



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: APPEALS HEARING BOARD
APPOINTMENT

FROM: Toni J. Taber, CMC
City Clerk

DATE: January 10, 2019

RECOMMENDATION

- a. Interview applicant(s) for appointment to the Appeals Hearing Board;
- b. Appoint one (1) applicant to the Attorney-at-Law Seat on the Appeals Hearing Board for a term ending December 31, 2022;
- c. Appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2019;
- d. Appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2022;
- e. If Council did not approve Item 3.4 on today's Council agenda, appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2021;
- f. If Rajwant Bains is appointed to a third term on the Appeals Hearing Board, make a finding that the reappointment is necessary under San José Municipal Code Section 2.08.150.F in order to maintain a functioning quorum or to retain valuable experience on the Board; and
- g. If any vacancy remains, direct the City Clerk to continue recruitment efforts and bring forward additional applicants for consideration within 90 days.

OUTCOME

Appointment of applicants to the Appeals Hearing Board will allow for the Board to have quorum to continue conducting regular business in January 2019.

BACKGROUND

The Appeals Hearing Board (Board), consisting of seven (7) members appointed by the City Council and one (1) member must be 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 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.

There are four (4) immediate vacancies on the Appeals Hearing Board. Two vacancies are due to the resignation of Edgar Parker and Robyn Shearin, one vacancy is due to the deemed resignation of Elizabeth Chien-Hale (Item 3.3 on today's Council agenda), and one vacancy is due to the regular term end date of the Attorney-at-Law seat that expired on December 31, 2018.

The Office of the City Clerk conducted an open recruitment from August 2, 2018 through January 1, 2019. At the close of the recruitment, one application was received from Thomas Skinner, incumbent, for the Attorney-at-Law Seat, and two applications were received from Annie Lin and Rajwant Bains for the Public Member Seat.

ANALYSIS

As required by Council Policy 0-4, the appointment process for the Appeals Hearing Board includes the City Council holding a public interview of the applicants. The applicants have been invited to be interviewed by the City Council on January 15, 2019. Successful applicants must receive six (6) or more votes to be appointed to the Board. If any seat remains unfilled, it is recommended that the recruitment be referred to the City Clerk to ensure additional applications for consideration by Council in 90 days. After the interview, the Council may make three (3) appointments to the Board with various end dates. If Council did not approve Item 3.3 on today's Council agenda, then the Council may make up to four (4) appointments for the Appeals Hearing Board.

The applicant interview order was determined by using the California Secretary of State's Randomized Alphabet Drawing for the November 6, 2018 General Election Ballot. Applicants will be sequestered in another location so that they may not view or hear the interviews of other applicants until they are called to appear. The interview order is:

- Annie Lin
- Thomas Skinner
- Rajwant Bains

Memoranda from the Office of the City Attorney and the Department of Planning, Building, and Code Enforcement regarding their review for potential conflicts of interests are also included.

A. Thomas Skinner, Attorney-at-Law Seat

Thomas Skinner is the only applicant seeking reappointment to the Board for the Attorney-at-Law Seat. His application is attached to this memorandum. His first term was from June 6, 2017 to December 31, 2018, a period of less than two years. Therefore, he is eligible for reappointment to a second term. He is current on his state-required Form 700 filing, AB1234 Ethics Training and Sexual Harassment training, and City-required boards and commissions training.

B. Annie Lin, Public Member Seat

Annie Lin is seeking appointment to the Public Member Seat. Her application is attached to this memorandum.

C. Rajwant Bains, Public Member Seat

Rajwant Bains is seeking appointment to the Public Member Seat. Her application is attached to this memorandum. Ms. Bains previously served two consecutive terms on the Appeals Hearing Board from October 2011 to December 31, 2013, and from January 1, 2014 to December 2017, during which she timely complied with the state-required Form 700 filing, AB1234 Ethics Training and Sexual Harassment training, and City-required boards and commissions training. Under Council Policy 0-4, because she has not been off the Appeals Hearing Board for a full four-year term, her reappointment, if any, would be to a third term.

Term limits apply to the Appeals Hearing Board. Under San José Municipal Code Section 2.08.150, members of the Appeals Hearing Board serve for a term of four years and are eligible for reappointment at the expiration of their first term for one additional four-year term. Should a Commissioner be off a commission for at least one full term, the Commissioner shall be eligible for a new appointment to that Commission.

Ms. Bains has served two terms of six years instead of the maximum eight years.

Council has the discretion under San José Municipal Code Section 2.08.150.F to reappoint Ms. Bains to a third term of one to four years if the Council find that her reappointment is necessary to:

1. Maintain a functioning quorum on the commission; or
2. Maintain commissioners with one or more years of experience or a required background on the commission; or
3. Establish or reestablish staggered terms to preserve a continuity of membership on the board or commission.

EVALUATION AND FOLLOW-UP

A core duty of the Office of the City Clerk is to minimize vacancies on the Boards and Commissions.

PUBLIC OUTREACH

The Office of the City Clerk conducted several open recruitments for the Public Member Seat beginning August 2, 2018 through January 1, 2019 with the following recruitment efforts:

- Council Offices and Boards and Commission secretary's newsletters and distribution tools
- Posted on the City's Brown Act Board
- Posted on the City Manager's Weekly Report
- Posted on the City's main website and Clerk's Office webpage
- Posted on City Calendar
- Distributed to all community centers and library branches
- Promoted through NextDoor.com from August 7, 2018 through August 22, 2018.

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.



TONI J. TABER, CMC
City Clerk

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