

BOARD OF ETHICS HEARING PANEL
FRIDAY, APRIL 24, 2017, 2 P.M.
ART PICK COUNCIL CHAMBER

MINUTES

PRESENT: Chair Stahovich and Members Tucker, Nelson, House, Ford, and Alternate Wright

ABSENT: None

STAFF PRESENT: Colleen Nicol, Dana Roa, and Robert Hansen

Chair Ford convened the meeting at 2:01 p.m.

PUBLIC COMMENT

Jason Hunter spoke regarding the ethics hearing of April 21, 2017, and today's hearing.

HEARING

Chair Stahovich convened the hearing on the complaint filed by Jason Hunter against Councilmember Mac Arthur alleging violation of the Code of Ethics on July 22, 2014.

Chair Stahovich noted that both complainant Jason Hunter and Councilmember Mac Arthur were present. The City Clerk administered the oath.

Chair Stahovich called upon the parties to present any technical or procedural issues of concern. Mr. Hunter objected to the City Attorney serving as legal counsel to the Board of Ethics, the lack of a process for panel members to recuse themselves, and redactions in the Davis investigation report. Further, Mr. Hunter requested the Panel to request the City Council to (1) halt destruction of all closed session documents and audio tapes related to the Soubirous and Davis investigations; and (2) issue subpoenas for all closed session documents and audio for Councilmembers' Soubirous and Davis' investigations and for the appearance of Councilmembers Soubirous and Davis as witnesses.

Chair Stahovich responded that he sees no conflict of interest for the City Attorney to serve as legal counsel to the Hearing Panel and he's satisfied with the policies in place relative to recusal of Panel Members. He finds no benefit to having an unredacted copy of the Davis investigation for this hearing. The requests for subpoenas of documents, halt of closed session materials destruction, and subpoena of Councilmembers Soubirous and Davis as witnesses will be discussed at the time of deliberation.

Mr. Hunter and Councilmember Mac Arthur presented opening statements. Mr. Hunter presented his evidence and called Councilmember Mac Arthur as a witness. Councilmember Mac Arthur presented his evidence followed by closing arguments by both parties.

Chair Stahovich called for discussion of the remaining technical issues. Following discussion, it was moved by Member Nelson and seconded by Member Tucker to discuss issuance of subpoenas following deliberations. Motion carried with Members Stahovich, Tucker, Nelson, and House voting yes and Member Ford voting no.

Following lengthy discussion, it was moved by Member House and seconded by Member Tucker to cease debate and move to a vote. The motion carried unanimously.

It was moved by Member Nelson and seconded by Member Ford to request the City Council to issue a subpoena for Councilmember Davis to appear as a witness. The motion failed for lack of four affirmative votes with Members Stahovich, Nelson, and Ford voting yes and Members House and Tucker voting no.

Subsequently, it was moved by Member Tucker and seconded by Member House to find that Councilmember Mac Arthur did not violate the Code of Ethics. Motion carried unanimously.

The meeting adjourned at 5:30 p.m.

Respectfully submitted,



COLLEEN J. NICOL
City Clerk

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City Council Date: 6-13-17

Item No.: 5

TRANSCRIPTION OF
BOARD OF ETHICS - HEARING PANEL
APRIL 24, 2017

IN RE: HUNTER v. MACARTHUR

Transcribed by:
Christine Aiello

Job No. J0582916

I N D E X

TESTIMONY

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
C. MacArthur	33				

C. MacArthur 33

E X H I B I T S

NO. DESCRIPTION

EVID.

Complainant's:

None offered.

Respondent's:

None offered.

PROCEEDINGS

(On the record - 02:00:56 p.m.)

CHAIRMAN STAHOVICH: At this time I would like to call the meeting of the hearing panel of the Board of Ethics to order. This meeting is to hear the complaint of Jason Hunter against Councilman Chris MacArthur alleging a violation of the Code of Ethics and Conduct occurring on or about July 22nd, 2014.

Because the allegation of a violation of the Code of Ethics and Conduct occurred prior to the adoption of the Riverside Municipal Code, Chapter 2.78, the applicable Code of Ethics and Conduct to be applied to the allegations of misconduct shall be the city council resolution number 22461 repealing resolution number 22318. Specifically the complaint alleges conduct in violation of -- of Chapter, Roman numeral, II, Section D-1, that the actions of the public official created distrust of local government.

At this point I am going to call for any public comments there may be on matters that are on items on this agenda. Okay. I have one card here. Jason Hunter, you'll have three minutes.

MR. HUNTER: Hello. Jason Hunter, Ward 1. I hope everyone had a good weekend. I'm -- I'm hoping to, once again, expeditiously or efficiently go through

1 the evidence, cross-examine the witnesses, ask for my
2 subpoenas. Some of it will be repetitive, but it has
3 to be because it has to go on the record. Regardless
4 of whether some of you have seen this now for the third
5 time, unfortunately when it goes before the council a
6 complete record needs to be prepared. So I apologize
7 in advance.

8 Although I think I'll probably be -- be
9 concentrating -- I'll still have to go over the parts
10 of the -- the Brown Act violations that I think
11 occurred, but I'm going to concentrate a little more
12 heavily, and this is why I don't think it's going to be
13 much shorter today, on things that I think went
14 unresolved on Friday's hearing. And I think here are
15 the things that went unresolved, and we're going to
16 have to discuss. And I think this -- this -- this
17 panel or another panel is going to have to address
18 these issues; number one, in my complaint it
19 specifically mentions the Davis investigation
20 specifically. I looked at it again and I'll be reading
21 it.

22 So you looked, you went -- referred to the
23 city council, the -- the Soubirous investigation, you
24 limited it at July 22nd, 2014; but actions were taken
25 after July 22nd, 2014, in regards to the investigations

1 and hearings as well. One the things that happened was
2 the referral to the D.A. I think that happened in
3 October of that year where discussions were held, once
4 again, in closed session, in my opinion -- opinion
5 illegitimately, to discuss process, not pending
6 litigation. You don't refer something to the D.A.
7 because pending litigation that a city employee would
8 have possibly brought forward. You're talking about a
9 process decision that had to be done publicly. So I
10 think we need to expand the scope of the request before
11 council. I think that I would like this council --
12 this panel to consider that.

13 And secondly, we need to discuss the process,
14 itself, and did the council bypass the ethics process
15 and create a completely new process in secret in order
16 to get their men, which were folks who were in the
17 political minority at the time, Councilman Davis and
18 Councilman Soubirous. In every other case going back
19 years on similar types of allegations brought by
20 members of the general public, and we've discussed how
21 staff is no different, they are members of the general
22 public under the ethics code, those complaints were
23 filed as ethics complaints. The hostile work
24 environment -- environment complaints were fired --
25 filed separately.

1 So why did these complaints -- like they did
2 to Councilman Soubirous -- Davis once before in 2012,
3 why did they bypass the process? And I think that is
4 an ethics -- not -- not following policy is an ethics
5 violation all -- in altogether. Thank you.

6 CHAIRMAN STAHOVICH: Thank you, Mr. Hunter.

7 Is the complainant present?

8 MR. HUNTER: Yes.

9 CHAIRMAN STAHOVICH: Will you and your
10 witnesses please stand?

11 MR. HUNTER: And I'm going to call Councilman
12 MacArthur.

13 CHAIRMAN STAHOVICH: Is the respondent
14 present? Will you and your witnesses please stand?

15 At this time I would now ask if the clerk
16 could please swear you in.

17 COLLEN NICOL: Please raise your right hand.
18 Do you promise to tell the truth, the whole truth, and
19 nothing but the truth so help you God?

20 PARTIES: I do.

21 (The parties are duly sworn according to law)

22 COLLEN NICOL: Thank you.

23 CHAIRMAN STAHOVICH: Since this complaint
24 arises out of allegations of misconduct pursuant to
25 Resolution 22461, we will dispense with the requirement

1 that the hearing panel determine that the complaint
2 complies with the requirements of Riverside Municipal
3 Code, Chapter 2.78.

4 At this point the complainant shall now have
5 five minutes to address the hearing panel concerning
6 any technical or procedural issues of concern. And
7 just to let you know up in front, if you have -- if --
8 if the complainant makes a request for the hearing
9 panel to issue any subpoenas or asks the council to
10 waive any privileges, the -- the hearing panel shall
11 defer any action on such requests until the time of
12 deliberations. All other technical or procedural
13 issues shall be resolved at this point.

14 If you -- I'll let you, just one second. Let
15 me make sure I give you the whole five minutes. You
16 may start. Thank you.

17 MR. HUNTER: And so I thank you, Mr. Chair.

18 I object to, once again, the city attorney
19 serving as counsel to this ethics panel. I think that
20 it protects both my complaint and the city attorney,
21 himself, deputy city attorney, from bad possible
22 retaliation by folks who are ultimately his bosses.
23 And you do have the power to hire independent
24 counsel -- counsel to -- to help you on this.

25 I object to there being no process by which

1 an ethics panel member may automatically or voluntarily
2 recuse themselves because of conflict of interest. I
3 reject to the redactions in the Davis
4 complaint/investigation -- investigation that was
5 included in as supplemental to your package. I think
6 that there's plenty of information that I have from
7 actually the complainant, himself, from the -- from the
8 defendant, himself, in that investigation without
9 redactions.

10 And I can tell you that some of that, some of
11 the information in there should not be redacted, okay?
12 And that's why maybe you need to get independent
13 counsel. But I would like to -- here's a new request,
14 and I think it's really important if you think about
15 it, I'd like to request this panel make to the council
16 to halt the destruction of all documents and audio
17 tapes regarding closed session discussion of the
18 Soubirous or Davis investigation.

19 I think that is incredibly important now that
20 there has been a referral made to the council to make
21 to the Attorney General. That evidence that still
22 exists, because it has not been two years and there
23 were discussions that went past the -- the -- the
24 July 22nd, 2014 hearing about these two investigations,
25 those -- that evidence should not be destroyed. And if

1 it's destroyed, I think it's partially on you, okay?
2 And I think the Attorney General might find that as
3 well. I would make that request. I think that's
4 pretty serious because there's a referral going forward
5 to the Attorney General if the council agrees to do it.

6 The fifth thing is I would still like to
7 subpoena, and I'll ask it again, don't know what you'll
8 say, but I'd like a subpoena of all documents that
9 still exist of closed session and audio regarding the
10 Davis -- Soubirous and Davis investigations. There's
11 still that -- that -- that evidence. I'd like to be
12 able to have the power to subpoena witness testimony in
13 the form of, I think I'll just -- because I'm going to
14 get a chance to -- to -- to -- to get testimony from
15 all the accused in these hearings, I'd like to just get
16 Soubirous and Davis. And just because it was not
17 allowed on Friday doesn't mean it won't happen today.
18 It's a different board -- it's a different group.

19 And I think it's vital that we hear -- now
20 keep in mind, they don't have to waive any privileges,
21 unlike the entire body of the council, because if
22 Soubirous -- if Councilman Davis or Councilman
23 Soubirous come here and they believe that what was
24 discussed in closed session wasn't privileged, they can
25 talk about everything that was discussed and you can

1 hear from -- from -- from witnesses' firsthand
2 knowledge of what happened in those closed sessions.

3 I think that is vital to hear, particularly
4 for the accusation that Councilman Davis made -- makes
5 in during the hearing on July 22nd that a vote was
6 taken to adjudicate the entire proceeding prior to the
7 proceeding occurring. I think that has to happen. If
8 it does not happen, I have immediate grounds for appeal
9 of these decisions because I will have been denied
10 crucial evidence with which to make my case, even
11 though I think I can make my case fairly well on most
12 of the charges, maybe not all of them, but most of them
13 beyond a reasonable doubt.

14 Forget about preponderance. Beyond a
15 reasonable doubt I can make my case on most of these
16 charges. And that would be all. Thank you.

17 CHAIRMAN STAHOVICH: Thank you.

18 At this time -- actually one -- one second,
19 please. Bob, at this time I want to ask a couple
20 questions. City attorney, I'd like to ask a couple
21 questions on the technical issues raised. And can we
22 just go right down the list? The first technical
23 question is whether or not the -- I'm going to
24 paraphrase, I'm sure you -- we were all listening to
25 what was said, but about the city attorney having a



1 conflict of interest.

2 To that how do you respond?

3 MR. HANSEN: I have no response. That's for
4 this board, for this panel to determine and deliberate.

5 CHAIRMAN STAHOVICH: Fair enough. Does
6 anybody have a concern about whether or not Mr. Hansen
7 working for the city attorney's office has any conflict
8 to provide us technical assistance if we need it?

9 Okay. Seeing none, I will move on to the next issue.

10 MEMBER FORD: I don't have any issues. I
11 think Bob has done an excellent job; but looking at it
12 from an outsider, I could see how it could appear that
13 there could be a conflict of interest. Like I said, I
14 think Bob has done an excellent job; but I can
15 understand how someone in Jason's position, it could
16 appear that there's too many hands coming in that are
17 pulling out of the same pot. So maybe in the future we
18 can discuss other options, but I think Bob has done
19 an -- an excellent job so far. I don't see the need to
20 change or hire outside counsel.

21 CHAIRMAN STAHOVICH: Thank you.

22 And I -- I would like to remind -- Bob, you
23 can correct me if I'm wrong, because this is in the
24 procedures, that if at some point, this or any hearing
25 panel felt there was a need for outside counsel because

1 of the conflict, at that time we could go through the
2 procedure, and I believe it's a four-fifths vote to
3 request that. That ultimately would be, I believe, the
4 decision of the city council, but I -- I -- I don't
5 hear that -- that being the case right now.

6 And again, just putting that out there for
7 procedurally.

8 MR. HANSEN: The vote would be by a simple
9 majority. It would be a request for the city council
10 to authorize hiring of outside counsel to advise the
11 hearing panel.

12 CHAIRMAN STAHOVICH: Thank you.

13 Next speaker, Wendel.

14 MEMBER TUCKER: My understanding that we are
15 supposed to cover these technical issues at the
16 beginning of our deliberations, not at this point in
17 time. We -- we still haven't heard from the
18 respondent, who may also have technical issues.

19 CHAIRMAN STAHOVICH: I intend to give him an
20 opportunity to ask any technical questions once we've
21 resolved the first ones on the table.

22 MEMBER TUCKER: However, the resolution of any
23 of the technical questions is -- is scheduled for the
24 beginning of deliberations. It doesn't -- you -- you
25 read the words yourself, it doesn't leave the leeway

1 for -- for the chair or the -- us to take votes at --
2 at -- at this point in time on -- on the technical
3 issues. We hear -- we hear what the technical issues
4 are, we hear the evidence, and then -- then we make a
5 decision. It takes votes at that time.

6 CHAIRMAN STAHOVICH: Bob, if I'm mistaken,
7 I -- I apologize if that -- that is the case. I was
8 just going off of my notepad here. And it really makes
9 no difference to me. So --

10 MR. HANSEN: According to the rules, it is the
11 chair who determines the, either the sustaining or
12 overruling of the technical objections raised at this
13 time. The only things that are deferred to
14 deliberations is requests for subpoenas of witnesses or
15 records or requests to the city council to waive any
16 privileges.

17 CHAIRMAN STAHOVICH: Okay. Then my apologies
18 for including you in my deliberations on these -- these
19 matters. So as chair, I find no evidence at this point
20 that there is any conflict of interest with the city
21 attorney representing us at this point.

22 I -- in -- in regards to a concern about the
23 process for recusal of any board members, I'm satisfied
24 with the policies in place by the Code of Ethics and
25 the larger panel.

1 In regards to the -- the -- the third item,
2 was the redactions of the Davis report, that the packet
3 regarding Mr. Davis, the complaint on Mr. Davis,
4 Councilman Davis; I understand your concern that why
5 are there redactions, there are other documents that
6 are not redacted. I think that's an excellent point.
7 At this point, however, I can see no reason to holdover
8 to -- I -- I can see no benefit to -- to me personally
9 or this hearing panel to have an unredacted copy at
10 this point.

11 The fourth issue, a halt to the destruction
12 of documents. In -- in that case again, I believe
13 there is a policy by the city council in place for --
14 for -- for the destruction or saving of documents.

15 I do have one technical question for -- for
16 you, Bob. Does the city's existing policy address the
17 issues of whether or not any existing documents for
18 this body are to be saved or destroyed?

19 MR. HANSEN: By this body, you mean the -- the
20 ethics board?

21 CHAIRMAN STAHOVICH: Yes, sir.

22 MR. HANSEN: No. The -- the destruction
23 policies in place have to do with timeframes. And so
24 the city council, closed session records, I believe,
25 are destroyed after two years. The city clerk could

1 address this more fully since she is the custodian of
2 records, but I think all records of the city have a
3 destruction policy attached to them, and they are held
4 until the time for destruction.

5 CHAIRMAN STAHOVICH: If -- and -- and again,
6 forgive me for my -- for my ignorance, but does that
7 policy have any exceptions or exemptions for pending
8 litigation or threats of litigation, things like that?

9 MR. HANSEN: The exception for litigation or
10 potential litigation is the -- the federal and state
11 requirements that entities preserve all electronic --
12 electronically stored information until those matters
13 are resolved. These hearings by the ethics board do
14 not fall into that category since the final decision is
15 made by the city council and not by a court.

16 CHAIRMAN STAHOVICH: Okay. I'll get back to
17 that one in a second. The last two issues raised were
18 subpoenaing documents and subpoenaing potential
19 witnesses. Those, Mr. Tucker, you're absolutely right,
20 those issues we'll put off until deliberation times.

21 You know, again on the issue of the
22 destruction of documents, is that something that I, as
23 chair, have any control over? Is that something that
24 this committee would need or this panel would need to
25 vote on, or is that beyond our purview altogether?

1 MR. HANSEN: I believe that if this body
2 entertains such a request, it would have to be voted on
3 by the body because it would be a request made to the
4 city council to -- to abrogate one of its adopted
5 policies.

