

JACQUELINE BISKUPSKI  
Mayor



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City Attorney

OFFICE of the CITY ATTORNEY

**MEMORANDUM**

**TO:** James Rogers, Chair  
Stan Penfold, Vice Chair  
City Council Members

**CC:** Cindy Gust-Jenson, Council Executive Director  
Brian Wilkinson

**FROM:** Margaret Plane, City Attorney   
Boyd Ferguson, Senior City Attorney  
Katherine Lewis, Senior City Attorney

**RE:** Conflict of Interest: Brian Wilkinson and Redevelopment Advisory Committee

**DATE:** August 18, 2016

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Brian Wilkinson is a member of the City's Redevelopment Advisory Committee ("RAC"), and is a partner, co-owner, and employee of Wilkinson Ferrari & Co. ("Wilkinson Ferrari"), a public relations and public involvement consulting firm that has performed consulting services for the City Council in the past. In July 2016, we were asked to provide an opinion regarding whether Mr. Wilkinson would have a conflict of interest between his role on the RAC and his position with Wilkinson Ferrari if the City Council were to hire Wilkinson Ferrari to perform consulting services in the future. In addition, we understand that Wilkinson Ferrari is subcontracted under the RDA's general contract for services related to the Eccles Theater, and our office has considered whether that relationship creates a conflict of interest. The members of the Redevelopment Agency ("RDA") Board and the City Council are the same people, and the City Council staff sometimes performs support services for the RDA Board.

The RAC makes recommendations to the RDA Board regarding RDA policies and loans and has also made recommendations to the RDA Board about RDA business transactions. As a member of the RAC, Mr. Wilkinson will have to decide whether to vote for or against recommendations to the RDA Board. In some cases, the City Council or its staff may have strong feelings about the policies related to such recommendations.

Section 2.44.030

Salt Lake City Code Section 2.44.030 states:

A. If the performance of a . . . volunteer public servant constitutes any governmental action on any matter involving the . . . volunteer public servant's financial or professional interest and it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally, the . . . volunteer public servant shall publicly disclose such matter: . . . [t]o the mayor and the members of the public body, if any, of which the . . . volunteer public servant is a member.

. . .

C. The . . . volunteer public servant who has a financial interest shall disqualify himself or herself from participating in any deliberation as well as from voting on such matter. The . . . volunteer public servant who has only a professional interest need not disqualify himself or herself.

“Governmental action” is defined in Section 2.44.020 as “official action on behalf of the city,” including “[a]ny legislative, administrative, appointive or discretionary action of any . . . volunteer public servant.” We believe that “governmental action” occurs when members of the RAC participate in discussions about or vote on recommendations regarding the RDA.

Disclosure or recusal under Section 2.44.030 is necessary only if (1) the volunteer public servant’s action would involve his or her financial or professional interest and (2) it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally.

Section 2.44.020 defines “financial interest” to include being an employee of a “business entity.” “Business entity” is defined to include an “organization or entity used in carrying on a business.”

Wilkinson Ferrari is a business that meets the definition of a business entity for purposes of Chapter 2.44. Furthermore, Mr. Wilkinson has a financial interest in Wilkinson Ferrari. Therefore, Mr. Wilkinson must disclose his interest and recuse himself from voting on a RAC recommendation if that governmental action would have an individualized material effect on his interest in Wilkinson Ferrari. For example, the RAC and the RDA Board might strongly disagree on an RDA policy issue. It might be reasonably foreseeable that Mr. Wilkinson’s vote on that issue would be so disagreeable to the City Council (as the RDA Board) or its staff that the City Council might be tempted to terminate its consulting contract with Wilkinson Ferrari. In addition, since Mr. Wilkinson’s firm is contracted to do work for the Eccles Theater, which the RDA partially owns, in the event a matter regarding the Theater came before the RAC, Mr. Wilkinson would have to disclose his interest and recuse himself from voting if the action would have an effect on his interest in Wilkinson Ferrari. For example, if the RAC and RDA Board were

to strongly disagree on an issue that is the subject of a RAC recommendation, Mr. Wilkinson's vote might be affected by a fear that his vote might lead the RDA board to seek the termination of Wilkinson Ferrari's contract regarding the Theater.

