



# City of Hemet

445 EAST FLORIDA AVENUE • HEMET, CALIFORNIA 92543 • (951)765-2303

From the Office  
of the  
**MAYOR**  
Eric McBride

September 22, 2009

Riverside County Grand Jury  
P.O. Box 829  
Riverside, CA 92502

To the Grand Jury:

Enclosed is the City of Hemet's response to the 2008-2009 Riverside County Grand Jury Report approved by the City Council.

Sincerely,

Eric McBride  
Mayor

City of Hemet's  
Response to 2008-09  
Riverside County Grand Jury Report

September 22, 2009

Pursuant to Penal Code § 933 et seq., the City Council of the City of Hemet hereby responds to findings and recommendations set forth in the 2008-2009 Grand Jury Report: City of Hemet, dated June 25, 2009 (the "Report"). The findings and recommendations of the Grand Jury have been copied verbatim from the Report below for ease of reference and response.

## FINDINGS

**Grand Jury Finding 1.a.** The City of Hemet successfully applied for funds from the California Senior Center Bond Act of 1984, which provided for the sale of \$50 million of general obligation bonds to finance acquisition, construction and expansion of senior center programs throughout the state. The City of Hemet sought the funds to add a senior wing to its neighborhood facility, the James Simpson Memorial Center. As part of its application for funds, the City of Hemet agreed to provide an array of senior services, two of which (outreach services and routine information and referral services) were to be provided by Prime of Life.

***Hemet's Response  
To Finding 1.a.***

***The City of Hemet ("City") agrees with this finding.***

**Grand Jury Finding 1.b.** The City of Hemet and Prime of Life signed an agreement for services, dated August 13, 1991. The City of Hemet failed to monitor the contract with Prime of Life to provide senior citizen referral services in the Hemet area. For example, Prime of Life's operating hours and days open were significantly reduced at least twice, while the City of Hemet continued to pay the contracted amount for services. The contract was never modified to reflect changes in Prime of Life's operation.

***Hemet's Response  
To Finding 1.b.***

***City disagrees with this finding to the extent it concludes that City failed to monitor the contract and to the extent it infers that the scope or amount of services were reduced or that an amendment of the contract was required.***

***Prime of Life performed its services from the City's community center known as the Simpson Center. A full time City employee – the Simpson Center Supervisor – was housed onsite at the Center and observed and monitored the daily activities of Prime of Life. The current and past supervisors confirmed to City Management that Prime of Life performed all of the***

*contracted services without interruption during the term. The scope of Prime of Life's services was never reduced. To the contrary, Prime of Life voluntarily provided additional services for no additional compensation. Since the original scope of services remained the same, new services were provided on a volunteered basis, and the aggregate amount of services was consistent with the contract, City management did not deem an amendment to the contract necessary.*

**Grand Jury Finding 2.**

There is a requirement which calls for written reports to be provided to the City Manager by Prime of Life every 60 days; however, testimony revealed there is no evidence of oversight by the City of Hemet.

***Hemet's Response  
To Finding 2.***

*City disagrees with this finding to the extent it infers that annual reports were not appropriate and to the extent it concludes that there is no evidence of City's oversight of Prime of Life.*

*The Contract provided Hemet's City Manager the ability to change the reporting requirement without Council action. Section 4 of the Contract provides: "Adequate written reports concerning the services will be provided to City's City Manager at not less than 60 day intervals, or at such other intervals as the City Manager may direct." During his tenure, prior City Manager Steve Temple directed Prime of Life to provide only annual reports. As explained above, City did provide oversight over Prime of Life's provision of services. City's records contain annual reports from Prime of Life covering the two prior fiscal years. The former Executive Director of Prime of Life represented that all annual reports were provided. City's records retention policy, which is consistent with and administered in accordance with the State law, does not require retention of such reports for more than three years.*

**Grand Jury Finding 3.**

The Prime of Life Executive Director was/is a longtime member of the Hemet City Council. This was well known in the community and by the Hemet City Council. As a member of the council, she participated in budget deliberations and approval of the entire city budget, including

funding for the operation of Prime of Life. This is a conflict of interest.

