



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: November 20, 2018

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. In order 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 Jose 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 Jose 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

Nine 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. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

APPLICANTS

Barinder Ahluwalia is employed as a Secretary for the County of Santa Clara Roads and Airports Department. Mr. Ahluwalia may need to abstain from participating in decisions that may affect his San Jose real property interests.

Robert Braunstein's application indicates that he is currently employed by the San Francisco 49ers as an Executive Producer, while the resume submitted with Mr. Braunstein's application indicates that he is currently President of Annabelle Productions. Mr. Braunstein's spouse is employed as a teacher with the San Jose Unified School District. Mr. Braunstein's application indicates that he is a member of the San Jose Hall of Fame Board, San Jose Reach Scholarship Board, and the San Jose

Small Business Development Commission. Mr. Braunstein may need to abstain from participating in decisions that would have an impact on his employers or clients, decisions involving boards and commissions of which he is a member, and decisions that may affect his San Jose real property interests.

Michelle Brenot is a self-employed lawyer with an office in the City of Campbell. Her spouse is a Scientist for Progenitor Cell Therapies. Ms. Brenot is a Petitioner in several lawsuits against the City involving the Baseball Stadium project:

1. a. Stand for San Jose et al. v. City of San Jose et al. (Athletics Investment Group (AIG), Real Party in Interest) Santa Clara Superior Court Case No. 111-CV-214196, consolidated with
b. Stand for San Jose et al. v. City of San Jose et al. (AIG, Real Party in Interest) Santa Clara Superior Court Case No. 113-CV-250372. These cases involve a petition for writs of mandate and declaratory and injunctive relief against the City for alleged violations of Redevelopment Law, voting requirements for sports facilities in San Jose, failure to comply with the California Environmental Quality Act (CEQA), and illegal sale of public property regarding the Baseball Stadium project. This case has been dismissed against the City, but AIG has appealed aspects of the trial court decision to the 6th District Court of Appeal.
2. Stand for San Jose et al. v. City of San Jose et al. (AIG, Real Party in Interest), Sacramento County Superior Court Case No. 34-2014-80001905. This case alleges that the City wrongfully attempted to continue an option agreement committing the City to sell property to AIG for the stadium and failed to comply with Redevelopment Law, the Redevelopment Dissolution Law, and the State Controller's Asset Transfer Review Report and Order, issued March 21, 2013. This case has been dismissed.
3. Stand for San Jose et al. v. City of San Jose et al. (Athletics Investment Group, Real Party in Interest), Santa Clara Superior Court Case No. 114-CV-274088. The case is a petition for writ of mandate and complaint for declaratory and injunctive relief alleging the City failed to comply with CEQA regarding the Baseball Stadium project.

Ms. Brenot may need to abstain from participating in decisions that would have an impact involving her litigation, business, or clients, as well as decisions that may affect her San Jose real property interests.

Ryan Carrigan is employed as the Government Affairs Director with the Silicon Valley Association of Realtors. The resume attached to Mr. Carrigan's application indicates that he represents "realtor interests in Silicon Valley" and coordinates "advocacy efforts" at the local, state, and federal level. Mr. Carrigan was also a formerly employed by the City of San Jose as Policy Director for Council District 7. Mr. Carrigan may need to abstain from participating in decisions that would have an impact on his current employer or employer's clients and members, any decisions involving work that he performed as a City employee, and decisions that affect the property he rents in San Jose.

Mike D'Ambrosio is employed as Assistant Manager and Broker Associate with Intero Real Estate Services in Los Gatos. The resume attached to his application states that he is also Vice President of Intero Development Group, New Home Sales Division. His spouse is employed as a Probation Officer for the County of Santa Clara Probation Department. Mr. D'Ambrosio may need to abstain from participating in decisions that would have an impact on his employer or clients, as well as decisions that may affect his San Jose real property interests.

David Mein is employed as Executive Vice President with Colliers International in San Jose. The application indicates that he engages in commercial real estate sales and leasing in San Jose. His spouse is employed in Sales by Intero Real Estate in San Jose. Mr. Mein may need to abstain from participating in decisions that would have an impact on his employer or clients, and his spouse's employer or clients, as well as decisions that may affect his San Jose real property interests.

Roald Nilsen is the owner of Aron Homes LLC in Los Gatos, CA. Mr. Nilsen may need to abstain from participating in decisions that would have an impact on his business or clients, as well as decisions that may affect his San Jose real property interests.

Nick Pham is the owner and broker of PN Real Estate Group, Inc. in San Jose. Mr. Pham may need to abstain from participating in decisions that would have an impact on his clients or any source of income to his business, as well as decisions that may affect his San Jose real property interests.

Jim Toal is employed as Director of Regional Marketing at Vishay Semiconductor in the City of Santa Clara. Mr. Toal may need to abstain from participating in decisions that may affect his San Jose 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. It is difficult to ascertain from some of the applications whether the applicants are paid for some of their services. Although an applicant's service as a board member of a charitable or community interest organization does 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 he or she may have to abstain from participation in matters before the Commission which concern the source of income.

In addition, the City Attorney's Office has researched its records to provide the Council with information relating to litigation involving any of the applicants. With the exception of applicant Michelle Brenot (see discussion above), no litigation involving the other applicants has been identified in the City Attorney's office.

None of the applicants appear to hold any incompatible offices. Their applications do not reveal any pervasive conflicts of interest which would prevent them 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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City Attorney

By 
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Senior Deputy City Attorney

cc: David Sykes, City Manager
Toni Taber, City Clerk