



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 7, 2021

Jeffrey Ballinger
City Attorney
City of Indian Wells
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-21-058

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of Indian Wells City Councilmember Donna Griffith regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

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

Under the Act, may Councilmember Griffith take part in City Council decisions regarding Resident Guest pricing rates at the City-owned Indian Wells Golf Resort, given that her home is within 500 feet of the resort and she golfs at the Golf Resort?

CONCLUSION

Provided there is no indication that the pricing strategy is necessary or intended to ensure the solvency or continued operations of the Golf Resort, the nature of the decision—involving a minor operational change—and physical obstacles separating the residence and Golf Resort indicate it is not reasonably foreseeable that the decisions will materially affect Councilmember Griffith’s

¹ 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.

property despite the proximity of her residence to the Golf Resort. Likewise, any change in pricing would not be large enough to materially affect Councilmember Griffith's personal finances, nor would she be obligated to continue golfing at the Golf Resort in any event.

FACTS AS PRESENTED BY REQUESTER

The Indian Wells Golf Resort ("Golf Resort") is a municipal golf course operated by the City of Indian Wells ("City") and consists of two golf courses, a pro shop, a restaurant, and a "Shots in the Night" high-tech golf putting game. There are no memberships available for the Golf Resort. A City discount card ("Resident Card") is available for purchase by all City residents for the price of \$50, and includes discounts on rounds of golf, pro shop items, and meals at the Golf Resort, as well as discounts at other restaurants in the City and events at the Indian Wells Tennis Garden. The Golf Resort also offers discounts to guests of the nearby hotels.

The City Council will consider making changes to the discounted golf rates available to Resident Guests. The proposed changes are designed to further the City's strategic planning goal of preserving the Golf Resort as a premier destination for residents and visitors. Currently, Resident Guests are provided a discounted rate for the cost of golf and are permitted to use the resident tee time slots on the tee sheet, which can be booked up to 14 days in advance. After reviewing the guest discounts offered by other golf courses in the City, City staff is recommending that the City Council consider adopting dynamic pricing for the Resident Guest rate, which would allow the Golf Resort operator the flexibility to dynamically price Resident Golf rounds within 72 hours of tee times or during slow periods at the Golf Resort. However, due to existing agreements with the City's hotel partners, the dynamic pricing would not impact the golf rounds available to the hotels.

While staff is recommending that the Council approve dynamic pricing for Resident Guest rates, the staff report also provides that the Council could consider as an alternative approving a "Friends and Family Golf Card Program" that would offer a Friends and Family Golf Card to Resident Card holders for an additional \$200 fee. The Friends and Family Golf Card would provide a discounted rate of \$20 per round for ten Resident Guest rounds. As proposed, this program would not require an additional City subsidy. In March of 2021, the Friends and Family Golf Card Program was presented to the City's Golf Resort Advisory Committee, which unanimously rejected the idea after determining that the Resident Guest rates currently offered by the Golf Resort are lower than those currently offered by the other golf courses in the City. Although the Committee rejected this proposed Golf Card Program, it will still be presented to the Council as an option.

Councilmember Griffith owns her personal residence, a single-family home that is located approximately 331 feet from the Golf Resort property when measured on a map in a direct line. However, the shortest driving distance from Councilmember's residence to the entrance of the Golf Resort is 5,140 feet. The Councilmember's residence is separated from the Golf Resort by a street, a sidewalk and landscaped area, Highway 111, and then another sidewalk and landscaped area. The Golf Resort is not visible from the Councilmember's residence.

Councilmember Griffith, like many other City residents, plays golf at the Golf Resort from time to time and has purchased a Resident Card.

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, including “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Councilmember Griffith has an economic interest in her residential real property, which is located less than 500 feet from the Golf Resort, as well as her personal finances.

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).”

Where, as here, 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.”

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 governmental 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)(7).) Notwithstanding Regulation 18702.2, the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

The decisions at issue concern the Golf Resort’s pricing strategies—namely, whether to adopt a dynamic pricing system or a “Friends and Family Golf Card Program.” In either scenario, you have not indicated that the change in pricing is necessary or intended to ensure the solvency or continued operation of the of the Golf Resort. Based on the facts provided, the decisions are of a minor operational nature and would not involve any structural changes that might potentially affect the view, privacy, noise levels, or air quality of Councilmember Griffin’s property. Given the minor scope of the operational change, the distance of Councilmember Griffin’s property, and physical obstacles such as a highway separating it from the Golf Resort, it appears any potential impact on Councilmember Griffin’s real property would be merely hypothetical or theoretical and not

reasonably foreseeable (Regulation 18701(b)), nor would the impacts be considered “measurable” for purposes of Regulation 18702.2(a)(7). Further, based on the facts provided, it appears any conceivable impact on Councilmember Griffin’s property would be nominal, inconsequential, or insignificant and therefore not material, Regulation 18702.2(a)(7) notwithstanding. (Regulation 18702(b).) Barring facts indicating that the pricing strategy is necessary or intended to ensure the solvency or continued operations of the Golf Resort, it is not reasonably foreseeable that the decisions will have a material effect on Councilmember Griffin’s property.


Finally, we note that although Councilmember Griffin has purchased a Resident Card and plays golf at the Golf Resort, neither pricing strategy would implicate her personal finances for purposes of the Act. A governmental decision’s reasonably foreseeable financial effect on a public official’s financial interest in their personal finances or those of immediate family is material if the decision may result in the official or official’s family receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) Even if the City adopted the Friends and Family Golf Card Program, the cost of such a card would be \$200, well below the \$500 threshold under Regulation 18702.5(a) and Councilmember Griffin would be under no obligation to purchase a card in any event.

For these reasons, Councilmember Griffin does not have a disqualifying conflict of interests under the Act and may take part in the City Council’s decisions regarding the Golf Resort’s pricing strategies.

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

Sincerely,

Dave Bainbridge
General Counsel


By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv