



# City Council

SEPTEMBER 20, 2016

# Overview

- Milestones
  - My eligibility
  - BMR unit eligibility
  - Rules / rule changes
  - Relevant documents
- Conflict of interest
  - Denial of due process
  - Investigation questions

Role of  
Commissioners  
and  
Councilmembers

# January, 2016

- ▶ **20:** Notified that I was selected candidate (with 2 backups) and application must be completed by 27-Jan
- ▶ **21:** I asked about income over limit in 2015 – answer was that **over limit in the past does not disqualify, as eligibility depends on current income**
- ▶ **25:** I completed my application
- ▶ **26:** I met with Christine at 4pm. She said I was over limit. I showed her that current wages plus last year's performance bonus was under limit, she said she would consult with city staff

$$\text{\$96,012.80} + \text{\$5,850.00} = \text{\$101,862.80}$$

- ▶ **28:** Christine emailed, saying after staff consultation, I am over limit

CO: [REDACTED] FILE: [REDACTED] DEPT: [REDACTED] CLOCK: [REDACTED] VCHR: NO. 1

**SEAGATE** SEAGATE US LLC  
[REDACTED]  
CUPERTINO, CA 95014  
[REDACTED]

Taxable Marital Status: Single  
Exemptions/Allowances:  
Federal: [REDACTED]  
CA: [REDACTED]

Social Security Number: [REDACTED]

**Earnings Statement** **ADP**  
Period Beginning: 11/30/2015  
Period Ending: 12/13/2015  
Pay Date: 12/18/2015

**KIMBERLY J SANDSTROM**  
[REDACTED]  
[REDACTED]  
CUPERTINO CA 95014

	rate	hours	this period	year to date	Other	this period	year to date
Regular	46.1600	80.00	3,692.80	86,183.36	401K Catch Up		[REDACTED]
Esp Stk Gain				702.01	401K Roth Cu %		[REDACTED]
Perf Bonus				5,850.00			
S Recogn Bns				833.33	<b>Net Pay</b>	\$ [REDACTED]	
Sick				345.44	Checking 1	[REDACTED]	
Vacation				6,623.20	<b>Net Check</b>	\$0.00	
Wellness Ee				250.00			
<b>Gross Pay</b>			<b>\$3,692.80</b>	100,787.34			

\* Excluded from federal taxable wages

CO: [REDACTED] FILE: [REDACTED] DEPT: [REDACTED] CLOCK: [REDACTED] VCHR: NO. 1

**SEAGATE** SEAGATE US LLC  
[REDACTED]  
CUPERTINO, CA 95014  
[REDACTED]

Taxable Marital Status: Single  
Exemptions/Allowances:  
Federal: [REDACTED]  
CA: [REDACTED]

Social Security Number: [REDACTED]

**Earnings Statement** **ADP**  
Period Beginning: 12/14/2015  
Period Ending: 12/27/2015  
Pay Date: 12/31/2015

**KIMBERLY J SANDSTROM**  
[REDACTED]  
[REDACTED]  
CUPERTINO CA 95014

	rate	hours	this period	year to date	Other	this period	year to date
Regular	46.1600	80.00	3,692.80	89,876.16	401K Catch Up		[REDACTED]
Esp Stk Gain				702.01	401K Roth Cu %		[REDACTED]
Perf Bonus				5,850.00			
S Recogn Bns				833.33	<b>Net Pay</b>	\$ [REDACTED]	
Sick				345.44	Checking 1	[REDACTED]	
Vacation				6,623.20	<b>Net Check</b>	\$0.00	
Wellness Ee				250.00			
<b>Gross Pay</b>			<b>\$3,692.80</b>	104,480.14			

\* Excluded from federal taxable wages

CO: [REDACTED] FILE: [REDACTED] DEPT: [REDACTED] CLOCK: [REDACTED] VCHR: NO. 1

**SEAGATE** SEAGATE US LLC  
[REDACTED]  
CUPERTINO, CA 95014  
[REDACTED]

Taxable Marital Status: Single  
Exemptions/Allowances:  
Federal: [REDACTED]  
CA: [REDACTED]