6 CHAIRMAN STAHOVICH: Thank you. A question on
7 procedure again. I apologize. Now, I agree with my
8 colleague, Mr. Tucker, here, Dr. Tucker indicated there
9 should be a technical -- a place where the respondent
10 can ask any technical questions. I don't see that on
11 my agenda. Is that an oversight? Am I --

12 MR. HANSEN: I believe number six addresses,
13 the second part of number six.

14 CHAIRMAN STAHOVICH: Well, I -- I hope it
15 does, because I'm going to call him up regardless.

16 Councilman MacArthur, you have five minutes
17 if you have any technical questions, any -- any issues
18 about the procedures that we're going through.

19 COUNCILMAN MACARTHUR: (Indiscernible).

20 CHAIRMAN STAHOVICH: Please, thank you.

21 COUNCILMAN MACARTHUR: The only technical
22 question I had is to -- to prevent myself from being
23 late, I walked right out of my car without my pen, so
24 I'd like to request a pen. Thank you.

25 CHAIRMAN STAHOVICH: Thank you.



1 MR. HANSEN: And, chair, I apologize. That is
2 supposed to be a reciprocal provision in number six for
3 both parties, not just the complainant.

4 CHAIRMAN STAHOVICH: Okay. I looked at it a
5 couple times, didn't see that, so thank you very much.

6 Okay. At this point the complainant will
7 have 15 minutes to give an opening statement. The --
8 you will have a total of 15 minutes for your opening
9 and closing statements combined, and it's your
10 responsibility for keeping track of your time and how
11 you appropriate it. So at this time, Jason, we're
12 going to give you 15 minutes to -- to come on -- come
13 on up and give your opening statements, again reserving
14 whatever time you believe is necessary for your closing
15 statements.

16 And I will ask the clerk to put the timer on.
17 Thank you.

18 MR. HUNTER: Thank you. Once again, Jason
19 Hunter, Ward 1. We're here today to discuss complaints
20 this time against Councilman MacArthur. We've heard --
21 some of you have heard this -- the evidence and the --
22 the rote stump speech I'm going to be giving. This
23 will be the third time. I apologize once again, but
24 here it is.

25 In the spring of 2014, different management

1 in place, some different councilmen in place, the City
2 of Riverside decided to invent a process, invent a
3 process to humiliate two sitting, as elected by their
4 constituents, city councilmen, in a way that would
5 demean and lessen their powers in the community. I see
6 that as very dangerous, and I see it as a threat to our
7 democracy, what happened.

8 Now, since that time, and probably as a large
9 part because of what happened at those hearings --
10 at -- at -- you know, during that process, the hearings
11 that followed and the -- the actions that followed and
12 the settlements that followed; we've completely
13 switched up the city management, all right? There --
14 there were repercussions for staff, but there was
15 really no accountability ever assigned to the electeds
16 that helped orchestrate it.

17 Now, some of the electeds played a far
18 greater role than some of the others; but here's what
19 happened, we had a couple of senior staff, executives,
20 who decided to use public funds to further their
21 political agendas within the city. We had electeds
22 that went along with it and they did it in secret and
23 they cast votes in secret. They did not record the
24 votes, as is required by the Brown Act.

25 And I will go into even more detail today

1 when we present the evidence that will show you that
2 any action taken, and an action taken is considered to
3 be a vote, a vote, that was needed by the council, and
4 that vote was needed to hire the investigator, needs to
5 be recorded in the minutes. I will further go in to
6 show you that it happened in two occasions. It wasn't
7 one occasion. It happened to Councilman Soubirous and
8 it happened to Councilman Davis as well.

9 It just didn't get to the hearing process,
10 but the investigations took place and the votes took
11 place to go after Councilman Davis much like they had
12 Councilman Soubirous. Now, a little thing happened on
13 the way to the -- to the market, right, which is that
14 the councilmen knew the actions were illegitimate and
15 brought them forward to the press, which blew up the
16 entire scheme by a select few on the council and -- and
17 some enablers and a few -- a few of the executives I
18 had just talked about.

19 The process, itself, it's not just the votes,
20 the process, itself -- when you're inventing a process,
21 much like the ad hoc ethics committee invented the
22 process that we're here now adjudicating this case, it
23 is to be done in open. It is not to be done in secret.
24 You don't invent a process in secret. Now, you can get
25 advice from counsel as to whether we're going to

1 litigate and what's our strategy here and what's the
2 strategy there, but inventing a process and hiring an
3 investigator is not seeking advice from counsel.

4 All of that should have been discussed in
5 open session. You do not, in the government, because
6 of the -- the force of the government and the decisions
7 it makes, decide on the fly, much like what happened
8 here, what the process is going to be. Because what
9 would invariably happen if you could create a new
10 process every time there was a new complainant or a new
11 defendant is someone's due process rights would get
12 violated, much like Councilman Davis and Councilman
13 Soubirous's did here. That's the reason you don't do
14 it.

15 You don't create an ethics process at the
16 same time you hear an ethics case. You do -- you do
17 what the council did. They got it right eventually,
18 right? I would say the council will eventually get it
19 right after they've exhausted every other option, okay?
20 So they got it right. They -- they -- they continued
21 -- they stopped all ethics complaints coming forward
22 for almost two years and had an ad hoc ethics committee
23 create a new process, right? And now we have
24 legitimate proceedings because everybody is -- is able
25 to be heard under the same set of rules, okay?

1 So on Friday we discussed some of the Brown
2 Act violations, but I think it's very important to
3 understand that Davis and Soubirous, that the -- the
4 violations went past the July 22nd hearing, okay? And
5 the process, itself, was completely, should have been
6 done out in the open, which violated the Brown Act, and
7 was illegitimate because we already had a process for
8 the majority of the complaints, and that process was
9 the existing Code of Ethics and Conduct.

10 And how do we know that? Once again, beyond
11 a reasonable doubt, not preponderance of evidence,
12 beyond a reasonable doubt we know we have seen a
13 summation that was provided to us by our city clerk of
14 all previous complaints under the Code of Ethics and
15 Conduct by members of the general public, which we know
16 staff are members of the general public, okay, whereby
17 very similar allegations, violations of 407,
18 administrative interference and executive
19 responsibilities, were adjudicated through the Code of
20 Ethics and Conduct.

21 There was no -- they didn't -- you know,
22 when -- when you bring a complaint as -- as Jason
23 Hunter or as John Doe from the community, I don't care
24 how legitimate it seems on its face, the city manager
25 and the city council doesn't give me \$100,000 to hire

1 an investigator to further my case, okay? Why?
2 Because it's not allowed for, under the rules that I
3 understand, for that to happen under the Code of Ethics
4 and Conduct, all right?

5 So my complaint if you think about it, today
6 my complaint, really not much different than the
7 complaint outside of the hostile work environment --
8 workforce environment complaint that -- part -- part of
9 the complaint of those executives, Scott Barber and
10 Chief Diaz, et cetera, et cetera. It's not much
11 different, and this complaint here today or some of the
12 complaints we've had in the past; but the council
13 decided, we're going to do it differently.

14 Why? Why did they do it differently? Why
15 did they invent a new process in secret? And the
16 reason for that has to be, guys and ladies, has to be
17 that they wanted an outcome that -- that was decided
18 upon ahead of time to railroad two councilmen who were
19 in the minority at the time as far as how they voted on
20 things, how they dealt with staff, et cetera, et
21 cetera.

22 And so we'll get to it today and we'll lay
23 out the same evidence and even more, I think, that we
24 didn't do last time, in order to get, not just a
25 recommendation to the Attorney General, which is more

1 expansive than the one we saw on Friday, but also a
2 sustained allegation that the process, itself, and this
3 is very similar -- this is very simple, the process,
4 itself, could not be invented in secret session. It
5 had to be discussed in the open. There's no exemption
6 for it under the Brown Act.

7 And then secondly, another sustained
8 allegation as to bypassing the existing process you
9 had. I can bring, under the new code, a specific
10 ethics violation under the new code if the council or a
11 board does not follow the policy, which is a process,
12 or an ordinance or whatever of the city. That is an
13 ethics code, per se.

14 So when they decided to invent a new process
15 by which to go over those councilmembers, they violated
16 the ethics code 100 percent. As soon as the investigator
17 or even council got over the very small
18 allegation of a hostile workforce environment, which
19 meant discrimination based upon color, creed, sex, et
20 cetera, et cetera, any of those protected classes, this
21 should have been immediately referred as an ethics code
22 violation, and they should have directed those
23 executives to submit it as such.

24 Thank you very much.

25 CHAIRMAN STAHOVICH: Thank you.

1 How much time did he use?

2 COLLEN NICOL: We have five minutes remaining.

3 CHAIRMAN STAHOVICH: You've used 10 of your

4 15. You have five minutes remaining.

5 Okay. And before I move on, I would like
6 to -- to make sure this panel all understands and that
7 the parties all understand that this is the first time
8 this panel is hearing this complaint. So what may have
9 happened some other day some other place is irrelevant
10 to the proceedings here. I just want everybody to keep
11 that in mind. Thank you.

12 At this point the public official, Councilman
13 MacArthur. At this time you can choose to make your
14 opening statements or you can defer making your opening
15 statement until after the completion of the
16 complainant's presentation of evidence. If you choose
17 to move forward, you, too, will have 15 minutes for
18 your combined opening and closing comments, and it's up
19 to you to keep track how much you use and when.

20 COUNCILMAN MACARTHUR: I'll go ahead and
21 open -- make an opening statement at this point.

22 CHAIRMAN STAHOVICH: Thank you.

23 COUNCILMAN MACARTHUR: Thank you very much.

24 Good afternoon, Chairman Stahovich, members
25 of the ethics board, city clerk, and city attorney.



1 Thank you for this opportunity. I would request that
2 you turn to page 420 of the record. And I'll wait
3 for -- if you've got the same binder I have, it's --
4 it's fairly laborious. I think everybody is there now
5 I'm assuming.

6 CHAIRMAN STAHOVICH: We are.

7 COUNCILMAN MACARTHUR: Thank you. And in our
8 Code of Ethics, section 2 titled code provisions, under
9 paragraph (d), core values defined, paragraph (1),
10 "creating trust of local government." I am asked as an
11 elected official, and you are asked as appointed
12 officials, that we shall aspire to operate the city
13 government and exercise our responsibilities in a
14 manner which creates trust in our decisions.

15 I am compelled today to demonstrate why this
16 complaint should be dismissed. In my five -- in my 10
17 years on the Riverside city council, I've always acted
18 in the best interests of Riverside's residents and our
19 city employees. I've taken appropriate care and
20 diligence to protect the legal interest of the city,
21 and I've acted in good faith on the advice of our
22 city's legal counsel.

23 Now, the strategy of the complainant today
24 will be one of confusion, instead of focusing on the
25 burden -- on the burden of proof, to prove that I

1 "created distrust of the local government." And so
2 what I would ask all of you to do today is sit above
3 this confusion and to stay focused on the issue at
4 hand. Did my actions aspire to create distrust in our
5 local government. Thank you.

6 CHAIRMAN STAHOVICH: Thank you, Councilman
7 MacArthur.

8 COLLEN NICOL: Mr. MacArthur has 12 minutes --
9 13 minutes remaining.

10 CHAIRMAN STAHOVICH: At this time I will call
11 forward Mr. Hunter. The complainant shall present your
12 evidence. And only evidence that was exchanged prior
13 to the hearing date shall be allowed. Mr. Hunter.

14 MR. HUNTER: So here's the structure. I'd
15 like to go over and do this once again with you all,
16 very similar to what we did Friday's. We'll go into
17 the actual dates of the ethics violations and then
18 we'll discuss the Brown Act and then we'll discuss the
19 process. So with that let's get into the ethics code,
20 because that's what this has been brought under.

21 And if you turn to your record, page 2, on --
22 this is in regards to resolution 22318.2(d), on July
23 22nd, 2014, there was a city council meeting, a hearing
24 was held regarding the findings of an investigation of
25 Councilman Mike Soubirous. A hearing on a similar



1 investigation of Councilman Davis was forthcoming, but
2 never happened.

3 On page 3, the decisions of the council and
4 mayor regarding both the investigations in hearing were
5 done in closed session, violating the Brown Act. The
6 decision to have an independent investigation followed
7 by a council hearing violated our ethics code at the
8 time. Both created distrust of local government. And
9 is that consistent with our Code of Ethics that was in
10 place at the time?

11 So if we go to section 2(d), which is on page
12 19 of the record, and Councilman MacArthur referenced
13 it; the elected and appointed officials of the City of
14 Riverside shall aspire to operate the city government
15 and exercise their responsibilities in a manner which
16 creates a trust in their decisions in the manner of
17 delivery of programs throughout the local government.
18 The officials shall aspire to create a transparent
19 decision-making process by providing easy access to all
20 public information about actual or potential conflicts
21 between their private (indiscernible) and their public
22 responsibilities.

23 The officials shall aspire to make themselves
24 available to the people of any -- of the city to hear
25 and understand their concerns. They shall aspire to

1 make every effort to ensure that they have accurate
2 information to guide their decisions and to share all
3 public information with the community to ensure the
4 community's understanding of the basis of the
5 official's decisions.

6 I thought that was the most relevant code
7 with which to introduce this complaint. And I'll tell
8 you what, let's go to page 4 of the -- of the -- the
9 record. Because the gist of -- of what we've got here
10 is a Brown Act complaint, right? And we also have a
11 process complaint. There's two complaints. Only one
12 was resolved on -- on Friday.

13 And on, if you look at the Brown Act, the
14 very opening paragraphs on section 54950, in enacting
15 this chapter, the legislature finds and declares that
16 the public commissions, boards, and councils and other
17 public agencies in this state exist to aid in the
18 conduct of the people's business. It is the intent of
19 the law that their actions be taken openly and that
20 their deliberations be conducted openly.

21 So the people of the state do not yield their
22 sovereignty to the agencies which serve them, the
23 people in delegating authority do not give their public
24 services -- servants the right to decide what is -- is
25 good for the people to know and what is not good for



1 them to know. The people insist on remaining informed
2 so that they may retain control of the instruments they
3 have indeed created, okay?

4 So this is, the Brown Act is saying, and they
5 do have exemptions under the Brown Act that you can
6 meet in closed session; but they are very limited, and
7 any actions taken in those closed sessions must be
8 immediately reported. That's the deal. That is the
9 Brown Act, okay?

10 So let's go into what is an action taking,
11 because we didn't really go into that Friday. Actually
12 before that, let's get to what is -- what needs to be
13 reported. And that is on page 59 of your record, and
14 it's code 54957.1, and it reads: The legislative body
15 of any local agency shall publicly report any action.
16 It does not say some action. Any action in closed
17 session and the vote or abstention on that action of
18 every member presents as follows, and then it gives you
19 some guidelines as to how you want to report out, okay?

20 Any action. And so what is an action? And
21 that's discussed in here as well, and that's on page
22 46. And that code is 54952.6. As used in this
23 chapter, action taken means a collective decision made
24 by a majority of the members on a legislative body, a
25 collective commitment or promise made, promised by a

1 majority of the members on a legislative body to make a
2 positive or negative decision or an actual vote by a
3 majority of the members of the legislative body when
4 sitting as a body or entity upon a motion, proposal,
5 resolution, order -- order, or ordinance, okay?

6 And we know votes were taken. That's an
7 action, and that's reportable, okay? So and when --
8 when should these actions be reported? And that's
9 covered as well under the Brown Act, and that's covered
10 under five -- 54957, I believe, .7 on page 62 of the
11 record, and it's section (b), which states, after any
12 closed session, the legislative body shall reconvene
13 into open session prior to adjournment and shall make
14 any disclosures required by the previous section I just
15 read.

16 CHAIRMAN STAHOVICH: Excuse me, Mr. Hunter.

17 MR. HUNTER: Yes.

18 CHAIRMAN STAHOVICH: Can I interrupt for just
19 a second?

20 MR. HUNTER: Sure.

21 CHAIRMAN STAHOVICH: I see some confusion
22 in -- in the room that as to which pages things are on.
23 Understanding that we have the original record, then we
24 have the transcripts, and we have a number --
25 everything seems to be on different pages.

1 MR. HUNTER: Okay. I've got --

2 CHAIRMAN STAHOVICH: So --

3 MR. HUNTER: -- (indiscernible).

4 CHAIRMAN STAHOVICH: -- if anybody is having
5 trouble finding --

6 MR. HUNTER: (Indiscernible).

7 MEMBER TUCKER: And, Jason, you appear to be
8 quoting straight out of the Brown Act.

9 MR. HUNTER: No. I've got -- these are the --

10 MEMBER TUCKER: It's not the pages that we --
11 we have. I saw them Friday, but I can't find them
12 today.

13 MEMBER NELSON: I -- I'm getting them -- I'm
14 using what was sent to us on a flash drive, and -- and
15 that's --

16 MEMBER TUCKER: I've -- I've got everything
17 that was sent to me here. I was reviewing them on
18 Friday with you, had the numbers written down. Do you
19 recall?

20 MEMBER NELSON: Yeah, that was page 62 is what
21 I get -- on mine.

22 CHAIRMAN STAHOVICH: And that's where I have
23 it as well.

24 MEMBER: Okay.

25 MR. HUNTER: That last one was 62, so I just

1 need to add two pages to everything, it looks like.

2 MEMBER NELSON: I'm already on 62.

3 MR. HUNTER: Okay.

4 CHAIRMAN STAHOVICH: Thank you.

5 MR. HUNTER: Would people -- would folks like
6 me to go -- to go over that part of it again, of the
7 Brown Act?

8 MEMBER TUCKER: Nope.

9 CHAIRMAN STAHOVICH: No. I think -- I think
10 with or without the pages, we are listening to what you
11 are saying and -- and we're following along just fine.

12 MR. HUNTER: Okay.

13 CHAIRMAN STAHOVICH: If anybody has any
14 different opinion, please let me know.

15 MR. HUNTER: So with that I'd like to -- I'd
16 like to call Councilman MacArthur to the witness stand,
17 I guess.

18 CHAIRMAN STAHOVICH: Councilman MacArthur, can
19 we get you to come have a seat right next to
20 Mr. Hansen? And as -- as you're aware, you're --
21 you're under oath. Thank you.

