



# City of San Marcos

## Work Session Meeting Minutes City Council

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Tuesday, March 16, 2021

3:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to COVID-19 rules.**

### I. Call To Order

**With a quorum present, the work session of the San Marcos City Council was called to order by Mayor Hughson at 3:00 p.m. Tuesday, March 16, 2021. The meeting was held online.**

### II. Roll Call

**Present:** 7 - Mayor Pro Tem Melissa Derrick, Mayor Jane Hughson, Council Member Maxfield Baker, Council Member Saul Gonzales, Deputy Mayor Pro Tem Shane Scott, Council Member Alyssa Garza and Council Member Mark Gleason

### PRESENTATIONS

1. Receive a Staff presentation and hold discussion on the Scooter Pilot Program, and provide direction to Staff.

**Bert Lumbreras, City Manager, provided a brief introduction regarding the scooter pilot program. Mr. Lumbreras introduced Pete Binion, Transit Manager to provide the presentation.**

**Mr. Binion provided the background on the scooter pilot program. In May 2020, Council prohibited “for profit” scooters due to concern for public safety and lack of suitable infrastructure. With the impact of Covid-19 on transit bus capacity, Texas State University began discussions about scooters with Spin, the micro-transit wholly owned subsidiary of the Form Motor Company. City staff joined them and looked at this socially distanced option. In August 2020 agreements were reached and the program began in September 2020.**

**Mr. Binion spoke on how this program is currently being monitored. The project team uses real time GPS software to provide detailed scooter location and “dwell” time. City staff time spent 75 hours monitoring, Field audits were held twice weekly at random times, and weekly meetings were held.**

**Mr. Binion provided the performance metrics including number of riders, trips**

completed, miles traveled, and hours of service.

The two main concerns that were expressed with the passage of the ordinance was public safety and infrastructure.

The pilot findings regarding Public Safety include:

- Three (3) non-critical injuries reported (no hospital visits)
- Provided socially distant form of travel during Pandemic
- Zero (0) COVID-19 cases reported by Spin employees

The pilot findings regarding Infrastructure Limitations include:

- Audits suggest less than one (1) mis-parked scooter per day
- Downtown businesses provided minimal negative feedback
- No scooters in the river (effective “geo fencing”)

There have been various Community Engagement events such as:

- Spin partners with Community organizations
- Main Street
- Greater San Marcos Partnership
- Spin provided “Spin to Vote” – free rides for Nov. 3 elections
- Spin provides “Access” – discounted rides to qualified riders

The challenges include:

- Theft & Vandalism
- Occurs in all scooter markets
- Occurs to all scooter companies
- Impacts minimized - new scooter model
- Travel Demand
- COVID-19
- Downtown parking availability
- University students remote learning

Summary

- Successful program monitoring
- Demand exists for this form of transportation
- Appears to be a safe form of transportation
- Vendor has worked closely with the community
- Staff Recommendation: Continue the scooter pilot program through the summer and solicit a full time provider

Mr. Binion provided the recommended next steps:

- Continue Pilot program through Summer 2021

- **Make needed changes to the Ordinance**
- **City and University complete RFP solicitation**
- **Both dockless bicycles & scooters required**
- **Council approval of selected vendor**
- **Full program roll-out for Fall 2021 semester**

#### **Council Direction Needed**

**Is Council interested in moving beyond a pilot program?**

**If yes, is the preference for a single provider or multiple providers?**

**Mayor Pro Tem Derrick inquired about going out for a Request For Proposal (RFP) and if asked if Spin would be interested in dockless bike rentals as some prefer to bike over riding a scooter. Mr. Binion stated Spin will provide dockless bikes and scooters.**

**Council Member Baker asked if these are will be electric? Mr. Binion stated they are electric/pedal assist.**

**Council Member Baker inquired about a reduced rate. Mr. Binion stated the company does offer reduced rates but proof of eligibility must be sent to Spin.**

**Council Member Baker asked if this causes a conflict with the proposed e-cab program. Mr. Binion stated this should not create much competition (if any) with e-cabs.**

**Deputy Mayor Pro Tem Scott expressed his interest in the program. He inquired into how many providers have the ability to provide both services. He asked about going out for a RFP with the University. Mr. Binion stated the RFP will come from the University, but there will be two separate license agreements, one for the City and one for the University. Mr. Binion stated this ordinance does not prohibit individuals from using their own personal scooters.**

