



# City of San Marcos

## Regular Meeting Agenda

### Ethics Review Commission

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Tuesday, March 9, 2021

5:30 PM

Virtual Meeting

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**Due to COVID-19, this will be a virtual meeting.**

To view the meeting, please go to <https://us02web.zoom.us/j/87510752072> or

Dial in at: US: 877 853 5247 (Toll Free) or 888 788 0099 (Toll Free) Webinar ID: 875 1075 2072 or

iPhone one-tap: US: +13462487799,,87510752072# or +12532158782,,87510752072#

- 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 email [tmoreno@sanmarcostx.gov](mailto:tmoreno@sanmarcostx.gov) no later than 12:00 p.m. on the day of the meeting. A call in number to join by phone or link will be provided for participation on a mobile device, laptop or desktop computer. Comments shall have a time limit of three (3) minutes each. Any threatening, defamatory or other similar comments are prohibited by Chapter 2 of the San Marcos City Code.*

  1. Administer Oaths of Office.
  2. Election of Chair.
  3. Election of Vice-Chair.
  4. Consider approval, by motion, of the February 11, 2021 special meeting minutes.
  5. Distribute, review, and discuss Code of Ethics with newly appointed and current ERC members.
  6. Review, discuss, and take action, as appropriate, on Ethics Review Commission recommendations to City Council.
  7. Discuss and take action, as appropriate, on changing and approving the Ethics Review Commission Rules of Procedure.
  8. Discuss and take action, as appropriate, on the Ethics Review Commission Rules of Procedure for Hearings.
  9. Discuss and take action, as appropriate, on amendments to the Code of Ethics, including but not limited to Sec. 2.444 – Complaints; review and hearing; sanctions for violations.
  10. Discuss and take action, as appropriate, on creating an informational video for the Ethics Violation Complaint Form, to be placed on the City's website.
- 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. 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](mailto:ADArequest@sanmarcostx.gov).

For more information on the Ethics Review Commission, contact Tina Moreno at 512.393.8151 or [tmoreno@sanmarcostx.gov](mailto:tmoreno@sanmarcostx.gov).



# City of San Marcos

## Meeting Minutes Ethics Review Commission

Thursday, February 11, 2021

5:30 PM

Virtual Meeting

### I. Call To Order

**With a quorum present, the special meeting of the Ethics Review Commission was called to order by Chair Garcia at 5:31 p.m. on Thursday, February 11, 2021.**

### II. Roll Call

**Present:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden.

**Absent:** 0

**Others Present:** Jordan Buckley, Loy Locke, Jamie Lee Case, Lucia Cordova, Saul Gonzales, Rusty Grice, Jade Huffman, Chase Stapp, Drew Wells, Tammy Cook, Daley Heller, Elizabeth Trevino, Alex Arlinghaus, Bucky Couch, Chris Lane, David Case, Diane Insley, Diane Phalen, Gloria Salazar, H Minor, Iila Knight, Jack E Miller, Jessica Ramos, Keith Ubben, Kelly Kistner, Kelly Stone, Larkin Smith Les Stephens, Linda Coker, Linda Spacek, Mitch Hoffmann, Naomi Narvaiz, Nicholas Aluotto, Rob Roark, Rodrigo Amaya, Stephanie Gates, Stephanie Reyes, Steve Parker, Warren Brown. **Others listed as Attendees in ZOOM without complete identifying information:** Christie, Elena, Elisa, Esther, Forrest, Gloria, Ivy, Jennifer, jg, rjs, 214 673 6824, and 827 8710 6623.

#### 1. Consider approval, by motion, the following meeting minutes:

##### a. January 27, 2021 – Special Meeting

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

**For:** 5 - Chair Garcia, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden.

**Against:** 0

**Abstain:** 1 - Commissioner Lollar

##### b. February 8, 2021 – Special Meeting

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

**For:** 5 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, and Commissioner Teehan.

**Against:** 0

**Abstain:** 1 - Commissioner Walden

2. Consider waiver of the 21-day deadline submission of physical evidence, under ERC's Rules of Procedure for Hearings, to allow relevant evidence submitted on or before February 4, 2021 to be considered at this hearing.

**A motion was made by Commissioner Taylor, seconded by Commissioner Lollar, to accept the waiver. The motion carried by the following vote:**

**For:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden.

**Against:** 0

3. Conduct hearing under Section 2.444 of the Ethics Ordinance on Complaint 2020-8.

Chair Garcia began with a review of the Hearing Procedures and the Decorum listed in the Ethics Review Commission's Rules of Procedure for Hearings.

