

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Planning Commission
Applicants

DATE: June 7, 2021

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

Seventeen 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. The applicants are divided by Council District to be considered in accordance with the November 3, 2020 amendments to Section 1000 of the City Charter. Unless otherwise indicated, no application discloses incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Commission.

APPLICANTS

Council District 4

Maribel Montanez is employed as Development Director by Gardner Health Services. If appointed, Mr. Martinez may need to abstain from participating in decisions that may affect her employer, her employer's clients, the organizations of which she is currently a member (Silicon Valley Leadership Group Racial Justice & Equity Task Force member), and the property she rents in San Jose.

Anthony Tordillos is employed as a Senior Software Engineer for Google (an Alphabet, Inc. subsidiary), while his spouse is employed as a PhD candidate in Biology at Stanford University. If appointed, Mr. Tordillos may need to abstain in participating in decisions that may affect his employer, his employer's clients, the parent company of his employer and its subsidiaries, his spouse's employer, and his San Jose real property interests.

Huy Tran is employed as Partner at Justice at Work Law Group LLP. If appointed, Mr. Tran may need to abstain from participating in decisions that may affect his clients, his employer, the organizations of which he is a current member (Vietnamese American Roundtable Core Member, Secretary and President; Wage Theft Coalition Steering Committee; Youth Changing Society Treasurer; and A Union of Golden Hearts Legal Counsel), and the property he rents in San Jose. Mr. Tran's is currently the District 8 appointee to the City's Housing and Community Development Commission. Section 1.A.6 of Council Policy 0-4 prohibits a person from serving on more than one City commission t the same time and requires the commissioner resign his existing membership when appointed to another commission. Mr. Tran must relinquish his membership in the Housing and Community Development Commission if he is appointed to the Planning Commission. Mr. Tran's application states that if appointed to serve on the Planning Commission, he will resign his seat on the Housing and Community Development Commission.

Council District 7

Sylvia Ornelas Wise is employed as Land Use Consultant/CEO by Wise Consulting Group LLC, while her spouse is employed by the County of Santa Clara as a HVAC Mechanic. If appointed, Ms. Ornelas Wise may need to abstain from participating in decisions that may affect her clients, her employer, her employer's clients, and her San Jose real property interests.

Peter Pham is employed as LEAD Program Assistant and Environmental Justice Intern by Foorhill-DeAnza College District. Mr. Pham's application indicates that he also currently leads the Silicon Valley Youth Climate Action's San Jose team. If appointed,

Mr. Pham may need to abstain from participating in decisions involving Silicon Valley Youth Climate Action and to avoid conflicts of interest including an appearance of bias. Mr. Pham may also need to abstain from decisions affecting his place of residence.

Carlos Rosario is employed as Product Counsel for Wing, a subsidiary of Alphabet, Inc. If appointed, Mr. Rosario may need to abstain from participating in decisions that may affect his employer, his employer's clients, the parent company of his employer and its subsidiaries, the organizations of which he is a current member (Santa Clara County Health Advisory Commission, Santa Clara County Bar Association Trustee, Katherine and George Alexander Community Law Center Advisory Board, Santa Clara County Black Lawyers Association President, and the Tri-City Health Center and Foothill Community Health Center Board Chair and CEO), and his San Jose real property interests.

Tasha Tenturier is employed as Facilities Project Manager by the Campbell Unified School District. If appointed, Ms. Tenturier may need to abstain from participating in decisions that may affect her employer and to avoid conflicts of interest including an appearance of bias, and may also need to abstain from decisions affecting her San Jose real property interests.

Council District 9

Peter Fleming is employed as a realtor by Intero Real Estate. If appointed, Mr. Fleming may need to abstain from participating in decisions that may affect his employer, his employer's clients, his clients, and the property he rents in San Jose. Additionally, Mr. Fleming's application indicates that he is not a registered voter in the City of San Jose, which has been confirmed by the City Clerk and the County Registrar of Voters. In the event that Council desires to appoint Mr. Fleming, City Charter section 1000(c) requires that he must be a registered elector of the City of San Jose at the time of his appointment to the Planning Commission and thereafter throughout the term for which he is appointed.

Canshara Washington is employed as a Sales Development Representative by Pure Storage. If appointed, Ms. Washington may need to may need to abstain from participating in decisions that may affect her clients, her employer, her employer's clients, and the property she rents in San Jose.

Michael Young and his spouse are both retired. If appointed, Mr. Young may need to abstain from participating in decisions that may affect his San Jose real property interests.

At-Large Applicants

Barry Del Buono (Council District 3) is employed as an Adjunct Professor of Sociology by San Jose City College, Evergreen Community College, and Santa Clara University, while his spouse is employed as a Professor at San Jose City College. If appointed, Mr. Del Buono may need to abstain from participating in decisions that may affect his employers and to avoid conflicts of interest including an appearance of bias, the organizations of which he is a member (Legacy San Jose Alviso Foundation and GEO Pontes, Inc. Executive Director), and his San Jose real property interests.

Charles Cantrell (Council District 3) is employed as the Vice President of eCommerce by Luxie Inc., while his spouse is employed as a Research Administrator by Stanford University. If appointed, Mr. Cantrell may need to abstain from participating in decisions that may affect his employer, his employer's clients, his spouse's employer, and his San Jose real property interests.

William Cord (Council District 3) is employed as the Proprietor of Stronghold Press Games and as a Crew Member by Trader Joe's, while his spouse is also employed as a Crew Member at Trader Joe's. Mr. Cord's application states that he will have a degree from San Jose State University in 2022, so it appears that he is also currently enrolled as a student at San Jose State University. If appointed, Mr. Cord may need to abstain from participating in decisions that may affect his business and its clients, his employer, and his rental property in San Jose.

Paul Feci (Council District 8) and his spouse are both retired. If appointed, Mr. Feci may need to abstain from participating in decisions that may affect the organizations of which he is a member (Fraternal Order of Eagles President) and his San Jose real property interests.

Gopi Nathan Niduvadan (Council District 5) is retired but is employed seasonally as a Tax Specialist by H&R Block, while his spouse is retired but also works part time as a Tax Specialist (employer not named). If appointed, Mr. Niduvadan may need to abstain from participating in decisions that may affect his and his spouse's clients, his and his spouse's employers, his and his spouse's employers' clients, and his San Jose real property interests.

Natalie Nguyen (Council District 3) is employed as Senior Operations Engineer/Corporate Internal Auditor by Lockheed Martin Corporation. If appointed, Ms. Nguyen may need to abstain from participating in decisions that may affect her employer, her employer's clients, and her place of residence.

Jeffrey Nott (Council District 1) is self-employed as the owner of Altus Business Solutions, while his spouse is employed as Head School Nurse at the Harker School. If appointed, Mr. Nott may need to abstain from participating in decisions that may affect

his business, his business's clients, his spouse's employer, and 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.

One applicant currently holds an incompatible office. Huy Tran is a San Jose Housing and Community Development Commission member, which position is incompatible with the office of San Jose Planning Commissioner. If appointed, Council Policy 0-4 requires Mr. Tran to relinquish his current City commission membership.

As noted above, if appointed to the Planning Commission, voter registration in the City of San Jose must also be confirmed for applicant Peter Fleming at the time of appointment and must be maintained during his entire term on the Commission.

Other than the incompatible office and voter registration issues mentioned above, the applications do not reveal any pervasive conflicts of interest which would prevent the current applicants 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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cc: David Sykes, City Manager
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