

Memorandum

TO: Honorable Mayor
and City Council

FROM: Nora Frimann
City Attorney

SUBJECT: Conflicts Review - Housing
and Community Development
Commission

DATE: March 17, 2021

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 ("CDBG"). 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, which are related to the use and spending of federal funds, including CDBG, Emergency Solutions Grant ("ESG"), and Home Investment Partnerships Program ("HOME") funds. In 2020, HCDC was designated as the Oversight Committee for the Measure E funds reviewing and commenting on spending plans and expenditures consistent with Council Policy 1-18. 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 shall be a person recommended by an organization of owners of San José mobilehome parks; (b) one member shall be a person 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 nominated by the Mayor, District 3, District 5, and District 7 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

There are currently two vacant seats on the Commission. In accordance with Section 2.08.180 of the Municipal Code, the vacant seats are to be nominated by District 1 and District 4. It is noted, however, that there is currently a landlord representative for residential rent stabilized apartments on the Commission, but no tenant representative on the Commission.¹ There are no other vacancies on the Commission.

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 consideration of a potential grant or contract, or a matter 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:

¹ Section 2.08.180A authorizes each councilmember, including the Mayor, to nominate one commissioner to the Housing and Community Development Commission. Councilmembers are not required to nominate commissioners from the district they represent. See Policy 0-4 (Council Resolution No. 77891). The District 8 nominated seat is currently vacant, but is not a seat designated for a tenant of a residential rent stabilized apartment. Although Section 2.08.2820D states that “[o]ne member *shall* be a tenant of a residential rent stabilized rental unit[]” (emphasis added), Section 1.04.020 (Definitions) of the Municipal Code states that the word “shall” as applied to the City is “directory only” and not mandatory.

- 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 is proposed to take 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.

Members serving as a mobilehome park representative or a residential rent stabilized apartment representative are permitted to take actions affecting mobilehome related matters or rent stabilized apartments matters, respectively, without violating general conflict of interest provisions of state and local law.

Municipal Code 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; and (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; and (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 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 that 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

The list below summarizes some of the basic information from the applications and identifies any conflicts or potential conflicts. It is separated into two categories: (a) those applicants that would qualify as a tenant of a residential rent stabilized unit; and (b) those applicants that would not qualify as a tenant of a residential rent stabilized unit. Since specific gender preferences of the applicants are not provided in the application, all applicants below are referred to as “them/their/they.”

APPLICANTS THAT WOULD QUALIFY FOR APPOINTMENT AS AN APARTMENT RENT ORDINANCE TENANT REPRESENTATIVE:

None.

OTHER APPLICANTS:

ROBERT HOWELL: Robert Howell resides in Council District 1. This application was submitted on January 27, 2021. This application indicates they are self-employed as President and Owner of Exatron. Exatron appears to be an electronics company based upon an internet search. The spouse sections indicate that Robert Howell's spouse is the Finance Officer for Exatron. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of Robert Howell's duties as a Commission.

TOBRETH HANSEN: The applicant resides in Council District 2. This application was submitted on January 20, 2021. This application indicates the applicant is employed at Morgan Hill Unified School District (MHUSD) as a "sub lunch lady." The spouse sections of this indicate that Tobreth's spouse works for Nutanix as a QA Engineer. The application indicates that the applicant owns a single-family residence at 7142 Via Lomas, San Jose, CA. 95139 and does not rent any property. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

JAYA SHINGAL: This application was submitted on November 23, 2020. According to the application, the applicant resides at 11449 Clayton Road, San Jose, which is situated in Council District 5, although their application indicates that they reside in Council District 3. Their application indicates that they are the Executive Vice President of Wyndham Garden San Jose Airport and Wyndham Garden Silicon Valley hotels. The spouse sections of this application are marked "N/A". The application indicates that Jaya Shingal is a current member of City of San Jose's Bridge Housing Community Advisory Committee. In addition, the applicant indicated in their responses that HCDC may make decisions that may affect their sources of income, interests in real property, personal finances or investments. The applicant additionally states that "they are looking to develop our parcels on 4th St. & Gish Rd. in San Jose, and have had preliminary discussions with the City of San Jose in which we have discussed incentives for developing affordable housing units in a mixed-use development." Thus, the applicant may need to recuse themselves from any Commission discussions that could potentially have an impact on property that they own or other sources of income, unless further conflicts analysis is undertaken.