Mr. Cosentino gave an outline of the nature of the allegation on Complaint 2020-8 filed back in December 2020 by Mr. Locke against Mr. Buckley. The complaint alleges two violations of the City's Code of Ethics. However, only one of the violations is under the jurisdiction of the Ethics Review Commission, which is Section 2.424(b)(4) making a false statement of material fact at a public meeting. The alleged violation listed under the Rules of Decorum, for all City boards and commissions, is not listed within the San Marcos Code of Ethics and does not fall under the jurisdiction of the Ethics Commission. He also advised that any evidence or witness testimony today, must be relevant to the facts alleged in the complaint and the specific section of the code alleged to be violated. The Commission will need to determine whether any extraneous information pertains to the matters of the three (3) items included in the complaint.

Presentation of evidence began by Mr. Locke calling his witnesses and then having them cross-examined by the accused, Mr. Buckley and by members of the Commission:

- Rusty Grice sworn in at 6:15 p.m.
- Jade Huffman sworn in at 6:53 p.m.
- Jamie Lee Case sworn in at 7:21 p.m.
- Lucia Cordova sworn in at 7:34 p.m.
- Drew Wells sworn in at 8:05 p.m.
- Jade Huffman recalled at 8:12 p.m.

**A motion was made by Commissioner Lollar, seconded by Commissioner Walden, to have a brief recess. The motion carried by the following vote:**

**For:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden

**Against:** 0

**The Commission reconvened to Open Session at 8:51 p.m.**

Presentation of evidence began by Mr. Buckley at 8:54 p.m. and calling his witness Mr. Jack E. Miller, sworn in at 9:11 p.m. There was no cross-examination.

**A motion was made by Commissioner Walden, seconded by Commissioner Lollar, to have a brief recess. The motion carried by the following vote:**

**For:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden

**Against:** 0

**The Commission reconvened to Open Session at 10:26 p.m.**

Rebuttal presentation of evidence by Mr. Locke began at 10:28 p.m. and by Mr. Buckley at 10:32 p.m.

Summation remarks by Mr. Locke began at 10:40 p.m. and by Mr. Buckley at 10:41 p.m.

**A motion was made by Commissioner Walden, seconded by Commissioner Lollar, to enter into Executive Session at 10:44 p.m. to review Complaint 2020-8. The motion carried by the following vote:**

**For:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden

**Against:** 0

**The Commission returned from Executive Session at 12:01 a.m.**

**The Commission reconvened into Open Session at 12:04 a.m.**

4. Consider findings and recommendations regarding Complaint 2020-8.

**A motion was made by Commissioner Lollar, seconded by Commissioner Teehan, to have the Ethics Review Commission vote to find that a violation under Article V of the Ethics Code, Section 2.424 – Standard of Conduct, subsection (b)(4) making a false statement of fact at a public meeting accord and that the Commission under Section 2.444(e)(3)(a) issue a letter of reprimand due to a violation that was minor and was committed knowingly, intentionally or in disregard of this article. The motion carried by the following vote:**

**For:** 6 - Chair Garcia, Commissioner Lollar, Commissioner Rice, Commissioner Taylor, Commissioner Teehan, and Commissioner Walden.

**Against:** 0

### III. Adjournment

**The Special Meeting of the Ethics Review Commission meeting was unanimously adjourned at 12:06 a.m.**

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Michael Cosentino, Staff Liaison

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Lee Garcia, Chair

# CITY OF SAN MARCOS ETHICS ORDINANCE

(SAN MARCOS CITY CODE, CHAPTER 2, ARTICLE 5)  
Updated June 2020

## ARTICLE 5. – CODE OF ETHICS

### 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.

#### 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.

### **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
- h. A person, business entity, or association from whom the official has received a campaign contribution in an amount exceeding \$300.00. This provision does not apply to campaign contributions received prior to November 7, 2018. This provision does not apply in circumstances where four or more council members would be prohibited from voting on a matter.

(2) Confer a benefit on the official or employee, or deprive the official or employee of a benefit, where the effect of the action on the official or employee is distinguishable from the effect of the action on members of the public in general or a substantial segment of the public.

(b) *Meaning of "affect".*

(1) In subsection (a)(1) above, an action is likely to affect an official's or employee's economic interest if it meets all of the following:

- a. The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public.
- b. The effect of the action on that interest is direct, and not secondary or indirect. However, the action need not be the only producing cause of the effect in order for the effect to be direct.
- c. The effect on the interest must be more than insignificant or de minimis in nature or value.

(2) In determining whether a person, entity or property is or was affected by a vote or decision, it will not be necessary to prove the actual existence or occurrence of an economic effect or consequence if the effect or consequence would be reasonably expected to exist or occur.