***Hemet's Response  
To Finding 3.***

***City disagrees with the finding only to the extent it concludes that participation in budget deliberations and approval was a conflict of interest under the law. Two successive City Attorneys for Hemet have concluded that no legal conflict existed. The City asked the General Counsel for the League of California Cities to independently review the conflict issues and the General Counsel also concluded that there was no conflict under the Political Reform Act or Government Code § 1090. See attached letter.***

**Grand Jury Finding 4.**

An examination of the FY 2008-2009 budget figures provided by the executive director of Prime of Life revealed that out of a total projected income of \$48,300, over 77 percent was allocated to four items: salary of the executive director (\$28,000); employment taxes (\$5,000); accounting services (\$2,000); insurance (\$2,500). These expenditures left little for other discretionary operating expenses. On the revenue side, in addition to the City of Hemet's contractual obligation, the primary funding source has been Central County United Way (whose funding has decreased in the recent past).

***Hemet's Response  
To Finding 4.***

***City agrees with this finding.***

**Grand Jury Finding 5.**

The Riverside County Office on Aging has been instrumental in supporting Prime of Life by providing referral operator trainees through its Senior Employee Training Program to answer calls from senior citizens in the Hemet area and refer them to appropriate agencies for assistance. The Riverside County Office on Aging also provides an 800 line for callers as backup to their efforts through Prime of Life.

***Hemet's Response  
To Finding 5.***

***City agrees with this finding.***

**Grand Jury Finding 6.**

For several years Prime of Life (without the necessary city monitoring) failed to submit required annual reports to appropriate state and federal tax agencies. This failure led the Franchise Tax Board to suspend the tax exempt status of Prime of Life until/unless Prime of Life could correct the

filing deficiencies. In order to regain tax-exempt status, Prime of Life had to expend approximately \$20,000 in back payments and accounting fees.

**Hemet's Response  
To Finding 6.**

***City disagrees with this finding only to the extent it infers that City had an obligation to monitor the ongoing internal administration of Prime of Life.***

***Prime of Life was a nonprofit public benefit corporation organized under California law upon which the IRS had conferred tax exempt status under Internal Revenue Code § 501(c)(3). Prime of Life was a separate and distinct legal entity from the City and considered an independent contractor. Prime of Life was neither set-up nor controlled by City. City had no legal authority and no legal obligation to audit Prime of Life's financial books or its tax status. The City does verify that independent contractors are in good standing at the initiation of the contract, but thereafter the concern of the City is the performance of services by the contractor. Here, all contracted services were provided without interruption and without dispute during the term of the contract.***

## **RECOMMENDATIONS**

**Grand Jury  
Recommendation 1.**

The City of Hemet should formally cancel the contract with the Prime of Life organization.

***Hemet's Response  
To Recommendation 1.***

***This recommendation was implemented on City's own initiative before the Grand Jury Report was issued. City is informed that Prime of Life has or is dissolving and winding up and that its executive director has resigned from that position. The City did not include any funding for Prime of Life in its 2009-2010 budget.***

**Grand Jury  
Recommendation 2.**

The Hemet City Council should perform due diligence and exercise oversight of all organizations to which it approves funding.

***Hemet's Response  
To Recommendation 2.***

***This recommendation is in the process of being implemented. The City Council has direct its City***

*Manager and City Attorney to review contract administration procedures to ensure an appropriate level of oversight and monitoring. A report and recommendation is expected before the end of 2009. City has already taken steps to add an ongoing monitoring and certification of good standing clause to its new contracts with nonprofit entities.*

**Grand Jury  
Recommendation 3.**

The City of Hemet should:

- Acknowledge publicly that a sitting Hemet City Council member had a conflict of interest with Prime of Life.
- Immediately move to prevent any future conflict and/or appearance of a conflict of interest.

