

Adopted as amended by Board of Ethics on June 3, 2021

**BOARD OF ETHICS HEARING PANEL
STATEMENT OF FINDINGS AND DECISION**

Complainant: Jason Hunter
Public Official: Councilperson Plascencia
Alleged Violation Date: December 17, 2021
Hearing Panel Decision: April 14, 2021
Alleged Violations: Riverside Municipal Code 2.78.060 - Sunshine Ordinance

Riverside Municipal Code Sections 2.78.060(D) Advocacy of private interests of third parties in certain circumstances prohibited and (M) Violations of federal, State, or local law prohibited

Hearing Panel Members Present: Chair Keen and Members Ford, Nelson and Graham

Hearing Panel Member Absent: Member Newman

Preamble: The City Council on numerous occasions has correctly pointed out that the appeal and De Novo hearing should be based exclusively on the evidence presented in the primary case. The entire defense the City Council presented was based entirely on new theories and evidence. The Hearing Panel did follow these guidelines and in fact asked the City Clerk's Office to place the transcript and entire packet from the first hearing in the packet. Regrettably this request was not complied with by the Clerk's Office and we had to reference the transcript by reading portions into the record and have them sent to each party during the hearing.

The assumption that the actions or policy decisions of the City Council are final and not subject to oversight lacks merit. Reference the transcripts pages 85 - 95, neither Councilperson Plascencia nor the Assistant City Attorney Mercer could cite any part of the City Charter nor "Government Code" in fact the Code of Ethics specifically says the opposite.

The Hearing Panel reviewed the case at length, referencing the following:

- The complete prior hearing video and transcripts
- The City Council Meeting - Appeal and New Defense
- City Council Meeting of December 17, 2019 agenda, minutes and video
- City Council Memorandum dated December 17, 2019 - **GUIDELINES FOR OFFICIAL CITY OF RIVERSIDE CITY COUNCIL COLLATERAL AND DETERMINE THE INSIGNIAS THAT SHOULD AND SHOULD NOT APPEAR ON THE COLLATERAL**
- CITY COUNCIL HOUSING AUTHORITIES MINUTES -DECEMBER 17, 2019
- CITY OF RIVERSIDE ADMINISTRATION MANUAL - **City Council, Successor Agency to the Redevelopment Agency, Authorities, and City Council Agent Reports**
- Social Design Notes "A Bugs Life"
- Video(s) of City Council Meeting - December 3, 2019 - timestamped at Item 46 (Items for Future Consideration) December 17, 2019 - timestamped at Items 7a - Councilperson Plascencia recommendations
- City Sunshine Ordinance (in its entirety)
- City of Riverside Brand Manual (in its entirety)
- 2019 Union Contributions to Candidate Gaby Plascencia

- California Form 460
- City Clerk Colleen Nicol - submitted Questions and Answers
- Statement from Jennifer McCoy - City of Riverside Purchasing Department, including email trail and purchasing records
- City of Riverside Council staff sample business cards
- City Council Person Business Cards
- Response from Councilperson Plascencia "Attorney Letter" - Dated March 23, 2021
- Response for Councilperson Plascencia- Dated September 10, 2020
- City Council Meeting Video - December 17, 2019 - Former City Attorney Gary Geuss opinion logos on business cards and opinion on union bug
- Witness testimony - Al Zelinka, City Manager
- Video of City Council Meeting - December 3, 2019 Item 46
- Business Cards from other Cities with Union Bug (logo)
- List of Cities that Allow Use of Union Bug (logo) on Cards
- City of Riverside Ordinance 7459 (in its entirety)
- City Council Minutes for October 27, 2020
- Complete Video - City Council Meeting October 27, 2020
- Examination of the Union Bug (logo)
- Testimony and Statements from both parties
- Additional Videos and Evidence as presented.