- (c) *Recusal and disclosure.* A city official or employee whose conduct would otherwise violate subsection (a), or a state conflict of interest law, if he or she took an action must abstain from participation in the action in accordance with the following:
- (1) Immediately refrain from further participation in the matter, including communications with any persons likely to consider the matter, such as any department, agency, commission or board of the city, from the time he or she discovers or reasonably should have discovered the matter triggering the recusal and until a decision regarding the matter has been made by the council, board or commission having final approval authority.
  - (2) Promptly file a form for disclosing the nature and extent of the interest triggering the recusal with the city clerk, if the person is an official, or with the person's supervisor, if the person is an employee;
  - (3) Promptly notify the person's supervisor of the nature and extent of the interest triggering the recusal, if the person is a city employee, so that the supervisor can reassign responsibility for handling the matter to another person; and
  - (4) Publicly disclose the interest triggering the recusal immediately after the agenda item has been called up for discussion or action, if the person is a member of a city board, commission, or city council, and leave the room while the board, commission, or city council is discussing or voting on the matter.

**Sec. 2.424. – Standards of conduct.**

- (a) *Standards for immediate family members.* It is unlawful for an immediate family member to intentionally or knowingly:
- (1) Solicit, accept or agree to accept from another person any benefit that the member's relative, who is a city officer or employee, is prohibited from soliciting, accepting or agreeing to accept under state law;
  - (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.

**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.

**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 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.

**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.

**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.

**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.

**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 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 recommends should be considered by the commission;
  - 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 the first day of early voting for any city election and ending on the later of the regular election day or runoff election day.
- (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.

(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.

- (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.

#### **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.

#### **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.

**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.

**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:
- (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.

**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.
  - (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;
  - (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.

**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.

**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.

## 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.

### **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.

### **Sec. 2.468. – Aggregate fundraising 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.

### **Secs. 2.469—2.500. – Reserved.**

CITY OF SAN MARCOS  
ETHICS REVIEW COMMISSION  
RULES OF PROCEDURE

SECTION 1. GENERAL RULES.

- (a) Speakers must confine their remarks to the subject under discussion.
- (b) Personal attacks and remarks are prohibited.
- (c) All votes except for adjournment will be voice vote, with the option for any member to request a roll call vote at any time.

SECTION 2. AUTHORITY OF CHAIR.

- (a) The Chair will control discussion at all times so that only one person speaks at a time.
- (b) The Chair will enforce these rules through the following measures:
  - (1) By calling a person to order, advising them of the rules and requesting compliance.
  - (2) By ending a person's opportunity to speak on an agenda item.
  - (3) By ordering a person to leave a meeting and barring the person's presence during the remainder of the meeting.
- (c) A member of the Commission may appeal the enforcement of rules by the Chair to the Commission by vote of a majority of the members present. Persons other than Commission members will have no right of appeal.
- (d) The Chair is entitled to vote on all items before the Commission, except where abstention is otherwise required by law. The Chair may not make a motion or second.
- (e) In the absence of the Chair at a meeting, the Commission shall appoint a Vice-Chair to preside over the meeting. The Vice-Chair may not make a motion or a second.



### SECTION 3. MEETINGS.

- (a) The regular meetings of the Ethics Review Commission shall be scheduled (5 per year, if needed) on second Tuesdays in March, June, August, October, and November with start time of 5:30 p.m. and adjournment of 8:00 p.m., or no later than 10:00 p.m., if needed. The meetings may be cancelled, if no item is agendized.
- (b) Special meetings of the Commission may be held upon the request of the Chair or three (3) members through notification to the Recording Secretary.
- (c) For regular meetings, agenda items are to be submitted no less than six (6) working days prior to the meeting; agenda packets are to be provided five (5) working days prior to the meeting; and comments/revisions will be accepted up to 72 hours prior to the meeting.
- (d) Voting shall be by voice vote with the option for any member to request a roll call at any time.

### SECTION 4. COMMITTEES.

- (a) A committee may exist of one member as chair with limitation of two other members.
- (b) Members of a committee shall be on a voluntary basis.

# CITY OF SAN MARCOS ETHICS REVIEW COMMISSION RULES OF PROCEDURE FOR HEARINGS

## **HEARING**

In accordance with Section 2-444 of the City Code of Ordinances, 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 the Ethics Code or a state conflict of interest law, the Commission shall schedule a hearing on the complaint. The following rules of procedures will be used to govern a hearing on a complaint. The rules will allow for the presentation of evidence by the complainant and the person accused, and cross examination of witnesses. The hearing shall be held in accordance with the Open Meetings Act.

## **EVIDENCE AND WITNESSES**

Physical evidence (documents, photographs, exhibits, etc.) must be submitted at least **21 days** before the hearing to all parties and the Ethics Review Commission.

The Ethics Review Commission may call city employees as witnesses. The complainant and the person accused may also call any witnesses with relevant knowledge of the matter before the Commission. The witnesses must have personal knowledge of the circumstances of the charges. Character witnesses or witnesses without personal knowledge are not acceptable and will not be permitted to testify. The Chair, or the Recording Secretary, will administer oaths to persons who testify at the hearing.

