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TRANSCRIPTION OF
BOARD OF ETHICS - HEARING PANEL
MAY 5, 2017

IN RE: HUNTER v. GARDNER

Transcribed by:
Christine Aiello

Job No. J0585910

I N D E X

T E S T I M O N Y

VOIR

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
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M. Gardner	7				
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E X H I B I T S

NO.	DESCRIPTION	EVID.
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Complainant's:

None offered.

Respondent's:

None offered.

P R O C E E D I N G S

(On the record - 01:32:39 p.m.)

CHAIRMAN HOUSE: The time is 1:32. Let's -- let's go ahead and come to order. This is a continuation -- rookie mistake. Let's go ahead and come to order, please. It is now 1:32. This is a continuation of an ethics hearing from February 10th.

Is the complainant present in the room? No. We will wait until 1:40 and continue from there. Thank you.

FEMALE SPEAKER: There he is.

CHAIRMAN HOUSE: And there he is.

MR. HUNTER: Traffic.

CHAIRMAN HOUSE: I see -- see now that the complainant is present.

We have already come to order, sir. And so the first item that we have on our agenda is public comment.

MR. HUNTER: Well, I'd like to speak for public comment. I haven't put a comment card in, but I can do that later.

CHAIRMAN HOUSE: That's fine.

MR. HUNTER: Or I can do it now.

CHAIRMAN HOUSE: Okay, sure.

MR. HUNTER: Hi there. Jason Hunter. Happy

1 Friday. I hope you'll looking forward to a wonderful
2 weekend. Sorry for being a little late, traffic was a
3 murder getting over here.

4 But we've been through three of these now.
5 I'm a little bit -- bit disappointed particularly by
6 three things that I've seen at the first three
7 hearings. One is, under the ethics code it says
8 something about, you know, aspiration -- it's
9 aspirational; and I think that that goes to intent.
10 And I've -- I've seen deliberations -- during
11 deliberations the panel try to say, well, regardless of
12 whether they may or may not have violated the Brown
13 Act, which they absolutely positively did, okay, and I
14 think I've proven that now beyond a reasonable doubt,
15 we don't know that they aspired to -- to, you know, to
16 not keep the public trust and integrity of the process.

17 And I can read verbatim out of the ethics
18 code what exactly that says, but I would -- I would
19 counter with this, and I think this would work in a
20 court of law as well, there is such a thing as reckless
21 indifference, okay? Somebody doesn't have to set out
22 trying to do bad things. They can be so negligent and
23 so reckless by their actions that they cause it anyway.
24 And you're still liable for it, okay?

25 All -- all I have to do is prove that our

1 electeds, who are trained in the Brown Act and the Code
2 of Ethics, didn't follow them. I don't have to prove
3 that they set about to break the -- the public trust
4 and confidence. That happens per se de facto once they
5 don't follow the Brown Act and our Code of Ethics.
6 It's very simple, okay?

7 So I'm -- I'm a little bit -- it seems like
8 folks are looking for technicalities to give these guys
9 an out. I've seen that before in the past, that's why
10 the public is 0 for 40 in ethics complaints, okay?
11 That needs to stop.

12 Secondly, I've got to get a subpoena of
13 Soubirous and Davis. There's no court of -- court
14 of -- there's no quasi or judicial process in the
15 country that would not allow me to subpoena relevant
16 witnesses who would testify to what happened behind
17 closed doors. And they can because they don't need the
18 council to waive the exemption for closed session if
19 they believe what was spoken about in closed session,
20 violated the Brown Act.

21 And if I don't get those subpoenas, okay, and
22 the folks who vote against those subpoenas allowing me
23 to make my case, I will bring ethics complaints against
24 members of this panel. I have to get those subpoenas
25 of witnesses. That is ridiculous that I have not

1 gotten them to date.

2 And I'm concerned that there may be a few
3 members of the panel, not all of them, but a few that
4 have already made up their minds before they came here
5 today. That concerns me. Thank you.

6 CHAIRMAN HOUSE: Okay, thank you, sir. Since
7 this --

8 Am I on? Okay. There we go. I can hear
9 myself ringing now. Thank you.

10 Since this is a continuation of the hearing
11 from February 10th, Mr. Hunter, I believe you were in
12 the process of starting to present your evidence, would
13 you like to continue from that point, sir?

14 MR. HUNTER: Yes, I do.

15 CHAIRMAN HOUSE: Thank you.

16 MR. HUNTER: And I'm -- and I'm not sure I
17 actually presented evidence at that hearing, did I? I
18 don't think I did.

19 CHAIRMAN HOUSE: I believe you were about to.
20 We were at that point in the -- in the -- in the
21 process.

22 MR. HUNTER: I'd like to count -- call
23 Councilman Gardner up at this time to ask him a few
24 questions if I could.

25 CHAIRMAN HOUSE: Councilman Gardner.

1 MR. HUNTER: And do we need to be sworn in
2 again?

3 CHAIRMAN HOUSE: The clerk says no.

4 MR. HUNTER: Thank you, Councilman Gardner.
5 If I could show this to the -- to the panel.
6 Thank you.

7 DIRECT EXAMINATION

8 BY MR. HUNTER:

9 Q That before us is -- what does it say? Could
10 you read the title on it, please? Councilman Gardner,
11 could you read the title on --

12 A Yes.

13 Q -- that?

14 A It says no signal.

15 MEMBER WRIGHT: Point of order. We don't have
16 screens here.

17 CHAIRMAN HOUSE: Yeah, you do. Hit the power
18 button.

19 MEMBER WRIGHT: This one?

20 CHAIRMAN HOUSE: Yeah.

21 MEMBER WRIGHT: Okay.

22 MR. HUNTER: Is everybody good?

23 COUNCILMAN GARDNER: I --

24 MEMBER WRIGHT: I have it.

25 COUNCILMAN GARDNER: -- will read from the

1 city attorney's screen. It -- the title says, City of
2 Riverside Code of Ethics and Conduct official
3 certification.

4 BY MR. HUNTER:

5 Q Okay. And -- and could you read the first
6 paragraph, please?

7 A It says, as a newly elected appointed or
8 reappointed official of the City of Riverside,
9 California, I herein certify that I have received a
10 copy.

11 MEMBER WRIGHT: Point of order. Point of
12 order. We've not seen this document before. It's not
13 in the -- it's not in the disc that's been submitted to
14 the committee, nor is it in our hardcopy.

15 MR. HUNTER: Okay, that's fine. I'm just
16 taking --

17 MEMBER WRIGHT: I -- I -- I --

18 MR. HUNTER: I'm taking --

19 MEMBER WRIGHT: I move that it be rejected.

20 MR. HUNTER: Absolutely I -- I would object to
21 that.

22 MEMBER WRIGHT: This has -- this has happened
23 several times now where we've been trying to get
24 evidence in under the wire, Mr. Hunter, and this is a
25 bridge too far.

1 MR. HUNTER: Well, I think first of all,
2 you're wrong. I can have him testify as to anything I
3 want to. I've got him up there as a -- as a witness.

4 MEMBER WRIGHT: You can't throw new documents
5 at this hearing panel.

6 MR. HUNTER: You can choose to --

7 MEMBER WRIGHT: The -- the rules are very
8 clear --

9 MR. HUNTER: You can choose --

10 MEMBER WRIGHT: -- about that, sir.

11 MR. HUNTER: You can choose to believe whether
12 this is -- this is true evidence or not or you can --
13 you can -- you can, you know --

14 CHAIRMAN HOUSE: Mr. Hunter, the point is we
15 have not been noticed on this evidence previously, and
16 it is therefore improper to admit it. So we're going
17 to ask that you withdraw this evidence.

18 MR. HUNTER: I'm having him read a document.
19 I can -- I can ask anybody to read a document.

20 MEMBER WRIGHT: No, you can't.

21 CHAIRMAN HOUSE: No, sir, you cannot. This
22 document has not been presented into evidence.

23 MR. HUNTER: I'm not introducing it into the
24 record as evidence. I'm entering -- I'm introducing
25 his testimony -- testimony as evidence into --

1 CHAIRMAN HOUSE: Sir --

2 MR. HUNTER: -- the record.

3 CHAIRMAN HOUSE: -- if he's reading the
4 document, that is reading the document into evidence.

5 MR. HUNTER: He can -- I -- he -- I can do
6 that. I'm allowed to do that.

7 CHAIRMAN HOUSE: Sir, I'm going to disallow
8 it. If you -- if you want to take to -- this to an
9 appeal or something or file an ethics violation against
10 me, so be it; but I'm not going to allow that document.

11 MR. HUNTER: And how would this be handled in
12 a regular judicial proceeding or any other --

13 CHAIRMAN HOUSE: This is not a regular
14 judicial proceeding.

15 MR. HUNTER: Okay. Well, I -- I find this
16 highly irregular that I can't ask questions based upon
17 something that's in front of him -- you don't have
18 to --

19 CHAIRMAN HOUSE: Sir, you're --

20 MR. HUNTER: -- accept it into the --

21 CHAIRMAN HOUSE: -- welcome to --

22 MR. HUNTER: -- record.

23 CHAIRMAN HOUSE: -- ask all the questions you
24 wish, sir. You may not have him read the document --

25 MR. HUNTER: Okay.

1 CHAIRMAN HOUSE: -- because it is not in
2 evidence.

3 BY MR. HUNTER:

4 Q Did you sign a Code of Ethics complaint -- or
5 excuse me -- a Code of Ethics in --

6 MR. HUNTER: Now I need the document back.
7 Excuse me. Thank you, sir.

8 BY MR. HUNTER:

9 Q On June 27th, 2011, did you sign the Code of
10 Ethics and Conduct official certification?

11 A Mr. Hunter, I have no idea. That was almost
12 seven years ago.

13 Q Okay. So you didn't just see what was in
14 front of you? You managed to miss that completely? It
15 was just in front of your eyes. You didn't -- now
16 you're saying you don't -- I -- you're saying you don't
17 remember even though you just saw a copy of the
18 document in front of you --

19 A Mr. Hunter, I --

20 Q -- with your signature on it?

21 A Mr. Hunter, I answered your question.

22 Q Okay. The Code of Ethics and Conduct, okay,
23 is given to all newly elected appointed and reappointed
24 officials of the City of Riverside, California, okay?
25 If we go to the Code of Ethics and Conduct --

1 MR. HUNTER: And let me grab the -- it might
2 be, actually be in the package that you guys have
3 received.

4 COUNCILMAN GARDNER: Mr. Chairman, while he
5 looks for that, could we possibly get some technical
6 assistance? My screen is not functioning. It puts me
7 at a little bit of a disadvantage.