ANTHONY ROSSELLO: The applicant resides in Council District 4. This application was submitted on January 21, 2021. This applicant's employer is King Digital (Activision-Blizzard) and their title is Software Engineer. The spouse sections of this application are marked "N/A". The applicant is a renter and resides at 3507 Palmilla Dr., Unit #2157, San Jose, CA 95134. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

HA TRAN: The applicant resides in Council District 4. This application was submitted on January 27, 2021. This applicant indicates that they are a retired engineer and part-time substitute teacher. Their spouse's employer is Oracle and the applicant's spouse's title is "IT." Their application indicates that they do not rent property in the City of San Jose. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

DONALD FUGATE: The applicant resides in Council District 9. This application was submitted on January 27, 2021. This applicant indicates that they are employed as a Pastor at Foxworthy Baptist Church ("Church"). Their spouse's employer is also Foxworthy Baptist Church and their title is secretary. Their application indicates that they do not rent property in the City of San Jose. Their application and resume states that Donald Fugate spent twelve years, serving until 2018, on the Executive Board for California Southern Baptists. A potential financial conflict of interest may arise if the Church is a grantee or seeks grants through the City. Currently the Church is not a grantee under any Housing grants. Other than the above, the application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

ROSIE ZEPEDA: The applicant resides in Council District 9. This application was submitted on November 8, 2020. The applicant indicates that their application is for the Charter Commission and that they previously applied to the HCDC, thus the Councilmembers may want to verify this information is still correct. This applicant indicates that they are employed as a Director of Media and Governmental Relations and Marketing at City College of San Francisco. The spouse sections of this application are marked "N/A". Their application indicates that they do not rent property in the City of San Jose. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

VERONICA SOSA: The applicant resides in Council District 9. This application was submitted on October 4, 2020. This applicant indicates that they are employed as a Senior Director of Finance at LinkedIn. The spouse sections of this application are marked "N/A". Their application indicates that they do not rent property in the City of San Jose. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

CANSHARA WASHINGTON: The applicant resides in Council District 9. This application was submitted on July 26, 2020. This applicant's employer is Pure Storage and the applicant's title is Sales Development Representative. The spouse sections of this application are marked "N/A". The application indicates that the applicant "lives in, operates or manages property subject to the Apartment Rent Ordinance and provides 1085 Foxchase Drive, San Jose CA 95123 as the address of that property, however this

unit is a condominium, so it would not be subject to the Apartment Rent Ordinance. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

ROMA DAWSON: The applicant resides in Council District 1. This application was submitted on January 31, 2021. This applicant is retired. The spouse sections of this application indicate their spouse is employed by Versatile Power as a Programmer. The application indicates that the applicant rents on a month-to-month basis their residence and provides 3896 Williams Road, San Jose CA 95117 as their home address, however this unit is a condominium, so it would not be subject to the Apartment Rent Ordinance. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

LINH VONG: The applicant resides in Council District 4. This application was submitted on September 14, 2020. This applicant's employer is the Health Trust and the applicant's title is Intensive Case Manager. The spouse sections of this application are marked "N/A". The applicant's employer has received grants from the City and thus Linh Vong may subject to grant related recusal requirements pursuant to the Housing Department Grantee Policy. The application indicates that the applicant is eligible for appointment to a seat that represents low income households. Except as listed above, the application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

RAMSIN JACOB: The applicant resides in Council District 1. This application was submitted on June 14, 2020. This application indicates the applicant is self employed as a Business Owner and Realtor. The spouse sections of this application are marked "N/A". If the applicant is working as realtor in San José, the applicant may need to recuse him/herself from participation in actions regarding the Apartment Rent Ordinance, Ellis Act Ordinance, and/or Mobilehome Rent Ordinance, unless further conflicts analysis is undertaken. The application discloses no other incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicant's duties as a Commission member.

MARICELA LECHUGA: The applicant resides in Council District 5. This application was submitted on July 4, 2020. This application's employer and title sections are marked "None" and "NA". However, recently the applicant took employment with the Law Foundation of Silicon Valley ("Law Foundation") who is currently receiving grant funds from the City to provide legal services to San Jose residents covered under the Apartment Rent Ordinance and Tenant Protection Ordinance. Accordingly, the applicant should recuse themselves from any matters that come before the Commission that affect the Law Foundation since it is the applicant's source of income. These items could involve existing or future grant agreements. The application indicates that the applicant

is eligible for appointment to a seat that represents low income households. The application discloses no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of Maricela's duties as a Commission member.

CONCLUSION

Except as noted in the review of applicants Shingal, Fugate, Vong, Jacob, and Lechuga, the applications disclose no incompatible offices, incompatible activities, or conflicts of interest which appear likely to arise in the performance of the applicants' duties as Commission members. You may wish to consider the above comments in making your recommendations on appointments to the Commission.

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City Attorney

By: /s/Christopher Alexander
Christopher Alexander
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cc: Toni Taber, City Clerk
David Sykes, City Manager
Jacky Morales-Ferrand, Director of Housing