

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: Conflicts Review –
Arts Commission Applicants**

DATE: June 7, 2022

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications generally do not provide complete information regarding actual conflicts; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight areas of potential conflict which are disclosed by the applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission for which the applicants are 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 the applicants.

COMMISSION DUTIES

Pursuant to the San Jose Municipal Code, the Arts Commission advises the City Council and other City boards and commissions on matters relating to the arts and cultural life of the City, reviews and recommends funding levels for grant applications from cultural and other organizations and monitors the City's art acquisition program.

The Commission is also responsible for formulating recommendations with respect to the City's art in public places program, in conjunction with the appropriate City departments and commissions.

Persons appointed to the Commission must have "acknowledged accomplishment" in one or more fields of art or "they must have demonstrated a deep interest and appreciation of cultural and artistic activities."

APPLICANTS

The applications listed below were reviewed by our office. No application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Arts 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 a commissioner and an entity comes before the Commission in the situations mentioned below. 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 of 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.

REVIEW OF APPLICANTS

Set forth below are the applicants and any apparent legal conflicts of interest and/or appearance of bias related to entities that are likely to come before the Arts Commission in some manner, as identified on the applications.

Alicia Aldama – Ms. Aldama’s application indicates she is employed as a Store Manager at Walgreens. Ms. Aldama’s spouse is a Maintenance Supervisor for Torani in San Leandro. The application discloses neither incompatible offices nor apparent conflicts of interest.

Jonathan Borca – Mr. Borca’s application indicates he is the Strategic Partnerships Manager at the Schools of Art and Culture at the Mexican Heritage Plaza. Mr. Borca is a board member and fund development chair for Local Color. Mr. Borca may need to disqualify himself from taking part in the Art Commission’s decision on related matters to his employment or board membership. The application discloses neither incompatible offices nor apparent conflicts of interest.

Arthur Jue – Mr. Jue application indicates he is the CEO of LiveFreely Inc. Mr. Jue is currently Chairman of the Board of Meriwest Credit Union, serves as a Board Advisor to the Get REAL Foundation, Board Member of the Institute of Behavioral and Applied Management, the SJSU B-School Deans Community Engagement Board, and currently in a corporate board certification program at Harvard. Mr. Jue may need to disqualify himself from taking part in the Art Commission’s decisions on related matters to his board memberships. The application discloses neither incompatible offices nor apparent conflicts of interest.

Tony Khoshaba – Mr. Khoshaba’s application indicates he is employed as a Firmware Engineer for Trimble Inc. His spouse is employed as a Hospitalist at Kaiser Permanente. Mr. Khoshaba was the founder and former director of the Mesopotamian Night Project. Mr. Khoshaba may need to disqualify himself from taking part in the Commission’s decision on related matters should they come before the Art’s Commission. The application discloses neither incompatible offices nor apparent conflicts of interest.

Charlie Mccollum – Mr. Mccollum’s application indicates he is retired from Mercury News in 2013. Mr. Mccollum is a member of the board of directors for City Lights Theater Company (2013-present), Happy Hollow Foundation (2013-present), San Jose Downtown Association Foundation (2015-present), and is currently a San Jose Arts Commission member from February 2017 to present. Mr. Mccollum is eligible to serve another term because his initial term was from January 10, 2017 through June 30, 2018, which was less than two years. Mr. Mccollum may need to disqualify himself from taking part in the Art Commission’s decisions on his other board related matters should they come before the Arts Commission. The application discloses neither incompatible offices nor apparent conflicts of interest.

June 7, 2022

Subject: Arts Commission Applicants – Conflict of Interest

Page 4

Samue Payes – Mr. Payes is a self-employed Artist. His spouse is a Deputy County Counsel for the County of Santa Clara. The application discloses neither incompatible offices nor apparent conflicts of interest.

Lynne Rosenthal – Ms. Rosenthal’s application indicates she is a self-employed residential interior designer. Ms. Rosenthal is currently serving her first term on the Arts Commission ending on June 30, 2022. The application discloses neither incompatible offices nor apparent conflicts of interest.

Joshua Russell – Mr. Russell is a Director of Marketing and Public Relations at Evergreen Valley College. Mr. Russell is currently a member of the Community Advisory Panel of KQED, on the advisory board of Content Magazine, and founder of genARTS Silicon Valley. Mr. Russell may need to disqualify himself from taking part in the Commission’s decisions on his other board related matters should they come before the Arts Commission. The application discloses neither incompatible offices nor apparent conflicts of interest.

Shelby Taketa – Ms. Taketa is a Marketing Director at TokuOra. The application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicants do not appear to have any incompatible offices or pervasive conflicts which would prevent serving on the Commission. You may wish to consider the above comments in making your recommendations on appointments to the Commission.

NORA FRIMANN
City Attorney

By: /s/ Arlene Silva
ARLENE SILVA
Deputy City Attorney

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



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: ADDITIONAL PLANNING
COMMISSION APPLICANT

DATE: 6/15/2022

SUPPLEMENTAL

**SUBJECT: CONFLICT OF INTEREST ANALYSIS -- ADDITIONAL PLANNING
COMMISSION APPLICANT**

REASON FOR SUPPLEMENTAL

This memorandum supplements the June 6, 2022 memorandum to Council to add a conflicts evaluation of applicant Barinder Ahluwalia. All the information provided in the previous memoranda remains the same.

ADDITIONAL APPLICANT

Council District 4

Barinder Ahluwalia applied on June 12, 2022. Applicant is retired. Applicant currently serves on the Neighborhoods Commission (appointed on April 12, 2022). Section 1.A.6 of Council Policy 0-4 prohibits a person from serving on more than one City commission at the same time and requires the commissioner resign the existing membership when appointed to another commission. Accordingly, Applicant must relinquish the position on the Neighborhoods Commission if appointed to the Planning Commission.

