

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

**SUBJECT: PUBLIC MEMBER APPLICANTS
FOR FEDERATED CITY
EMPLOYEES' RETIREMENT
PLAN BOARD**

DATE: August 22, 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 applications submitted by individuals who will be considered by the City Council for a public member trustee position on the Federated City Employees' 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 applicants are seeking appointment. The Board of Trustees of the Federated City Employees 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 Federated City Employees Retirement Plan 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. Spencer Horowitz

Employer

Self-Employed

Business Development Consultant

Spouse's Employer

Greg Haupt Farmers Insurance

Administrative

Conflict of Interest

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

Mr. Horowitz did disclose that he was appointed by the Santa Clara Valley Water District to the Public Facilities Financing Corporation (PFFC) and he is a current board member of the PFFC. The PFFC is a nonprofit public benefit corporation whose primary purpose is to provide assistance to the Santa Clara Valley Water District in financing the acquisition, construction and improvement of public buildings, works and equipment for the district, together with site development, landscaping, utilities, furnishings and appurtenance and related facilities. There does not appear to be any legal conflicts based solely on the applicant's membership on the board of the PFFC.

2. Lionel Allan

Employer
N/A

Spouse's Employer
Retired Realtor

Conflict of Interest

Mr. Allan did not identify any organization, association, or entity in which he is active or which he is involved or associated that might be affected by decisions of the Board. He further indicated that he and his spouse would have no financial interest to disclose.

Mr. Allan did disclose that he was the 2015-2016 Chair of the Santa Clara County Civil Grand Jury committee on the City of San Jose's Unfunded Pension Liabilities. Mr. Allan is not a member of the Santa Clara County Civil Grand Jury for the current 2019-2020 term. On June 19, 2019, the 2018-2019 Santa Clara County Civil Grand Jury released publicly its Final Report entitled, "SAN JOSE - UNFUNDED PENSION LIABILITIES – A Growing Concern." The City of San Jose, with input from both retirement boards, will submit its response to this Report on or before October 1, 2019. If this applicant is appointed to the Federated Retirement Board and participated in the Grand Jury's Report, the Board and its counsel may want to consider any issues relating to the applicant's participation in the Federated Retirement Board's response to the Report.

3. John Klobe

Employer
N/A

Spouse's Employer
N/A

Conflict of Interest

Mr. Klobe did not identify any organization, association, or entity in which he is active or which he is involved or associated that might be affected by decisions of the Board. He further indicated that he and his wife would have no financial interest to disclose.

Mr. Klobe did disclose that he was a member of the Santa Clara County Civil Grand Jury for the 2017-2018 term and 2018-2019 term. Mr. Klobe is not a member of the Santa Clara County Civil Grand Jury for the current 2019-2020

term. On June 19, 2019, the 2018-2019 Santa Clara County Civil Grand Jury released publicly its Final Report entitled, "SAN JOSE - UNFUNDED PENSION LIABILITIES – A Growing Concern." The City of San Jose, with input from both retirement boards, will submit its response to this Report on or before October 1, 2019. If this applicant is appointed to the Federated Retirement Board and participated in the Grand Jury's Report, the Board and its counsel may want to consider any issues relating to the applicant's participation in the Federated Retirement Board's response to the Report.

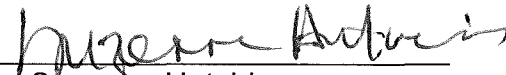
LEGAL REVIEW OF RETIREMENT BOARD APPLICANTS

Our office reviewed the applications submitted by the applicants to be considered for the public member position on the Federated Employees' Retirement Plan Board by the City Council. Our review was limited to the information provided by the applicants and was not intended to be a comprehensive investigation of potential conflicts involving the applicants. The results of our review are as follows:

- The applications do not disclose any incompatible offices.
- The applications do not disclose an appearance of bias.
- The applications do not disclose an existing conflict of interest, e.g. no disclosure of an existing financial interest in any organization, association, or entity that has an existing contractual relationship with the Federated Retirement Board.
- Two applicants indicated that they would not have any financial interests.
- One applicant indicated that he would not have any financial interests other than his employment and his spouse's employment.
- Two applicants disclosed that they were members of the Santa Clara County Civil Grand Jury. To the extent one of the applicants is appointed to the Board and the applicant participated in the Grand Jury's Final Report entitled, "SAN JOSE - UNFUNDED PENSION LIABILITIES – A Growing Concern," the Board and its counsel may want to consider any issues relating to the applicant's participation in the Federated Retirement Board's response to the Report.

Attachment A is a list of the entities with which the Federated City Employees' Retirement Board currently has a contractual relationship. We note that some of these are forms of entities (partnerships or private companies) in which it is unlikely that an applicant would have a financial interest if they are not employed by the firm. However, even if an applicant does not currently have a contractual relationship with any firm in which the Board currently 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 any 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

FEDERATED RETIREMENT PLAN

List of Administrative and Investment Vendors as of October 2018

Custodian Bank

State Street Bank

Investment Consultant

Meketa Investment Group

Hedge Fund Consultant

Albourne LLC

Investment Attorney

Hanson Bridgett LLP

Proxy Voting

Glass Lewis

General Counsel

Reed Smith, LLP

Tax Counsel

Ice Miller, LLP

Actuary

Cheiron

Legal Counsel

Saltzman & Johnson Law
Corp

Investment Managers and Hedge Funds:

American Realty Advisors

AHL Frontier

Artisan Partners Limited Partnership

ArrowMark Partners

BlackRock

Blue Bay Asset Management

Claren Road Asset Management, LLC

Comgest Asset Management International Limited

Cove Street Capital LLC

Credit Suisse Asset Management, LLC

Crestline Investors

Cross Ocean Partners

Davidson Kempner Capital Management LLC

DE Shaw

Dimensional Fund Advisors

DRA Advisors LLC

Dymon Asia Macro Fund

GEM Realty Capital

Global Infrastructure Partners

GQG Partners Global Emerging Markets

Great Hill Partners

Hudson Bay International Fund

Innovation Endeavors

JD CAPITAL

Kepos Capital

Marshall Wace Eureka

Medley Capital

NEPC, LLC
Neuberger Berman - PE Strategic Partnership
Northern Trust NT World ex-US
Oberweis International Opportunities
Pantheon Ventures
Partners Group (USA) Inc
Pathway Capital Management LLC
PGIM
Pharo Macro
Pine River Capital Management
Pinnacle Asset Management L.P.
Russell Implementation Services, Inc
Rhumblin Advisors
Sandler Capital Management
Senator Investment Group LP
Systemica Alternative
Torchlight Investors
Tristan Capital Partners
Vanguard Group
Voya Investment Management
Wadhvani (Keynes Lev Quant Strat, LTD)
White Oak Global Advisors, LLC