



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: January 13, 2023

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, actual or perceived, 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

Pursuant to section 2.08.2130 of the San José Municipal Code, the Clean Energy Community Advisory Commission ("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 José 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

The Commission is a nine-member commission which supports and advises San José 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 (6) specialty seats, and the Mayor nominates applicants for the remaining three (3) 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:

- A. 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;
- B. 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; and/or
- C. 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 that 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. The 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. **Phillip Remaker**: Mr. Remaker indicated that he is employed by Cisco Systems, Inc. as a director of strategy and planning. The application does not disclose any apparent actual or perceived conflict of interest.
- 2. **Hai Bui**: Mr. Bui indicated that he is employed by VMware, Inc. as a staff engineer. The application does not disclose any apparent actual or perceived conflict of interest.
- 3. **Antonio Shelly**: Mr. Shelly indicated that he is employed by “CoreSite” as a manager of data center operations. Additionally, Mr. Shelly represented that he serves as an advisor to “several startup businesses.” It is possible that Mr. Shelly will need to recuse himself from the Commission deliberation if a matter involving

CoreSite or any of the startup businesses with whom Mr. Shelly has a financial interest. Otherwise, the application does not disclose any apparent actual or perceived conflict of interest.

4. **Karen Nelson**: Ms. Nelson indicated that she is retired. Her spouse, Robert Ruff, is also retired and receives pensions from the City of San José and CalPERS.

The application does identify one prior position held by Ms. Nelson from 2019 to 2021 that could pose a potential conflict of interest. Ms. Nelson was a contractor with Silicon Valley Clean Energy. If Ms. Nelson were to receive income from any entity that may be involved in a matter considered by the Commission, she would need to recuse herself from the deliberations. The application does not disclose any apparent actual or perceived conflict of interest.

5. **Jeremiah Wilson**: Mr. Wilson indicated that he is employed by Whole Foods Market as an Amazon Prime Shopper/Store Support. The application does not disclose any apparent actual or perceived conflict of interest.
6. **Christopher Lee**: Mr. Lee indicated that he is employed by Ernst & Young as a product manager. He is a member of the Citizens' Climate Lobby Silicon Valley South. It is possible that Mr. Lee's affiliations could present a conflict of interest in the future depending on the nature of his role. The application does not disclose any apparent actual or perceived conflict of interest.

VII. CONCLUSION

None of the applicant's applications identify or disclose information that would preclude the applicant from serving on the Commission. It is possible that certain applicants may be disqualified from participating in certain matters involving entities from whom they receive a source of income or hold a position that creates a conflict of interest.

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

NORA FRIMMAN
City Attorney

By s/ Enrique A. Fernandez
Enrique A. Fernandez
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: Measure T Community
Oversight Committee

DATE: January 12, 2023

BACKGROUND

This Office routinely reviews applications to City Boards, Commissions and Committees. The applications 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 potential conflict that are disclosed by the applications for the Measure T Community Oversight Committee. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission or committee to which the applicant is seeking appointment.

COMMITTEE DUTIES

The Measure T Community Oversight Committee ("Measure T Committee") was established pursuant to Resolution No. 79165 that the City Council adopted on June 18, 2019. Per Resolution No. 79165, the Measure T Committee is required to meet once each year and has the following responsibilities:

1. Review the expenditure of the proceeds of Measure T Bonds to ascertain consistency with the voter approved purposes for the funds;
2. In connection with the review of expenditures of Measure T Bonds, review and forward to the City Council the City Auditor's separate audit of the proceeds of the Measure T Bonds as well as the Director of Finance's annual report on the amount of Measure T Bonds issued and the amount of ad valorem tax collected for each prior fiscal year ending June 30th; and
3. Review the status of projects funded with the proceeds of Measure T Bonds and forward a status report on the pending Measure T projects to the City Council.

COMMITTEE MEMBERSHIP

The Measure T Committee is to be comprised of fifteen members, with each member nominated pursuant to the process set forth in San José Municipal Code 2.08.180, as may be amended. Each Councilmember recommends one Committee member who is a

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resident of the district of the nominating Council Office. The Mayor recommends five members as citywide representatives, with each member possessing subject matter expertise in one of the following fields: public safety, environmental issues, labor, business, and finance or accounting. Each of the nominations shall be considered by the full Council for formal appointment. Nominees must be residents of San José. Subject matter expertise in the fields of emergency and disaster response, public safety, finance, and/or transportation is highly desirable.

APPLICANTS

New Applicants:

Hai Bui – Mr. Bui resides in District 2. Mr. Bui is a principal software engineer for VMware located in Palo Alto. His application discloses neither incompatible offices nor apparent conflicts of interest.

Rich Giammona – Mr. Giammona resides in District 2. He is a substitute teacher with San Jose Unified School District. Mr. Giammona's spouse is an office manager with Rani Theraputics located in San Jose. His application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicants do not appear to hold any incompatible offices or to have conflicts of interest that would preclude them from serving on the Measure T Committee. The City Council may wish to consider the above comments in considering the appointment to the Measure T Committee.

NORA FRIMANN
City Attorney

By /s/
Rosa Tsongtaatarii
Chief Deputy City Attorney

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