



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: November 17, 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 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. Abtin Barzin: This applicant indicates that he is a resident of District 3. He is a student at San Jose State University. Applicant acknowledges that he/she does not have any professional experience pertinent to this Commission. The applicant is majoring in Ecology and Evolution at SJSU. Applicant is applying as a concerned citizen with scientific research experience and an interest in public policy, who wants to do what he/she can to solve environmental problems at the local level. Applicant notes he/she would “push for the Commission to take more of an active and expansive role, advising the city on other environmental policies that aren’t necessarily energy related and also on policies that aren’t explicitly requested from (the Commission).” The applicant is unmarried. The applicant’s

work experience includes tutoring in math, and political volunteering. 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 is currently serving on San Jose Clean Energy's Community Advisory Commission ("SJCECAC"). He 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. He has a PhD in Physics from the University of Illinois, and a BS in Physics from MIT. 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. Ruth Merino: This applicant is currently serving on the SJCECAC and has been for almost four years. She indicates that she is a resident of District 6. She is retired from the City of San Jose where she served as a Senior Program Performance Auditor. She does draw a San Jose pension. She has served as the Chair of SJ Community Energy Advocates for six years. Her spouse is retired but she does not indicate where from. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
4. Victor Niemeyer: This applicant is a resident of District 1. He is applying from the Electricity Field. He is retired from Electric Power Research Institute, an independent, nonprofit organization for public interest energy and environmental research in Palo Alto, where he was a Senior Tech Executive. His spouse is retired from Live Oak Adult Day Services. He is an ongoing member of the Environmental Advisory Council of the New York Independent System Operator (NY's version of the CAISO). He was an advisor to the Mayor's Commission on Electric Rates for the City of Austin in 1976. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
5. Anthony Strawa: This applicant is a resident of District 1. He is a retired Commissioner and receives a pension from the Federal Government. His spouse is retired but the application does not state from where. Applicant has a military and earth science/atmospheric science background with NASA. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.

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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 /s/ Lynne Lampros
Lynne Lampros
Senior Deputy City Attorney

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