22 MR. HUNTER: All right.

23 DIRECT EXAMINATION

24 BY MR. HUNTER:

25 Q Councilman MacArthur, we're going to --

1 MR. HUNTER: (Indiscernible).

2 BY MR. HUNTER:

3 Q Councilman MacArthur, in front of you, can
4 you read the -- the title of this document?

5 A Do you want me to start at the top where it
6 says minutes, or how far down do you want me to go?

7 Q I think start from the top and go through the
8 date and that's fine.

9 A Okay. Under minutes, Tuesday, April 1st,
10 2014, 2:00 -- 2:00 p.m., our council chambers, City
11 Hall.

12 Q Okay. And the very top of that, is just, it
13 says city council.

14 A Right. Redevelopment agency, Housing
15 Authority.

16 Q Okay, perfect. And could you read about
17 halfway down? There's a report by the city attorney on
18 closed session. Could you read what it says underneath
19 that?

20 A City attorney report on closed session, the
21 city attorney announced that there were no reportable
22 actions taken on the closed sessions held earlier in
23 the day.

24 Q Thank you. Now, the second document here,
25 could you please read the title right through the --

1 the date, please?

2 A City council successor agency to
3 redevelopment agency minutes. Tuesday, April 8th,
4 2014, 2:00 p.m.

5 Q And could you read the -- what it says under
6 minutes at the very top of the page?

7 A The minutes of the city council meeting of
8 April 1st, 2014, were approved as presented.

9 Q And do you see your name on the -- on the
10 list there to the right?

11 A Yes, even though the vote is not showing up,
12 I'm assuming because it has another page from a
13 previous page where it records all the votes.

14 Q Yes. And -- and -- and in this case it's --
15 it's -- it was passed on consent --

16 A Right.

17 Q -- so that every -- and -- and -- and so you
18 would admit that you voted in favor of this?

19 A Yes.

20 Q Okay, thank you. And -- and once again could
21 you read the title through the date on this one?

22 A City council successor agency to
23 redevelopment agency minutes, Tuesday April 22nd, 2014,
24 1:30 p.m.

25 Q Thank you. And could you see what it -- read



1 what it says under city attorney report on closed
2 sessions?

3 A The city attorney announced that there were
4 no reportable actions taken on the closed session held
5 earlier in the day.

6 Q And once again the title through the date on
7 this memo.

8 A Can you just push it down a little bit, if
9 you would, please. City council minutes, Tuesday,
10 May 6th, 2014, 1:30 p.m.

11 Q And could you read what it says under
12 minutes, again towards the bottom of the page?

13 A The minutes of the city council meeting of
14 April 22nd and 29th, 2014, were approved as presented.

15 Q Okay. And do you see your name once again
16 under the minutes?

17 A Yes.

18 Q And I -- I would assume that you would agree
19 that you voted to pass the minutes?

20 A Yes.

21 Q Thank you very much. Now, you've heard my
22 opening, Councilman MacArthur --

23 MR. HUNTER: And -- and we can -- I'd -- I'd
24 like to keep Councilman MacArthur up there for a little
25 while if I could because I think there may be -- I

1 don't want to keep on having to call him back up.

2 CHAIRMAN STAHOVICH: Then I would suggest you
3 go ahead and ask him the questions that you would like
4 to ask him.

5 MR. HUNTER: Okay, sure.

6 CHAIRMAN STAHOVICH: Thank you.

7 MR. HUNTER: Sure.

8 BY MR. HUNTER:

9 Q Do -- do you agree that a vote was taken on
10 April 1st to investigate Councilman Soubirous --
11 Soubirous?

12 A Well, I wouldn't be able to answer your
13 question because it requires that I relay information
14 or discussion that is privileged from this -- or that
15 is protected under disclosure under attorney-client
16 closed session privilege.

17 Q Okay. Now, you -- you heard me as well just
18 introduce the Brown Act into evidence and the Brown Act
19 specifically states that all actions taken, meaning any
20 votes taken in closed session are reportable, correct?

21 A Well, again, I wouldn't be able to answer
22 your question because it requires that I relay
23 information or discussion that's protected from
24 disclosure under attorney-client closed session
25 privilege.



1 Q Okay. I -- I guess I'm confused once again
2 by -- by the actual literal -- the actual literal words
3 I read from the Brown -- Brown Act. Are you denying
4 that a vote ever took -- would you -- are you not --
5 neither confirming nor denying that a vote ever took
6 place to -- to investigate Councilman Davis or
7 Councilman Soubirous?

8 A Again, I wouldn't be able to answer your
9 question because it requires that I relay information
10 or discussion that is protected from disclosure under
11 the attorney-client closed session privilege.

12 Q Okay.

13 MR. HUNTER: Let me grab some evidence here.
14 If I could direct the -- the panel to page -- hopefully
15 I'm getting it right. If I'm not, just tell me and
16 I'll add two. Actually hold on. No. We -- let's do
17 this instead, let's go to page 38 of the record,
18 please.

19 BY MR. HUNTER:

20 Q It states, behind closed doors, it states,
21 officials acknowledge that the council discussed the
22 complaints in closed session, but meeting minutes
23 didn't show that the city ever publicly reported the
24 council's decision to investigate or the related
25 spending, which is very important. It's not just the

1 decision to investigate, it was the decision to
2 appropriate funds, spend money, okay?

3 On June 24th, the council reported its vote
4 to hold a hearing June 22nd on the findings of the
5 Soubirous investigation. One expert on California's
6 open government law, known as the Brown Act said it
7 appears that the city legally at least should have
8 reported the council's closed-door decisions on the
9 complaints and may have been required to discuss them
10 in public to begin with in the first place.

11 The Brown Act forbids holding a closed
12 session simply to talk about complaints against members
13 of the council, said Terry Francke, general counsel for
14 Californians Aware, a government transparency advocacy
15 group. In light of what you just heard there, would
16 you like to change your answer?

17 A No, but I can add to what you just added.
18 Because if you go to page 39 of the record, the same
19 gentleman, Terry Francke, this is quoted, this is in
20 the article October 8th, 2014, Riverside Davis,
21 Soubirous investigation, costs may rise; he also said,
22 it could be legal -- I'm quoting him now. Francke said
23 it could be legal to keep the investigation secret if
24 they were being handled by the city attorney as a
25 response to a possible legal threat.

1 Q Okay. Let's go to the top of that page,
2 Councilman MacArthur. On the same page you just
3 referenced, it's page 39, and it says, the city
4 council. And this is by Leonard Gumpert, you're
5 familiar with Mr. -- who Mr. Gumpert is, correct?

6 A That is correct.

7 Q Okay. He was the investigator hired by the
8 city council, who is also a licensed attorney in the
9 State of California. The city council made a decision
10 to investigate and to give the mayor pro tem the
11 ability to sign the contract with Gumpert -- oh, oh,
12 with Gumpert -- Bailey said. And this is -- this is --
13 actually Rusty Bailey, I think I actually misquoted
14 this last time. I thought it was Gumpert who said
15 this, but it's actually our own mayor, Mayor Rusty
16 Bailey says, he said he thought it had been reported as
17 required.

18 Now, are you saying -- do you think that a
19 vote of the council should be reported as required as
20 Mr. Bailey seems to indicate, or do you --

21 A That's the mayor's opinion.

22 Q Okay.

23 A That's not mine.

24 Q That's fine, that's fine. So do you agree
25 that if there had been a vote of the council to

1 investigate Councilman Soubirous and Davis, it was
2 never reported?

3 A Yeah, you're asking me a speculative
4 question. And if it was in closed session, I wouldn't
5 be able to answer your question because it requires --
6 it would require that I would relay information or
7 discussion that is protected from disclosure under --

8 Q That's -- that's not --

9 A -- attorney-client privilege.

10 Q -- my question. My question is, if there had
11 been a vote, do you think in your -- in you -- was --
12 was it ever reported?

13 A I'm not going to answer an if question.

14 Q I'm not saying there was a vote or there
15 wasn't a vote. If there had been a vote, was there
16 ever anything reported? Here, better -- better way to
17 phrase the question. Was there ever a vote -- anything
18 recorded on the minutes, that's open -- that's a
19 California Public Record Act -- document, that would
20 have captured a vote made by the council to --

21 A Again, you're -- you're --

22 Q -- make an investigation?

23 A -- injecting facts I don't have. And -- and
24 so you're asking me to ask a question based on
25 something that's not there. I can't answer --

1 Q We'll --

2 A -- that.

3 Q Take that as there is no -- there is -- there
4 is no record of any vote that was taken by the council
5 to make an investigation, okay?

6 Now, let's go to Mr. Francke's statement
7 there, and we'll -- and we'll discuss that. Francke
8 said, this is on page 39, it could be legal to keep the
9 investigation secret if they were being handled by the
10 city attorney as a response to a possible legal threat.
11 And once again I'll say, maybe you could keep the
12 investigations and what was in them secret, but you
13 could not keep secret that you voted to hire an
14 investigator, okay, or keep secret that you were
15 changing the process outside of the ethics code.

16 Okay. They're talking about the contents of
17 the investigation while the investigation was ongoing,
18 not the decision to hire the investigator. Because you
19 simply could have reported out of closed session the
20 council made a decision to hire an investigator for up
21 to 49,000 as a result of possible or pending legal
22 litigation. Done.

23 No -- nothing would have been leaked as to
24 any sensitive information or who's who. You would have
25 just reported that the council was appropriating money,

1 okay? And it voted to appropriate money.

2 So let's go to -- let's go to page 41 of the
3 record, please, and it -- maybe it's 43, 41, I think
4 though. It should be the council memorandum under
5 members of -- two members of the city council from
6 Mayor William R. Bailey, Mayor Pro Tem Steve Adams,
7 incoming Mayor Pro Tem James Perry, dated July 22nd,
8 2014. And let's go to the background section. And
9 let's go to the -- the sentence halfway down
10 which states, on April 1st, 2014, one of the dates we
11 showed up on the -- the overhead, the city council with
12 Councilman Soubirous excused and Councilman Davis
13 absent unanimously directed that an independent
14 investigation immediately be commenced as required by
15 state law and city policy -- policy.

16 Mr. Leonard Gumpert of Gumpert Maston was
17 retained to conduct this information. Are -- are --
18 are you saying that that information is incorrect?

19 A Well, it's -- it's on a memorandum. I didn't
20 sign the memorandum.

21 Q Okay.

22 A But it's now a public document, so according
23 to this public document, that's what was reported.

24 Q Okay.

25 MR. HUNTER: I'll enter that as evidence

1 affirming that this -- this action did indeed occur on
2 April 1st that is never recorded in the minutes of
3 which Councilman MacArthur approved. Okay.

4 BY MR. HUNTER:

5 Q I'd like to go to page 10 of the record. And
6 we will see in an article by the Press Enterprise once
7 again, second paragraph, a sentence that says,
8 Councilman Davis is subject to the latest probe, which
9 the council voted to pursue in an April 22nd
10 closed-door session according to a letter to Davis from
11 an outside law firm overseeing the investigation. I
12 assume that's -- that's -- that's Leonard Gumpert.

13 And we have copies -- we have copies of these
14 contracts. We can go into these contracts at length to
15 see when the investigator was hired, okay? We've got
16 dated contracts signed by the city attorney and the
17 mayor pro tem at the time. Once again, are you denying
18 that you took part in a vote on April 22nd, 2014?

19 A Are you directing that question to me?

20 Q Yes, I am.

21 A Well, if it was in closed session, I wouldn't
22 be able to answer your question because it requires
23 that I relay information or discussion that is
24 protected from disclosure under attorney-client closed
25 session privilege.

1 Q Are -- maybe I'm not following you. Are you
2 saying that the council doesn't have to --

3 CHAIRMAN STAHOVICH: Excuse me, Mr. Hunter.

4 MR. HUNTER: Sure.

5 CHAIRMAN STAHOVICH: I apologize for
6 interrupting. At this time we're hoping that you're
7 presenting evidence --

8 MR. HUNTER: Okay.

9 CHAIRMAN STAHOVICH: -- and not necessarily a
10 debate with the --

11 MR. HUNTER: Okay.

12 CHAIRMAN STAHOVICH: -- witness.

13 MR. HUNTER: Okay, okay. Well, I'm trying to,
14 I -- I am trying to ask the questions while he's up
15 there, right? I'm trying to. Okay.

16 CHAIRMAN STAHOVICH: Thank you.

17 MR. HUNTER: I -- I -- we've gone through the
18 Brown Act. We know it has to be reported.

19 BY MR. HUNTER:

20 Q Page 26 of the record, please. Towards the
21 bottom left-hand corner, I just want to get this into
22 the record, and we'll -- we'll double back on this. It
23 says, Riverside has released the results of an
24 investigation into complaints against Councilman
25 Soubirous, a hearing on the findings is scheduled for



1 July 22nd. Was there ever a vote to release the findings to the Press Enterprise of this investigation, councilman?

4 A Again, I wouldn't be able to answer your question because it requires that I relay information or discussion that's protected from disclosure under attorney-client closed session privilege.

8 Q Okay. But -- but you'll -- you'll admit that the -- the investigation was released to the public via a public records request, that --

11 A It was.

12 Q Okay.

13 MR. HUNTER: Let's go to page 31 of the record, please. About halfway down it says, the council voted in closed session to investigate. This week the city released a June 13th report on the findings in response to a July 3rd public records request. Once again, these are public records, the investigative reports are not privileged, otherwise they would have not been able to be released under the Public Records Act.

22 And if there was a vote, for which we have no record that they were exempt and then allowed to be released by the council, we have no record of that in the minutes, so they must have been non-privileged from

1 the very get-go. That is the only thing you can deduce
2 from that. Unless there was a vote that they were
3 exempt, and the council wanted to make them nonexempt.
4 But once again, we don't see that anywhere in the
5 minutes.

6 All right. Let's go to page 885 of the
7 record, please, and we're going to go to the transcript
8 here for a little while. And this is by Mayor Bailey
9 making a statement. Line 15. Is it 885, or should I
10 be adding two?

11 CHAIRMAN STAHOVICH: When you start reading,
12 we'll let you know.

13 MR. HUNTER: Okay. It says -- oh, sorry.
14 This closed session led to the city council.

15 CHAIRMAN STAHOVICH: That's the correct page.

16 MR. HUNTER: Okay. Led to the council -- city
17 council unanimously with counsel, s-e-l, it should be
18 counsel, Councilman Soubirous and Davis -- excused and
19 Davis absent, authorizing the mayor pro tem to hire an
20 outside investigator as required by state law and
21 policy. We had a duty to investigate. Today --
22 today's hearing and agenda item were scheduled by
23 unanimous vote, unanimous vote of the city council.

24 With Councilman Soubirous excused after
25 meeting in closed session with our special counsel and

1 the outside investigator to review the evidence and
2 facts of the completed investigation, which was
3 subsequently released to the public as a public
4 document. Okay.

5 CHAIRMAN STAHOVICH: Oh, Mr. Hunter, are you
6 going to have any more questions for Councilman
7 MacArthur?

8 MR. HUNTER: He can step down at this point, I
9 think.

10 CHAIRMAN STAHOVICH: Okay.

11 MR. HUNTER: Thank you.

12 CHAIRMAN STAHOVICH: Thank you.

13 Thank you, Councilman MacArthur.

14 And again, Mr. Hunter, I -- I would ask that
15 you focus on providing evidence --

16 MR. HUNTER: Sure.

17 CHAIRMAN STAHOVICH: -- and maybe refrain from
18 comments that may be best suited for your closing
19 comments --

20 MR. HUNTER: Okay.

21 CHAIRMAN STAHOVICH: -- during this -- this
22 time.

23 MR. HUNTER: Sure, I'm sorry. Not a lawyer.

24 CHAIRMAN STAHOVICH: Oh, I know. You're doing
25 a great job though, thank you.



1 MR. HUNTER: So if we could go to page 938 of
2 the record, and once again this is a transcript of the
3 city council meeting of July 22nd, 2014, line --
4 starting with line 13 or line 14. Mayor Rusty Bailey,
5 that was the will of the council to conduct closed
6 sessions, to vote in the closed sessions, and to bring
7 this to a public hearing. And it was a unanimous vote
8 to bring this to public hearing for transparency
9 purposes. I can't vote today unless there is a tie and
10 to break a tie. Okay. That would be important
11 probably more for Mayor Bailey's hearing than Chris
12 MacArthur's hearing.

13 Okay. If we could go to page 958 of the
14 record. Once again, Mayor Bailey on line 16, there was
15 a closed session that the council authorized hiring an
16 investigation. I guess we have Mayor Bailey three
17 times. We don't have to go into too many more times
18 on -- on him saying that we -- we hired an investigator
19 in closed session.

20 But let's get to Councilman Adams, okay,
21 somebody who is no longer on the council. And I keep
22 saying why would Councilman Adams or Mayor Rusty Bailey
23 have any reason to not tell the truth about what the
24 process is, right, so it's on page 964 of the record.
25 And he states on line, starting -- beginning with line

1 11 at the hearing, I was contacted by the city attorney
2 that a complaint was coming forward and was told that
3 by government code if that complaint happened, we would
4 have to take action. We had a closed session meeting.

5 The council voted to approve to hire an
6 outside investigator to see if there were any grounds
7 for the complaint, and the city manager -- manager
8 advised what he was willing to pay. Flipping over to
9 the next page, page 965, please. Beginning with line
10 2, so it's not something I went out and looked for. It
11 came before me, and I followed the directions I was
12 given by legal counsel, and we took a vote with the
13 council before every step.

14 It was approved before we signed any
15 contract, and it was approved that it would be within
16 the city manager's financial limits. And if he went
17 over the limits, he would have to come back and get
18 approval from the council, okay? So each of the
19 members here, with the exception of Mr. Soubirous, I
20 think Mr. Davis may have been gone that evening, did
21 vote unanimously. We did on two occasions.

22 Okay. Now, let's go to page 914 of the
23 record. Actually I believe it starts on 913, it's on
24 page 20 -- or line 24 of -- of page 913. And it
25 begins, one allegation was that it appeared that there

1 had been a Brown Act violation. Now, this is
2 Mr. Gumpert speaking here, and he's talking about the
3 complaint filed by Chief Diaz and city manager Scott
4 Barber at the time. Now, the Brown Act requires that
5 generally the council conduct its business publicly and
6 as a group and that they not have secret votes on
7 various matters.

