

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: NORA V. FRIMANN,
City Attorney

SUBJECT: **Civil Service Commission
Appointment**

DATE: January 20, 2022

BACKGROUND

This Office routinely reviews applications for appointment to City boards and commissions. The applications generally do not provide complete information; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of known potential conflicts that are disclosed by the applications.

COMMISSION DUTIES

As established by the City Charter and authorized by the Municipal Code and Policy 0-4, the Civil Service Commission acts as an appellate body for certain personnel decisions affecting City employees and applicants for City employment. The Commission also makes recommendations to the Council and the City Manager and may conduct investigations concerning the administration of personnel in the Classified Service, reviews and recommends changes to Civil Service Rules, and appoints members of the City Council Salary Setting Commission.

COMMISSION COMPOSITION

The Civil Service Commission consists of five members. City Charter section 1001(a) requires that one member must be an attorney who has practiced law in the State of California for at least five years and that the Civil Service Commission may not have more than four members of the same sex. In addition, City Charter Section 1001(b) requires that one member must be nominated by full-time officers and employees, excluding members of the Council and Commissions. Council policy also states that a Commissioner may not be a present, former, or retired City employee. [Policy 0-4, §I(B)(1), (3).]

Of the five positions, there is currently one vacancy although another position will be available soon. The current Commission includes the attorney-at-law position and at

least one male and female member. The current applicant is for an at-large position and this position may be filled without considering profession or the sex of the applicant.

San Jose Municipal Code section 2.08.150(a) provides that the Charter controls the term for the Charter commissions. For the Civil Service Commission, the Charter provides that the term of office is four years, but it is silent on term limits. [Charter, §1001(b).] Thus, unlike other non-Charter Commissions, here, Commissioners may be reappointed for more than two terms.

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.

APPLICANTS TO BE INTERVIEWED

Samuel Swift – Mr. Swift’s application indicates he is a semi-retired attorney who works for his own law firm. His spouse is employed at the same law firm. The application does not disclose any current or past City employment.

If appointed to the Commission, Mr. Swift and his firm would be prohibited from representing any City employee in proceedings before the Civil Service Commission. Mr. Swift’s application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicant does not appear to hold any incompatible office nor have any apparent conflicts that would prevent him from serving on the Civil Service Commission. The Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN,
City Attorney

By: /s/ Colleen D. Winchester
Colleen D. Winchester
Senior Deputy City Attorney