

Memorandum

TO: HONORABLE MAYOR AND CITY
COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Downtown Parking Board
Applicants: Conflicts of Interest

DATE: December 3, 2023

BACKGROUND

Following the recommendation of a member by the Mayor, the City Council may approve the recommendation and appoint members to the Downtown Parking Board ("Board").

This office routinely reviews applications to City Boards, Commissions and Committees. Although the applications do not provide complete information, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of potential conflict that are disclosed by the applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission or committee to which the applicant is seeking appointment.

DUTIES

The Board is comprised of seven-members and established to:

- A. Review, evaluate and make recommendations to the city council regarding the city's downtown parking program, including, but not limited to:
 1. The updating and implementation of any downtown parking plan that has been approved by the city council.
 2. The annual capital and operating budgets respecting the downtown parking program.
 3. The award of consultant and vendor contracts related to the downtown parking program.
 4. The goals and objectives for the downtown parking program.
 5. The on-street and off-street parking rates and implementation of parking validation programs.
 6. The marketing of on-street and off-street parking facilities in downtown.

7. The implementation of downtown parking enforcement.
 8. The operation of public off-street and on-street parking facilities.
- B. Periodically review, evaluate and make recommendations regarding the parking fund fiscal reports and the use of parking operations revenues.
 - C. Review and make recommendations on downtown parking needs, the expansion, addition or improvement of downtown parking facilities, and improvements to parking operations downtown.
 - D. Serve as a public forum for the discussion of downtown parking issues.

MEMBERSHIP REQUIREMENTS

Board members must be appointed to the Board upon the Mayor's recommendation to the City Council and the City Council's approval of such recommendation. The Board consists of seven members as follows:

- A. A member of the Downtown Business Association.
- B. A representative of a business association within a designated meter district outside of the Downtown Core.
- C. A representative from San Jose State University.
- D. A downtown resident.
- E. A member of an organization representing downtown arts and/or special events.
- F. Two at-large individuals with expertise in business and/or finance and/or an owner/representative of a private off-street parking facility located within the Downtown Core, with a maximum of one at-large seat filled by an owner/representative of a private off-street parking facility.

Under Section 2.08.3640(B) of Part 36 of Chapter 2.08 of Title 2 of the San Jose Municipal Code, the members of the downtown business association appointed to the Board are intended to represent and further the interest of the downtown business community, and their representation will ultimately serve the public interest.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a Board member from participating in a Board discussion or from voting on a matter if there is a conflict. While this list is not complete, conflicts usually fall within the following situations:

- An application shows entities that are “sources of income” to a potential commissioner within the 12 months preceding the start of the Board term, as defined under the Political Reform Act.
- An application shows sources of income to a spouse or Domestic Partner of a potential Board member within the 12 months preceding the start of the Board term.
- An applicant or the spouse or Domestic Partner of an applicant, is an Officer or Board Member of an entity and it is foreseeable that the entity could be involved in a matter coming before the Board.

In each of these instances, the Board member may be required to recuse himself or herself if a matter comes before the Board affecting the above interests. A Board member’s employer, or the employer of the member’s spouse, is generally considered a source of income to the member such that the member will have to recuse himself or herself from taking part in the Board’s decision on a matter if the decision will have a foreseeable financial effect on the employer.

APPEARANCE OF BIAS

There may also be facts which would not amount to a legal conflict of interest, but still require recusal because certain relationships may create an appearance of bias. City Council policy requires Board members to be free from bias in their decision making and may require recusal if the facts could reasonably lead one to conclude that the member would be biased for or against an entity or entities.

APPLICANT

Ruvane, Louis: Applicant applied on September 27, 2023. Applicant is a resident of District 3 in San Jose and employed as the owner of Orangetheory Fitness, located at 111 West St. John Street, Ste 110, in San Jose. The Applicant’s listed employment appears to satisfy the requirements for members of the Board from the Downtown Business Association.

The Applicant reports past employment with the Baltimore Orioles and San Diego Padres and past community involvement as an Orangetheory Franchise Advisory Committee Member. The Applicant's application does not appear to contain any information which would constitute a conflict of interest.

CONCLUSION

The Council may wish to consider the above comments in making its recommendations regarding appointments to the Board.