**Mayor Pro Tem Derrick asked if we will have geo fencing for bikes like we do for scooters. Mr. Binion confirmed there will be geofencing.**

**Mayor expressed her appreciation to Staff for their work on this program.**

**Mr. Binion expressed his appreciation to the university, Spin management staff, other city departments including Main Street, Communications, Planning and Development Services, Electric Utility. He also thanked Mr. Lee**

**Hitchcock, former Director of General Services.**

**Mr. Lumbreras noted the process worked well, including ensuring there is one provider for the university and the city. This program has been a success and he thanked Mr. Binion.**

**Council provided unanimous consent to move beyond the pilot program and seek a single provider. Council want to see bikes as well as scooters.**

- 2. Receive a Staff presentation and hold discussion regarding the renewal of the San Marcos Parks Premises lease between the City of San Marcos and the San Marcos Lions Club, and provide direction to Staff.**

**Bert Lumbreras, City Manager, provided a brief introduction regarding the lease agreement with the Lions Club. Mr. Lumbreras introduced Drew Wells, Director of Parks and Recreation to provide the presentation.**

**The purpose of the presentation is to provide information regarding the Lease of Parks Premises between the City of San Marcos and the San Marcos Lions Club that will expire on April 10, 2021, and receive Council direction.**

**Mr. Wells provided information regarding the Lease agreement that will expire on April 10, 2021. Mr. Well provided the history and background including the following:**

- City Charter Section 3.07 requires that the City Council place a ballot proposition before the qualified voters of the city before entering into a lease of dedicated parkland for a term of more than 3 years.**
- City Records first mention the Terms & conditions of a Lease between the City and the San Marcos Lions Club being placed before the qualified voters of the City during a Regular City Council meeting on November 23, 1981.**
- April 3, 1982 – First time lease agreement between the City and the San Marcos Lions Club was adopted by a majority of the qualified voters. The lease was executed with a 5 year term and an option to renew for an additional 5 years.**
- May 5, 1990 – Second time lease agreement between the City and the San Marcos Lions Club was adopted by a majority of the qualified voters. The lease was executed with a 5 year term, and three consecutive 5 year renewable options, (April 11, 1991 – April 10, 2011)**
- April 17, 2007 – Lease amended during the third option to renew for another 5 year term. The San Marcos Lion’s Club was provided permission to operate a concession stand in Rio Vista Park. In exchange, the exclusive right to sell concessions in City park and Rio Vista park, the Lion’s Club offered to pay to the City 75% of the net profits from the proceeds of their concession**

operations. These finds were to be deposited into the same fund created for the franchising of river shuttles.

- **April 27, 2009** – The Lion’s Club tube rental concession area, restrooms and kitchen areas were destroyed by a fire.
- **November 2, 2010** – Third time lease agreement between the City and the San Marcos Lions Club was adopted by a majority of the qualified voters. The lease was executed with a 5 year term, and four consecutive 5 year renewable options.

Mr. Wells provided the current key components of the lease:

- **Leased Premises** include approximately 4,720 square foot portion of the City Recreation Building, adjacent sidewalks, access to and shared use of public parking and public restrooms in the City Recreation Building.
- **Term:** 5 year lease with four additional terms of five years, each upon mutual agreement of Lessee and Lessor. This will be the second renewal option
- **Rent:** This was the first lease since 1982 to require rent payments. Rent payments were determined based on the total cost of the reconstruction of the portion of the building Lion’s Club leased from the City that was destroyed by fire in April 2009. Rental payments will reimburse the City \$298,500 over the terms of the lease. Total rent collected to date is \$110,750.
- **Rent:** The current annual rent that San Marcos Lion’s Club pays to the City is \$11,350 per year (April 2016-April 2021). Rent is paid annually on or before September 30 of each year. Unless otherwise agreed at the time of any renewal under paragraph 2.01, the annual rent during any renewal period shall be as follows:
  - o April 11, 2021 through April 10, 2026 - \$11,900
  - o April 11, 2026 through April 10, 2031 - \$12,500
  - o April 11, 2031 through April 10, 2036 - \$13,150
- **River Clean Up:** The Lessee shall assist in the cleanup of the San Marcos River in and around the area of the City recreation building during city of San Marcos designated river cleanup events.
- **Amendment:** This Lease may be amended only by an instrument in writing signed by both parties.