8 CHAIRMAN HOUSE: We're -- we're not looking
9 at anything.

10 COUNCILMAN GARDNER: No, I understand, but at
11 some point I suspect we might be.

12 MEMBER NELSON: And I have a question for the
13 chairman.

14 CHAIRMAN HOUSE: Yes, sir.

15 MEMBER NELSON: Unless I read through it all,
16 in our packet it has the city charter that was
17 submitted. Is this document not part of the city
18 charter?

19 CHAIRMAN HOUSE: Which document?

20 MEMBER NELSON: City -- the -- what he was
21 asking Councilman Gardner to read.

22 CHAIRMAN HOUSE: No, sir, it's --

23 MEMBER NELSON: No, okay.

24 CHAIRMAN HOUSE: -- not.

25 MEMBER NELSON: All right, thank you. I

1 didn't want to have to read through all the pages. Let
2 me see if this is what I have.

3 MR. HUNTER: Yeah. Let's go to page 18 of the
4 record, please.

5 BY MR. HUNTER:

6 Q The provisions of this code --
7 (indiscernible) provisions of this Code of Ethics and
8 Conduct shall apply to the mayors and members of the
9 city council and to all members of the boards,
10 commissions, and committees appointed by the city
11 council or the mayor or the mayor and the city council
12 including any ad hoc -- ad hoc committees. The
13 provision of this code shall also apply to all members
14 of the committees appointed by individual members of
15 the city council or department heads.

16 Further, the provisions of the --

17 MEMBER NELSON: Excuse me, you said you were
18 on page --

19 MEMBER TUCKER: Eighteen.

20 MEMBER NELSON: -- 18, what sub?

21 MR. HUNTER: Scope.

22 MEMBER NELSON: Okay, thank you. Okay.
23 Under -- under -- you're in (b) scope?

24 MEMBER TUCKER: Yeah.

25 MR. HUNTER: Yes, (b) scope.

1 BY MR. HUNTER:

2 Q Further, the provisions of this code shall
3 apply to the mayor and members of the city council at
4 all times during their term of office as elected
5 officials in the City of Riverside. Okay. So, Mr. --
6 Mr. Gardner, are you familiar with the Code of Ethics
7 and Conduct?

8 A I am.

9 Q Okay. Did you sign at any time a Code of
10 Ethics and Conduct official certification that you
11 received it?

12 A I believe I have.

13 Q Yeah.

14 MR. HUNTER: And if I could, can I -- can I
15 ask the -- the clerk a clarifying question?

16 CHAIRMAN HOUSE: I would say no, sir.

17 MR. HUNTER: Okay. A technical question?
18 Well, I -- I mean, I guess, what I -- what I -- I would
19 further say is, this is given out to every single --
20 you guys have received one of these, okay? Every
21 elected and appointed official who -- who, you know,
22 gets on a board or is -- gets on the council receives a
23 copy of this and signs it, okay? It goes -- it's a
24 public document. We know that they have signed it.
25 They're supposed to understand it.

1 You're supposed to understand that document.
2 I think you get that, right? I mean, you -- you --
3 they -- the clerk gives this to you to sign it, you --
4 you pass it back to them. Okay. So let's go to
5 page -- page 22 of the record, please, Councilman
6 Gardner.

7 BY MR. HUNTER:

8 Q And under line 4, it says complaints from
9 members of the public regarding elected or appointed
10 officials shall be submitted on the complaint form
11 available from the clerk. Who -- who do you consider
12 to be the public, Mr. Gardner?

13 A The public would be anybody that -- I -- I
14 think it's inclusive of everybody in the city.

15 Q Okay. So it would include staff?

16 A It would.

17 Q Yeah, because they can get down here during
18 public comment and -- it would include elected
19 officials, right? You can get down here on public
20 comment and make a comment, correct?

21 A Sure.

22 Q Okay. And would Scott Barber have been a
23 member of the public?

24 A In some circumstances certainly.

25 Q Yeah, I'd say in all circumstances he'd be a

1 member of the public. The -- would Sergio Diaz be a
2 member of the public? Could he get down here and make
3 a public -- a comment from public comment from the
4 dais?

5 A He could.

6 Q Okay.

7 A Actually not from the dais because he doesn't
8 sit on the dais.

9 Q Oh, sure, not from the dais, from the podium,
10 sorry. You're -- you're correct. Now, as far as
11 regarding an elected or appointed official, would Mike
12 Soubirous be an elected official?

13 A At what point in time.

14 Q When? During the time of his complaint.

15 A Yes.

16 Q Okay. So complaints from members of the
17 public, which would include Sergio Diaz, Scott Barber,
18 regarding appointed officials, such as Mike Soubirous
19 or Paul Davis, shall be submitted on the complaint form
20 available from the city clerk. That seems pretty, you
21 know, it --

22 A It --

23 Q -- seems --

24 A It does --

25 Q -- pretty obvious, right?

1 A -- seem very straight forward if you are
2 looking at how the Code of Ethics and Conduct operates.
3 There is nothing about the --

4 Q I don't --

5 A -- Code of Ethics and Conduct that says that
6 any complaint about an elected official must be
7 submitted under the Code of Ethics and Conduct. In
8 fact, I think it would be illegal of the city to tell a
9 city employee that they could not use the California
10 elections code as a mechanism to attempt to seek
11 redress for what they --

12 Q Okay.

13 A -- saw as --

14 Q Okay.

15 A -- an issue with --

16 Q Sure.

17 A -- an elected official.

18 Q Okay. So -- so what you're saying is, if
19 there is, by statute or law or some other authority,
20 another way to make a complaint, you can file it that
21 way?

22 A Exactly.

23 Q And I would totally agree with that. Okay.
24 So but it does say here, once again --

25 A This -- this explains the --

1 Q I'm not -- I'm not going back and forth --

2 A -- process.

3 Q -- to you.

4 A Yeah.

5 Q I'm -- I'll ask you questions. The
6 complaints from members of the public regarding elected
7 or appointed -- appointed officials shall be submitted.
8 What does shall mean? Does shall mean must?

9 A It does.

10 Q Okay.

11 A If you're using this process, that's --

12 Q Yes.

13 A -- what it --

14 Q So --

15 A -- means, yes.

16 Q So must be submitted. Now, it doesn't say --
17 let me see, it says complaints from members of the
18 public regarding elected and appointed officials.
19 Complaints, all complaints.

20 A No.

21 Q Shall --

22 A It doesn't say all --

23 Q It says --

24 A -- complaints.

25 Q -- complaints -- does it --

1 A It says --

2 Q Okay. Let's just say it's ethics complaints,
3 okay, well --

4 A Fine.

5 Q -- okay. I'll -- I'll -- I'll --

6 A A complaint under --

7 Q -- agree with that.

8 A -- this process shall be --

9 Q Okay. Under the --

10 A -- filed on --

11 Q To your knowledge, was --

12 A -- the record with --

13 Q -- there another process that we should be
14 aware of whereby --

15 A Yeah, there's the California elections, the
16 California employment code and --

17 Q Okay.

18 A -- complaints filed under that.

19 Q What --

20 A Which are a different process.

21 Q Could -- could you show me anywhere in the
22 record the other process by which Scott Barber and
23 Sergio Diaz filed their complaints? Could I see that?
24 Could you show me anywhere in the record the
25 alternative process and the authority they used to file

1 their complaint?

2 A I -- I don't know that it's in the record,
3 but I will tell you that the complaints that were filed
4 by Mr. Barber and Chief Diaz were filed under the
5 California elections code, not as complaints that the
6 councilmembers that were complained against violated
7 the city's Code of Ethics and Conduct. They would have
8 used the correct form as required if that was what they
9 intended to do, and they clearly did not.

10 Q So you're saying that members of the public
11 have options as to how they want to file their
12 complaint?

13 A No. Members -- members --

14 Q Could I file a --

15 A -- do --

16 Q -- complaint that way? Just curious.

17 A No, because you're not a city employee.

18 Q Okay. So a city --

19 A If you were --

20 Q -- employee --

21 A -- city employee and you were complaining
22 about another city employee --

23 Q Okay.

24 A -- you could use that.

25 Q You can use the California elections code?

1 A Yes, you can.

2 Q And is there --

3 A No, no, no. Employment code, I'm sorry. I
4 misspoke.

5 Q Okay. I was -- I didn't know what the
6 elections code was covered for. Okay. California --
7 and by that, you mean of course the -- the labor code
8 which refers to hostile workforce environments,
9 correct?

10 A Among other things it does.

11 Q Okay.

12 A Yes.

13 Q Okay. And so you're familiar with hostile
14 workforce environments and -- and the law that regards
15 that, correct? And if you're not, we can go to the
16 record and --

17 A Yeah.

18 Q -- we can look it up.

19 A I'm -- I'm not familiar in detail, I can't
20 quote it, but yes I'm generally familiar with it.

21 MR. HUNTER: Okay. Let's -- let's actually go
22 to the record on that. If we could turn to 898 of the
23 record. Okay. Is everyone there?

