



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: November 16, 2018

**SUBJECT: APPOINTMENT TO THE FIRE RETIREE SEAT ON THE BOARD OF
ADMINISTRATION FOR THE POLICE AND FIRE RETIREMENT
PLAN**

RECOMMENDATION

- a. Appoint Richard Santos as the Fire Retiree Representative for a third term ending November 30, 2022 with the support of the Board of Administration for the Police and Fire Retirement Plan.
- b. In the alternative, if the Council does not appoint and a vacancy remains, direct the City Clerk to continue recruitment efforts.

OUTCOME

Appointment to the Fire Retiree Representative Seat will allow for a fully constituted Board of Administration for the Police and Fire Retirement Plan (Board) to continue conducting regular business.

BACKGROUND

San José Municipal Code Section 2.08.1210.D requires one member of the Board to be a person who was employed in the Fire Department and has retired under provisions of the Police and Fire Retirement Plan.

The recruitment process for a vacancy for the Fire Retiree seat due to the expiration of a retired fire member's term of office is set forth in Section 2.08.1245, which requires a nomination process conducted among retired members of the Police and Fire Retirement Plan. The nomination process allows up to three candidates who have received the highest number of votes by the retired members to move on to the next step of an interview by a panel. The interview panel consists of a representative from the San José Police Officers' Association, a representative from International Association of Fire Fighters Local 230, and a representative from the City Manager's Office. The purpose of the interview is to ensure that the candidates are viable in that

they will be able to attend meetings of the Board and fulfill the time commitment of member of the Board. The panel recommends to the City Council one of the interviewed retired fire members for appointment to the Board.

Each retired member appointed to the Board serves for a term of four years, unless they are filling an unanticipated vacancy, then they serve the remainder of the unexpired term.

Pursuant to Section 2.08.1235.D, retired members may not serve more than two consecutive terms *unless* no other retired member is recommended through the regular recruitment process.

ANALYSIS

Trustee Richard Santos is completing his second consecutive term for the Fire Retiree Seat, which expires on November 30, 2018.

On August 31, 2018 the Office of the City Clerk mailed a notice of vacancy to all retired members of the Police and Fire Retirement Plan for the upcoming Fire Retiree vacancy (Attachment A). The election date was set for November 19, 2018 with a panel interview on November 20, 2018, in order to ensure a fully constituted Board right after the expiration of the incumbent's term on November 30, 2018.

Pursuant to Section 2.08.1245.D.1, the nomination period opened on September 10, 2018 at 8:00 a.m. and closed on September 28, 2018 at 5:00 p.m (Attachment A). During the nomination period, Trustee Santos, the current Fire Retiree Representative, expressed interest in applying for a third term. Trustee Santos was notified that because he had already served two consecutive terms, under the Municipal Code, he was not eligible to be nominated for a third term through the regular nomination process, but would be eligible for appointment by the City Council to a third term if there were no other applicants. At the close of the nomination period, the Office of the City Clerk did not receive any eligible applications, and notified Trustee Santos that he was eligible to be appointed by the City Council to a third term and he could submit a letter of interest to that effect.

On September 1, 2018, Trustee Santos submitted an application and on October 9, 2018, Trustee Santos submitted the attached letter requesting to serve a third term (Attachment B). On October 15, 2018, after close of the nomination period, Richard Seal, a retired Battalion Chief with the City of San José submitted an application for the Fire Retiree seat. On November 8, 2018, Richard Seal resubmitted his application. Applications from both candidates are attached. Because Richard Seal's application was received after the close of the nomination period, there was insufficient time to extend the nomination period, or hold another nomination period, in order to hold an election among the police and fire retirees for recommendation and appointment prior to the expiration of the current incumbent's term on November 30, 2018.

Per City Council direction on August 9, 2016 that City staff must include in memoranda to Council a statement indicating the City board/commission action on the item being heard by Council, this item was taken to the Board for recommendation and input. On November 1, 2018, the Board considered the incumbent Trustee Santos' request for a third term and unanimously voted in support of Trustee Santos' request for a third term (Attachment C). A letter of support from Board Chair Vincent Sunzeri on behalf of the Board is attached (Attachment D).

The City Council may accept the Board's recommendation or, in the alternative, since there appears to be at least one interested applicant (Richard Seal), direct the City Clerk to continue recruitment. If the Clerk continues the recruitment, a nomination process will be conducted among the retired members of the Police and Fire Retirement Plan pursuant to Section 2.08.1245.D. Trustee Santos cannot be considered for a third term through the nomination process pursuant to Section 2.08.1235.D, which provides that retired members may not serve more than two consecutive terms *unless* no other retired member is recommended through the nomination process. Up to three candidates who have received the highest number of votes by the retired members will move on to the next step of an interview by a panel, consisting of a representative from the San José Police Officers' Association, a representative from International Association of Fire Fighters Local 230, and a representative from the City Manager's Office. The panel will then recommend to the City Council one of the interviewed retired fire members for appointment to the Board.

EVALUATION AND FOLLOW-UP

A core duty of the Office of the City Clerk is to minimize vacancies on the Boards and Commissions. If any vacancies remain, it is recommended that the City Council direct the City Clerk to continue recruitment.

