

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review – Council
Appointment Advisory
Commission Applicants

DATE: January 5, 2023

BACKGROUND

This office routinely reviews applications to City Boards, Commissions and Committees. The applications 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 that are disclosed by the applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission or committee to 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 applicants.

COMMISSION DUTIES

The Council Appointment Advisory Commission consists of eleven (11) members and its functions, duties and powers include: (1) Review applications, interview applicants and maintain a pool of screened applicants for all City commissions; (2) Review applications, interview applicants and nominate for appointment by the City Council, persons to those commission seats that have special eligibility requirements, or otherwise set forth in the Municipal Code; and (3) Such other related duties as may be directed by the City Council.

The Council Appointment Advisory Commission assumed the role of the former commission, Project Diversity Screening Committee which was established by Council action in 1991.

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.

APPLICANTS

Applications from the applicants listed below were reviewed by our office. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Council Appointment Advisory Commission.

1. Martin Atmadja

Martin Atmadja is self-employed as Finance Controller. Martin’s spouse is employed as an Accountant at Ouster, Inc. in San Francisco. The application disclosed no incompatible offices or apparent conflicts of interest.

2. Gabriel Borden

Gabriel Borden is a Senior Housing Planner at the City of Cupertino. He was previously employed as Development Officer, Acting Development Officer and Grants Management Analyst in the City of San Jose’s Housing Department and Associate Environmental Services Specialist in the City of San Jose’s Environmental Services Department from 2016 to 2021. The application disclosed no incompatible offices or apparent conflicts of interest.

3. Christopher Lee

Christopher Lee is a Product Manager at Ernst & Young in San Jose. The application disclosed no incompatible offices or apparent conflicts of interest.

4. Ravi Pathak

Ravi Pathak is a Senior Director, Oracle Fusion Cloud SaaS at Oracle Corporation in Redwood City. He is a member of several organizations, including currently being Chartered President of Rotary Club of Silicon Valley for Global Impact in San Jose and Steering Committee Member of the District 8 Community Round Table. Ravi's spouse is employed as a Master Teacher at CTC, the California Commission on Teacher Credentialing. The application disclosed no incompatible offices or apparent conflicts of interest.

5. Robert Valentukonis

Robert Valentukonis is an Electric Division Manager at the City of Santa Clara. Robert's spouse is an Educator at Mountain View-Los Altos Union High School District in Los Altos. The application disclosed no incompatible offices or apparent conflicts of interest.

CONCLUSION

The applicants do not appear to hold any incompatible offices or pervasive conflicts which would prevent them from serving on the Council Appointment Advisory Commission, although applicants may be precluded from participating in matters involving the entities of which they are an officer or member, or entities that are sources of income to them. Where this may be the case, they must abstain from participating in that commission recruitment. The City Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN
City Attorney

By: /s/ Neelam Naidu
Neelam Naidu
Senior Deputy City Attorney

cc: Toni J. Taber CMC, City Clerk

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: NORA FRIMANN
City Attorney

SUBJECT: Conflicts Review - Airport
Commission Applicants

DATE: January 4, 2023

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications 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 that are disclosed by the applications. To analyze potential conflicts, it is necessary to consider the duties of the particular commission to which the applicant is seeking appointment.

COMMISSION DUTIES

Under the Municipal Code, the Airport Commission is an advisory body that makes recommendations to the Council and the Airport Department on matters on its workplan as approved by the Rules and Open Government Committee. The Airport Commission serves as an advisory body to the City Council and the Director of Aviation regarding Airport noise related issues and provides a public forum for Airport noise related issues, policies, and decisions. The Airport Commission is also responsible to monitor curfew intrusion information and reviews the City's Airport public information program and the City's Airport noise complaint procedures. The Commission also hears appeals of administrative citations issued by the Director of Aviation for violations of the City's Curfew Ordinance and appeals of revocations or denials of Airport permits.

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 that 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.

APPLICANTS

Hai Bui – Mr. Bui is a resident of District 2 and is employed by VMware as a Principal Software Engineer. His application discloses neither incompatible offices nor apparent conflicts of interest.

Nick Wester – Mr. Wester resides in District 6 and works at Azazie, Inc. as a QC Supervisor. His application discloses neither incompatible offices nor apparent conflicts of interest.

Carlos Casas-Hawkins – Mr. Casas-Hawkins is a resident of District 10 and works as an Administrative Assistant at Luther Burbank School District. His application discloses neither incompatible offices nor apparent conflicts of interest.

Ravi Pathak – Mr. Pathak is a resident of District 7 and works at Oracle as a Senior Director of Oracle Fusion Cloud SaaS. His spouse works at CDC as a Master Teacher. His application discloses no other incompatible offices nor apparent conflicts of interest.

Antonio Shelly – Mr. Shelly is a resident of District 3 and works at CoreSite as a Data Center Operations Manager. The spouse section of his application is marked N/A. His application discloses neither incompatible offices nor apparent conflicts of interest.

Cristian Martinez-Carranza – Mr. Martinez-Carranza is a resident of District 3 and works at Varian as a Supplier Quality Engineer. His spouse is employed at DCP Alum Rock High School as a Special Education Teacher. His application discloses neither incompatible offices nor apparent conflicts of interest.

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Margaret Wheeler – Ms. Wheeler is a resident of District 4 and she is retired. Her spouse is retired, too. Her application discloses neither incompatible offices nor apparent conflicts of interest.

Marcel Pajuelo-Schwartz – Mr. Pajuelo-Schwartz is a resident of District 6 and he is retired. The spouse section of his application is marked N/A. His application discloses neither incompatible offices nor apparent conflicts of interest.

Dana Todd Iketani – Mr. Iketani is a resident of District 6 and works at Shield Intellectual Property PC as an Attorney. His application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

None of the applicants appear to hold any incompatible offices or to have conflicts of interest that would preclude them from serving on the Airport Commission.

NORA FRIMANN,
City Attorney

By: /s/ Jon Calegari
Jon Calegari
Senior Deputy City Attorney

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