8 Okay. And since there is definitely no
9 public record of any vote being taken through
10 February 14th on the issue of armed guards or increased
11 security of the parks, there may have been a Brown Act
12 violation, right? If there was a vote of the
13 council -- or if -- if there was no vote to hire
14 guards, and he can't find it -- if there was a vote,
15 and he can't find it in the minutes to hire guards,
16 there was a Brown Act violation. Very similar to if
17 there was a vote to hire an investigator, and we can't
18 hire -- find it in the minutes, we have a Brown Act
19 violation, okay? That's the city's own investigator
20 saying that.

21 Okay. Let's go to page -- I think that will
22 cover it for the Brown Act violations. Actually one
23 thing I'd like to bring up, and maybe we can get this
24 shown for the -- for the -- no, we'll bring that up
25 next. Sorry.

1 So that goes to the -- to the actual minutes
2 recordation of the events and things that were voted
3 on, on April 1st, April 22nd, okay, that were never
4 recorded in the minutes. They're required by law to be
5 recorded in the minutes. Mr. -- Mr. -- Councilman
6 MacArthur approved those minutes where actions were
7 taken. He's now hiding behind attorney-client
8 privilege, which is totally outrageous and ridiculous
9 that you could try to hide in a legal action by hiding
10 behind attorney-client privilege that does not protect
11 illegal activity.

12 So anyway, the next thing we're going to talk
13 about is the process of conducting the investigation --
14 or -- or having the process developed outside of the
15 ethics code and doing it in secret, which violated our
16 ethics code and the Brown Act, in and of itself per se.

17 So let's go to, and let's start off with the
18 council memo, let's get to the -- the -- the
19 back and then we'll go back to the front. Once again,
20 that's page 41 of the record. It's the July 22nd, 2014
21 memo to the city council. I've -- I've -- I've read it
22 into the record before, so I don't think I need to do
23 that again. You know what the general gist of it is.

24 The subject is a hearing on investigation of
25 complaints against Councilman Mike Soubirous for

1 administrative interference and harassment. And the
2 issue is the issue presented for city council
3 consideration is whether to take any action as against
4 Councilman Mike Soubirous based upon the results of the
5 investigation, a response to complaints of
6 administrative interference and harassment made by the
7 city manager and chief of police.

8 So there is no doubt that we are here to have
9 a hearing, and the recommendation was that the city
10 council conduct a hearing to consider the results of
11 the investigation of the complaints and any information
12 submitted in response thereto to Councilman Soubirous
13 and to take whatever action, if any, that the city
14 council deems appropriate.

15 We know on June 24th of 2014 -- and this is
16 included in the audio record, but I'd like to show this
17 to the -- to the panel. We know that on June 24th,
18 under city attorney report on closed sessions,
19 Councilman Adams announced that during the closed
20 session pursuant to government code 54956.9(d)(2), the
21 city council voted unanimously and we can see over to
22 the right that all city council members were present at
23 that time, and this was on the consent calendar, so
24 they all voted in favor for it -- for it, to hold a
25 public hearing on July 22nd, 2014, at 1:00 p.m.

1 regarding the investigation of Councilman Soubirous.
2 So they were all okay -- okay with having this public
3 hearing.

4 Let's now go to the Code of Ethics, and this
5 would be on page 25, I believe. And it says, and this
6 is under the old ethics process, it says -- it's
7 beginning with line 7, let's say, and sorry, I might
8 read a little bit too much, but I'd rather have more
9 than less here for the record. Following the hearing,
10 and that's the hearing of the adjudicating body, the
11 city clerk will notify both parties in writing of the
12 adjudicating body's decision. In an appeal process,
13 the decision of the adjudicating body may be appealed
14 by other party by submitting such appeal in writing to
15 the city clerk within seven days of the adjudicating
16 body's decision.

17 If no appeal is received within seven days,
18 the matter is concluded. If appealed within seven
19 days, the city clerk will schedule an appeal before the
20 city council and notify both parties at least 14 days
21 in advance of the hearing. The record on appeal will
22 consist of a transcript of the hearing before the
23 adjudicating body as well as documenting evidence
24 submitted at the hearing. No new evidence will be
25 considered.



1 The city council will review the record and
2 will disturb the adjudicating's decision only upon a
3 showing of clear error or -- or abuse of discretion.
4 That is under our ethics process. The council's
5 involvement in the ethics process, which is to hear
6 appeals -- appeals. I just introduced into evidence on
7 July -- once again, on June 23rd, I believe it was. Is
8 that their stuff? June 24th, not an appeal, this was
9 an actual adjudication, a trial approved unanimously
10 with Councilman MacArthur voting as such.

11 All right. Let's go to page 886 of the
12 record, please. This is councilman -- Mayor Bailey
13 once again. We are here to review the findings of the
14 investigation as presented by Mr. Gumpert, listen to
15 response from Councilman Soubirous, encourage the
16 public to comment, allow the council to ask questions,
17 discuss, deliberate, and take -- take action if so
18 desired. I don't see that under our Code of Ethics.
19 Nor -- and -- and now onto Councilman Soubirous, nor
20 will there be any cross-examination --
21 cross-examination of the witnesses.

22 Okay. So this was a hearing. I think that's
23 beyond a reasonable doubt. It's not an appeal. I do
24 find it interesting though on page 915 of the record,
25 line 3, that there was an allegation that there had



1 been an ethics violation on the grounds that perhaps
2 Councilman Soubirous had misrepresented a possible
3 secret vote to terminate Scott Barber as city manager.

4 Well, the investigator sure seems to get
5 that, you know, maybe there should be -- he's
6 investigating ethics violations. And -- and -- and
7 later on page -- on -- on line 10 he says, he actually
8 comes to a conclusion, he's adjudicating, he says, and
9 therefore my conclusion was there's no likely ethics
10 violation.

11 Now wait a second. Why is the investigator
12 adjudicating ethics code violations? I just don't --
13 you just don't understand that. Okay. So let's go to
14 page 926 of the record.

15 CHAIRMAN STAHOVICH: And, Mr. Hunter, as we're
16 turning there, just for my own edification, about how
17 much longer are you going to need for your testimony?

18 MR. HUNTER: For the -- for the evidence,
19 maybe 15 minutes, maybe 20. Let's say 20, because I
20 usually go a little bit over.

21 CHAIRMAN STAHOVICH: Thank you.

22 MR. HUNTER: So page 926 of the record, this
23 is Councilman Soubirous. And I -- I'm not going to go
24 into too much of -- of Councilman Soubirous and
25 Councilman Davis's statements, because once again,

1 they -- I guess they could be viewed as bias; but he
2 says, and I think it's very important to listen to this
3 and -- and apply your own common sense, he says, what
4 is the source of authority to conduct this hearing.
5 What is the source of authority did you follow to
6 conduct secret meetings to plot, plan, and execute this
7 investigation?

8 And then earlier in the page on line 2 --
9 line 1 he says, this investigation and subsequent
10 hearing is in direct conflict with charter -- charter
11 chapter 202, which is -- which is the Code of Conduct
12 and Ethics. If you -- if -- if you -- I could bring
13 that into the record as well, I guess. It's in your
14 record under the city -- the city charter, I believe,
15 as part of your package. It's the mechanism for all
16 council conduct.

17 Now, going onto line 17 of the same page,
18 what is the source of authority to prevent me from
19 cross-examining, questioning, or evidence or bringing
20 witnesses? In a sense you are violating my due process
21 rights. What charter, chapter, or -- or source of
22 authority allows you all to sit in judgment of me? I
23 can't find it in our charter. I can't find it in the
24 charter where any of the councilmembers can sit in
25 judgment of me.

1 Okay. I won't go any further on that. I
2 get -- I would surmise that Councilman Soubirous there
3 is stating, in fact, the process. He's complaining
4 about the process. You don't have any -- where's the
5 process? You have a Code of Ethics. This is beyond
6 the process. And the Code of Ethics should be sitting
7 in an appeal. For some reason you've created this
8 whole new process -- process for me.

9 Okay. Let's go to page -- sorry, just give
10 me one second. Let's go to page 1032 of the record.
11 And there we find Mayor Bailey once again talking about
12 instead of having this investigation go to the Press
13 Enterprise, who asked for the public records request,
14 and allow the investigation to go into the blogosphere
15 and court of public opinion, the council decided to
16 bring this to the public in this type of format so that
17 individuals that were listed and named in this
18 investigation had an opportunity for their equal
19 treatment and voices to be heard.

20 Well, I believe that was probably, he's
21 referencing the vote on June 23rd that we just had up
22 there for you to see, or maybe he's -- he's referencing
23 some other vote we don't know about.

24 Okay. I want to briefly touch on, and we can
25 briefly go into it, or maybe I'll just surmise it.

1 In -- inside of your record and beginning on page 129
2 is a complaint against Councilman Davis. And I'll tell
3 you why this is -- this is relevant, okay? It's a
4 previous complaint against Councilman Davis made by a
5 fire -- a member of our fire department at a festival
6 that was being conducted.

7 Once again, I don't want to get into the
8 merits of the complaint, but what had happened here was
9 that, if you look at page 130, you'll see once again we
10 have, down towards the bottom of the page, it says --
11 it says article 2 of resolution 22318, we have another
12 complaint -- complaint here being -- being brought
13 against Councilman Davis, who's being brought against a
14 complaint in 2014 as well, to adjudicate. And this is
15 an investigator.

16 And if you look on page -- page 128, you'll
17 see it's being done by Jeff Collopy, a private
18 investigator, okay, which I assume was hired by the
19 council as well -- as well, and I'd bring ethics
20 complaints against that, but it's past our statute of
21 limitations. Back to page 130, where he's adjudicating
22 a Code of Ethics and Conduct complaint against public
23 officials.

24 So I would surmise that we've seen this for
25 only Councilman Davis in the past and now for

1 Councilman Davis and Soubirous, that a Code of Ethics
2 complaint can be brought against certain people, but
3 not under the Code of Ethics process, okay? Every
4 other time it goes to the Code of Ethics process, but
5 not this time.

6 Can we go to page 1114 of the record? I
7 think it actually starts on 1113 or 12. I think it's
8 1113 of the record. We'll see a copy of all the
9 previous Code of Ethics complaints. And we'll actually
10 see on one of those pages, I think it's page 1114,
11 we'll see complaints being brought by a Deborah Wong,
12 Michael Dunn, Mary Figueroa for charter 407,
13 administrative -- interference with administrative
14 services in the past.

15 These didn't go to the council to hire an
16 investigator to hold a trial of a councilman, city --
17 city councilman. This went to a Code of Ethics
18 adjudicating body. Once again a member of the public.
19 And I think that's really important that we cover that
20 part of it. So and -- and there's others, you can see
21 then there's a list of them. Any council -- anything
22 that anybody complained by a member of the general
23 public went directly to the Code of Ethics adjudicating
24 body, including the 407, which is very similar to the
25 complaints made against Soubirous and Davis in 2014.

1 Only once was that ever deviated from. And I
2 just provided the example in 2012 against Councilman
3 Davis. There's a pattern, 2014, once again Councilman
4 Davis, but this time Councilman Soubirous was added.

5 So let's go to the Code of Ethics and see
6 exactly well who can file a complaint. If we go to
7 page 22, complaints from members of the public
8 regarding elected and appointed officials shall be
9 submitted on the complaint form available to the --
10 from the city clerk.

11 Well, who is a member of the public? Well,
12 anybody who can speak during public comment as a member
13 of the public, okay? You can step off the dais, you
14 could have stepped off the dais at the beginning of
15 this meeting, come down here and given public comment.
16 You're a member of the public, okay? City manager is a
17 member of the public. The -- Paul Davis is a member of
18 the complaint. You know, Mike Soubirous could have
19 come down off the dais and talked during public comment
20 during his -- his portion of -- of -- and gotten his
21 three minutes.

22 So there's no justifiable reason beyond the
23 hostile workforce environment complaint. And I -- and
24 I do need to touch on that, why every other thing
25 wouldn't have been investigated under the Code of



1 Ethics and Conduct process -- process like it had been
2 done dozens of times in the past. Instead a new
3 process was created for Councilman Soubirous and
4 Councilman Davis.

5 So let's get to harassment free workplace
6 policy. And let's -- let's talk about what our own
7 investigator -- actually this is -- this is council's
8 counsel, city council's counsel, their lawyer that was
9 representing them at the hearing, page 898 of the
10 record. And it's Mr. Meyerhoff, which was special
11 counsel approved, provided to the -- the -- the city
12 council.

13 And he talks about alleged -- amongst other
14 things, claims of hostile work environment --
15 environment. Under the California government code as
16 part of Fair Employment Housing Act, section 12940 of
17 the government code, employers, including the City of
18 Riverside, are required to conduct fair, prompt,
19 thorough investigation of any claims of hostile work
20 environment. And -- and that's true. I don't dispute
21 that.

22 But he also goes on to state, and I believe
23 this is in his investigatory report, maybe I'll get to
24 that -- I'll get back to that in a second, but he goes
25 on to state, and I think you'll see it when I introduce

1 the harassment free workforce policy here that, you
2 know, this was quickly dismissed. Because if we look
3 at page 68 of the -- of the record under the harassment
4 free workplace, which this would be covered by, we see
5 that it says for harassment to have occurred, it may
6 consist of offensive verbal, physical, or -- or visual
7 conduct when such conduct is based on or related to an
8 individual on the base of race, color, ancestry,
9 religious creed, disability, medical condition, age,
10 marital status, sexual orientation, or any other
11 protected classification under applicable law.

12 And then it goes down some. I don't think I
13 need to cover that part of it, but it would have had to
14 have been based upon a protected class. And there's
15 nothing in any of the record at the time that suggests
16 either Scott Barber or Chief Diaz or any of the other
17 people involved in the complaint were -- were making
18 that action.

19 So to me that was just, you know, it was
20 cover used to create a new process to go after
21 Councilman Davis and Councilman Soubirous. That could
22 have been dismissed out of hand by our city attorney
23 who was well trained at the time to know what a hostile
24 workforce environment complaint -- complaint was,
25 instead they decided to create a new process because

1 they wanted to because it was Councilman Soubirous and
2 Councilman Davis and our city council (indiscernible).

3 Let's talk about what was the, sort of the
4 end result of all this -- this mess. And this is -- I
5 want to put this up, it's October 21st, 2014. So
6 what -- what came out of the decision to not vote on
7 July 20 -- 22nd, 2014? Well --

8 MEMBER TUCKER: Mr. Chairman, are these items
9 in our documents that were mailed to us?

10 CHAIRMAN STAHOVICH: Madam clerk, the -- are
11 these documents that we're looking at, were they
12 provided in our binders that -- that were sent to us?

13 COLLEN NICOL: I am not certain. Mr. Hunter
14 I'm sure can answer that question.

15 CHAIRMAN STAHOVICH: Mr. Hunter.

16 MR. HUNTER: Yes, they're in the audio record.
17 They're just -- they're just some explaining what's in
18 the audio record. We can play the audio record. We --
19 we went over, I think, this last Thursday or
20 Wednesday --

21 MEMBER TUCKER: Yes, we did.

22 MR. HUNTER: -- or Friday.

23 MEMBER TUCKER: We went over clearly that --
24 that you had to be prepared to -- to -- to -- to bring
25 it to our attention in -- in writing. You -- you

1 have -- in -- in this session alone, you have added
2 documents on the screen that -- that we have not had
3 previous opportunity to review.

4 MR. HUNTER: I --

5 MEMBER TUCKER: We rely upon you sending me
6 the paper to read.

7 MR. HUNTER: As part of the official record,
8 are the audio tapes that you did have to review? I
9 mean, we can queue once again those audio tapes. When
10 we made the decision -- my --

11 MEMBER TUCKER: You made a request -- you made
12 a request earlier to have the full transcripts, which
13 you would go through, you would determine which were
14 the portions that were pertinent for our attention, and
15 that those documents then would be made available to us
16 so that those of us that were visually inclined versus
17 auditorily inclined could follow the records.

18 MR. HUNTER: Okay. And that -- I guess that's
19 what I'm giving you the opportunity right now is to
20 be --

21 MEMBER TUCKER: I'm saying, those that are --

22 MR. HUNTER: -- visually inclined.

23 MEMBER TUCKER: Yes, but you didn't provide --
24 provide those to me in advance.

25 MR. HUNTER: Are you disputing the accuracy?

1 MEMBER TUCKER: I'm not disputing the accuracy
2 at all. That's not the point at hand. The point at
3 hand is, you, as -- as a complainant, were specifically
4 asked in our continuances previously --

5 MR. HUNTER: Uh-huh.

6 MEMBER TUCKER: -- to make sure that we had
7 all documents in front of us that you were going to
8 refer to at a future time. You provided us with over a
9 thousand pages worth of material of which we were
10 expected to read and look at. You also did give me an
11 audiotape that -- that I -- I -- I'm not going to rely
12 on your audiotape. I'm going to rely on what you sent
13 me.

14 MR. HUNTER: The audiotape was sent to you as
15 part --

16 MEMBER TUCKER: I -- I --

17 MR. HUNTER: -- of the discovery.

18 CHAIRMAN STAHOVICH: Excuse me. I would like
19 to make a point of order here. At this point I did not
20 recognize any speaker. I understand your concerns. At
21 this time I would suggest we move forward, there's
22 about -- there's -- there's about eight minutes left in
23 his testimony. I would like to move forward with that.
24 After he's done testifying, I would entertain any
25 discussions that anybody may have on whether or not any

1 of the information should be considered and to what
2 extent. We have the -- we have the ability to weigh.

3 MEMBER TUCKER: And I -- and I will remind
4 you, Mr. Chairman, that I made a point of order, and
5 I -- I accept your decision.

