



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

**SUBJECT: POLICE AND FIRE
DEPARTMENT RETIREMENT
PLAN BOARD PUBLIC
MEMBER APPOINTMENT**

DATE: April 17, 2019

RECOMMENDATION

Appoint Drew Lanza as a Public Member on the Board of Administration for the Police and Fire Department Retirement Plan to a term ending April 30, 2023.

BACKGROUND

On August 10, 2010, the City Council approved Ordinance No. 28787 that revised Section 2.08.1210 of the San Jose Municipal Code to modify the composition and increase the size of the Police and Fire Department Retirement Plan Board of Administration to nine members, including the appointment of four (4) public members. Section 2.08.1240 of the Municipal Code provides that once three of the four public members were appointed to the Board, the Board would then interview applicants and make a recommendation to the City Council for the appointment of the ninth and final member.

ANALYSIS

The Police and Fire Department Retirement Plan Board of Administration met on Thursday, February 7, 2019 in regular session. The Board recommends reappointment of Drew Lanza as the 9th Trustee of the Board of Administration for the Police and Fire Retirement Plan. Pursuant to Section 2.08.1225 of the San Jose Municipal Code, all public members of the Board shall be eligible for reappointment to successive four-year terms.

COORDINATION

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

CEQA

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

HONORABLE MAYOR AND CITY COUNCIL

Subject: Board of Fair Campaign and Political Practices Interviews

Page 2



TONI J. TABER, CMC
City Clerk

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



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: PUBLIC MEMBER APPLICANT
FOR POLICE AND FIRE
RETIREMENT PLAN BOARD

DATE: April 16, 2019

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 the individual who will be considered by the City Council for a public member trustee position on the Police and Fire Departments' 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 Police and Fire Departments' 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 Police and Fire Departments' Retirement Plan's 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.

APPLICANTS

1. Drew Lanza

Employer

Berkeley Catalyst Fund

Managing Member

Spouse Employer

Silver Giving Foundation

Grant Manager

Conflict of Interest

Mr. Lanza did not identify any organization, association, or entity in which he was active or which he is involved or associated which might be affected by decisions of the Board. Mr. Lanza further indicated that he would have no financial interest to disclose other than his interest in his employment and his spouse's employment. Mr. Lanza's spouse's employment does not appear to create a potential for a conflict of interest.

LEGAL REVIEW OF POLICE AND FIRE RETIREMENT BOARD APPLICANT

Our office reviewed the application submitted by the applicant to be considered for the public member position on the Police and Fire Retirement 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 an incompatible office.
- The applicant did not disclose an appearance of bias.
- The applicant did not disclose an existing conflict of interest, e.g. the applicant did not disclose an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Board.
- The applicant indicated that he would not have any financial interests, other than his employment and his spouse's employment, to disclose.

Attachment A is a list of the entities with which the Police and Fire Departments' Retirement Board has a contractual relationship with as of October 2018. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that the applicant would have a financial interest if he is not employed by the firm. To the extent that the Board has engaged in additional contractual relationships since October 2018, the applicant, who is a current Board member, would be aware of any conflicts of interest with such relationships and would have had the opportunity to consult with Board's counsel. However, even if the applicant does not currently have a contractual relationship with any firm in which the Board 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 the individual appointed to this Board will need to exercise vigilance to avoid conflicts from arising in the future.

RICHARD DOYLE
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

POLICE AND FIRE DEPARTMENTS' RETIREMENT PLAN

List of Administrative and Investment Vendors as of October 2018

Custodian Bank

Investment Consultant

Hedge Fund Consultant

Investment Attorney

Proxy Voting

General Counsel

Tax Counsel

Actuary

Legal Counsel

State Street Bank
Meketa Investment Group,
Albourne LLC
Hanson Bridgett LLP
Glass Lewis
Reed Smith, LLP
Ice Miller, LLP
Cheiron
Saltzman Johnson Law
Corp.

Investment Managers:

American Realty Advisors
AHL Partners
Artisan Partners Limited Partnership
Beach Point Capital
Blackstone
BlackRock
GO Capital Partners / The Blackstone Group
Blue Bay Asset Management
Brookfield
Comgest Global Emerging Markets
Cross Ocean
Claren Road Asset Management, LLC
CCMP Capital Advisors
Colchester Global Investors Limited
Credit Suisse Risk Parity
Cove Street Capital
Davidson Kempner Capital Management LLC
DE Shaw
Dimensional Fund Advisors
Francisco Partners
Franklin Templeton
Dymon Asia Macro Fund
GEM Realty Capital
Harbour Vest Partners, LLC

Hudson Bay International Fund
Industry Venture
JD Capital (Tempo Volatility)
KSL Capital Partners
Marathon
Marshall Wace
Medley Capital
Northern Trust
Oberweis
OZ Capital
Orion Capital
Park Square Capital, LLP
Pantheon Ventures (US) LP
Pharo
Pine River Capital
Pinnacle
Portofolio Advisors, LLC
Rhumbline Advisors
Russell Implementation Services Inc.
Sandler Capital Management
Senator Investment Advisors LLC
Shoreline Capital
Siguler Guff & Company, LP
Symphony
Systematica
TA Realty
Torchlight Investors
TPG Capital
Tristan Capital Partners
Vanguard
Voya
Wadhvani (Keynes Lev Quant Strat, Ltd)
Wellington
White Oak