



City of San Marcos

Regular Meeting Agenda

Ethics Review Commission

Tuesday, August 8, 2023

5:30 PM

City Hall Conference Room

630 E. Hopkins

The presiding officer for this meeting will be present at the meeting location described above.

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

To view the meeting, please go to: <https://us02web.zoom.us/j/84712485199> or

Dial in at: 888 788 0099 (toll free) or 877 853 5247 (toll free) or

One tap mobile: US: +13462487799,,84712485199#,,,,*047662#

Meeting ID: 847 1248 5199 Passcode: 047662

I. Call To Order

II. Roll Call

III. Citizen Comment Period

Persons wishing to participate (speak) during the Citizen Comment portion of the meeting must email mlacey@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, if needed. 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. Consider approval, by motion, of the May 9, 2023, Special Meeting Minutes, and the June 20, 2023, Regular Meeting Minutes.

2. Consider a recommendation regarding amendments to the meeting procedures and rules under the Bylaws governing the Ethics Review Commission.

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

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.

For more information on the Ethics Review Commission, contact Monika Lacey at 512.393.8151 or mlacey@sanmarcostx.gov.



City of San Marcos

Regular Meeting Minutes Ethics Review Commission

Tuesday, May 9, 2023

5:30 PM

City Hall Conference Room

I. Call To Order

With a quorum present, the regular meeting of the Ethics Review Commission was called to order by Commissioner Rios (temporary chair) at 5:34 p.m. on Tuesday, May 9, 2023.

II. Roll Call

Present: 6 - Commissioner Chandler, Commissioner Morris, Commissioner Osborne, Commissioner Rios, Commissioner Rowe and Commissioner Smithson

Absent: 1 - Commissioner Armer

III. Citizen Comment Period

Citizen, Sarah Teale, was present and, expressed concerns over Annual Financial Disclosure Forms, and Campaign Contributions to Council Members.

1. Administer Oaths of Office.

Ms. Lacey stated oaths had been completed prior to the meeting.

2. Election of Chair.

Commissioner Smith nominated Commissioner Ed Rios for Chair. There were no other nominations. Commissioner Rios was elected by the following vote:

For: 6 - Commissioner Chandler, Commissioner Morris, Commissioner Osborne, Commissioner Rios, Commissioner Rowe, and Commissioner Smithson

Against: 0

Absent: 1 - Commissioner Armer

Election of Vice-Chair.

Commissioner Roselynn Morris received a nomination for Vice-Chair. There were no other nominations. Commissioner Morris was elected by the following vote:

- For:** 6 - Chair Rios, Commissioner Chandler, Commissioner Morris,
Commissioner Osborne, Commissioner Rowe, and Commissioner Smithson
- Against:** 0
- Absent:** 1 - Commissioner Armer

3. Consider approval, by motion, of the November 8, 2022 regular meeting minutes.

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

- For:** 6 - Chair Rios, Commissioner Chandler, Commissioner Morris,
Commissioner Osborne, Commissioner Rowe and Commissioner Smithson
- Against:** 0
- Absent:** 1 - Commissioner Armer

4. Review, discuss, and take action, as appropriate, on an amended 2021/2022 Annual Financial Disclosure Form, from a Planning & Zoning Commissioner

A motion was made by Commissioner Chandler, seconded by Commissioner Rowe, to approve the Annual Financial Disclosure.

- For:** 6 - Chair Rios, Commissioner Chandler, Commissioner Morris,
Commissioner Osborne, Commissioner Rowe and Commissioner Smithson
- Against:** 0
- Absent:** 1 - Commissioner Armer

5. Review, discuss and take action, as appropriate, on Ethics Review Commission recommendations sent to City Council.

This item was discussed, and no action taken.

IV. Discussion and Recommendations for Future Agenda Items.

ERC regular meeting on June 20, 2023:

- review, discuss, Bylaws and Governance

V. Question and Answer Session with Press and Public.

Citizen Sarah Teale asked questions regarding Requirements for Annual Financial Disclosures submitted by City Council members.