NORA FRIMANN
City Attorney

By /s/ Matthew Tolnay (electronically signed)
Matthew Tolnay
Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni J. Taber, City Clerk

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Historic Landmarks
Commission Applicant

DATE: November 20, 2023

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications do not provide complete information regarding potential conflicts of interest; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of potential conflict that are disclosed by the applications. To analyze potential conflicts, it is necessary to consider the duties of the particular commission for which the applicant is seeking appointment. This review is limited to the information provided on the applications and is not intended to be a comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The Historic Landmarks Commission has two major responsibilities under the Municipal Code:

1. To serve in an advisory capacity to the City Council, the City Manager, and the Director of Planning with respect to various actions proposed to be taken involving property of historical significance. The various actions include acquisition, gifts, disposal, designation, sales and exchanges of such property; and
2. To encourage and promote the preservation of historic landmarks, sites, artifacts and other property connected with the history of the City of San José.

The members of the Commission must be persons having demonstrable interest and expertise in historic preservation. Whenever possible, at least three (3) members shall have professional expertise in one of the following disciplines: architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, landscape architecture or related disciplines.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions and other financial interests may preclude a commissioner from participating in a Commission discussion and voting if a matter involving the entity comes before the Commission. While this list is not complete, these types of conflicts generally fall within one or more of the following situations:

- An application shows entities that are “sources of income” to a potential commissioner within the 12 months preceding the start of the Commission term, as defined under the Political Reform Act.
- An application shows sources of income to a spouse or domestic partner of a potential commissioner within the 12 months preceding the start of the Commission term.
- An applicant of the spouse or domestic partner of an applicant is an officer or board member of an entity, and it is foreseeable that the entity could be involved in a matter coming before the Commission.
- An applicant has an interest (including community property interest) in real property, such as their place of residence or any other real property in San José that may be affected by a matter coming before the Commission.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest under the Political Reform Act requiring a commissioner to abstain from a commission vote or discussion, but the relationship could indicate a bias or the appearance of bias on the part of the commissioner. City Council policy requires commissioners to be free from bias in their decision making and may require a commissioner to abstain if the facts could reasonably lead one to conclude that the commissioner would be biased for or against an applicant or application.

REVIEW OF APPLICANTS

One application was received and determined by the City Clerk to meet the basic qualifications for consideration. The application from the applicant listed below was reviewed by our office. Set forth below is the new applicant, and any apparent legal conflicts of interest and/or appearance of bias related to entities that are likely to come before the Commission in some manner, as identified in their applications.

HISTORIC LANDMARKS COMMISSION APPLICANT:


Sara Ghalandari – Ms. Ghalandari applied on November 12, 2023. She is an attorney with Gibson Dunn & Crutcher LLP. Her spouse is an attorney with Messing Adam & Jasmine LLP. She owns her residence in the Willow Glen neighborhood in San José City Council District 6. If appointed, Ms. Lakshminarayan may need to abstain from participating in decisions that present a conflict with her or her spouse's work and/or clients.

CONCLUSION

If an applicant is compensated for a given activity, there may be occasions when they may have to abstain from participation in matters before the Commission which concern the source of income. If an applicant is a member of a board, they may also be required to abstain when the organization of which they are a board member takes a position in favor or against a project before the Commission.

The applications do not reveal any pervasive conflicts of interest which would prevent the current applicants from serving on the Historic Landmarks Commission. You may wish to consider the above comments in making your recommendations on appointments to the Historic Landmarks Commission.

NORA FRIMANN
City Attorney

By 

DANIEL ZAZUETA
Senior Deputy City Attorney

Cc: Jennifer Maguire, City Manager
Toni Taber, CMC, City Clerk

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review - Housing
and Community Development
Commission

DATE: November 29, 2023

BACKGROUND

This Office routinely reviews applications to City boards, committees, and commissions. Although the applications do not provide complete information, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of potential conflict that are disclosed by applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission or committee to which the applicant is seeking appointment. This review is limited to the information provided on the applications and is not intended to be a comprehensive investigation of potential conflicts involving applicants.

