

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review Senior
Citizens' Commission
Applicants

DATE: April 3, 2025

BACKGROUND

The City Attorney's Office routinely reviews applications to City Boards and Commissions. The applications generally do not provide complete information regarding potential 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 application. In order 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 comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The Senior Citizens' Commission is responsible for studying, reviewing, evaluating and making recommendations to the Council on matters affecting elderly people in the City.

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, 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.

REVIEW OF APPLICANT

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 applications.

Emilie Highley – Emilie Highley's application indicates she is a Realtor as Compass Silicon Valley. Her spouse, now deceased, worked at Lockheed Martin and she currently receives a portion of his retirement. If the Commission considers a matter involving Lockheed Martin, it may present an actual conflict or appearance of bias. In such a case, she may need to disqualify herself from taking part in the Commission's decision on that matter. Otherwise, the application discloses no incompatible offices nor apparent conflicts of interest.

Barbara Brenner – Barbara Brenner's application indicates she is a retired Program Manager for the Health Trust. Her spouse works for the San Jose Unified School District as a Teacher. If the Commission considers a matter involving the San Jose Unified School District, it may present an actual conflict or appearance of bias. In such a case, she may need to disqualify herself from taking part in the Commission's decision on that matter. Otherwise, the application discloses no incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicants do not appear to hold any incompatible office or have any apparent conflicts that would prevent him or her from serving on the Senior Commission based upon the application submitted. Some of the applicants may be precluded from participating in matters involving their employer or the entities of which they are owners, officers or members. Where this may be the case, they must abstain from participating in that Senior Commission agenda matter.

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The City Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN

City Attorney

By /s/ Andrew Malek

Andrew Malek

Deputy City Attorney

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