city other than the city council.
- (d) *Representation in municipal court.* In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties:
- (1) No city council member shall knowingly represent any private person other than himself or herself. If a city council member elects to have a trial in municipal court, the city council, without the participation of the affected city council member, will appoint a special judge to preside over the trial.
 - (2) No city officer or employee shall knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.
- (e) *Representation in land use and development matters.* A member of the planning and zoning commission shall not knowingly represent the member or any other person, group or interest in any matter before the zoning board of adjustments involving land use or development, and a member of the zoning board of adjustments shall not knowingly represent the member or any other person, group or interest in any matter before the planning and zoning commission involving land use or development. This subsection does not apply to members representing their interests in their owner-occupied homesteads.
- (f) *Prohibited use of city position.* A city official or employee shall not use his or her position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official or employee who represents to a person that the official or employee may provide an advantage or impediment to the person based on the official's or employee's office or position violates this rule.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.425. Contracts with city; eligibility for appointment or election to office.

- (a) No member of the city council and no city employee shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person's position with the city. Any person having an interest shall be ineligible for election as a city council member or appointment as a city employee, and any city council member or city employee who acquires an interest shall forfeit the office or employment. Any violation of this subsection with the actual or constructive knowledge of the city council member or employee shall render the contract voidable by the city manager or the city council.
- (b) In subsection (a) of this section and in subsection 2.425(c), the term "sale to the city" includes a sale to city-sponsored entities and organizations subject to substantial control by the city in one or more of the following respects:
 - (1) All or a majority of the governing body of the entity or organization is appointed by the city council;
 - (2) The city provides more than one-half of the operating funds of the entity or organization;
 - (3) The city has approval authority over purchasing decisions made by the entity or organization;
 - (4) The city has approval authority over bonds or other indebtedness issued by the entity or organization;
or
 - (5) The city has approval authority over the budget of the organization.
- (c) This section does not apply to acquisition of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.426. Restrictions on former employees.

- (a) No former city employee shall, for a period of two years from the date of leaving city employment, knowingly:
 - (1) Appear at a meeting of a board or commission staffed by members of the department of which the employee was a member, as a representative for any private person, including the employee or any immediate family member, or any group or interest.
 - (2) Represent, directly or indirectly, any private person, including the former employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party.

This subsection shall not be construed to deprive a former employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

- (b) In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties, no former city employee shall, for a period of two years from the date of leaving city employment, knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.
- (c) For a period of two years from the date of leaving employment, a former city employee shall not have any financial interest in the sale to the city of any land, materials, supplies or service. Any violation of this subsection with the actual or constructive knowledge of the former city employee shall render the contract voidable by the city manager or the city council. This subsection shall not apply to a former city employee

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(Supp. No. 34, Update 1)

whose employment was terminated as part of a reduction in force or to a former employee whose skills or experience are so unique that failure to contract with him or her would be a detriment to the city as determined by the city manager.

(Ord. No. 2017-20 , § 1, 11-21-17)

Secs. 2.427—2.440. Reserved.

DIVISION 2. ETHICS REVIEW COMMISSION

Sec. 2.441. Established; composition; term of members.

An ethics review commission is established, to be composed of seven members, all of whom will reside in the city. Members of the commission will be appointed for staggered three year terms, and will serve until their respective successors are appointed.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.442. Organization; rules and regulations.

The ethics review commission each year will elect from its membership its chairperson and will promulgate its own rules and regulations as to its forms and procedures and maintain proper records of its opinions and proceedings.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.443. Authority and duties.

