

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: Planning Commission
Applicants

FROM: Richard Doyle
City Attorney

DATE: July 30, 2019

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

Twenty-six 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

Louis Barocio is employed as an Associate Principal of Educational Services by the East Side Union High School, while his spouse is employed as Director of Student Achievement by Escuela Popular charter school. If appointed, Mr. Barocio may need to abstain from participating in decisions that may affect his and his spouse’s employers and his San Jose real property interests.

Noelle Boesenberf is employed as Business Development Director by Maritz Global Events. Ms. Boesendorf is currently Chair of the Meeting Professionals International Northern California Chapter Certified Meeting Professionals University and is also San Jose State University Liaison for the Emerging Professionals Committee. If appointed,

Ms. Boesendorf may need to abstain from participating in decisions that may affect her employer, the employer's clients, her civic and charitable organizations, and the property she rents in San Jose.

Rolando Bonilla is employed as a Chief Strategy Officer by Voler Strategic Advisers, while his spouse is employed as Chief Executive Officer of Voler Strategic Advisors. If appointed, Mr. Bonilla may need to abstain from participating in decisions that may affect his and his spouse's employer, the employer's clients, and his San Jose real property interests.

Mariel Caballero is employed as Deputy Director of Probation Administration by the County of Santa Clara. If appointed, Ms. Caballero may need to abstain from participating in decisions that may affect her employer and her San Jose real property interests.

Ryan Carrigan is employed as the Government Affairs Director by 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. If appointed, Mr. Carrigan may need to abstain from participating in decisions that would have an impact on his employer, 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.

George Casey is employed as an Associate Attorney by Morrison Foerster. If appointed, Mr. Casey may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose.

Donna Castillo is employed as a Realtor by Intero Real Estate Services and also as a Senior Level Consultant by Donna Castillo LLC dba Go To Donna Events. Ms. Castillo is also currently on the Board of Directors of the Campbell Chamber of Commerce and the Board of Directors of the National Association of Hispanic Real Estate Professionals. If appointed, Ms. Castillo may need to abstain from participating in decisions that may affect her employers and business interests, their clients, and her San Jose real property interests. She may also need to abstain from decisions that involve her current board positions on the Campbell Chamber of Commerce and the Board of Directors of the National Association of Hispanic Real Estate Professionals to avoid conflicts of interest including an appearance of bias.

Aimee Escobar is employed as a Senior Housing Policy Analyst by the Santa Clara County Housing Authority and is Chair of the Santa Clara County Housing Authority. Ms. Escobar is also currently a member of the County of Santa Clara Planning Commission. If appointed, Ms. Escobar must relinquish her position with the County Planning Commission because that office is an incompatible office with Planning Commission membership in San Jose. Ms. Escobar also may need to abstain from

decisions that may affect her employer/organization of which she is a Board member, her employer's and organization's clients, and the property she rents in San Jose. Ms. Escobar's application also notes that she received a Planning Achievement Award from the American Planning Association in 2010 for a project entitled "Alviso Community Assessment Report." Depending on the nature of the report and the opinions expressed therein, Ms. Escobar may also need to abstain from participating in decisions relating to the Alviso area to avoid an appearance of bias.

Jonathan Fleming is self-employed as an engineer and parent, while his spouse is employed as a registered nurse by El Camino Hospital. If appointed, Mr. Fleming may need to abstain from participating in decisions that may affect his clients, his spouse's employer, and his San Jose real property interests. Mr. Fleming may also need to abstain from decisions that involve his current board positions on the Senter Monterey Neighborhood Association and District 7 Leadership Group, and his current position on the Community Working Group for the California High-Speed Rail Authority, to avoid conflicts of interest including an appearance of bias.

Bretton Fraboni is employed as a Corporate Paralegal by Cooley LLP. If appointed, Mr. Fraboni may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose.

 **Shlee Gonzales** is employed as a Real Estate Attorney-Junior Partner by Brewer Offord & Pedersen LLP. Ms. Gonzales is also an Affiliate Member of the Santa Clara County Association of Realtors and the Silicon Valley Association of Realtors. If appointed, Ms. Gonzales may need to abstain from participating in decisions that affect her employer, employer's clients, the civic organizations of which she is a member, and the property she rents in San Jose.

Lilia Hancock is employed as the Human Resources Manager by Monterey Mushrooms, Inc., while her spouse is employed as a Senior Staff Scientist by Abbott. If appointed, Ms. Hancock may need to abstain from participating in decisions that may affect her or her spouse's employer, their employers' clients, and her San Jose real property interests.

Katherine Keene is employed as Senior Marketing Manager by Adobe, while her spouse is employed as Sales Operations Manager by Golden State Orthopedics. If appointed, Ms. Keene may need to abstain from participating in decisions that may affect her or her spouse's employers, their employers' clients, and her San Jose real property interests.