The Parks & Recreation Board provided the following recommendations:

- **Limit Days of Operation:** Limit the days of operation for the lessee to offer commercial tubing and/or like recreation (rental and/or shuttles) to; 3 days out of Monday, Tuesday, Wednesday, Thursday and Friday, and 1 day out of Saturday and Sunday. This will provide the river a period of rest from the commercial tubing operation and allow citizens to utilize the river for active recreation, which is often restrictive during the commercial tubing operation.

- **Rent Increase:** Council should direct City Staff to determine fair market value for lease of the property based on local commercial real estate rates and similar municipal leases in other municipalities. Additionally, a surcharge of \$2.00 per tube rental and shuttle service must be added and provided to the City of San Marcos Parks and Recreation Department to support operations and improvements within the parks.
- **Litter Pick-up:** The lessee must provide an employee to clean litter from the river channel, much of which is contributed by tubers. The Board recommends at least 2 hours of cleanup per operating day.
- **Lease Term:** Change the lease renewal from 5 years to 2 years. This will provide the City better flexibility in making changes if future changes need to occur.

The San Marcos Lion's Club provided the following response to the Parks and Recreation Board recommendations:

- **Limit Days of Operation:** Lions Club disagrees with this stipulation and is adamantly against closing any days of the week. They are willing to agree to only be open on weekends prior to Memorial and after Labor day. They feel that limiting the days of operation will only cause confusion to our customer base and will not allow us to have any staff to help with litter control and educate park patrons of park rules.
- **Rent Increase:** Lion's Club disagrees with the drastic increase in rent. The rental agreement was mutually agreed upon by both parties with staggered rent increases built into the contract. They have strived to keep the Lion's Tube rental an affordable friendly event for all. The 78666 area code is the most popular zip code from all their customers. Increasing rent will not allow the Lion's Club to keep it affordable for local families and will cause a drastic reduction in donations to local charities. In 2019 they increased the tube rentals by \$2 a tube; and that caused an 11 percent decrease of tube rentals. They would like to start a "River park Improvements" donation fund to be utilized by the parks. They would start by having a donation page on their website and will add it to their Point of Sale asking every customer for donations to help keep the river and parks beautiful.
- **Litter Pick-up:** Agrees to add 2 additional hours for the weekends. They would also cover the parking lot to the river and up to the pedestrian bridges in City Park. We will also cover across the river at the Dog Park. In addition,

they would cover part of Rio Vista where our concession stands to the riverbank to Cheatham Street.

- **Lease Term:** Lion's Club disagrees with the changing the lease to fewer years than the citizens of San Marcos voted and originally approved.

City Staff provided the following responses to the recommendations:

- **Limit Days of Operation:** Staff believes that the intent will not be met. Staff saw a great deal of river use by out of town visitors and residents last year following the Governor's order to shut down tube rental operations, and prior to our park re-closure. Most of the daily phone calls that Parks & Rec Staff received during the summer months were from out of town visitors asking about river park use.

- **Rent Increase:** Staff remains supportive of the terms that were negotiated and approved in the 2011 lease agreement.

- **Litter Pick-up:** City Staff currently has the following litter abatement programs in place, along with a contract with Easter Seals for additional litter collection during the busy season, and supports the Lion's Clubs recommendation for additional hours being provided by them on the weekends.

- **Leave No Trace:** Tents with two interns are stationed in the busy river parks on weekends during the summer. The interns play educational games, pass out trash bags for visitors, and pick up litter and micro-litter in the parks. An educational video about litter (crated by city staff) is played all day at the local tube rental facility.

- **Conservation Crew:** Texas State students are hired each summer to walk and kayak the heavily used recreation areas of the river. These students talk to river users about the impact of litter, hand out trash bags, clean out three litter boats in the river, and pick up litter along the river. The Kayakers talk with people on the river.

- **River Clean up Events:** Twice a year, volunteers cleanup the San Marcos River watershed within City limits. The cleanup has expanded from a small localized event to include all creeks, tributaries, drainage ditches and downtown streets that feed the San Marcos River.

- **Lease Term:** Staff remains supportive of the lease term as previously approved by the qualified voters of the City.