Social Security Number: [REDACTED]

**Earnings Statement** **ADP**  
Period Beginning: 12/28/2015  
Period Ending: 01/10/2016  
Pay Date: 01/15/2016

**KIMBERLY J SANDSTROM**  
[REDACTED]  
[REDACTED]  
CUPERTINO CA 95014

	rate	hours	this period	year to date	
Regular	46.1600	64.00	2,954.24	2,954.24	
Vacation	46.1600	16.00	738.56	738.56	
<b>Gross Pay</b>			<b>\$3,692.80</b>	3,692.80	

\* Excluded from federal taxable wages

Your federal taxable wages this period are

# February, 2016

- ▶ **2:** C.J. emailed, saying my eligibility is not yet determined; he asked for latest paystub; later he said unit failed inspection and instructed Christine to remove it from list of units eligible for sale
- ▶ **9:** Christine cancelled meeting with C.J. and I. The unit passed inspection, but I was not informed of this
- ▶ **11:** I attended Housing Commission meeting at 9am. **C.J. explained that if I applied 12-Feb, I would be eligible.** I attended meeting at WVCS (with Christine, C.J.) at 2pm where I provided mid-year bonus statement. Christine emailed attachment on letterhead stating my ineligibility at 6:50pm

CO. FILE DEPT. CLOCK VCHR. NO.	1
SEAGATE SEAGATE US LLC	
CUPERTINO, CA 95014	
Taxable Marital Status: Single	
Exemptions/Allowances:	
Federal:	
CA:	
Social Security Number:	
<b>Earnings</b>	
rate hours this period year to date	
Regular 46,1600 64,00 2,954.24	2,954.24
Vacation 46,1600 16,00 738.56	738.56
<b>Gross Pay</b>	<b>\$3,692.80</b>
	3,692.80
* Excluded from federal taxable wages	
Your federal taxable wages this period are	

CO. FILE DEPT. CLOCK VCHR. NO.	1
SEAGATE SEAGATE US LLC	
CUPERTINO, CA 95014	
Taxable Marital Status: Single	
Exemptions/Allowances:	
Federal:	
CA:	
Social Security Number:	
<b>Earnings</b>	
rate hours this period year to date	
Regular 46,1600 80,00 3,692.80	6,647.04
Vacation 46,1600 16,00 738.56	738.56
<b>Gross Pay</b>	<b>\$3,692.80</b>
	7,385.60
* Excluded from federal taxable wages	
Your federal taxable wages this period are	

CO. FILE DEPT. CLOCK VCHR. NO.	1
SEAGATE SEAGATE US LLC	
CUPERTINO, CA 95014	
Taxable Marital Status: Single	
Exemptions/Allowances:	
Federal:	
CA:	
Social Security Number:	
<b>Earnings</b>	
rate hours this period year to date	
Regular 46,1600 80,00 3,692.80	10,339.84
Vacation 46,1600 16,00 738.56	738.56
<b>Gross Pay</b>	<b>\$3,692.80</b>
	11,078.40
* Excluded from federal taxable wages	
Your federal taxable wages this period are	

# February, 2016, continued

- ▶ **12:** I delivered my first grievance to WVCS, but Ms Venkatraman was not in the office
- ▶ **16:** Ms Venkatraman called me, in response to voicemails I left on April 12<sup>th</sup> regarding bringing / leaving grievance. She said I was ineligible; no unit was available and sale to alternate was 80% done
- ▶ **22:** I received Ms Venkatraman's response to my grievance by certified mail

February 19th, 2016

Kimberly Sandstorm

Cupertino, CA 95014

Dear Kimberly Sandstorm,

This letter is to acknowledge the receipt of your letter dated 2/12/2016. I reviewed your case file and met with the Property Manager to discuss your concerns. Here are my responses to some of the concerns that you had in your letter

- Family Income- As per the City BMR policy (Exhibit 3) clearly states that we only look at 24 CFR 5.609 paragraph (b). Paragraph (a) is not being considered in our BMR program. Attached in the income calculation again- The current unit is a 2 bdrm. moderate-income unit and
- The current maximum limit is \$102,050 and your projected/anticipated gross household income including bonus pay came out to \$103,648.14. Total Household Income = \$96,012.80 (Projected/Anticipated Gross Household Income) + \$7,635.34 (Bonus Income) = \$103,648.14 (Total Household Gross Annual Income). You are \$1,589.14 over the maximum income limit.