COMMISSION DUTIES

The Housing and Community Development Commission (“HCDC” or “Commission”) was formed in July 2013 when the Housing and Community Development Advisory Commission was merged with the Advisory Commission on Rents (“ACR”) and the Mobilehome Advisory Commission (“MAC”). It serves as the successor to ACR and MAC fulfilling their duties under the Mobilehome Rent Ordinance, Chapter 17.22 of the Municipal Code and the Rental Dispute Mediation and Arbitration Ordinance (“Apartment Rent Ordinance”), Chapter 17.23 of the Municipal Code. These duties include review of the fees imposed under those ordinances. HCDC also reviews potential amendments to provisions of the Zoning Code that apply to mobilehomes including the City’s Mobilehome Park Conversion Ordinance. HCDC serves as the lead citizen participation group in the planning and programming of the Community Development Block Grant (“CDBG”). HCDC also makes recommendations on new and existing Housing Department programs and policies. Additionally, HCDC holds public

hearings and makes recommendations in conjunction with the City's Consolidated Plan and Annual Action Plans, which are related to the use and spending of federal funds, including CDBG, Emergency Solutions Grant ("ESG"), and Home Investment Partnerships Program ("HOME") funds. In 2020, HCDC was designated as the Oversight Committee for the Measure E funds reviewing and commenting on spending plans and expenditures consistent with Council Policy 1-18. The decisions made by the members of HCDC, particularly those related to the Consolidated Plan, may impact the spending of City funds.

COMMISSION MEMBERSHIP

The Commission is a 14 member body with the following special eligibility requirements: (a) one member shall be a person recommended by an organization of owners of San José mobilehome parks; (b) one member shall be a person recommended by an organization of residents of San José mobilehome parks; (c) one member shall be an owner or manager of San José rent stabilized apartments; (d) one member shall be a tenant of a San José rent stabilized apartment, (e) one member shall be a person with experience being homeless, and (f) at least five members shall represent low income households. The members nominated by the Mayor, District 3, District 5, and District 7 are the seats that are intended to be filled by persons representing low-income households. Additionally, the mobilehome park resident representative is deemed to be a representative of low-income households.

UPCOMING VACANCIES

There is currently only one vacant seat on the Commission. In accordance with Section 2.08.180 of the Municipal Code, the vacant seat to be nominated by District 2.

APPLICANTS

The applications from the applicants eligible for the upcoming vacancies were reviewed by our office and are listed below. Unless otherwise indicated, the applications reviewed do not disclose incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a commissioner from participating in a commission

discussion or from voting if a matter involving or affecting an entity comes before the commission, including consideration of a potential grant or contract, or a matter under the Mobilehome Rent Ordinance or the Apartment Rent Ordinance. While this list is not complete, these types of conflicts generally fall within one or more of the following situations:

- An application shows entities that are “sources of income” to a potential commissioner within the 12 months preceding the start of the commission term, as defined under the Political Reform Act.
- An application shows entities that are sources of income to a Spouse or Domestic Partner of a potential commissioner within the 12 months preceding the start of the commission term.
- An applicant or the Spouse or Domestic Partner of an applicant is an Officer or Board Member of an entity and it is foreseeable that the entity could be involved in a matter coming before the commission.

Additionally, a conflict may arise when the Commission is proposed to take action on a matter related to the Mobilehome Rent Ordinance, the Apartment Rent Ordinance or the Mobilehome related provisions of Title 20, if applicant resides in or owns a property subject to these ordinances and the potential commission action may impact the personal finances of the applicant.

Members serving as a mobilehome park representative or a residential rent stabilized apartment representative are permitted to take actions affecting mobilehome related matters or rent stabilized apartments matters, respectively, without violating general conflict of interest provisions of state and local law.

Municipal Code Section 2.08.2820 provides that: (a) one member of the Commission shall be a person recommended by an organization of residents of San José mobilehome parks, (b) one member of the Commission shall be a person recommended by an organization of owners of the San José mobilehome parks, and these members have designated seats on the Commission pursuant to Section 2.08.2830.A. Section 2.08.2820 also provides that: (c) one member shall be an owner or manager of a residential rent stabilized property, (d) one member shall be a tenant of rent stabilized unit, however, there are no designated seats for these representatives.