6 CHAIRMAN STAHOVICH: Thank you.

7 MR. HUNTER: Now I kind of lost my train of
8 thought.

9 CHAIRMAN STAHOVICH: For your recollection,
10 you were putting up --

11 MR. HUNTER: Yeah. And this -- and this is
12 provided to you in the -- in -- in the official record.
13 And it's just in audio format, I'm just showing it to
14 you in -- in video format. It's no -- the -- the audio
15 format is not going to differ from the -- from the
16 video format of it. And I think at that time we had --
17 we had decided to try to do this as expeditiously as --
18 as -- as possible, and I'm trying to do that by not
19 making you sit here and listen to the audio. I mean,
20 I'm trying to save time.

21 So I don't understand -- oh, and -- and
22 expense for the -- for the -- for the city, because to
23 make a transcript would be a pretty long and expensive
24 process. This is to save the time of -- of everyone
25 involved and money for our city to do it this way.

1 The city attorney report in closed session on
2 October 21st, 2014, states, Councilman Adams announced
3 that the city council in closed session determined to
4 take no action on the complaint filed by the city
5 manager against Councilman Paul Davis and to forward
6 the matter to the district attorney's office for
7 independent review and final determination. There were
8 no reportable actions on the remaining closed session.

9 And I -- I -- I give this to you once again
10 for two reasons, okay, one is -- one to show you that
11 this was still being deliberated in closed session and
12 it shouldn't have been, because this has -- has to do
13 with process, and process should not be disclosed in --
14 in closed session. That should be out in open session.
15 And that the council was unanimous in discussing
16 process behind closed doors and that includes
17 Councilman MacArthur and nothing was being done until
18 we get to, the only actions we see, and once again
19 these are provided as part of your audio package is on,
20 and I'll just read these, it's very short:
21 December 1st, 2015, so a year later, city attorney
22 report on closed session.

23 You'll hear the same thing if we listen to
24 the audio report, city attorney Geuss announced the
25 four settlements approved by the city council as

1 follows: Number one, on October -- November 10th,
2 2015, Paul Davis versus City of Riverside, claim 150804
3 was settled in the amount of \$40,000 with the following
4 public acknowledgment, no charges were ever filed or
5 brought against Councilman Davis in regards to the
6 event of 2014. The city council regrets these events
7 took place and hopes to put them behind us and move
8 towards -- forward in the spirit of cooperation. The
9 vote was 6-0 with Councilmember Davis recused, okay?

10 So there was an apology and money paid. I
11 doubt our city is in the business of giving away money
12 or apologies. In the case of -- of Councilman
13 Soubirous, city report on closed session,
14 February 23rd, 2016, which is included in your record
15 as an -- as an audio, city attorney Geuss reported that
16 in closed session the city council approved by a vote
17 of six in favor and none opposed with the Councilman
18 Burnard absent at the request of Councilman Soubirous,
19 for a reimbursement of attorney's fees in the amount of
20 \$1,055 related to the investigation of Councilman
21 Soubirous.

22 Further, the city council makes the following
23 statement, we regret the actions taken with regard to
24 the investigation of Councilman -- Councilmember Mike
25 Soubirous. This includes the process of denying the

1 matter in -- of discussing the matter in closed
2 session. Once again, we regret the actions taken with
3 regard to the investigation of Councilman Mike
4 Soubirous.

5 This includes the process of discussing the
6 matter in closed session, yet hearing the matter
7 publicly, denying the councilmember a right to rebut
8 the witnesses. We regret any damages to Councilman
9 Soubirous's reputation and sincerely hope this can move
10 council forward in the spirit of cooperation.

11 I want to keep that memo up there as well.
12 Just -- I just can't hammer this point -- point home --
13 home enough. Why would Councilman MacArthur seem to
14 imply or actually insist that there was no right or no
15 obligation to take, to record votes made to hire
16 investigators back in April 1st and April 22nd, which
17 we know happened, we've got multiple sources that say
18 those votes took place. And these are not Councilman
19 Davis, they're not Councilman Soubirous.

20 When we're reporting things out of closed
21 session, they're -- they're not reporting on -- on --
22 on October 21st, 2014, they're not reporting pending
23 litigation or litigation being settled, they're just
24 reporting an action, an action really not much
25 different than we've decided to hire an investigator,

1 but somehow that didn't get reported. And I would -- I
2 would cite to you that it was because they wanted to
3 keep this whole thing secret.

4 So with that, I think I can save that for my
5 close, I conclude my presentation on the evidence.

6 Thank you.

7 CHAIRMAN STAHOVICH: Mr. Hunter, you actually
8 have 22 seconds left.

9 MEMBER NELSON: Can -- can we ask for a break?

10 CHAIRMAN STAHOVICH: Absolutely. At this time
11 I'd like to take a five-minute break.

12 (Off the record - 03:39:11 p.m.)

13 (On the record - 03:45:10 p.m.)

14 CHAIRMAN STAHOVICH: At this point I would
15 like to reconvene the meeting, call back to order. At
16 this point of the -- of the hearing, the -- since the
17 public official did give a brief opening statement,
18 we'll go directly into any evidence that you would like
19 to bring forward, Councilman MacArthur, and you will be
20 given as much time as you need as well.

21 COUNCILMAN MACARTHUR: Thank you very much.

22 Just a brief --

23 MEMBER NELSON: Just one question, do you have
24 the same packet if you're referring to page numbers?

25 COUNCILMAN MACARTHUR: Yes. Well, the --



1 MEMBER NELSON: Okay.

2 COUNCILMAN MACARTHUR: -- packet that I have
3 is the one that was given to me. I'm assuming --

4 MEMBER NELSON: Okay.

5 COUNCILMAN MACARTHUR: -- it was given to you
6 as well.

7 MEMBER NELSON: All right.

8 COUNCILMAN MACARTHUR: So hopefully the --
9 hopefully the pages line up correctly. So just -- just
10 to recap a little bit of what -- of what was talked
11 about today, we talked a little bit about the initial
12 complaint, and this is not from the complainant, this
13 is what actually came to -- to city staff. The city
14 manager approached elected officials alleging that
15 members of the city council were acting in ways that,
16 A, created a hostile work environment; and B,
17 violated -- violated the charter -- the charter by
18 interfering in his ability to administer the business
19 of the city. That's what -- that's what occurred.

20 So what decision -- decision drivers came out
21 of that? Well, there was claims of hostile work
22 environments, and -- and those are very serious and
23 should be appropriately investigated. One of the
24 questions that may have come up or could have come up
25 is why didn't this go to the human resources

1 commission; well, the human resources director reports
2 to the city manager, so the situation had to be removed
3 to avoid the potential for conflict of interest.

4 An investigation is essential to seeking the
5 truth. I always tell my clients and my children that
6 the only way you can make a proper decision is having
7 all the facts in front of you. Now, I'm not a human
8 resources or a legal expert, so I needed to seek the
9 counsel or the advice of our city's legal counsel.

10 We talk about closed versus open session.
11 What occurred, the matter was referred to closed
12 session. And the decision drivers there were the
13 matter was a personnel matter as it involved conduct
14 and working conditions for existing employees. The
15 matter involved potential litigation. The Brown Act
16 allows for both personnel matters and potential
17 litigation to be in closed session.

18 And again, we sought legal advice from the
19 city attorney and were advised that closed -- that the
20 closed session were approved -- closed session was
21 appropriate to hear this. And what we know of the
22 Brown Act, and we've discussed this, I think quite a
23 bit today, or the complainant has; the Brown Act allows
24 for closed session for potential litigation. That
25 would be on page -- let me put my glasses on here, page

1 63, sections 54956.9 of the record and personnel
2 issues, pages 57 and 58 of the record, section 54954.5.

3 Closed session proceedings for potential
4 litigation does not need to be reported until
5 litigation is initiated or settled. In this case the
6 litigation did, in fact, proceed and final settlements
7 were announced by the city attorney. And that would be
8 on pages 65 and 66 of the record, section 54957.1.

9 And I think finality is the key here, is the
10 key word here, finality. And as I mentioned earlier in
11 the -- in the testimony or my questioning, on page 39
12 of the record, the Brown Act expert Terry Francke, as
13 quoted in the Press Enterprise by reporter Alicia
14 Robinson on October 8th, 2014, said and I quote, "It
15 could be legal to keep an investigation secret if it
16 was being handled by the city attorney as a response to
17 a possible legal threat."

18 That concludes my evidence. Thank you.

19 CHAIRMAN STAHOVICH: Thank you.

20 At this time, Mr. Hunter, you can start your
21 closing arguments. You have five minutes remaining
22 from your opening arguments, so -- so you'll have five
23 minutes total for your closing arguments. Mr. Hunter.
24 Let me know when you're ready to start.

25 MR. HUNTER: I'm ready to start right now.

1 CHAIRMAN STAHOVICH: Okay.

2 MR. HUNTER: So let's take a look at what
3 happened April 2014, the closed session unanimous vote
4 to hire an investigators, multiple sources have been
5 cited to you today. Evidence, this is evidence.
6 Regarding Soubirous, it's not recorded in the minutes.
7 We know that the minutes were approved by Councilman
8 MacArthur. We know that the exact same thing happened
9 on April 22nd with Councilman Davis, and the minutes
10 were approved once again by Councilman MacArthur.
11 These are Brown Act violations per se.

12 These are decisions to hire investigators,
13 these are not, you know, talking with your lawyer
14 about, you know, possible litigation. These are not
15 personnel exemptions, because as we know, and we can go
16 back over the city -- the Brown Act again, city
17 councilman are not considered employees via subject of
18 the Brown Act. So in order to claim that exception, it
19 would have to be for staff, not the electeds, but we
20 were looking into the electeds here, so that exemption
21 does not work, okay?

22 So what happened in the -- please, the next
23 slide. These are beyond a reasonable doubt violations
24 of the Brown Act, not preponderance of evidence, okay?
25 June 24th we had a closed session vote to have public

1 hearings regarding Soubirous. This discussion, okay,
2 is not allowed in closed session. You cannot discuss
3 process. It's not the investigation, itself, that I'm
4 saying you couldn't discuss, we have liability, we
5 don't have liability, it's the process by which they
6 went through to hire an investigator and then go to
7 this big hearing in lieu of the Code of Ethics.

8 ~~process~~ That's -- the process cannot be in closed
9 session. You can't just develop that, okay? That is a
10 Brown Act violation per se. There is no exemption for
11 it. You can't -- developing a process is not existing
12 litigation or discussing existing litigation. It's not
13 a personnel exemption.

14 ~~Next slide, please.~~ And so in July 24th --
15 July of 2014, closed session vote. And once again, I
16 can't -- we -- we don't know what happened on
17 July 22nd, when -- when Councilman Davis says for the
18 record, we took a vote and adjudicated this beforehand,
19 because we don't have -- we need him as a -- as a
20 witness here. We need him and Soubirous here to
21 determine what really happened on these days. This
22 could be a very important very serious Brown Act
23 violation if they adjudicated this before they walked
24 into that council meeting, okay? We need the
25 subpoenas.

1 Please turn it over. In closing, these are
2 the four things I'm asking, okay? Sustain on my
3 allegations of secret votes not recorded in the
4 minutes. Sustain on my allegations that the process,
5 not the investigation, itself, don't be confused,
6 should have been discussed in open session regarding
7 investigations and hearings.

8 I don't care about whether they discussed
9 litigation or not. They can do that in closed session
10 until the cows come home, but the process by which they
11 went through needed to be discussed in open session.
12 And if they were hiring people and appropriating money,
13 you cannot do that secretly. This is the public
14 treasury you're talking about, they can't just pass
15 secret votes. Of course they can't.

16 Sustain on my allegation that the Code of
17 Ethics was violated by allowing the complainants here
18 special treatment to take allegations directly to the
19 council, bypassing the adjudicating body. Council is
20 only supposed to hear appeals, right? Instead they
21 say, oh, it was a hostile workforce. No, it was not.
22 That was all garbage from the very get-go, very easily
23 discerned by anybody with a cracker jack license, which
24 is why I say, finally we must make a decision here.

25 It's important for the City of Riverside in

1 order to move on. We had a city attorney that was
2 violating the rules, was a serial Brown Act violator.
3 I really think we need, as -- as a city, and I hope you
4 guys do this, make an official Bar complaint against
5 Priamos for violating the Brown Act, violating our Code
6 of Ethics, creating processes out of thin air. And
7 they can't hide behind the city attorney and say, oh,
8 it was all Greg Priamos's fault.

9 They hire the city attorney, and they made it
10 so we can't bring complaints against staff. Chris
11 MacArthur has voted favorably against that every time
12 that it's come forward. For years he has not allowed
13 the public to bring Code of Ethics violations against
14 his executives, which means the buck stops with
15 Councilman MacArthur.

16 He must take responsibility for the actions
17 of said staff. He can't just simply turn around and
18 say, well, you know -- you know, he told us to do it.
19 Well, if he told you to jump off a bridge, would you do
20 that? You know, if he told you to murder somebody,
21 would you do that because you were told that the --
22 that -- that it was okay?

23 You had Brown Act training. These guys get
24 Brown Act training every single year, okay? They're
25 responsible for reading it and understanding it. If

1 they have any questions, they can go to the Attorney
2 General for advisement. And he did -- did none of that
3 and that's why I think we need to rule on all four of
4 these and we need to expand the motion you guys made
5 passed July 22nd on Friday, and we need to include
6 Councilman Davis.

7 Thank you very much.

8 CHAIRMAN STAHOVICH: Thank you.

9 Councilman MacArthur, you have --

10 COLLEN NICOL: Thirteen minutes.

11 CHAIRMAN STAHOVICH: -- 13 minutes for your
12 closing statements. Thank you.

13 COUNCILMAN MACARTHUR: Thank you very much. I
14 don't think it will take that long, hopefully not.

15 Members of the board, I submit to you that
16 all of my actions were reasonable. I gave my best
17 efforts to be well informed, maintaining public
18 confidence and trust by handling potential human
19 resource related items and litigation expediently.
20 Acting in the best interest of Riverside's residents
21 and city employees, taking appropriate care and
22 diligence to protect the legal interests of the city,
23 acting in good faith on the advice of the city's legal
24 counsel.

25 The complainant has the burden of proof to



1 clearly illustrate with a preponderance of the evidence
2 that I aspired to create distrust of the local
3 government. Mr. Hunter has failed to meet this burden
4 of proof. The only logical conclusion that the Board
5 of Ethics can make is that this complaint is either
6 unfounded or inconclusive. I would recommend that the
7 board make a result to this effect.

8 I thank all of you for your time today,
9 taking time away from your professions and your family
10 to serve our great city. Thank you very much.

11 CHAIRMAN STAHOVICH: Thank you, Councilman
12 MacArthur.

13 At -- at this time as we start our
14 deliberations, there were some requests previously that
15 we need to, I believe, discuss at this time. There was
16 a technical request made by Councilman MacArthur. I
17 think we resolved that issue by giving him his pen. We
18 have, however, I believe two or three outstanding items
19 Mr. Hunter requested us to consider.

20 And, Bob, is this the right time to talk
21 about those things?

22 MR. HANSEN: Whatever the chair wishes.

23 CHAIRMAN STAHOVICH: Well, I will -- I will
24 start with the -- the issues that I have referenced,
25 first being there was a request for this board to

1 request the city council to stop any destruction of
2 documents it may have in regards to these -- this
3 matter, and this matter is the matter of the complaint,
4 Mr. Hunter versus Councilman MacArthur and only that --
5 that matter.

6 Now, Bob, what is the protocol for the vote
7 on that?

8 MR. HANSEN: The -- it would be by a simple
9 majority vote, but the panel should consider, in making
10 such requests of the city council, that the sole
11 determination for the hearing panel today is whether
12 Councilmember MacArthur violated section 2(d) of
13 Resolution 22461 by participating in decisions
14 regarding the investigations of Councilmembers
15 Soubirous and Davis and the decision to hold a hearing
16 concerning Councilman Soubirous that occurred in closed
17 session on July 22, 2014, only.

18 No other dates were mentioned in the
19 complaint or are relevant to the action before this
20 hearing body. So in making a request to the city
21 council to preserve any records, the only records
22 relevant to this proceeding would be the records of
23 July 22, 2014, and that request has already gone to the
24 city council.

25 CHAIRMAN STAHOVICH: Thank you.

1 The first speaker, Keith.

2 MEMBER NELSON: While -- while I understand
3 the -- the request, the request is more relevant to the
4 hearing we had last week or earlier this week, where we
5 had asked the city council to make a complaint to the
6 Attorney General. And I think that's not relevant to
7 this hearing.

8 MR. HANSEN: Chair, may I address that? In
9 last week's hearing, a mention was made of jurisdiction
10 of the Attorney General. And in my research after that
11 hearing, it's the district attorney that has
12 jurisdiction over the Brown Act, not the Attorney
13 General, and any private citizen who's aggrieved within
14 the statute of limitations set forth in the Brown Act.
15 So although a request is going forward to the city
16 council for an Attorney General investigation, there is
17 no authority under the Brown Act for the Attorney
18 General to review Brown Act matters for local agencies.

19 CHAIRMAN STAHOVICH: Is there any further
20 discussion on this matter? And is there -- is there
21 anybody recommending a motion in -- to deal with the
22 specific issue of the -- the destruction of documents
23 from that specific date as previously mentioned?

24 Wendel.

25 MEMBER TUCKER: Bob, how does this differ from

1 the 4 to 5 vote that is required to request a subpoena?

2 MR. HANSEN: That's specifically addressed in
3 the ordinance, not specifically addressed is request to
4 the city council to waive privileges, and therefore
5 that would require a simple majority vote.

6 CHAIRMAN STAHOVICH: Keith.

7 MEMBER NELSON: I feel it's prudent for us to
8 ask the city council to retain records from July 22nd,
9 because we're not asking to release them until the
10 hearings are concluded and all appeals are exhausted.
11 So that's my motion.

12 CHAIRMAN STAHOVICH: Erin.

13 MEMBER HOUSE: I would suggest that since we
14 don't have an adjudication on this yet, it's perhaps
15 premature to discuss whether or not the records need to
16 be retained. I think that's something that we may be
17 able to take up in a future Board of Ethics meeting
18 once these hearings are all concluded.