*Total Gross Income: \$11,078.40 divided by 3 pay periods = \$3,692.80 (Avg. Gross Pay Per Pay Period) x 26 pay periods (Bi-Weekly) = \$96,012.80 (Projected/Anticipated Gross Household Income) + Bonus Income per Part 5 Income Inclusions*

ESP Stk Gain	\$702.01
Performance Bonus	\$5,850.00
S Recogn Bonus	\$833.33
Wellness Bonus	\$250.00
Total Bonuses:	\$7,635.34

Capital Gains

- BMR process- As per our BMR policy the first phase towards BMR ownership for the buyer is Eligibility-as soon as the unit becomes available the prospective clients is contacted and is asked to submit paperwork for eligibility. There is a parallel process for the seller which is Housing Inspection and Unit appraisal. A buyer who passes the eligibility moves on to the next process. In your situation you were deemed ineligible at the first phase of this process due to your income. Hence, the whole unit inspection situation that happened with this unit in February does not apply to you.

You continue to maintain your current waitlist number 12 and we will be contacting you again when another unit comes for re-sale to start the eligibility process. If you have any questions please feel free to contact me at 408-255-8033 ext. 103 or email me at [sujathav@wvcommunityservices.org](mailto:sujathav@wvcommunityservices.org). For your information, I have attached the BMR policy manual for review.

Sincerely,

*V. Sujatha*

Sujatha Venkatraman  
Associate Director  
Stability Support Services



Policy and Procedures  
Manual for Administering  
Deed Restricted Affordable  
Housing Units, as amended  
2-Aug by City Council  
Resolution No. 16-084  
(although no changes to  
Exhibit 3, per the Resolution)

EXHIBIT 3

Part 5 exclusions

This table presents the Part 5 **income exclusions** as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), <b>capital gains</b> and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).

(c) Annual income does not include the following:

- (1)Income from employment of children (including foster children) under the age of 18 years;
- (2)Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3)Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), **capital gains** and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(5)Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

From Agenda Packet: E-  
Referenced Regulations (24 CFR  
5.pdf (near bottom of page E-2 on  
left)

(and near top of page E-2, below)

# March, 2016

- ▶ **1:** I handed my second grievance to Mr Selo
- ▶ **8:** I received Mr Selo's response to my grievance by certified mail
- ▶ **10:** I attended Housing Commission meeting at 9am
- ▶ **15:** I attended City Council meeting at 6:45pm and during Oral Communications, I asked the City Council to investigate my case. I provided detailed and pertinent records
- ▶ **29:** BMR unit was sold on or about this date to Director of Client Services at WVCS and her adult sister, but this fact was not discovered by me for about four weeks

# Excerpt from CC Resolution No. 16-084 Adopting Amendments to the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.pdf

Although this regulation was not part of the BMR Manual in March, 2016, a Conflict Of Interest event clearly occurred with WVCS's approval of the eligibility of their own employee, after denying my eligibility

## 2.2 Conflict of Interest

The following individuals are ineligible to purchase or rent a BMR unit:

- City employees and officials (and their immediate family members and dependents) who have policy-making authority or influence regarding City housing programs, participate in making decisions regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program;
- Any consultant to the City and employees of the consultant (and their immediate family members and dependents) who have policy-making authority or influence regarding City housing programs, participate in making decisions regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program;
- An applicant for or developer of the project containing the BMR units and its officers and employees (and their immediate family members), and the property owner of the project and its officers and employees (and their immediate family members); or
- Any other individual who has a conflict of interest as defined by federal or state law or the City's adopted Conflict of Interest Code.

