



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: PUBLIC MEMBER APPLICANT
FOR FEDERATED CITY
EMPLOYEES' RETIREMENT
PLAN BOARD

DATE: November 23, 2020

BACKGROUND

This Office routinely reviews applications for appointment to City boards and commissions for conflicts of interest, appearance of bias and incompatible office. 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 summarize our review of the application submitted by an individual who will be considered by the City Council for a public member trustee position on the Federated City Employees' Retirement Plan's Board.

BOARD DUTIES

In order to analyze potential conflicts, it is necessary to consider the duties of the particular board or commission for which the applicant is seeking appointment. The Board of Trustees of the Federated City Employees' Retirement Plan is established under the Municipal Code to manage, administer and control the plan. The Board's scope of authority and duties include determining employee eligibility for benefits, establishing contribution rates for employees and the City based on actuarial valuations, commenting on ordinances that propose modifications to the retirement plan and investing retirement funds. The Board is expressly authorized to secure the following types of contractual services:

1. Actuarial service
2. Auditing services
3. Investment management services
4. Investment performance evaluation services
5. Proxy voting services
6. Legal services
7. Other consulting services as the Board deems necessary to carry out its duties and responsibilities under the retirement plan.

SUBSTANCE OF CONFLICTS REVIEW

Incompatible Office

The doctrine of incompatible offices is contained in Government Code section 1099. To fall within the Doctrine of Incompatible Offices, two elements must be present.

- Hold two public offices simultaneously, and
- A potential conflict or overlap in the functions or responsibilities of the two offices must exist.

Appearance of Bias

There may be facts which would not amount to a legal conflict of interest, but which could require a Board trustee to recuse him or herself from a Board vote or discussion, because of an appearance of bias on the part of the Board. City Council policy requires Board members to be free from bias in their decision making, and may require a Board member to recuse him or herself if the facts could reasonably lead one to conclude that the Board member would be biased for or against a person or entity.

Legal Conflicts That May Preclude Board Contracts

Because the Board has independent contracting authority, Board member conflicts of interest preclude the Board from contracting with entities in which a trustee has a financial interest. (Government Code Section 1090) For the Federated City Employees' Retirement Plan Board, it is not adequate for a trustee to recuse him or herself from participating in a Board discussion or from voting on matters coming before the Board. The trustee with the conflict must either resign, or the Board must forgo the contractual opportunity.

While this list is not complete, conflicts generally arise in one or more of the following situations:

- A trustee has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.
- A trustee's spouse or domestic partner has "sources of income" within the 12 months preceding the start of the trustee's term or during the trustee's term, as defined under the Political Reform Act.

- A trustee or trustee's spouse or domestic partner is an Officer or Board Member of an entity other than the Retirement Board and the entity is involved in a matter coming before the Board.

APPLICANT

Spencer Horowitz

Employer

Self-Employed

Business Development Consultant

Spouse's Employer

Greg Haupt Farmers Insurance

Administrative

Conflict of Interest

Mr. Horowitz is a current member of the Federated City Employees' Retirement Plan Board. He did not identify any organization, association, or entity in which he is active or which he is involved or associated that might be affected by decisions of the Board. He further indicated that he would have no financial interest to disclose other than his interest in his employment and his spouse's interest in employment.

Mr. Horowitz did disclose that he was appointed by the Santa Clara Valley Water District to the Public Facilities Financing Corporation (PFFC) and he is a current board member of the PFFC. The PFFC is a nonprofit public benefit corporation whose primary purpose is to provide assistance to the Santa Clara Valley Water District in financing the acquisition, construction and improvement of public buildings, works and equipment for the district, together with site development, landscaping, utilities, furnishings and appurtenance and related facilities. There does not appear to be any legal conflicts based solely on the applicant's membership on the board of the PFFC.

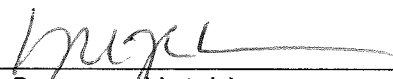
LEGAL REVIEW OF RETIREMENT BOARD APPLICANTS

Our office reviewed the application submitted by the applicant to be considered for the public member position on the Federated Employees' Retirement Plan Board by the City Council. Our review was limited to the information provided by the applicant and was not intended to be a comprehensive investigation of potential conflicts involving the applicant. The results of our review are as follows:

- The applicant did not disclose any incompatible offices.
- The applicant did not disclose an appearance of bias.
- The applicant did not disclose an existing conflict of interest, e.g. no disclosure of an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Federated Retirement Board.
- The applicant indicated that he would not have any financial interests other than his own employment and his spouse's employment.

Attachment A is a list of the entities with which the Federated City Employees' Retirement Board has a contractual relationship as of October 30, 2020. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that an applicant would have a financial interest if they are not employed by the firm. However, even if an applicant does not currently have a contractual relationship with any firm in which the Board currently has a financial interest, the list of entities with which the Board contracts with changes from time to time and we would expect a Board member's financial interests to change over time as well. Thus, both staff and any individual appointed to this Board will need to exercise vigilance to avoid conflicts from arising in the future.

NORA FRIMANN
City Attorney

By 
Suzanne Hutchins
Sr. Deputy City Attorney

cc: David Sykes, City Manager
Toni Taber, City Clerk
Roberto Pena, Director Retirement Services

ATTACHMENT A
Retirement Board Contractors

FEDERATED RETIREMENT PLAN

List of Administrative and Investment Vendors as of October 30, 2020

Custodian Bank

Investment Consultant

Absolute Return Consultant

Investment Attorney

Proxy Voting

General Counsel

Tax Counsel

Actuary

Governance and Joint Personnel

Disability Counsel

Auditor

Risk Advisory Services

Portfolio Overlay Services

Pension Administration System Project Manager

Legistar Operating System

Medical Consultant

Communication Consultant

Printing Services

Investment Professionals:

Artisan Partners
Arbor Lane Capital Management
Blackstone Group
Black Rock Financial Management
Blue Bay Asset Management
BNY Mellon Asset Management
Cove Street Capital LLC
Credit Suisse Asset Management, LLC
Crestline Investors
Cross Ocean Partners
DRA Advisors
DE Shaw
Dimensional Fund Advisors
Eagle Point
GEM Realty Capital
Global Infrastructure Partners
GQG Partners

BNY Mellon
Meketa Investment Group
Albourne LLC
Hanson Bridgett LLP
Glass Lewis
Reed Smith, LLP
Ice Miller, LLP
Cheiron
Cortex
Saltzman Johnson Law Corp.

Grant Thornton
Verus Advisory, Inc.
Russell Investments
LRWL
LRS
Dr. Tierman
Communication Advantage
Marty Boyer

PJ Graphics

Great Hill Partners
Hudson Bay Capital Management
Innovation Endeavors
Insight Investment
JD Capital
Kepos Capital
Lime Rock Partners
Medley Capital LLC
Neuberger Berman
Northern Trust Asset Management
Oberweis Asset Management
Octagon Credit Investors
Pantheon Ventures
Partners Group
Pine River Capital Management
Russell Investment
Torchlight Investors
Tristan Capital Partners
Voya Investment Management
Wellington Management
White Oak Global Advisors