- (a) *Generally.* The ethics review commission shall act as authorized by section 12.02 of the Charter concerning conflicts of interest, ethical conduct or interests of city officials and employees.
- (b) *Review and recommendations.* The commission will meet at least once a year to review this article and may make recommendations to the city council.
- (c) *Hearings.* The commission shall consider and conduct hearings on complaints of violations of this article and of state conflict of interest laws in accordance with section 2.444.
- (d) *Advisory opinions.* The commission shall render advisory opinions on potential conflicts of interest or violation of this article at the request of a public official or employee subject to the terms of this article. The opinion must relate to an action proposed to be taken by the person requesting the opinion.
- (e) *Opinions binding.* Any advisory opinion rendered by the commission to a person is binding on the commission in any subsequent complaint concerning the person about whom the opinion was requested and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in connection with the opinion.

(Ord. No. 2017-20 , § 1, 11-21-17)

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

- (a) *Complaint procedure.*

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- (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; 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;
 - f. No complaints shall be filed within a period beginning on the 60th day 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 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; and
 - 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

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- 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.

(Ord. No. 2017-20 , § 1, 11-21-17; Ord. No. 2021-07 , § 1, 2-2-21)

Sec. 2.445. Special counsel.

An independent outside attorney approved by the city council, who does not otherwise represent the city, shall be retained to serve as special counsel to the ethics review commission in the following situations:

- (1) When a complaint is filed alleging that the mayor or a member of the city council, or the city manager, city attorney, city clerk or municipal court judge violated this article or a state conflict of interest law.
- (2) When an advisory opinion is requested under section 2.443(d) by the mayor or a member of the city council, or by the city manager, city attorney, city clerk or municipal court judge.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.446. Criminal penalty and discipline for violations.

- (a) A person who violates any provision of this article shall be punished, upon conviction thereof, by a fine not to exceed \$500.00.
- (b) The penalties prescribed in the preceding subsection do not limit the power of the city manager to discipline employees under the city manager's supervision or the power of the city council to discipline its members for violations of this article or a state conflict of interest law.

(Ord. No. 2017-20 , § 1, 11-21-17)

Secs. 2.447—2.460. Reserved.

DIVISION 3. FINANCIAL DISCLOSURE

Sec. 2.461. Definitions.

In this division:

Board member means a member of a board or commission whose membership is wholly appointed by the city council, including any temporary board or commission.

Business entity means a corporation, partnership, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other entity organized for profit.

Candidate means every person who declares for or files for any city office to be filled by election.

Compensation means any benefit received in return for labor, services, property or investment.

Family member means the spouse and any dependent children of any official or candidate.

Gift means a benefit received other than as compensation, but not including campaign contributions reported as required by state law.

Identification means, for an individual, the person's name, street address, city and state. For any entity other than an individual, the term "identification" means the name, address, city and state of the entity's principal location or place of business; the type or nature of the entity's principal location or place of business; the type or nature of the entity; the date on which it came into existence; the state of incorporation, if any; and the names of the partners or officers of the entity.

Income means a benefit received.

Source of income means any business entity, employment, investment or activity which earned or produced income, including interest, dividends, royalties or rents.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.462. Financial disclosure statement required.

- (a) Between March 15 and April 30 of each year, every city council member, every member of the planning and zoning commission, and the city manager, city attorney, municipal court judge, and city clerk shall file a sworn financial disclosure statement with the city clerk reflecting the financial situation of the official as of December 31 of the previous year and the official's financial activity between January 1 to December 31 of the previous year.
- (b) A newly elected city council member, and a newly appointed planning and zoning commission member, city manager, city attorney, municipal court judge, or city clerk shall file a sworn financial disclosure statement with the city clerk within 30 days from the date the position is assumed. The statement shall reflect the financial condition as of the date and financial activity for the previous 12 months.
- (c) A candidate for city council shall file a sworn statement with the city clerk not later than ten days from the date the candidate files with the city clerk an application to be placed on the official ballot. This statement shall include:

