



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Toni J. Taber, CMC

**SUBJECT:** REAPPOINTMENT TO  
APPEALS HEARING BOARD

**DATE:** January 10, 2019

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## RECOMMENDATION

Consider reappointment of Elizabeth Chien-Hale to the Appeals Hearing Board for the remainder of her unexpired term, ending December 31, 2021, upon a finding that there was good excuse for her absences from Board meetings or upon finding that the reappointment will be in the City's best interests.

## OUTCOME

Reappointment of Elizabeth Chien-Hale to the Appeals Hearing Board will allow for the Board to continue to have a quorum (four out of seven members) to conduct regular business.

## BACKGROUND

The Appeals Hearing Board (Board), consisting of seven (7) members appointed by the City Council, which includes one (1) member who is an attorney-at-law licensed to practice in the State of California, is established by San Jose Municipal Code Section 2.08.600.

Under San José Municipal Code (SJMC) Section 2.08.620, the Appeals Hearing Board has the following functions, powers, and duties:

- A. Hear all administrative hearings and appeals authorized by this Code or by ordinance.
- B. Conduct all administrative abatement action hearings authorized by this Code or by ordinance.
- C. Perform the functions and duties within the jurisdiction of the code enforcement appeals commission and traffic appeals commission as set forth in other titles of this Code.
- D. Perform such other programs or functions related to administrative hearings and appeals that the city council or the city manager may, from time to time, authorize or request.
- E. Hear and determine, consistent with city policies, appeals from orders of the city traffic engineer pertaining to citizen requests for stop control devices.
- F. Issue decisions, consistent with city policies, to the city traffic engineer on the subject of installing stop signs at street intersections.

Elizabeth Chien-Hale was appointed to the Appeals Hearing Board on December 12, 2017 to a term ending December 31, 2021. SJMC Section 2.08.060 (Attachment A) establishes rules and regulations regarding attendance at Board meetings.

On December 14, 2018, the Appeals Hearing Board Secretary notified the City Clerk's Office that Elizabeth Chien-Hale had unexcused absences for more than 20% (twenty-percent) of the Board's regular meetings in February, November, and December 2018. The Appeals Hearing Board held ten (10) regular meetings this past calendar year. On December 14, 2018, the Clerk's Office notified Elizabeth Chien-Hale in writing that her absences resulted in a deemed resignation under San Jose Municipal Code Section 2.08.060.

City Board Members who are deemed to have automatically resigned due to unexcused absences may seek reappointment from the City Council pursuant to Section 2.08.060.G. Ms. Chien-Hale has requested that the City Council consider her for reappointment to her unexpired term. Ms. Chien-Hale's request is included with this memorandum (Attachment B).

### **ANALYSIS**

Section 2.08.060.G allows the Council to reappoint a member whose seat became vacant by virtue of a deemed resignation due to unexcused absences to her former office for the balance of the member's unexpired term, if Council finds there was good excuse for the member's absences from meetings or finds that the reappointment will be in the City's best interests. In the event of a reappointment, the previous unexcused absences of the member shall not be considered in determining any future resignation of the member. If Council does not reappoint, the seat will be up for appointment.

### **EVALUATION AND FOLLOW-UP**

A core duty of the Office of the City Clerk is to minimize vacancies on the Boards and Commissions. At the time of this writing, the Office of the City Clerk is conducting an open recruitment to obtain additional applicants for the Board. The applicants will come before City Council on January 15, 2019 for interview and appointment.

### **PUBLIC OUTREACH**

This memorandum has been posted on the City Clerk's website as part of the January 15, 2019 City Council Meeting Agenda.

### **COORDINATION**

This memorandum has been coordinated with the Office of the City Attorney and the Department of Planning, Building, and Code Enforcement.

**COMMISSION RECOMMENDATION/INPUT**

The recommended actions have no commission input or recommendation.

**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', written in a cursive style.

TONI J. TABER, CMC  
City Clerk

For questions, please contact Toni Taber, City Clerk, at (408) 535-1260.

# ATTACHMENT A

## SAN JOSE MUNICIPAL CODE

### 2.08.060 - Absence from meetings - Reappointment.

- A. A member of any board or commission, other than the planning commission, the salary setting commission and the civil service commission, shall be deemed to have automatically resigned from office if:
  - 1. The board or commission has four or fewer regular meetings in any calendar year, and the member has unexcused absences from any two consecutive regular meetings of the board or commission; or
  - 2. The board or commission has more than four regular meetings in any calendar year, and the member has unexcused absences from either:
    - a. Any three consecutive regular meetings of the board, or commission; or
    - b. More than twenty percent of the total number of regular meetings in any calendar year, or if the member was appointed to fill a vacancy, more than twenty percent of the total number of remaining regular meetings in that calendar year.
- B. For purposes of this section, the following shall not be considered an unexcused absence:
  - 1. An absence due to an illness of the member, or illness or death of a member's spouse, domestic partner, parent, child, sibling or dependent; or
  - 2. An absence because a member is away on authorized board or commission business; or
  - 3. For any member who is a city councilmember or a city employee, an absence due to the member performing required city business; or
  - 4. An absence from a meeting of the board of administration for the federated city employees' retirement system or of the board of administration for the police and fire department retirement plan which the board of administration has found to be for good cause; or
- C. Within a reasonable period, but not exceeding ten days after a member has been deemed to have resigned pursuant to this section, the secretary of the board or commission shall notify the city clerk of the vacancy and the city clerk shall thereupon notify the member that the member is deemed to have resigned pursuant to this section. The city clerk shall simultaneously notify the city council that the vacancy exists as a result of the automatic resignation.
- D. Except as provided in Subsection A. above, the provisions of this section shall apply to all voting members of boards and commissions established or otherwise regulated under this Chapter 2.08.
- E. As used in this section, "regular meetings" means regularly scheduled meetings of the board or commission and shall not include special meetings. For purposes of this section, adjourned regular meetings or continued regular meetings shall be considered special meetings.
- F. For purposes of this section, a member shall be deemed absent from a meeting if the member fails to be in attendance at a regular meeting for at least one-half of the duration of the regular meeting.
- G. A member whose seat has become vacant by virtue of the above provisions may be reappointed to his or her former office for the balance of the member's unexpired term if the council finds there was good excuse for the member's absence from meetings or finds that the reappointment will be in the best interests of the city.
- H. In the event of a reappointment, the previous unexcused absences of the reappointed member shall not be considered in determining any future resignation of the member under this section.

(Ords. 25209, 29250.)

# ATTACHMENT B

Elizabeth chien-hale

Thu 12/20/2018 1:30 PM

Dear All,

As I discussed with several staff members in the office, I would like to petition for reappointment.

Please consider this a formal request.

From what I understand, this item will be entered into the City Council meeting agenda on the 15th.

Thanks,

Elizabeth Chien-Hale