



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: July 30, 2021

I. BACKGROUND

This Office routinely reviews applications for appointment to City boards and commissions. The applications generally 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 known potential conflicts that are disclosed by the applications.

II. COMMISSION DUTIES

The commission has the following functions, powers and duties:

- A. Advise and make recommendations to the City Council, the City Manager and the Director of Community Energy on all aspects of San Jose Clean Energy start up and operations.
- B. Provide feedback and input on the development of clean energy program strategy and operating principles or models.
- C. Inform the prioritization and development of energy programs.
- D. Identify areas of concern and innovative opportunities for reducing carbon emissions.
- E. Monitor best practices of other community choice energy programs, legislative and regulatory issues, and new energy developments.
- F. Be liaisons to the community for purpose of advocacy and outreach.

III. COMMISSIONS COMPOSITION

This is a nine-member commission which supports and advises San Jose Clean Energy. Whenever possible, at least six (6) members shall have expertise in one (1) of the following categories: community outreach, policy advocacy, clean energy programs, industry, labor, education, not-for-profits, environmental associations, and advocacy organizations. The Council Appointment Advisory Commission nominates applicants for the six specialty seats, and the Mayor nominates applicants for the remaining three

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seats. The City Council must approve the appointment of all members to the Commission.

IV. 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.

V. 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/herself if the facts could reasonably lead one to conclude that the applicant would be biased for or against an entity or entities.

VI. APPLICANTS

1. Mary Tucker: This applicant indicates that she is a retired Environmental Program Manager/Specialist with the City of San Jose. Applicant worked in this capacity for the City of San Jose between 1988-2012, and again as a retiree rehire between July 2019-April 2020. Prior to 1988, she worked for Jobs in Energy (non-profit) in Berkeley CA, Appropriate Technology Employment Project in Rockville, MD, Nuclear Information and Resource Service in Washington DC, Ohio Solar Energy Association, and for the City of Toledo/Crosby Gardens. The applicant is either unmarried or if she has a spouse, the spouse is not employed. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
2. Glen Garfunkel: This applicant indicates that he retired in July 2020 from his position as a technologist with Headway Technologies, Inc., a group company of TDK Corporation, Milpitas, California. Headway Technologies is a storage

company. Applicant worked in the development of magnetic sensors. From 1989-1998 he worked in storage for IBM. His spouse is an Environmental Education Manager with Veggielution in San Jose. TDK is a publicly traded company. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's former relationship with Headway or TDK come before the Commission the applicant may need to refrain from participating in the matter.

3. John Mogannam: This applicant indicates that he is a mechanical engineer and has been a Senior Program Manager since 2008 with Jacobs-CH2M Hill, an engineering and construction firm in San Jose, CA. CH2M was acquired by Jacobs Engineering Group, which is publicly traded. The applicant's spouse is not employed outside the home. This applicant's application does state on page one that he is applying for the CECAC Commission. However, on page 3 it becomes an application for the Parks and Recreation Commission. It is unclear if he applied to both commissions and the application was mistakenly combined by City of San Jose, or if he made an error and submitted an improperly combined application. Notwithstanding that, the application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's employer, Jacobs Engineering Group or CH2M come before the Commission, the applicant may need to refrain from participating in the matter.

VII. CONCLUSION

The applicants' applications do not identify or disclose information that would preclude the applicants from serving on the Clean Energy Community Advisory Commission.

Note the issue with Mr. Mogannam's application being a blend of application to both CECAC and Parks and Recreation.

The Council may wish to consider the comments above regarding potential conflicts in making its appointments to this Commission.

NORA FRIMMAN
City Attorney

By /s/ Lynne Lampros
Lynne Lampros
Senior Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni J. Tabor, CMC, City Clerk



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: July 6, 2021

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This Office routinely reviews applications for appointment to City boards and commissions. The applications generally 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 known potential conflicts that are disclosed by the applications.

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V. APPEARANCE OF BIAS

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VI. APPLICANTS

1. Victor Niemeyer: This applicant indicates that he is a Senior Technology Executive and independent consultant, semi-retired from the Electric Power Research Institute (“EPRI”). EPRI is an independent, nonprofit organization that conducts research, development, and demonstration projects for the benefit of the public in the United States and internationally. The applicant’s spouse is a retired Program Director from Live Oak Adult Day Services. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant’s relationship with EPRI come before the Commission the applicant may need to refrain from participating in the matter.

2. Gabriel Borden: This applicant indicates that he is a Senior Housing Planner with the City of Cupertino. The applicant was previously employed as an Associate Environmental Services Specialist (ESD), Analyst II (Housing), and Development Officer (Housing) with City of San Jose. His service with the City terminated in January 2021. The applicant is either unmarried or if she has a spouse, the spouse is not employed. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
3. Craig Courtnay: This applicant indicates that he is a Product Solution Specialist Manager at Synopsys, Inc, a semi-conductor and software company. The applicant is either unmarried or if he has a spouse, the spouse is not employed. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
4. Mark Gilpatrick: This applicant indicates that he is in Business Process at Qualcomm, a communications technology company. The applicant is either unmarried or if he has a spouse, the spouse is not employed. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
5. Ying Wu: This applicant indicates that he retired in December of 2020. His last role was as a Senior Manager responsible for the drivetrain firmware at Tesla, Inc. ("Tesla"), an electric vehicle, solar, and clean energy company. The applicant's spouse is also retired. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's former relationship with Tesla come before the Commission the applicant may need to refrain from participating in the matter.
6. Cody Coeckelenbergh: This applicant indicates that he is the Vice President of Operations at Lincus, Inc., an energy demand management consulting firm and program implementer for load serving entities. He also serves on the board of the California Efficiency and Demand Management Council ("CEDMC"), and previously served on the California Energy Efficiency Coordinating Committee ("CAEECC"). The applicant's spouse is employed as a Program Manager at Google. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's relationship with Lincus and CEDMC or his spouse's relationship with Google come before the Commission, the applicant may need to refrain from participating in the matter.
7. Desiree Grahn: This applicant indicates that she is employed as an Office Manager at Agylstor Inc, a computer hardware manufacturer, and as a realtor at Compass. She also serves as a member of the Climate Action Leadership

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Committee at the Sierra Club. The applicant is either unmarried or if she has a spouse, the spouse is not employed. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding her work as a realtor or her relationship with the Sierra Club come before the Commission, the applicant may need to refrain from participating in the matter.

VII. CONCLUSION

The applicants' applications do not identify or disclose information that would preclude the applicants from serving on the Clean Energy Community Advisory Commission.

The Council may wish to consider the comments above regarding potential conflicts in making its appointments to this Commission.

NORA FRIMMAN
City Attorney

By 

Luisa F. Elkins
Senior Deputy City Attorney

cc: Dave Sykes, City Manager
Toni J. Tabor, CMC, City Clerk