VI. Adjournment

The Special Meeting of the Ethics Review Commission meeting was unanimously adjourned at 6:02 p.m.

Sam Aguirre, Staff Liaison

Eduardo Rios, Chair

DRAFT



City of San Marcos

Regular Meeting Minutes

Ethics Review Commission

Tuesday, June 20, 2023

5:30 PM

City Hall Conference Room

I. Call To Order

With a quorum present, the regular meeting of the Ethics Review Commission was called to order by Chair Rios at 5:48 p.m. on Tuesday, June 20, 2023.

II. Roll Call

Present: 5 - Chair Rios, Commissioner Chandler, Commissioner Morris, Commissioner Osborne, Commissioner Smithson

Absent: 2 - Commissioner Armer (Resigned) and Commissioner Rowe (Car trouble)

III. Citizen Comment Period:

Professor Lisa Marie Coppoletta was present and expressed concerns regarding ERC scheduled Hearing on June 21, 2023. Professor Coppoletta also expressed concerns regarding errors on the agenda.

Forrest Fulkerson (previous ERC member) presented a document regarding the Open Records Act. The Statute Government Code Title 5 Open Government. Ethics Subtitle A. Open Government Chapter 552 Public Information.

1. Consider approval, by motion, of the May 9, 2023, regular meeting minutes.

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

For: 5 - Chair Rios, Commissioner Chandler, Commissioner Morris, Commissioner Osborne, and Commissioner Smithson

Against: 0

Absent: 1 - Commissioner Rowe

2. Distribute, review, discuss General Ordinances / Administration/ Code of Ethics / Ethics Review Commission, and BYLAWS of the Ethics Review Commission, with newly appointed and current ERC members.

These commission discussed the city's Code of Ethics and the commissions Bylaws, and how they govern the conduct and affairs of the commission. The city attorney explained various provisions to the commission. The commission directed staff to place an item on the next agenda to consider possible recommended changes to these provisions.

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

This item was not discussed and no action taken.

IV. Discussion and Recommendations for Future Agenda Items.

ERC regular meeting on August 8, 2023:

- Bylaws, Ordinance, and Code of Ethics, for possible action for amendments.
- ERC Transparency Discussion and Recommendations

V. Question and Answer Session with Press and Public.

Professor Coppoletta had questions regarding what she could not hear at the beginning of meeting, Chair Rios informed her regarding, approval of minutes, correction on minutes. They made her aware comments were made regarding, a hearing on an ethics complaint, but that the hearing is not on this agenda, and also that he is not and cannot be involved in discussion regarding the hearing.

VI. Adjournment

The Regular Meeting of the Ethics Review Commission meeting was adjourned by unanimous vote at 6:41 p.m.

Sam Aguirre, Staff Liaison

Eduardo Rios, Chair

BYLAWS OF THE
Ethics Review Commission

ARTICLE 1. NAME.

The name of the board is Ethics Review Commission.

ARTICLE 2. PURPOSE AND DUTIES.

The purpose of the board is defined within Chapter 2, Article 5, Division 2: Ethics Review Commission and Section 12.02 of the City Charter with the following duties and authorities:

- (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 the Code of Ethics and may make recommendations for amendments 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.

Personnel matters are not within the purview of the Commission

ARTICLE 3. MEMBERSHIP.

- (A) The commission is composed of seven (7) members appointed by the city council.
- (B) A member serves at the pleasure of the city council.
- (C) *Qualifications:* All commission members will reside in the city.
- (D) Members of the commission will be appointed for staggered three-year terms, beginning March 1st on the year of appointment. If a member is appointed to fill a vacancy, the term

begins on the date of appointment. Members will also serve until their respective successors are appointed.

