# CITY OF RIVERSIDE
## Code of Ethics and Conduct Complaint

*A Public Document*

**RECEIVED**
DEC 27 2016
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**Person filing complaint:**

Name JASON HUNTER Email jehunter51@msn.com

Address (optional if email provided) _____

Phone (202) 321-2630

**Official who committed alleged violation:**

Name RUSTY BAILEY, MIKE GARDNER, ANDY MELENDREZ, CHRIS MACARTHUR + JIM PERRY

Position MAYOR + CITY COUNCILMEMBERS

**Date(s) of alleged violation:** 7/22/14

**If not filed within 180 days from when alleged violation occurred:**

Date of discovery of alleged violation _____

Describe circumstances that led to discovery of alleged violation (may attach separate sheet or documents)

**Specific section(s) of Code of Ethics and Conduct allegedly violated:**

RESOLUTION No 22318 II (D)

**Description of event(s) (may attach separate sheet or documents):**

ON 7/22/14, AT A CITY COUNCIL MEETING, A HEARING WAS HELD REGARDING THE FINDINGS OF AN INVESTIGATION OF COUNCILMAN MIKE SOUBIRAS. A HEARING ON A SIMILAR INVESTIGATION OF COUNCILMAN DANK WAS FORTHCOMING (BUT NEVER HAPPENED).

**In what way did the event(s) allegedly violate the Code of Ethics and Conduct cited above (may attach separate sheet or documents)?**

THE DECISIONS OF THE COUNCIL + MAYOR, REGARDING BOTH THE INVESTIGATIONS AND HEARING WERE DONE IN CLOSED SESSION, VIOLATING THE BROWN ACT. THE DECISION TO HAVE AN INDEPENDENT INVESTIGATION FOLLOWED BY A COUNCIL HEARING VIOLATED OUR ETHICS CODE AT THE TIME. BOTH CREATED DISTRUST OF THE LOCAL GOVERNMEN

**If complaint is related to a member of a City board, commission, or committee, shall the complaint first be referred to the Chair in an effort to achieve informal resolution?**

Yes _____ No, forward directly to adjudicating body _____

Signature _____ Date 12/27/16

***PLEASE NOTE:*** *Failure to complete all sections of this form may result in the filing being deemed incomplete and the complainant will be so notified. Incomplete filings will not be processed.*

File completed form and attachments:

Office of the City Clerk
City of Riverside
3900 Main Street
Riverside, CA 92522
951-826-5557
cnicol@riversideca.gov

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] ( Title 5 added by Stats. 1949, Ch. 81. )

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] ( Division 2 added by Stats. 1949, Ch. 81. )

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] ( Part 1 added by Stats. 1949, Ch. 81. )

CHAPTER 9. Meetings [54950 - 54963] ( Chapter 9 added by Stats. 1953, Ch. 1588. )

54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Added by Stats. 1953, Ch. 1588.)

54950.5. This chapter shall be known as the Ralph M. Brown Act.

54957. (a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a

public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline

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NEWS

# RIVERSIDE: Complaints against Councilman Soubirous spark probe

*An L.A. attorney who looked into San Bernardino County corruption has been hired to investigate complaints that Mike Soubirous interfered with city employees*

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BY ALICIA ROBINSON / STAFF WRITER
*Published: April 25, 2014 5:13 p.m.*

FILE PHOTO

Riverside is investigating complaints that Councilman Mike Soubirous violated the city charter by interfering with employees, allegations he said are puzzling but that he nonetheless denied.

Details of the allegations, such as who raised them and what exactly Soubirous is accused of, have not been made public. The investigation appears to center on Soubirousâ contacts with police officials and the city manager during recent discussions of panhandlers, vagrants and park security.

Soubirous, who took office in December, said he has pushed to address residentsâ concerns about panhandlers and has tried to ask tough questions as he promised voters he would. But he doesnât think he did anything improper.

âI would never cross the line of ordering an employee or countermanding an order of the city manager,â he said. âI have no idea at this point where this (investigation) is coming from and why.â

COMPLAINTS FILED

Since mid-January, city officials have been discussing how to address security at parks, following two December shootings and complaints from residents about aggressive panhandlers and homeless people.

The council initially considered hiring private security guards as a short-term solution, but earlier this month instead approved a $3.1 million plan to add police overtime and beef up services from code enforcement and the parks department to address the problem.

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According to a letter to Soubirousâ attorney, Danuta Tuszynska, from a Los Angeles law firm Riverside hired to oversee the probe, an investigator is seeking emails and records of council meetings at which Soubirous discussed police conduct regarding panhandlers, vagrants or parks; and the employment status of police Chief Sergio Diaz and City Manager Scott Barber.

Emails from Jan. 15 to March 15 between Soubirous and Barber, Diaz or Riverside Police Officers Association President Brian Smith were among the correspondence requested.

Diaz declined to comment, as did Barber through a city spokesman. Smith did not



mayor pro tem â" told him four complaints were filed but would not say who filed them. Soubirous was told he is accused of violating charter section 407, which says the city manager has sole authority over city employees, and of creating a hostile work environment, he said.

The council hired Gumport Maslan to investigate, under a contract signed by Adams for up to $49,000. Leonard Gumport has previously been hired by San Bernardino County to look into allegations of conflicts of interest, bribery and corruption.

In response to a public records request, outside attorneys would not provide copies of the complaints, citing legal exemptions for privacy and the pending investigation.

INTERFERENCE?

City officials were emailing each other about park security and panhandlers prior to public discussions of those issues in February and April.

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*Published: April 25, 2014 5:13 p.m.*

In one string of emails provided by Soubirous, the councilman â" prompted by a residentâs complaint â" wrote that he has often heard police say âour hands are tiedâ and âthereâs nothing we can doâ about panhandlers and vagrants.

âI believe it is time we tackle this issue with all we have,â wrote Soubirous, who retired after a career with the California Highway Patrol.

Soubirous said he did not include Diaz in the email, but that another councilman may have copied the chief when responding. Diaz wrote back to Soubirous that âno good comes from labeling dedicated public servants as âlazyâ and that it is âpolitically unwise to declare war on your cops,â according to the messages.

Soubirous said he has asked questions and raised concerns about the police department and its handling of vagrants, but doesnât believe he lost his temper with city employees or told them how to do their jobs.

He also questioned the process of the investigation. Soubirous has refused to meet with the investigator, he said, to protest what he calls a lack of transparency on the cityâs part.

âI think the people of Ward 3 and the entire city should know that Iâm under investigationâ rather than learning of it only if the council decides to censure him, he said.

The last time Riverside hired an outside investigator to review a complaint against a council member was 2012, when a fire inspector alleged Councilman Paul Davis interfered with her job duties and was rude to her during a food truck event he helped organize.

That investigatorâs report concluded Davis violated council rules, the city ethics code and the city charter by publicly criticizing, being disrespectful to and interfering with a

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city employee. Davis questioned the finding and how the city handled the investigation.

The matter concluded with the council publicly reprimanding Davis, who made his own apology to the unnamed fire inspector.

