

# *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

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

**DATE:** June 7, 2022

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## **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.

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**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: LIBRARY AND EDUCATION  
COMMISSION APPLICANT**

**DATE:** August 9, 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 child care.

## **APPLICANTS**

The application from the applicant listed below was reviewed by our office. This review was limited to the information provided on the application and was not intended to be a 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.

**Deniz Westphal** – Ms. Westphal’s application indicates she is a Customer Advocacy and References Manager at Aruba Networks (a Hewlett Packard company) in San Jose. The application does not indicate a spouse. The application discloses no incompatible offices nor apparent conflicts of interest.

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**CONCLUSION**

The applicant does not appear to hold any incompatible office or have any apparent conflicts that would prevent her from serving on the Library and Education Commission based upon the application submitted. The applicant may be precluded from participating in matters involving her employer or the entities of which she is an officer or member. Where this may be the case, she must abstain from participating in that Library and Education Commission agenda matter. The City Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN  
City Attorney

By   
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Erin O'Neill  
Deputy City Attorney

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