In addition, if an employee of any consultant involved with City housing programs is on the waiting list for any BMR unit, all review of that employee's application must be performed by the City.

In order to track applicants who potentially fall under this conflict of interest policy, the City will ensure that the waitlist of BMR Program applicants contains the employer and position for each person on the waitlist.



C.     **Prohibition on Self-Dealing**


The Attorney General stated that Section 1090 was enacted to prevent “self-dealing” in contracts by public officials.<sup>8</sup>

In a 1983 opinion, the Attorney General stated:

“Section 1090 of the Government Code codifies the common law prohibition and the general policy of this state against public officials having a personal interest in contracts they make in their official capacities. Mindful of the ancient adage, that ‘no man can serve two masters,’ a self-evident truth, as trite and impregnable as the ‘law of gravity,’ the section was enacted to ensure that public officials ‘making’ official contracts not be distracted by personal financial gain from exercising absolute loyalty and undivided allegiance to the best interest of the entity which they serve, and at least with respect to those contracts, it does so by removing or limiting the possibility of their being able to bring any direct or indirect personal influence to bear on an official decision regarding them. The mechanism of the section is one of prohibiting public officials from being personally financially interested as private individuals in any such contract . . .”<sup>9</sup> [Emphasis added.]

In a 1993 opinion, the Attorney General stated:

“ . . . Section 1090 is concerned with financial interests, other than remote or minimal interests, which would prevent officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their public agencies. Moreover, when Section 1090 is applicable to one member of the governing body of a public entity, the proscription cannot be avoided by having the interested member abstain; the entire governing body is precluded from entering into the contract. A contract which violates Section 1090 is void.”<sup>10</sup>



Excerpt from  
California Law  
Governing  
Conflict of  
Interest, by  
Orange County  
Department of  
Education, June,  
2014

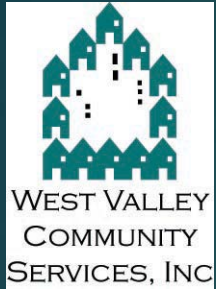
# April, 2016

- ▶ **5:** I attended City Council meeting at 6:45pm
- ▶ **14:** I attended Housing Commission meeting at 9am, where I was allowed to speak for 3 minutes. I recalled 11-Feb meeting and asked commissioners to take action against capricious decision. C.J. said that grievances to WVCS must continue
- ▶ **19:** I attended meeting of the Board Administration Committee of the Board of Directors of WVCS at 4pm where I was allowed to speak for 3 minutes. I asked committee to take action against capricious decision and I handed my third grievance to the Board Chair
- ▶ **19, continued:** I attended City Council meeting at 6:45pm, where C.J. presented CDBG Annual Plan and funding details (item 15 on Agenda). Afterwards, he was asked by Councilmember Paul for an update on my appeal. C.J. stated that I had two more levels of grievance to complete at WVCS. He said that, in the future, the Assistant City Manager could be asked to place my appeal on the agenda of the Housing Commission
- ▶ **27:** I received, by certified mail, Mr Barkey and Ms Harper's response to grievance three, which told me to forward any following grievance to Mr Selo. **I discovered the identity of the buyer of the BMR unit in public records search**

# May, 2016

- ▶ **3:** I sent my fourth grievance to Mr Selo as an email attachment (copying C.J., Assistant City Manager, Mayor and Councilmembers) expressing my outrage at the **Conflict of Interest that arose when WVCS qualified their own staff after disqualifying me. I asked for a full investigation; acknowledgment and rectification of the error that resulted in my disqualification; a complete reconsideration of the unlawful sale and a lawful sale to take its place.** Mr Selo responded with attachment BMR Policy for WVCS Staff. I attended City Council meeting at 6:45pm
- ▶ **6:** C.J. emailed Mr Selo suggesting that WVCS recuse itself and that the appeal would move to the Housing Commission. **I responded to C.J. and Ms Shrivastava asking that my appeal appear on the Agenda of the 12-May Housing Commission meeting. There was no response to my email**
- ▶ **12:** I attended Housing Commission meeting at 9am, where **my appeal was not on the agenda** and I was allowed to speak for 3 minutes. **C.J. said my appeal would be heard at the 9-Jun meeting** because there had not been time to get it on today's agenda. He said that Ms Shrivastava would follow up, as he was leaving the City of Cupertino for other employment and this was his last Housing Commission meeting