San José Municipal Code Section 2.08.2850 contains findings and declarations which provide that: (a) for the purposes of the mobilehome park owner who serves on the commission, the San José mobilehome park industry is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103; and (b) for purposes of the mobilehome park resident who serves on the commission, the San José mobilehome park residential community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103. Together, these provisions allow the persons appointed to these representative positions to take action on issues related to the mobilehome rent ordinance or other mobilehome related matters without violation of the general conflict of interest provisions of state and local law. Municipal Code Section 2.08.2850 also contains findings and declarations which provide that: (c) for the purposes of the owner or manager of residential rent stabilized rental unit(s) who serves on the commission in San José, the residential rent stabilized rental property owners is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103; and for purposes of the tenant of a residential rent stabilized rental unit who serves on the commission, the San José residential rent stabilized rental unit tenants community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103. Together, these provisions allow the persons appointed to these representative positions to take action on issues related to the Apartment Rent Ordinance or other rent stabilized apartment related matters without violation of the general conflict of interest provisions of state and local law.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest requiring a commissioner to recuse him or herself from a commission vote or discussion, however the relationship could create an appearance of bias on the part of the commissioner. City Council policy requires commissions to be free from bias in their decision making and may require a commissioner to recuse him or herself if the facts could reasonably lead one to conclude that the applicant would be biased for or against an entity or entities.

HOUSING DEPARTMENT GRANTEE POLICY

In addition to the conflicts listed above, it is Housing Department Policy that in order to avoid a perceived conflict of interest, no person who is a member of the board of

directors of, or is employed by, an agency that applies for or receives CDBG, ESG, HOME or other funding will be eligible to vote on funding decisions involving that agency regarding that funding source. Where an applicant is connected with a specific agency that has previously applied for grants or funding, this policy will be mentioned below.

REVIEW OF APPLICANTS

The list below summarizes some of the basic information from the applications and identifies any conflicts or potential conflicts. Since specific gender preferences of the applicants are not provided in the application, all applicants below are referred to as “them/their/they.”

ELIZABETH AGRAMONT-JUSTINNIANO: The applicant resides in Council District 3 in a non-rent-stabilized apartment. This application was submitted on September 30, 2023. This application indicates they are employed at Life Moves, a nonprofit organization under contract with the City, as a Motel Intake Coordinator at 1041 The Alameda. The spouse sections of the applicant indicates “N/A.” The applicant also indicates that they currently rent property in San José and that property is subject to the Tenant Protection Ordinance. A potential conflict of interest could arise in their role as a Life Moves employee in the event that an item came before the Commission related to Life Moves’ work with the City. In this event, the applicant would likely be required to recuse themselves because there could be a potential financial conflict of interest. Otherwise, the application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant’s duties as a Commission member.

LYNNARD BARNES: The applicant resides in Council District 2. This application was submitted on August 31, 2023. This applicant indicates in the employment section that they are employed with PG&E as an Engineering Estimator.” The spouse sections of this application indicates their spouse is also employed at PG&E as a Customer Service Rep. Their application indicates that they own property in San José. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant’s duties as a Commission member.

TODD DAVIDSON: The applicant resides in Council District 9. This application was submitted on October 20, 2023. Their application indicates that they own property in San

José. This application indicates they are mostly retired and doing some consulting work, with their prior full time employment in clean energy and water solutions. The spouse section indicates "N/A". The applicant owns their home. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

ANGELIE DO: The applicant resides in Council District 2. This application was previously submitted on October 27, 2023. Their application indicates that they own property in San José. This application indicates the applicant's employment is as a Pharmacist at Viet Town Pharmacy. The applicant's spouse sections of this application indicates "N/A". Their application indicates that they own, lease, or manage properties subject to the City's Mobilehome Rent Ordinance. Since the mobilehome owner representative role is currently filled, a conflict of interest may arise when there are items discussed at Commission impacting mobilehomes. In such cases, the Commissioner will likely need to recuse themselves when such matters are brought before the Commission. Additionally, the applicant indicates they are also a licensed realtor. A possible conflict of interest could arise if the Commission was hearing a matter that would impact the financial interests of this applicant based upon the applicant's work as a realtor, so the applicant may have to recuse themselves if such an item came before the Commission. Otherwise, the application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