PUBLIC OUTREACH

A memorandum sent to the Board, see attachment, was posted on the Office of Retirement Services' website as part of the Board's November 1, 2018 Meeting Agenda. This memorandum has been posted on the City Clerk's website as part of the November 27, 2018 City Council Meeting Agenda.

COORDINATION

This memorandum has been coordinated with the Office of the Retirement Services and the Office of the City Attorney.

November 16, 2018

Subject: Police and Fire Retirement Board Fire Retiree Seat

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BOARD RECOMMENDATION/INPUT

The Board of Administration for the Police and Fire Retirement Plan considered Trustee Santos' request for a third term at their Regular Board Meeting on November 1, 2018 as item 4f. The Board unanimously voted to support Trustee Santos' third term. A letter from the Board Chair is attached.

CEQA

Not a Project, File No. PP17-010, City Administrative Activities, resulting in no changes to the physical environment.

A handwritten signature in black ink, appearing to read 'Toni J. Taber', with a long horizontal flourish extending to the right.

TONI J. TABER, CMC
City Clerk

For questions, please contact Elaine Trinh, Deputy City Clerk, at (408) 535-1260.

Attachment A: Notice of Retiree Nomination Process

Attachment B: Letter from Trustee Santos

Attachment C: Memorandum from the City Clerk to the Board

Attachment D: Letter from Board Chair

Attachment E: San José Municipal Code Sections re: Retiree Member Appointment

Attachment A



NOTICE OF RETIREE NOMINATION PROCESS *Police and Fire Department Retirement Plan Board of Administration* *Fire Department Retiree Representative*

NOTICE IS HEREBY GIVEN that in accordance with the San José Municipal Code and the election procedure established by the City Council, a nomination process will be held on Monday, November 19, 2018, for the following purpose: recommending to the City Council one retiree representative who is a retired member of the **Fire Department** under the Police and Fire Department Retirement Plan to serve on the Board of Administration for said retirement system for a term which expires November 30, 2022.

Eligible candidates may, not earlier than 8:00 a.m., Monday, September 10, 2018, or later than 5:00 p.m., Friday, September 28, 2018, file in the Office of the City Clerk a nomination petition for office. The petition form, which will be available on and after September 10, 2018, shall be obtained from the Office of the City Clerk and shall be signed by at least ten (10) eligible retired members of the Fire Department. Nominations may not be withdrawn after the close of the nomination period. No one retiree may sign more than one nomination petition for a given office.

Candidates must file an application with the Office of the City Clerk before the petition form is submitted. The application can be found at: <https://sanjose.granicus.com/boards/apply>. Candidates' statements of qualifications, prepared in accordance with Section 700 of the election procedure, may be filed with the City Clerk not later than 5:00 p.m., Friday, September 28, 2018.

ELIGIBILITY RULES ARE AS FOLLOWS:

- **Candidates:** For the Police and Fire Department Retirement Board (P&F), only **Fire Department retirees** who are receiving retirement allowances from the P&F as of July 1, 2018* shall be eligible to run.
- **Petition Signers:** Only **Fire Department retirees** who are receiving retirement allowances from P&F as of July 1, 2018*, shall be eligible to sign nomination petitions of candidates for the Board.
- **Voters:** Only **Police or Fire retirees** who are receiving retirement allowances from P&F both as of July 1, 2018* shall be eligible to vote.

*Retirees must be set up with Retirement Services' payroll system for August to be included in the count.

Ballots for the nomination process will be mailed to eligible voters no later than Friday, October 19, 2018. Any questions about the nomination process may be referred to the Office of the City Clerk, (408) 535-1260 or by e-mail: commissions@sanjoseca.gov.

Dated: August 31, 2018

/s/ Toni J. Taber
Toni J. Taber, CMC, City Clerk

Approved by the City Clerk

Attachment B

San Jose Police/Fire Retirement Board of Trustees

Re: Approve my request as the Fire Retiree Trustee for the San Jose Police/Fire Retire Board

Mr. Chair Vince Sunzeri:

I have over 52 years of Government service and I am the longest serving Trustee of the San Jose Fire Retirement Board with 20 years of service. I was the Vice Chair of the San Jose Fire Retire Board as an Active member for 12 years and 8 years as the Fire Retiree Trustee.

I enjoy and take my responsibility as a fiduciary very seriously. I find working with the present Trustees very satisfying and we all perform well as a team in providing financial security for this public fund.

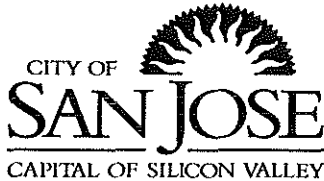
I request your approval in my position as the Retiree Fire Trustee for the San Jose Police/Fire Retirement Board.

Sincerely



Richard P. Santos
Trustee

Cc: San Jose Mayor and City Council
Cc: San Jose City Clerk



Memorandum

TO: BOARD OF ADMINISTRATION FOR THE
POLICE & FIRE RETIREMENT PLAN

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: FIRE RETIREE APPOINTMENT

DATE: October 25, 2018

RECOMMENDATION

Recommend to the City Council that Richard Santos be appointed to the Fire Retiree seat on the Board of Administration for the Police and Fire Retirement Plan for a third term ending November 30, 2022.