# BMR Policy for WVCS Staff



## Below Market Rate Policy for WVCS Staff adopted 7/19/11

### Below Market Rate

West Valley Community Services staff who does not have decision making authority or influence of the BMR program may apply as a potential candidate for the BMR program. Staff excluded from application include but not limited to: Executive Director, Department Directors, WVCS BMR staff. There will be no special consideration or accommodations for the staff's application. The staff member must qualify based on BMR requirements set forth by the City of Cupertino and WVCS, and will be given priority points based on the same criteria as all qualified applicants. The staff member will not participate in any BMR program decision making processes for application, qualification or placement. The staff member will not have any access to BMR files or other BMR client information.



# June, 2016

- ▶ **6:** I emailed Ms Shrivastava because no agenda was posted for 9-Jun Housing Commission meeting. Mr Fu replied that my appeal was continued to 23-Jun
- ▶ **9:** Housing Commission meeting is cancelled "due to lack of business"
- ▶ **23:** Special meeting of the Housing Commission had my appeal on the Agenda as item 3. External Counsel, acting as staff, made a presentation. I made a presentation. There were comments from the public. From the minutes: "Chair Barnett said that the Commission would take all the information received today into consideration, review with Staff and bring this item back for a recommendation at the meeting of July 14, 2016"

# July and August, 2016

- ▶ **July 6:** Mr Fu called and told me that the 14-Jul Housing Commission meeting would be cancelled because external counsel needed more time to investigate the determination of my income. When I asked about the criminality of the transfer, he said they were investigating that too. He said my appeal would be continued to 11-Aug. He also sent an email with essentially the same information
- ▶ **14:** Housing Commission meeting is cancelled "due to lack of business"
- ▶ **August 2:** City Council adopted Resolution No. 16-084 amending the Policy and Procedures Manual for Administering Deed-Restricted Affordable Housing Units (Below Market Rate (BMR) Manual), with modification, after 4-1 vote
- ▶ **11:** At Housing Commission meeting External Counsel presented, **including incorrect income calculation.** I presented, but was **prevented from showing my investigative findings related to COI.** There were comments from the public. There was a motion to deny my appeal, which passed after a 3-1 vote

Handout  
presented  
by Ms Klueck  
at 11-Aug  
Housing  
Commission  
meeting has  
math error  
and bonus  
error

## Calculation of Kimberly Sandstrom's Income

Annual Gross Income is calculated pursuant to 24 CFR 5.609

(Attached as Exhibit C to the Staff Report)

Gross Wages Each Pay Period: \$3,692.80 paid biweekly

Annualized Pay: \$3,692.80 x 24 pay periods = **\$96,012.80**

Total Bonuses (included in income under 24 CFR 5.609(b)): **\$7,635.34**

**Total Annual Gross Income: \$96,012.80 + \$7,635.34 = \$103,648.14**

Alternatively, using the average of her bonuses over the previous 3 years: \$7,295 (the average bonus) + \$96,012.80 = **\$103,307.80**

Income limit for a two-person household at a moderate income level in Santa Clara County = **\$102,050**

$$\text{\$3,692.80} * 24 = \text{\$88,627.20}$$



# Excerpt from F- Technical Guide for Determining Income.pdf

My application included verifiable evidence that:

- S Recogn Bonus was one time (2015 only)
- Wellness Bonus would not be earned in 2016
- Performance Bonus was sharply decreased in 2016
- Stock value declined precipitously

## Technical Guide for Determining Income and Allowances for the HOME Program

### *Anticipating Income*

The HOME regulations at 24 CFR 92.203(d)(1) require that, for the purpose of determining eligibility for HOME assistance, a PJ must project a household's income in the future. To do so, a "snapshot" of the household's current circumstances is used to project future income. In general, a PJ should assume that today's circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary. For example, if a head of household is currently working for \$7.00 per hour, 40 hours per week, the PJ should assume that this family member will continue to do so for the next year. Thus, estimated earnings will be \$7.00 per hour multiplied by 2,080 hours, or \$14,560 per year.