- (E) All vacancies shall be filled as provided for by Section 2.071 of the City Code.
- (F) An individual commission member may not act in an official capacity except through the action of the commission.
- (G) Attendance at commission meetings shall conform to the requirements outlined in Section 2.069 - Absence from meetings of the City Code.
- (H) A member who seeks to resign from the commission shall submit a written resignation to the chair of the commission, the staff liaison, or the city clerk's office. If possible, the resignation should allow for a thirty-day notice so the city council can appoint a replacement.

ARTICLE 4. OFFICERS.

- (A) The officers of the commission shall consist of a chair and a vice-chair.
- (B) Officers shall be elected annually by a majority vote of the commission at the first regular meeting after March 1. In the event a current officer becomes ineligible to serve as an officer, the commission may hold an election at the next regular meeting agenda.
- (C) The term of office shall be one year, beginning April 1st and ending March 31st.
- (D) A member may not hold more than one office at a time.

ARTICLE 5. DUTIES OF OFFICERS.

- (A) The chair shall preside at board meetings, approve each final meeting agenda, and execute approved meeting minutes.
- (B) In the absence of the chair, the vice-chair shall perform all duties of the chair.
- (C) In the absence of both the Chair and the Vice-Chair, the commission should elect an interim chair for that meeting, or until the Chair or Vice-Chair arrives.
- (D) The Chair is responsible for promoting and maintaining order in meetings. The Chair should ensure adherence to the agenda for the meeting.
- (E) The Chair should control discussion to ensure that it focuses on the issue and not on any person. Personal remarks and attacks are not permitted.

ARTICLE 6. AGENDAS.

- (A) The following general order of business should be used for regular meetings of the commission:
1. Call to order
 2. Roll call
 3. Citizen Comments – 30 minutes, 3 minutes per speaker
 4. Consent Agenda (includes routine items such as minutes from the previous meeting which normally do not need separate discussion)
 5. Presentations and/or Public Hearings
 6. Items for action or discussion/direction
 7. Reports (report items should be listed individually as needed to comply with Open Meetings Act requirements)
 8. Items for future agendas
 9. Executive Session (in accordance with Open Meetings Act exceptions)
 10. Question and Answer Session.
 11. Adjournment
- (B) Prior to taking office all newly appointed members shall attend an orientation. This orientation will include, but may not be limited to, a review of Bylaws, Specific Board Ordinance and Charge, Open Meetings Act, Public Information Act, Ethics, parliamentary procedure, how to run a meeting, and procedures on how to file a complaint with the city.
- (C) The commission may only discuss or consider an item that is stated within the assigned scope of work or charge of the commission as provided in Article 2.
- (D) The chair or two or more members may place a discussion item on an agenda for a regular commission meeting no later than 10 business days prior to the meeting. If two or more members wish to place a discussion item on a meeting agenda, they must separately contact the staff liaison by written request.
- (E) After first consulting with and receiving input from the staff liaison, the chair shall approve each final meeting agenda. The chair may not remove an item placed on an agenda by prior direction of the commission under subsection (C) above or placed on an agenda as a discussion item by two members under subsection (C) above.
- (F) The staff liaison will submit the meeting agenda to the City Clerk's Office for posting no later than 72 hours before the meeting. If the 72-hour deadline should fall on a weekend or holiday it is the responsibility of the staff liaison to provide the meeting agenda to the City Clerk's Office by 4:30 p.m. on the last business day before the weekend or holiday.
- (G) Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

ARTICLE 7. MEETINGS.

- (A) The commission meetings shall comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (B) The commission will conduct its meetings by the rules of common courtesy and procedure identified in Article 10.
- (C) The Chair should introduce each item as it appears on the agenda, and in the order in which it appears on the agenda. The Chair may allow items to be considered out of order with the informal consent of the commission.
- (D) The following types of actions may be taken or motions can be made during a meeting:
1. **Approval** – Means the item is approved as proposed.
 2. **Conditional approval** – Means approval for the item will take effect upon the occurrence of the conditions.
 3. **Approval as amended** – Means the item is approved with changes from the original proposal.
 4. **To Table** – Means to temporarily delay the consideration of the item while another item is brought up for consideration.
 5. **Remove from Table** – Means to bring back the previously delayed item for consideration.
 6. **Postpone** – Means postponement of consideration of the item, either until a definite time, or indefinitely. Action on the item at a subsequent meeting requires the item to be placed on the agenda for that meeting.
 7. **Reconsider** – Means to reopen discussion of an item that was already acted upon. Reconsideration may only occur at the same meeting, or at the next meeting after the one at which the original action occurred. A motion to reconsider may only be made by a person who voted on the prevailing side on the original action. Reconsideration of an item at a subsequent meeting requires the item to be placed on the agenda for that meeting.
 8. **Withdraw** – Made by the person who made the motion. Does not require a formal vote unless a member objects to the withdrawal.
 9. **Close debate ("calling for the question")** – Requires a motion and second and 2/3 vote. If it passes, a vote is then taken on the motion that was under discussion, without further debate. If it fails, debate resumes on the motion that was being discussed.
 10. **Amend** – Usually consists of striking out, inserting, adding, or substituting words, sentences or paragraphs to the subject of the original motion. This motion is voted upon separately from the original motion. Note: A friendly amendment, agreed to by persons who made and seconded a motion, does not require a separate vote from the original motion.
 11. **Recess** – A temporary break in a meeting may be called by the Chair. This does not require a formal vote unless a member objects to the recess.
 12. **Limited discussion or debate** – The Chair may establish a reasonable time limit for consideration of an item, or a reasonable time limit on each person

addressing the commission, or upon each commission member who comments on an issue. This does not require a formal vote unless a member objects to the limits.

- (E) In accordance with the Open Meetings Act, discussion and action is limited to the items listed on the agenda for a meeting. Discussion of any subject not listed on the agenda must be limited to whether to place the item on the agenda for a future meeting.
- (F) Board meetings will adhere to Sec. 2.045. – Rules of decorum for city council and city board and commission meetings of the San Marcos City Code.
- (G) The commission shall meet when the board is legally required to meet in order to comply with a legal deadline. In October of each year, the board shall adopt a schedule of the meetings for the upcoming year, including makeup meeting dates for the holidays and cancelled meetings.
- (H) Special meetings of the commission shall be called by the staff liaison upon the written request of the chair or any three members of the commission. A commission may not call a meeting in addition to its regular scheduled meetings as identified in its adopted meeting schedule, more often than once a quarter, unless the meeting is required to comply with a statutory deadline or a deadline established by Council.
- (I) Executive sessions are permitted only when they have been posted in advance and conform to those requirements of the Texas Government Code Chapter 551 (Texas Open Meetings Act) which pertain to executive sessions.
- (J) A majority of the voting membership of the commission members constitute a quorum.
- (K) If a quorum for a meeting does not convene within one-half hour of the posted time for the meeting, then the meeting is deemed cancelled.
- (L) To be effective, a commission action must be adopted by an affirmative vote of the number of members necessary to provide a quorum.
- (M) The chair has the same voting privilege as any other member.
- (N) The commission will allow citizens to address the commission during a period of time set aside for citizen communications during their regular meeting. Each speaker will be limited to three minutes.
- (O) The staff liaison shall prepare the meeting minutes. The minutes of each commission meeting must include the vote of each member on each item before the commission and indicate whether a member is absent or failed to vote on an item.
- (P) The city clerk shall retain agendas, approved minutes, internal review reports and bylaws. The city attorney's office shall retain all other commission documents. The documents are public

records under Texas Local Government Code Chapter 552 (Texas Public Information Act).

- (Q) The chair shall adjourn a meeting not later than 10 p.m., unless the board votes to continue the meeting.

ARTICLE 8. RECOMMENDATIONS.