Background

- To strive to create a government that is trusted by everyone. The public officials of the City of Riverside shall aspire to operate the City government and exercise their responsibilities in a manner which creates trust in their decisions and the manner of delivery of programs through the local government. **The public 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 public 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 understands the basis of the officials' decisions.
- **To strive to ensure that all public decisions are well informed, independent, and in the best interests of the City of Riverside. The public officials of the City of Riverside will encourage and support research and information gathering from verifiable sources**

Findings and Decision - Riverside Municipal Code 2.78.060 - Sunshine Ordinance

Specific testimony references

- Quotes from City Manager Zelinka from the transcript of the **September 30, 2020, Board of Ethics Hearing Panel, page 86, line 24-25** " .. .indicated we had met. And I believe, based on my Outlook archives, we met on November 12th of 2019.
- ... " **and page 87, lines 5-7,**" During that conversation, the councilwoman, then the council-member-elect, indicated interest in the union bug logo on her card.

- And while I have family", and page **88 lines 1-9**, "the -- I think it was the next -- the next day, Shanae received a call in response to the email from multiple council-members, but -- or other council-members, I don't know who all, but Councilwoman-Elect Plascencia communicated with Shanae about a lot of those logistics and -- and mentioned or had conversations about, brought up the topic of the union bug, or had a conversation with Shanae about the topic. Shanae brought that to my attention, and ...

Motion on Findings

Member Nelson: The -- the city council has come up with this theory, which I completely disagree with, that if I'm speeding on the freeway, I'm guilty; but if I can convince one other person to speed with me, I'm now innocent. I completely disagree. I watched the city council meeting that was in the evidence package. I watched the original hearing where we -- where Councilman Feirro testified. There was never a discussion of urgency. So for the city council to say at this point that the bar of urgency was met is void of fact. I cannot find a single instance where anyone even discussed what was urgent. And, in fact, the evidence proves the city council had no idea what they were going to discuss until the discussion began. Because as we know, this is not an insignia. This is a logo and a logo that clearly has allegiance to one entity.

In fact, they copyrighted it. In fact, their publication rules say it does show allegiance. So I think the city council was flawed, and I move that we uphold the Sunshine Ordinance violation because urgency was never discussed.

As far as, and I just want to address a more comment where people say, well, maybe it shouldn't be against one councilperson; anyone was open and available to file a complaint against anyone else. So we don't -- we don't -- we're not allowed to extend our jurisdiction to people not on the complaint or to file complaints that we think should have been filed. So I find that point moot. My motion is that we uphold the recommendation of a conviction on the violation of the Sunshine Ordinance.

Chair Keen: I do want to -- before anybody seconds that or we take it to a vote, I do want to comment on that, and in the same vein, but slightly different. So the way this is written, it does determine that plurality potentially creates the legality on what is urgent and what is not. And specifically, in that city council's finding, because I know this wasn't discussed at length like city attorney Brandon said during this hearing, but it is a huge part of this, is that they threw it out. And the urgency they're claiming is -- they're saying, they're not claiming, they're stating that the urgency is determined by either the mayor and a council-member or two council-members and that the urgency was established in this case and procedure was followed.

That's only half of it. So even if we want to say that that urgency was determined, it's only half of what the Sunshine Ordinance stated at the time. So and it -- it's in the packet multiple times. Mr. Hunter did read it in. It is in Ms. Plascencia's response, is that the mayor or council-member, with the concurrence of another council-member, believe an item is urgent **and**, this word is getting bypassed. It's not just the two signatures. That plurality of two members, giving it the urgency is only half of what the Sunshine Ordinance states at the time. It's that part and the failure to meet any additional notice requirements was due to. And in that letter A portion, because B does not apply, Mr. Hunter already stated that in his evidence, on A, it states, the need to take immediate action which came to the attention of the local body, and here's the **important word, after the agenda was posted**. So if we take -- if we look at their stating clear error on urgency, okay, maybe that's true; however, they're

completely disregarding and not commenting on that clear error of the fact that she didn't meet the additional notice requirements and evidence in this hearing, which we can go back through, states that she knew about it prior to this agenda being posted.

We have it quoted in testimony from the previous hearing. We have it in this packet that she knew prior to that 12 days for the posting. It was also brought up in that meeting on the 3rd of December, which again that's prior to.

So yes, she had the second signature and those two people thought it was urgent, but she did not meet the additional notice requirement, which makes it a violation of the excuse of the Sunshine Ordinance.