24 COUNCILMAN GARDNER: Yes.

25 MR. HUNTER: There's a part on the bottom

1 which says Mr. Meyerhoff, I hope, on your --

2 COUNCILMAN GARDNER: Uh-huh.

3 MR. HUNTER: Okay. At the very bottom it's
4 highlighted. This says Mr. Meyerhoff -- and
5 Mr. Meyerhoff for -- for folks reference was the
6 attorney hired, not the investigator, but the attorney
7 hired by the City of Riverside to provide legal counsel
8 for them during this case. And he says, I have been
9 assisting the city as special counsel for this matter.
10 As the mayor mentioned, the complaints brought by the
11 city manager on behalf of the chief of police and one
12 of his subordinates alleged, amongst other things,
13 claims of hostile workforce environment, right?

14 And he goes onto explain the -- the code, I
15 believe, which Mr. Gardner is -- is referencing here,
16 under the California government code, as part of the
17 Fair Employment Housing Act, section 1290 -- 12 --
18 12940 of the government code, employers, including the
19 City of Riverside, are required to -- required to
20 conduct fair, prompt, and thorough investigations into
21 claims of hostile workforce environment, okay?

22 And that was one of the reasons that the
23 council authorized the investigation of an independent
24 third-party investigator, okay?

25 BY MR. HUNTER:

1 Q So, Mr. -- Mr. Gardner, I agree with you, you
2 are correct that a hostile workforce environment does
3 need to be investigated by state law and can be filed
4 under labor code, but that's all, okay, that was
5 required, okay, all that was required. There is no
6 requirement under California code, unless you can
7 provide me a specific example, you've given -- been
8 given adequate time to prepare for this -- for this
9 hearing today, there is nothing under California labor
10 code that says you have to investigate 407 complaints
11 of interference with the city manager's
12 responsibilities.

13 There is nothing in the labor code about
14 investigating ethics violations. There's nothing in
15 the -- in the labor code about investigating Brown Act
16 violations, which were alleged unto the council by, I
17 believe, either Chief Diaz or -- or Scott Barber, city
18 manager at the time, Scott Barber. So unless you can
19 provide me with actual evidence, you know, and I can't
20 find anything in the record where --

21 MEMBER HUERTA: Is there a question coming?

22 MR. HUNTER: Yeah.

23 MEMBER HUERTA: This is becoming --

24 BY MR. HUNTER:

25 Q Is there anything in the record that --

1 that -- that you could find outside of the hostile
2 workforce environment that was required to be
3 investigated in a certain way by state law?

4 A I don't know that there was anything that was
5 required to be investigated in a certain way. There
6 was also no prohibition against investigating it that
7 way.

8 Q Okay. And -- and you guys had -- had a
9 process that was established for -- for doing this,
10 correct, for investigating city councilmen, you had a
11 process, you had already discussed it and you had the
12 authority to do so?

13 A I am not aware of a formalized process, not
14 by --

15 Q So you kind of made up --

16 A -- this or any other council --

17 Q So you -- you made up --

18 A -- for investigating a complaint like that.

19 Q Okay. So you -- you made up the process as
20 you went along?

21 A We're getting into things that may or may not
22 have been discussed in closed session, and I cannot
23 address those.

24 Q Okay. Well, is there anything in the record,
25 to your knowledge, or anything you brought here today,

1 that would show a process by which you could -- you had
2 the authority, it was a previously established process,
3 whereby you had the authority to hold a hearing on a
4 city councilmember and -- and possibly impose
5 sanctions? Is there anything in the record that shows
6 that that was previously established?

7 A Not that I'm aware of, no.

8 Q Okay. I'll -- I'll leave that as evidence
9 that it didn't exist, okay? That it was created on the
10 fly, okay? And so once again I go back to the Code of
11 Conduct. The only process I'm -- I'm aware of, and --
12 and maybe you could disagree -- you can disagree with
13 me if you want, by which --

14 MR. HUNTER: Actually let's go to page --
15 let's go to page 113 of the record. Now, these are
16 Code of Ethics complaints that were previously filed by
17 members of the public. And as we know the members of
18 the public can include anyone, it could include any
19 person really that comes here to speak at the -- at
20 the --

21 COUNCILMAN GARDNER: I'm sorry, Mr. Hunter,
22 I'm not --

23 CHAIRMAN HOUSE: I'm sorry, yeah --

24 COUNCILMAN GARDNER: -- seeing that on page
25 113.

1 CHAIRMAN HOUSE: -- I'm not seeing that on 113
2 either.

3 MEMBER NELSON: You mean page 119.

4 MR. HUNTER: Sorry, 119.

5 MEMBER NELSON: 119 is where I have it.

6 COUNCILMAN GARDNER: 119 appears to be a
7 chart.

8 MR. HUNTER: Okay. And it's -- just in case
9 I'm off by a couple numbers here, and I think for all
10 these hearings, it's a couple pages off it seems.

11 MEMBER NELOSN: Yeah, it's 119.

12 MR. HUNTER: Yeah. I'm actually looking at
13 the complaints that were filed on August 30th, 2010,
14 September 27, 2010, and March 15th, 2011.

15 MEMBER: (Indiscernible).

16 CHAIRMAN HOUSE: Yeah, that's --

17 MR. HUNTER: Okay. 120.

18 CHAIRMAN HOUSE: Or 115 on mine.

19 MEMBER: (Indiscernible).

20 CHAIRMAN HOUSE: Okay. Yeah, we're with you.

21 BY MR. HUNTER:

22 Q We've got, you know, Scott Barber and -- I'm
23 going to ask you a question here. Scott Barber alleged
24 a charter 407 violation, correct, as part of his
25 complaint against Councilman Soubirous and Councilman

1 Davis?

2 A Mr. Hunter, I'm sorry, I'm not finding that,
3 a complaint by Mr. Barber in this list. I'm not saying
4 it's not there, I'm just not yet finding it.

5 MEMBER TUCKER: I -- I believe -- I believe
6 your question is not -- is -- is going to reference
7 back to this, but it's not specifically on this page.

8 MR. HUNTER: Oh, no, it's not specifically on
9 this page.

10 MEMBER TUCKER: Yeah.

11 BY MR. HUNTER:

12 Q To -- to your recollection, the -- the
13 Soubirous and Davis investigation centered, at least in
14 part, on charter section 407 violations, which was
15 interference with administrative services, correct?

16 A I believe that was part of the --

17 Q Yeah.

18 A -- complaint, yes.

19 Q Okay. So I see a member of the public
20 towards the bottom of this page making a complaint
21 about charter 407, interference -- interference with
22 administrative services here, three of them. I see
23 three different complaints, but it looks like two
24 groups that was adjudicated by the -- by the --

25 A Yes, yeah. I --

1 Q -- ethics panel.

2 A I see them here.

3 Q So -- so --

4 A And that's because --

5 Q -- there was precedent --

6 A -- those were -- those were filed as a
7 complaint under -- as a violation of the Code of Ethics
8 and Conduct.

9 Q But there's -- there's --

10 A Mr. Barber and Chief Diaz's complaints were
11 not filed as complaints of violation of the Code of
12 Ethics and Conduct, hence that process was not
13 followed.

14 Q Okay. So what you're saying is if you're a
15 member of the public, you have an option, you don't --
16 I -- I can file -- I can get a -- can I get an
17 investigator? Could the council okay -- if I -- if I
18 wanted to bring my complaints a different way, would
19 the council okay maybe \$100,000 for me to -- to -- to
20 investigate my complaints.

21 MEMBER WRIGHT: Is your screen on, Mr.
22 Chairman?

23 CHAIRMAN HOUSE: Yes, it is.

24 MEMBER WRIGHT: She -- she as a question over
25 here.

1 MEMBER HUERTA: As soon as Jason is done, I
2 have a point of order.

3 CHAIRMAN HOUSE: Okay.

4 BY MR. HUNTER:

5 Q You know, could I -- Mr. Gardner, can -- can
6 I bring a complaint directly to the council that would
7 absolutely positively be investigated using, you know,
8 hundreds of thousands of dollars in city resources? Is
9 that -- that available to every member of the general
10 public?

11 A The particular complaint was an employment
12 complaint. And since you are not a city employee, you
13 could not make such a complaint.

14 Q Okay.

15 CHAIRMAN HOUSE: Now, I'm going to interrupt
16 you for just a moment, if I could, Jason, because
17 I've -- I've got a point of order here.

18 MR. HUNTER: Sure.

19 MEMBER HUERTA: I --

20 CHAIRMAN HOUSE: Gloria, go ahead.

21 MEMBER HUERTA: This is my first hearing, so
22 I'm not sure at what point we could ask questions.

23 MEMBER NELSON: Deliberations.

24 MEMBER HUERTA: Do we hold our questions to
25 the end?

1 MEMBER NELSON: Deliberations.

2 MEMBER HUERTA: Okay.

3 CHAIRMAN HOUSE: Deliberations, yes.

4 MEMBER HUERTA: Thank you.

5 CHAIRMAN HOUSE: I'm sorry, Mr. Hunter.

6 Please -- please go ahead.

7 MR. HUNTER: Okay.

8 BY MR. HUNTER:

9 Q So you would agree though that looking at
10 this there is precedent for members of the public to
11 bring complaints of interference with administrative
12 services under the ethics code, there's precedence
13 there?

14 A Certainly.

15 Q Okay. And so why wasn't, once the hostile
16 workforce complaint was investigated and duly dismissed
17 because --

18 MR. HUNTER: And we can go into, if anybody
19 feels the need for me to go into hostile workforce
20 environment -- environment claims, I will again.
21 Hostile workforce environment claims basically say that
22 somebody was discriminated upon based upon color,
23 creed, religion, sex, et cetera, et cetera. And maybe
24 I'll get it into the record a little bit later when I
25 do the introduction of evidence.

1 BY MR. HUNTER:

2 Q But why wasn't warrants -- Chief Diaz and
3 Scott Barber -- once the hostile workforce complaint
4 was readily dismissed, as it was clearly not a hostile
5 workforce environment claim, why did the council feel
6 the need to create a new process?

7 A The compliant was not filed as a complaint of
8 the violation of the Code of Ethics and Conduct, so it
9 wasn't followed, that procedure was not followed. The
10 complaint was filed differently and a procedure that
11 the council was advised by the city attorney's office
12 as the proper mechanism, also the human relations
13 office was the proper method to investigate a complaint
14 filed under the labor code against a city employee.

