



# AGENDA REPORT

City Council

<b>DATE:</b>	March 26, 2024
<b>TO:</b>	Mayor Martinez and Members of the City Council
<b>FROM:</b>	Councilmembers Zepeda and Jimenez
<b>Subject:</b>	Prevent Nepotism During the Appointment Process for Richmond Boards, Commissions, Committees, and Task Forces, and City Hiring and Employment.
<b>FINANCIAL IMPACT:</b>	No financial impact at this time.
<b>PREVIOUS COUNCIL ACTION:</b>	None
<b>STATEMENT OF THE ISSUE:</b>	To Prevent Nepotism During the Appointment Process for Richmond Boards, Commissions, Committees, and Task Forces, and City Hiring and Employment.
<b>RECOMMENDED ACTION:</b>	DISCUSS and PROVIDE direction to City Attorney's Office to draft and for staff to implement a City policy preventing City Council Members from appointing family members to Richmond boards, commissions, committees, and task forces -Councilmember Cesar Zepeda (510-620-6593) and Vice Mayor Claudia Jimenez (510-620-6565). <b>This item was continued from the March 19, 2024, meeting.</b>

## DISCUSSION:

In past administrations City elected officials have appointed family relatives to serve on various Richmond boards, commissions, committees, and task forces (together,

“bodies”). This is extremely problematic for the Richmond City Charter, as it seats all nominating authority for appointments to these bodies with the Mayor. The City Council is delegated with approval authority over the Mayor’s nominations. However, it provides an opportunity for certain Richmond elected officials to exert disproportionate influence over these important appointed bodies that assist in setting essential policy for the City.

While most cities in their personnel rules prohibit nepotism in terms of City staff, few have ordinances dealing with appointments to commissions and similar City bodies. Research has identified only a handful of cities that to date have acted to prevent nepotism in city bodies, including the cities of Westminster, Santa Monica, Laguna Niguel and Garden Grove. Each of these cities has passed limitations on the appointment of relatives of City Councilmembers to their city’s bodies.

Most California cities’ personnel rules prohibit nepotism in terms of city staff. These policies govern the hiring of city employees who are related to either city leadership, such as the City Manager, or the city’s elected officials.

The City of Richmond does not have a policy limiting the appointment of City Councilmembers’ relatives to City boards, commissions, committees and task forces (together, “bodies”). However, the City’s Administrative Manual addresses nepotism in its hiring practices includes the following definition of “Immediate family member.”

An analysis of seven key issues pertaining to limiting appointments of relatives to City bodies:

1. Whether “relative” should defined more or less broadly: Most cities define “relative” more broadly to include a spouse, parent, sibling, child, grandparent, grandchild, in-law, aunt/uncle, niece/nephew, or another relation living in the same household. Others expand on that definition to also include parents of foster children, siblings who were either fosters or stepsiblings, and a parent’s adoptive, foster and step-children.

Richmond does not have a policy limiting the appointment of City Councilmembers’ relatives to City bodies, but the City’s Administrative Manual addressing nepotism in its hiring practices includes the following definition of “Immediate family member.” It states that an immediate family member is “an individual’s parent, step-parent, parent-in-law, grand-parent, child, step-child, grandchild, brother, sister, step-brother, step-sister, aunt, uncle or first-cousin.” It also states that the term “‘immediate family member’ also includes an individual who falls within one of these categories by a previous marriage, adoption or registered domestic partnership.”<sup>1</sup> Interestingly, this definition does not appear to be applied to any current rule of the City.

Santa Monica uses the more limited definition of “wife, husband, registered domestic partner, son, daughter, mother, father, brother or sister.” It excludes in-laws, aunt and uncles, nieces and nephews, as well as the broader category of “any other legally

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<sup>1</sup> City of Richmond, Administrative Manual Policy Number AP 308.

related person living in the same household as the City Council member.” It also omits the language addressing adoptions, fosters and steps.

None of the ordinances include associates or other non-familial categories, except Santa Monica, which includes lobbyists (see subsection 5 and 6 below).

**Suggestion:** Since Richmond’s Administrative Manual already includes a workable definition of “relative,” we suggest the City apply this definition **with the addition of spouse and registered domestic partner** to any nepotism ordinance governing appointments to its City bodies.

2. Whether similar restrictions should apply to relatives of other City leadership: The City of Westminster includes restrictions on “[r]elatives of a city council member, *city manager, department director, or a primary assistant of the city manager.*”<sup>2</sup> None of the other cities reviewed expands the restrictions in this way.

**Suggestion:** This practice appears to be an anomaly and seems unnecessary.

3. Whether term limits apply to such appointments: Richmond has term limits of between two and four terms for most City bodies except for two: 1) the Housing Advisory Commission and 2) the Commission on Aging.

Santa Monica also includes a four-year waiting period once a person is termed out before rejoining the body.

**Suggestion:** Add term limits to the Housing Advisory Commission and the Commission on Aging. No other city whose rules were reviewed, includes the waiting period that Santa Monica enacted. Perhaps it is unnecessary.

4. Whether a person may serve on more than one City body at a time: Santa Monica and Laguna Niguel limit a person’s participation to one body, although Laguna Niguel permits more than one appointment under special circumstances. The other cities reviewed do not specify.

**Suggestion:** It seems reasonable to limit participation to one City body to further spread community participation among the City’s residents.

5. Whether paid lobbyists should be prohibited from serving even though they are not “relatives” of Councilmembers: Santa Monica excludes lobbyists from serving on city bodies. None of the other cities researched addressed lobbyists.