Contact Alicia Robinson at 951-368-9461 or arobinson@pe.com

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# RIVERSIDE: City investigating second councilman

*A complaint that Paul Davis violated the city charter is being handled by the investigator looking into similar allegations against Councilman Mike Soubirous*

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**BY ALICIA ROBINSON** / STAFF WRITER
*Published: May 2, 2014 Updated: Oct. 7, 2014 5:04 p.m.*

FILE PHOTO

In an unprecedented situation, Riverside is investigating complaints that two city councilmen "created a hostile work environment" and violated a part of the city charter that bars the council from interfering with the city manager's authority.

Councilman Paul Davis is the subject of the latest probe, which the council voted to pursue in an April 22 closed-door session, according to a letter to Davis from an outside law firm overseeing the investigation.

The firm, Los Angeles-based Liebert Cassidy Whitmore, also is in charge of an investigation of Councilman Mike Soubirous that started in early April. An attorney from another firm, Leonard Gumport, is the investigator in both cases.

As in the Soubirous case, little information has been made public, such as who filed the complaint against Davis or what he is alleged to have done. And like Soubirous, Davis has denied any wrongdoing and called the investigation an attempt to silence or punish him for asking hard questions.

"I am 100 percent confident that I will be exonerated from these charges, but it will be costly to the citizens of Riverside," Davis said Friday, May 2.

City spokesman Phil Pitchford said officials can't comment on a continuing investigation.

If either investigation finds wrongdoing, it's not clear what would happen. The city's ethics code provides for public censure of elected or appointed officials who violate it, and the charter says violations of its provisions or of city ordinances may be prosecuted as misdemeanors.

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City officials did not respond to emails asking about the procedure for handling complaints against council members.

Investigation into Riverside Councilman Paul Davis

LIEBERT CASSIDY WHITMORE

[redacted]

July 15, 2014

**VIA EMAIL**

Mr. Jim Potts
Potts & Associates
3500 E. Colorado Boulevard. Suite 107
Pasadena, California 91107
Email: pasemrep@aol.com

Mr. Paul Davis
City of Riverside
3900 Main Street, 7th Floor
Riverside, California 92522
pdavis@riversideca.gov

Re: ***Investigation of Councilmember Paul Davis/Public Hearing***
**Client-Matter: R1085/057**

Dear Mr. Potts and Mr. Davis:

This office serves as special counsel to the City of Riverside with regards to the referenced investigation.

The City of Riverside has received a Public Records Act request from Alicia Robinson at the Press-Enterprise. The July 3, 2014 request seeks any "reports, memos or other correspondence regarding findings or results of the investigation of complaints about Councilman Paul Davis by Gumport Masten." The City has reviewed the request and has determined that legal authority requires it to release the final investigation report prepared by Leonard Gumport regarding the complaints made against Mr. Davis. If you have any objections to releasing the investigation report pursuant to the Public Records Act, please advise immediately.

Attached to this letter is a complete unredacted copy of Mr. Gumport's investigation report. Please be advised that the copy the City intends to release to Ms. Robinson will contain redactions. Specifically, the City will redact (1) the names of all City employees who were witnesses to the investigation, however Mr. Barber's name will not be redacted, (2) any



You are also being provided with an unredacted copy of the investigation report because

Investigation into Riverside Councilman Paul Davis (redacted)

**PRIVILEGED AND CONFIDENTIAL**
**ATTORNEY-CLIENT COMMUNICATION**

**REDACTED DOCUMENT**

June 13, 2014

**REPORT OF INVESTIGATION OF CERTAIN ALLEGATIONS MADE CONCERNING COUNCILMEMBER PAUL DAVIS**

LEONARD L. GUMPORT (SBN 086935)
GUMPORT | MASTAN
550 S. Hope St., Suite 1765
Los Angeles, CA 90071-2627
Telephone: (213) 452-4900
Email: lgumport@gumportlaw.com

Independent Counsel for City of Riverside



The cost of the investigations is just one of the unknowns. A contract with Gumport was signed April 7 and covers up to $49,000 of work and expenses. That amount appears to be for the Soubirous investigation. The council didn't agree to look into the Davis complaint until two weeks later.

On Friday, the city did not immediately provide information on the Davis complaint or other contracts regarding the investigation. How much the law firm is being paid has not been disclosed.

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Published: May 2, 2014 Updated: Oct. 7, 2014 5:04 p.m.

The allegations in both cases appear similar.

The letter Davis received says he is accused of violating the city charter section that states council members must not interfere with the city manager's performance of his duties or give orders to city employees.

Gumport requested records from the city including emails Davis sent between Jan. 25 and March 25 to other council members, City Manager Scott Barber and several other city employees about a property owned by the March Joint Powers Authority that Davis thought was suitable for a possible youth baseball center.

The attorney also sought any emails Davis sent about Barber's "employment status or job performance." In Soubirous' case, the investigator asked for records of council meetings when Barber's employment status was discussed.

Davis inquired about three months ago regarding a potential Riverside site for a youth baseball facility that Major League Baseball was considering building in San Bernardino.

Regarding the city manager, Davis has expressed dissatisfaction with Barber's performance since his 2011 hiring. The councilman said he doesn't recall ever saying he would get Barber fired, but "If I say I have no confidence in his ability to continue as city manager, that basically (implies) that, don't you think?"

Davis said he's aware the council as a whole decides on hiring and firing the city manager, but he's entitled to his opinion. He said he believes the investigation is retaliation for "trying to hold people accountable and ask questions," and for his criticism of the city manager and testimony in a fired deputy city attorney's recent lawsuit against the city.

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The only other time in recent memory that Riverside investigated a council member was in 2012, and the target was Davis.

A city fire inspector complained he was disrespectful and interfered with her doing her job at a food truck event Davis helped organize.

An outside investigator was paid $850 for looking into the matter and found that Davis violated council rules, the ethics code and the charter. The council reprimanded him in a public meeting.

As for two councilmen being under investigation at the same time, for similar reasons, former Mayor Ron Loveridge says he doesn't recall such a situation any time back to the mid-1960s.

Loveridge, who held elected office in the city for 22 years, said he preferred to settle



Asked what impression the investigations might give the public, Mayor William "Rusty" Bailey said, "I think the community expects the highest ethical standards and integrity from its elected officials."

Bailey denied that the investigations are retaliation against Davis and Soubirous.

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*Published: May 2, 2014 Updated: Oct. 7, 2014 5:04 p.m.*

The issue has already raised questions in the community.

Katie Greene, a member of community organization The Group, said when Davis spoke about the investigations at a meeting Thursday, "My first inclination (was), 'Can't you all just get along?"

Greene said she sometimes thinks Davis "talks a little bit too much to too many people," but she's also noticed that his questions and attempts to discuss issues aren't always well received at council meetings.

Soubirous questioned the secrecy surrounding the complaint and investigation process. He has said officials declined to tell him who filed complaints against him.