This method should be used even when it is not clear that the type of income received currently will continue in the coming year. For example, assume a family member has been receiving unemployment benefits of \$100 per month for 16 weeks at the time of income certification. It is unlikely that the family member will continue on unemployment for another 52 weeks. However, because it is not known whether or when the family member will find employment, the PJ should use the current circumstances to anticipate annual (gross) income. Income would therefore be calculated as follows: \$100 per week x 52 weeks, or \$5,200.

The exception to this rule is when documentation is provided that current circumstances are about to change. For example, an employer might report that an employee currently makes \$7.50 an hour, but a negotiated union contract will increase this amount to \$8.25 an hour eight weeks from the date of assistance. In such cases, income can be calculated based on the information provided. In this example, the calculation would be as follows: • \$7.50/hour x 40 hours/week x 8 weeks = \$2,400 • \$8.25/hour x 40 hours/week x 44 weeks = \$14,520 • \$2,400 + \$14,520 = \$16,920.



# My Company, our main competitor and Nasdaq Composite 2013 – 2016

Demonstrates that larger economic forces are driving the loss in value



# My latest paystub



CO. FILE DEPT. CLOCK VCHR. NO. 1

SEAGATE US LLC  
CUPERTINO, CA 95014

Taxable Marital Status: Single  
Exemptions/Allowances:  
Federal:  
CA:

Social Security Number:

## Earnings

	rate	hours	this period	year to date
Regular	46.1600	80.00	3,692.80	60,192.64
Perf Bonus				2,236.00
Sick				369.28
Vacation				5,908.48
<b>Gross Pay</b>			<b>\$3,692.80</b>	<b>68,706.40</b>

## Earnings Statement



Period Beginning: 08/22/2016  
Period Ending: 09/04/2016  
Pay Date: 09/09/2016

KIMBERLY J SANDSTROM  
CUPERTINO CA 95014

Checking 1

**Net Check \$0.00**

\* Excluded from federal taxable wages

Your federal taxable wages this period are

# August, 2016, continued

- ▶ **23:** External counsel, Ms Lee, emailed me, inviting me to share my presentations with her, while stating **she would not share her findings with me**
- ▶ **24:** Mr Fu emailed, asking me to forward my presentation
- ▶ **25:** Mr Fu emailed saying that my appeal before the City Council would be continued from 6 to 20-Sep
- ▶ **26:** I received a letter from Ms Squarcia informing me that my appeal would be heard by the City Council 6-Sep and that any issues not raised before the Council on that date may be inadmissible, if I later bring an action in court
- ▶ **27:** I received a second letter from Ms Squarcia informing me that my appeal would be continued to an unknown date
- ▶ **29:** I uploaded presentations, audio recordings, letters from City to a Google Drive folder that I shared with Ms Lee and the Mayor and Councilmembers. Ms Lee asked me to invite her via a gmail account, and I complied
- ▶ **31:** I emailed the City Clerk expressing utter confusion and asking for guidance on my hearing before the City Council. Ms Schmidt clarified that my appeal would be heard 20-Sep

# September, 2016

- ▶ **6:** I attended City Council meeting at 6:45, where the Council approved postponement of my appeal to 20-Sep
- ▶ **8:** I attended Housing Commission meeting at 9am. During the approval of minutes, I attempted to make errors in the draft minutes known. However I was silenced and told I could speak during Oral Communications. This is a violation of my Brown Act rights

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=54001-55000&file=54950-54963>

