CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Honorable Mayor and City Council

FROM: Richard Doyle City Attorney

SUBJECT: Conflicts Review - Housing and Community Development Commission

DATE: December 1, 2017

BACKGROUND

This Office routinely reviews applications to City boards and commissions. Although the applications do not provide complete information, 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 applications.

COMMISSION DUTIES

The Housing and Community Development Commission ("HCDC" or "Commission") was formed in July 2013 when the Housing and Community Development Advisory Commission was merged with the Advisory Commission on Rents ("ACR") and the Mobilehome Advisory Commission ("MAC"). It serves as the successor to ACR and MAC fulfilling their duties under the Mobilehome Rent Ordinance, Chapter 17.22 of the Municipal Code and the Rental Dispute Mediation and Arbitration Ordinance ("Apartment Rent Ordinance"), Chapter 17.23 of the Municipal Code. These duties include review of the fees imposed under those ordinances. HCDC also reviews potential amendments to provisions of the Zoning Code that apply to mobilehomes including the City's Mobilehome Park Conversion Ordinance. HCDC serves as the lead citizen participation group in the planning and programming of the Community Development Block Grant. HCDC also makes recommendations on new and existing Housing Department programs and policies. Additionally, HCDC holds public hearings and makes recommendations in conjunction with the City's Consolidated Plan and Annual Action Plans. The decisions made by the members of HCDC, particularly those related to the Consolidated Plan, may impact the spending of City funds.

COMMISSION MEMBERSHIP

The Commission is a 13 member body with the following special eligibility requirements: (a) one member must be recommended by an organization of owners of San José mobilehome parks; (b) one member must be recommended by an organization of residents of San José mobilehome parks; (c) one member shall be an owner or manager of San José rent stabilized apartments, (d) one member shall be a tenant of a

San José rent stabilized apartment, and (e) At least five members shall represent low income households. The members appointed by the Mayor, District 5, District 7 and District 9 are the seats that are intended to be filled by persons representing low income households. Additionally, the mobilehome park resident representative is deemed to be a representative of low income households.

CURRENT VACANCIES

The current vacancy for which this application is being considered is for the Mobilehome Park Resident Representative. Under Section 2.08.2820.B, and Section 2.08.2850.C the criteria for this seat is that the applicant be a mobilehome park resident "recommended by an organization of residents of San José mobilehome parks".

APPLICANTS

The applications from the applicants eligible for the current vacancies were reviewed by our office and are listed below. Unless otherwise indicated, the applications reviewed do not disclose incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

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 or affecting an entity comes before the commission, including a potential grant or contract, or action under the Mobilehome Rent Ordinance, or the Apartment Rent Ordinance. 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 entities that are 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.

Additionally, a conflict may arise when the Commission takes action on a matter related to the Mobilehome Rent Ordinance, the Apartment Rent Ordinance or the Mobilehome related provisions of Title 20, if applicant resides in or owns a property subject to these ordinances and the potential commission action may impact the personal finances of the applicant.

Section 2.08.2820 provides that: (a) one member of the Commission shall be a person recommended by an organization of residents of San José mobilehome parks, (b) one member of the Commission shall be a person recommended by an organization of owners of the San José mobilehome parks, and these members have designated seats on the Commission pursuant to Section 2.08.2830.A. Section 2.08.2820 also provides that: (c) one member shall be an owner or manager of a residential rent stabilized property, (d) one member shall be a tenant of rent stabilized unit, however, there are no designated seats for these representatives. San José Municipal Code Section 2.08.2850 contains findings and declarations which provide that: (a) for the purposes of the mobilehome park owner who serves on the commission, the San José mobilehome park industry is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103; and (b) for purposes of the mobilehome park resident who serves on the commission, the San José mobilehome park residential community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103. Together, these provisions allow the persons appointed to these representative positions to take action on issues related to the mobilehome rent ordinance or other mobilehome related matters without violation of the general conflict of interest provisions of state and local law. Municipal Code Section 2.08.2850 also contains findings and declarations which provide that: (c) for the purposes of the owner or manager of residential rent stabilized rental unit(s) who serves on the commission in San José, the residential rent stabilized rental property owners is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103; and (d) for purposes of the tenant of a residential rent stabilized rental unit who serves on the commission, the San José residential rent stabilized rental unit tenants community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103. Together, these provisions allow the persons appointed to these representative positions to take action on issues related to the apartment rent ordinance or other rent stabilized apartment related matters without violation of the general conflict of interest provisions of state and local law.

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.

HOUSING DEPARTMENT GRANTEE POLICY

In addition to the conflicts listed above, it is Housing Department Policy that in order to avoid a perceived conflict of interest, no person who is a member of the board of directors of, or is employed by, an agency that applies for or receives CDBG, ESG, HOME or other funding will be eligible to vote on funding decisions involving the said agency regarding that funding source. Where an applicant is connected with a specific agency that has previously applied for grants or funding, this policy will be mentioned below.

REVIEW OF APPLICANTS

MARTHA MARIE O'CONNELL: Ms. O'Connell resides in Council District 9. She currently serves on the Commission in a non-representative capacity pursuant to an appointment by District 1. This application for the Mobilehome Park Resident Representative was submitted on November 16, 2017. The employer section of her application is filled in "retired". The spouse employment section of his application is marked "n/a". She is a Regional Manager for Zone A-1 of Golden State Manufactured and Mobile Home Owners League (GSMOL), an advocacy group for residents of mobilehome parks. She is also the President of HOME, an advocacy group for residents of mobilehome parks. She resides in Colonial Manor Mobilehome Park, a park subject to the City's Mobilehome Rent Ordinance. The application discloses no incompatible offices, incompatible activities, or other conflicts of interest unrelated to her status as mobilehome park resident which appear likely to arise in the performance of Ms. O'Connell's duties as a Commission member.

DANIEL FINN: Mr. Finn resides in Council District 4. This application for the Mobilehome Park Resident Representative was submitted on November, 2017. His employer is Able Engineering Services and his title is Facilities Engineer. He is retired from the City of San José. The spouse employment section of his application is marked "unemployed". He was an OE3 union steward. He was President of the Oakcrest Estates Mobilehome Park HOA. He resides in Oakcrest Estates Mobilehome Park, a park subject to the City's Mobilehome Rent Ordinance. The application discloses no incompatible offices, incompatible activities, or other conflicts of interest unrelated to his status as mobilehome park resident which appear likely to arise in the performance of Mr. Finn's duties as a Commission member.

CONCLUSION

You may wish to consider the above comments in making your recommendations on appointments to the Commission.

RICHARD DOYLE
City Attorney

By: _____
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Sr. Deputy City Attorney

cc: Toni Taber, City Clerk
David Sykes, City Manager
Jacky Morales-Ferrand, Director of Housing