"Is this a way of discrediting someone in the voters' eyes? 'Don't ask questions or we'll make you look bad,'" Soubirous said.

Davis and Soubirous have hired attorneys. Davis said he wasn't satisfied with how the 2012 complaint against him was handled, but he let it go. This time, he's prepared to defend himself.

"You punch me once, I turn the other cheek," he said. "You punch me twice, it's on."

Contact Alicia Robinson at 951-368-9461 or arobinson@pe.com

COUNCILMEN INVESTIGATED

Riverside is looking into complaints against Councilmen Mike Soubirous and Paul Davis.

ALLEGATIONS: The investigations focus on whether the councilmen created a hostile work environment and interfered with the city manager's authority.

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UNKNOWNS: The city has not disclosed who filed the complaints or exactly what they allege. Officials have not commented on the procedures in such cases.

INVESTIGATOR: Leonard Gumport, who has previously probed allegations of conflicts of interest, bribery and corruption in San Bernardino County, was hired to review the Riverside complaints.

WHAT'S NEXT: More information could be made public when the investigations end. Findings of wrongdoing could result in public censure, but only voters can remove a councilman from office.



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RESOLUTION NO. 22318

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA, ESTABLISHING A CODE OF ETHICS AND CONDUCT FOR ELECTED OFFICIALS AND MEMBERS OF APPOINTED BOARDS, COMMISSIONS AND COMMITTEES, AND REPEALING RESOLUTION NO. 22149.

WHEREAS, on November 2, 2004, Measure DD was approved by the voters of the City of Riverside, thereby adding Section 202 to the Riverside City Charter; and

WHEREAS, the City Council desires to further amend the Code of Ethics and Conduct.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Riverside that the following shall be the Code of Ethics and Conduct for all elected officials and members of appointed boards, commissions, and committees for the City of Riverside.

I

**PREAMBLE**

The people of the City of Riverside, at an election held on November 2, 2004, approved an amendment to the City Charter of the City of Riverside which states: "The City of Riverside shall adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees which shall assure public confidence in the integrity of local government and its effective and fair operation." To assure public confidence in and ensure effective and fair operation of the local government of the City of Riverside the following Code of Ethics and Conduct is hereby adopted by the City of Riverside.

II

**CODE PROVISIONS**

A. Purpose

It is the intent of this code to achieve fair, ethical, and accountable local government for the City of Riverside. The people of Riverside expect public officials, both elected and appointed, to comply with both the letter and the spirit of the laws of the State of California, the United States of America and the Charter, Municipal Code, and established policies of the City of Riverside affecting the operations of local government. In addition, public officials are

CITY ATTORNEY'S OFFICE
3900 MAIN STREET
RIVERSIDE, CA 92522
(951) 826-5567

expected to comply with the provisions of this Code of Ethics and Conduct established pursuant to the expressed will of the people. All persons covered by this code will aspire to meet the highest ethical standards in the conduct of their responsibility as an elected or appointed official of the City of Riverside.

B. Scope

The provisions of this Code of Ethics and Conduct shall apply to the Mayor and members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council or the Mayor or the Mayor and City Council, including any *ad hoc* committees. The provisions of this code shall also apply to all members of committees appointed by individual members of the City Council or by Department Heads.

Further, the provisions of this code shall apply to the Mayor and Members of the City Council at all times during their term of office as elected officials of the City of Riverside. However, the provisions of this code shall apply to the appointed officials only while they are acting in their official capacities and in the discharge of their duties.

C. Core Values

The people of the City of Riverside share a set of core values that constitute the guiding principles for the establishment of this code. These core values are expressed in the following aspirations:

(1) To create a government that is trusted by everyone.

(2) To make decisions that are unbiased, fair, and honest.

(3) To use public office for service to the public good and not for personal or private gain.

(4) To ensure that everyone is treated with respect and in a just and fair manner.

(5) To create a community that affirms the value of diversity.

(6) To ensure that all public decisions are well informed, independent, and in the best interests of the City of Riverside.

(7) To maintain a nonpartisan and civic minded local government.

(8) To ensure that all officials are adequately prepared for the duties of their office.

City Attorney's Office
3900 Main Street
Riverside, CA 92522
(951) 826-5567

(9) To ensure that members of appointed boards, commissions, and committees make a diligent effort to attend all regularly scheduled meetings of their board, commission, or committee.

Based upon these core values it is the City of Riverside's intent to establish through this Code of Ethics and Conduct reasonable expectations of behavior for elected and appointed public officials who will meet the aspirations of these core values.

D. Creating Trust of Local Government

The elected and appointed officials of the City of Riverside shall aspire to operate the City government and exercise their responsibilities in a manner which creates a trust in their decisions and the manner of delivery of programs through the local government. The officials shall aspire to create a transparent decision making process by providing easy access to all public information about actual or potential conflicts between their private interests and their public responsibilities. The officials shall aspire to make themselves available to the people of the city to hear and understand their concerns. They shall aspire to make every effort to ensure that they have accurate information to guide their decisions and to share all public information with the community to ensure the community's understanding of the basis of the officials' decisions.

E. Making Unbiased, Fair, and Honest Decisions

The elected and appointed officials of the City of Riverside shall aspire to ensure that their decisions are viewed as unbiased, fair, and honest. They shall strive to avoid participation in all decisions which create a real or perceived conflict of interest and to disclose any personal interest that would be perceived to be in conflict with the fair and impartial exercise of their responsibilities. They will not accept gifts or favors which might compromise the independence of their judgments or actions or give the appearance of being compromised.

F. Use of Office for Service to the Public Good and Not for Personal or Private Gain

The elected and appointed officials of the City of Riverside have a responsibility to use the benefits of public office exclusively for the public purpose for which it was created. They shall strive to avoid the use of their office for personal or private gain by accepting gifts or favors which might compromise the independence of their judgment or give the appearance of being

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compromised, using their official title for matters other than the official conduct of their office, and engaging in decisions which would affect the level of compensation they may receive for their service except as otherwise required by law. Acceptance of gifts shall otherwise be consistent with the requirements and limitations of state law.

G. Treating Everyone with Respect and in a Just and Fair Manner

The elected and appointed officials of the City of Riverside have a responsibility to make extraordinary attempts to treat all people, including city staff, in a manner which would be considered just and fair. They shall strive to value and encourage input from members of the community and encourage open and free discussion of public issues. They shall strive to have all persons treated with respect as they come before the body on whicb they serve. They shall aspire to create an atmosphere of genuine interest in the point of view expressed by members of the community even if it differs from their own.

H. Creating a Community that Affirms the Value of Diversity

The elected and appointed officials of the City of Riverside shall aspire to recognize and affirm the value of all persons, families, and communities within the City of Riverside. They will encourage full participation of all persons and groups, be aware and observe important celebrations and events which reflect the values of our diverse population, and provide assistance for those who find it difficult to participate due to language barriers or disabilities.