- (A) The commission is encouraged to provide the city council with advisory recommendations on matters of city policy within their purpose and duties provided in Article 2 as necessary.
- (B) The staff liaison must submit a policy recommendation that has been approved by a majority of the membership in the form of a resolution to the city clerk and city manager for distribution to the city council.
- (C) The commission will submit an annual report to the city clerk by February 28 of each year.

ARTICLE 9. COMMITTEES.

- (A) The Ethics Review Commission does not have any standing committees but may have ad hoc committees as necessary.
- (B) Each committee must be established by an affirmative vote of the commission. Each committee shall consist of at least three commission members approved by the commission. A staff member shall be assigned to each committee by the director of the city attorney's office.
- (C) A committee may designate a chair, with the member's consent, but is not required to do so.
- (D) Quorum requirements do not apply to committees.
- (E) Committees are not required to post their meetings in accordance with the Texas Government Code Chapter 551 (Texas Open Meetings Act). A quorum of the membership is not allowed to be present.
- (F) Each committee shall update the commission at least quarterly on their work.

ARTICLE 10. RULES OF COMMON COURTESY AND PROCEDURE.

- (A) During meetings, members shall preserve order and decorum, shall not interrupt or delay proceedings.
- (B) Members shall demonstrate respect and courtesy to each other, to city staff members, and to members of the public appearing before the commission.

- (C) Members shall refrain from rude and derogatory remarks and shall not belittle staff members, other commission members, or members of the public.
- (D) The Chair should exercise control over persons who abridge this policy or disrupt a meeting in the following ascending order of action:
1. Call the person to order, advising the person of the infraction.
 2. Advise the person that the infraction must cease immediately or the person will be ordered to leave the meeting.
 3. Order the person to leave the meeting. If the offending person is a member of the commission, the Chair shall call for a vote on the expulsion of the member from the meeting.

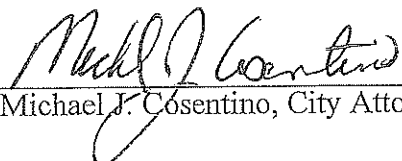
ARTICLE 11. GENERAL POWERS AND DUTIES

- (A) Personnel Issues: Personnel matters are not within the purview of the Commission and are not appropriate for posting on an agenda, discussion at a meeting, or as a subject for a commission recommendation. Neither the Commission nor any of its members shall recommend, instruct, or request the City Manager or any of the City Manager's subordinates to change the job qualifications for a current employee, appoint, or remove any person from, office or employment. The Commission and its members are prohibited from giving orders to subordinates of the City Manager either publicly or privately.
- (B) All Boards and Commissions shall adhere only to their specific general powers and duties within their Ordinance, as provided in Article 2.

ARTICLE 12. AMENDMENT OF BYLAWS.

A bylaw amendment is not effective unless approved by the Council Finance and Audit Committee.

The bylaws were approved by the Ethics Review Commission at their meeting held on June 14, 2022.



Michael J. Cosentino, City Attorney

ETHICS REVIEW COMMISSION

August 8 2023, Regular Meeting

Example Revisions to Bylaws Based on Discussion of the Commission on June 20, 2023

At its regular meeting on June 8, 2023, the commission discussed possible amendments to its bylaws and requested that an action item be placed on this agenda for consideration of a recommendation to the Audit and Finance Committee for approval of possible revisions.

Two sections of the bylaws specifically discussed were Article 7, Meetings, Sections (K) and (L). Below are possible redlines based on comments from the previous meeting. Tonight's agenda posting will allow the flexibility to approve variations to what is offered below.

Section (K) Current:

- (K) If a quorum for the meeting does not convene within one-half hour of the posted time for the meeting, then the meeting is deemed cancelled.