Stuti Khanna is employed as a Program Manager by Apple, while her spouse is employed as a Senior Engineer by ASML. If appointed, Ms. Stuti may be required to abstain from participating in decisions that may affect her employer, her spouse's employer, their employers' clients, and her San Jose real property interests.

Justin Lardinois is employed as a Software Engineer by Course Hero. If appointed, Mr. Lardinois may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose. Mr. Lardinois is also currently a member of the San Jose Housing and Community Development Commission. Section I.A.6 of Council Policy 0-4 prohibits a person from serving on more than one City commission at the same time and requires the commissioner resign his existing membership when appointed to another commission. Mr. Lardinois must relinquish his membership on the Housing and Community Development Commission if he is appointed to the Planning Commission.

John Martin is employed as Logistics Systems and Process Lead by Arista Networks, Inc. If appointed, Mr. Martin may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose.

Teo Martinez is employed as Associate Land Surveyor by Underwood & Rosenblum, Inc., while his spouse is employed as a Special Education Teacher by the San Jose Unified School District. Mr. Martinez also serves on the Board of Directors of the Sherman Oaks Neighborhood Association. If appointed, Mr. Martinez may need to abstain from participating in decisions that may affect his employer, his spouse's employer, his employer's clients, the Sherman Oaks Neighborhood Association, and his San Jose real property interests.

Natalie Nguyen is employed as a Senior Program Planner by Lockheed Martin Corporation. If appointed, Ms. Nguyen may need to abstain from participating in decisions that may affect her employer, employer's clients, and the property she rents in San Jose.

Gopi Nathan Niduvadan and his spouse are both retired and not otherwise employed. If appointed, Mr. Niduvadan may need to abstain from participating in decisions that may affect his San Jose real property interests.

Kayvon Rahbar is self-employed as a contractor. If appointed, Mr. Rahbar may need to abstain from participating in decisions that may affect his contracting business, his clients, and the property he rents in San Jose.

Christopher Schneider is employed as a Sales Manager by Keller Williams. If appointed, Mr. Schneider may need to abstain from participating in decisions that may affect his employer, employer's clients, and the property he rents in San Jose.

Deborah Torrens is self-employed as a family child care provider—Pre-K Teacher, while her spouse is employed as Assistant Principal and Activities Director by the Los Gatos-Saratoga Union High School District. If appointed, Ms. Torrens may need to abstain from participating in decisions that may affect her business and its clients, her husband's employer, and her San Jose real property interests.

Ivan Torres is employed as a Pharmacy Technician by Stanford Hospital. If appointed, Mr. Torres may need to abstain from participating in decisions that may affect his employer and the property he rents in San Jose.

Richard Tso is employed as Principal Engineer by Ifland Engineers, while his spouse is the owner of Forever Enchanted Parties. Although page 1 of Mr. Tso's application indicates San Jose residency, page 3 of his application states that he does not own or rent property in the City of San Jose. These inconsistent statements in Mr. Tso's application should be clarified to determine whether Mr. Tso is a San Jose resident. If residency is confirmed and Mr. Tso is appointed, Mr. Tso may need to abstain from participating in decisions that may affect his employer, his employer's clients, his spouse's business, his spouse's business clients, and his place of residence.

Charles Wasser is self-employed as the owner of Wasser Graphics Rotary Merchandise and Wasser Graphic Print Brokerage. If appointed, Mr. Wasser may need to abstain from participating in decisions that would have an impact on his businesses, the clients of his businesses, and the property he rents in San Jose. Mr. Wasser also serves on the Board of Directors of the Santa Clara County Fairgrounds Management Corporation. The Fairgrounds Managements Corporation is an IRS 501(c)(3) not-for-profit corporation formed to operate, fund-raise, and maintain the County Fairgrounds property. If appointed, Mr. Wasser may also need to abstain from decisions that affect the County Fairgrounds.

William Wu and his spouse are both retired and are not otherwise employed. If appointed, Mr. Wu may need to abstain from participating in decisions that would have an impact on 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. 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 he or she 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.

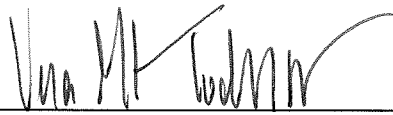
Two of the applicants currently hold incompatible offices. Aimee Escobar is a Santa Clara County Planning Commissioner and Justin Lardinois is a San Jose Housing and Community Development Commission member. Both positions are incompatible with the office of San Jose Planning Commissioner. If appointed, California law requires Ms. Escobar to relinquish her current office prior to being sworn to serve as a San Jose

Planning Commissioner, while Council Policy 0-4 requires Mr. Lardinois to relinquish his current City commission membership.

As noted above, San Jose residency must also be confirmed for applicant Richard Tso prior to Council consideration.

Other than the incompatible offices mentioned above, the 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.

RICHARD DOYLE
City Attorney

By 
VERA TODOROV
Senior Deputy City Attorney

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