

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** **Appointments to the Clean  
Energy Community Advisory  
Commission**

**DATE:** November 5, 2018

## **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 new nine-member commission that will support and advise San Jose Clean Energy. The Council Appointment Advisory Commission will nominate six members

and the Mayor will nominate an additional three members. The City Council must approve all members.

#### **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. Serena Zhao: This applicant indicates that she and her spouse are Sr. Program Managers and she is also a Sustainability Action Team Champion for Adobe. Ms Zhao’s application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
2. Michael Smith. This applicant is retired and receives a pension from General Electric. His spouse is likewise retired, although the application does not specify the company or the nature of his spouse’s former work. Mr. Smith’s application does not identify or disclose incompatible offices or apparent conflicts of interest.

3. Amrutha Ragavan: This applicant is self-employed as a consultant and the applicant's spouse is unemployed. The applicant's application does not identify or disclose incompatible offices or apparent conflicts of interest.
4. Karen Nelson: This applicant is CEO of Pacific Media. In this capacity, she provides pro bono services to a start-up clean energy company located in Texas. Her spouse is retired and receives pensions from the City of San Jose and California Public Employees Retirement System. In the event that any of Ms. Nelson's clients are before the Commission or seek contracts with San Jose Clean Energy, Ms. Nelson will be obligated to recuse herself. And the City may be precluded from contracting with Pacific Media as well. Nothing in Ms. Nelson's application reveals incompatible offices.
5. Tristan Mecham. The applicant discloses that he is the Director of Compliance and Sustainability for Locus Technologies. His spouse is a Project Manager, Sustainable Supply Chains for Google. Should Mr. Mecham's or his spouse's company seek to do business with San Jose Clean Energy, this could pose a conflict of interest. Other than this potential conflict, which if it materializes might disqualify either company as a potential vender, his application does not identify any incompatible offices.
6. Cheryl McGovern. The applicant discloses that she is retired from U.S. Environmental Protection Agency (US EPA). Her life partner is a therapist. The applicant's application does not identify or disclose incompatible offices or apparent conflicts of interest.
7. Marta Martinez: This applicant and her spouse both work for Elite Recycling Services as COO and President respectively. Her application does not identify or disclose incompatible offices or apparent conflicts of interest.
8. Paul Katawicz: This applicant is Associate General Counsel at Plantronics, Inc and his spouse works as a special aide for the Los Gatos Unified School District. His application does not identify or disclose incompatible offices or apparent conflicts of interest.
9. Aloke Gupta. The applicant discloses that he is a self-employed consultant but does not identify the areas in which he consults. His spouse is an instructional aide with Evergreen School District. The applicant has experience in power and energy sectors. Should the applicant's consulting include power and energy sectors and the applicant seek to do business with San Jose Clean Energy, this could pose a conflict of interest. Other than this potential conflict, which if it materializes might disqualify either company as a potential vender, his application does not identify any incompatible offices.

10. Michael Gross: This applicant works as the Director of Sustainability for Zanker Recycling and his spouse is self-employed but there is no information in the application respecting his spouse's occupation. There are several things in this application that raise potential conflict concerns. First, Mr. Gross is a registered lobbyist with the City. Second, the City may have active contracts in place with Zanker Recycling. Third, Zanker Recycling produces and sells energy to PG&E which will be a direct competitor to San Jose Clean Energy. Finally, Zanker Recycling also sells biomass energy to various energy users. Mr. Gross would be conflicted out if there is a discussion of buying biomass energy. The application does not disclose incompatible offices.
11. Gerald Gothiel. The applicant discloses that he is self-employed in Corporate and Marketing Communications. His spouse is not employed. The applicant has experience in utilities and renewable energy sectors. Should the applicant's consulting include utilities and renewable energy sectors and the applicant seek to do business with San Jose Clean Energy, this could pose a conflict of interest. Other than this potential conflict, which if it materializes might disqualify either company as a potential vender, his application does not identify any incompatible offices.
12. Christopher Chan. The applicant discloses that he and his spouse are senior managers with Cisco. The application does not identify or disclose incompatible offices or apparent conflicts of interest.
13. Kat Baumgartner. The applicant is a retired Fire Captain with the Santa Clara County Fire Department. The applicant's spouse is an Electrical Foreman with Sprig Electric. The application does not identify or disclose incompatible offices or apparent conflicts of interest.
14. Bill Bach. The applicant discloses that he is Regional Account Manager with Ygrene which enrolls and trains contractors in use of PACE financing for residential and commercial property owners and his spouse is a realtor with Fireside Realty. The applicant discloses that he is a sustainable energy expert helping organizations and individuals lower costs while minimizing impact on the environment. If the applicant seeks to do business with San Jose Clean Energy, this could pose a conflict of interest. Other than this potential conflict, which if it materializes might disqualify the applicant to hear a matter or as a potential vender. His application does not identify any incompatible offices.
15. Kevin Armstrong. The applicant discloses that he is a sustainability manager for the County of Santa Clara and his spouse is a Division Manager for Policy and Planning for the Department of Transportation of City of San Jose. His application does not identify or disclose incompatible offices or apparent conflicts of interest.

16. Mohammed Alrai: This applicant is CEO of RAI Energy International, Inc., a renewable energy company. His spouse is an accounting manager for RAIE & Company, which is a CPA firm. Should Mr. Alrai's company seek to do business with San Jose Clean Energy, this would pose a conflict of interest. Other than this potential conflict, which if it materializes might disqualify RAI as a potential vender, his application does not identify any incompatible offices.

**VII. CONCLUSION**

None of these applicants have any incompatible offices that would preclude them 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.

RICHARD DOYLE  
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By \_\_\_\_\_

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