.... I feel like those two words are the most important part, and they're being disregarded in Council-member Plascencia's response letter. And I and based on what we have from the city council meeting when they said we made a clear error, they do not address that specific piece in theirs. They only address the second signature. And nobody is denying that Council-member Plascencia got the second signature, that somebody else thought it was urgent. They are completely disregarding the fact that she did not meet the additional notice requirement. And the evidence is here to prove that she knew she wanted to talk about the union bug prior to that 12-day filing period.

The -- the findings are that urgency was never discussed. There's no evidence that urgency was ever discussed, nor considered, at any point during this process. And the fact is the councilperson and the city manager were well aware of the request -- the request to put the union bug on business cards long before the agenda was -- was created.

I'd like to add to that, to the findings for that, is that in the city council's decision that this was clear error, they omitted any statements covering the fact that Councilmember Plascencia did not meet the additional notice requirement as stated in the excuse of the Sunshine notice requirements, that she was aware prior. And the evidence for that can be found in the quotes from Al Zelinka, I believe it was page 86 and 88 from the prior transcript, stating that he had communication with her in November of 2020 regarding a union bug specifically.

(From the Transcripts in the Matter of Hunter vs Plasencia Complaint - Hearing April 14, 2021 prepared by Esquire Deposition Solutions - pages 127 - 131. 132 - 133)

Recap

- Urgency was never discussed.
- Public Interest to be heard was never discussed or considered
- Waiver did not meet requirements for waiver of public's right to comment.
- Agenda's included in the Chamber did not ALL list the agenda item clearly.
- Item was not properly presented to allow factual and accurate research and information from verifiable sources.
- Avoiding public comment is adverse to transparent decision making process.
- Avoiding public comment does not allow City Council to hear and consider the concerns of the public's or allow discussion of potential conflicts between private interests and public responsibilities.

Findings and Decision - Riverside Municipal Code Sections 2.78.060(D) Advocacy of private interests of third parties in certain circumstances prohibited and (M) Violations of federal, State, or local law prohibited

Motion on Findings

Member Nelson -- I will go ahead and make another motion. On -- on item -- on the city council, the union bug on a business card does not promote the interest of a third party is factually incorrect. It is a registered trademark of a party, of an entity. It is -- that is specific union bug is the registered trademark of the printer's union.

So its use as legal is immaterial. We are not a court of law. We are an ethics panel. There's a -- for -- when they talk about other cities doing it, doesn't apply, because we don't even know if those other cities had any kind of marketing manual. We don't know how it was presented to be on their collateral, whether it was presented by a councilperson or not. And -- and it -- it -- so and the city council was not well versed or informed on this topic when they called the union bug an insignia, shows they were not educated on what they were approving; therefore, we are not questioning their ability to make solid, informed, and properly agendized policy decisions.

We're discussing them making decisions that are not informed, not agendized, and that circumvent the public's right to air their opinion.

Member Graham: I think it's the same thing, like the legal versus the ethical, like what they did right on here is that the third party as its use is legal. Okay. We get that and understand that, but is it ethical that she put it on the cards? And what it represents is what we're looking at. So we've got to focus on that part.

Chair Keen And as Councilmember Perry states in that in the video from the meeting is where -- where does this ball stop rolling down the road as far as insignias and logos as they appear on the cards. This opens the door for a large thing.

Member Nelson: It is, we are not asking the city council to review a policy decision they made. They created that in their own lust to make a defense. We are saying that the process that -- that got this approved is where the violation occurred. What the city council does in regards to keeping the policy, agendize -- or changing it later, I would concur with them, they have the right to make policy decisions, like I said, properly agendized with care -- with actual factual data presented and well informed.

If the City of Riverside's majority of citizens disagree with that union bug being on the card, I don't think that is a Board of Ethics issue. That is for them to take up with their city council person at public comment or at face-to-face meetings or when they come up for election. So I want to make it clear that my motion is not in any way telling the city council to change their policy. It is specifically addressing on how this decision was made and how that violated the ethics code.

... there is -- an insignia and a trademark logo are mutually exclusive. And, in fact, that's why they're kind of jumpropping with the term. And the fact that it doesn't have an allegiance to any one entity -- entity, I would argue with the trademark office regarding that or the printer's union. They claimed it as a representative logo trademarked of their entity. So what I'm saying is the reason the city council returned it is not based on fact or the facts in this case. And -- and by the way -- in the original decision -- here was nowhere that I read that you guys said the city council doesn't have the right to make policy. So that -- that's an argument that wasn't even on the table. That's an argument they just threw into the appeal.