Applicant further disclosed that he serves on the Santa Clara County Roads Commission. If appointed, Applicant may need to abstain from participating in decisions that may affect or conflict with the duties of the Roads Commission.

//

//

//

//

CONCLUSION

Applicant's application raises no other issues that were not evaluated above. The Council may wish to consider the above comments in making your recommendations on appointments to the Planning Commission.

NORA FRIMANN
City Attorney

By /s/ _____
MARK J. VANNI
Sr. Deputy City Attorney

cc: Jennifer Maguire

For questions please contact Mark J., Vanni, Senior Deputy City Attorney, at (408) 535-1997

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: June 6, 2022

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications do not provide complete information regarding potential conflicts of interest; 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 particular commission for 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 the applicants.

COMMISSION DUTIES

The Planning Commission has two major responsibilities under the City Charter and the San Jose Municipal Code (SJMC):

1. To serve as a quasi- judicial body with respect to the consideration of issuance of certain land use permits, and
2. To serve in an advisory capacity to the City Council with respect to specific proposals for or affecting zonings, the general plan, specific plan, and Zoning Ordinance (SJMC Title 20) amendments.

Pursuant to State law and the City Charter, the Planning Commission also is required to review capital improvement programs. Additionally, under the City's Municipal Code requirements, the Planning Commission has responsibilities related to considering and certifying the adequacy of many environmental impact reports under the California Environmental Quality Act for projects within the Planning Commission's jurisdiction and for making recommendations to the City Council for projects within the Council's jurisdiction. In addition, the Commission serves in an advisory capacity with respect to other City activities related to land use and development, such as park master plans.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions and other financial interests may preclude a commissioner from participating in a Commission discussion and 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 show 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 of the spouse of 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.
- An applicant has an interest (including community property interest) in real property, such as their place of residence or any other real property in San Jose that may be affected by a matter coming before the Commission.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest under the Political Reform Act requiring a commissioner to abstain from a commission vote or discussion, but the relationship could indicate a bias or the appearance of bias on the part of the commissioner. City Council policy requires commissioners to be free from bias in their decision making and may require a commissioner to abstain if the facts could reasonably lead one to conclude that the commissioner would be biased for or against an applicant or application.

REVIEW OF APPLICANTS

Six applications were received and determined by the City Clerk to meet the basic qualifications for consideration. Applications from the applicants listed below were reviewed by our office. The applicants are divided by Council District to be considered in accordance with the November 3, 2020 amendments to Section 1000 of the City Charter. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

APPLICANTS

Council District 1

Justin Lardinois applied on May 28, 2022. Mr. Lardinois is employed as a Software Engineer by Course Hero. Mr. Lardinois is currently the District 1 representative on the Planning Commission. If reappointed, Mr. Lardinois may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose.

Nishad Somalwar applied on April 9, 2022. Mr. Somalwar is employed as a Senior Sales Manager with Infosys Limited and his spouse is employed as a Senior Vice President with Bank of America. Mr. Somalwar is also the Chairperson of St. Jude India ChildCare Centers USA, a nonprofit organization. If appointed, Mr. Somalwar may need to abstain from participating in decisions that may affect his and his spouse's employers and his San Jose real property interests as well as decisions that may affect the non-profit organization he chairs.

Council District 5

Louis Barocio applied on May 31, 2022. Mr. Barocio is employed as an Associate Principal of Educational Services by the East Side Union High School and his spouse is employed as Director of Student Achievement by Escuela Popular charter school. If appointed, Mr. Barocio may need to abstain from participating in decisions that may affect his and his spouse's employers and his San Jose real property interests.

Council District 6

Luke Oberson applied on May 17, 2022. Mr. Oberson is employed as a Senior Global Program Manager with Tesla, Inc. and his spouse is employed as the Head of NPI Operations with Zoom, Inc. If appointed, Mr. Oberson may need to abstain from participating in decisions that may affect his and his spouse's employers and his San Jose real property interests.

Pierluigi Oliverio applied on May 25, 2022. Mr. Oliverio is currently employed as a Software Consultant by GLC. Mr. Oliverio is currently the District 6 representative on the Planning Commission. If reappointed, Mr. Oliverio may need to abstain from participating in decisions that may affect his San Jose real property interests, his employer and their clients.

Council District 9

Michael Young applied on May 18, 2022. Mr. Young and his spouse are both retired. Mr. Young is currently the District 9 representative on the Planning Commission. If

reappointed, Mr. Young may need to abstain from participating in decisions that may affect his San Jose real property interests.

CONCLUSION

Some of the applicants are associated with one or more employers or organizations that may involve conflicts of interest relating to items before the Planning Commission. Even when an applicant's service as a board member of a charitable or community interest organization may not constitute a legal conflict of interest, it may create an appearance of conflict if the applicant were to participate in matters concerning his or her organization. If an applicant is compensated, there may be occasions when they may have to abstain from participation in matters before the Commission which concern the source of income. Applicants may also be required to abstain when the organization of which they are a board member takes a position in favor or against a project before the Commission.

Other than the incompatible office and voter registration issues mentioned above, the applications do not reveal any pervasive conflicts of interest which would prevent the current applicants from serving on the Planning Commission. You may wish to consider the above comments in making your recommendations on appointments to the Planning Commission.

NORA FRIMANN
City Attorney

By /s/ _____
MARK VANNI
Senior Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni Taber, City Clerk