



*City of Arts & Innovation*

On October 7, 2021, a Hearing Panel of the Board of Ethics held a pre-hearing conference to review the Code of Ethics and Conduct complaint filed by Selma Kelly against Councilmembers Fierro and Cervantes, Mayor Pro Tem Plascencia, and Mayor Lock Dawson alleging violations of (1) Riverside Municipal Code 2.78.060 (D) "Advocacy of private interests of third parties in

certain circumstances prohibited”; (2) Riverside Municipal Code 2.78.060(L) “Knowingly assisting another Public Official in violating this Code of Ethics and Conduct prohibited”; and (3) Riverside Municipal Code Section 2.78.060(M) “Violation of federal, State, or local law prohibited.”

Following review of the complaint, it was moved by Hearing Panel Member Huerta and seconded by Hearing Panel Member Keen to determine the complainant failed to show that it was more likely than not that there may have been a violation of prohibited conduct finding there was no evidence of a violation in the complaint in regard to Riverside Municipal Code 2.78.060(D) “Advocacy of private interests of third parties in certain circumstances prohibited,” Riverside Municipal Code 2.78.060(M) “Violations of federal, State, or local law prohibited,” and Riverside Municipal Code 2.78.060(L) “Knowingly assisting another Public Official in violating this Code of Ethics and Conduct prohibited.” The motion carried with Chair Newman and Members Ford, Huerta, and Keen voting aye. The statement of findings is attached to this report.

## **DISCUSSION:**

On August 24, 2021, Selma Kelly filed a Code of Ethics and Conduct Complaint with the City Clerk’s Office. The complaint alleged that, on July 15-17, 2021, Councilmembers Fierro and Cervantes, Mayor Pro Tem Plascencia, and Mayor Lock Dawson violated Code of Ethics and Conduct Prohibited Conduct Section specifically (1) Riverside Municipal Code 2.78.060 (D) “Advocacy of private interests of third parties in certain circumstances prohibited;” (2) Riverside Municipal Code 2.78.060(L) “Knowingly assisting another Public Official in violating this Code of Ethics and Conduct prohibited;” and (3) Riverside Municipal Code Section 2.78.060(M) “Violation of federal, State, or local law prohibited.” The complaint states “Civil Rights violations against Riverside County Conservative Citizen Tax-Payers” referencing the event as a result of the cancellation of the Matt Gaetz/Marjory Green “America First Rally” event scheduled for July 17, 2021, at the Riverside Convention Center.

On October 7, 2021, the Hearing Panel conducted a pre-hearing conference and determined that the complainant failed to show that it was more likely than not that there may have been a violation of prohibited conduct finding there was no evidence of violation in the complaint in regard to Riverside Municipal Code 2.78.060(D) “Advocacy of private interests of third parties in certain circumstances prohibited,” Riverside Municipal Code 2.78.060(M) “Violations of federal, State, or local law prohibited,” and Riverside Municipal Code 2.78.060(L) “Knowingly assisting another Public Official in violating this Code of Ethics and Conduct prohibited.”

On November 4, 2021, the Board of Ethics adopted the Hearing Panel statement of findings of the pre-hearing conference and dismissed the Complaint. On November 15, 2021, the complainant Selma Kelly filed the notice of appeal of this decision.

## **Appeal Procedures under the RMC**

RMC 2.78.090(B) provides the following:

A decision by the hearing panel of the Board of Ethics not finding a violation of the Prohibited Conduct section of this chapter may be appealed to the City Council by either party. The appeal shall be taken by filing a written notice of appeal with the City Clerk within ten City business days following the date of the hearing by the hearing panel. The notice of appeal shall be in writing on a form provided by the City Clerk. The City Clerk shall place the appeal on the agenda for a regular meeting of the City Council within 30 City business days of the

filing of the notice of appeal. The City Clerk shall notify the parties in writing of the hearing date. that the City Clerk shall place the appeal on the agenda of a regular meeting of the City Council within 30 City business days of the filing of the notice of appeal.

RMC 2.78.090(E) provides the following:

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

The term “clear error” means although there may be evidence to support the finding, the reviewing entity after reviewing the entire evidence is left with a definite and firm conviction that a mistake was committed. (*Escobar v. Flores* (2010) 183 Cal.App.4<sup>th</sup> 737, 748.) The “clear error” standard is deferential to the fact finder. (*Ibid.*)

“Abuse of discretion” means the decision maker “has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc. § 1094.5(b).)

### **FISCAL IMPACT:**

Pursuant to RMC 2.78.090 (D), the record on appeal requires a transcript of the hearing before the hearing panel. The cost of transcripts for appeals is included in the City Clerk’s Office budget.

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Approved as to form:              Phaedra A. Norton, City Attorney

### **Attachments:**

1. Appeal filed by Complainant
2. Statement of Finding and Decision
3. Complaint
4. RMC Chapter 2.78
5. Transcript of Hearing Record