Member Ford: ... So it's advocacy of a private interest of third parties in certain circumstances, that's the item that's prohibited. And what the city council gave as their reason for finding clear error in it is that the union bug on business cards constitutes advocacy for private interest of a third party; and their response to us saying that is, the union bug on a business card does not promote the interest of a third party as its use is legal. There is a precedent for such an insignia to be used on city stationery and the insignia certifies labor performed, not an allegiance to any one entity.

... in reading their response, I believe there's error in there being a precedent for such insignia to be used in other cities. So other cities may not have the same municipal codes. They may not have the same Code of Ethics. They may not have the same position. So this is that irrelevant to the City of Riverside specifically and the codes that we have.

We're not debating -- nothing about this claim -- this complaint is -- is about it being -- that we're not -- we're not saying that the use of a union bug isn't legal. We all know that it is legal to use it. Like, I could print it on my stationery for my business if I -- if that's the situation we were in. But they're stating, they specifically state, the union bug does not promote the interest of a third party. However, it is, like Member Nelson stated, a trademarked logo for a specific business.

Unions are incredibly powerful. And just kind a little bit of a background with that, those who support unions, typically I wouldn't say receive favors, but there's advantages to supporting unions. So just to kind of pretend like this is just this ambiguous sort of entity, highly inappropriate.

Member Nelson ... I don't think we need to show that a specific union donated money or that there was any financial transaction, nor am I implying there was. What it says in -- in the evidence package, which is this is not being speculative, it's evidence that was presented and not refuted; it's a protection against antiunion and nonunion shops that otherwise may profess working conditions. It can be part of a public relations campaign to induce customers to buy union-made products. It is a sign of good workmanship and quality standards. It is the badge of prestige to attract new union members. It is a warning against trespass by competitive unions. It doesn't say specifically a public relation campaign to induce people to buy union printing. It says union. And this is from the evidence that was presented and -- and not refuted or not challenged, the purpose of placing the union bug or the union logo on a document or presenting it. And it -- and it's their stated five purposes. So I just want to be extremely clear that I am, in my motion, there is no implication nor any -- anything saying that she took money from any specific union to put this on a card.

The -- my motion is that we uphold the prior recommendation to city council on the violation of 2.78.060, advocacy of private interest of a third party in certain conditions because the union logo on a business card promotes the interest of a third party and the logo certifies allegiance to one specific party.

(From the Transcripts in the Matter of Hunter vs Plasencia Complaint - Hearing April 14, 2021 prepared by Esquire Deposition Solutions - pages 134 - 135, 137 , 140 -144, 148)

Recap

- The union bug is a Logo
- The union bug is a copyrighted logo
- The union bug is a trademarked logo

- The union has stated goals and requirements for using the union bug
- The union bug has a stated mission to be part of a public relations campaign to introduce customers to buy union products
- The union bug has a stated purpose to attract new members
- The union bug has a stated purpose as a badge of union prestige

Short Form Narrative

On May 6, 2021, following discussion, it was moved by Hearing Panel Chair Keen and seconded by Panel Member Graham to amend the Statement of Findings and Decision that Councilwoman Plascencia violated Riverside Municipal Code Section 2.78.060(M) Violations of federal, State, or local law prohibited by failing to meet the Riverside Municipal Code Section 4.05.050(D)(2)(a) Excuse of Sunshine Notice Requirements because the need to take immediate action was not discussed or considered and to include that (1) Councilwoman Plascencia, the City Council, and the City Manager were well aware of the request to put the union bug on the business cards long before the agenda was created.

The motion carried unanimously.

it was moved by Panel Member Nelson and seconded by Panel Chair Keen to amend the Statement of Findings and Decision that Councilwoman Plascencia violated Riverside Municipal Code Section 2.78.060(D) Advocacy of private interests of third parties in certain circumstances prohibited by use of the union bug. The findings were based on the evidence presented that the union bug is the registered trademark and logo with a stated purpose including use as part of a public relations campaign to induce customers to buy union made product and it is a badge of union prestige to attract new members and certifies allegiance to a specific party.

The motion carried unanimously.