

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Planning Commission Applicants –  
Conflicts Review

**DATE:** April 5, 2010

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## **RECOMMENDATION**

That the City Council review and consider the following information as a part of its evaluation of applicants to fill one (1) unexpired term and three (3) expired term vacancies on the Planning Commission.

## **BACKGROUND**

This Office routinely reviews applications 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 potential conflict disclosed by an application. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission to which the applicant is seeking appointment.

## **COMMISSION DUTIES**

The Planning Commission has two major responsibilities under the City Charter and the Municipal Code: (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, rezonings, general plan amendments, and Zoning Code (SJMC Title 20) amendments.

Pursuant to State law, the Commission is required to review redevelopment plans and capital improvement plans. Additionally, under the City's Municipal Code requirements, the Commission is the body charged with initially considering and certifying the adequacy of Environmental Impact Reports (EIRs) and with conducting hearings on protests against Negative Declarations. 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.

This Office was alerted late last week to the names of applicants selected for interview by the City Council for a vacant Planning Commissioner seat with an unexpired term ending on June 30, 2012 and for three (3) vacant Commissioner seats with a term ending on June 30, 2014. Below are some elements reflected on the applications of these applicants for your consideration as the City Council decides which applicants to appoint to fill the vacant Planning Commissioner seats.

## **APPLICANTS**

**Edgar Abelite** – Mr. Abelite states his employment as General Partner, Property/Asset Manager, Canyon Creek Plaza, LLC, Windemere Silicon Valley Properties. The application also specifies that Mr. Abelite's spouse is District Director and Manager of 65 real estate professionals for Zip Realty, USA in Emeryville, CA. In the past, Mr. Abelite has appeared before the Planning Commission and the City Council on items relating to retail property that he manages in the Evergreen Specific Plan Area, and he discloses such property management in the Evergreen area on his application. Mr. Abelite may need to abstain from participating in decisions that would have an impact upon his partnership, employer, wife's employer, and any of his or his wife's employer clients. His application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Edesa Bitbadal** – Ms. Bitbadal does not list any employment for herself. She states that her spouse is a self-employed high-tech consultant. She may have to abstain from participating in decisions that would have an impact on her spouse's business or any of her spouse's clients. Her application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Hope Cahan** – Ms. Cahan states that she is self-employed as a homemaker. Her application states that her spouse is employed by the Santa Clara County Office of the District Attorney. She may have to abstain from participating in decisions that would have an impact upon the County of Santa Clara (her spouse's employer). Her application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Rebecca Gallardo** – Ms. Gallardo states that she is Managing Partner and Realtor, Portelo Group Realty, San Jose. She states that her spouse is a Surgical Technician for Bay Area Surgery Group in Santa Clara. Ms. Gallardo may need to abstain from participating in decisions that would have an impact upon her partnership and employer, and any of their clients. Additionally, Ms. Gallardo's application indicates that she holds the incompatible office of Vice-Chair of the Santa Clara County Planning Commission, which position she would be required to resign prior to accepting the position of City Planning Commissioner. Her application discloses an incompatible office, but no pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Kerri Hamilton** – Ms. Hamilton's application states that she is a "full-time community leader" and part-time consultant who "will return to full-time employment soon," and that she is a former cost/project accountant/analyst and horticultural consultant/designer. Her spouse is listed as a self-employed horticulturalist/consultant. She may have to abstain from participating in decisions that would have an impact on her spouse's business or any of her spouse's clients. Her application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Norman Kline** – Mr. Kline's application states that he is President and CEO of Library World, Inc., San Jose. Mr. Kline's spouse is listed as the Director of Advancement, Marketing, Public Relations, and Fund Development for the Diocese of San Jose. Mr. Kline may need to abstain from participating in decisions that would have an impact upon his business, upon one of its clients, or upon his spouse's employer or any client of his spouse's employer. Mr. Kline's

application indicates that he is currently the Board Chair for the Valley Medical Center Foundation, Committee Chair for Santa Clara County Measure A Citizen's Oversight Committee, a Member of the Board of the Guadalupe River Park Conservancy, and a Member of the Board of Sustainable Silicon Valley. Mr. Kline may also need to abstain from participating in decisions that would have an impact upon any of the organizations with which he is involved. His application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Bonnie Mace** – Ms. Mace does not list any employment for herself. She states her spouse's employment as Principal of Rubicon, Inc., Los Gatos. She may have to abstain from participating in decisions that would have an impact on her spouse's employer or any of the employer's clients. Ms. Mace's application indicates that she is currently Chair of the San Jose Housing and Community Development Advisory Commission, President of the District 8 Community Roundtable, Coordinator of the Silicon Valley Leadership Group, Chair of the Evergreen Elementary School District Measure I Bond Oversight Committee, and Member of the East Side Union High School District Measure E Bond Oversight Committee. Ms. Mace's position on the San Jose Housing and Community Development Advisory Commission is incompatible with the Planning Commissioner position so she would be required to resign prior to accepting the position of City Planning Commissioner. Ms. Mace may also need to abstain from participating in decisions that would have an impact upon any of the other organizations with which she is involved. Her application discloses an incompatible office, but no pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Elias Portales** – Mr. Portales states his employment as Principal for EEP Law Group, San Jose. He states that his spouse is employed as a Project Controls Specialist for Jacobs, which oversees budgets and schedule for infrastructure projects in the Bay Area, including VTA projects. Mr. Portales may need to abstain from participating in decisions that would have an impact upon his business, upon one of his clients, or upon his spouse's employer or a client of his spouse's employer. His application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Patrick Waite** – Mr. Waite's application does not state any employment for himself or a spouse. Mr. Waite's application indicates that he is currently the Board Chair for Going Evergreen and sits on the Board of Regents for Archbishop Mitty High School. Mr. Waite may need to abstain from participating in decisions that would have an impact upon any of the organizations with which he is involved. His application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

**Jack Wimberly** – Mr. Wimberly states that he is employed as Firm Director for Transparency, San Jose, and does not state any employment for a spouse. He may need to abstain from participating in decisions that would have an impact upon his employer or one of his employer's clients. His application discloses no incompatible offices or pervasive conflicts of interest likely to occur in the performance of duties on the Planning Commission.

## **CONCLUSION**

Many of the applicants are associated with one or more organizations that may be involved with the City in one way or another. It is difficult to ascertain from a number of the applications whether the applicants are paid for their services. Although an applicant's service as a board member of a charitable organization does not constitute a legal conflict of interest, it may create

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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 his or her organization.

This office and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement have researched its respective records in order to provide the Council with information related to previous or potential conflicts analyses and pending litigation or Code Enforcement issues. No pending litigation or Code Enforcement issues in connection with these applicants have been identified.

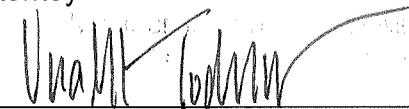
Two of the applicants, Rebecca Gallardo and Bonnie Mace, hold incompatible offices, as indicated above, that they would need to resign prior to appointment to the San Jose Planning Commission.

None of the applications reveal any pervasive conflict of interest which would prevent the applicants from serving on the Planning Commission, although some may need to disqualify themselves on major policy issues where a particular conflict situation arises. You may wish to consider the above comments in making your recommendations on appointments to the Planning Commission.

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By



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Senior Deputy City Attorney

cc: Debra Figone, City Manager  
Lee Price, City Clerk