15 Q And how would a complaint like this be
16 adjudicated today in your opinion?

17 A If it was filed as a complaint under the
18 labor code, I think a very similar process would be
19 followed. If it was filed as a complaint of the
20 violation of the Code of Ethics and Conduct, the
21 procedure that you have been talking about would be
22 followed.

23 Q Okay.

24 MR. HUNTER: Now I'm going to make a request
25 at this juncture before the end that I get a subpoena

1 of my complaint against city executives, it should be
2 Hunter versus Kerr and Dave Wright, circa 2012, which
3 will show another similar complaint that was made that
4 was not investigated, not nearly like Mr. Gardner would
5 like to -- to insinuate.

6 It was a hostile -- hostile workforce
7 complaint with whistleblower complaints with it as
8 well. Only the hostile workforce complaint was
9 investigated.

10 CHAIRMAN HOUSE: Could -- could you repeat the
11 citation, please?

12 MR. HUNTER: It's a 2012 complaint, Hunter
13 versus Wright and Kerr. It was a complaint made that
14 had a hostile workforce environment --

15 MEMBER WRIGHT: Thank you.

16 MR. HUNTER: -- minor component to it, mostly
17 other complaints. And if I could get that, I would
18 show this -- this -- this -- this panel that what
19 Mr. Gardner said is completely untrue, okay, but I need
20 to subpoena that. I already request it via public
21 records, and I -- I am not able to get that -- that
22 document.

23 CHAIRMAN HOUSE: I believe it is a part of our
24 process, and I'm -- I'm going to ask our counsel to --
25 to help me out with this; subpoenas are dealt with

1 during the earlier part of the hearing, the -- the
2 technical --

3 MEMBER NELSON: It's -- it's my understanding
4 it's at the end.

5 CHAIRMAN HOUSE: And well, we bring it up
6 there and also at the end. So I -- I would ask you to
7 hold your request in abeyance until we reach
8 deliberations.

9 MR. HUNTER: Okay, thank you. All right. So
10 let's talk about comments you made to the Press
11 Enterprise at the time. If we could go to page 36 of
12 the record. And the third paragraph down are comments
13 purportedly made by you.

14 BY MR. HUNTER:

15 Q It says Gardner said the council should
16 address the matter, but he added that the council's
17 response could be to disagree with the investigator's
18 conclusion, take no action, or censure or otherwise
19 punish Davis. Okay. So are these your comments?
20 Do -- do you -- I mean, does this -- would you
21 disagree? Would you say that you've been misquoted or
22 you've -- these -- these are incorrect?

23 A I -- I do not know if that is an accurate
24 quote. I think those were --

25 Q And there's a (indiscernible) --

1 A I'd have to --

2 Q -- as well?

3 A I'd have to go back and -- and review the
4 entire context.

5 Q Okay. I'm presenting it as evidence that --
6 of -- of an article that exists, okay? The -- it says
7 below --

8 A I don't dispute the article exists.

9 Q Yeah, okay. The -- the -- the issue with not
10 just doing anything is that the investigation is
11 taking -- and this is actual quotes, the investigation
12 is taking place and there's a conclusion of the
13 investigator, which is public; I don't think the
14 council just says, oh, never mind, I think the council
15 has to do something. And once again I go back to,
16 okay, so I -- I don't see -- you haven't provided me
17 with any evidence whatsoever of any alternative
18 complaint process outside of investigating a hostile
19 workforce environment.

20 You've -- you've already said you've created
21 the process more or less on the fly, and now you're
22 saying here in this article that you -- you have the
23 right to hear Councilman Davis, hear the complaint,
24 adjudicate it, and censure or otherwise punish --
25 punish Davis, similar to what had been previously done

1 to or suggested to be done to Councilman Soubious,
2 okay?

3 So you were, obviously thought that the
4 council had some authority to have these trials and
5 to -- and to -- and to punish councilmembers, right?
6 You -- I assume you thought they had the authority to
7 do that.

8 A You can assume anything you'd like, sir.

9 Q Okay. Do you -- did you -- did you think at
10 the time that you had those powers?

11 A The council has the authority to censure
12 another councilmember. The council has the authority
13 to strip a councilmember of committee assignments.
14 That would be up to the council whether it wished to do
15 that in any particular case.

16 Q Okay.

17 A There -- there are limited remedies for the
18 council to take if they believe that a fellow member
19 has done something inappropriate.

20 Q So you would agree that on page 42 of the
21 record it says, towards the very end it says, after
22 careful consideration and deliberation concerning the
23 facts, conclusions, recommendations set forth in the
24 report, as well a consideration of any information, a
25 response provided by Councilman Soubious, the council

1 may consider any of the following response thereto.
2 You can take no action, public censure, removal from
3 chairmanships, removal from committee assignments,
4 removal from mayor pro tem.

5 You -- you agreed at the time that the
6 council had could do any of those; isn't that right?

7 A I don't see my signature on that piece of
8 paper.

9 Q Okay. It's -- it's not on there, but you
10 just said that the council could -- you --

11 A There -- there are a variety of things that
12 the council can do --

13 Q Okay.

14 A -- if it believes that a fellow councilmember
15 or the mayor, for that matter --

16 Q Are there any --

17 A -- has done something inappropriate.

18 Q Sure. Are there -- do you -- would you agree
19 that with -- with those statements down there they
20 could do, that the council could do any of those things
21 if it wanted to?

22 A The council can only remove a member from
23 regional organizations that the council has appointed
24 that person to. If, for example, they were appointed
25 by Western Region Council of Governments, the council

1 would not have the authority to undo that appointment.

2 Q Okay. But the rest of them they can do
3 that's on the list, right?

4 A If it's a council appointment, yes --

5 Q All right.

6 A -- they could.

7 Q And -- and could you -- so you -- but -- but
8 you agree that the council had -- had the authority at
9 the time to take any of these -- these actions that are
10 stated there?

11 A And it does today.

12 Q Okay. And can you show me the authority, the
13 actual document, I want a hard document -- and
14 remember, you had time to prepare for this hearing
15 today, you had months. Could you show me where the
16 actual authority is for you guys to take those actions?

17 A I don't have a document that says that in my
18 possession, no.

19 Q Okay. It doesn't exist. Or you say it does.
20 You -- you say -- okay. You say you don't have it. I
21 say that that document does not exist. There's no
22 evidence of that document existing that I am aware of.
23 So --

24 A I -- I would point out, Mr. Hunter, there are
25 things that neither of us are aware of that do, in

1 fact, exist.

2 Q But you were aware that we were having a
3 hearing today, correct?

4 A Oh, yes.

5 Q And you were aware that you needed to bring
6 your evidence today, right?

7 A I don't see any need to provide that
8 particular piece --

9 Q And --

10 A -- of evidence.

11 Q And -- and you were aware that I was going to
12 be asking questions about the process by which you had
13 a hearing and were going -- going to decide on what
14 punishments to direct onto your fellow councilmembers,
15 correct? And you brought no evidence, correct, showing
16 any of that authority?

17 CHAIRMAN HOUSE: Mr. -- Mr. Hunter, can I
18 interrupt you for just a moment, sir? It sounds like
19 to me you are trying to get your witness to prove
20 himself innocent, whereas I believe your role here is
21 to prove him guilty. We're assuming his innocence.

22 MR. HUNTER: Well, I don't think guilty or
23 innocence is the correct words here we want to use.
24 It's either sustaining the allegations or -- or not,
25 right? But I mean, I'm giving Mr. Gardner ample

1 opportunity to provide a document to back up the claims
2 he's making, and he cannot seem to provide any evidence
3 whatsoever that this authority that he seems to think
4 he has exists.

5 He was well aware of what the nature of this
6 hearing was today and should have brought that here.
7 That's what I'm -- that's the point I'm making.

8 MEMBER: (Indiscernible).

9 MEMBER HUERTA: I would like to remind
10 Mr. Hunter that I do believe that it is your
11 responsibility to prove, and not any other complainant
12 or respondents' responsibility to disprove your -- or
13 disprove your statements. So if indeed you wished to
14 have that evidence, you should have asked for it, made
15 it clear that it was your request to have that document
16 present. That's my position.

17 MR. HUNTER: Ms. Huerta, I can't prove a
18 negative. I can't prove that something doesn't exist,
19 right? I can't prove that something doesn't exist. I
20 can't prove -- provide a document of something that
21 doesn't exist. I -- that's -- I just can't. So all I
22 can do in the -- in the contrary is say, well, if
23 you've got that document, I couldn't find it, I
24 couldn't introduce it into evidence, if you've got that
25 document with that authority to hold this process and

1 to issue these punishments, please show it to me; and I
2 don't see one, so I'm going to have to go on the
3 assumption it does not -- well, the assumption it does
4 not exist, folks.

5 It's plain and simple. Okay. You can get up
6 there and state whatever you want. Bring the evidence.
7 I brought mine.

8 Okay. So let's go back to that -- that
9 council document once again on February 22nd, 2014.

10 MEMBER: (Indiscernible).

11 MR. HUNTER: Yeah, it's on page --

12 CHAIRMAN HOUSE: It's --

13 MR. HUNTER: I think it would be on page,
14 maybe, 41 of the record. City council memorandum.
15 Hearing on the investigation of complaints against
16 Councilmember Mike Soubirous for administrative
17 interference and harassment. That document.

18 BY MR. HUNTER:

19 Q It reads in here, it says that -- if you go
20 down to background -- and I -- I -- oh, I think I'll --
21 I'll read the recommendation first. I think that is
22 important to -- for -- for everyone to hear, that the
23 city council conduct a hearing to consider the results
24 of an investigation of the complaints or any
25 information submitted in response thereto by Councilman

1 Soubirous so take whatever action, if any, that the
2 council deems appropriate. That's what the -- the
3 meeting was about.

