



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: SEPTEMBER 12, 2017**
FROM: CITY CLERK **WARDS: ALL**
SUBJECT: APPEAL OF BOARD OF ETHICS PANEL DECISION - HUNTER - AUSTIN

ISSUE:

On August 11, 2017, Jason Hunter filed an appeal of the Board of Ethics hearing panel decision of no violation in the matter of his complaint against Board of Public Utilities Chair David Austin for an alleged violation of the Code of Ethics and Conduct on May 22, 2017.

RECOMMENDATIONS:

That the City Council:

1. Find that the hearing panel did not commit a clear error or an abuse of discretion based upon the record in determining that Chair Austin did not violate the Code of Ethics and Conduct on May 22, 2017, and adopt the decision of the hearing panel as the findings of the City Council on appeal; **or**
2. Find that the hearing panel committed a clear error or abuse of discretion based upon the record in determining that Chair Austin did not violate the Code of Ethics and Conduct on May 22, 2017, and refer the matter back to the Board of Ethics for a *de novo* (new) re-hearing of the matter.

BACKGROUND/LEGISLATIVE HISTORY:

On August 3, 2017, the Board of Ethics hearing panel conducted a hearing for the Code of Ethics and Conduct attached complaint filed on June 20, 2017, by Jason Hunter against Chair Austin alleging a violation of Riverside Municipal Code Section 2.78.060 M. by Chair Austin for violating certain sections of the Standing Rules of the Board of Public Utilities of the City of Riverside during the Board of Public Utilities meeting on that date. Specifically, the complaint alleges the following violations of the Standing Rules of the Board of Public Utilities of the City of Riverside: (a) Section 7B by allowing a speaker on Item 19 on the agenda for that meeting to speak past three minutes without calling for a vote of the RPU Board; and (b) Section 5B by not enforcing Section 7B of the Standing Rules of the Board of Public Utilities of the City of Riverside.

Following presentation of evidence by both parties and panel deliberations, the panel unanimously found no violation of the Code of Ethics and Conduct by Chair Austin.

On August 11, 2017, Mr. Hunter filed an appeal of the hearing panel's decision pursuant to Section 2.78.090(B) of the Riverside Municipal Code. Preparation of a transcript of the hearing is underway by an outside agency and will be distributed upon receipt. RMC Section 2.78.090(E)

provides that the City Council shall review the record of the hearing to determine whether the hearing panel committed a clear error or an abuse of discretion based upon the record. If no such finding is made by a majority of the City Council, then the City Council shall adopt the decision of the hearing panel as the findings of the City Council on appeal. If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be referred back to the Board of Ethics for a *de novo* (new) re-hearing of the matter in light of the findings on appeal.

No elected official who is either the complainant, or the subject of a Code of Ethics complaint shall participate in the appeal of a decision of the hearing panel and must recuse himself or herself from participation.

FISCAL IMPACT:

The cost for preparation of related transcripts is estimated at \$1,000 and will be absorbed within the City Clerk's Office Professional Services Account 1200000-421000. All remaining processing and duplication costs were absorbed within the City Attorney and City Clerk's Office Budgets.

Prepared by: Colleen J. Nicol, City Clerk
Approved as to form: Gary G. Geuss, City Attorney

Attachments:

- Appeal
- Complaint and response documents
- Hearing transcript of August 3, 2017
- Hearing panel minutes of August 3, 2017