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- (1) A list of any financial interest the person has, direct or indirect, in real property located within the corporate limits or within the extraterritorial jurisdiction of the city.
 - (2) A list of any financial interest the person has, direct or indirect, in any business entity located in the city or its extraterritorial jurisdiction or any business entity doing business with the city.
 - (3) The financial interests listed by the person shall include those held at any time during the 12 months preceding the date of filing for office and shall include any interest held by the candidate or a family member of the candidate.
- (d) All board members shall file a disclosure statement with the city clerk within 30 days after their initial appointment, and thereafter between October 1 and October 31 of each year, regarding their relevant substantial interests in business entities and real property during the 12-month period preceding the date of the statement. Members of temporary boards and commissions shall file a disclosure statement with the city clerk within 30 days after their initial appointment. The statement shall be on a form provided by the city. For purposes of this section, the term "business entity" and the determination of substantial interests in business entities and real property shall be as defined and determined under V.T.C.A., Local Government Code Ch. 171. The form shall note whether the person claims a homestead exemption on any real property owned by the person. The form to be used by members of the planning and zoning commission shall contain the information required under section 2.463.
- (e) Any person filing a statement required by this section may include additional time periods.
- (f) Financial disclosure statements shall be updated within 30 days of any significant change in the interests of an official even if the change is temporary. For this part, "significant" means a change in interest that would tend to render the annual financial disclosure statement misleading or incomplete.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.463. Information required on financial disclosure statement.

- (a) Every person required to file a financial disclosure statement under subsection 2.462(a) or (c) shall include in that statement the following information:
- (1) The person's name, the name of each family member and all names under which the person or family members do business.
 - (2) Identification of each source of income amounting to more than \$100.00 received in the reporting periods by the person or family members, stating the name, address, and nature of the source of income and stating the amount of income received; and identification of each option held, owned, acquired or sold during the reporting period, stating the nature of the option, the amount of transaction, and identification of the other parties to the transaction.
 - (3) Identification of each business entity, nonprofit entity or union in which the person or family member:
 - a. Was a partner, manager, officer, member of the board of directors, proprietor or beneficiary, during the reporting period, stating the position held; or
 - b. Had an ownership interest of more than \$100.00 at the fair market value at any time during the reporting period, stating the value and a description of that ownership interest; provided that, where the ownership interest includes or consists of shares of stock, the number of shares owned shall be stated together with the number of outstanding shares; and if sold during the reporting period a statement of the net gain or loss realized from the sale.

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- (4) Identification by street address, legal or lot-and-block description of all real property located within the city and its extraterritorial jurisdiction, together with its fair market value and present use, in which the person or family member has an interest as:
 - a. Fee simple owner;
 - b. Beneficial owner;
 - c. Partnership owner, naming the partners;
 - d. Joint owner with an individual or corporation, naming them;
 - e. Board member, officer or the owner of more than five per cent of a corporation that has title to the real property, naming the corporation; or
 - f. A leaseholder, naming the person or corporation from whom the property is leased and the amounts of annual rental.

The form shall note whether the person claims a homestead exemption on any real property owned by the person.

- (5) Identification of persons, business entities or guarantors to whom the person or a family member owed a debt of more than \$100.00 during the reporting period, stating the amount, but not including debts owed to persons related within the second degree of consanguinity or affinity and excluding loans to a political campaign which were reported as required by law. If this debt was repaid during the reporting period, the date and amount of repayment shall also be stated.
 - (6) Provided this information is not privileged by law, identification of persons, entities or guarantors who owed the person or a family member a debt of more than \$100.00 during the reporting period, stating the amount, including all bonds, notes and other commercial paper held or owed by the person reporting or any family member during the reporting period, but not including debts owed by persons related within the second degree of consanguinity or affinity. If this debt was repaid during the reporting period, the date and amount of repayment shall also be stated.
 - (7) Identification of the source of each gift or accumulation of gifts from one source of more than \$100.00 in value received by the person or family member, or received by another person for the use and benefit of the person or family member, within the reporting period, stating the amount; but this requirement does not include:
 - a. A gift received from a relative if given because of kinship; or
 - b. A gift received by will, by intestate succession or as distribution from an inter vivos or testamentary trust established by a spouse or ancestor.
 - (8) Provided this information is not privileged by law, if the person filing the statement is the owner of five per cent or more of any business entity, the person shall list all customers from whom the entity received at least ten per cent of its gross income during the reporting period.
 - (9) Identification of any financial interest in or any transaction during the reporting period with any holder of any franchise issued by the city, other than as a utility or franchise customer or patron, stating the nature and amount of interest and transaction, including transactions by any family member and any business entity in which the person filing the statement has an ownership interest of five per cent or more.
- (b) Except for the identification of transactions and amounts required by subsection (a)(9) of this section, any amount required to be reported under subsection (a) of this section may be reported by categories as follows:
- (1) *Category I.* At least \$100.00 but less than \$10,000.00;