Further, Wilkinson Ferrari is consulting on an hourly basis for the Council on three of its highest priorities—affordable housing/homelessness; streets and infrastructure; and economic development. These priorities overlap with the RDA's priorities, and the RDA is doing work on both affordable housing and economic development issues. There could be a time when Mr. Wilkinson votes on an RDA policy matter regarding economic development or affordable housing that does not align with the City Council's economic development goals, causing the City Council to rethink its contract with Wilkinson Ferrari. Additionally, under its contract for the Eccles Theater, Wilkinson Ferrari is consulting on the marketing and branding of the Theater. The RDA Board is considering funding for rebranding and marketing for all of Regent Street (impacting the Theater) and the Gallivan Center, and policy questions regarding these matters could come before the RAC. In such an instance, Mr. Wilkinson would be required to disclose and recuse himself, to ensure that he is not advising the RDA Board on a policy matter and also doing business with the RDA connected to the same matter.

Furthermore, if Mr. Wilkinson's recusals became frequent, it might prevent him from being a productive RAC member.

#### Section 2.44A

Mr. Wilkinson should also be aware that Section 2.44.040A(1) prohibits the disclosure of confidential information acquired as member of the RAC. Also, Section 2.44.040A(2) prohibits corruptly using or attempting to use an official position to: a) further substantially the financial or professional interests or the financial or professional interests of others; or b) secure special privileges for the board member or others.

#### Section 2.44.040B

Section 2.44.040B says that a volunteer public servant may not have a financial or professional interest in an entity that is doing business with the city department or division to whom the city committee, commission, authority, agency, or board of which the volunteer public servant is a member primarily provides direct assistance or direction.

In this case, Mr. Wilkinson has a financial interest in Wilkinson Ferrari, which may be entering into a consulting contract (i.e., doing business) with the City Council.<sup>1</sup> Wilkinson

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<sup>1</sup> Under Section 2.44.040B, if a hypothetical City committee existed that provided recommendations to the City Council, Mr. Wilkinson could not be a member of that committee as long as Wilkinson Ferrari had a contract with the City Council.

Ferrari is also currently doing business with the RDA, pursuant to its subcontract to do work on the Eccles Theater, which is partially owned by the RDA.

With respect to the potential conflict of interest for the City Council contract, on its face, Section 2.44.040B applies only to a “city” department or division and only to a “city” committee, commission, authority, agency, or board. In this case, the RAC primarily provides assistance or direction to the RDA, not to the City Council. The RDA is legally separate from the City, and the RAC was created by the RDA Board, not by the City Council or the Mayor.

Despite the legal separation between the City and the RDA, the RDA has voluntarily subjected itself to the City’s conflict of interest ordinance. For instance, it requires all RAC members to sign a conflict of interest waiver, requires all contracts to include the City’s mandatory ethics clause, and all RDA employees, as City employees, adhere to the City’s gift and other conflict of interest rules. The issue is therefore whether Mr. Wilkinson’s service on the RAC and Wilkinson Ferrari’s contracts with City Council and subcontract to do work on an RDA project meet the two elements of Section 2.44.040B. If so, Mr. Wilkinson has a conflict of interest under Section 2.44.040B.

The first element of Section 2.44.040B is whether Mr. Wilkinson, as a volunteer public servant on RAC, has a financial interest in an entity that is doing business with a City department. The answer here is yes—Mr. Wilkinson is a partner in Wilkinson Ferrari, which is doing business with the City and the RDA. The second element of Section 2.44.040B is whether Wilkinson Ferrari is doing business with the City department that the RAC provides primary assistance to. The answer here is also yes—Wilkinson Ferrari is doing business with the RDA for services related to the Eccles Theater. Because the answer is yes to each of these elements, we conclude that Mr. Wilkinson has a conflict of interest under Section 2.44.040B.

Based on the facts presented, this Office is of the opinion that there is a conflict of interest between Mr. Wilkinson’s position with Wilkinson Ferrari and his membership on the RAC under Sections 2.44.030 and 2.44.040B of the City Code. Therefore, Mr. Wilkinson should resign from the RAC or see that Wilkinson Ferrari’s contracts with the City Council and RDA are terminated.