4 At the hearing in the official transcript,
5 and I could -- I could point it out, I might go to it
6 later when I get over the, start looking at the
7 evidence and -- and get you off of there, I don't want
8 to keep you up there the whole time. Councilman Davis
9 states that the complaint against Councilman Soubirous
10 was already adjudicated prior to even convening the
11 hearing. Is that -- is that true to your recollection?

12 A Mr. Hunter, if that were, in fact, the case,
13 it would have occurred in closed session. And as you
14 know, I cannot discuss what occurred or didn't occur in
15 closed session.

16 Q Okay. But -- but if there was a vote, that
17 would have to be disclosed, correct?

18 A If there was a vote that was a final action
19 of the council on an item, typically they are reported.
20 I'm not sufficiently familiar with the requirements for
21 reporting each and every action of the council taken in
22 closed session. Some are preliminary actions and are
23 not reported out, it's not a reportable action. Others
24 are reportable.

25 Q Okay.

1 MR. HUNTER: So let's go to page, I believe
2 it's 59, I'm hoping it's 59 of the record. It's the
3 Brown Act. And it's the section under 54957.1.

4 BY MR. HUNTER:

5 Q And it -- it states there, Councilman
6 Gardner, it states, the legislative body of any local
7 agency -- and is the City of Riverside a local agency?

8 MEMBER WRIGHT: Pardon me. Hold on. I'm
9 finding it on 65. I'm finding -- on 65.

10 MR. HUNTER: Okay. So it's on plus six this
11 time. Last time it was plus two. Plus six.

12 MEMBER NELSON: Okay.

13 CHAIRMAN HOUSE: Yeah.

14 MEMBER NELSON: Page 65.

15 COUNCILMAN GARDNER: Okay. I believe I have
16 that section.

17 BY MR. HUNTER:

18 Q It says, the legislative body of any local
19 agency -- now, in your opinion would that be the city
20 council of the City of Riverside? Would that -- would
21 that include -- include the city council of the City of
22 Riverside?

23 A Yes, it would.

24 Q Okay. -- shall publicly report any action
25 taken in closed session in the vote or abstention on

1 that action of every member present, okay? So you have
2 to publicly report any action that you've taken,
3 publicly report any action, any vote you've taken.
4 It's got to be reported out.

5 A It might be worth reading the remainder of
6 that section. It does say, as follows.

7 Q Uh-huh.

8 A And it lists a variety of actions which need
9 to be reported.

10 Q Okay. Those -- those are how -- and -- and
11 those, I -- I agree with you, it shows you if you're
12 reporting on certain subjects --

13 A Uh-huh.

14 Q -- this is how you would report out on them.

15 A Uh-huh.

16 Q It's not all inclusive, you would agree? I
17 hear the city -- the city attorney report all sorts
18 things that are not included in this list regularly out
19 of closed session these days. So this is not an
20 inclusive list, all inclusive. You can report other
21 things as long as you report any action publicly, a
22 vote that you've --

23 A I'm going to --

24 Q -- taken.

25 A -- disagree with your interpretation. I

1 believe that the section needs to be taken as a whole
2 and that those things that are listed after the words,
3 as follows --

4 Q Uh-huh.

5 A -- are the actions that need to be reported.
6 If an --

7 Q If you're --

8 A -- action --

9 Q -- reporting those actions.

10 A If an action doesn't meet one of those
11 criteria, it's not a reportable action.

12 Q Oh, okay. Now, does the city attorney
13 currently report when you hire attorneys to do work on
14 cases?

15 A Not out of closed session typically, no.
16 Some -- it depends on -- on -- it depends on the
17 circumstances.

18 Q Okay.

19 A Sometimes -- sometimes he does; sometimes he
20 does not.

21 Q All right. That's not what the record and
22 the evidence will show, just for when we get back into
23 the evidence part of this case again. We'll -- we'll
24 show that the council -- the city attorney routinely
25 reports anything they vote. They voted -- they --

1 they -- how about this one, did the city attorney
2 report that the city council approved a three percent
3 salary increase for the city clerk affecting the next
4 pay -- pay period back in January -- January of this
5 year, January of 2015?

6 A No, no.

7 MEMBER TUCKER: Point of order. We seem to be
8 drifting into a wide variety of -- of different topics
9 and -- and supposed. I -- I would like for us to
10 stick to the issue which occurred in 2014 --

11 MR. HUNTER: Sure.

12 MEMBER TUCKER: -- not -- not what's common
13 practice now or -- or any of that. It -- this is about
14 what were the decisions made in 2014.

15 MR. HUNTER: Yeah, and I think --

16 CHAIRMAN HOUSE: We do seem to be kind of
17 drifting afield on this --

18 MR. HUNTER: Okay.

19 CHAIRMAN HOUSE: -- Mr. Hunter.

20 MR. HUNTER: I'll -- I'll tell you --

21 CHAIRMAN HOUSE: If you could --

22 MR. HUNTER: I'll tell -- I'll --

23 CHAIRMAN HOUSE: -- please.

24 MR. HUNTER: Yeah, I'll tell you where I'm
25 going with this. I'm going with the sort of excuse

1 that the only thing that we're required to report out
2 of closed session are things that are listed on this
3 page here. And what I'm trying to prove is that that
4 is completely untrue. It is not the standing city
5 practice. They report on all sorts of things that are
6 not included on this list out of closed session all the
7 time, okay?

8 MEMBER TUCKER: And again I would suggest that
9 in the context of 2014, not in the context of 2017.
10 What is the context in 2014?

11 MR. HUNTER: Okay. I don't -- I don't think
12 the Brown Act changed between 2014 and 2017.

13 MEMBER TUCKER: Continue -- you continue to
14 talk about common practice, but you -- you're using
15 current examples. Stick to the -- stick to the what
16 occurred in 2014.

17 MR. HUNTER: Okay.

18 MEMBER TUCKER: What was -- what was the
19 situation in 2014.

20 MR. HUNTER: Okay. Let's go to page -- you
21 said it was plus six, I believe, so page 68 of the
22 record. And it should be under section 54957.7. And
23 it's (b). And it reads, after closed session, the
24 legislative body shall reconvene into open session
25 prior to adjournment and shall make any disclosures

1 required by the section I just read to you previously,
2 okay?

3 So I guess the -- the point of that is, is
4 that any action taken, once again it doesn't say some
5 actions, it says any action, any action, all actions,
6 must be reportable immediately upon reconvening out of
7 closed session. That is the law.

8 MEMBER: (Indiscernible).

9 CHAIRMAN HOUSE: Okay.

10 MR. HUNTER: So let's get into what happened,
11 let's get into the timeline of leading up to the
12 hearing.

13 CHAIRMAN HOUSE: Mr. Hunter, has the
14 councilman seen this before today?

15 MR. HUNTER: It's just a calendar. It's not
16 evidence.

17 CHAIRMAN HOUSE: I asked a question, sir.

18 MR. HUNTER: I don't believe so.

19 CHAIRMAN HOUSE: Then he's not been noticed on
20 it.

21 MR. HUNTER: No.

22 CHAIRMAN HOUSE: And I don't think therefore
23 it's -- it's admissible in this procedure.

24 MR. HUNTER: It's not a -- it's not evidence.
25 It's just a calendar. I'm using it to structure the

1 talk.

2 CHAIRMAN HOUSE: I'm going to ask city
3 attorney on this one.

4 MR. HANSEN: Informal rules of evidence apply,
5 and the chair has final decision on all evidentiary
6 matters.

7 MEMBER NELSON: My issue would be consistency
8 amongst the fairness to other councilmen. We've
9 allowed it before.

10 CHAIRMAN HOUSE: All right then, let's go
11 ahead.

12 MR. HUNTER: Now back on the -- sorry to
13 jostle around here, because I'm trying to make an
14 argument with evidence that's located all over the map,
15 but if we could go back briefly to the memo of
16 July 22nd, 2014, again, that would be on page -- and I
17 believe I have this correct -- it would be page 41. It
18 says on April 1st -- I'm in the background -- 2014, the
19 city council, with Councilman Soubirous excused and
20 Councilman Davis absent, unanimously, unanimously,
21 everyone directed that an independent investigation
22 immediately be commenced as required by state law and
23 city policy.

24 BY MR. HUNTER:

25 Q This is an official council memo written

1 by -- now, your name is not on it, I'll -- I'll agree
2 to that, but by the mayor pro tem, the incoming mayor
3 pro tem and Mayor William Rusty Bailey. Does that
4 statement line up with your recollection of events that
5 occurred?

6 A I don't know about the dates. Yeah, I -- I
7 don't know about the dates.

8 Q Okay. But a -- but a vote took place to
9 conduct an investigation and --

10 A That's what this --

11 Q -- and --

12 A -- says.

13 Q Okay, okay. So you're not denying it, okay.
14 Page, and I'm hoping I'm right, 10 of the record is an
15 article entitled, city investigating second councilman.
16 And it says there Councilman Davis -- this is by the
17 Press Enterprise by Alicia Robinson. It states,
18 Councilman Paul Davis is the subject of the latest
19 probe which council voted to pursue in an April 22nd
20 closed-door session according to a letter to Davis from
21 an outside law firm overseeing this investigation.

22 So this was the second vote that happened in
23 closed session to hire an investigator into another
24 city councilman. Would this be to your recollection of
25 what happened, there was a vote to hire a second

1 investigator?

2 A I am not going to comment on what did or
3 didn't occur in closed session.

4 Q Okay, okay. Well, I'll just -- I'll just,
5 I'll introduce that, I guess, as -- as evidence and you
6 don't have to comment on a vote that has to be -- I
7 just, you know, I just read the Brown Act which says
8 that all -- any actions taken have to be --

9 A No. It does not --

10 Q -- reported out of --

11 A -- say that any actions taken by a
12 legislative body must be reported. It says that those
13 actions that are required to be reported must be
14 reported -- reported immediately following a closed
15 session.

