

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: May 19, 2019

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 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. Jonathan Fleming: This applicant indicates that he is a self-employed mechanical engineer. The applicant’s spouse is employed as a registered nurse with El Camino Hospital. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
2. Peter Pham: This applicant indicates that he is an associate degree student of Science for Transfer in Mathematics at Foothill College. The applicant is unmarried. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
3. Victor Niemeyer: This applicant indicates that he is a Senior Technology Executive and independent consultant, semi-retired from the Electric Power Research Institute (“EPRI”). EPRI is an independent, nonprofit organization that conducts research, development, and demonstration projects for the benefit of the public in the United States and internationally. The applicant’s spouse is a retired Program Director from Live Oak Adult Day Services. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the

applicant's relationship with EPRI come before the Commission the applicant may need to refrain from participating in the matter.

4. Jose Corbacho: This applicant indicates that he is a self-employed engineering consultant. The applicant was formerly employed by Alta Devices, a manufacturer of photovoltaic solar cells, until its dissolution in 2019, and he was retained by the creditors-in-possession of the equipment and Intellectual Property assets to provide support with regulatory compliance and technical advice to their plans around M&A. The applicant's spouse is employed as an Accounting Associate at Redwitz Inc. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's engagement with Alta Devices' creditors-in-possession come before the Commission the applicant may need to refrain from participating in the matter.
5. Deepika Caveney: This applicant indicates that she is employed as a Senior Marketing Director by WootCloud, Inc, a smart device security platform. The applicant is unmarried. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
6. Yuval Schwartz: This applicant indicates that he is a retired high-tech executive, has no retirement pension, and is unmarried. The applicant's resume indicates that he runs a Schwartz Group LLC, a management and business consulting firm in areas of marketing and project development. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
7. Alex Caraballo: This applicant indicates that he is employed by the International Brotherhood of Electrical Workers Local Union 332 and was formerly employed by Systems Incorporated and Rosendin Electric Incorporated, in which he worked on building electrical infrastructure throughout Silicon Valley. The applicant's spouse is employed as a EEG tech for Washington Hospital. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's employer or former employers come before the Commission the applicant may need to refrain from participating in the matter.
8. David Trindade: This applicant indicates that he is a retired high-tech executive and has a pension from IBM. The applicant's spouse is also retired. The applicant founded and is currently Chief to Stat-Tech, which provides consulting expertise in the application of statistical methods to solve technical and engineering problems, and he is also a director of Silver Creek Valley Country Club Home Owners Association. The applicant was formerly a Fellow, Chief of Best Practices, for Bloom Energy, a manufacturer and marketer of on-site fuel cells. The applicant disclosed that he invests in companies involved in late-harvest power and energy, but he is not a Director or part of the board of any power or energy company. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's consulting firm, any of his investments in late-harvest power and energy, Silver Creek Valley Country

Club Home Owners Association, or Bloom Energy come before the Commission the applicant may need to refrain from participating in the matter.

9. Richard Zahner: This applicant indicates that he is a retired Captain of the United States Navy Reserve ("USNR") and receives a federal pension from the USNR retirement program. The applicant's spouse is also retired. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
10. Cynthia-may Gong: This applicant indicates that she is employed as a hardware verification engineer with Varian Medical Systems. The applicant's spouse is employed as an engineer with Akamai Technologies. The applicant disclosed that she developed and patented a low-energy reprocessing step for nuclear fuels, and that she has a close relative who is a top manager at GE Wind. The application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest. However, should a matter regarding the applicant's patent or GE Wind come before the Commission the applicant may need to refrain from participating in the matter.

VII. CONCLUSION

The applicants' applications do not identify or disclose information that would preclude the applicants 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
City Attorney

By _____
Luisa F. Elkins
Senior Deputy City Attorney

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