



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

August 5, 2021

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

Re: Your Request for Advice
Our File No. A-21-066

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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTIONS

1. Does Councilmember Griffith have a disqualifying financial interest in the decision of the City Council whether to approve the City’s Operating Budget (which includes the Golf Resort budget) and Capital Improvement Plan (which includes planned improvements to the Golf Resort), given that her personal residence is located within 500 feet of the Golf Resort?
2. Does Councilmember Griffith have a disqualifying financial interest in decisions concerning future allocations for the continued implementation of an energy efficiency project,

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 18998 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.

which includes improvements to the Golf Resort, given that her personal residence is located within 500 feet of the Golf Resort?

CONCLUSIONS

1. Councilmember Griffith has a conflict of interest in decisions concerning the operations of, or improvements to, the Golf Resort. However, as she already participated in the final vote to adopt or reject the previous Operating Budget, analysis as to the segmentation of the next budget decision cannot be provided without expressing an opinion related to the previous decision. As we do not provide advice in regard to past conduct, we can offer no opinion concerning the segmentation of the Operating Budget decisions.

2. The Act generally prohibits Councilmember Griffith from taking part in any decisions relating to the Energy Efficiency Project if those decisions would include projects located within the Golf Resort within 500 feet of her residence. She will also be prohibited from taking part in decisions relating to the Energy Efficiency Project that include projects located within 500 to 1,000 feet of her residence if the decisions will change her parcel's development or income producing potential, highest and best use, character or market value. Councilmember Griffith may wish to seek additional assistance prior to taking part in any decisions related to the project once the specific nature of the decision can be identified.

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.

Golf Resort Budget and CIP Improvements

On May 20, 2021, the City Council approved the City's Biennial Operating Budget and Capital Improvement Plan ("CIP") (together, "Budget and CIP"). The proposed Budget included funding in an amount of \$13,386,771 for Fiscal Year 2021-22, and \$13,721,440 for Fiscal Year 2022-23, for operation and maintenance of the Golf Resort pursuant to the terms established in the City's contract with the Golf Resort operator. You state that the City Council segmented those two decisions, in accordance with Regulation 18706, and Councilmember Griffith did not participate in those portions of the Budget and CIP decisions that affected the Golf Resort. However, the City Council will need to adopt its budget and CIP every year and will likely need to approve additional funding for the Energy Efficiency Project, so the Council will make future decisions on these matters.

The CIP is not a budget but rather a financial plan for capital improvements for the next five years. The program is not a commitment for spending; no authorization to spend funds exists until the City Council adopts the budget that includes the first two years of the five-year plan. The

proposed five-year CIP includes thirty-nine capital projects budgeted at a total of \$25.2 million. The proposed projects include driving range equipment replacement, golf cart replacement, bridge maintenance, and facility improvements to the Golf Resort, and these improvement projects total approximately \$3.8 million over the five-year period, or 15.3% of the total proposed CIP budget.

Energy Efficiency Project

On May 20, 2021, the City Council authorized the City Manager to execute an energy services contract implementing a City Facilities Energy Efficiency Project (“Energy Efficiency Project”). Councilmember Griffith recused herself from that decision.

In January of 2020, prior to Councilmember Griffith’s election to Council, the City Council identified reducing energy costs and identifying opportunities to utilize alternative energy sources a strategic priority. This strategic priority addresses the concern that utility costs continue to rise and comprise a significant portion of the City’s overall operating budget.

As part of the City’s efforts toward increased energy efficiency, staff committed to work with industry professionals to evaluate the City’s current energy consumption and identify projects to increase efficiency, reduce overall consumption and utilize alternative sources of energy. To that end, staff issued a Request for Qualifications (“RFQ”) in July of 2020 seeking a certified Energy Services Company to serve as a consultant to the City. The City selected a consultant, who evaluated the City’s current energy usage and completed an investment grade audit of all City facilities. Following this review and analysis, the consultant completed a comprehensive program proposal that outlines a list of projects at a number of facilities to address energy usage and consumption and reduce the overall cost of energy to the City.