SANELA METOVIC: This application was submitted on June 29, 2023. The applicant resides in Council District 6. The applicant discloses that they reside and rent in a rent-controlled property, as well as manage a rent-controlled property on behalf of their parents. The application indicates that they are self-employed. The spouse sections of this application indicate "N/A." Since both the landlord and tenant representative role is currently filled, both residing and managing a property covered by the Apartment Rent Ordinance can create a conflict of interest when there are items discussed at Commission impacting such properties which is a regular occurrence. In such cases, the Commissioner will likely need to recuse themselves when such matters are brought before the Commission. Otherwise, the application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

ALAIN MOWAD: This application was submitted on September 2, 2023. According to the application, the applicant resides in Council District 2. Their application indicates that they own property in San José. The applicant indicates they are a Senior Director,

Product Marketing for Talkdesk, Inc. The spouse sections of this application indicate they are a teacher's aide." The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

CONCLUSION

Except as noted in the review of applicants Elizabeth Agramont-Justinniano and Angelie Do, the applications disclose no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicants' duties as Commission members. You may wish to consider the above comments in making your recommendations on appointments to the Commission.

NORA FRIMANN
City Attorney

By: /s/ Christopher Alexander
Christopher Alexander
Deputy City Attorney

cc: Toni Taber, City Clerk
Jennifer Maguire, City Manager
Rosallynn Hughey, Interim Director of Housing

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review - Parks &
Recreation Commission
Applicant

DATE: November 29, 2023

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications generally do not provide complete information regarding potential conflicts; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight areas of potential conflict which are disclosed by the application. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission for which the applicant is seeking appointment. This review is limited to the information provided on the applications and is not intended to be comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The Parks and Recreation Commission's duties include studies, reviews, evaluation, and making recommendations to the City Council regarding the City's Parks and Recreation programs. The Parks program includes the location, design, and maintenance of parks and other recreation facilities. The Recreation programs include adult sports and youth, senior and special population activities. If an applicant lives in proximity to the park or recreational facility, there may be occasions when he or she may have to abstain from participation in matters before the Commission that concern the particular facility. We have no way of evaluating this situation in advance – City staff would need to evaluate the location of the project and the commissioner's residence on a case-by-case basis.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a commissioner from participating in a commission discussion or from voting if a matter involving the entity comes before the commission. While this list is not complete, these types of conflicts generally fall within one or more of the following situations:

- An application shows entities that are “sources of income” to a potential commissioner within the 12 months preceding the start of the commission term, as defined under the **Political** Reform Act.
- An application shows sources of income to a spouse or domestic partner of a potential commissioner within the 12 months preceding the start of the commission term.
- An applicant or the spouse or domestic partner of an applicant is an officer or board member of an entity and it is foreseeable that the entity could be involved in a matter coming before the commission.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest requiring a commissioner to recuse him or herself from a commission vote or discussion but the relationship could create an appearance of bias on the part of the commissioner. City Council policy requires commissions to be free from bias in their decision making and may require a commissioner to recuse him or herself if the facts could reasonably lead one to conclude that the applicant would be biased for or against an entity or entities.

REVIEW OF APPLICANT

The application from the applicants listed below was reviewed by our office. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the commission.

Kelsey Douglass-Kipp – Kelsey Douglass-Kipp’s application indicates she is currently unemployed. Their spouse is employed at Tesla as a software engineer. It is possible that the Commission could consider a matter involving Tesla which may present an actual conflict or appearance of bias. In such a case, she may need to disqualify herself from taking part in the Commission’s decision on that matter. Otherwise, the application discloses no incompatible offices nor apparent conflicts of interest.

Vishy Narayan – Vishy Narayan’s application indicates they are a Vice President at Technology Consulting. Their spouse is a Senior Manager at Commscope. The application discloses no incompatible offices nor apparent conflicts of interest.

Alexander Mok – Alexander Mok’s application indicates he is currently self employed. The application discloses no incompatible offices nor apparent conflicts of interest.

Haneet Goraya – Haneet Goraya’s application indicates they are employed at the San Jose Unified School District as a School Psychologist. The application discloses no incompatible offices nor apparent conflicts of interest.

Sachihiko Michitaka – Sachihiko Michitaka’s application indicates they are currently self employed. Their application also indicated they served on the Parks and Recreation

Commission for the City of Sunnyvale in 2021 and is currently an Environmental and Ware Resources Committee member for Santa Clara Valley Water District. The application discloses no incompatible offices nor apparent conflicts of interest.

