

# *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** NORA V. FRIMANN,  
City Attorney

**SUBJECT:** Civil Service Commission  
Appointment

**DATE:** April 12, 2023

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## **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. Council policy also states that a Commissioner may not be a present, former, or retired City employee. [Policy 0-4, §I(B)(1), (3).] 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. The current Commission has an attorney and no more than two members of the same sex. As a result, this appointment can be made without regard to profession or gender.

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.

The current position is for the employee-nominated seat vacated by Mr. William Brill upon his passing. It continues through the remainder of the unexpired term, until November 30, 2025. The employees nominated the current applicant, Gary Diquisto, through the Charter process. His application does not disclose any current or past City of San Jose employment.

### **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.

### **APPLICANT TO BE INTERVIEWED**

**Gary Diquisto** – Mr. Diquisto's application indicates he is a retired San Francisco Police Officer. He receives pensionable income from the City and County of San Francisco and Social Security. His application discloses that his wife is unemployed and receives pensionable income from the Teamsters Union and Social Security. Although the application does not seek the information, Mr. Diquisto is the brother-in-law of Sam Swift, a current Civil Service Commissioner. All Commissioners are expected to arrive at their own independent decisions regardless of their relationship, and this does not prevent appointment. Mr. Diquisto's application discloses neither incompatible offices nor apparent conflicts of interest.

### **CONCLUSION**

The applicant does not appear to hold any incompatible offices, 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  
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