If the Commission decides to call City witnesses, it must notify them at least **ten (10) working days** before the hearing. Recording Secretary shall notify such witnesses. If complainant or the person accused wish to call City witnesses, they must provide the names to the Recording Secretary **ten (10) working days** before the hearing so that she will have sufficient time to notify the city witnesses. Witness identity submitted to the Recording Secretary must include the following information:

1. Name of Witness
2. Telephone Number of Witness
3. Department and Supervisor of Witness

## **PLACING WITNESSES UNDER THE RULE**

Upon request by either party or the Chair of the Commission, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case. Both the complainant and the person accused may stay in the hearing room, regardless if they are later called to testify.

Witnesses under the rule shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys or representatives in the case.

## **REPRESENTATION**

The person accused of a violation, and the person or persons alleging the violation, may be represented at the hearing by any person of their choice, including an attorney. Only one person will act on behalf of each side in the presentation of the case before the Commission.

## **HEARING PROCEDURES**

The format for hearings on alleged violations of the Code of Ethics will be as follows:

- (1) Introduction of hearing by Chair and having all parties introduce themselves for the record. Attorney representing the Commission shall outline the nature of allegation, ordinance provisions involved, and issues to be determined by the Commission.
- (2) Presentation of evidence by complainant of violation (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by accused person or representative and members of the Commission.
- (3) Presentation of evidence by accused person (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by complainant or representative and members of the Commission.
- (4) Commission may request the testimony of any witness or evidence they deem relevant to the hearing.
- (5) Rebuttal presentation of evidence by complainant.
- (6) Rebuttal presentation of evidence by accused person.
- (7) Summation remarks by person alleging violation or representative.
- (8) Summation remarks by accused person or representative.

## **SUMMATION**

The complainant and the person accused or their representatives will have a maximum of **ten (10) minutes** to summarize.

## **DELIBERATIONS**

The Commission may recess into Executive Session to determine, by a preponderance of the evidence, whether any of the alleged Code of Ethics rule violations were committed. Once the Commission has adequately discussed the matter in Executive Session, the Commission must then reconvene the hearing into Open Session and render the determination in Open Session. If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the sanctions authorized by Section 2-444 (e) of the City Code of Ordinances. If the Commission determines that a good cause for continuance exists, the hearing may be continued to a future date.

## **DECORUM**

Both the complainant and the person accused and representatives must be respectful to Commissioners, witnesses and each other. No person present shall be permitted to indulge in personalities, use language personally offensive, and question motives of the Commissioners or charge deliberate misrepresentation. IT IS IMPERATIVE THAT THE CHAIRPERSON MAINTAIN ORDER AT ALL TIMES. THE CHAIRPERSON MUST NOT PERMIT DEBATE OR COMMENTS

FROM ANY PERSON WHO HAS NOT BEEN RECOGNIZED. INTERRUPTIONS MUST BE SILENCED BY VOICE, USE OF THE GAVEL OR OTHER MEANS, AND, IN THE EVENT OF ANY PERSON'S FAILURE TO HEED THE DIRECTIONS OF THE CHAIRPERSON, THE OFFICER MAY HAVE THAT INDIVIDUAL REMOVED FROM THE ROOM.

All cell phones must be either turned off or on the vibrate mode and there will be no loud talking while witnesses are testifying.

**City of San Marcos Ethics Review Commission  
Ethics Violation Complaint Form**

*All fields **MUST** be completed for complaint to be considered.*

**Complainant Information:**

Name: (please print) \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number/email address: \_\_\_\_\_

**Who is the complaint against:**

Name: \_\_\_\_\_

Position with City: \_\_\_\_\_

**MUST specify what law you allege was violated:**

\_\_\_ City Ethics Ordinance, Section(s) \_\_\_\_\_

\_\_\_ State Conflict of Interest Statute (Local Government Code Chapter 171)

**Briefly state in your own words the facts that lead you to believe a violation has occurred:**

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

**Please attach a copy of all documents upon which you are relying as a basis for this complaint.**

By submitting this complaint, you acknowledge the following:

- 1. You have reviewed a copy of the City Ethics Ordinance and the Ethics Review Commission Rules of Procedure.
- 2. You may be asked to appear at the hearing to present evidence to establish the alleged violation.
- 3. When completed submit your form by mail to the City Attorney's Office, 630 E. Hopkins, San Marcos, TX 78666, e-mail: [mcosentino@sanmarcostx.gov](mailto:mcosentino@sanmarcostx.gov) or fax to 855.759.2846.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Legal Department Use Only**

Date complaint received: \_\_\_\_\_ Person receiving complaint: \_\_\_\_\_