I. Ensuring that all Public Decisions are Well Informed, Independent, and in the Best Interests of the City of Riverside

The elected and appointed officials of the City of Riverside will encourage and support research and information gathering from verifiable sources. They will seek to ensure that information provided by the City Government to the public is accurate and clear. They will ensure that all information utilized in the decision making process, except that which by law is confidential, will be shared with the public.

J. Maintaining a Nonpartisan and Civic Minded Local Government

The elected and appointed officials of the City of Riverside shall affirm the value of a nonpartisan council-manager form of government.

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K. Ensuring that All Officials are Prepared for the Exercise of their Duties

The elected and appointed officials shall commit to participation in all orientation and training sessions which are presented to ensure our full preparation for the exercise of their public duties.

L. Ensuring Impartiality When Acting in a Quasi-Judicial Capacity

Whenever the members of a board, commission or committee participate in a matter, the subject of which will be subsequently heard by the City Council, the members shall not contact the Mayor and/or any members of the City Council for the purpose of influencing the City Council's decision.

M. Impartiality/Undue Influence

Neither the Mayor nor any member of the City Council shall contact a board, commission or committee member at any time for the purpose of influencing that member with respect to the discharge of his/her official duties.

## III

## IMPLEMENTATION OF THE CODE

A. Implementation, Monitoring and Oversight

Monitoring and oversight are essential to ensure this Code of Ethics and Conduct is effectively implemented. The objectives of this implementation effort shall include:

All persons covered by this code must be aware of its provisions.

All persons covered by this code shall have resources available to clarify expectations in situations where they feel a potential area of noncompliance may exist.

All bodies covered by the code shall adopt rules of procedure which include the provisions of this code.

Annual review shall be conducted to ensure the code is being applied in a fair and effective manner.

Annual review shall be conducted by the City Council at a regular meeting.

To achieve these objectives the following mechanisms should be utilized.

1. All new members of the City Council, upon election or reelection, and members

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of boards, commissions, and committees appointed by the Mayor, City Council, Mayor and City Council, individual members of the City Council, or Department Head, upon appointment or reappointment, shall be given a copy of the code and required to affirm in writing they have received the code and understand its provisions. (See Attachment A).

2. All new members of the City Council and boards, commissions, and committees shall be provided a training session which shall clarify the provisions and application of the code. These sessions shall be coordinated by the City Manager, City Attorney and City Clerk through the Mayor's Office.

3. The City Attorney, or his or her designee, shall serve as a resource person to those persons covered by the code to assist them in determination of appropriate actions consistent with the code.

4. Complaints from members of the public regarding elected or appointed officials shall be submitted on the complaint form available from the City Clerk. Complaints concerning Section II, G, herein, shall be presented by the person who claims to be treated in a manner inconsistent with that Section. Complaints shall be filed with the City Clerk within 180 days of discovery of an alleged violation of the Code of Ethics and Conduct. "Discovery" is defined as when the complainant knew or reasonably should have known or discovered evidence of the alleged violation through the exercise of reasonable diligence.

Upon receipt of the complaint form, the City Clerk and City Attorney will review the submittal for completeness only. Any issue of timeliness will be resolved by the adjudicating body, and, if there is an appeal, by the City Council. Once the filing is deemed complete, the City Clerk will schedule the complaint concerning the elected official for a hearing before the adjudicating body as soon as practicable and notify both parties. For complaints against members of boards, commissions and committees, the City Clerk will forward the matter to the appropriate board, commission or committee chair for informal resolution if so requested by the complainant. If the matter is not resolved, or if the complainant did not request to seek an informal resolution, the City Clerk will schedule the complaint for a hearing before the adjudicating body as soon as practicable and notify both parties.

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The adjudicating body shall consist of five members and one alternate chosen from the chairpersons of the City's boards and commissions selected by lot by the City Clerk. No chairperson shall serve who is from the same ward as the elected official to which the complaint concerns. The City Clerk will notify both parties of the hearing date, place and time at least fourteen (14) days in advance of the hearing. The adjudicating body shall hear all timely filed complaints and attempt to resolve each complaint on its merits.

Following the hearing, the City Clerk will notify both parties, in writing, of the adjudicating body's decision and the appeal process. The decision of the adjudicating body may be appealed by either party by submitting such appeal in writing to the City Clerk within seven (7) days of the adjudicating body's decision. If no appeal is received within seven (7) days, the matter is concluded. If appealed within seven (7) days, the City Clerk will schedule the appeal before the City Council and notify both parties at least fourteen (14) days in advance of the hearing.

The record on appeal will consist of a transcript of the hearing before the adjudicating body as well as all documentary evidence submitted at the hearing. No new evidence will be considered. The City Council will review the record and will disturb the adjudicating body's decision only upon a showing of clear error or abuse of discretion.

The City Clerk will notify both parties in writing of the City Council's findings and determination. The determination of the City Council is final and there is no further right to appeal. The hearing and appeal process shall be concluded if at all possible, within ninety (90) days of the complaint being determined to be complete. Complaints and any supporting documentation shall be retained for a period of at least two (2) years.

5. The chair of each body covered by this code is responsible to intervene and provide appropriate guidance to members and, if need be, communicate concerns to the City Council.

6. In September of each year, the Mayor, the City Manager, the City Attorney and the chairs of all Boards and Commissions shall meet with the Governmental Affairs Committee of the City Council to assess the effectiveness of this code and its application. They shall present a report to the City Council which may include recommendations for the inclusion of new values

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or procedures. Prior to the annual Governmental Affairs Committee meeting, every Board and Commission is encouraged to agendize and discuss the Code and submit any recommendations for the Committee's consideration.

7. In September of each year, the City Council shall hold a public hearing on its evening agenda at a regularly scheduled meeting, and shall review the report and make an independent evaluation of the effectiveness of the Code of Ethics and Conduct.

B. Enforcement and Sanctions

It is the intention that this code be self enforcing. However, it is recognized that there may be instances where even after receiving guidance and counsel, a person may continue to violate the Code's provisions. In those cases sanctions would apply and would occur in a public meeting.

(1) Mayor - City Council

The sanctions that would apply by action of the City Council would be:

(a) Public censure of a member.

The ultimate sanction of removal from office would lie in the hands of the electorate.

(2) Boards and Commissions

(a) Public censure by the Board or Commission.

(b) Public censure by the Mayor and City Council.

(c) Removal from office by the Mayor and City Council.

Ultimately, the responsibility for the enforcement of this Code of Ethics and Conduct lies with the Mayor and City Council as they represent the will of the people of the City of Riverside.

BE IT FURTHER RESOLVED that Resolution No. 22149 is hereby repealed.

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ADOPTED by the City Council this 13th day of December, 2011.