***Hemet's Response  
To Recommendation 3.***

***City acknowledges that the circumstances reviewed by the Grand Jury created the public perception of conflict of interest. To minimize situations that may give rise to such perceptions in the future, the City Council has directed the City Manager and City Attorney to review Hemet's conflict of interest code and to report methods the Council may utilize to assure the community that Councilmembers conduct themselves, not only in conformance with the law, but the highest ethical standards.***

**Grand Jury  
Recommendation 4.**

The City of Hemet should develop written policies and procedures to ensure requisite oversight on expenditures and immediately cease funding any non-compliant entities.

***Hemet's Response  
To Recommendation 4.***

***This recommendation is in the process of being implemented. See response to Recommendation No. 2.***

**Grand Jury  
Recommendation 5.**

The City of Hemet should spearhead an effort to retain a relationship with the Riverside County Office on Aging, so Office on Aging trainees can continue to handle referral calls.

***Hemet's Response  
To Recommendation 5.***

***This recommendation is in the process of being implemented. City Management has contacted the County Office on Aging and is investigating alternative methods for providing the essential services to seniors that were being provided by Prime of Life. City***

*anticipates completion of this recommendation by the end of 2009.*

**Grand Jury**  
**Recommendation 6.**

The City of Hemet should examine its contracts and agreements with other tax-exempt organizations in the community to confirm that those organizations are current with their tax filing fiduciary responsibilities.

***Hemet's Response***  
***To Recommendation 6.***

***This recommendation is in the process of being implemented. See response to Recommendation No. 2.***



September 21, 2009

Mayor Eric McBride  
City of Hemet  
445 East Florida Avenue  
Hemet, CA 92543

Re: Council Member Robin Lowe—Alleged Conflict of Interest

Dear Mayor McBride:

I have been informed that the Hemet City Council has requested my independent opinion as to whether Council Member Robin Lowe has a conflict of interest arising from her former position as Executive Director of Prime of Life, which until recently contracted with the City for funding to provide services to senior citizens.

In reviewing this issue, I have been provided with a City Manager's Report on Prime of Life dated September 23, 2008. I have also been provided with a legal opinion dated September 14, 2004 that analyzes whether Council Member Lowe has a conflict of interest under Government Code section 1090 or the Political Reform Act. Further, I have reviewed the Grand Jury report concluding that Council Member Lowe did have a conflict of interest, and I have reviewed a draft response from the City to that report.

After review of these documents, and a review of the relevant state statutes and regulations, I agree with the conclusion in the September 14, 2004 legal opinion that Council Member Lowe does not have a conflict of interest under either Government Code section 1090 or the Political Reform Act. It is my opinion that the September 14, 2004 legal opinion correctly analyzed the relevant law, and reached a correct conclusion based on the facts presented.

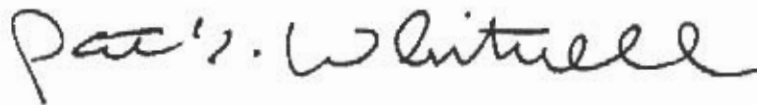
Please note that this letter is not intended as legal advice and neither the City of Hemet nor any individual may rely upon it as such. Further, the opinion set forth in this letter is based solely on the documents referenced above. I have not undertaken to do an

Mayor Eric McBride  
City of Hemet  
September 21, 2009  
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independent investigation, and I have taken the representations made in the various documents as being factually accurate and complete.

I hope you find this letter helpful.

Very truly yours,

A handwritten signature in cursive script that reads "Pat's. Whitnell".

Patrick Whitnell  
General Counsel

cc: Chris McKenzie, Executive Director  
Brian Nakamura, City Manager, City of Hemet  
Eric Vail, City Attorney, City of Hemet