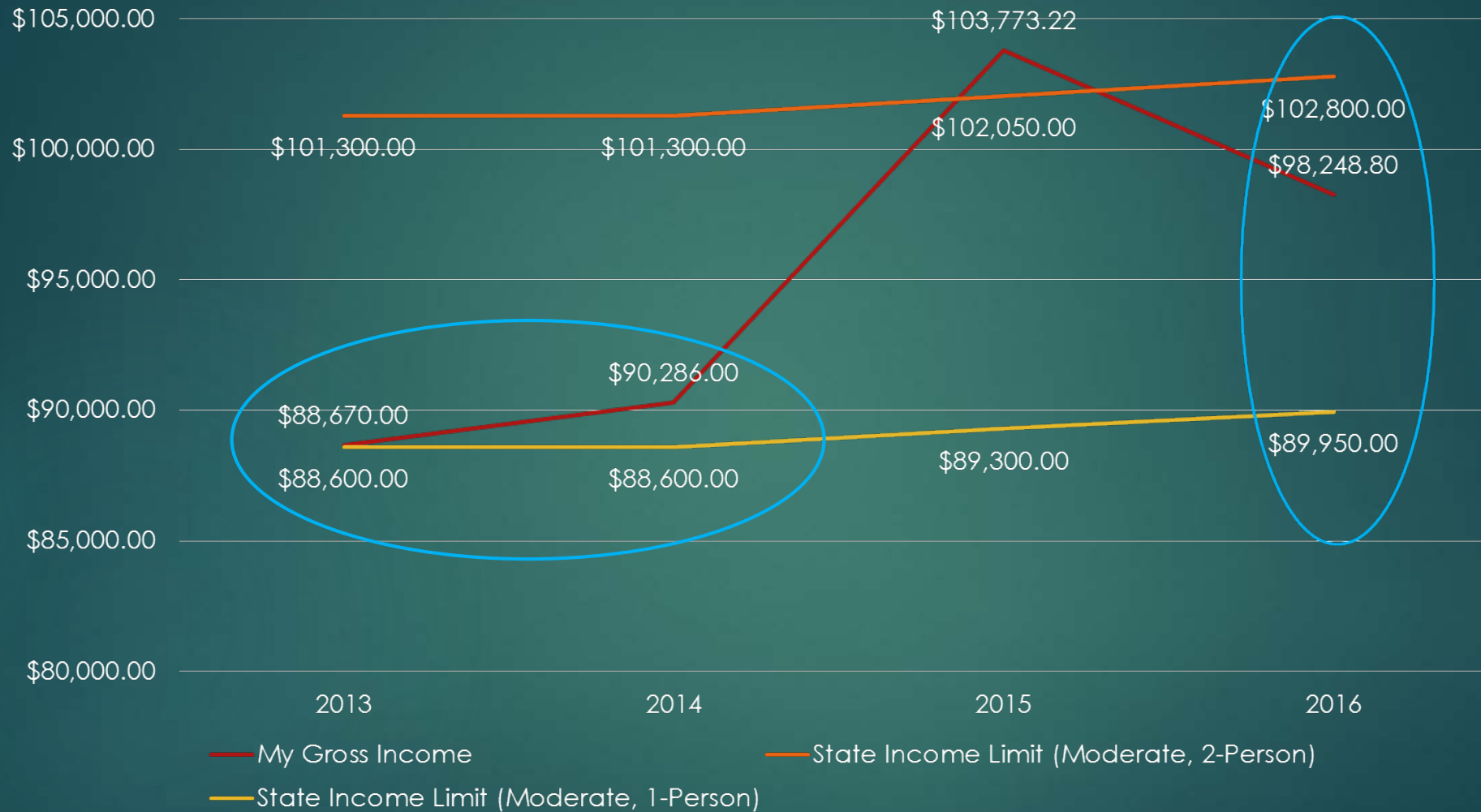
**54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.**

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) **The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.** Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.