Possible revisions:

- (K) If a quorum for the meeting does not convene within ~~one-half hour~~ 15 minutes of the posted time for the meeting, then the meeting is deemed cancelled.
- (K) If a quorum for the meeting does not convene within ~~one-half hour~~ 15 minutes of the posted time for the meeting, then the meeting is deemed cancelled, unless the members present for the meeting unanimously agree to remain for a longer period as they deem appropriate under the circumstances.

Section (L) Current:

- (L) To be effective, a commission action must be adopted by an affirmative vote of the number of members necessary to provide a quorum.

Possible revisions:

- (L) To be effective, a commission action must be adopted by an affirmative vote of ~~the number of members necessary to provide a quorum~~ a majority of the members present at the meeting, unless other provisions of these bylaws or rules of procedure approved by the commission specify otherwise.

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.*
 - (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. The city attorney shall also provide a copy of the ethics review commission's rules of procedure for hearings to the complainant and to the person accused within seven business days of accepting the complaint form.
 - (3) City officials and employees shall not use or threaten to use official authority or influence to intimidate or discourage any person from filing an ethics complaint or testifying at a hearing before the ethics review commission regarding a pending ethics complaint.
 - (4) City officials and employees shall not take action as a reprisal against any other city official or employee who in good faith reports or initiates a complaint regarding an alleged violation of this Code or who participates in the complaint process by providing testimony or producing documents at a hearing before the ethics review commission regarding a pending complaint.
 - (5) A City of San Marcos official or employee may not suspend or terminate the employment of, or take other adverse personnel action against a city employee who in good faith files an ethics complaint or who provides testimony or produces documents at a hearing before the ethics review commission regarding a pending complaint. "Adverse personnel action" means an action that affects a city employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

(b) *Review of complaints by commission.*

-
- (1) The commission shall review each complaint in executive session prior to conducting a hearing to determine whether the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law.
 - (2) If the commission determines that the complaint is defective in form or does not allege sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law, the commission shall dismiss the complaint, and provide notice, including the reasons for the dismissal, to the complainant and to the person accused.
 - (3) If the commission determines that the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of this article or a state conflict of interest law, the commission shall schedule a hearing on the complaint.
- (c) *Hearings.*
- (1) The commission will adopt rules of procedure to govern hearing on complaints. The rules will allow for the presentation of evidence by the complainant and the person accused, and cross examination of witnesses.
 - (2) The chair of the commission or any person acting in that capacity, and the recording secretary of the commission, are authorized to administer oaths to persons who testify at hearings conducted by the commission.
 - (3) All city officials and employees shall comply with requests from the ethics review commission to appear and provide testimony at hearings to assist the commission in carrying out its duties to resolve a pending complaint. Failure to comply with the obligations imposed by this subsection is a violation of this Code.
- (d) *Ex parte communications.* It is unlawful for a person who has filed a complaint alleging a violation of this article or a state conflict of interest law by a city officer or employee, or a person against whom such a complaint has been filed, to communicate verbally or in writing about the subject matter of the complaint with a member of the ethics review commission at any time other than during a public meeting of the commission. All such communications by such persons to the commission outside of a public meeting of the commission must be directed to the city attorney. The city attorney will collect all such communications and provide them to the commission with the agenda materials for the meeting at which the complaint is considered. The city attorney will make copies of these communications available to interested persons in accordance with state law.
- (e) *Sanctions.* If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the following sanctions:
- (1) A letter of notification, if the violation is clearly unintentional, or when the official or employee's action was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the official or employee of any steps to be taken to avoid future violations.
 - (2) A letter of admonition, if the commission finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.
 - (3) A reprimand, if the commission finds that the violation:
 - a. Was minor and was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or
 - b. Was serious and may have been unintentional.
- A copy of any reprimand directed to an official shall be sent to the city council. A copy of any reprimand directed to an employee shall be sent to the city manager and included in the employee's personnel file.

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

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

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

(Ord. No. 2017-20 , § 1, 11-21-17; Ord. No. 2021-07 , § 1, 2-2-21; Ord. No. 2021-52 , § 1, 8-3-21)

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.