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<sup>2</sup> Ordinance 2597, Jan. 11, 2023 (emphasis added).

**Suggestion:** Preventing paid lobbyists from joining the City's bodies seems prudent to ensure the interests of their paying clients do not take precedence over the interests of the City's community members.

6. Whether business associates should also be excluded from serving even though they are not "relatives" of Councilmembers. None of the other cities researched addressed business associates.

**Suggestion:** The term "business associate" is difficult to define with clarity and introduces potential ambiguities that create substantial risk of conflict during the practical implementation of the ordinance.

7. Whether, upon implementation of the new ordinance, a currently seated appointee who is a "relative" of a Councilmember should be permitted to complete their current term. Under either the more or less broad definition of "relative," there are currently seated appointees whose appointments would be prohibited by the proposed ordinance.

**Suggestion:** Upon implementation of the new ordinance, allowing currently seated appointees to complete their current terms prevents the unexpected disruption to the composition of City bodies. It also allows the community and Council to consider the impact of the new ordinance when making future appointments or deciding to seek a seat on the City Council. This exception should apply only upon initial implementation of the new ordinance.

An ordinance implementing the suggestions above might read something like this:

Nepotism Restrictions Pertaining to Boards, Commissions, Committees and Task Forces. City Council members may not vote to approve the appointment of a relative of any City Council member to any board, commission, committee or task force. "Relative" includes: spouse, registered domestic partner, parent, step-parent, parent-in-law, grand-parent, child, step-child, grandchild, brother, sister, step-brother, step-sister, aunt, uncle or first-cousin, and any individual who falls within one of these categories by a previous marriage, or adoption. An ordinance implementing a narrower definition of "relative" like Santa Monica uses might read something like this:

Nepotism Restrictions Pertaining to Boards, Commissions, Committees and Task Forces. City Council members may not vote to approve the appointment of a relative of any City Council member to any board, commission, committee or task force. "Relative" includes: wife, husband, registered domestic partner, son, daughter, mother, father, brother or sister.

B. **Application to Staff.** Second, we consider the adoption of a nepotism policy prohibiting the employment of relatives of City officers and elected officials.

The City of Richmond does not have a policy prohibiting the hiring of relatives of either City officials or elected officials, even though as mentioned earlier, the City of Richmond's Administrative Manual includes a definition of "immediate family member." Rather the City's Administrative Manual explicitly states that its policy regarding nepotism is "to not discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital or registered domestic partner status."<sup>3</sup> It does, however, "reserve[] the right to reasonably regulate, for reasons of supervision, safety, security, or morale, the assignment of spouses and registered domestic partners within the same department, division, facility, or unit." *Id.* This policy appears to date back to 2014 and likely implements the somewhat competing requirement of the Department of Fair Employment and Housing Act that forbids discrimination in employment decisions based on marital status.<sup>4</sup> The additional language stating the rules were adopted for "reasons of supervision, safety, security, or morale" overrides the requirements of the Fair Employment and Housing Act.<sup>5</sup> Richmond may wish to revisit this policy. Many cities do prohibit the hiring of relatives of City officials, such as relatives of the city manager and other department heads. Others also prohibit the hiring of relatives of elected city councilmembers. For example, Walnut Creek's municipal code states: "No person related to the City Manager . . . shall hold any appointive office or employment with the City."<sup>6</sup> And, according to a Laguna Niguel Staff Report dated Nov. 16, 2021, Laguna Hills personnel policy casts a wide net, stating "[i]t is the City's policy not to hire a relative of current City officers and employees. Any relative of a Council Member, the City Manager, City-appointed commissioner, board or committee member, Department head, or any full-time or part-time City employee, shall not be considered for employment with the City in any capacity, whether full-time or part-time."<sup>7</sup>

Importantly, the State of California also forbids nepotism in the hiring practices of all State institutions under Cal. Code Regs. Tit. 2, Section 87, promulgated pursuant to Cal. Govt. Code Section 18502 and 18660. These rules require:

"[A]ll State entities to adopt a nepotism policy that includes the following:

(1) A statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system.

(2) A definition of "nepotism" as an employee's use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship.

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<sup>3</sup> City of Richmond, Administrative Manual Policy Number: AP 308.

<sup>4</sup> Institute for Local Government, *Everyday Ethics for Local Officials Hiring: When a Relative Wants a Job* (April 2003).

<sup>5</sup> *Id.*

<sup>6</sup> City of Walnut Creek Municipal Code Section 2-6.407.

<sup>7</sup> Laguna Niguel Nepotism Policy Staff Report, Attachment B, <https://www.cityoflagunaniguel.org/DocumentCenter/View/21530/D1-Nepotism---Definitions-Public-Policy-and-Sample-Anti-Nepotism-Policies> (accessed 1/2/24).

(3) A definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership, or cohabitation.

(4) A statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6.

(5) A statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6.

(6) A process for addressing issues of direct supervision when personal relationships, as defined in section 83.6, between employees exist."

Section 83.6 referenced above defines "personal relationship" as: "persons related by blood, adoption, current or former marriage, domestic partnership, or cohabitation. For purposes of this section, cohabitation means living with another person in a romantic relationship without being married or in a domestic partnership."

Although the State rules do not apply to local agencies, they have been vetted by the State and apply broadly throughout California.

***Suggestion:*** The City should consider adopting a nepotism policy that complies with the State of California's anti-nepotism framework, which governs whenever the City considers hiring a relative of the specific appointing or hiring body.

#### **DOCUMENTS ATTACHED:**

None