



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 27, 2020

Gary W. Schons  
Best Best & Krieger LLP  
City Attorney  
City of Palm Springs, 655 West Broadway, 15th Floor  
San Diego, CA 92101

Re: Your Request for Advice  
**Our File No. A-20-127**

Dear Mr. Schons:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Do the Act’s conflict of interest provisions prohibit Councilmember Dennis Woods from taking part in a City decision to hire a real estate broker to list two City-owned properties for sale where those properties are located within 500 and 1,000 feet, respectively, of the Councilmember’s residence?

### CONCLUSION

No. Councilmember Woods may take part in the decision to hire a real estate broker to list the two City-owned properties because it will not have any measurable impact on his residence.<sup>2</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> This conclusion is limited only to the decision to hire a real estate broker to list the properties to gauge the public’s interest in the property. However, we caution that it is likely Councilmember Woods is disqualified from any subsequent decisions regarding the sale of the properties, and we recommend he seek further advice prior to taking part in any subsequent decision involving the properties.

## **FACTS AS PRESENTED BY REQUESTER**

Your firm serves as City Attorney for the City of Palm Springs, and you seek this advice on behalf of City Councilmember Dennis Woods. The City Council has directed staff to solicit real estate services to determine general interest in the purchase of two City owned properties – the so-called Crescendo property and the Boulders property. As noted in the City Council Staff Report dated October 8, 2020:

It is important to note that this action is only approving a real estate broker agreement and is the first step to identify what interest, if any, exists in the real estate market for potential buyers of these properties. To the extent interest exists, and offers are presented, the City Council will consider that interest and determine whether to proceed to declare these properties as surplus and to dispose of them in accordance with applicable state law.

(Report, p. 1.) The Staff Report further reflects:

The City is required to follow applicable state laws in disposing of surplus properties. However, in order to determine whether the City desires to declare a property as surplus, it is important to understand whether the property has certain value to be sold to third parties or should be retained and held by the City. Listing properties for sale by a real estate broker is one method to determine what interest, if any, exists in the real estate market from prospective buyers of City-owned property.

City Council has directed Staff to engage the services of a commercial real estate broker to determine the actual market value of these properties by marketing them to qualified prospective buyers. Through this process potential offers may be presented to the City Council for further consideration on whether the value of the offer(s) should be pursued further.

Entering into an agreement with a real estate broker is necessary to officially list these properties for potential sale. However, it is important to note and Staff expressly advises the public that this action does not authorize the sale of these City properties. The action is limited solely to entering into an agreement with a real estate broker to list the properties for potential sale.

If offers to purchase these City properties are received, the City Council will consider the offers and consider whether to proceed with subsequent actions to dispose of these properties in accordance with state law. One first action required will be to declare one or both of these properties as surplus in accordance with the Assembly Bill 1486 (the ‘Surplus Land Act’).

In the hypothetical where the City receives interest from prospective buyers of these properties, the City Council (if it chooses to proceed with the sale of one or both of these properties) will first have to declare the properties as surplus through adoption of a Resolution stating that fact, and providing an opportunity first to all entities identified in Government Code Section 54222 an opportunity to competitively bid to purchase the properties.

(Report, pp. 2-3.)

City Councilmember Woods owns a residence within 500 feet of the Crescendo property and within 500 and 1,000 feet of the Boulders property. The properties are currently undeveloped, open space, both zoned R1A. The Boulders property has a final map for 45 single family residential lots.

### ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” Councilmember Wood’s real property interest is not explicitly involved in the governmental decisions at issue.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.”

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. Regulation 18702.2(a)(8) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value.

Here, Councilmember Woods owns a residence that is located within 500 feet of the Crescendo property and within 500 and 1,000 feet of the Boulders property. You state the City Council has directed staff to solicit real estate services only to generally determine whether prospective buyers have interest in the purchase of those two City-owned properties. The City Council Staff Report confirms this by stating that engaging the services of a real estate broker is the first step in identifying whether there is any interest from potential buyers in the properties. It further indicates that even if the City received offers to purchase one or both properties, the City Council would then need to consider the offers and whether to proceed with subsequent actions, including declaring the properties as surplus, before disposing of them.

Based on the facts provided, there is clear and convincing evidence that the instant decision whether to engage the services of a real estate broker to list both City-owned properties will not have any measurable impact on the official's property.<sup>3</sup> Councilmember Woods' real property does not present a disqualifying conflict of interest under the Act, and he may take part in the decisions related to hiring a real estate broker for both City-owned properties.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

*Jack Woodside*

By: Jack Woodside  
Senior Counsel, Legal Division

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<sup>3</sup> Based on this conclusion, it is not necessary to do a separate analysis under Regulation 18702.2(a)(8) with respect to the City-owned property located between 500 and 1000 feet of Councilmember Woods' residence.