

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Appointments to the Clean
Energy Community Advisory
Commission

DATE: November 4, 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. Richard Zahner: This applicant indicates that he is a retired energy industry consultant. Mr. Zahner indicates that his spouse is retired. Mr. Zahner’s application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
2. David Trindade. Is self-employed at STAT-TECH a statistical consulting and training company. He also works part-time as an Adjunct Lecturer at Santa Clara University. Mr. Trindade invests in companies involved in late harvest power and energy. Mr. Trindade indicates that his spouse is retired. Mr. Trindade’s application does not identify or disclose incompatible offices or apparent conflicts of interest; however, his investments may require him to recuse himself from certain actions of the Commission related to his power and energy investment entities.
3. Reza Sadehgian: This applicant is self-employed as a consultant which includes advising a solar installation public benefit company. The applicant does not

identify a spouse. The applicant's application does not identify or disclose incompatible offices or apparent conflicts of interest; however, he may have to recuse himself from certain actions of the Commission related to the solar installation public benefit company.

4. Arthur Kulakow: Mr. Kulakow is a principal engineer with Automation Anywhere. His spouse is employed with Stanford Health Care. Mr. Kulakow's application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
5. Cynthia-may Gong. Ms. Gong is a systems engineer with Varian Medical Systems. Her spouse is an engineer employed with Akamai Technologies. Ms. Gong's application does not identify or disclose information that would create an incompatible office or an apparent conflict of interest.
6. Breton Fraboni. The applicant is a corporate paralegal for Cooley LLC. The applicant does not identify a spouse. The applicant's application does not identify or disclose incompatible offices or apparent conflicts of interest.

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
City Attorney

By 

Ed Moran
Assistant City Attorney

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