City Staff provided the following Recommendations:

- **Approving the renewal of the lease with the amendments that have been agreed to by the San Marcos Lion's Club.**
- **Creation of a "River Park Improvements" donation fund to be utilized by the parks.**
- **Adding an additional 2 hours for litter control on the weekends for a total of 4 hours on weekend days and 2 hours on weekday operation.**

**Council Member Baker inquired how much money goes to actual Non-profit organizations. Mr. Wells stated the agreement does not require disclosure of this information, but as a non profit they must provide their 990 tax documents and this has been included to demonstrate who they provided money to in the excess of \$5,000 per organization. Mr. Wells stated the Lions Club actively sponsors over 100+ organizations and they feel that going public with this information may cause some concern. Council Member Baker would like to see amounts especially those donated to the City of San Marcos, Hays County and the San Marcos Consolidated Independent School District (SMCISD). Mr. Wells noted that the amount given to the SMCISD is shown on the 990 tax form which had been provided. The amount given to the city, in various ways, is in the packet.**

**Council Member Baker asked how much is spent for river clean up. Staff stated that \$15,000 year comes from eco-tourism funds (Leave no Trace - HOT Tax), The Conservation Crew is \$33,000 per year from the Habitat Conservation Plan Budget, which comes from the habitat conservation plan fund, and Easter Seals Contract, which includes mowing, is \$97,000 for this year from the City's general fund. The Lions Club provides \$2,500 annually to the river clean-up that is held every year.**

**Mayor Pro Tem Derrick stated the Lions Club does a lot within our community, but due to budget constraints which she understands was necessary this year she is concerned about assistant in funding for our parks. Specifically, she spoke on the need for Park Rangers and spoke of all the responsibilities they have in all of the parks in our city. She would like to see an increase in rent or an agreement that helps with the expense of park rangers or some surcharge from tube rentals. Park Rangers are needed for the protection of our citizens and the river.**

**Mayor noted the amounts that were donated to the City by the Lions Club for the last few years.**

**Mayor Pro Tem Derrick inquired about exclusive concessions. Mr. Wells said**

the conversation has not been made with the Lions club about allowing other concessions at this time.

Mayor inquired about the sale of concession funds and where they go? Mr. Wells said 75% of sales go back to the City. Staff will provide additional clarity on concessions.

Council Member Gonzales wanted to confirm that the Parks Board intention was not to throw them out, he wanted confirmation of this. Mr. Wells said there was discussion at the Parks Board to put the lease agreement out for a competitive process, but they were not recommending that at this time. Council Member Gonzales does not recommend contracting this out, he believe the Lions Club is doing a great job.

Council Member Gleason inquired about the need for reconstruction to the Rec Hall after the fire. He asked if we have seen a financial increase related to the rental of the other side of the Rec Hall. Mr. Wells stated that we do rent this space out, but he does not have the numbers at this time. Council Member Gleason stated that due to these renovations, the City has been able to benefit as a community due to this facility. He also asked if we have studied the economic impact that the Lions Club has on the entire community? Mr. Wells stated this has not been done. Mr. Gleason wants to look at the overall picture because there is an affect to our sales tax revenue because of the Lions club. He would like to see if the \$15,000-18,000 we receive for rangers comes from the franchise fee or if this comes from rent.

Mayor Hughson would like to know how much was received by insurance due to the fire.

(1:32:00) Council Member Garza inquired about the documentation or financial disclosures that are required from a nonprofit required when applying for city funding such as Community Development Block Grant (CDBG), Human Services Advisory Board (HSAB), or any other city funding? Mr. Wells stated it depends on what funding is being requested dictates what has to be submitted. The Lions Club does not receive any funds from the City but rather they have entered into a Lease agreement with the City and are paying us. We are not entitled to that information like we would be for an entity that would receive funds from the City. Council Member Garza thinks we have a financial responsibility to understand where money is going as the Lions Club does utilize a tax payer funded facility.

**Mr. Lumbreras stated we should look at the agreement and what it requires and determine what we want to include moving forward. Mr. Wells stated the agreement is silent on what financial information is required to be provided by the Lions Club. There is only general lease agreement language, nothing that states they must provide financial accounting of funds spent.**

**Deputy Mayor Pro Tem Scott asked what happens if one party of the agreement does not renew? If the taxpayers approved this, why are we trying to change this? Mr. Wells stated the initial 5 year term was approved by voters, then staff, working with the Lions Club to work on renewing for additional terms. Both the City and Lions Club would have to agree, in writing, to amend the agreement. Mr. Cosentino confirmed that the decision to renew for additional terms is by mutual agreement of the parties and without this agreement, the agreement would terminate. The rent amount was not on the ballot or even negotiated until after voters approved the lease agreement.**

**Council Member Baker inquired about the cause of the fire to this facility. Mr. Stapp stated arson was the cause and an arrest was made in 2009.**

