

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Richard Doyle
City Attorney

**SUBJECT: NEIGHBORHOODS
COMMISSION APPLICANTS**

DATE: February 9, 2018

BACKGROUND

This office routinely reviews applications to City Boards, Commissions, and Committees. Although these applications do not provide complete information, they occasionally disclose potential conflicts of interest or incompatible offices. This memorandum highlights major areas of potential conflict disclosed by the applications. However, this review is limited to the information provided, and is not intended to be a comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The Neighborhoods Commission is an advisory body to the City Council. (SJMC §§ 2.08.3400 *et seq.*) It studies, reviews, evaluates, and makes recommendations to the City Council "regarding issues, policies, and programs affecting the quality of life in San José neighborhoods, focusing on neighborhood safety, transportation, and code enforcement." (SJMC § 2.08.3430.) In addition, it serves as a Citizens' Oversight Board that reports to the City Council about revenue expenditures generated from the November 2016 voter-approved sales tax. (Reso. No. 78016.)

COMMISSION MEMBERSHIP

The Commission is a 20-member body. Each member must reside within the boundaries of the council district for the seat to which he or she was appointed during the term of that seat. (SJMC §§ 2.08.3410, 2.08.3420.) If a member is no longer a resident of the council district, the seat will be deemed vacant.

Commissioners are appointed by the City Council after being nominated through a neighborhoods caucus process. (SJMC § 2.08.3440.A.) When a vacancy

occurs outside of the scheduled caucus process, the City Council makes an appointment based upon the recommendation of the Council Appointment Advisory Commission. (SJMC §.2.08.3440.D.) Commissioners appointed outside the caucus process serve until the next scheduled process for their district. Currently, there are vacancies for Districts 7 and 8. The caucus process will occur in Spring 2018 for the odd-numbered districts and Spring 2020 for even-numbered districts.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a commissioner from participating in a commission discussion or from voting on a matter if there is a conflict of interest. While this list is not complete, 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.

In each of these instances, the commissioner may be required to recuse himself or herself in the event a matter comes before the Commission affecting the above interests.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest that requires recusal; 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.

APPLICANTS

The following applications were reviewed by our office:

CANDIDATES FOR DISTRICT 7

Juan Quinones — The Applicant is a resident of Council District 7 and is employed with the Silicon Valley Leadership Group as an Executive Assistant.

The Applicant also serves on the Santa Clara County Child Abuse Council, but does not identify any leadership role. If Applicant has such a role, it is possible that the Commission could consider an issue that may come within the purview of his leadership role in this Council, presenting an actual conflict or appearance of bias. In this instance, Applicant may need to disqualify himself from taking part in a Commission decision if the organization were to come before the Commission.

Otherwise, the application discloses neither incompatible offices nor apparent conflicts of interest.

Bruce Sullivan — The Applicant is a resident of Council District 7 and is employed as the President of Structural Hardware and Supply, Inc. Applicant's spouse is employed with Home Care Assistance, Inc. in Sunnyvale as a Care Giver.

The Applicant is also a member of the McLaughlin Corridor Neighborhood Association (MCNA) and the Senter Monterey Neighborhood Association (SMNA). Applicant does not identify any leadership role in these neighborhood associations, but if he has such a role, it is possible that the Commission could consider an issue that may come within the purview of his leadership role in this Council, presenting an actual conflict or appearance of bias. In this instance, Applicant may need to disqualify himself from taking part in a Commission decision if the organization were to come before the Commission.

Otherwise, the application discloses neither incompatible offices nor apparent conflicts of interest.

Jonathan Velasquez — The Applicant is a resident of Council District 7. In the resume he attached to the application, the Applicant represents that he is employed as a Recreational Leader for San José Parks, Recreation, and Neighborhood Services. Council Policy 0-4, Section I, B, states that “no City employee or City intern, paid or unpaid, shall be appointed to any City Board or Commission.” If Applicant is indeed currently employed with the City of San José, he may not be appointed to the Commission pursuant to Council Policy 0-4, unless he was willing to end his City employment. If Applicant were to end his City employment, he could serve on the Commission.

The Applicant is also employed with First 5 Kids Santa Clara County as a Program Specialist and serves as the President of the Seven Trees Neighborhood Association. It is possible that the Commission could consider an issue that may come within the purview of his leadership role in this community organization, presenting an actual conflict or appearance of bias. In such a case, he may need to disqualify himself from taking part in the Commission’s decision on that matter.

CANDIDATES FOR DISTRICT 8

Jeremy Barousse — The Applicant is a resident of Council District 8. He is employed with the Services, Immigrant Rights, and Education Network (SIREN) as the Director of Civic Engagement. His spouse works Our Lady of Guadalupe Church as a Pastoral Associate.

The Applicant also serves as of the District 8 Community Roundtable, which is described as a district-wide neighborhood association. It is possible that the Commission could consider an issue that may come within the purview of his leadership role in this community organization, presenting an actual conflict or appearance of bias. In such a case, he may need to disqualify himself from taking part in the Commission’s decision on that matter.

Otherwise, the application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

The Council may wish to consider the above comments in making appointments to the Neighborhoods Commission. Except for Applicant Jonathan Velasquez, the applicants do not appear to have any incompatible offices or conflicts which would prevent serving on the Commission. If Applicant Velasquez indeed works as a Recreational Leader with the City of San José, as represented in his attached resume, he may not be appointed to the Commission, per Council Policy, unless he were willing to end his City employment before assuming his role on the Commission.

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By: 
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cc: David Sykes, City Manager
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