The proposed Energy Efficiency Project includes the following improvements:

- Lighting upgrades (installation of LED lights) at City Hall, the Fire Station, the Public Works Building (all of which are well over 1,000 feet from Councilmember Griffith’s residence), and the Golf Resort
- HVAC system upgrades at City Hall and the Golf Resort
- Solar panel installation at various facility locations including the Public Works Maintenance Yard, the Fred Waring Maintenance Building, and the Golf Resort
- Power savers and transformers
- Solar battery storage
- Installation of a diesel backup generator at the Golf Resort

The backup generator proposed to be installed at the Golf Resort is designed to prevent any interruption in power during hours of operation and will facilitate a cooling center for City residents during power outages.

The solar panel installations at the Golf Resort will not be slated to start construction until the summer of 2022 and the exact location of the solar panels will be determined through a collaborative process as the Golf Resort works through the master planning process, which is scheduled to begin in the next few months. Staff met with the proposed Golf Resort Master Plan consultant who is supportive of the City moving forward with the project and will assist the City in identifying appropriate locations for the solar panels at the Golf Resort.

The total cost of the proposed Energy Efficiency Project is \$9,068,169, which includes the base purchase cost of \$8,890,362 as well as a 2% controlled contingency on pricing. You anticipate that the Council will make future decisions concerning additional funding of the Energy Efficiency Project. You anticipate future decisions on the solar project, but have not yet identified the decisions that may return to the Council.

Councilmember Griffith

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. In a subsequent email, you noted that three potential locations of the proposed generator range in distances between 1,197-feet and 1,369 from the Councilmember's property.

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."

City Operating Budget

On May 20, 2021, the City Council approved the City's Budget and CIP, which included funding of \$13,386,771 for Fiscal Year 2021-22, and \$13,721,440 for Fiscal Year 2022-23, for operation and maintenance of the Golf Resort. You state that the City Council segmented those two decisions, in accordance with Regulation 18706, and Councilmember Griffith did not participate in those portions of the Budget and CIP decisions that affected the Golf Resort. Currently, you ask if Councilmember Griffith may take part in the next City Operating Budget decision.

Generally, we can only advise that an official is not disqualified from a decision if property segmented from a decision in which the official has a disqualifying interest. The Commission's rules for segmenting a decision are found in Regulation 18706. However, as Councilmember Griffith took part in the previous City Operating Budget decisions, an analysis as to the segmentation of the next budget decision cannot be provided without expressing an opinion related to the previous decision. Accordingly, the approval of the next City Budget, which includes allocations for the Golf Resort, implicates past conduct, as it involves the same underlying facts as the budget decision which has already take place. As such, we cannot advise on Councilmember Griffith's participation in the next budget decision. (Regulation 18329(b)(6)(A).)

Golf Resort Budget and CIP Improvements

The decisions at issue concern approval of the Golf Resort budget and CIP improvements. The proposed projects include driving range equipment replacement, golf cart replacement, bridge maintenance, and facility improvements to the Golf Resort, and these improvement projects total approximately \$3.8 million over the five-year period, or 15.3% of the total proposed CIP budget. Councilmember Griffith's residence is located less than 500 feet from the Golf Resort

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).)

Under this standard, it is presumed that the reasonably foreseeable financial effect of a governmental decision is material, unless there is clear and convincing evidence that the decision will not have any measurable impact on Councilmember Griffith's real property. As noted above, these improvements include the replacement of driving range equipment and golf carts, bridge

maintenance, as well as facility improvements to the Golf Resort. The cost of these improvement projects totals approximately \$3.8 million. These appear to be the types of improvements necessary to ensure the solvency or continued operations of the Golf Resort. You have not provided any evidence to show that these decisions will not have a measurable impact on the Councilmember's property. Thus, the Act prohibits Councilmember Griffith from taking part in those decisions.

Energy Efficiency Project

The Act generally prohibits Councilmember Griffith from taking part in decisions relating to the Energy Efficiency Project to the extent that they would affect property, such as the Golf Resort, located within 500 feet of her residence. Further, she will also be prohibited from taking part in decisions relating to the Energy Efficiency Project that would include projects located within 500 to 1,000 feet of her residence if the decisions will change her parcel's development or income producing potential, highest and best use, character or market value. Councilmember Griffith may wish to seek additional assistance prior to taking part in any decisions related to the Energy Efficiency Project once the nature of the specific decision can be identified.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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