Jesse Castaneda – Jesse Castaneda's application indicates they are currently retired. The application states Jesse Castaneda was a former employee of Santa Clara County. Their application indicates they are a former delegate of South Bay Labor Council, as well as a former member of County Employee Management Association of Santa Clara County. The application discloses no incompatible offices nor apparent conflicts of interest.

Ken Brennan – Ken Brennan's application indicates they are currently self employed as a real estate developer. The application discloses no incompatible offices nor apparent conflicts of interest.

CONCLUSION

You may wish to consider the above comments in making your recommendation on appointment to the Commission.

NORA FRIMANN
City Attorney

By Andrew Malek
Andrew Malek
Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni J. Taber, CMC, City Clerk

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review Senior
Citizens' Commission
Applicants

DATE: November 29, 2023

BACKGROUND

The City Attorney's Office routinely reviews applications to City Boards and Commissions. The applications generally do not provide complete information regarding potential conflicts; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight areas of potential conflict which are disclosed by the application. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission for which the applicant is seeking appointment. This review is limited to the information provided on the applications and is not intended to be comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The Senior Citizens' Commission is responsible for studying, reviewing, evaluating and making recommendations to the Council on matters affecting elderly people in the City.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a commissioner from participating in a commission discussion or from voting if a matter involving the entity comes before the commission. While this list is not complete, these types of conflicts generally fall within one or more of the following situations:

- An application shows entities that are "sources of income" to a potential commissioner within the 12 months preceding the start of the commission term, as defined under the Political Reform Act,
- An application shows sources of income to a Spouse or Domestic Partner of a potential commissioner within the 12 months preceding the start of the commission term,
- An applicant or the Spouse or Domestic Partner of an applicant, is an Officer or Board Member of an entity and it is foreseeable that the entity could be involved in a

matter coming before the commission.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest requiring a commissioner to recuse him or herself from a commission vote or discussion, however the relationship could create an appearance of bias on the part of the commissioner. City Council policy requires commissions to be free from bias in their decision making, and may require a commissioner to recuse him or herself if the facts could reasonably lead one to conclude that the applicant would be biased for or against an entity or entities.

REVIEW OF APPLICANT

Set forth below is the applicant and any apparent legal conflicts of interest and/or appearance of bias related to entities that are likely to come before the commission in some manner, as identified on the applications.

Belinda Quesada – Belinda Quesada’s application indicates they are currently unemployed. They previously worked 25 years for the County of Santa Clara Social Services Agency, 5 of which they served as a Commission Liaison. They also worked as an Employment Counselor for the Department of Employment & Benefit Services. The application discloses no incompatible offices nor apparent conflicts of interest.

Guadalupe Gonzalez – Guadalupe Gonzalez’s application indicates they are a retired Santa Clara County employee for the Office of Education. Their spouse, now deceased, worked as a Manager for Santa Clara Valley Water District. Their application also discloses that Guadalupe serves as President of the Mayfair Seniors Advisory Board, and as a member of East Side Presidents NA Coalition. If the Commission considers a matter involving the East Side Presidents NA Coalition, it may present an actual conflict or appearance of bias. In such a case, Guadalupe Gonzalez may need to disqualify himself from taking part in the Commission’s decision on that matter. Otherwise, the application discloses no incompatible offices nor apparent conflicts of interest.

Giovanna Erkanat – Giovanna Erkanat’s application indicates they are currently employed for Redwood City as a Management Analyst II. They previously worked for the City of Palo Alto and San Mateo County. The application discloses no incompatible offices nor apparent conflicts of interest.

Kirk Pennington – Kirk Pennington’s application indicates they are retired from the City of San Jose as a former Traffic Maintenance Manager, and with the City Manager’s Budget Office as a Senior Executive Analyst. The application discloses no incompatible offices nor apparent conflicts of interest.

Donna Tran – Donna Tran's application indicates they are a medical student at Michigan State University College of Human Medicine. The application discloses no incompatible offices nor apparent conflicts of interest.

CONCLUSION

You may wish to consider the above comments in making your recommendation on appointment to the Commission.

NORA FRIMANN
City Attorney

By Andrew Malek
Andrew Malek
Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni J. Taber, CMC, City Clerk