

TO: HONORABLE MAYOR AND CITY
COUNCIL

FROM: NORA FRIMANN
City Attorney

SUBJECT: Appeals Hearing Board Applicant

DATE: November 30, 2021

BACKGROUND

This Office routinely reviews applications to City Boards, Commissions and Committees. The applications 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 that are disclosed by the applications. To analyze potential conflict, it is necessary to consider the duties of the commission or committee to which the applicant is seeking appointment. This review is limited to the information provided on the application and is not intended to be comprehensive investigation of potential conflicts involving the applicants.

BOARD DUTIES

The Appeals Hearing Board sits as a quasi-judicial Board which hears code enforcement appeals of blighted conditions; illegal building activity; unsafe and unsanitary living conditions; abandoned, dismantled and inoperative vehicles; neglected vacant houses; weed abatement liens; garbage liens; police permittee denials or revocations; sign removal fees; stop control devices or traffic sign appeals; and utility billing and graffiti abatement fees. The Board has the authority to impose certain penalties in lieu of criminal and civil judicial enforcement. At least one member of the Board must be an attorney licensed to practice law in the State of California.

APPLICANT

The application from the applicant listed below was reviewed by our Office. Unless otherwise indicated, the application does not disclose any incompatible offices or apparent conflicts of interest that would substantially impair the functioning of the Board.

LEGAL CONFLICTS THAT MAY PRECLUDE VOTE OR PARTICIPATION

Certain positions may preclude a member from participating in the Board discussion or from voting if a matter involving the entity comes before the Board. 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 member within the 12 months preceding the start of the Board term, as defined under the Political Reform Act.
- An application shows sources of income to a Spouse or Domestic Partner of a potential member within the 12 months preceding the start of the Board 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 Board.

APPEARANCE OF BIAS

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

REVIEW OF APPLICANT

Set forth below is the applicant, and any apparent legal conflicts of interest and/or appearance of bias related to entities that are likely to come before the Board in some manner, as identified in their application.

Ronald Cabanayan – Mr. Cabanayan is a practicing attorney at law in San Jose. He has previously been appointed to two terms and is the current Vice-Chair of the Appeals Hearing Board. His spouse is employed by Cristo Rey Jesuit High School in San Jose. The application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

The applicant does not appear to hold an incompatible office or to have pervasive conflicts of interest that would preclude him from serving on the Appeals Hearing Board. **It is possible depending on specific circumstances that the following situations could create an actual conflict of interest or an appearance of conflict of interest including, but not limited to, proximity of the property before the Commission to the applicant's residence or business, an applicant's position on the board of an organization that appears before the Commission, or the member's or his/her spouse's current or prior financial interest in an organization that comes before the Commission.** The applicant states they reside in San Jose. The Committee may wish to consider the above comments in making its recommendations regarding an appointment to the Appeals Hearing Board.

NORA FRIMANN
City Attorney

By 

Rosa Tsongtaatarii
Senior Deputy City Attorney

cc: Jennifer Maguire, City Manager
Toni J. Taber, CMC, City Clerk