

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: NEIGHBORHOODS
COMMISSION APPLICANTS:
CONFLICTS OF INTEREST**

DATE: December 8, 2020

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. A Commissioner’s employer, or the employer of the Commissioner’s spouse, is generally considered a source of income to the Commissioner such that the Commissioner will have to recuse himself or herself from taking part in the Commission’s decision on a matter if the decision will have a foreseeable financial effect on the employer.

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 2

Chin Hang Leung: Applicant applied on December 30, 2019. Applicant is self-employed as a driver.

No incompatible officers or conflicts of interest are disclosed.

Lalbabu Prasad: Applicant applied on November 4, 2020. Applicant is employed by Kaiser Permanente as an Admitting Representative and Applicant's spouse is employed with Lotus Premier, Inc.

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

CANDIDATES FOR COUNCIL DISTRICT 3

Adam Supernant: Applicant applied on March 4, 2020. Applicant is an Engagement Manager for Area Technology.

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

Charles Cantrell: Applicant applied on June 26, 2020. Applicant is the Vice President of eCommerce at Luxie, Inc., and Applicant's spouse is employed as a Research Administrator at Stanford University.

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

Frank Ponciano: Applicant applied on January 27, 2020. Applicant is a Community Liaison with Abode Services, and Applicant's spouse is a Teacher with the Sunnyvale School District.

Applicant further discloses that Applicant is a Board Member with the Alum Rock Counseling Center, Board Member with the San Jose Downtown Residents Association, and a Board Member with the Silicon Valley Democratic Club. It is possible that the Commission could consider an issue that may come within the purview of Applicant's leadership role in these groups, presenting an actual conflict or appearance of bias. In such a case, Applicant may not be able to participate in the Commission's decision on that matter.

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

Jaya Shingal: Applicant applied on November 23, 2020. Applicant is an Executive Vice President at Wyndham Garden San Jose Airport & Wyndham Garden Silicon Valley.

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

Rondi Pacheco: Applicant applied on April 20, 2020. Applicant is an Executive Assistant at Pure Storage, and Applicant's spouse is employed as a Project Surveyor at Keir & Wright.

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

CANDIDATES FOR COUNCIL DISTRICT 4

Brandon Catolico: Applicant applied on November 9, 2020. Applicant is a Manager with Stanford Third Party Contract Employment.

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

CANDIDATES FOR COUNCIL DISTRICT 5

Claudie Tercero: Applicant applied on June 17, 2020. Applicant is a Support Coordinator/Budget Analyst with San Jose State University.

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

CANDIDATES FOR COUNCIL DISTRICT 6

Jonathan Velasquez: Applicant applied on November 8, 2020. Applicant is a Program Specialist with First 5 Kids Santa Clara.

Applicant further discloses that Applicant is a President of the Seven Trees Neighborhood Association. It is possible that the Commission could consider an issue that may come within the purview of Applicant's leadership role in this group, presenting an actual conflict or appearance of bias. In such a case, Applicant may not be able to participate in the Commission's decision on that matter.

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

Katie Gray: Applicant applied on June 21, 2020. Applicant is self-employed as a sole proprietor.

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

CANDIDATES FOR COUNCIL DISTRICT 8

David Burckhard: Applicant applied on October 3, 2020. Applicant is retired.

No incompatible officers or conflicts of interest are disclosed.

CANDIDATES FOR COUNCIL DISTRICT 9

Neeti Deshmukh: Applicant applied on November 12, 2020. Applicant is a Senior Director at PayPal, Inc., and Applicant's spouse is employed as a Manager at Cisco.

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

Theresa Papenfuss: Applicant applied on October 9, 2020. Applicant is retired, and Applicant's spouse is employed as a Sales Engineer at Recht Associates.

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

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.

NORA FRIMANN
City Attorney

By: /s/ _____
Mark J. Vanni
Deputy City Attorney

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