CHRISTOPHER H. MAC ARTHUR
Mayor Pro Tem of the City of Riverside

Attest:

COLLEEN J. NICOL
City Clerk of the City of Riverside

I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the City Council of said City at its meeting held on the 13th day of December, 2011 by the following vote, to wit:

Ayes: Councilmembers Gardner, Melendrez, Bailey, Davis, Mac Arthur, Hart, and Adams

Noes: None

Absent: None

Disqualified: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Riverside, California, this 16th day of December, 2011

COLLEEN J. NICOL
City Clerk of the City of Riverside

[11-2667]
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# RIVERSIDE: Probe of councilman inconclusive

*The next step will be a City Council hearing on the investigation report, but it isn't clear what action, if any, could result against Mike Soubirous.*

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BY ALICIA ROBINSON / STAFF WRITER

*Published: June 25, 2014 Updated: June 26, 2014 10:59 a.m.*

. FILE PHOTO

**IF YOU GO**

**What:** Riverside City Council will hold a hearing on results of an investigation of complaints against Councilman Mike Soubirous

**When:** 1 p.m., July 22

**Where:** Riverside City Hall, 3900 Main St.

**READ THE RESULTS OF THE INVESTIGATION**

Riverside has released the results of an investigation into complaints against Councilman Mike Soubirous. A hearing on the findings is scheduled for July 22.

Click here to read in full screen.

An investigation into complaints against Riverside Councilman Mike Soubirous was inconclusive, finding that "it would be speculation" to say whether Soubirous did anything wrong.

The City Council will hold a public hearing on the findings July 22. Officials have not explained the procedure or possible outcomes of the hearing.

The report makes public for the first time who filed the complaints: Riverside City Manager Scott Barber and police Chief Sergio Diaz. They alleged that Soubirous created a hostile work environment and violated the city charter by suggesting that a majority of the council was prepared to fire them.

Soubirous has denied making any comments about firing the city manager or police chief.

Soubirous has called the allegation that he threatened the city manager's and police chief's jobs "so far-fetched it is laughable."

If a majority of the council was ready to be rid of either official, Soubirous said, "they would be gone."

The crux of the investigation was a Feb. 14 meeting between Soubirous and Riverside Police Officers' Association President Brian Smith.

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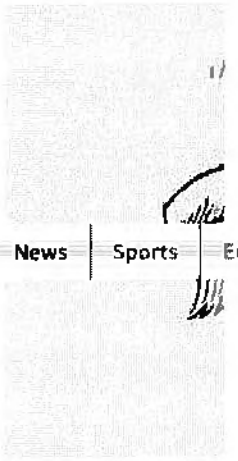



Both men agree that they met and discussed security at city parks, but their accounts on what else Soubirous may have said are contradictory, according to a report from investigator Leonard Gumport that was released Wednesday by the city and Soubirous.

Smith said that, at the meeting, Soubirous "tried to big and he was calling the shots, that it was a 7-0 vote to remove Scott if he didn't do what they deemed he needed to do, and that maybe if Sergio doesn't come in line, maybe it's time to see if Sergio Diaz can be replaced as chief of police," according to a transcript of his interview with Gumport.

Soubirous, Smith said, wanted the city manager and chief to do more to address problems with panhandlers, transients and other sources of frustration to residents and business owners.

Smith told Diaz and Barber about the meeting, leading them to complain to Mayor William "Rusty" Bailey and Councilman Steve Adams, who got council approval to spend up to $49,000 to investigate. The city has not been billed for the final cost of the probe.

Gumport tried to determine whether Soubirous created a hostile work environment for Barber by allegedly threatening his job, violated the charter by interfering with the city manager's employees and whether council members had a secret vote or discussion on firing Barber or Diaz that would violate state open-meeting laws.

The report said it appears there was never such a vote or discussion. But because Soubirous's and Smith's verions of what was said are at odds and no one else witnessed the conversation, there is "insufficient information to justify finding" that Soubirous committed the other alleged violations.

However, Gumport wrote, the meeting and subsequent investigation "demonstrate the cost and disruption that can occur when council members deal directly with subordinates of the city manager instead of dealing with them through the city manager."

The report includes a transcript of Gumport's lengthy interview of Smith and brief written responses Soubirous provided after declining to be interviewed. It also includes Barber's and Diaz's complaints and interviews with council members and several other city officials.

In his interview, Smith suggested there was bad blood between Soubirous, a retired California Highway Patrol official, and some police officials. Soubirous was upset that the police union had backed his opponent in the election, Smith said, and police were angry because they felt the councilman was criticizing their job performance.

Soubirous has said he believes the investigation is politically motivated because of the election, and because he has questioned Police Department actions and policies since taking office.

"I am an elected official and if I want to propose policy for (the Police Department), for building and planning, for parks and recreation, that's my job," he said. "They don't want to see any rocking of the boat."

A second investigation into similar complaints against Councilman Paul Davis continues. Davis is alleged to have created a hostile work environment and interfered with the city manager's job.

**Contact the writer:** 951-368-9461 or arobinson@pe.com



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# RIVERSIDE: Accusations, no punishment at councilman Soubirous' hearing

*In its first such hearing, the council doesn't censure Councilman Mike Soubirous, but he and others questioned process one called 'irretrievably broken'*

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BY ALICIA ROBINSON / STAFF WRITER

*Published: July 22, 2014 Updated: July 23, 2014 12:48 a.m.*

DAVID BAUMAN , DAVID BAUMAN STAFF PHOTOGRAPHER

An investigation of Councilman Mike Soubirous ended Tuesday with no council action against him, but City Hall still was not a friendly place to be.

During a three-hour hearing into allegations that he violated the city charter, Soubirous accused Mayor Rusty Bailey of trying to smear him. Councilman Paul Davis, who faces a similar hearing in the fall, alleged that he and his colleagues had violated state open meeting laws. Several residents said they were embarrassed by the investigation and implored the council to act like adults and work together.

Good governance "cannot happen in the current atmosphere in City Hall," said Kathy Allavie, president of the Raincross Group, a civic organization. "We need you to get on with the business of the city. Riverside has too many critical needs to be wasting our time with such small-town shenanigans."

The pleas and accusations came in a session that was the first of its kind in Riverside and centered on the results of an investigation of complaints against Soubirous.

City Manager Scott Barber and Police Chief Sergio Diaz filed the complaints, alleging the councilman created a hostile work environment and violated the city charter by interfering with their job performance.

Their allegations stem from a February meeting between Soubirous and Riverside Police Officers' Association President Brian Smith. According to Smith, Soubirous said the council was ready to fire Barber and Diaz if they didn't address problems with transients and panhandlers. Soubirous has denied threatening their jobs.

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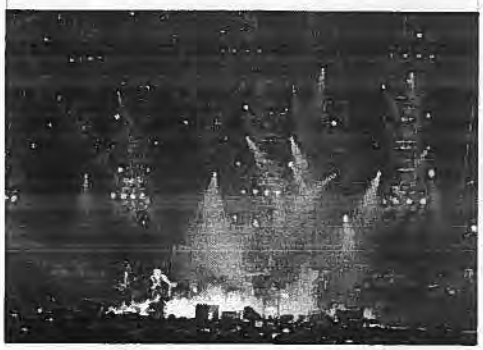

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At the hearing, investigator Leonard Gumport told the council he concluded "it would be undue speculation" to find Soubirous did anything improper because only Soubirous and Smith know what was said at their meeting, and there was no proof as to who's telling the truth.

