



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: JUNE 27, 2017**

FROM: CITY CLERK **WARDS: ALL**

SUBJECT: APPEAL OF BOARD OF ETHICS HEARING PANEL DECISION - HUNTER - GARDNER

ISSUE:

On May 19, 2017, Jason Hunter filed an appeal of the Board of Ethics hearing panel decision of no violation in the matter of his complaint against Councilmember Gardner.

RECOMMENDATIONS:

That the City Council:

1. Find that the hearing panel did not commit a clear error or an abuse of discretion based upon the record in determining that Councilmember Gardner did not violate the Code of Ethics and Conduct on July 22, 2014, and adopt the decision of the hearing panel as the findings of the City Council on appeal; or
2. Find that the hearing panel committed a clear error or abuse of discretion based upon the record in determining that Councilmember Gardner did not violate the Code of Ethics and Conduct on July 22, 2014, and refer the matter back to the Board of Ethics for a *de novo* (new) re-hearing of the matter.

BACKGROUND/LEGISLATIVE HISTORY:

On February 10, 2017, the Board of Ethics hearing panel conducted a hearing for the Code of Ethics and Conduct attached complaint filed on December 27, 2016, by Jason Hunter against Councilmember Mike Gardner. Following presentation of evidence by Mr. Hunter, the hearing was continued to allow staff time to facilitate the playing of the July 22, 2014, audio evidence. On May 5, 2017, the Board of Ethics hearing panel convened and following presentation of evidence by both parties and panel deliberations, the panel unanimously found no violation of the Code of Ethics and Conduct by Councilmember Gardner.

On May 19, 2017, Mr. Hunter filed an appeal of the hearing panel's decision pursuant to Section 2.78.090(B) of the Riverside Municipal Code. The complaint and all other relevant materials are attached to this report. RMC Section 2.78.090(E) provides that the City Council shall review the record of the hearing to determine whether the hearing panel committed a clear error or an abuse of discretion based upon the record. If no such finding is made by a majority of the City Council, then the City Council shall adopt the decision of the hearing panel as the findings of the City Council on appeal. If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be

referred back to the Board of Ethics for a *de novo* (new) re-hearing of the matter in light of the findings on appeal.

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

FISCAL IMPACT:

The cost for preparation of related transcripts totaled approximately \$3,700 and was absorbed within City Clerk's Office Professional Services Account 1200000-421000. All remaining processing and duplication costs were absorbed within the City Attorney and City Clerk's Office Budgets.

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

Attachments:

1. Appeal of Hearing Panel Determination
2. Complaint
3. Response - Gardner
4. Ralph M. Brown Act
5. Harassment Free Workplace Policy
6. Legal Counsel Billings
7. Complaint Log
8. 10-21-2014 CC Minutes
9. 11-10-2015 Minutes and Report
10. Settlement records
11. Investigation Report
12. 8-28-2012 Agendas, Minutes, and Report
13. Signature Authority Designations
14. City Charter
15. Harassment-Discrimination Brochure and Form
16. 7-22-2014 Minutes and Report
17. 8-11-2015 Minutes and Report
18. Investigation Report by GumportMastan
19. Transcript of July 22, 2014
20. Hearing panel transcript of February 10, 2017
21. Hearing panel minutes of February 10, 2017
22. Hearing panel transcript of May 5, 2017
23. Hearing panel minutes of May 5, 2017