16 Q Well, let's get back to the actual language
17 of the Brown Act here. So let's -- let's -- you don't
18 have to skip back there. I'm going to read actually
19 verbatim, not your paraphrasing of the Brown Act.
20 Let's read it verbatim. It states, Mr. Gardner --
21 Gardner, the legislative body of any local agency,
22 shall, must -- okay, I didn't -- must is mine -- shall
23 publicly report any action taken in closed session and
24 the vote or abstention of that action of every member
25 present.

1 That's what it says. That's the exact --

2 A It goes on after that though.

3 Q It says, as follows, assuming that you took
4 those actions --

5 A No.

6 Q -- that's how you'd report it. Exactly.
7 That's exactly what it means.

8 COUNCILMAN GARDNER: That's your
9 interpretation.

10 MEMBER TUCKER: Mr. Chairman, point of order
11 again.

12 CHAIRMAN HOUSE: Go ahead, sir.

13 MEMBER TUCKER: Mr. Hunter is -- is supposed
14 to be presenting his case to the five people sitting up
15 here and -- and not in an argumentative --

16 MR. HUNTER: Okay. I'm sorry.

17 MEMBER TUCKER: -- debate with -- with
18 Councilman Gardner. Just you know, present your facts
19 and -- and allow us to deliberate.

20 MR. HUNTER: Okay.

21 COUNCILMAN GARDNER: Mr. Chairman, while we're
22 on facts, with reference to the calendar page that's up
23 on our screens, I have no objection to the calendar
24 page, itself. I will even agree that the handwritten
25 one, two, and three, the next three dates after the

1 30th of April are accurate. The notations on that page
2 are something I've not seen, I don't know anything
3 about. I cannot tell you whether they are accurate or
4 not, and I object to them being presented.

5 CHAIRMAN HOUSE: Comment?

6 MR. HUNTER: That's fine.

7 MEMBER NELSON: Which notation specifically?

8 COUNCILMAN GARDNER: The handwritten notations
9 throughout the page. It's -- it's saying that Brown
10 Act violations occurred. I disagree with that.

11 MEMBER NELSON: That's --

12 COUNCILMAN GARDNER: It's -- it's listing
13 things that Mr. Hunter apparently believes happened on
14 certain dates. I -- I am unable to say whether that is
15 accurate. It's -- it was portrayed as being simply a
16 calendar page. It is more than that.

17 MEMBER NELSON: I would agree that we should
18 eliminate the allegation of the Brown Act violations
19 per se, in that I don't think Mr. Hunter has yet to
20 introduce --

21 MR. HUNTER: That evidence --

22 MEMBER NELSON: -- in this hearing --

23 MR. HUNTER: -- I haven't, you're right.

24 MEMBER NELSON: -- in this hearing that things
25 occurred on 4/22, such as minutes approved, and on 4/8

1 that minutes approved. I think we're molding multiple
2 hearings into one.

3 CHAIRMAN HOUSE: Yeah, I agree. It need -- it
4 would need to say, if anything, alleged Brown Act
5 violations. And you're making references, as my
6 colleague has said, to items that you have not proven.

7 MEMBER NELSON: In this hearing.

8 CHAIRMAN HOUSE: In this hearing. But again
9 this is the only hearing that counts right now.

10 MEMBER NELSON: (Indiscernible).

11 MR. HUNTER: Okay. I'd like to -- well,
12 maybe, we'll see how it works. I've got a couple
13 more --

14 CHAIRMAN HOUSE: Let's -- let's go ahead and
15 take the calendar down, please.

16 COUNCILMAN GARDNER: Thank you.

17 MR. HUNTER: All right. Without a calendar
18 it's going to be a little more difficult to follow this
19 of course, because we are not -- you know, but I'll --
20 I'll do my best.

21 MEMBER WRIGHT: Mr. Chairman, point of order.

22 CHAIRMAN HOUSE: Go ahead, sir.

23 MEMBER WRIGHT: We've been, by my
24 recollection -- by my guess here, listening to exchange
25 between complainant and respondent for well over

1 45 minutes. Do we have a timeline in terms of how long
2 this is going to take to present?

3 CHAIRMAN HOUSE: No, sir, actually we don't,
4 but we can certainly set one.

5 Mr. Hunter, as -- as my -- as my colleague
6 has pointed out, you've been at this for about
7 45 minutes.

8 MR. HUNTER: Uh-huh.

9 CHAIRMAN HOUSE: About how much longer, sir,
10 would you say you're -- you're going to be?

11 MR. HUNTER: I would say 30 minutes tops.

12 CHAIRMAN HOUSE: Okay. It's 2:30. At five
13 minutes to 3:00, we will discuss how much further we're
14 going to go.

15 MEMBER WRIGHT: Could I ask for a five-minute
16 recess?

17 CHAIRMAN HOUSE: Certainly. We can take a
18 five-minute recess, and that will push you up to 3:00.

19 (Off the record - 2:30:32 p.m.)

20 (On the record - 2:35:27 p.m.)

21 CHAIRMAN HOUSE: That was just five minutes
22 for our five-minute break, so we're going to come back
23 into session and go on the record.

24 And, Mr. Hunter, if you'll please continue.

25 MR. HUNTER: Hi there. As -- as we open up,

1 now that I understand how I'm not going to be able to
2 present my case effectively because I won't be able to
3 ask questions and have the witness read public records
4 easily accessible, these are public records, judicially
5 notice -- noticeable materials, off of the projector
6 screen, I'd like to read the rules for this hearing,
7 okay, to you. And this is on the city's website when I
8 filed this complaint.

9 It says, complaints arising from facts
10 occurring to -- prior to May 5th, 2016, will be heard
11 by the Board of Ethics pursuant to the provisions of
12 the prior Code of Ethics and Conduct. Okay. Now, in
13 the prior Code of Ethics and Conduct, you could present
14 your evidence at any time. And so if we want to go
15 down this path, then I will file an objection that we
16 are -- are not following verbatim what was given to me
17 as to the rules as to how I was going to be able to
18 allowed to proceed with this -- this hearing.

19 And I'll bring that to the council as a
20 technicality that -- and I was willing to work around
21 it, as well as -- as long as I was allowed to make my
22 case effectively and efficiently by having Mr. Gardner
23 read judicially -- judicially noticeable materials,
24 which are public records of fact. Now that you're
25 saying that I can't introduce anything that wasn't

1 previously put into part of the record, I'll -- I'll
2 lodge my objection at this time.

3 COUNCILMAN GARDNER: Mr. -- Mr. Chairman,
4 could we ask the city attorney for some counsel on what
5 the process previously laid out or the process for the
6 prior Code of Ethics and Conduct hearings was? Because
7 I don't recall there being anything written that says
8 what Mr. Hunter just said.

9 CHAIRMAN HOUSE: It might be a good time for
10 some clarification.

11 Bob.

12 MR. HANSEN: (Indiscernible).

13 CHAIRMAN HOUSE: And I got Jeff here. Do you
14 want to go ahead, Jeff?

15 MEMBER WRIGHT: Under rule 9, prehearing
16 exchange of evidence, there are three points made that
17 are very clear about what can and -- what is and is not
18 admissible. Before a hearing panel, new documents on
19 the day of a hearing, are nowhere in sight here.

20 MR. HUNTER: I don't see rule 9.

21 MEMBER WRIGHT: Rule 9 --

22 MR. HUNTER: -- under the old Code of Ethics.

23 MEMBER WRIGHT: Rule 9 of the Board of Ethics
24 hearing rules and procedures, Mr. Hunter.

25 MEMBER: (Indiscernible).

1 MR. HUNTER: What -- what resolution --

2 MEMBER WRIGHT: Dated -- there -- the -- the
3 memorandum is dated January 15th, 2017. My
4 understanding is that we are in session hearing under
5 an old council resolution, but according to rules set
6 by this Board of Ethics. And this Board of Ethics set
7 those rules in January preliminary to your filing
8 complaints. You've had access to these rules, and
9 you've been aware of them.

10 MR. HUNTER: I -- I read to you --

11 MEMBER WRIGHT: Have you not?

12 MR. HUNTER: I read to you what's on the --
13 the -- the city clerk's website. As I said, you can
14 rule anyway you want, it's just leaving me for appeal
15 to the council.

16 MEMBER WRIGHT: Well, I guess we're assuming
17 that you're going to be appealing any decisions that
18 are made here that aren't in your favor, so I -- I
19 don't know what to say about that other than we've been
20 operating in -- in the hearings that I've been a part
21 of, we've been operating according to these rules that
22 were adopted in open session with you present in the
23 audience, in fact.

24 MR. HUNTER: And -- and -- and I believe that
25 at every single other previous hearing I was allowed to

1 show those documents up on the screen, Mr. Wright. So
2 for any sort of --

3 MEMBER WRIGHT: Well --

4 MR. HUNTER: The precedent has been set and
5 that's how these hearings have been conducted, three
6 previous with no objections.

7 MEMBER WRIGHT: Well, if we're going to have a
8 colloquy, Mr. Hunter, then I would simply say that the
9 objection has been raised that your calendar is
10 pejorative and perhaps isn't sufficient and each
11 hearing is operated differently under the rules. So
12 I -- I don't know what to say to you except maybe you
13 should take a pen and scratch out per se.

14 MR. HUNTER: Okay. I believe other things
15 were not allowed in turn. Let's -- let's get to my --
16 let's get to my documents. It wasn't just the
17 calendar. It was also the signed appointment -- Code
18 of Ethics and Conduct and official certification that
19 was signed by Councilman Gardner that was also not
20 allowed.

21 MEMBER WRIGHT: Point of order, Mr. Chairman.

22 CHAIRMAN HOUSE: Yes, Mr. Hunter.

23 MEMBER WRIGHT: There -- there -- there --
24 there was a ruling made on that. It was a new document
25 that you sought to introduce in -- in -- in -- in

1 contradiction to rule 9 of our rules of hearing -- of
2 evidence -- of hearing. I -- I don't know how other --
3 how -- how to take it any simpler than that. You can't
4 introduce new documents.

