

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review - Housing
and Community Development
Commission

DATE: November 21, 2022

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 13 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.

CURRENT VACANCIES

There are currently three vacant seats on the Commission. In accordance with Section 2.08.180 of the Municipal Code, the vacant seats are to be nominated by District 9 and two citywide seats nominated by the Mayor. One of the citywide seats is dedicated to the lived experience with homelessness. It is noted that there is no tenant representative on the Commission. Currently, there are two rent stabilized tenant applicants.¹ Additionally, there are three applicants applying for the currently vacant

¹ Section 2.08.180A authorizes each councilmember, including the Mayor, to nominate one commissioner to the Housing and Community Development Commission. Councilmembers are not required to nominate commissioners from the district they represent. See Policy 0-4 (Council Resolution No. 77891). The District 3,5,7, 9 and a citywide nominated seat is currently vacant, but is not a seat designated for a tenant of a residential rent stabilized apartment. Although Section 2.08.2820D states that "[o]ne member *shall* be a tenant of a residential rent stabilized rental unit[]" (emphasis added), Section 1.04.020 (Definitions) of the Municipal Code states that the word "shall" as applied to the City is "directory only" and not mandatory.

lived experience with homelessness seat. That seat includes an alternative member to be nominated.

APPLICANTS

The applications from the applicants eligible for the current 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. It is separated into five categories: (a) those applicants that would qualify for appointment as a commissioner with experience living in homelessness; (b) those applicants that would qualify as a tenant of a residential rent stabilized unit; (c) those applicants that would qualify as a commissioner representing mobilehome park residents; (d) those applicants that would qualify as a commissioner representing mobilehome park owners; and (e) those applicants that do not qualify for a particular designated member seat, but are otherwise qualified to serve. Since specific gender preferences of the applicants are not provided in the application, all applicants below are referred to as “them/their/they.”

APPLICANTS THAT QUALIFY FOR APPOINTMENT AS A COMMISSIONER WITH EXPERIENCE LIVING IN HOMELESSNESS:

ZENIA CARDOZA: This application was submitted on October 6, 2022 and indicates that they are applying for the lived experience with homelessness commission seat. The applicant resides in Council District 3. Under the current employment section, the applicant indicates they are employed by Stanford Healthcare as a substance abuse navigator. Under the spouse's job section, the applicant indicates "n/a." The applicant indicates that they currently rent property in San José and that property is subject to the Apartment Rent Ordinance. 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.

YAMILLE JIMENEZ: This application was submitted on October 6, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 5. The applicant indicates that they are employed by Next Door Solutions as a self-sufficiency advocate. The spouse sections of this application indicate "n/a." 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.

NIA TAYLOR: This application was submitted on October 6, 2022 and indicates they are applying for the lived experience with homelessness member seat. The applicant resides in Council District 5. This applicant indicates in the employment section "n/a" and "disabled." The spouse sections of this application are marked "N/A". Their application indicates that they rent property in the City of San José and it is subject to rent control. The application indicates that they serve as the lived experience advisory board member for Abode. A potential financial conflict of interest may arise since currently Abode is under contract with the Housing Department to operate permanent supportive housing sites at the Plaza Hotel and Evans Lane. If the Commission is presented with any items potentially impacting services or agreements with Abode, the Commissioner may have to recuse themselves from participating in the item.

MICHAEL ECKHART: This application was submitted on October 24, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 3. The applicant indicates that are employed as owner of 4n1 Extracting. The spouse sections of this

application indicate they are retired. 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.

RAYMOND RAMSEY: This application was submitted on October 24, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 3. The applicant indicates they are retired and previously practiced law. The spouse sections of this application indicate "none." 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.

SKETCH SALAZAR: This application was submitted on October 24, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 6. The applicant indicates in the employment section that they are a student on receive disability. The spouse sections of this application indicate "n/a." 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. The application indicates that they serve as the lived experience advisory board member for Destination Home. A potential financial conflict of interest may arise since currently the Housing Department is under contract with Destination Home to provide various homeless related services and notably, funding for Destination Home's Lived Experience Advisory Board that the applicant is a member. If the Commission is presented with any items potentially impacting services or agreements with Destination Home, the Commissioner may have to recuse themselves from participating in the item due to the potential conflict of interest.

JEROME SHAW: This application was submitted on October 24, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 3. The applicant indicates they are a sheet metal apprentice for Silicon Valley Mechanical. The spouse sections of this application indicate "n/a." 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.

**APPLICANTS THAT QUALIFY FOR APPOINTMENT AS AN APARTMENT RENT
ORDINANCE TENANT REPRESENTATIVE:**

ZENIA CARDOZA: This application was submitted on October 6, 2022 and indicates that they are applying for the lived experience with homelessness commission seat. The applicant resides in Council District 3. Under the current employment section, the applicant indicates they are employed by Stanford Healthcare as a substance abuse navigator. Under the spouse's job section, the applicant indicates "n/a." The applicant indicates that they currently rent property in San José and that property is subject to the Apartment Rent Ordinance. 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.

