

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: NEIGHBORHOODS COMMISSION APPLICANTS:
CONFLICTS OF INTEREST

DATE: May 17, 2018

BACKGROUND

This office routinely reviews applications to City Boards, Commissions, and Committees. Although these applications do not offer complete information, they occasionally disclose potential conflicts of interest or incompatible offices. This memorandum highlights major areas of potential conflict disclosed in 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.

The City Council appoints Neighborhoods Commissioners after taking into consideration nominations provided through a neighborhood groups caucus process. (SJMC § 2.08.3440.A.) If a vacancy occurs outside of the scheduled caucus process, the Council may fill the vacancy based on the recommendation of the council appointment advisory

commission. (SJMC § 2.08.3440.D.)

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. While this list is not complete, conflicts usually fall within 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 if a matter comes before the Commission affecting the above interests.

APPEARANCE OF BIAS

There may also be facts which would not amount to a legal conflict of interest, but still require recusal because certain relationships may create an appearance of bias. City Council policy requires commissioners to be free from bias in their decision making, and may require recusal if the facts could reasonably lead one to conclude that the commissioner would be biased for or against an entity or entities.

APPLICANTS

The following applications were reviewed:

CANDIDATES FOR COUNCIL DISTRICT 4

Chen Gu: Applicant resides in District 4, and submitted the application on September 08, 2017. Appliance is a Senior IP Counsel for Western Digital Corporation.

No incompatible officers or conflicts of interest are disclosed.

Afia Laig: Applicant resides in District 4, and submitted her application on April 21, 2018. Applicant is employed by Chevron as a Program Manager and her spouse is employed with Align Technologies.

Applicant serves as the Vice President of the Sixth District PTA, which is made up of 221 school PTA's. She is also the President of the North Valley Council of PTA's which comprises 16 PTA's and three School Districts in San José. It is possible that the Commission could consider an issue that may come within the purview of her leadership role in these groups, presenting an actual conflict or appearance of bias. In such a case, Applicant may need to recuse herself from taking part in the Commission's decision on that matter.

Otherwise, no incompatible officers or conflicts of interest are disclosed.

Cassandra Langer: Applicant resides in District 4, and submitted her application on September 15, 2017. Applicant is an Office Manager for the Office of Congressman Ro Khanna. Applicant is involved in various Neighborhoods Associations, but does not disclose any leadership roles.

No incompatible officers or conflicts of interest are disclosed.

Robert Levy: Applicant resides in District 4, and submitted his application on September 29, 2017. Applicant is self-employed, and his spouse is employed as a Reading Specialist with the Mt. View Whisman School District.

According to Applicant's resume, included with his application, Applicant serves as the Chair of the District 1 Leadership Group and the Co-Chair of the Stevens Creek Urban Village Advisory Group. It is possible that the Commission could consider an issue that may come within the purview of his leadership role in these groups, presenting an actual conflict or appearance of bias. In such a case, Applicant may need to recuse himself from taking part in the Commission's decision on that matter.

Otherwise, no incompatible officers or conflicts of interest are disclosed.

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CONCLUSION

The Council may wish to consider the above comments in making appointments to the Neighborhoods Commission. Presently, applicants do not appear to have any disclosed incompatible offices or conflicts that would prevent serving on the Commission.

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