5 CHAIRMAN HOUSE: Mr. Hunter, is this document
6 before us already been submitted in our 1,033-page
7 packet?

8 MR. HUNTER: I don't believe so, but it has
9 been submitted to previous panels.

10 MEMBER WRIGHT: Again, we -- we have, in other
11 hearings, to the extent that it's relevant to this
12 discussion, and I'm not sure it is, but to the extent
13 that it might be relevant to this discussion, we have
14 allowed a calendar of events to be shown and discussion
15 about that. Panel members and -- and Councilman
16 Gardner made objection to a conclusion drawn on that
17 document. I think that's a legitimate point to make.
18 Mr. Hunter --

19 MR. HUNTER: I --

20 MEMBER WRIGHT: -- has been given an
21 opportunity to correct it and seems to want to have an
22 argument about it.

23 MEMBER NELSON: I -- I -- I think we have a
24 few items in discussion, and maybe I'm getting
25 confused. There's an objection to the conclusion that

1 there's a Brown Act violation of which the chair said
2 should be removed, that caveat.

3 MR. HUNTER: On the -- on the calendar.

4 MEMBER NELSON: Then -- on the calendar. The
5 next question is, are city council minutes in our
6 packet, and I'm seeing those in our packet. Okay. And
7 so the third one is, was the signed ethics compliance
8 paper, whatever you want to call it in the packet, and
9 the answer was, we did not see that in the packet.

10 MR. HUNTER: That is correct.

11 MEMBER: (Indiscernible).

12 MEMBER NELSON: That's where I'm looking. I'm
13 seeing city council minutes, and I'm looking for these.

14 MEMBER: (Indiscernible).

15 MEMBER HUERTA: Could we take these minutes
16 down while we're researching whether or not it's
17 already been submitted as evidence.

18 MEMBER NELSON: Here's what I'm finding, and
19 just if anyone thinks I'm wrong, I don't mind,
20 October 21st, 2014, agency minutes in the packet.

21 CHAIRMAN HOUSE: What page do you have there,
22 sir?

23 MEMBER NELSON: Page 126.

24 CHAIRMAN HOUSE: Minutes for December 1st,
25 2015, in my packet.

1 MEMBER NELSON: Okay. I'm also showing the
2 November 10th minutes on page 127. Each packet varies
3 a little bit. Okay. I'm showing the revised
4 August 28th, 2012, the July 22nd city council minutes.
5 And that's what I have found so far. That was about
6 what you were saying.

7 MEMBER: (Indiscernible).

8 CHAIRMAN HOUSE: And I'm not showing all of
9 those at all.

10 MEMBER TUCKER: Well, if we start on
11 (indiscernible).

12 MEMBER NELSON: He -- he's concurring to exact
13 (indiscernible).

14 MEMBER TUCKER: (Indiscernible).

15 MEMBER NELSON: Yeah.

16 CHAIRMAN HOUSE: Again -- again my 126 is
17 December 1st, 2015.

18 MEMBER TUCKER: Our -- yeah, our 126
19 (indiscernible) is October 21st.

20 MEMBER NELSON: Sadly the paper and the online
21 don't exactly match. That's where -- I think I was off
22 nine pages, something like that, when I go see it
23 online.

24 CHAIRMAN HOUSE: Okay. I've got the
25 October -- we're looking for which one, the 21st?

1 MEMBER TUCKER: So here -- here's what's --
2 here's what's in our paper version, and it seems to
3 match up with what's on -- on Keith's. On 126, you
4 have October 21st.

5 CHAIRMAN HOUSE: Okay.

6 MEMBER TUCKER: On 127, you have November --
7 November 10th. On 129 you have February 23.

8 CHAIRMAN HOUSE: Okay.

9 MEMBER TUCKER: On 130 you have December 1st.
10 And on 131 you have December 1st. And no place can
11 I -- have I ever found the -- the one that was on the
12 screen previously.

13 MR. HUNTER: I'd like call to the -- the
14 ethics panel a notice that you were also provided with
15 this of events that occurred on these days that I'm
16 going to be -- be showing you what happened. We can
17 play the entire disc, if you'd like, into the record.

18 MEMBER WRIGHT: (Indiscernible).

19 CHAIRMAN HOUSE: Does it show it on the disc?

20 MEMBER WRIGHT: It shows it.

21 MEMBER NELSON: The city council meeting audio
22 is December 23rd, 12/1/2015, 9/23/2014, June 24th,
23 2014, April 1st, 2014, August 11th, 2015, October 21st,
24 2014, July 22nd, 2014, April 22nd, 2014, and
25 August 28th, 2012. And then the stand alone is

1 July 22nd, 2014.

2 CHAIRMAN HOUSE: Okay.

3 MR. HUNTER: Okay.

4 CHAIRMAN HOUSE: So we don't have it.

5 MR. HANSEN: Yes, you do.

6 MEMBER NELSON: I think you do.

7 CHAIRMAN HOUSE: Okay. So we do have it,
8 okay.

9 MR. HUNTER: Okay. So let's -- let's --
10 let's --

11 CHAIRMAN HOUSE: All right. Let's go ahead.

12 MR. HUNTER: Let's put it up.

13 BY MR. HUNTER:

14 Q Councilman Gardner, could you please read
15 the -- the title of this document?

16 A As near as I can tell it says, redevelopment
17 agency Housing Authority minutes Tuesday, April 1,
18 2014, 2:00 p.m.

19 Q Okay. And --

20 A There may be something above that, I can't
21 see the top.

22 Q I think it says city council. I'm not -- I
23 can't --

24 A That -- that would not be unusual for it to
25 say that.

1 Q Yep, okay. And you -- you -- you read the
2 date as well, correct, April 1st?

3 A It says April 1, 2014.

4 Q Yep. Could you read what it says under city
5 attorney report on closed sessions?

6 A The city attorney announced that there were
7 no reportable actions taken on the closed session held
8 earlier in the day.

9 Q Okay. Do -- do you -- do you -- earlier --
10 previously we talked about statements in the Press
11 Enterprise -- statements actually on council memos by
12 three of your colleagues stating that a vote was taken
13 on this day. Do you remember a vote being taken on
14 this day? Just out of curiosity.

15 A I am unable to discuss what may or may not
16 have occurred in closed session.

17 Q Okay.

18 A The minutes would indicate nothing
19 reportable --

20 Q Okay.

21 A -- occurred in that closed session.

22 MR. HUNTER: Could we get to the next -- the
23 next page, please?

24 BY MR. HUNTER:

25 Q And all this is, is the approval of the --

1 the minutes, right? Could you read the very top where
2 it says under minutes?

3 A Minutes of the city council meeting of
4 April 1, 2014, were approved as presented.

5 Q And -- and your name is on there as having
6 approved them, correct?

7 A I see my name. The sheet, as it is shown
8 does not show the vote.

9 Q Yeah, but that -- it's typical for -- for --
10 if you weren't there, it's going to be shaded. That's
11 for people who aren't at the meeting. And -- and under
12 consent calendar items quite as this, there would be an
13 X in all. You know, if you -- if you had disagreed
14 with the vote, it would be -- it would show up on there
15 as an X, correct?

16 A I -- I'm only saying that I don't see an
17 indication that I voted.

18 Q Okay.

19 A My name is there.

20 Q Okay. I think it's common practice that this
21 is the way it's recorded. I mean, I don't know how
22 often you read the minutes, but --

23 CHAIRMAN HOUSE: Sir, I think we're starting
24 to get a little bit --

25 MR. HUNTER: Okay. Sure.

1 CHAIRMAN HOUSE: -- off again.

2 MR. HUNTER: Let's go to the next -- the next
3 page, please.

4 CHAIRMAN HOUSE: I would also remind you, sir,
5 that your complaint has to do with the 22nd of -- of
6 July. We're going to be connecting the dots here --

7 MR. HUNTER: Sure.

8 CHAIRMAN HOUSE: -- somehow?

9 MR. HUNTER: Oh, yeah, for sure, because --

10 CHAIRMAN HOUSE: Okay.

11 MR. HUNTER: -- I'm -- I'm showing that --
12 that actions were --

13 CHAIRMAN HOUSE: All right.

14 MR. HUNTER: -- were -- were not reported and
15 that Councilman Gardner voted to approve those minutes,
16 that -- no -- that show no -- no vote even though
17 they're required by the Brown Act to be reported out.

18 BY MR. HUNTER:

19 Q So on -- on this one, could you read the --
20 the title and the date on this memo, please?

21 A It says on it, city council and successor
22 agency to redevelopment agency minutes, April 22, 2014.

23 Q Okay. And could you read under city attorney
24 report out of closed session, what it says?

25 A The city attorney announced that there were

1 no reportable actions taken on the closed sessions held
2 earlier in the day.

3 Q Okay.

4 MR. HUNTER: Please the next slide, please, or
5 next page.

6 BY MR. HUNTER:

7 Q And this is -- once again, could you read
8 under minutes really quickly?

9 A Sorry, under minutes. The minutes of the
10 city council meetings of April 22nd and 29, 2014, were
11 approved as presented.

12 Q And your name is on that again as not being
13 absent and not voting against. In fact, it says,
14 motion second, all ayes. You can --

15 A Yes, this --

16 Q -- see how it's recorded.

17 A This one does, in fact, say that.

18 Q Yeah. And -- and -- and that's so people
19 know generally, when there's no opposition, it doesn't
20 actually put an X there if you voted in favor, it just
21 puts blank for all everything below it, okay?

22 MR. HUNTER: So the next page, please.

23 BY MR. HUNTER:

24 Q This is June 24th, 2014. Could you read what
25 it says? Could you read the title and -- and the date

1 again?

2 A City council and successor agency to the
3 redevelopment -- or to redevelopment agency minutes,
4 June 24, 2014.

5 Q And could you read what it says under city
6 attorney report on closed session?

7 A Councilmember Adams announced that during the
8 closed session, pursuant to government code
9 54956.9(d)(2), the city council voted unanimously to
10 hold a public hearing on July 22, 2014, at 1:00 p.m.,
11 regarding the investigation of Councilman Soubirous.