19 If we have adjudicated and come to decisions
20 on each of the hearing matters, then there is an
21 automatic appeal process to the council of the
22 decisions that are made. And after that it's done.
23 According to the ethics code, the -- the decision of
24 the city council on appeal will be final and absolute.
25 And after that there would be no need to retain the

1 records because the decision had been made.

2 On the other hand, if we find that one or
3 more of the hearing boards is absolutely unable to come
4 to a decision, we may want to consider, as the whole
5 body, whether we want to ask the council to retain the
6 records. So I would say at this point it's not
7 something we really need to take up.

8 CHAIRMAN STAHOVICH: Okay. There is a motion
9 on the floor. Is there a second? We'll hear from the
10 city clerk.

11 COLLEN NICOL: The retention period for closed
12 session documents is two years. All the closed session
13 records in my custody for July 22nd, 2014, no longer
14 exist.

15 MEMBER NELSON: (Indiscernible).

16 CHAIRMAN STAHOVICH: Excuse me. Keith, can
17 you turn on your speaker, please? We need to hear that
18 was your error on the record.

19 MEMBER NELSON: I'm sorry. I'm sorry. I --
20 my math was wrong, I did two plus four equals eight.
21 I'm sorry.

22 CHAIRMAN STAHOVICH: Are you withdrawing your
23 motion?

24 MEMBER NELSON: Yes, I withdraw my motion.

25 CHAIRMAN STAHOVICH: Okay. Hearing no further

1 discussion on that matter, I will move on to the second
2 request, which would be a subpoena of those same
3 documents from closed session.

4 Erin -- Erin.

5 MEMBER HOUSE: Did I not hear somewhere that
6 the council has already decided unanimously not to
7 release any closed session documents? So if that is
8 the case -- and is -- is that the case that they've
9 decided that?

10 CHAIRMAN STAHOVICH: I will try to take a stab
11 at that first, and then I will lean on Bob for
12 guidance. But again as I reminded the complainant,
13 this is a new hearing panel, this is matters that have
14 never been heard before. Each claim, regardless of who
15 makes them, stand on their own merit. It's my
16 understanding that in separate matters, again not
17 having to do with this, a similar request was made and
18 you're correct that the council asserted their -- their
19 privilege.

20 MEMBER HOUSE: Yes, that's -- I thought that
21 was the case, and I believe they did so unanimously.
22 With that -- with that knowledge I would suggest that
23 to do so would probably be pretty pointless and futile.
24 If they denied it before, they'll probably deny it
25 again.



1 CHAIRMAN STAHOVICH: Do I hear a motion on
2 anything here?

3 MEMBER FORD: Well, technically these
4 documents have been destroyed, so it seems like we
5 shouldn't ask for something that technically doesn't
6 exist anymore. And if I'm wrong, I will turn my mic
7 off so it's not recorded.

8 CHAIRMAN STAHOVICH: At this -- at this point,
9 again -- again were there requests made by a party that
10 we need to address individually and independently. So
11 and you're not wrong.

12 The -- the third request was made to subpoena
13 witnesses, Councilmembers Soubirous and/or Councilman
14 Davis. Is there any discussion on that?

15 MEMBER FORD: I --

16 CHAIRMAN STAHOVICH: Champagne.

17 MEMBER FORD: Well, for -- for transparency
18 purposes, I've had a change of heart. I -- I think
19 it -- it is important that they come in and speak on
20 this issue. So I think it's -- I think it's important
21 to have their presence, and they be compelled to
22 testify in this hearing.

23 CHAIRMAN STAHOVICH: Wendel.

24 MEMBER TUCKER: I would echo Erin's -- I would
25 echo Erin's comment that that decision should occur

1 after we have had our deliberations and -- and
2 determined that we cannot make a decision without that
3 additional information. The -- the testimony is
4 necessary for our decision-making, you know, I --
5 that's what -- that's what I believe. I don't -- I
6 don't think that -- I don't think that we need at this
7 point in time to make a decision.

8 CHAIRMAN STAHOVICH: Erin.

9 MEMBER HOUSE: Yeah, thank you. I don't feel
10 that we need to subpoena the councilmen. And I think
11 that we have ample testimony, ample information here to
12 come to a reasonable decision on this.

13 CHAIRMAN STAHOVICH: With that discussion, I
14 will call, is there a motion pending?

15 Keith.

16 MEMBER NELSON: I -- I move -- I move that we
17 visit subpoenas after we deliberate.

18 MEMBER TUCKER: Second. I'll second that.

19 CHAIRMAN STAHOVICH: Actually I -- I'm not
20 sure that we need to vote not to do anything, I think
21 we only need to vote if we were moving forward with the
22 subpoenas.

23 Is that correct, Bob?

24 MR. HANSEN: Either way it doesn't harm to
25 take a vote to defer the action until the end of



1 deliberations.

2 CHAIRMAN STAHOVICH: There's a motion and a
3 second. Any further discussion? And so we're all on
4 the same page, the motion was to defer the decision of
5 subpoenas until later in the process. Please vote.

6 COLLEN NICOL: Do you -- do you -- so did you
7 intend to vote in favor of the motion? You're voting
8 no?

9 CHAIRMAN STAHOVICH: So --

10 MEMBER FORD: (Indiscernible).

11 COLLEN NICOL: Okay.

12 CHAIRMAN STAHOVICH: So we can zero it out
13 and redo it.

14 MEMBER FORD: Yeah.

15 COLLEN NICOL: We can record you as a no vote
16 and all -- all the rest ayes.

17 CHAIRMAN STAHOVICH: So the motion to defer
18 that decision until later was passed, four affirmative
19 and one abstention -- or one -- one no vote, excuse me.
20 Thank you.

21 I believe that's all the request for
22 considerations that I had prior, at the beginning of
23 the meeting. So at this point we will move forward
24 with our deliberations. Any -- any discussion?

25 Erin.

1 MEMBER HOUSE: Thank you, Mr. Chairman.

2 It seems to me, having listened to everything
3 that's been said here today, that the city council went
4 into closed session on a human resources issue here,
5 not an ethics issue. With this 407 issue, it's true
6 that city councilmen are not specifically employees in
7 every sense of the word, however, there were complaints
8 made against the city councilmen by several people who
9 were employees of the city, and that made it a human
10 resources matter.

11 So this was -- really wasn't an ethics
12 investigation. This was a human resources
13 investigation, and as such was not subject to the
14 ethics code, as has been suggested by Mr. Hunter.

15 As I've listened to everything and I've
16 looked at all this, I find myself shaking my head. I
17 -- I have to say I think a lot of dumb things were said
18 and a lot of dumb things were done, but I'm not sure
19 that I see any of it rising to the level of aspiring to
20 create distrust by the public in our city council's
21 process.

22 CHAIRMAN STAHOVICH: Would anybody else like
23 to weigh in?

24 MEMBER FORD: I -- I guess I have a question
25 for Jason.

1 Were there --

2 CHAIRMAN STAHOVICH: Actually Keith is up
3 next. Keith and then Champagne. I'm looking at the
4 board.

5 MEMBER FORD: Oh, okay.

6 MEMBER NELSON: I think the entirety of what
7 occurred caused some distrust in our -- in our city
8 government, which is regrettable. However, was that an
9 ethics violation, what occurred, is what I'm -- I'm
10 quandaring with. Then and the next step is really, it
11 seems to be that there -- there was votes taken in
12 closed session and not really denied that that
13 occurred, and really the question comes, were those
14 protected votes under the Brown Act.

15 And I'm still at the part that that's kind of
16 out of our -- our -- our expertise. You really need a
17 professional to say were -- were those votes
18 appropriate, and I don't think that's us.

19 CHAIRMAN STAHOVICH: Champagne.

20 MEMBER FORD: I guess I have a question for
21 Jason.

22 Erin stated that it was held in closed
23 session because it became a labor issue, it was city
24 employees making a complaint about -- in regards to a
25 city official. Can -- do you have evidence that in the

1 past city employees had made a complaint and it was
2 handled through the ethics process and not through this
3 sort of process that happened behind closed doors?

4 Would you -- can you validate what he's
5 stated, or do you think that's his opinion?

6 MR. HUNTER: Do -- do I -- I mean, it's --
7 it's an opinion, right? I mean, were there complaints
8 made by the -- by employees in the past, I'd -- I'd
9 have to go through each individual to find -- see if
10 any of those -- I don't know if those people were
11 employees or not, I don't, I have no idea. I know they
12 are members of the general public.

13 CHAIRMAN STAHOVICH: Erin.

14 MEMBER HOUSE: Thank you. As far as closed
15 session votes being taken, as I've read all of this,
16 and if I've -- as I've listened, I've seen it reported
17 in the Press Enterprise, or least there's been
18 testimony -- testimony that it's reported in the Press
19 Enterprise, that closed session votes were taken;
20 however, we do not have anything authoritative that
21 says a closed session vote were taken because we do not
22 have closed session records, so we cannot really say or
23 know whether or not these votes were taken.

24 CHAIRMAN STAHOVICH: Well, I don't see any
25 other names popping up for a minute, so I'll use the

1 opportunity to think out loud. Now, Mr. Hunter has
2 provided a lot of information, a lot of complex --
3 complex and complicated information. The things he
4 talked about, the showing public records. Were there
5 actions that occurred in closed session that should
6 have been reported out, that should have been held in a
7 public forum, which would constitute a Brown Act,
8 should that not happen?

9 He has a lot of good information. The
10 challenge I continue to have is that I don't know that
11 I have the legal ability.

12 And, Bob, I know you don't -- I'm not going
13 to ask you for testimony, but can you give me some
14 guidance? Who -- in the State of California, who can
15 legally make a determination if a Brown Act occurred?

16 MR. HANSEN: Ultimately it's the Superior
17 Court, but the code provides for criminal complaints
18 brought by the district attorney of the county in which
19 the entity is located or civil writs of mandate by
20 either the district attorney or by any member of the
21 public asking for the Superior Court to rule on
22 particular actions that were taken or to rule on a
23 pattern of practice of an agency in -- in ordering them
24 not to further engage in that pattern of practice.

25 So it's either the district attorney or any

1 member of the public.

2 CHAIRMAN STAHOVICH: And this is -- this is
3 what -- what's going through my mind, again, if -- if
4 there was a finding that a violation of the Brown Act
5 occurred, our job would be real easy, we can look off
6 the checklist in the ethics complaints, it's -- it's
7 number six, guilty. What -- the challenge that we're
8 having here that I'm seeing here is we're not -- we're
9 not being asked to simply make a determination whether
10 there was an ethics violation as outlined in the
11 resolution.

12 It's to first make a finding that -- a legal
13 finding that something occurred. And again, I'm not
14 sure that we have that authority. I did do some
15 research on statutes of limitations and how -- what the
16 process was. And like, I worked for government for a
17 long time, and I don't understand the stuff, so I know
18 how complicated it can be.

19 But as I understand it, Bob, if there is a
20 complaint, and I'm going to paraphrase and I'm probably
21 going to mess it up badly, so you can correct me, but
22 my understanding is that should a violation be alleged
23 that a complaint is to be made to that body within, I
24 believe, it's 30 or 60 days; is that correct?

25 MR. HANSEN: If it's a -- if -- if it's a



1 complaint as to a particular action, it's within nine
2 months, and then action has to be taken by the body
3 within 30 days. If it's a complaint, mandamus, or
4 injunctive relief, then the party -- the party alleging
5 the violation must file the letter within 30 days and
6 then -- and then the agency -- I'm sorry -- within
7 90 days, and then the agency has 30 days within which
8 to correct.

9 So if it's because of a pattern of practice,
10 it's nine months and then 30 days to correct. If it's
11 for a particular action, it's 90 days and then 30 days
12 to correct.

13 CHAIRMAN STAHOVICH: Okay. And I'm going to
14 do something that I know better than, I'm going to
15 assume something. Based on the complaint, I see this
16 as a specific case, not a pattern, and so I'm going to
17 make the assumption that we are looking at one
18 incidence. That's probably where I read the 90 days
19 and only read it partially wrong.

20 Given that, looking at some of the timelines
21 that -- you know, again, I've had these thoughts going
22 throughout this meeting -- this hearing, and I was
23 looking at it, and the thing that -- that caught my
24 attention was the calendar. In fact, can we put the
25 calendar back up that Mr. Hunter provided?

1 MR. HUNTER: I can't find it. It's not
2 supported by argument.

3 CHAIRMAN STAHOVICH: We're allowing it for
4 your closing arguments, not for evidence.

5 Okay. And I'm -- I'm looking at the dates,
6 I'm looking at the allegations occurring, that
7 something happened in April, whether the, you know, the
8 -- the 1st, the 8th, the 22nd, there's, you know --
9 and -- and here's something else that caught my
10 attention, at the top of --

11 And -- and actually, Mr. Hunter, I'm going to
12 ask you if can step back up to the microphone. I have
13 a question or two for you.

14 MR. HUNTER: Sure.

15 CHAIRMAN STAHOVICH: Can you read what you
16 handwrote above or on the top of the calendar?

17 MR. HUNTER: Brown Act violations per se.

18 CHAIRMAN STAHOVICH: Per se. And what does
19 per se mean?

20 MR. HUNTER: Means they -- they are, in and of
21 itself, you know, if -- if these things that I've
22 written down have occurred, that is a Brown Act
23 violation.

24 CHAIRMAN STAHOVICH: If they have occurred?

25 MR. HUNTER: Yes.

1 CHAIRMAN STAHOVICH: Okay. And -- and -- and
2 again -- that -- that's all the questions I had for you
3 right now.

12 There's a lot of people's opinions. Press
13 Enterprise did a good job asking people for their
14 opinions. What we're missing, what I'm missing is
15 something from the authority who can actually make the
16 determination that this, in fact, was absolutely a
17 Brown Act violation. Again, Mr. Hunter brought some
18 very compelling information saying, here's the record,
19 here's what they finally reported out when they
20 reported it out, here's the dates and times, here's
21 what became public record when -- when push came to
22 shove.

23 Even with all that, I'm having a tough time
24 understanding that that was more than an allegation,
25 that it was absolutely an actual conclusion of law by

1 those in a position to make it. I now have some
2 speakers up there, so I will stop rambling. I
3 apologize. We'll start with Keith.

4 MEMBER NELSON: I have a -- going -- following
5 your train of thought, if I were to be, make
6 assumptions or respective, it looks like the city
7 council had some possible Brown Act violations and
8 later comes forward and makes public disclosure, maybe
9 late, but does it. The one that -- the one comment
10 that -- and -- and the fact of ruling on the Brown Act
11 troubles me for the same reasons it troubles you. But
12 there's a comment that's about been brought up in
13 testimony a couple of times where Councilman Davis
14 walks out and says, we're going to have a trial, it's
15 already been concluded.

16 And that's kind of where -- that's the one
17 violation -- accusation that still sits uncomfortable
18 with me.

19 CHAIRMAN STAHOVICH: Champagne.

20 MEMBER FORD: Well, all of the issues in
21 regards to the Brown Act, I have to admit, it's
22 definitely above my pay grade, but I'm -- I'm looking
23 at the complaint Jason has -- has submitted to the city
24 clerk's office, and he's saying that the specific
25 section of Code of Ethics that were violated is

1 resolution number 223318, section 2, part (d). And I
2 think going above -- going into the weeds of the Brown
3 Act has overly complicated this situation. I think we
4 have to focus on that section (d), and that section (d)
5 is creating trust of local government.

6 Those that we elected, we have to ask
7 ourselves, and we have to look at that paragraph;
8 and -- and it states that officials shall aspire to
9 create a transparent decision-making process by
10 providing easy access to all public information --
11 information, and if we -- we have to ask ourselves, did
12 they do that.

13 And I think Jason has proven that they did
14 not, because they had the votes in closed session. So
15 like I said, you know, going into the weeds of the
16 Brown Act, above our pay grade; but if you look at this
17 paragraph, and that's what his complaint is based on, I
18 think there's merit to his complaint because the
19 process was not transparent, there were closed session
20 hearings. And even one of the councilmembers stated
21 that it was kind of like a witch hunt.

22 I mean, so based on that, I think there's
23 merit to what he's saying that they did violate the
24 city's Code of Ethics. There's -- whether it was
25 intentional or not, that's what I am kind of wrestling

1 with, but I -- I think there's merit to what he's
2 saying, and I think we need to -- instead of focusing
3 on this Brown Act, we need to kind of look at this
4 paragraph of creating trust of local government, did
5 they violate that.

6 And I -- I don't want to speak for everybody,
7 but I think we can acknowledge that there was
8 definite -- there was some distrust that was created.

9 CHAIRMAN STAHOVICH: I think you make some
10 valid points. Again, I think the -- the discussion on
11 the Brown Act was not something we derived, it's
12 something I personally want to -- want to respond to.

13 Erin.

14 MEMBER HOUSE: Thank you, Mr. Chairman.
15 Continuing on your excellent train of thought, you do
16 raise, I think, a very good question; if -- if
17 Councilman Davis was so convinced there was a Brown Act
18 violation, why did he not go across the street and get
19 a writ of mandate to that effect?

20 CHAIRMAN STAHOVICH: Wendel.

21 MEMBER TUCKER: I concur -- I concur with
22 that, with both what Champagne says and what Erin says,
23 and I think you need to look at both of their comments
24 and realize that -- that individuals spoke as
25 individuals. Board members, councilmembers, anybody on

1 a legislative body acts as a whole. And when they
2 report out, they report out as a whole. And to come
3 out of a closed session and make a public statement
4 that reflects you, as the individual, but yet reflects
5 upon the entire legislative body, in my opinion, is a
6 violation of the Code of Ethics.

7 This case for me, and -- and we've -- we've
8 heard this, different ones of us in different
9 configurations now for several days, and -- and none of
10 us are taking this lightly or we -- we take our
11 responsibility seriously. And so for me it comes back
12 to two or three key points.

13 First and foremost, in -- and -- and I
14 don't -- I don't doubt Jason's fervor and passion
15 and -- and his abilities to look at things and to study
16 things thoroughly and to come to an opinion, to come to
17 an occlusion -- conclusion. Mr. Francke comes to a
18 conclusion. Mr. Davis comes to a conclusion. But all
19 of those are a variety of individual opinions, and none
20 of them have been tested in a court of law as each
21 of -- as -- as has been said here to me.