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- (2) *Category II.* At least \$10,000.00 but less than \$20,000.00; or
 - (3) *Category III.* At least \$20,000.00 but less than \$50,000.00.
 - (4) *Category IV.* At least \$50,000.00 but less than \$75,000.00;
 - (5) *Category V.* At least \$75,000.00 but less than \$100,000.00; and
 - (6) *Category VI.* \$100,000.00 or more, report to nearest \$100,000.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.464. Retention of statements and inspection.

- (a) The city clerk shall maintain all statements required to be filed with the city clerk under section 2.462 as public records and shall retain them for a period of three years, after which the statements will be returned to the person filing them or will be destroyed.
- (b) The financial disclosure statement file maintained by the city clerk under this section shall be kept in alphabetical order for each year in which statements are filed. This file is open to public inspection during normal hours. The city clerk shall maintain a list of all persons requesting to inspect these files, identifying the files inspected.

(Ord. No. 2017-20 , § 1, 11-21-17)

Sec. 2.465. Forms of statements.

Financial disclosure statements shall be filed on the form promulgated by the city clerk. The city clerk will provide a form to any person requesting one and, not less than ten days before the last day set for filing a statement by any person, shall send a form to the person.

(Ord. No. 2017-20 , § 1, 11-21-17)

DIVISION 4. CAMPAIGN FINANCES

Sec. 2.466. Definitions.

In this division:

Campaign contribution means and includes a contribution to a candidate for mayor or city council in any of the following forms: a monetary contribution or a non-monetary contribution (in-kind contribution).

Contributor means a natural person or a business entity other than a corporation.

Election cycle means the period of time beginning on the day after the last general election for the office of mayor or council member of a particular council place and ending on the day of the next general election for that position.

(Ord. No. 2018-37 , § 1, 9-18-18)

Sec. 2.467. Individual contribution limit.

A contributor may not make campaign contributions in an amount exceeding \$500.00 per election cycle to a candidate for mayor or to a candidate for council member of a particular council place. This limit does not apply to contributions by a candidate to his or her own campaign.

(Ord. No. 2018-37 , § 1, 9-18-18)

Sec. 2.468. Aggregate fund raising limits.

- (a) *Candidates for mayor.* A candidate for the office of mayor, including an incumbent mayor, shall not accept campaign contributions during an election cycle in an amount exceeding an aggregate limit to be determined as follows: An amount equal to \$0.75 multiplied by the number of registered voters in the city on the date of the last election for the office of mayor. The aggregate limit shall not include contributions made by a candidate to his or her own campaign.
- (b) *Candidates for city council positions.* A candidate for the position of council member of a particular council place, including an incumbent council member, shall not accept campaign contributions during an election cycle in an amount exceeding an aggregate limit to be determined as follows: An amount equal to \$0.50 multiplied by the number of registered voters in the city on the date of the last election for any council position. The aggregate limit shall not include contributions made by a candidate to his or her own campaign.

(Ord. No. 2018-37 , § 1, 9-18-18)

Secs. 2.469—2.500. Reserved.