Gumport pointed to apparent animosity between Soubirous and Smith, both because the union endorsed Soubirous's election opponent, and because Smith may have seen Soubirous as trying to boss the police department.

Soubirous has strongly urged officials to respond to complaints about aggressive panhandling and vagrants in his ward.

In a 20-minute rebuttal, Soubirous called the investigation an attempt to discredit him because he doesn't go along with the council majority, and said Bailey was diminishing his ability to hold staff accountable.

"My crime so far is doing my job," Soubirous said. "This is nothing more than a political witch hunt orchestrated by our mayor."

Bailey said the investigation was authorized by the council, and the city has a legal duty to investigate complaints of harassment.

The council voted 6-1, with Jim Perry dissenting, to close the hearing but chose not to decide on any punishment. They could have taken no action, censured Soubirous, or stripped him of committee posts and other duties. Only voters can remove a council member from office.

It's not clear what will happen with Davis' investigation, which has not yet been discussed publicly. He also stands accused of violating the charter.

On Tuesday, Davis alleged that the council violated the Brown Act by discussing the Soubirous investigation privately. He also questioned the council's authority to investigate its members or sit in judgment of them.

The council likely will discuss how to address the Davis investigation before holding another hearing. Councilman Mike Gardner said a few things can be learned from the whole ordeal, including that the process they used is "irretrievably broken" and "is tearing us apart as a council and as a city."

"Our challenge is to fix the process and find a way to move forward together for the good of our city," he said.

**Contact the writer:** 951-368-9461 or arobinson@pe.com

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# RIVERSIDE: Councilman Davis may have violated charter, investigation finds

*Councilman Paul Davis now faces a possible September hearing before his council colleagues, who will decide whether to censure or punish him*

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BY ALICIA ROBINSON / STAFF WRITER

*Published: July 24, 2014 Updated: 11:10 p.m.*

FILE PHOTO

An outside investigator found that Riverside City Councilman Paul Davis likely interfered with the city manager's job performance and violated the city charter.

Davis continues to deny wrongdoing in the case probed by attorney Leonard Gumport. It began in April after City Manager Scott Barber filed a complaint against Davis that included allegations the councilman told others he wanted Barber fired.

The council voted in closed session to investigate. This week, the city released a June 13 report on the findings in response to a July 3 public records request.

The probe sought to determine whether Davis gave orders to city staff about annexing land owned by the March Joint Powers Authority so a youth baseball facility could be developed there. Gumport found "substantial basis to conclude" that Davis circumvented the city manager and directed city employees, according to the report.

The report also said that, though it's likely Davis publicly criticized Barber's job performance, such comments wouldn't constitute creating a hostile work environment as Barber alleged.

## PROBE COMPLETED

Riverside City Council members are expected in September to discuss results of an investigation into complaints against Councilman Paul Davis.

**The complaint:** City Manager Scott Barber alleged Davis violated the city charter by interfering with his job performance and creating a hostile work environment.

**The investigator:** Attorney Leonard Gumport, who also probed complaints against Councilman Mike Soubirous, began investigating in April.

**The report:** Gumport found it could reasonably be concluded that Davis interfered by giving orders to Barber's staff, but Davis' alleged actions didn't meet the legal definitions of harassment.

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**The next steps:** Davis continues to deny wrongdoing; the council will decide whether to censure or otherwise punish him.

Davis said this week he told Barber privately that "I no longer have confidence in you as city manager," but he said nothing about it publicly until after learning Barber filed a complaint against him.

"In this case, I did nothing wrong," Davis said.

Through city spokesman Phil Pitchford, Barber declined to comment on an "ongoing investigation."

It's the city's second investigation of one of its own councilmen in recent months and the second investigation of Davis since 2012. At that time, a city fire inspector complained that Davis was disrespectful and interfered with her work during a downtown food truck festival.

The fire inspector's complaint was upheld and the council reprimanded Davis, who took issue with how the matter was handled but apologized to the inspector.

Earlier this week, the council closed an investigation of Councilman Mike Soubirous with no action. Soubirous also was alleged to have violated the charter by interfering with the city manager, but the probe was inconclusive.

If the council agrees Davis violated the charter, it could censure him or strip him of committee seats and other posts. Only voters could remove Davis from office.

The city charter states that violating its provisions is a misdemeanor that could carry a fine or jail time, but those punishments could only come after successful prosecution by the city attorney or Riverside County District Attorney's office.

**Requests vs. orders**

Section 407 of the charter says the mayor and council members must not interfere with the city manager's performance of duties. Although council members may ask staff members questions, they can give orders only to the city manager.

According to the report, Barber said Davis told Community Development Director Al Zelinka to look into the baseball facility proposal and work on annexing the March JPA parcel.

The names of Zelinka and most other city employees were redacted from a copy of the report released by the city. An outside law firm said it was done to protect the employees' privacy. Davis provided the complete report and has shared full copies with the public.

Zelinka told the investigator Davis organized a meeting between city employees and officials interested in building a youth baseball facility on a 60-acre parcel just outside Davis' ward. Afterward, city staff members were researching what the project might entail, and Davis called Zelinka for an update.

When asked whether he felt Davis had directed him to do anything, Zelinka said no but added that he gets calls from all council members with questions and, sometimes, requests.

"The splitting of hairs, however, is those requests we take extremely seriously because they are elected leaders of the city so in effect they're orders," Zelinka told Gumport.

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*Published: July 24, 2014 Updated: 11:10 p.m.*

Also in the report, Assistant City Manager Deanna Lorson, whose name was blacked out in the city-released document, said that in later conversations with Zelinka and another city official, "I was told that Councilman Davis came across as demanding that Al annex the property" and that Zelinka was uncomfortable with what Davis had said in their phone conversation.

Davis said Thursday that he only went to Lorson and Zelinka after Barber directed him to. Davis said he never gave any orders.

**Rights violated?**

Barber's other main allegation was that Davis made inappropriate requests, publicly criticized him and said he should be fired.

"Discussion with my staff that Paul intends to fire me as city manager violates my rights as an employee of the City Council and makes my job as city manager extremely difficult, because it creates fear and confusion for me and my subordinate staff," Barber wrote in his complaint.

The city manager told Gumport that Davis had complained about him and expressed an intention to fire him to several people, including Patricia Solano, a parks department chief.

According to the report, Solano spoke to Davis during a 2013 Halloween party at Villegas Community Center. Davis told her he was upset about the recent announcement that parks Director Ralph Nuñez was retiring, that he held Barber responsible and intended to get him fired, Solano told Gumport.

Davis denied making the comments when interviewed by Gumport, and on Wednesday he called Solano's narrative "complete fabrication."

