

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: March 15, 2023

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 SJMC 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

Thirteen 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 1

Nishad Somalwar applied on April 9, 2022. Ms. Somalwar is employed as a Senior Sales Manager for Infosys Limited located in San Francisco. Her spouse is a Senior Vice President at Bank of America located at 560 S. Winchester Blvd. in San José. She and her spouse own their home at 3352 Valley Square Ln. in San José. If appointed, Ms. Somalwar may need to abstain from participating in decisions that potentially affect her or her spouse's employer and her real property interests.

Council District 2

Nnenna Ujah applied on August 9, 2022. Ms. Ujah is seventeen years old and is currently a high school student. She does not own or rent property in San José.

Hai Bui applied on December 5, 2022. Ms. Bui is employed as a Principal Software Engineer with VMware in Palo Alto. Ms. Bui lists no spouse or domestic partner. Ms. Bui owns her home located at 305 Crestridge Court in San José. If appointed, Ms. Bui may need to abstain from participating in decisions that potentially affect her employer and real property interests in San José.

Council District 3

Huy Tran applied on March 7, 2023. Mr. Tran is a partner at Justice at Work Law Group, LLP, located in San José. His spouse is a Program Associate for the David and Lucille Packard Foundation located in Los Altos. Mr. Tran and his spouse currently rent their home and do not own property in San José. If appointed, Mr. Tran may need to abstain from participating in decisions that potentially affect his or his spouse's employer.

Anthony Tordillos applied on June 29, 2022. Mr. Tordillos is employed as a software engineer at Google in Mountain View. His spouse is a scientist at Grace Science LLC in Menlo Park. Mr. Tordillos and his spouse own their home at 483 S. 6th Street in San José. If appointed, Mr. Tordillos may need to abstain from participating in decisions that potentially affect his or his spouse's employer and his real property interests.

Michelle Brenot applied on October 4, 2022. Ms. Brenot is unemployed. Ms. Brenot's spouse is employed as a scientist for Milteny Biotec located at 2825 N. First Street in San José. Ms. Brenot and her spouse own their home at 465 N. 4th Street in San José. If appointed, Ms. Brenot may need to abstain from participating in decisions that potentially affect her spouse's employer and her real property interests.

Shelly Antonio applied on October 10, 2022. Ms. Antonio is a Data Center Operations Manager for CoreSite and a veteran of the U.S. Military. She does not list a spouse or domestic partner. She does not own property in San José and currently rents. If appointed, Ms. Antonio may need to abstain from participating in decisions that potentially affect her employer.

Samuel Payes applied on November 7, 2022. Mr. Payes is self-employed as an artist. His spouse is a Deputy County Counsel for Santa Clara County. He and his spouse own their home at 561 N. 17th Street in San José. If appointed, Mr. Payes may need to abstain from participating in decisions that potentially affect his spouse's employer and his real property interests.

Council District 6

Jeremiah Wilson applied on August 17, 2022. Mr. Wilson is unemployed and lists no spouse or domestic partner. He does not own property in San José and currently rents.

Luke Oberson applied on May 17, 2022. Mr. Oberson is a Senior Global Programs Manager for Tesla, Inc. His spouse is Head of NPI Product Operations for Zoom, Inc. He and his spouse own their home at 2284 Woodland Ave and a property 2918 Via Encinitas in San José. If appointed, Mr. Oberson may need to abstain from participating in decisions that potentially affect his or his spouse's employer and his real property interests.

Council District 8

Monica Rodriguez applied on December 20, 2022. Ms. Rodriguez is employed as a Courtesy Clerk at Safeway located at 6150 Bollinger Road in San José. Ms. Rodriguez does not own property in San José and currently rents. She lists no spouse or domestic partner. If appointed, Ms. Rodriguez may need to abstain from participating in decisions that potentially affect her employer.

Council District 9

Michael Young applied for reappointment to the Planning Commission on May 18, 2022. Mr. Young and his spouse are retired. He and his spouse own their home at 1845 Gunston Way in San José. If re-appointed, Mr. Young may need to abstain from participating in decisions that potentially affect his real property interests.

Michitaka Sachihiko applied on September 3, 2022. Mr. Sachihiko is self-employed and collects social Security. Mr. Sachihiko lists no spouse or domestic partner. He owns his home at 1442 Sprucewood Drive in San José. If appointed, Mr. Sachihiko may need to abstain from participating in decisions that potentially affect his real property interests.

Council District 10


Eric Peterson applied on July 12, 2022. Mr. Peterson is employed as a property manager for Woodmont Real Estate Services. Mr. Peterson lists no spouse or domestic partner. He does not own property in San José. If appointed, Mr. Peterson may need to abstain from participating in decisions that potentially affect his employer and any of his employer's 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.

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