

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: May 14, 2020

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 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 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 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

Thirty 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

Peter Allen is employed as the Owner/Principal of Peter Allen Media, while his spouse is employed as Policy Director with the County of Santa Clara Board of Supervisors. Mr. Allen’s application indicates that he is currently on the Board of Teatro Vision San Jose and the Rotary Club of Campbell-San Jose West. If appointed, Mr. Allen may need to abstain from participating in decisions that may affect his business and clients, the organizations in which he is a member, his spouse’s employer, and his San José real property interests.

Shiloh Ballard is employed as Executive Director of the Silicon Valley Bicycle Coalition, while her spouse is employed as an Engineer by Zag Technical Services. Ms. Ballard’s

application indicates current membership in several organizations including the Great Communities Collaborative Advisory Board, the Board of Directors of the Santa Clara County League of Conservation Voters, the Board of Governors of the California Housing Consortium, the Association of Bay Area Governments Regional Planning Committee, and Court Appointed Special Advocate. Also, Ms. Ballard states that she is a shareholder in Avalon Bay. If appointed, Ms. Ballard may need to abstain from participating in decisions involving her employer, her spouse's employer, Avalon Bay, and her San José real property interests. Additionally, Ms. Ballard may need to abstain from participating in decisions involving the organizations in which she is a member to avoid conflicts of interest including an appearance of bias.

Laura Barreras is employed by the La Raza Historical Society of Santa Clara Valley as a Consultant and Grant Writer. If appointed, Ms. Barreras may need to abstain from participating in decisions that may affect her employer and client. Ms. Barreras' application indicates that she is registered to vote in San Martin. The City Clerk has confirmed that Ms. Barreras is not a registered voter in San Jose. San José Charter section 1000(c) requires each planning commissioner to be a "registered elector of the City of San José at the time of his or her appointment and thereafter to and including the date of commencement of the four-year term or lesser period of time for which he or she is appointed." If the Council desires to appoint Ms. Barreras, voter registration in San José must be established by the time of appointment and for the duration of Commission membership.

Carlin Black is retired. His spouse is self-employed as a piano teacher. Mr. Black is currently a member of Catalize SV and is a member of the Stevens Creek Advisory Group and Winchester Neighborhood Advisory Committee. If appointed, Mr. Black may need to abstain from participating in decisions that may affect his spouse's clients and his San José real property interests. Additionally, Mr. Black may need to abstain from participating in decisions involving the organizations in which he is a member to avoid conflicts of interest including an appearance of bias.

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

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 José real property interests.

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 José.

Andrew Ditlevsen is employed as an attorney by Hopkins & Carley, while his spouse is employed as an Executive Producer by Facebook. Mr. Ditlevsen's resume indicates that is a real estate lawyer with clients including a property owner in the Diridon Station Area and mobilehome park owners in connection with efforts to close and convert mobilehome parks, including Winchester Mobilehome Park. If appointed, Mr. Ditlevsen may need to abstain from decisions that involve his clients, clients of his law firm, his spouse's employer, and his San José real property interests.

Aimée 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 José. 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 José. 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.

Jorge Antonio Garcia is employed as an Account Executive by Redwood Mortgage, while his spouse is employed as an Office Administrator in the Chemistry Department at San Jose State University. If appointed, Mr. Garcia may need to abstain from participating in decisions affecting his employer, employer's clients, and his San José real property interests.

Tran Huy is employed as a Partner by Justice at Law Group, LLP. Mr. Huy's application also indicates that he is a current member of several community organizations, and the Wage Theft Steering Committee. If appointed, Mr. Tran may need to abstain from participating in decisions involving his employer, employer's clients, and the property he rents in San José. Additionally, Mr. Huy may need to abstain from participating in decisions involving the organizations in which he is a member to avoid conflicts of interest including an appearance of bias

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 José real property interests.

Arthur Kulakow is employed as an Automation Engineer by Automation Anywhere, while his spouse is employed as Registry by Stanford Health Care. If appointed, Mr. Kulakow may be required to abstain from participating in decisions that may affect his employer, his spouse's employer, and his San José real property interests.

Cassandra Langer is currently employed as Office Manager and Community Liaison for Congressman Ro Khanna. Ms. Langer's application indicates that she is currently a District 4 Neighborhood Commissioner, but states that she will be resigning that position. If appointed, Ms. Langer may be required to abstain from participating in decisions affecting her employment and the property she rents in San José.

Justin Lardinois is employed as a Software Engineer by Google. 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 José. Mr. Lardinois is also currently a member of the San José Housing and Community Development Commission and the District 1 Leadership Group. 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. Additionally, in the event that Ms. Langer does not resign as a Leadership Group member, he may need to abstain from participating in decisions involving the Leadership Group to avoid conflicts of interest including an appearance of bias.