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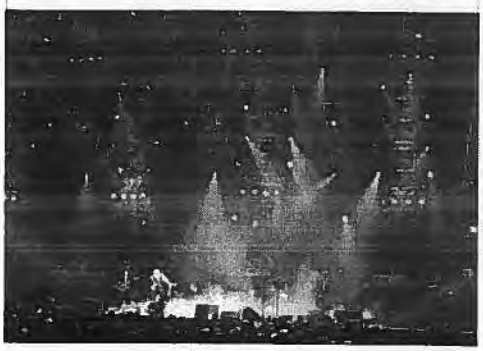

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Solano, whose name was obscured in the city-released report, said Thursday she answered the investigator's questions truthfully and had nothing to add.

Though Gumport concluded Davis' alleged behavior didn't violate city or state policies on workplace harassment, he wrote that "it reasonably appears that the councilman's conduct towards the city manager was unfair and unjust" based on the city's ethics code. However, the complaint wasn't filed under the ethics code, which has different procedures.

Davis questioned why the potential ethics issue was included in the report and said the allegations and investigation are retaliation against him for raising questions about how the city does business.

"I'm the guy who's pushing for audits. I'm the guy who's bringing up things that are incorrect or potentially even illegal in this city," he said.

A hearing on the investigation findings has not been scheduled but will likely be in September. But before that, the council could discuss the hearing process, after a contentious hearing this week about the investigation of Soubirous.

Each investigation could cost up to $49,000, but city officials say they don't have final



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# RIVERSIDE: Investigation of Councilman Davis in limbo

*What to do is unclear now that retiring City Manager Scott Barber said he'll drop his complaint against Paul Davis*

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BY ALICIA ROBINSON / STAFF WRITER
*Published: Sept. 22, 2014 Updated: Sept. 23, 2014 4:19 p.m.*

, FILE PHOTO

More than three months after an investigator concluded Riverside Councilman Paul Davis may have violated the city charter, council members have not held a hearing on the probe or publicly discussed its findings.

And it's not clear if they ever will, or whether there's any reason to, because retiring City Manager Scott Barber has said he'll withdraw the complaint that led to the investigation.

About six months ago, Barber filed complaints against Davis and Councilman Mike Soubirous. He alleged they had interfered with his job performance, which would be a violation of the city's charter, and created a hostile work environment. Both council members have denied any wrongdoing.

An investigation of Soubirous was inconclusive, and in July the council chose not to act on the findings.

Attorney Leonard Gumport's June report on the Davis probe determined it's likely that Davis violated the charter by giving an improper order to Community Development Director Al Zelinka. Gumport also found that Davis probably did criticize Barber's performance, but that such an action would not constitute harassment.

Now the question for the council is what to do with the Davis findings.

At the Soubirous hearing, some residents told the council the investigation was an embarrassing waste of time. Councilman Mike Gardner said the process was broken beyond repair.

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Also, Barber told the council Sept. 10 he would be "dropping all my employment claims upon my retirement" at the end of the year. Barber could not be reached for comment Monday.

The council is expected to discuss what to do in a closed-door session Tuesday. At least three council members said they don't see a point in holding a hearing, while others said they'll wait to discuss it with the rest of the council before commenting.

Gardner said the council should address the matter, but he added that the council's response could be to disagree with the investigator's conclusion, take no action or censure or otherwise punish Davis.

"The issue with just not doing anything is that the investigation has taken place and there's a conclusion of the investigator, which is public," Gardner said. "I don't think the council just says, 'Oh, never mind.' I think the council has to do something."



Davis said he expects a hearing, but it should be in court because the city charter says any violations "shall be deemed a misdemeanor" punishable by a fine or jail time.

"My colleagues do not have the authority to hear a criminal case," he said. "If they're going to pursue it they need to refer it to the district attorney for prosecution."

Davis said he has tried to find out the status of his case and received no response from the city.

City officials have said that when Barber filed complaints against the council members, the city was obligated to look into them. So far, the investigations have proven an acrimonious and likely expensive ordeal.

Two city contracts with Gumport, the investigator, were for up to $49,000 each, and the city also used an outside law firm to oversee both cases. The city has not disclosed the total cost of either investigation.

**Contact the writer:** 951-368-9461 or arobinson@pe.com

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# RIVERSIDE: Davis, Soubirous investigation costs may rise

*The city spent almost $93,000 on probes of alleged charter violations, but councilmen are hoping to recover their legal fees*

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BY ALICIA ROBINSON / STAFF WRITER

*Published: Oct. 8, 2014 Updated: Oct. 9, 2014 10:24 a.m.*

, FILE PHOTO

Riverside's investigations of complaints against Councilmen Mike Soubirous and Paul Davis have cost city taxpayers nearly $93,000, and that may not be the total bill.

Soubirous has filed a claim seeking reimbursement of $1,055 for hiring an attorney to advise him. Davis said he also will try to recover his legal costs, though he did not know the total when reached Tuesday.

"At one point or another, I'll be reimbursed," Davis said, declining to elaborate.

The council discussed Soubirous' claim behind closed doors Tuesday, but no decision was reported at the meeting.

The city's costs to date include $31,807 for legal advice from Los Angeles firm Liebert Cassidy Whitmore and $60,989 for investigator Leonard Gumport's services. The investigations arose from complaints alleging that Soubirous and Davis interfered with City Manager Scott Barber's job performance, which would be a violation of the city charter.

Barber filed complaints against both councilmen. Police Chief Sergio Diaz filed one against Soubirous. Aside from a tense, argumentative hearing on the Soubirous investigation findings in July, the city has

## CLOSED-DOOR PROCESS

Riverside has spent nearly $93,000 investigating complaints against Councilmen Mike Soubirous and Paul Davis, but the only public discussion was a July hearing on the Soubirous findings. Questions remain as to whether the council should have talked about the complaints publicly or reported its closed-door decisions on them.

**March 28:** City Manager Scott Barber and Police Chief Sergio Diaz file complaints against Soubirous.

**April 7:** City hires investigator Leonard Gumport to look into Soubirous complaint.

**April 14:** Barber files complaint against Davis.

**April 21:** City hires Gumport for Davis complaint.

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**April 22:** Council authorizes Davis investigation, according to letter from outside law firm overseeing both probes.

SOURCES: Riverside City Council meeting minutes, contracts between Riverside and Leonard Gumport, reports on Davis and Soubirous investigations, Liebert Cassidy Whitmore letter to Davis.

had little public discussion of what is an unprecedented situation.

The uniqueness of the circumstances and the city's lack of disclosure have raised questions about how council members decided to address the complaints and whether they should have done so in the open.

Soubirous and Davis have said they learned of the investigations from other city officials but never saw the complaints until the city released the investigator's findings. Both have said they believe the complaints and investigation process should have been shared with the public from the beginning.

**BEHIND CLOSED DOORS**

Officials acknowledge the council discussed the complaints in closed session, but meeting minutes don't show that the city ever publicly reported the council's decisions to investigate or the related spending. On June 24, the council reported its vote to hold a hearing July 22 on the findings of the Soubirous investigation.

One expert on California's open-government law, known as the Brown Act, said it appears that the city legally at least should have reported the council's closed-door decisions on the complaints, and may have been required to discuss them in public in the first place.