22 So the -- the whole thing, first of all,
23 revolves around a Brown Act. And as Mr. Hunter has
24 pointed out, the city council are well trained in that.
25 And I, likewise as a public employee for a number of

1 years and on a variety of different boards, I also have
2 been trained annually in the Brown Act. And most
3 generally the -- the training we get is exactly the
4 same, regardless of which -- which attorney, whether
5 it's an paid attorney, whether it's a city attorney,
6 whether it's whoever it is; the Brown Act is pretty
7 clear.

8 And so for me this comes down to the fact
9 that a member of a legislative body, in this case the
10 city council, is required to follow legal counsel. And
11 legal counsel is expected to give them professional
12 advice. So the question then for me relative to the
13 Brown Act is, I personally do not feel, and again I
14 will state this is my personal opinion as I did the
15 other day, I do not feel that the Brown Act was
16 violated in the sense that the Brown Act clearly allows
17 for discussion of potential litigation, it allows for
18 appropriate discussion in closed session, and it
19 specifically, which I pointed out the other day, says
20 that it shall be confidential and final.

21 So therefore things that occurred that now
22 have come to light in the -- in -- in -- in the
23 light of day later, yes, there were votes taken, but I
24 would not challenge those votes, because in my opinion
25 they were in part necessary for the process of making a

1 fair and reasonable decision relative to how to deal
2 with something that had never been dealt with before.

3 There's no question that a Code of Ethics
4 complaint was filed -- or a hostile work was then
5 filed. The question then comes down to attorneys
6 deciding was there or was there not a conflict of
7 interest for human resources. If there was a conflict
8 for human resources, then who -- who does it fall to,
9 to -- to deal with this; well, it falls to the highest
10 body. And Jason is correct, that generally speaking in
11 the -- in the charter and everything, it says that the
12 city council will hear the appeals, but in a situation
13 where they become the -- the initial body, then there's
14 needs to be something.

15 And that may be part of what's our struggle
16 in all of this, because as Jason has clearly pointed
17 out, there wasn't a process at that point in time.
18 There wasn't -- there wasn't something that was -- that
19 would take care of administrative interference that --
20 which is a Code of Ethics violation for a city
21 councilmember. And so and -- and because there had
22 been hostile work environment complaints, which do fall
23 under the issue of -- of potential litigation, in my
24 mind is was perfectly reasonable for them to discuss a
25 new process.

1 They brought it to the public. What they
2 didn't do was bring it to the public in their initial
3 discussions, but they were doing that under
4 client-attorney privilege at that point in time. So
5 the question then for -- for each of us, and because
6 we're not legal authorities, it comes down to, what
7 is -- what is the legality of -- of a closed session
8 process, what is allowed in closed session process.

9 We've heard Jason's opinion, we've heard
10 other people's opinion; but, you know, we're here --
11 we're here to look at this separately. Here's what it
12 boils down to me in all of this, there's two issues
13 involved; one is the violation of the Brown Act, and
14 the second was really the fact that the -- that the
15 city council came up with this process, and yes, they
16 did it behind -- in closed session. I don't use the
17 word secret. They used -- they did it in closed
18 session. And they created a process and then brought
19 it to the public.

20 So it wasn't like they conspired to do
21 something and did it. The opinion of whether or not it
22 was a politically motivated or not politically
23 motivated is just simply that, an opinion. So my
24 findings on this are that on the -- on the issue of the
25 Brown Act violation, there was no violation.



1 In the issue of the Code of Ethics violation,
2 there was no intent to do other than to fulfill
3 their -- their duty to their voters, to conduct
4 business, not in a serial manner and not in a truly
5 private manner, but to -- to conduct business in -- in
6 the official closed session and with the -- with the
7 advice and -- advice and -- and of their legal
8 attorney; therefore, they acted within their
9 jurisdiction and dealt with a very difficult situation.

10 My opinion is no violation occurred in either
11 case.

12 CHAIRMAN STAHOVICH: Champagne.

13 MEMBER FORD: I just have a request for Jason.

14 Can you place on the monitor that statement
15 by the city in which they state pretty much, it's our
16 -- you -- it was in your closing argument where the
17 city apologized for the actions that had taken place.
18 I don't know if you have that. You read it to us,
19 but --

20 MR. HUNTER: Would you like to see like the --
21 the Soubirous statement, the last one or the one before
22 that, which is the --

23 MEMBER FORD: (Indiscernible).

24 MR. HUNTER: -- Davis statement?

25 MEMBER FORD: (Inaudible) last.

1 MR. HUNTER: Okay.

2 MEMBER FORD: With regards to (Inaudible).

3 MR. HUNTER: I've got that. Okay. Could you
4 give -- could you give me like 30 seconds to find it
5 while you're talking? Sorry. (Indiscernible).

6 MEMBER FORD: Well, I -- I think some of the
7 statements Wendel made is -- I can agree with. I don't
8 know if I necessarily agree with that the city council,
9 they're supposed to follow legal counsel. I don't know
10 if they are required by law to sort of follow whatever
11 counsel they're given blindly.

12 The issue of intent, just because someone
13 maybe doesn't have certain intentions doesn't mean --
14 it -- it -- it doesn't lessen what was done. And so I
15 have to go back to that resolution number in creating
16 that -- that mistrust of city government. And I know
17 that Jason provided a statement in which the city
18 apologized in essence sort of creating that distrust.
19 So I need to see that statement, what the city actually
20 apologized for.

21 So there it states, we regret the actions
22 taken with regard to the investigation. We regret any
23 damages. So that's where I'm struggling with --

24 MEMBER NELSON: Is that the completion of the
25 statement?

1 MEMBER FORD: -- the city --

2 MEMBER NELSON: Is that the statement in its
3 entirety? Because it ends at the page. I don't know
4 if there's some carried on.

5 MR. HUNTER: That's the statement in its
6 entirety.

7 MEMBER FORD: So I mean, Wendel, he makes a
8 good point about the intent. Maybe there were -- there
9 -- there wasn't malicious intent. But you know, if
10 I -- if I hit somebody in the head and I can say -- and
11 they die, I can't say, well, my intent was just to --
12 just to hurt them. Do you know what I mean? I can't.
13 It's -- it's that statement that kind of bothers
14 me a little bit, we regret the actions taken with
15 regards to the investigation.

16 Sorry, David, I can't think out loud as good
17 as you, but that statement just kind of resonates with
18 me.

19 CHAIRMAN STAHOVICH: Erin.

20 MEMBER HOUSE: Thank you, Mr. Chairman.
21 Coming back to the complaint, referring to section (d)
22 in the old ethics code, the elected and appointed
23 officials of the City of Riverside shall aspire to
24 operate the city government and exercise, et cetera, et
25 cetera. To violate that, I would think they would have

1 to, shall not aspire or shall aspire to not operate. I
2 haven't seen anything that suggests to me conclusively
3 that that occurred.

4 And I think aspirations are different from
5 intent. This is one of the main reasons when the ad
6 hoc committee was formed to rewrite the ethics code,
7 that that form -- that that committee was formed.

8 The -- these articles in this Code of Ethics talking
9 about it's aspirational, and it's very, very difficult
10 to determine conclusively what somebody did aspire to
11 or what somebody did not aspire to. I don't think it
12 can be said, and that's one of the reasons that of the,
13 I believe it was 43 ethics complaints that were filed
14 prior to the institution of the new code, that none
15 were upheld.

16 It's very difficult to come to a conclusion
17 that somebody has aspired to violate their charge --
18 their -- their charge. And we have the -- we don't
19 have that in the new code. It's -- it's just not
20 there. So I find it very difficult to come to a
21 conclusion that the councilman aspired to not operate
22 the city government and exercise his responsibility in
23 a manner which creates a trust in their decision or
24 that he did not aspire, either way. Either, whichever
25 semantic side you want to choose.

1 I don't see that I can conclude that he did
2 from the evidence here.

3 CHAIRMAN STAHOVICH: Thank you.

4 Wendel.

5 MEMBER TUCKER: Thank you, Erin. I was going
6 to refer to that same section.

7 I think -- I think to make a decision, which
8 we're being required -- required to do, would let --
9 would -- would cause us, or we would need to use the
10 word conspire. We'd have -- we'd have -- we'd have to
11 say to ourselves that they -- they intentionally went
12 out to conspire together or not went out, just that
13 they -- they intentionally conspired to violate
14 somebody's rights.

15 And I don't find anything in -- in any of the
16 evidence presented, any of the things that I've read,
17 any of the -- any of the processes that took place that
18 they specifically went out to conspire to damage
19 Councilman Soubirous.

20 CHAIRMAN STAHOVICH: Keith.

21 MEMBER NELSON: There is an allegation or
22 purported allegation, and without Mr. Davis here to
23 question him on it or hear his testimony, where he
24 comes in and says, the council conspired to vote prior
25 to public hearing. And that -- that kind of would go

1 against what we're defending against.

2 CHAIRMAN STAHOVICH: Wendel.

3 MEMBER TUCKER: And I was -- if I had the
4 opportunity to talk to Councilman Davis, my first
5 question to him would be on what authority or basis did
6 you have to make that public statement.

7 CHAIRMAN STAHOVICH: Okay. And I will go
8 ahead and weigh in waiting for some more lights to come
9 on. Again -- again, the aspirational aspect is
10 troubling. That is the primary change from the old
11 ordinance -- or the old resolution to the new
12 ordinance. It's black and white. It's either you did
13 this or you didn't. It's not, I thought you may have
14 or it looked like you could have. It's -- it's very
15 clearcut as to what violations are now -- how -- how
16 they're addressed.

17 The -- the challenge that we have, we're
18 trying to apply new, I think, pretty good rigid
19 standards to an abstract thought. That's why, as I was
20 thinking out loud about the Brown Act, the Brown Act is
21 clearcut. If there's a violation, if -- if somebody --
22 if somebody in authority makes a determination that
23 there was a violation, then it's very easy for me to
24 say, okay, there you go, violation was -- was
25 confirmed, therefore there is an ethics violation



1 confirmation.

2 That being said, I would no way say that what
3 Mr. Hunter's allegations are, are without merit. I
4 think he -- I think that he's done a lot of homework.
5 I think that he has an opinion as to what may have
6 occurred. Again, going back to what -- what was
7 explained on how violations of the Brown Act work and
8 looking back at that calendar, one of the other
9 things -- I didn't get into it when the calendar was
10 up.

11 You don't have to put it up right now, but
12 looking at these 30-, 60-, 90-day milestones of what
13 happens. If we're looking at the fact that the alleged
14 Brown Act violation may have happened April 22nd,
15 mid -- mid April, let's -- let's call it April, and
16 then in June, Mayor Pro Tem Steve Adams comes out and
17 announces, we're going to have this matter on the
18 council's agenda, and then in July that happened. I'm
19 not sure, and again this is the Brown Act, this is a
20 very complicated matter, it was -- it was handed to me,
21 I didn't ask for it; but just looking at the timelines,
22 I guess my question would be, would a determination by
23 the proper authority have been made that the situation
24 was cured or the remedy had already taken place and
25 that, again, if you were supposed to report something,

1 to fix that you report it.

2 At some point within a couple of months this
3 was reported. We're now dealing with it three years
4 later through no fault of Mr. Hunter's, the -- the
5 rules changed, the -- the game -- the game plan changed
6 midway through; but again the challenge that I'm having
7 is that I'm being asked to make a determination that,
8 to use your words, Champagne, is above my pay grade.

9 And --

10 Bless you.

11 And that's why I'm discussing that ad
12 nauseam. The issue then becomes to me, the simple
13 focus, what does the actual complaint say.

14 And -- and -- and, Bob, if you could remind
15 us, exactly what are we supposed to be considering at
16 this point.

17 MR. HANSEN: Based upon -- oh, sorry. Based
18 upon the complaint, the sole issue for determination by
19 this hearing panel is whether Councilmember MacArthur
20 violated section 2(d) of resolution 22318, replaced by
21 22461, by participating in decisions regarding the
22 investigations of Councilmembers Soubirous and Davis
23 and the decision to hold a hearing concerning
24 Councilmember Soubirous that occurred in closed session
25 on July 22, 2014.



1 CHAIRMAN STAHOVICH: Okay. Hold that thought.

2 Keith, can you --

3 Or actually, Champagne, would you mind
4 repeating or -- or reading the section of the actual
5 ethics code that we need to apply? Was it Erin or --
6 or Champagne that read that?

7 MEMBER FORD: I think --

8 MEMBER HOUSE: I think we both did. I think
9 we both did.

10 MEMBER FORD: I read it.

11 CHAIRMAN STAHOVICH: Okay. Erin, if you have
12 it, you can go ahead and read it. Whichever --
13 whichever one of you would like to.

14 MEMBER HOUSE: (Indiscernible) section (d),
15 the elected and appointed -- sorry about that. Section
16 (d), the elected and appointed officials of the City of
17 Riverside shall aspire to operate the city government
18 and exercise their responsibilities in a manner which
19 creates a trust in their decisions and the manner of
20 delivery of programs through the local government.

21 CHAIRMAN STAHOVICH: Okay. That's -- that's
22 far enough. That's good right there. Again, hearing
23 what we're looking at and applying the standard that
24 you just read, to me in my -- in -- in my mind the
25 question is, becomes did Councilman MacArthur put the

1 public's trust in jeopardy by participating in a
2 meeting where the -- where the council took action.
3 That may be an oversimplification of it, but that's
4 kind of how I'm looking at it.

5 And it's -- it's my understanding a
6 councilman's job is to take those daily actions or
7 weekly actions as part of his duties and obligations.
8 So again to oversimplify, you're -- you're elected to
9 make decisions on behalf of the county. Did you damage
10 the -- the city -- the public's trust by participating
11 in the meeting which you were elected to do.

12 Without -- without being able to ask, you
13 know, conclusively, was there a Brown Act violation,
14 give me something to hang my hat on, show me something
15 tangible that, you know, again, I have opinions and
16 some of them you may like, some of them you may not
17 like, but give me something to hang my hat on,
18 something I can point to that says clearly this fits in
19 those loose parameters that we have.

20 MEMBER FORD: I had to bring out the online
21 dictionary just so I can make sure that I, you know, am
22 reading this correctly. And if you look aspire, it
23 says, it means to direct one's hopes or ambitions
24 towards achieving something. So you're right, it's
25 that language, it's not very concrete, it's not very

1 black and white.

2 And if you look at him specifically,

3 Mr. MacArthur, I even need more evidence to show he did

4 something directly besides just possibly being present

5 at the closed session hearing. So there's a violation

6 there, but now that we're working with this paragraph,

7 give me something, you know, like specific to show that

8 he did something intentional to create that mistrust.

9 And I just don't see it besides just being present,

10 quite possibly or even voting at the closed sessions,

11 but we don't have record of how really it was voted or

12 who was present. So --

13 CHAIRMAN STAHOVICH: Keith.

14 MEMBER NELSON: I think I'm obsessing. I'm

15 quantered between what my friend Wendel has said,

16 Dr. Tucker.

17 MEMBER TUCKER: Wendel.

18 MEMBER NELSON: And Councilman Davis made a

19 direct accusation against the council. He said that we

20 did, in fact, violate the Brown Act and that we did and

21 how we did it before we proceed and that is a -- and

22 then it's cut off. And I've -- and I've read through

23 and I was kind of scrolling through here, he never

24 really says what they did that I can find. And it

25 was -- and without his testimony and without his desire

1 to file a complaint, I mean, almost -- if I was sitting
2 on the council at that time and I had thought we had
3 made that violation, even being part of the members, I
4 probably would have asked for it to be adjudicated just
5 to -- to clear the air. And it just kind of ends
6 there.

7 And I -- and you know, the -- the -- the
8 meeting was less than stellar for the City of Riverside
9 that night, but that's the best we've got that I think
10 that someone says there's a Brown Act violation.

11 CHAIRMAN STAHOVICH: Councilman MacArthur, I
12 have a question for you. Did you violate the Brown Act
13 on that date?

14 COUNCILMAN MACARTHUR: It's my feeling I did
15 not, based on the -- what I gave you earlier today.

16 CHAIRMAN STAHOVICH: Did you aspire to
17 diminish the public trust in any way through your
18 actions?

19 COUNCILMAN MACARTHUR: Absolutely not.

20 CHAIRMAN STAHOVICH: Thank you.

21 You know, and again, we have two individuals
22 who have very differing opinions on what happened I
23 don't question most of -- most of the evidence brought
24 forward by Mr. Hunter is public records, is very
25 verifiable. What's missing for me are two things.

1 Number one, a determination of a violation, again,
2 which would make things easy; number two, aspirational.
3 I don't like the way you just shook your head at me.
4 That's aspirational. It's my opinion. It doesn't mean
5 you did something wrong, it means I didn't like what
6 you did.

7 That's a horrible standard. That standard,
8 trying to apply an aspirational standard to a very
9 serious allegation. And again, it -- it -- because
10 it's not been deemed or adjudicated, it is just that,
11 it is an allegation, just like Mr. Davis's allegation.
12 And going back through that meeting, going -- going
13 back and -- and listening to that meeting, my take is
14 that things were not going well for Councilman Davis
15 that -- that night.

16 I'm not going to make any excuses one way or
17 the other. I guess if -- if I had him in front of me,
18 I might ask him, was -- were any of the words that came
19 out of your mouth just simply a response of, you know,
20 of -- of being frustrated or angry or hurt or any
21 number of issues, is that just a response that you gave
22 at that time. And again, why did you not file a
23 complaint if, in fact, you believed that to be a
24 complaint. You have an obligation, too.

25 Councilman Davis would have had an obligation



1 to file that Brown Act complaint if he believed it
2 happened, even if it was against himself. So I'm
3 struggling with, you know, why we would even need to
4 subpoena Mr. Davis here to ask him or Mr. Soubirous to
5 ask them for their opinions. I think that there's a
6 lot to be said that, again, based on the -- the code
7 that we're looking at, the section that we're looking
8 at, the standard is one that's very difficult to
9 achieve what is aspirational.

