

October 17, 2022

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VIA EMAIL

Ms. Louise Hansen
City Elections Officer
City of Portland Auditor's Office
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Complaint No. 2022-04-SPM

Dear Ms. Hansen:

Perkins Coie LLP represents Schnitzer Properties Management, LLC with respect to the above-referenced complaint that has been filed with City of Portland Auditor's Office. The complaint alleges that Schnitzer Properties Management made an impermissible in-kind contribution to the Rene for Portland campaign committee by providing office space for below-market rent.

Schnitzer Properties Management and its president Jordan D. Schnitzer take seriously their legal obligations, including compliance with restrictions on campaign contributions, and make diligent efforts to discharge those obligations. If Schnitzer Properties Management erred in this instance, it will of course take the necessary steps to bring itself into compliance.

Nonetheless, Schnitzer Properties Management respectfully disagrees with the complaint for the following reasons.

The Rene for Portland campaign committee is a participant in the Small Donor Elections Program. The disposition of the complaint against the committee, dated September 20, 2022, found violations of PCC 2.16.040D-E (prohibited contributions), Administrative Rule 6C (in-kind contributions over the limit), and PCC 2.16.140C (failure to report).¹ These restrictions govern the activities of candidates, not contributors. Thus, even if the campaign committee erred by accepting an impermissible in-kind contribution, no violation is committed by the contributor.

To the extent that Portland City Charter Article 3 and/or City Code Chapter 2.10 (which relate to campaign finance for candidates not participating in the Small Donor Elections Program) govern

¹ Contrary to the suggestion of the complaint, the Small Donor Election Program's disposition of September 20, 2022 is not final and is subject to judicial review.

contributions to the Rene for Portland campaign committee, provision of free or discounted office space is expressly excluded from the definition of “Contribution.” *See* Charter § 3-308(e)(2) (excluding “[p]roviding rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.”); PCC 2.10.080E(2) (same). Thus, the provision of discounted office space cannot constitute an in-kind contribution to which the limitations of Charter Article 3 and Code Chapter 2.10 apply.

Yet, even if provision of discounted office space were not excluded from regulated contributions, we respectfully submit that Schnitzer Properties Management did not provide the Rene for Portland campaign committee with office space that was discounted below market value.

It is well-known that owners of vacant commercial properties in downtown Portland are currently struggling to find tenants.² The Portland Business Journal recently reported that downtown’s office vacancy rate is now 26.2% and is on an upward trajectory. *See* J. Bach, “Downtown Portland Landlords ‘Should Brace Themselves’ As Vacancies Hit New High,” *Portland Business Journal* (Oct. 12, 2022). The article reported that sublease availability “skyrocketed 42% year-over-year and 18.3% from the second quarter to hit 1.8 million square feet in the third quarter[.]” *Id.*

The location of the subject-property — 1010 SW 11th Avenue — is particularly troubled as houselessness, vandalism, and crime have exploded in this highway-adjacent neighborhood. The space’s location in the building, i.e., on the ground floor, makes it particularly undesirable. In fact, the subject-property been listed for more than two years, since April 30, 2020, with no tenant willing to lease the space. (Indeed, no prospective tenant has even toured the space.) To put it bluntly, Schnitzer Properties Management has no serious prospects of leasing the space to any long-term tenant.

Under these circumstances, it is not uncommon for owners and managers of commercial properties to accept short-term or “pop-up” tenants for substantially reduced rent (and, indeed, sometimes even for free). Owners and managers of such properties appreciate having a tenant in the building, which is a deterrent to vagrancy, vandalism, and crime, and which makes the space more desirable to prospective future renters.

In determining the market value of the leased space at issue here, the Small Donor Election Program made the mistake of relying on the listing price. But the listing price does not represent the market value of a space that, apparently, no tenant wanted to lease at that price. *See Jim Bernard for Clackamas Cnty. Comm’r v. Elections Div.*, 229 Or. App. 419, 425, 211 P.3d 321, 324 (2009) (“Fair market value is an objective concept, representing the price that a hypothetical willing buyer would pay a hypothetical willing seller.”); *see also Goodman v. Comm’r*, 29 T.C.M. (CCH) 528 (T.C. 1970) (finding fair market value of zero where no purchaser wanted to

² The facts recited in this letter are based on the Declaration of Steve Roselli.

buy product). The Small Donor Election Program also erred in concluding that discounted rent is “not generally available to the public” because such discounts are not listed in publicly available sources. Discounts from a listed price that are available through bilateral negotiations may indeed be available to the public, even if not listed publicly. *See* 25A C.J.S. Damages § 355 (2022) (“The current listing price of real property is not substantial and competent evidence of its fair market value[.]”).³

We respectfully submit that, under the circumstances, the subject-property could well have been leased to a “pop-up” short-term tenant for \$250 per month or less, as a result of an arms-length negotiation. Whatever the precise fair market value of a short-term lease of an otherwise vacant property in a blighted neighborhood at a time when vacancies of commercial properties are at a historic high, we respectfully submit that it is far closer to \$250 than to the listing price.

As mentioned, Schnitzer Properties Management is committed to rigorous adherence to its legal obligations. Although, for the reasons explained, it does not believe it has run afoul of the City’s campaign finance rules, it will of course take the necessary steps to bring itself into compliance if a violation is found.