## My Gross Income and State Income Limits for Santa Clara County



<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/incnote.html>

# Conflict of interest / Due process

Although Christine Nguyen told me that a conflict of interest would arise if I were both a volunteer and a client at WVCS...

...she nonetheless denied me and then sold the 2-bedroom, moderate unit – *while the appeal process was still underway* – to her coworker, Michelle Ma, the Director of Client Services at WVCS; a single woman with no dependents

This is clearly unacceptable and I am asking YOU, City Council, to take action and reverse this illegal sale

# Investigative Questions

- ▶ Is Michelle Ma the Director of Client Services at West Valley Community Services?
  - ▶ Date of hire – 2008, per Ms Lee
  - ▶ Date of termination – April 2016, per Ms Lee
- ▶ How many City of Cupertino Below Market Rate units are ***owned by***
  - ▶ current West Valley Community Services staff
  - ▶ former West Valley Community Services staff
  - ▶ current City of Cupertino staff
  - ▶ former City of Cupertino staff
- ▶ How many City of Cupertino Below Market Rate units are ***rented by***
  - ▶ current West Valley Community Services staff
  - ▶ former West Valley Community Services staff
  - ▶ current City of Cupertino staff
  - ▶ former City of Cupertino staff

# Questions about sale of APN 369-55-036 on or around 21-Mar-2016

- ▶ How many applicants were contacted and invited to complete their applications, including Ms Ma and I? – 3, per Ms Lee: Sandstrom, Ma and additional backup?
- ▶ How many applicants submitted complete applications?
- ▶ Did all of the applicants have the same number of priority points? – No, per Ms Lee
- ▶ How many priority points did Ms Ma have? – 2, per Ms Lee
- ▶ At the time of application, where was Michelle Ma's residency?
  - ▶ Longevity at that address?
- ▶ At the time of application, where was Marissa Ma's residency?
  - ▶ Longevity at that address?
- ▶ What was Marissa Ma's income?
- ▶ What was the waitlist priority number of Ms Ma? – 23, per Ms Lee



# City Council has the power to find a transaction fraudulent and overturn it

## **2.6 False Statements**

During the BMR application process, applicants who intentionally make false statements or misrepresent any facts on the application to purchase or rent a BMR unit will be removed from the BMR waiting list and barred from re-applying for a BMR unit in Cupertino in the future.

If the City or its agent should discover that a contract was completed by a purchaser or renter who intentionally made false statements or misrepresented the facts in order to appear eligible, the

City will treat this as a breach of the resale and/or rental restrictions and may exercise any remedies allowed under the resale and/or rental agreement including a forced sale of the unit or eviction and the imposition of any civil penalties that apply.

Excerpt from CC Resolution No. 16-084 Adopting Amendments to the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units

# Responsibilities of Commissioners (excerpted from COMMISSIONER'S HANDBOOK, 2016, City of Cupertino)

## D. DISCRIMINATION AND EQUAL PROTECTION

All rules, regulations, laws, services and facilities must apply equally to all persons, and not give favor to any segment of the community. Similarly, all laws and ordinances of the city must afford equal protection to all facets of the community, unless the purpose of a city action requires special classification of the community.

## E. DUE PROCESS

All governmental procedures and process must allow an affected party a right to be heard, and to present controverting fact or testimony on the question of right in the matter involved. Unfair determinations, such as bias, predetermination, refusal to hear, etc., may invalidate actions.

## F. REASONABLENESS

Every action of municipal government must be reasonable, or otherwise stated, not capricious, extreme, arbitrary, or abusive.

# In closing

- ▶ Affordable housing is one of the most valuable things in existence in Cupertino...
- ▶ A valuable BMR unit has been sold in a frankly illegal manner
- ▶ Please restore justice and undo the sale
- ▶ Please reject the recommendation of staff, denying my appeal
- ▶ Please recognize that no speculation is needed to find that I met the income eligibility limit, even assuming performance bonus at same level in 2016 as in 2015
- ▶ Please do not play a part in continuing the unethical action that has occurred and instead, work to undue this action