

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: LIBRARY AND EDUCATION
COMMISSION APPLICANTS**

DATE: March 7, 2022

BACKGROUND

This Office routinely reviews applications 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 potential conflict which are disclosed by the applications.

COMMISSION DUTIES

In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission for which the applicant is seeking appointment. Of the Library and Education fifteen-member Commission, at least four members of the Commission shall have a background in education subject matter expertise. The Library and Education Commission is an advisory body which makes recommendations to the Mayor and City Council, City Manager, and the Director of Library Services respecting existing and proposed library facilities, the utilization of such facilities, their use and operation, the extent and nature of library services to be rendered to the public, the financing of libraries and of their operations and services, and other matters respecting the library system. The Commission will also study, evaluate, review and provide advice to the Council, the City Manager, the City Librarian, and other department heads designated by the City Manager on all matters and issues related to early education and childcare.

APPLICANTS

The application from the applicants listed below was reviewed by our office. This review was limited to the information provided on the application and was not intended to be comprehensive investigation of potential conflicts involving the applicant. Unless otherwise indicated, no application discloses 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 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 (“PRA”).
- 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.

LEGAL REVIEW OF APPLICANTS

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 application.

Michele Hemeryck – Ms. Hemeryck’s application indicates that she is unemployed. Ms. Hemeryck’s spouse is employed at Apple, Inc. as a Battery Management System Architect. Ms. Hemeryck also serves as the Secretary of the Prospect Music Boosters Club. It is possible that the Commission could consider a matter involving these organizations which may present an actual conflict or appearance of bias. In such a case, Ms. Hemeryck 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.

Cameron Finley – Mr. Finley's application indicates he is currently employed as a Sr. Technical Support Engineer by TACACS.net. The application does indicate a spouse. Mr. Finley's application discloses no incompatible offices nor apparent conflicts of interest.

Anita Reyes – Ms. Reyes is currently employed at Grail Family Services as a Preschool Program Manager, and also at Kidango Inc. (Hubbard Media Arts Academy) as the California Center Director. Ms. Reyes is also the Secretary of the Fil-Am South Bay Community in San José. Ms. Reyes's spouse is employed as a Caregiver with In Home Support Services. It is possible that the Commission could consider a matter involving these organizations which may present an actual conflict or appearance of bias. In such a case, Ms. Reyes 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.

G Singh – The application for Mr. Singh indicates Mr. Singh is currently self-employed. The application does not indicate a spouse. The application does not indicate whether Mr. Singh has previously or currently serves in any office, or whether he has any potential or apparent conflicts. Without additional information, a full conflict check for this applicant could not be completed.

Lawrence Dietz – Mr. Dietz is currently employed as an attorney with the ALEC Group. Mr. Dietz's spouse is employed as a part-time Substitute School Nurse with the San Jose Unified School District. It is possible that the Commission could consider a matter involving the San Jose Unified School District which may present an actual conflict or appearance of bias. In such a case, Mr. Dietz 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.

Kristen Brown – Ms. Brown is a parent, advocate, and student. Ms. Brown's spouse is employed at Apple, Inc. as an Edge Operations Manager. Ms. Brown is also the Vice-Chair for the Community Advisory Committee for Special Education, SELPA IV. It is possible that the Commission could consider a matter involving these organizations which may present an actual conflict or appearance of bias. In such a case, Ms. Brown may need to disqualify herself from taking part in the Commission's decision on that matter. Otherwise, her application discloses no incompatible offices nor apparent conflicts of interest.

Vivian Mai – Ms. Mai's application indicates she is a student at UC Santa Cruz. The application does not indicate a spouse. Ms. Mai volunteers as a Vietnamese School

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Teacher at Van Lang Vietnamese School. The application discloses no incompatible offices nor apparent conflicts of interest.

Simaben Shah – Ms. Shah's application indicates she is the owner of the Primrose School of Willow Glen, Cupertino, and Milpitas. The application indicates Ms. Shah's spouse is employed as the CEO of Reflektion, Inc. It is possible that the Commission could consider a matter involving the Primrose School which may present an actual conflict or appearance of bias. In such a case, Ms. Shah may need to disqualify herself from taking part in the Commission's decision on that matter. Otherwise, her application discloses no incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicants do not appear to hold any incompatible office or have any apparent conflicts that would prevent him or her from serving on the Library and Education Commission based upon the application submitted. Some of the applicants may be precluded from participating in matters involving their employer or the entities of which they are officers or members. Where this may be the case, they must abstain from participating in that Library and Education Commission agenda matter. A conflicts check was not completed for one applicant due to insufficient information provided in the application. The City Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN
City Attorney

By /s/ Aaron Yu
Aaron Yu
Deputy City Attorney

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