

**TO:** HONORABLE MAYOR AND CITY COUNCIL      **FROM:** Nora Frimann  
City Attorney

**SUBJECT:** Board of Fair Campaign and Political Practices Applicants: Conflicts of Interest      **DATE:** April 25, 2022

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## **BACKGROUND**

The City Council will interview applicants for the San José Board of Fair Campaign and Political Practices (“BFCPP”) to fill any vacancies.

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 BFCPP is a five-member commission established to:

- Monitor compliance with all campaign, lobbying and ethics ordinances in the San José Municipal Code (See SJMC Title 12);
- Investigate complaints and issue findings where appropriate, including fines; and
- Recommend changes to campaign, lobbying, and ethics regulations and policies.

## **MEMBERSHIP REQUIREMENTS**

BFCPP members must be appointed by a two-thirds vote of the City Council and selected by the same procedure of application and public interview used for the Planning Commission. (SJMC §2.08.1610.) BFCPP members may also be removed by two-thirds vote of the City Council for any reason or no reason. (SJMC §2.08.1640.)

BFCPP members must have some demonstrated familiarity and experience with campaign laws and should be representative of the community. (SJMC §2.08.1630(A).) They also have special eligibility requirements, which may result in a vacancy or removal if not followed. (SJMC §2.08.1630, see also SJMC §2.08.050.) BFCPP

members must be qualified electors of the City and may not hold elected public office; publicly endorse any candidate for City office; engage in political or campaign activity on behalf of any candidate for City office; or be employed by or have any contractual relationship with any candidate for City office. (SJMC §2.08.1630(A)(C)(E)(F).) Further, no member can participate as a candidate in any election for public office for a period of one year before and after tenure on the Board. (SJMC §§2.08.1630(D).) Finally, no member may be employed by the City or have any direct and substantial financial interest in any business, work or official action taken by the City. (SJMC §§2.08.1630(B).)

### **LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION**

Certain positions may preclude a commissioner from participating in a commission 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 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.

In each of these instances, the commissioner may be required to recuse himself or herself if a matter comes before the Commission affecting the above interests. A Commissioner’s employer, or the employer of the Commissioner’s spouse, is generally considered a source of income to the Commissioner such that the Commissioner will have to recuse himself or herself from taking part in the Commission’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 commissioners to be free from bias in their decision making and may require recusal if the facts could reasonably lead one to conclude that the commissioner would be biased for or against an entity or entities.

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## **APPLICANTS**

**Tom Pavel** – Applicant applied on April 17, 2022.

Applicant is retired. Applicant does not disclose any other apparent conflicts of interest or incompatible offices.

## **CONCLUSION**

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

NORA FRIMANN  
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By /s/ Mark Vanni (electronically signed) \_\_\_\_\_  
Mark J. Vanni  
Senior Deputy City Attorney

cc: David Sykes, City Manager  
Toni J. Taber, City Clerk