

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: Conflicts Review – Council
Appointment Advisory
Commission Applicants**

DATE: April 5, 2021

BACKGROUND

This office routinely reviews applications to City Boards, Commissions and Committees. The applications 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 that are disclosed by the applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission or committee to 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 applicants.

COMMISSION DUTIES

The Council Appointment Advisory Commission consists of eleven (11) members and its functions, duties and powers include: (1) Review applications, interview applicants and maintain a pool of screened applicants for all City commissions; (2) Review applications, interview applicants and nominate for appointment by the City Council, persons to those commission seats that have special eligibility requirements, or otherwise set forth in the Municipal Code; and (3) Such other related duties as may be directed by the City Council.

The Council Appointment Advisory Commission assumed the role of the former commission, Project Diversity Screening Committee which was established by Council action in 1991.

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, but 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.

APPLICANTS

Applications from the applicants 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 Council Appointment Advisory Commission.

1. Michael Booker

Mr. Booker is a Technical Writer at Apple, Inc. in Cupertino. The application disclosed no incompatible offices or apparent conflicts of interest.

2. William Cord

Mr. Cord is a Crew Member with Trader Joe's in Milpitas and the Proprietor (Game Designer and Entrepreneur) of Stronghold Press Games in San Jose. He served in the U.S. Army from 2016-2018. Mr. Cord's spouse is also a Crew Member with Trader Joe's in Milpitas. The application disclosed no incompatible offices or apparent conflicts of interest.

3. Jonathan Fleming

Mr. Fleming is a self-employed engineer. He served on the San Jose Neighborhoods Commission from 2016 to 2018. Mr. Fleming's spouse is a Registered Nurse at El Camino Hospital. Mr. Fleming is a member of the Community Working Group for the California High-Speed Rail Authority (2017 - Present). The application disclosed no incompatible offices or apparent conflicts of interest.

4. Victor Niemeyer

Mr. Niemeyer is a Senior Technology Executive Independent Consultant, and is semi-retired from Electric Power Research Institute in Palo Alto. Mr. Niemeyer's spouse is retired from Live Oak Adult Day Services. The application disclosed no incompatible offices or apparent conflicts of interest.

5. Rondi Pacheco

Ms. Pacheco is an executive assistant at Pure Storage in Mountain View. Ms. Pacheco's spouse is a Project Surveyor for Keir and Wright. The application disclosed no incompatible offices or apparent conflicts of interest.

CONCLUSION

The applicants do not appear to hold any incompatible offices or pervasive conflicts which would prevent them from serving on the Council Appointment Advisory Commission, although applicants may be precluded from participating in matters involving the entities of which they are an officer or member, or entities that are sources of income to them. Where this may be the case, they must abstain from participating in that commission recruitment. The City Council may wish to consider the above comments in making its appointments to the Commission.

NORA FRIMANN
City Attorney

By: /s/ Neelam Naidu
Neelam Naidu
Senior Deputy City Attorney

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