



*City of Arts & Innovation*

# City Council Memorandum

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**TO: HONORABLE MAYOR AND CITY COUNCIL**      **DATE: DECEMBER 13, 2022**

**FROM: CITY CLERK'S OFFICE**      **WARDS: ALL**  
**CITY ATTORNEY'S OFFICE**

**SUBJECT: APPEAL OF THE DECISION OF BOARD OF ETHICS HEARING PANEL AT THE  
OCTOBER 6, 2022, PRE-HEARING CONFERENCE FOR THE CODE OF  
ETHICS AND CONDUCT COMPLAINT FILED BY JEN LARRATT-SMITH  
AGAINST COUNCILMEMBER CONDER**

## **ISSUE:**

To consider the appeal filed by Jen Larratt-Smith of the Board of Ethics Hearing Panel decision and determine whether the Hearing Panel committed clear error or an abuse of discretion in the dismissal, at the October 6, 2022 pre-hearing conference, of the complaint filed by Jen Larratt-Smith against Councilmember Conder.

## **RECOMMENDATIONS:**

That the City Council:

1. Consider the appeal filed by Jen Larratt-Smith of the Board of Ethics Hearing Panel decision at the October 6, 2022 pre-hearing conference, of the complaint filed by Jen Larratt-Smith against Councilmember Conder and determine whether the Hearing Panel committed clear error or an abuse of discretion based upon the hearing record; and
2. If there is no finding of a clear error or abuse of discretion, 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 of clear error or abuse of discretion, then the City Council shall state the finding of clear error or abuse of discretion and shall refer the matter back to the Board of Ethics to conduct a pre-hearing conference in light of the findings on appeal.

## **HEARING PANEL DECISION:**

On October 6, 2022, a Hearing Panel of the Board of Ethics held a pre-hearing conference to review the Code of Ethics and Conduct complaint filed by Jen Larratt-Smith against Councilmember Conder alleging violation of 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 Foreman and seconded by Hearing Panel Member Demont to proceed with the complaint determining the complainant had shown that the evidence, if taken as true, more likely than not shows that there may be a potential violation of the prohibited conduct in regard to Riverside Municipal Code 2.78.060(M) *Violations of federal, State, or local law prohibited*. The motion failed for lack of majority vote with Members Demont and Foreman voting aye and Chair Foley and Members, Huerta, and De Herrera voting no.

Chair Foley instructed the City Clerk to prepare a Statement of Findings of the Hearing Panel stating there was no evidence presented in the record of any violation of Riverside Municipal Code Section 2.78.060 (M) *Violation of federal, State, or local law prohibited*. The complaint was dismissed. The statement of findings is attached to this report.

## **DISCUSSION:**

On September 12, 2022, Jen Larratt-Smith filed a Code of Ethics and Conduct Complaint with the City Clerk's Office. The complaint alleged that, on 9/2021, 11/9/2021, 2/24/2022, 5/18/2022, 8/18/2022, and 9/7/2022, Councilmember Conder violated Code of Ethics and Conduct Prohibited Conduct Section specifically Riverside Municipal Code Section 2.78.060(M) "Violation of federal, State, or local law prohibited."

On October 6, 2022, the Hearing Panel conducted a pre-hearing conference and determined there was no evidence presented in the record of any violation of Riverside Municipal Code Section 2.78.060 (M) *Violation of federal, State, or local law prohibited*.

On October 17, 2022, the complainant Jen Larratt-Smith filed the notice of appeal of the Board of Ethics Hearing Panel decision.

On November 3, 2022, the Board of Ethics adopted the Hearing Panel statement of findings of the pre-hearing conference and dismissed the Complaint.

## **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 Riverside Municipal Code does not define what “clear error or an abuse of discretion”. Here are some examples that have been used in the past by City Council to guide discussion:

1. 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, which is the Hearing Panel of the Board of Ethics. (*Ibid.*)

2. “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. The cost for this transcript was \$771.50.

Prepared by: Donesia Gause, City Clerk  
Susan Wilson, Assistant City Attorney

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

### **Attachments:**

1. Appeal filed by Complainant
2. Statement of Finding and Decision
3. Transcript of Hearing Record
4. Complaint Filed including Video Clips
5. RMC Chapter 2.78 – Code of Ethics
6. Hearing Rules and Procedure