Richard Lazarowich is employed as a Mechanical Engineer by Lockheed Martin. If appointed, Mr. Lazarowich may need to abstain from participating in decisions that may affect his employer.

Chin Hang Leung is self-employed as a driver. If appointed, Mr. Leung may need to abstain from participating in decisions that may affect any clients who meet the source of income threshold in the Political Reform Act and the property he rents in San José. Mr. Leung's application indicates that he is not registered to vote in San José, which has been confirmed by the City Clerk. San José Charter section 1000(c) requires each planning commissioner to be a "registered elector of the City of San José at the time of his or her appointment and thereafter to and including the date of commencement of the four-year term or lesser period of time for which he or she is appointed." If the Council desires to appoint Mr. Leung, voter registration in San José must be established by the time of appointment and for the duration of Commission membership.

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 José.

Diego Martinez is employed as a Legal Executive Assistant by Intellectual Property Group LLP and as a Campaign Staffer and Scheduling Lead for the Otto Lee for Supervisor campaign. If appointed, Mr. Martinez may need to abstain from participating in decisions that may affect his employers and employers' clients. Mr. Martinez's application also indicates that he intends to run for elected office on the Oak Grove Elementary School District Board of Trustees in 2021. If elected to the school board in 2021, Mr. Martinez could no longer serve on the Planning Commission because it is an incompatible office. Additionally, Mr. Martinez may need to abstain from participating in decisions relating to his advocacy involving positions taken by the Lee supervisorial campaign to avoid conflicts of interest including an appearance of bias.

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, and his San José real property interests. Additionally, Mr. Martinez may need to abstain from participating in decisions involving the Sherman Oaks Neighborhood Association to avoid conflicts of interest including an appearance of bias,

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 José real property interests.

Harry Oberhelman III is a retired lawyer, while his spouse is employed as a Grant Writer by the Community Health Awareness Council. If appointed, Mr. Oberhelman may need to abstain from participating in decisions affecting his spouse's employer and his San José real property interests.

Peter Pham is employed as LEAD Program Assistant and Environmental Justice Intern by Foothill-DeAnza College District. Mr. Pham's application indicates that he also currently leads the Silicon Valley Youth Climate Action's San José team. If appointed, Mr. Pham may need to abstain from participating in decisions affecting his employer. Additionally, Mr. Pham may need to abstain from participating in decisions involving Silicon Valley Youth Climate Action to avoid conflicts of interest including an appearance of bias.

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 José.

Jim Ramsell and his spouse are both retired. If appointed, Mr. Ramsell may need to abstain from participating in decisions affecting his San José real property interests

Jerome Rogers is a retired Senior Manager. If appointed, Mr. Rogers may need to abstain from participating in decisions affecting his San José real property interests.

John Salah is self-employed as a consultant, while his spouse is employed as a realtor with Ventura Barnett. If appointed Mr. Salah may need to abstain from participating in decisions affecting his clients, his spouse's clients, spouse's employer, spouse's employer's clients, and his San José real property interests. Mr. Salah's application also indicates that he is currently an appointed member of a Santa Clara Valley Water District Advisory Committee but does not specify which of the several Water District advisory committees. A determination would need to be made prior to appointment whether this would create a prohibited incompatible office requiring resignation from the District's advisory committee prior to the effective date of the Planning Commission appointment or he may continue to serve on the District's advisory committee and abstain from participating in decisions involving the Water District to avoid conflicts of interest including an appearance of bias.

Ram Srinivasan is self-employed as an Independent Consultant, while his spouse is a self-employed realtor. If appointed, Mr. Srinivasan may need to abstain from participating in any decisions affecting his business or clients, his spouse's business or clients, and his San José real property and rental interests.

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 José real property interests.

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 José 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 to avoid an appearance of bias.

Two of the applicants currently hold incompatible offices. Aimée Escobar is a Santa Clara County Planning Commissioner and Justin Lardinois is a San José Housing and Community Development Commission member. Both positions are incompatible with the office of San José Planning Commissioner. If appointed, California law requires Ms. Escobar to relinquish her current office prior to being sworn to serve as a San José Planning Commissioner, while Council Policy 0-4 requires Mr. Lardinois to relinquish his current City commission membership. Additionally, specific information about applicant John Salah's membership on one of several Valley Water advisory boards was not provided in his application, so we are unable to determine at this time whether that position would be incompatible with the office of San José Planning Commissioner.

Another two applicants, Laura Barrera and Chin Hang Leung, are not currently registered voters in San José as required by Charter section 1000(c). If the Council desires to appoint Ms. Barreras or Mr. Leung, Charter section 1000(c) requires that voter registration in San José must be established by the time of appointment and for the duration of Commission membership.

Other than the incompatible offices and voter registration issues 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 /s/
VERA TODOROV
Senior Deputy City Attorney

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