



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: **Historic Landmarks
Commission Applicants**

FROM: Richard Doyle
City Attorney

DATE: May 17, 2018

BACKGROUND

This Office routinely reviews applications to City Boards, Commissions and Committees. The applications 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 that are disclosed by the applications. To analyze potential conflicts, it is necessary to consider the duties of the commission or committee to which the applicant is seeking appointment. This review is limited to the information provided on the application and is not intended to be 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 Jose.

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.

APPLICANTS

Applications from the applicants listed below were 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.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a member from participating in the 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 member 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 member 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 member 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 member. City Council policy requires members to be free of bias in their decision making, and may require a member 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 APPLICANTS

Set forth below are incumbents and new applicants, 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.

Incumbent:

Arnold, Harriett – Ms. Arnold is semi-retired, and teaches course as a Professor at the University of the Pacific in Stockton, CA. Her spouse is a Program Coordinator with

The Health Trust located in San Jose, CA. She currently sits on the Historic Landmarks Commission to complete the balance of a term for a seat that was vacated. Ms. Arnold serves on the Collections Committee of History San Jose, is a member of the Preservation Action Council of San Jose, and Chair of the Antioch Baptist Church Historical and Archival Committee.

New Applicant:

Boehm, Paul – Mr. Boehm was and may still be a teacher with Campbell Union High School in San Jose, CA. His spouse is an Instructional Aide with San Jose Unified School District in San Jose, CA. Mr. Boehm volunteers as a docent at the Roberto Adobe and Sunol House, and teaches “Santa Clara Valley History” for Campbell Adult Education.

CONCLUSION

Neither the applicant nor incumbent appear to hold incompatible offices or have pervasive conflicts of interest that would automatically preclude them from serving on the Historic Landmarks Commission. **It is possible depending on specific circumstances that the following situations could create an actual conflict of interest or an appearance of conflict of interest including, but not limited to, proximity of the property before the Commission to the applicant or incumbent’s residence or business, the applicant or incumbent’s position on the board of an organization that appears before the Commission, or the member’s or his/her spouse’s current or prior financial interest in an organization that comes before the Commission.** The applicant and incumbent confirmed that they reside in San Jose. The Committee may wish to consider the above comments in making its recommendation regarding appointments to the Historic Landmarks Commission.

RICHARD DOYLE
City Attorney

By 
Rosa Tsongtaatarii
Senior Deputy City Attorney

Cc: Dave Sykes, City Manager
Toni Taber, CMC, City Clerk