Please let me know if I can provide additional information in support of this response.

Sincerely,



Misha Isaak

Enclosure

³ A search of precedent cases reveals numerous examples of courts concluding that the listing price does not indicate fair market value, often because arms-length parties negotiate prices different from the listing price. *See, e.g., Farr W. Invs. v. Topaz Mktg. LP*, 220 P.3d 1091, 1095 (Idaho 2009); *Mohawk Data Scis. Corp. v. City of Detroit*, 63 Mich. App. 102, 107, 234 N.W.2d 420, 423 (1975); *Hunter v. Comm’r*, 51 T.C.M. (CCH) 1533 (T.C. 1986).

DECLARATION OF STEVE ROSELLI

I, Steve Roselli, do hereby attest and declare as follows:

1. I am the Senior Vice President and Regional Manager for Schnitzer Properties in Portland, Oregon. In that role, I manage the company's portfolio and leasing efforts for Schnitzer Properties' 4.0 million square feet of office and industrial buildings in Portland. I was a long time licensed real estate broker and have over 38 years of commercial real estate experience.

2. It is well-known that owners of vacant commercial properties in downtown Portland are currently struggling to find tenants, as was recently reported in an article in the Portland Business Journal, a true and correct copy of which is attached hereto as Exhibit A.

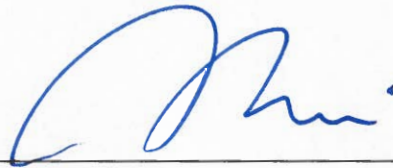
3. The property that is currently leased to the Rene for Portland campaign committee is located at 1010 SW 11th Avenue, in downtown Portland, on the building's ground floor. The neighborhood that surrounds this building is particularly troubled as houselessness, vandalism, and crime have exploded there. Although ground-floor space used to be popular among public-facing businesses, that is no longer the case. Many of those businesses have moved to the suburbs to be closer to their customer base, and ground-floor space in neighborhoods of downtown Portland plagued by houselessness, vandalism, and crime has become particularly undesirable. On account of these conditions and the other drivers of downtown Portland's high vacancy rate, the property has been listed for more than two years, since April 30, 2020, with no tenant willing to tour much less lease the space. I see no serious prospects of leasing this space to any long-term tenant.

4. Under circumstances like these, it is not uncommon for owners and managers of commercial properties to accept short-term or "pop-up" tenants for substantially reduced rent (and, indeed, sometimes even for free). Owners and managers of such properties appreciate having a tenant in the building, which is a deterrent to vagrancy, vandalism, and crime, and which makes the space more desirable to prospective future renters.

5. In my opinion, the \$250 monthly lease price paid by the Rene for Portland campaign committee is a fair approximation of the fair market value of a short-term lease of this property by a “pop-up” tenant.

I make the foregoing statements based on my personal knowledge and belief, under penalty of perjury under the laws of Oregon and the United States. I understand that this Declaration may be used as evidence in administrative or court proceedings.

Dated this 17th day of October, 2022.



Steve Roselli

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From the Portland Business Journal:

<https://www.bizjournals.com/portland/news/2022/10/12/downtown-portland-office-vacancy-q3-2022.html>

Downtown Portland landlords 'should brace themselves' as vacancies hit new high

Oct 12, 2022, 2:55pm PDT **Updated: Oct 12, 2022, 2:57pm PDT**

Downtown Portland's office vacancy rate edged upward in the third quarter to surpass 26%, according to CBRE.

The latest rate of 26.2% reported by the commercial real estate firm runs on par with this year's second quarter, when office vacancy stood at 25.8%. That was roughly double the pre-pandemic equivalent. Competitor JLL also published its quarterly report showing high office vacancies in Portland's urban core.

This comes as the Portland metro's overall vacancy rate hit 20.8% in the third quarter, rising from the second quarter's 20.2%, according to CBRE's report this week.

Some commercial real estate professionals have expressed optimism about the city proper, but they also widely show concern for the safety of employees. Still, Northwest Portland has emerged as something of a hot spot, especially on news of Fila USA's recent



CATHY CHENEY

Downtown Portland's office vacancy rate edged upward in the third quarter to surpass 26%, according to CBRE, as tenants refused to make enough substantive moves into the urban center.

Declaration of Steve Roselli
Exhibit A

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3,000-square-foot deal on Northwest Savier Street. But that isn't enough to move the market.

Sublease availability, another key figure to track, skyrocketed 42% year-over-year and 18.3% from the second quarter to hit 1.8 million square feet in the third quarter, according to CBRE. JLL had sublease availability even higher, at more than 2 million square feet, with more room likely cut loose in the future.

"While the third quarter appears muted, urban core office owners should brace themselves for a significant increase in vacancy over the coming quarters," JLL said in its report. "Several notable Portland tenants have communicated plans to relocate out of the City of Portland for the suburbs and multiple tenants have listed their space for sublease over the past quarter."

In the past 12 months, the Business Journal has reported on several large downtown employers who have left the city center, or have plans to exit. They include Unitus Community Credit Union, JE Dunn Construction and Umpqua Bank.

There are companies who have mentioned employee safety as a reason to reassess their downtown offices, but many have said that the adoption of remote or distributed work is the driving factor for exiting downtown.

Jonathan Bach

Staff Reporter

Portland Business Journal