BACKGROUND

Trustee Richard Santos is completing his second consecutive term for the Fire Retiree Seat, which expires November 30, 2018. San José Municipal Code Section 2.08.1235.D provides that "Retired members may not serve more than two consecutive terms unless no other retired member is recommended" pursuant to the nomination process.

ANALYSIS

Pursuant to San José Municipal Code Section 2.08.1245.D.1, the nomination period for the Fire Retiree Seat opened on September 10, 2018 and closed on September 28, 2018. During this nomination period, no applications were received, however, Trustee Santos expressed interest in applying for a third term. Our office notified him that because he had already served two consecutive terms, he would not be eligible to apply through the regular nomination process, but would be eligible to be appointed by the City Council to a third term if there were no other applicants.

On October 9, 2018, Trustee Santos submitted the attached letter requesting to serve a third term. On October 15, 2018, after close of the nomination period, Richard Seal, a retired Battalion Chief with the City of San José submitted an application for the Fire Retiree seat. Because his application was received after the close of the nomination period, there is insufficient time to hold an election among the police and fire retirees for recommendation and appointment prior to the expiration of the current term on November 30, 2018.

In order to allow a fully constituted board following the expiration of the current Fire Retiree seat on November 30, 2018, it is recommended that the Board recommend to the City Council that Richard Santos be appointed to the Fire Retiree seat for a third consecutive term. Alternatively, the Board can recommend to the City Council that the City Clerk re-open recruitment for the Fire Retiree seat.

TONI J. TABER, CMC
City Clerk

Attachments

Letter from Trustee Richard Santos

Attachment D



Office of Retirement Services

Federated City Employees' Retirement System Police and Fire Department Retirement Plan

November 27, 2018

Honorable Mayor and City Council
City of San Jose
200 E. Santa Clara Street, 18th Floor
San Jose, CA 95113

Dear Honorable Mayor and City Council,

By Memorandum dated October 25, 2018, you requested that the Board of Administration of the Police and Fire Department Retirement Plan comment on the application and proposed re-appointment of Richard Santos to a third term as the retired fire member of the Board, pursuant to San Jose Municipal Code sections 2.08.1235 and 2.08.1245.

On behalf of the Board, we advise that we understand Mr. Santos timely expressed an interest in continuing to serve on the Board if there were no other applicants; that there were no other applications timely filed; and we believe that Mr. Santos is qualified to serve on the Board. We would welcome his reappointment to the Board. We trust that the City will follow its regular process for making the appointment.

The Board recognizes that under law Mr. Santos will hold over in his position at the expiration of his current term on November 30, 2018, and will continue to serve as a Board member, until the City Council makes the appointment for the next term of office.

Sincerely,

Vincent Sunzeri
Chair of the Board of Administration
Police and Fire Department Retirement Plan

Attachment E

SAN JOSE MUNICIPAL CODE

2.08.1235 - Terms of office - Retired members.

* * *

C. Whenever a vacancy occurs in the seat held by a retired member, the council, or the mayor, if authorized by the council, shall appoint a successor in conformance with the provisions of [Section 2.08.1245](#) of this code.

D. Retired members may not serve more than two consecutive terms unless no other retired member is recommended pursuant to [Section 2.08.1245](#)

2.08.1245 - Recommendations for filling employee and retiree vacancies.

D. The initial vacancy in the seat on the board for retired fire member of the plan, and any subsequent vacancy in a seat on the board held by a retired fire member of the plan because of the expiration of a retired fire member's term of office, shall be filled as follows:

1. The retired members of the plan shall recommend, at an election to be conducted among them by the city clerk, one of such retired members as a successor for such seat.
2. A panel consisting of a representative from the San José Police Officers' Association, a representative from International Association of Fire Fighters Local 230, and a representative from the city manager's office shall interview the three (or less if there are fewer than three candidates) retired members receiving the highest number of votes. The purpose of the interview shall be to ensure that the candidates are viable in that they will be able to attend meetings of the board and fulfill the time commitment of member of the board.
3. The panel shall recommend to the city council one of the interviewed retired fire members for appointment to the board. The panel's recommendation shall be determined by a majority of the members of the panel; provided that a dissenting member of the panel may submit a minority report. If there is no majority for the recommendation of a retired member, each member of the panel may submit a written report to the city council.

* * *

F. The appointment of employee and retiree members shall be routine business on the council agenda.

1. Council shall only reject the employee recommended by a majority of those voting in an election among employees upon a finding of cause for rejection.
2. Council shall only reject the retiree recommended by an interview panel upon a finding of cause for rejection.
3. Cause for rejection may include, but is not be limited to, council finding that the recommended candidate will not be able to attend meetings of the board and fulfill the time commitment of a member of the board, or to act in accordance with fiduciary duties or carry out the requirements of governing legislation, including the requirements of [Chapter 3.36](#) of [Title 3](#) of this Code.