YAMILLE JIMENEZ: This application was submitted on October 6, 2022 and the applicant is applying for the lived experience with homelessness member seat. According to the application, the applicant resides in Council District 5. The applicant indicates that they are employed by Next Door Solutions as a self sufficiency advocate. Their application indicates that they rent property in the City of San José and it is subject to rent control. The spouse sections of this application indicate "n/a." 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.

NIA TAYLOR: This application was submitted on October 6, 2022 and indicates they are applying for the lived experience with homelessness member seat. The applicant resides in Council District 5. This applicant indicates in the employment section "n/a" and "disabled." The spouse sections of this application are marked "N/A". Their application indicates that they rent property in the City of San José and it is subject to rent control. The application indicates that they serve as the lived experience advisory boardmember for Abode. A potential financial conflict of interest may arise since currently Abode is under contract with the Housing Department to operate permanent supportive housing sites at the Plaza Hotel and Evans Lane. If the Commission is presented with any items potentially impacting services or agreements with Abode, the Commissioner may have to recuse themselves from participating in the item to avoid any potential conflicts of interest.

JEREMIAH WILSON: The applicant resides in Council District 6. This application was submitted on August 17, 2022. The application indicates "n/a" in the employment section but that they are a tutor. Their application indicates that they rent property in the

City of San José that is subject to rent control. 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.

APPLICANTS THAT QUALIFY FOR APPOINTMENT AS THE RESIDENT OF MOBILEHOME PARK RECOMMENDED BY AN ORGANIZATION OF ITS RESIDENTS:

DANIEL FINN: The applicant resides in Council District 4 and is applying for the mobilehome resident representative seat which is currently occupied through December 31, 2022. Their application was submitted on September 6, 2022. This application indicates "retired" under their employment status. The spouse's employment section indicates they are a clerk at "MV Trading." The application indicates that they own a mobilehome property in San José that they rent and therefore is covered by the Mobilehome Rent Control Ordinance. 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.

APPLICANTS THAT QUALIFY FOR APPOINTMENT AS AN MOBILEHOME PARK OWNER REPRESENTATIVE:

RYAN JASINSKY: Their application was submitted on October 18, 2022. The applicant resides in Sunnyvale, CA and is applying for a second consecutive term as the mobilehome park owner representative seat that currently expires December 31, 2022. Non-city applicants may be appointed if they are the only applicant for the position under Council Policy 0-4. The application indicates that are employed as the Director of Property Management for Brandenburg, Staedler, & Moore. The applicant's spouse is employed with Jazz Pharmaceuticals as an Executive Assistance to the CEO. The applicant was previously recommended for this position by the President of the Manufactured Housing Educational Trust (MHET), and currently has a recommendation from Western Manufactured Housing Communities Association, a statewide nonprofit organization representing owners and operators of mobilehome parks. The applicant would serve as a mobilehome park representative and therefore 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. 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.

OTHER APPLICANTS:

ELIZABETH AGRAMONT-JUSTINNIANO: This application was submitted on July 14, 2022. The applicant resides in Council District 3 in a non-rent-stabilized apartment. This application indicates they are employed part-time by Luna as a Promatora and work for Sunday Friends which is a nonprofit organization in San José. The spouse sections of the applicant indicates "N/A." 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.

MICHELLE BRENOT: The applicant resides in Council District 3. This application was submitted on October 4, 2022. This application indicates the applicant is not currently employed. The applicant's spouse sections of this application indicates that they are a scientist at Miltenyi Biotec. 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.

DON JACKSON: The applicant resides in Council District 9. This application was submitted on April 16, 2022. This application indicates they are self-employed in software development. The spouse section indicates that their spouse is not employed. 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.

PRAVIN PATEL: The applicant resides in Council District 4. This application was submitted on May 16, 2022. This applicant indicates they are retired. The spouse sections of this application indicate their spouse is also retired. 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.

ROMA RODRIGUEZ: This application was submitted on December 30, 2021. The applicant resides in Council District 3. This applicant indicates that they are employed

as a server at IHOP. They also indicate that they are a real estate agent with Keller Williams. Their spouse is building manager in Santa Clara. Their application indicates that rent property in the City of San José, but this property is not subject to rent control. 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.

ANTONIO SHELLY: The applicant resides in Council District 3. This application was submitted on October 10, 2022. This applicant indicates that they are a Data Center Organizations Manager for Coresite. Their application indicates that rent property in the City of San José, but it is not subject to rent control. 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.

JOE LOVELACE: The applicant resides in Council District 9. This application was submitted on May 9, 2022. The application indicates "n/a" in the employment section. The spouse section indicates that their spouse is employed as a nutritional therapist. 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 Nia Taylor and Sketch Salazar, 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

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cc: Toni Taber, City Clerk
Jennifer Maguire, City Manager
Jacky Morales-Ferrand, Director of Housing