

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: August 29, 2022

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications do not provide complete information regarding potential conflicts of interest; 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. To analyze potential conflicts, it is necessary to consider the duties of the particular commission for 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 the applicants.

COMMISSION DUTIES

The Planning Commission has two major responsibilities under the City Charter and the San José Municipal Code (SJMC):

1. To serve as a quasi- judicial body with respect to the consideration of issuance of certain land use permits, and
2. To serve in an advisory capacity to the City Council with respect to specific proposals for or affecting zonings, the general plan, specific plan, and Zoning Ordinance (SJMC Title 20) amendments.

Pursuant to State law and the City Charter, the Planning Commission also is required to review capital improvement programs. Additionally, under the City's Municipal Code requirements, the Planning Commission has responsibilities related to considering and certifying the adequacy of many environmental impact reports under the California Environmental Quality Act for projects within the Planning Commission's jurisdiction and for making recommendations to the City Council for projects within the Council's jurisdiction. In addition, the Commission serves in an advisory capacity with respect to other City activities related to land use and development, such as park master plans.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions and other financial interests may preclude a commissioner from participating in a Commission discussion and 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 show 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 of the spouse of 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.
- An applicant has an interest (including community property interest) in real property, such as their place of residence or any other real property in San José that may be affected by a matter coming before the Commission.

APPEARANCE OF BIAS

There may be facts which would not amount to a legal conflict of interest under the Political Reform Act requiring a commissioner to abstain from a commission vote or discussion, but the relationship could indicate a bias or the appearance of bias on the part of the commissioner. City Council policy requires commissioners to be free from bias in their decision making and may require a commissioner to abstain if the facts could reasonably lead one to conclude that the commissioner would be biased for or against an applicant or application.

REVIEW OF APPLICANTS

Three applications were received and determined by the City Clerk to meet the basic qualifications for consideration. Applications from the applicants listed below were reviewed by our office. The applicants are divided by Council District to be considered in accordance with the November 3, 2020 amendments to Section 1000 of the City Charter. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

APPLICANTS

Council District 2

Hai Bui applied on August 4, 2022. Ms. Bui is employed as a Principal Software Engineer with VMware in Palo Alto. If appointed, Ms. Bui may need to abstain from participating in decisions that may affect her employer and real property interests in San José.

Carlos Rosario applied on July 18, 2022. Mr. Rosario is employed as Product Counsel for Wing in Palo Alto. Mr. Rosario also currently serves on a number of boards for community organizations. If appointed, Mr. Rosario may need to abstain from participating in decisions that may affect his employer, his San José real property interests, and decisions that may affect the non-profit organizations for which he serves.

Council District 3

Anthony Tordillos applied on June 29, 2022. Mr. Tordillos is employed as a Staff Software Engineer with Google and his spouse is employed with Grace Science LLC in Menlo Park. If appointed, Mr. Tordillos may need to abstain from participating in decisions that may affect his employer and the employer of his spouse and his San José real property interests.

CONCLUSION

Some of the applicants are associated with one or more employers or organizations that may involve conflicts of interest relating to items before the Planning Commission. Even when an applicant's service as a board member of a charitable or community interest organization may not constitute a legal conflict of interest, it may create an appearance of conflict if the applicant were to participate in matters concerning his or her organization. If an applicant is compensated, there may be occasions when they may have to abstain from participation in matters before the Commission which concern the source of income. Applicants may also be required to abstain when the organization of which they are a board member takes a position in favor or against a project before the Commission.

The applications do not reveal any pervasive conflicts of interest which would prevent the current applicants from serving on the Planning Commission. You may wish to consider the above comments in making your recommendations on appointments to the Planning Commission.

NORA FRIMANN
City Attorney

By /s/
MARK VANNI
Senior Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni Taber, City Clerk