10 Keith.

11 MEMBER NELSON: (Indiscernible).

12 CHAIRMAN STAHOVICH: Wendel.

13 MEMBER TUCKER: Okay. So I -- I want to deal
14 with this -- this whole issue of whether or not the
15 city council acted within its authority and whether it
16 was fair and -- and just and -- and -- and responsible
17 in doing this. And I refer all of you to page 898.
18 And the portion that Jason has highlighted begins on
19 line 23, but I think it's important that we start with
20 Mr. Meyerhoff's statement -- statement on line 18,
21 excuse me, 898, line 18, where Mr. Meyerhoff identifies
22 himself as from the law firm of Liebert Cassidy and
23 Whitmore and -- -- and indicates that he's been
24 assisting the city as special counsel on this
25 particular matter.

1 And as the mayor mentioned, the complaints
2 brought by the city council on behalf of the chief of
3 police and one of his subordinates alleged, among other
4 things, claims of hostile work environment. Under the
5 California code as part of -- going to page 899,
6 please -- part of the Fair Employment and Housing Act,
7 section 12940 of the government code, employers,
8 including the City of Riverside, are required to
9 conduct fair, prompt, and thorough investigations into
10 any claims of hostile work environment.

11 And that was one of the reasons that the
12 council authorized the investigation by an independent
13 third party. The investigation -- investigator also
14 reviewed allegations that the city charter was
15 violated, specifically section, charter section 407.
16 Based on this obligation, the council retained an
17 impartial third-party investigator to conduct an
18 investigation into the allegations that were made. The
19 council is here today to publicly deliberate on the
20 issue of whether any action should be taken as a result
21 of this investigation.

22 Not highlighted, but key. Now, this type of
23 meeting is authorized by government code and is within
24 the authority of this council. That is the legal
25 advice given to the city council on which they acted



1 upon whatever decisions they were going to make.
2 Reemphasizing my point is -- is that the city
3 council, throughout this entire process, has acted in
4 an -- in a very politically charged environment, has
5 acted to be as open and fair to all individuals
6 possible. And in the absence of anything specifically
7 telling them how they should go about investigating
8 themselves, they went through a process to create a
9 hearing, and that hearing was held in public.

10 To determine whether or not you need to have
11 a hearing or whether there's any heat or light to
12 the -- to -- to any allegations that are made, you --
13 it requires an investigation. And as -- as
14 Mr. Meyerhoff -- Meyerhoff has indicated, those things
15 are all part of what is required under fair labor
16 practices.

17 So the city council was put into a position
18 where they needed to create a methodology to -- to
19 address complaints, fair employee complaints against
20 the -- against the city council in its role as
21 administrative interference. So -- so I come back to
22 my decision is that throughout all of this process, and
23 it was a lengthy process, it didn't occur -- it didn't
24 occur in a bar with three -- three or four
25 councilmembers violating the Brown Act. It didn't

1 occur out at -- at a public event and three or four of
2 them got off at the site and said, what are we going to
3 do about this particular situation we're facing.
4 That's a clear Brown Act violation.

5 Three -- four people out of -- out of seven
6 talk about anything that's on the agenda, not in -- not
7 in a called session is a violation of the Brown Act.
8 They didn't do that. They -- they met in closed
9 session with their counsel and took actions that were
10 necessary to, in their opinion and in the opinion of
11 their legal counsel, were necessary to process -- to
12 continue with the process.

13 Now, what I believe and think doesn't matter
14 in that particular case. It's simply, I didn't -- I --
15 and -- and I'm not -- this is not my opinion, but it's
16 simply like saying, well, I don't feel good about that.
17 So -- so and my opinion is as good as anybody else's,
18 so everybody should feel bad about this. That's not
19 our -- that's not our purview. Our purview is to look
20 at it, did they do things with -- with their advisor,
21 the person that is paid to give them legal advice and
22 to keep the city and the city council out of lawsuits,
23 that's what litigation -- potential litigation is all
24 about. And that's why you meet in closed session.

25 Now, I do not believe a Brown Act violation

1 was created. I do not believe that the process of --
2 of -- of dealing with the allegations of a hostile work
3 environment and administrative interference, because
4 those are what the allegations were, were handled in a
5 fair and appropriate manner given the circumstances and
6 given the lack of clarity on certain policies.

7 CHAIRMAN STAHOVICH: We've talked about a lot
8 and we've got a lot to consider. Let's take a
9 five-minute break. Thank you.

10 (Off the record - 04:58:54 p.m.)

11 (On the record - 05:14:46 p.m.)

12 CHAIRMAN STAHOVICH: I call back to order. I
13 apologize for the delay. Mr. Hunter had to step away
14 for a few minutes for an emergency. Mr. Hunter is now
15 back with us, so we'll proceed with our deliberations.

16 MEMBER TUCKER: Mr. President, can -- can --

17 CHAIRMAN STAHOVICH: Excuse me.

18 MEMBER TUCKER: Do you want to --

19 CHAIRMAN STAHOVICH: Thank you for the
20 promotion. Wendel, go ahead.

21 MEMBER TUCKER: Mr. Chairman, how is that? Is
22 that better? Do you like that? Can -- can we discuss
23 a time limit? I mean, I've already missed one
24 obligation to -- today. I'd -- I'd like to figure out
25 whether I'm going to miss another one.



1 CHAIRMAN STAHOVICH: Certainly if -- if you'd
2 like to do that. At least we're going to have to hold
3 ourselves accountable for how much time we continue.

4 MEMBER TUCKER: That's right.

5 CHAIRMAN STAHOVICH: You know what, I -- I
6 would just urge all of us to follow our own advice and
7 let's not regurgitate the same issues we've already
8 talked about. Let's -- let's -- is there -- is there
9 more issues? Is there new issues to continue? I do
10 have a couple more speakers. I -- I trust that
11 everybody is -- would -- would like to resolve things
12 or -- or we can continue to another day, but I think
13 right now we'll go a few more minutes starting with
14 Erin.

15 MEMBER HOUSE: Mr. Chairman, I think you're
16 reading my mind. I'd like to move that we take this to
17 a vote.

18 MEMBER TUCKER: Second.

19 CHAIRMAN STAHOVICH: We'll have further
20 discussion, and I do have one speaker in the queue
21 already. Keith.

22 MEMBER NELSON: I just had one -- one question
23 for Councilman MacArthur.

24 Who -- who --

25 CHAIRMAN STAHOVICH: Excuse me. Let me -- let

1 me ask a quick question.

2 MEMBER NELSON: Go ahead.

3 CHAIRMAN STAHOVICH: We have a -- Bob, we have
4 a motion and a second on the floor, is it okay that we
5 have questions from the floor?

6 MR. HANSEN: I believe that we could table the
7 motion for Boardmember Nelson to ask his questions and
8 then bring it back.

9 MEMBER HOUSE: I will be very happy to yield
10 my motion to Boardmember Nelson.

11 MEMBER TUCKER: And I second.

12 CHAIRMAN STAHOVICH: Keith.

13 MEMBER NELSON: Yeah. My -- my question is,
14 who hired the attorney and the investigator
15 specifically, what is the council, the city attorney,
16 the city manager? Who hired those parties?

17 COUNCILMAN MACARTHUR: That's a good question
18 without going back and -- and reviewing the notes. You
19 know, we're talking three years ago. It was a
20 collective decision obviously, but I don't have an
21 answer to that.

22 MEMBER NELSON: Okay, thank you.

23 MR. HANSEN: Boardmember --

24 COUNCILMAN MACARTHUR: Thank you.

25 MR. HANSEN: -- Nelson, I believe in your



1 packet of materials are the contracts with those
2 attorneys, which would -- and those, the signature on
3 those would indicate who it was that contracted with
4 those entities.

5 CHAIRMAN STAHOVICH: And correct me if I'm
6 wrong, but my recollection was it was the city
7 manager's office; is that correct, Bob?

8 MR. HANSEN: Without reviewing the documents,
9 I wouldn't -- wouldn't know.

10 MEMBER FORD: Well, Jason has his hand up.
11 Maybe he knows the answer.

12 CHAIRMAN STAHOVICH: Champagne, would you --
13 the -- I'll recognize you. You feel free to ask a
14 question.

15 MEMBER FORD: Jason, would you happen to know
16 the answer to that question?

17 MR. HUNTER: As a matter of fact, I do. If
18 you -- and I can get the -- I can cite the record if
19 you'd like to, as well, but the -- the council voted in
20 closed session to hire and then Steve Adams as the
21 mayor pro tem signed the contracts with the
22 investigator. Now, with the -- the -- the special
23 counsel Meyerhoff, I believe there was an ongoing
24 relationship between his firm and the City of
25 Riverside, so no additional contract was needed with

1 him.

2 They just added it onto whatever services he
3 was already providing. But the -- the decision to get
4 a special investigator -- or excuse me, special counsel
5 assigned was once again a council decision.

6 CHAIRMAN STAHOVICH: All right, thank you.

7 Does that answer your question, Keith?

8 MR. HUNTER: Thank you.

9 CHAIRMAN STAHOVICH: Any further comments,
10 questions? Seeing none, I would consider a motion.

11 Well now that it's tabled, we have to untble it.

12 MEMBER TUCKER: (Indiscernible).

13 CHAIRMAN STAHOVICH: Wendel, go ahead.

14 MEMBER TUCKER: Point of order real quick. Is
15 that light on? Point of order. This -- this -- this
16 is one of those sticky parliamentary procedure things,
17 because generally speaking, when -- when an action like
18 Erin proposed, it occurs as a question on the motion,
19 which is -- means that there's already a motion on the
20 floor and you're -- and you're asking the body to come
21 to a vote. You specifically are -- are basically
22 asking the question or -- or making a motion, which is
23 to cease debate.

24 MEMBER HOUSE: That is correct.

25 MEMBER TUCKER: And -- and I will second it.



1 I will -- I will second it, the cease the debate
2 motion. Then a -- then a formal motion of what actions
3 we want to take must proceed after that.

4 ~~to 5:00~~ CHAIRMAN STAHOVICH: At this point do we have
5 a motion back on the floor? And what is your motion?

6 MEMBER HOUSE: I move that we cease debate and
7 that we move to a vote.

8 MEMBER TUCKER: You need a second, I second
9 that.

10 MEMBER HOUSE: Okay.

11 CHAIRMAN STAHOVICH: And now further
12 discussion on whether or not we should stop the debate.

13 MEMBER NELSON: Well, I'm confused on the
14 motion, because we're asking to vote and it says cease
15 debate and vote, but I don't know what we're voting on.

16 CHAIRMAN STAHOVICH: Again, that's a --
17 that's -- that's a point of order. Any motion on the
18 floor with a second, it's -- it's a -- kind of a moot
19 point because there's further discussion before you
20 vote on it, so we're right back where you started.

21 MEMBER TUCKER: Well, yes and no. You're on a
22 very, very specific parliamentary procedure motion.
23 There's two of them that basically say the same thing.
24 The first one -- the first one is a question on the
25 motion. And a question on the motion must be voted on,

1 yes or no, not -- and it does not, is not a vote on the
2 original motion. It is simply a motion on whether
3 we're going to vote.

4 And you have to take a yes or no vote on
5 whether we're going to vote. If that motion passes,
6 then you move directly, without any further discussion,
7 directly to the motion on the floor, whatever that
8 motion might be. And -- and -- and you don't discuss
9 it further because you have taken a -- an action to
10 cease all discussion.

11 The second of the parliamentary procedure
12 type thing is -- is -- is very similar to that, only it
13 occurs when there has not been a motion on the floor
14 yet and you are engaged in lengthy discussion and a
15 member of the -- of the body moves to cease discussion.
16 And then it is seconded. And again, there can be brief
17 discussion on whether or not we need to talk more, but
18 you can't talk about what you were talking about.

19 You have to -- you have to say yes or no.
20 I'm done talking, and I want the rest of you to be done
21 talking. And that vote is up or down. And once --
22 once -- if it's voted yes to cease discussion, then in
23 this case, because we do not have a motion on the
24 floor, we then proceed directly to somebody making a
25 motion that then is discussible. So as I understand

1 what Erin just did, parliamentary-wise, I can't say
2 that big word, is that we -- he is asking us to stop
3 talking.

4 MEMBER HOUSE: Exactly right.

5 MEMBER TUCKER: And to put a motion to take,
6 upon which we will act on the floor.

7 MEMBER HOUSE: Exactly right.

8 CHAIRMAN STAHOVICH: Well, I'm glad there was
9 no further discussion, because that was the lengthiest
10 discussion I've ever had on what you're not supposed to
11 say.

12 MEMBER NELSON: Did we already vote?

13 MEMBER FORD: I feel sorry for your wives.

14 They must -- you guys probably argue back and forth.

15 CHAIRMAN STAHOVICH: Bob, again, at -- at this
16 point, is that correct that there's no more discussion,
17 we have to vote if we want to stop talking?

18 MR. HANSEN: Right now there's action to be
19 taken on -- on the motion that's on the floor.

20 CHAIRMAN STAHOVICH: Okay.

21 MR. HANSEN: And that motion is to cease
22 debate and move to a vote.

23 CHAIRMAN STAHOVICH: Perfect. That is the
24 question. Go ahead and vote, please. I actually hit
25 the wrong button.

1 COLLEN NICOL: So your vote is?

2 CHAIRMAN STAHOVICH: Yes.

3 COLLEN NICOL: Okay. Passed.

4 CHAIRMAN STAHOVICH: It's way under the
5 screen.

6 MEMBER TUCKER: Yeah, I'm off now. Erin is
7 on.

8 MEMBER HOUSE: I'm off.

9 CHAIRMAN STAHOVICH: You're off?

10 I'll recognize Keith.

11 MEMBER NELSON: I will make a motion that we
12 subpoena Councilman Davis.

13 CHAIRMAN STAHOVICH: Is there a second?

14 MEMBER FORD: I'll second that motion.

15 CHAIRMAN STAHOVICH: There's a motion and a
16 second. Further discussion? At this time it's
17 permissible. Seeing no requests, we'll call for a
18 vote. The question is whether -- actually hold on one
19 second. We're going to vote to whether or not we
20 subpoena Councilman Davis and what is the requirements,
21 is that a four-fifths or a simple majority?

22 CHAIRMAN STAHOVICH: Four-fifths, motion
23 fails, three voting yes, with two noes.

24 Wendel.

25 MEMBER TUCKER: I will make a motion on the

1 matter of the violation of the Brown Act, Councilman
2 MacArthur has no violation. On the matter of a Code of
3 Ethics violation, and specifically that Councilman
4 MacArthur aspired to -- to whatever the words say in
5 the code, aspired to do something unfair and not in the
6 public's best interest, no violation.

7 MEMBER HOUSE: I will second that motion.

8 CHAIRMAN STAHOVICH: Motion and a second.

9 Further discussion? And I will start.

10 Again, Bob, is the consideration that we're
11 looking at whether or not there was a Brown Act
12 violation or whether or not there was a Code of
13 Ethics -- what is -- what is the complaint alleging,
14 and what are we to be considering?

15 MR. HANSEN: As previously stated, the sole
16 issue for determination by this hearing panel is
17 whether Councilman MacArthur violated section 2(d) of
18 resolution 22318, replaced by 22461, by participating
19 in decisions regarding the investigations of
20 Councilmembers Soubirous and Davis and the decision to
21 hold a hearing concerning Councilmember Soubirous that
22 occurred in closed session on July 22, 2014.

23 CHAIRMAN STAHOVICH: Given that explanation,
24 and again, my understanding is that we're not to be
25 considering whether or not a Brown Act violation

1 occurred, any further discussion?

2 MEMBER TUCKER: I will amend my motion to
3 remove the violation of the Brown Act. And -- and my
4 motion is that in the matter of violation of the Code
5 of Ethics that Councilman MacArthur has no violation.

6 MEMBER HOUSE: And I'm willing to amend my
7 second.

8 CHAIRMAN STAHOVICH: Any further discussion?
9 These moments of long awkward silence don't affect me
10 at all. No further discussion? And again, my -- my
11 concern, my opinion on this and how the motions and how
12 the findings come out, I can't sit here and say there
13 was no merit to the complaint. I can say that based on
14 the standard that we have in front of us, I think it's
15 very difficult to get inside Councilman MacArthur's
16 head and see whether or not he intentionally tried
17 to --

18 What -- what are the words, Erin?

19 MEMBER HOUSE: Aspire.

20 CHAIRMAN STAHOVICH: No, no, not the aspire,
21 but what -- what about the public trust?

22 MEMBER HOUSE: I don't know. I got it. The
23 elected and appointed officials of the City of
24 Riverside shall aspire to operate the city government
25 and exercise their responsibilities in a manner which

1 creates a trust in their decisions and the manner of
2 delivery of programs to the local government.

3 CHAIRMAN STAHOVICH: Yeah. Again, thank you.
4 That's a -- that's a horrible standard.

5 MEMBER HOUSE: That's why we rewrote the code.

6 CHAIRMAN STAHOVICH: I agree. With -- with
7 that, I have nothing else to say. We'll call for the
8 vote. Motion. Everybody understand the motion?

9 MEMBER FORD: So if I vote yes, that means, I
10 just want to make sure that I'm state -- I -- if I vote
11 yes, I am agreeing that he did not violate this
12 resolution? I just wanted to make sure.

13 CHAIRMAN STAHOVICH: Yes. Now that we've
14 had -- after reaching a final decision, the city clerk
15 is to prepare a written statement of findings and
16 decisions based upon the majority vote of the hearing
17 panel and place it on the next agenda for the Board of
18 Ethics at least 14 days out following the final
19 decision to be voted on by the members of the hearing
20 panel only.

21 MR. HANSEN: And pardon me, chair, that's only
22 in the case of a finding that there was a violation of
23 the ethics code.

24 CHAIRMAN STAHOVICH: That's not what your
25 notes tell me. You better rewrite them. Okay. So --

1 so I stand corrected. There was no finding of -- of
2 wrongdoing, therefore this meeting is simply adjourned.

3

4 (Whereupon, the proceeding was concluded at 05:30 p.m.)

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