

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Richard Doyle
City Attorney

**SUBJECT: NEIGHBORHOODS
COMMISSION APPLICANTS**

DATE: October 30, 2017

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 is 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 a comprehensive investigation of potential conflicts involving the applicants.

COMMISSION DUTIES

The San Jose Municipal Code provides that the Neighborhoods Commission is an advisory body to the City Council. The Commission studies, reviews, evaluates, and makes recommendations to Council "regarding issues, policies, and programs affecting the quality of life in San Jose neighborhoods, focusing on neighborhood safety, transportation, and code enforcement." By Council Resolution, the Commission also serves as the Citizens' Oversight Board which reviews, and reports to Council about the expenditures of the revenue generated by the sales tax approved by the voters in November, 2016.

APPLICANTS

Applications 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 commission.

COMMISSION MEMBERSHIP

The Commission is a 20-member body with the following special eligibility requirement: each member of the commission must reside within the boundaries of the council district for the seat to which he or she was appointed for the duration of the term of that seat. If a member is no longer a resident of the council district, the seat will be deemed vacant.

Commissioners are nominated through a neighborhoods caucus process, and appointed by Council. When a vacancy occurs outside of the normal caucus process, the Council makes an appointment based upon the recommendation of the council appointment advisory commission. Commissioners appointed outside the caucus process serve until the next scheduled process for their district. There are current vacancies for Council Districts 1, 3, 4, 7, and 9. The caucus process for the odd number districts will occur in Spring, 2018, 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 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.

LEGAL 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 commission in some manner, as identified the application.

Candidates for District 1

Franklin Nguyen — The Applicant resides in Council District 1 and is a Product Manager for IBM. The Applicant's spouse is a Portfolio Manager for Lyell Wealth Management. The application discloses neither incompatible offices nor apparent conflicts of interest.

Candidates for District 3

Andrew Tubbs — The Applicant resides in Council District 3 and works in Administration for Congregation Sinai. The Applicant's spouse is employed as a Technical Manager for Experis in Campbell. He is the President of the Delmas Park Neighborhood Action Coalition. 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.

LaToya Fernandez — The Applicant resides in Council District 3 and is founder of Queenhype, a non-profit. Applicant's spouse is employed at Rocketship.

Education in San Jose. The application discloses neither incompatible offices nor apparent conflicts of interest.

Nia Celestin — The Applicant resides in Council District 3 and is a Senior Product Marketing Manager at Polycom. The Applicant's spouse is employed as a Senior Product Marketing Manager for Ring Central. The application discloses neither incompatible offices nor apparent conflicts of interest.

Richard Wong — Applicant resides in Council District 3 and is the CEO for ECS Design, Inc. Applicant's spouse is listed as the CFO and VP of ECS Design, Inc. The application identifies positions on the Board of Directors of Delmas Park Neighborhood Association and ACT for Mental Illness. It possible that the Commission could consider an issue that may come within the purview of his leadership role in the Neighborhood Association, presenting an actual conflict or appearance of bias. In such a case, Applicant 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.

Candidates for District 4

Robert Levy — The Applicant resides in Council District 4 and is self employed as a Project Manager/Senior Business Analyst/Community Activist. Applicants spouse is a Reading Specialist with the Mountain View Whisman School District. He currently serves as a Committee member for the City of San Jose's GreenPrint Steering Committee, as Co-chair of the Stevens Creek Urban Village Advisory Group, Chair of the District 1 Leadership Group, and as a Committee member/Chair of the Santa Clara Valley Water District's Environment and Resource Advisory Committee. The application discloses neither incompatible offices nor apparent conflicts of interest.

Cassandra Langer — The Applicant resides in Council District 4 and is an Office Manager for the Office of Congressman Ro Khanna. The Application states that she is actively involved in Neighborhood Associations and lists current membership in the Berryessa Citizens Advisory Council, the River Oaks Neighborhood Association, and the Penitencia PNA Neighborhood Association. The application does not indicate whether these are leadership roles. If Applicant serves in leadership roles, it is possible that the Commission could

consider an issue that may come within their leadership role, presenting an actual conflict or appearance of bias. In such a case, Applicant may need to disqualify herself from taking part in the Commission's decision on that matter. Otherwise, the application discloses neither incompatible offices nor apparent conflicts of interest.

Alan Hinman, Jr. — The Applicant resides in Council District 4 and is retired, but serves as President of the Homeowner's Association where he resides. It is possible that the Commission could consider an issue that may come within the purview of his leadership role in the Homeowner's Association, presenting an actual conflict or appearance of bias. In such a case, Applicant 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.

Chen Gu — The Applicant resides in Council District 4 and is Senior IP Counsel for Western Corporation. Applicant's spouse is employed as an instructor at Berlitz. The application discloses neither incompatible offices nor apparent conflicts of interest.

Candidates for District 7

Bruce Sullivan — The Applicant resides in Council District 7 and is self-employed as President of Structural Hardware and Supply, Inc. The Applicant's spouse is a caregiver for Home Care Assistance Inc. Applicant currently belongs to MCNA and SMNA neighborhood associations, but the application does not identify a leadership role. Assuming 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 these Neighborhood Associations, presenting an actual conflict or appearance of bias. In such a case, Applicant 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.

Candidates for District 9

Michael Young — Applicant resides in Council District 9 and is retired, along with his spouse. The application discloses neither incompatible offices nor apparent conflicts of interest.

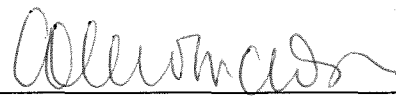
Richard Cappadona — Applicant resides in Council District 9 and is Director of Sales at Dtex Systems. Applicant's spouse is an Account Executive with Sierra Pacific Mortgage. Applicant recently served as past President and Secretary of the Pinehurst Cabana Club. It is possible that the Commission could consider an issue that that may come within the purview of his past leadership role of Pinehurst Cabana Club, presenting an actual conflict or appearance of bias. In such a case, Applicant 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 applicants do not appear to have any incompatible offices or pervasive conflicts which would prevent serving on the Commission. Nonetheless, you may wish to consider the above comments in making appointments to the Neighborhoods Commission.

RICHARD DOYLE
City Attorney

By: _____


Colleen D. Winchester
Sr. Deputy City Attorney

cc: David Sykes, City Manager
Toni J. Taber, CMC, City Clerk