**Council Member Baker inquired about any conflicts of interest and if any staff or Council Members are current (or former) members of the Lions Club. He also inquired about anyone that may be related to any recipient organizations.**

**Council Member Garza has asked if the City can require a financial report or a list of organizations to whom they donate and the amount.**

**Council Member Gleason stated if we require this if one organization then we need to require of all nonprofits. He expressed his concern with supporting this because the Lions Club has federal and state guidelines to follow.**

**Mayor Hughson has requested the application for CDBG, Human Services Funding, and Arts Funding to see what is asked of applicants for that funding.**

**Mayor Pro Tem Derrick likes the recommendation presented regarding the new donations fund. However, she expressed concern that this fund may not receive too much as most people don't carry cash and those who know about the tube rental don't use the website. Council Member Gleason stated there is potential to receive a good amount as it can be as easy as rounding up and adding this to the point of sale and including this to their donation page. Mayor Hughson noted that**

cash would not be required, that this can be an addition to the tube rental fee via credit card.

Council Member Baker inquired about fair market value of this facility. He also inquired about the concessions if there is consensus to require all items that are sold to be biodegradable or environmentally sensitive.

Mr. Lumbreras indicated that staff has stated that market value can be researched if Council provides consensus to provide that information.

Council Member Gonzales inquired how much is A/C and Heating livable space within the facility.

Council Member Gleason spoke about revenue and he stated the Lions Club may take in \$1M but that is not all profits. Mr. Gleason also spoke of the recommendations made by the Parks Board and how some are in conflict with one another. One recommendation is to increase rent in order to increase revenue, but another recommendation is to limit their number of operating days per week. He wants us to be mindful of what other revenue is brought into our city by the tube rental business.

Council Member inquired about tube rental increase of \$2.00 in 2019 and the 11% decrease. Mayor Hughson would like to see the amount of money that was received from tube rentals due to this tube rental increase.

Mayor Hughson asked the following questions that were posed by Council:

1. Does the City want to increase the net income? Council provided consensus to increase the amount of funds that the city receives from the Lions Club tube rental lease.
2. Instead of an exclusive on concessions that we consider allowing food trucks, with the exact arrangements including fees to be charged to be determined at a later date. Council provided consensus to look into this further.
3. Are any City Council members current or former members of the Lions Club. Deputy Mayor Pro Tem Scott and Council Member Gleason found this question irrelevant and all others confirmed they are not members of the Lions Club.

**4. Are any City Council members a current or former board member with any organization that receives funds from the Lions Club? Deputy Mayor Pro Tem Scott and Council Member Gleason found this question irrelevant all others confirmed they are not members. Mayor Hughson stated she was on the Food Bank Board in the early 2000s.**

**5. Should the lease agreement include the donation amount and financials? Council provided consensus that this is not required in the lease agreement.**

**6. Should concessions that are offered be more environmentally friendly as they are near the river? Council provided consensus to require items be environmentally friendly.**

**7. Do we want to seek the commercial value of this property? Council provided consensus that this is not required.**

**8. Staff recommends approval of the renewal of the lease with the following amendments that have been agreed to by the San Marcos Lions Club:**

- Creation of a "River Park Improvements" donation fund to be utilized by the parks.**
- Adding an additional 2 hours for litter control on the weekends for a total of 4 hours on weekend days and 2 hours on weekday operation.**

**Council provided consensus to ask for both of these.**

**Mayor Hughson stated there are still some responses that are needed and staff will work on providing this information.**

## **EXECUTIVE SESSION**

**3. Executive Session in accordance with:**

**A. Sec. §551.071 of the Texas Government Code: Consultation with Attorney: To receive advice of legal counsel regarding the Purchase and Sale Agreement with Pursuant Ventures Development, LLC for the San Marcos Sportsplex Project**

**B. Sec. §551.074 of the Texas Government Code: Personnel Matters: to discuss the duties and responsibilities of a Public Officer - to wit City Council Members**

**Mayor Hughson stated the Executive Session items will not be considered at this meeting.**

**III. Adjournment.**

**A motion was made by Deputy Mayor Pro Tem Scott, seconded by Council Member Gonzales, to adjourn the work session of the City Council at 5:33 p.m. The motion carried by the following vote:**

**For:** 7 - Mayor Pro Tem Derrick, Mayor Hughson, Council Member Baker, Council Member Gonzales, Deputy Mayor Pro Tem Scott, Council Member Garza and Council Member Gleason

**Against:** 0

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**