"The Brown Act forbids holding a closed session simply to talk about complaints against members of the council," said Terry Francke, general counsel for Californians Aware, a government transparency advocacy group.

The threat of legal action – for example, the chance that someone with a complaint against a council member might sue the city – could be a legitimate reason to discuss the issue in private, Francke said.

Even then, he said, the law requires officials to divulge the legal threat if requested.

**SECRET DECISIONS**

Whether the city followed the law in disclosing the council's closed-door decisions on the investigations is also unclear.

In response to a public records request, interim City Attorney Cristina Talley could not produce documents showing that the city publicly reported the council's decisions to hire Liebert Cassidy Whitmore or investigator Gumport.

Councilman Mike Gardner said he couldn't recall whether the council voted in closed session to hire the law firm or the investigator. Mayor William "Rusty" Bailey said the council did vote, but it was simply to investigate the complaints – not specifically to hire anyone.

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# RIVERSIDE: Davis, Soubirous investigation costs may rise

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*Published: Oct. 8, 2014 Updated: Oct. 9, 2014 10:24 a.m.*

"The City Council made a decision to investigate and to give the mayor pro tem the ability to sign the contract" with Gumport, Bailey said. He said he thought that had been reported as required.

Councilman Steve Adams, who was mayor pro tem for the first half of 2014, signed contracts on April 7 to investigate Soubirous and on April 21 to investigate Davis.

Meeting minutes for April 1, 8, 22 and 29 show "no reportable action" from the closed session. The April 15 minutes indicate the council authorized the city attorney to "initiate litigation" but no other details are given.

Francke said it could be legal to keep the investigations secret if they were being handled by the city attorney as a response to a possible legal threat.

But city records show nearly $20,000 of the money paid to Gumport came from the city manager's budget, which raises the question of a possible conflict of interest, because the city manager's complaints prompted the investigations. The rest of Gumport's bills – close to $40,000 – were paid by the City Attorney's Office.

"That's odd to say the least," Francke said of the City Manager's Office paying the investigator.

Voting to put the mayor pro tem in charge of hiring an investigator "wouldn't get (the council) any lawful secrecy," he said. "That would have been a reportable action no matter what kind of closed session you were claiming it to be."

**WHO'S ACCOUNTABLE?**

As to how the city handled the investigations and public disclosure, Bailey said it's a first for Riverside.

In such a case, "You trust your staff – the city manager and the city attorney – to find the right process," Bailey said.

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"If there's an issue where professional staff did not follow the right process or protocol, then we will hold them accountable for that."

That could be difficult, however, because the city attorney when the complaints were filed and during the investigations was Greg Priamos, who left in July to become lead counsel for Riverside County.

The Soubirous case is closed, after the council chose to take no action on the investigation's inconclusive findings.

Council members still have not said publicly what they plan to do in the Davis case. That investigation found it is likely Davis violated the city charter, but Davis has insisted that the matter be turned over to the Riverside County district attorney, since the charter itself says any violations of its provisions would be a misdemeanor.



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# City Council Memorandum

**TO:** MEMBERS OF THE CITY COUNCIL **DATE:** JULY 22, 2014

**FROM:** MAYOR WILLIAM R. BAILEY, III
MAYOR PRO TEM STEVEN K. ADAMS
INCOMING MAYOR PRO TEM JAMES PERRY **WARD:** ALL

**SUBJECT:** HEARING ON INVESTIGATION OF COMPLAINTS AGAINST COUNCILMEMBER MIKE SOUBIROUS FOR ADMINISTRATIVE INTERFERENCE AND HARASSMENT

## ISSUE:

The issue presented for City Council consideration is whether to take any action as against Councilmember Mike Soubirous based upon the results of the investigation in response to complaints of administrative interference and harassment made by the City Manager and Chief of Police.

## RECOMMENDATION:

That the City Council conduct a hearing to consider the results of the investigation of the complaints and any information submitted in response thereto by Councilmember Soubirous and to take whatever action, if any, that the City Council deems appropriate.

## BACKGROUND:

On March 28, 2014, the City Manager and Chief of Police each filed complaints with the City alleging that Councilmember Mike Soubirous engaged in administrative interference in violation of Riverside City Charter section 407 and that the offensive conduct unreasonably interfered with their work performance thereby creating a hostile working environment in violation of the City's Human Resources Policy and Procedure Manual Section III-6. On April 1, 2014, the City Council (with Councilmember Soubirous excused and Councilmember Davis absent) unanimously directed that an independent investigation immediately be commenced as required by state law and City policy. Mr. Leonard Gumport of Gumport Mastan was retained to conduct the investigation.

Riverside City Charter section 407 – Interference in Administrative Service, provides in pertinent part:

> ***Neither the Mayor nor the City Council nor any of its members shall interfere with the execution by the City Manager of his/her powers and duties, or order, directly or indirectly, the appointment by the City Manager or by any of the department heads in the administrative service of the City, of any person to an office or employment or their removal therefrom. Except for the purpose of inquiry, the Mayor, the City***

***Council and its members, shall deal with the administrative service under the City Manager solely through the City Manager and neither the Mayor nor the City Council nor any member thereof, shall give orders to any subordinates of the City Manager, either publicly or privately.***

Section III-6 of the City's Human Resources Policy and Procedure Manual provides that "harassment" may consist of offensive verbal, physical, or visual conduct when such conduct is based on or related to an individual on the basis of race, color, ancestry, religious creed, disability, medical condition, age (over 40), marital status, sexual orientation or any other protected classification under applicable law, and the offensive conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

Furthermore, Resolution No. 22676 governing the Rules of Procedure and Order of Business provides that the Mayor and City Council shall not publicly criticize an individual employee. The Resolution further provides that the Mayor and Councilmembers shall not get involved in personnel issues except during a closed session where personnel issues may be discussed or as otherwise appropriate concerning the City Manager, City Attorney, City Clerk or other staff as appointed by the City Council. Lastly, the Resolution provides that if a Councilmember is unhappy about a department or an employee, he/she may discuss the situation with the City Manager, Assistant City Manager, Deputy City Manager, or the City Attorney or City Clerk as appropriate.

Attached to this report is a copy of the completed investigation for consideration by the members of the City Council.

After careful consideration and deliberation concerning the facts, conclusions and recommendations set forth in the report as well as consideration of any information and/or response provided by Councilmember Soubirous, City Council may consider any of the following in response thereto:

- Take no action
- Public censure
- Removal from committee chairmanship
- Removal from standing committee assignments
- Removal from Mayor Pro Tem rotation
- Removal from regional organization assignments
- Referral to the Riverside County District Attorney's Office for investigation as to whether or not a crime has been committed for violation of Charter section 407.

**FISCAL IMPACT:**

The cost for Mr. Gumport's services to investigate the complaints is $30,195 as of June 17, 2014, with total costs not-to-exceed $49,000.00.

Prepared by:

WILLIAM R. BAILEY, III
Mayor

STEVEN K. ADAMS
Mayor Pro Tem

JAMES PERRY
Incoming Mayor Pro Tem