12 Q And that's good. That's good right there.
13 Thank you.

14 MR. HUNTER: And if we could, let's go back to
15 the Brown Act rules again, the Brown Act regulation.

16 BY MR. HUNTER:

17 Q I believe it's 59, on page 59, where you
18 previously said that --

19 MR. HUNTER: It could be 59 plus six, maybe
20 it's 65. It would be under section 54957.1 of the
21 Brown Act. So it's either 59 or 65, I believe. Okay.

22 BY MR. HUNTER:

23 Q You previously had stated that, you know,
24 if -- if -- if things had to be reported out, they had
25 to be reported. This was all inclusive, you know,

1 couldn't report anything that wasn't one of these items
2 here. Could you please show me where under this
3 section 59 -- 54957.1 it would describe how you could
4 report this action under the rules here if this was
5 supposably all inclusive? Could you -- could you show
6 me that on here, Mr. -- Mr. Gardner?

7 A I -- I -- I don't know that it is there. The
8 city attorney advised what was reportable, what was
9 not, and made a report accordingly.

10 MR. HUNTER: Okay. For the record it's --
11 it's not on there anywhere. So they -- this is
12 obviously not an all inclusive list of things that need
13 to be reported, okay? But it does once again state,
14 the legislative body shall publicly report any action
15 taken in closed session and the vote.

16 COUNCILMAN GARDNER: Mr. Chairman, for
17 clarification, may we ask the city attorney whether any
18 action taken by a legislative body --

19 MR. HUNTER: I object, I object.

20 COUNCILMAN GARDNER: -- in closed session --

21 MR. HUNTER: I object.

22 COUNCILMAN GARDNER: -- must be --

23 MR. HUNTER: He's not presenting his case. I
24 object.

25 COUNCILMAN GARDNER: -- must be reported.

1 CHAIRMAN HOUSE: I'm going to hold that off
2 until you present your case.

3 COUNCILMAN GARDNER: Okay.

4 MR. HUNTER: Okay.

5 BY MR. HUNTER:

6 Q So you -- let's go to your -- the Brown Act
7 training. The city has Brown Act training, correct?

8 A Yes, it does.

9 Q You have received Brown Act training,
10 correct?

11 A Yes, I have.

12 Q How -- could you estimate how many times
13 you've received Brown Act training since you've been
14 here?

15 A It's required every two years, I've been here
16 10 years, so minimum five as a councilmember and some
17 before that as a member of a board or commission.

18 Q Okay. And so you should be familiar with
19 what the Brown Act says. It's --

20 A I am generally familiar with the Brown Act.

21 Q And the same -- and the same would be true
22 for the Code of Ethics. You've received the Code of
23 Ethics, right?

24 A Yes.

25 Q Okay. You've read it, you're supposed to be

1 responsible for it, we all admit that, okay. So once
2 again, can you cite any authority that allows -- like
3 an actual written document that was voted on, approved
4 by the city council, that allows you, the city council,
5 to sit in judgment and have a hearing on an elected
6 city councilman? Can you provide a document like that?

7 A There may be something in the charter, I'm
8 not sure, but no, I'm not going to --

9 Q Okay.

10 A -- point to a particular document, nor --

11 Q Okay.

12 A -- can you point to one that says, you
13 cannot.

14 Q Well, I can't prove a negative, right? I
15 mean, that's -- it's insane. Okay. So let's go to the
16 next page, please. And this is -- could you please
17 read the -- the -- the title and the date, please?

18 A City council and successor agency minutes,
19 Tuesday, October 21, 2014.

20 Q Okay. And could you read under city attorney
21 report on closed sessions, please?

22 A Councilmember Adams announced that the city
23 council in closed session determined to take no action
24 on the complaint filed by the city manager. I'm sorry,
25 I can't read the next word. I believe it's against,

1 but a hole has been punched in it, Councilmember Davis,
2 and to forward the matter to the district attorney's
3 office for independent review and final determination.
4 There were no reportable actions on the remaining
5 closed sessions.

6 Q And could -- could -- could you show me once
7 again where -- if -- if 54957.1 was supposed to be all
8 inclusive, could you show me where it references that
9 statement out of the city attorney somewhere in
10 54957.1?

11 A I don't believe that Councilmember Adams was
12 ever the city attorney.

13 Q Oh, sorry, sorry. Okay. You're -- you're --
14 you're correct. That -- you -- you got me. Okay.
15 Could you show me where the statement made by
16 Councilman Adams would be covered anywhere under
17 54957.1?

18 A No.

19 Q Okay, perfect. So it's not all inclusive.
20 So let's go, and I'm almost done and you can get down
21 in a second out of the hot seat.

22 MR. HUNTER: I'd like to go to page 1032 of
23 the record. It's -- it's -- it's the transcript. And
24 once again, it must -- it might be plus six, so I don't
25 know if it's 1032 or 1038. In fact, it's 1030 -- it

1 starts on 1031. I'm sorry.

2 BY MR. HUNTER:

3 Q And at the very bottom of that page, there's
4 a statement by Councilmember Gardner, it says.

5 MR. HUNTER: Is it 1031?

6 MEMBER NELSON: (Indiscernible).

7 MR. HUNTER: It's -- no. It's -- it's -- it
8 says Councilman Gardner at the very beginning, okay.
9 And if -- if I could, I'd like to just make some sort
10 of quick closing remark. Do you see that?

11 MEMBER NELSON: (Indiscernible).

12 MR. HUNTER: Okay. 1031, so I got the right
13 page, okay.

14 BY MR. HUNTER:

15 Q Mr. Gardner, are you there?

16 A Yes, I am.

17 Q Okay. So could you please read your
18 statement? This is at -- first of all read the
19 document. What is the title of the document?

20 A The title of this page says city council
21 meeting, Riverside City Council meeting July 22, 2014,
22 149.

23 Q Thank you. And could you read beginning
24 with, okay, at the very bottom of that page? Could you
25 read your entire statement?

1 A It says, okay. And if I -- I could, I'd like
2 to just make sort of a quick closing remark. Yeah,
3 I -- I think we can learn three things from today and
4 everything that led up to today. The first is, is that
5 this process is irretrievably broken and it does more
6 harm than good. Second is that the process and the way
7 that we all have implemented it is tearing us apart as
8 a council and as a city. And the third is that we, as
9 elected officials, have to be really careful in what we
10 say and in choosing the words we use.

11 Would you like me to go on?

12 Q Yes, please.

13 A So words take on a weight beyond what they
14 really deserve simply because of the position we hold.
15 And it gives us weight, that as regular people, we
16 don't -- we don't carry. Our challenge is to fix the
17 process and to find a way to move forward together for
18 the good of our city. And I request that each of us,
19 me, too, is that we will put aside our differences and
20 work hard to make that happen.

21 Q Okay. And so what did you mean when you said
22 our -- our -- our -- when you said that the process is
23 irretrievably broken? What did you mean by that?

24 A The process for investigating the complaints
25 that were filed against two councilmembers, it did not

1 work well.

2 Q All right.

3 A There's no question about that.

4 Q And -- and secondly, you would admit that the
5 way you've implemented -- it says, the way you've
6 implemented it was tearing apart the council and the
7 city, you'd agree with that? You said that in the
8 statement, right?

9 A I did say that.

10 Q Okay. That's good.

11 MR. HUNTER: I -- I believe you can step down
12 now.

13 COUNCILMAN GARDNER: Thank you.

14 MEMBER TUCKER: (Indiscernible).

15 CHAIRMAN HOUSE: I -- I was just going to
16 bring up, because we're standing right on 3 o'clock,
17 which is where we agreed we would talk about this. I
18 think in fairness we spent 5 to 10 minutes going back
19 and forth about what was on what page and what pages
20 were going to be allowed. I -- I think, you know, in
21 total fairness here, maybe another 10 minutes, and then
22 we'll discuss how much farther we're going to go. Does
23 that sound okay to everybody?

24 MEMBER: (Indiscernible).

25 CHAIRMAN HOUSE: No. I'm just --

1 MEMBER: Yeah.

2 CHAIRMAN HOUSE: -- acknowledging, yeah.

3 MEMBER TUCKER: Yeah. My -- my question was,
4 was the understanding that it was going to be
5 30 minutes of testimony from Councilman Gardner or
6 30 minutes of -- of Mr. Hunter's presentation of his
7 facts?

8 CHAIRMAN HOUSE: Thirty minutes -- 30 minutes
9 of -- of Mr. Hunter's presentation of facts and
10 then we'll --

11 MEMBER TUCKER: I'm perfectly comfortable for
12 both.

13 CHAIRMAN HOUSE: But like I say, he's got
14 probably another 10 minutes, because we ate --

15 MEMBER TUCKER: Yeah.

16 CHAIRMAN HOUSE: -- at some of that.

17 MEMBER: (Indiscernible).

18 MEMBER TUCKER: I -- I would be comfortable
19 to 3:15.

20 CHAIRMAN HOUSE: Sounds good to me.

21 Please go ahead, Mr. Hunter.

22 MR. HUNTER: Thank you. So let's get into
23 the -- to the facts now or into the evidence. And
24 let's go to page -- actually let's go ---- -- let's go
25 to Councilman Steve Adams's statement on page 964. And

1 for the -- for the sake of efficiency and speed, I'm
2 going to just, I'm going to assume you'll catch up, and
3 I'm going to start reading, okay?

4 So Councilman Adams -- Adams says, just a
5 quick moment on the process. It was my turn to be
6 mayor pro tem. I was contracted -- contacted by the
7 city attorney that a complaint was coming forward, and
8 I was told that by government code if that complaint
9 happened, we would have to take action. We had a
10 closed session meeting. The closed session -- council
11 voted to approve and hire an outside investigator and
12 to see if there were any grounds to the complaint, and
13 the city manager advised what he was willing to pay.

14 And then on the next page he says, and we
15 took a vote with the council before every step. It was
16 approved before we signed any contract, and it was
17 approved that it would be within the city manager's
18 financial limit -- limits. And if he -- if he went
19 over the limits, he would have to come back and get
20 approval from the -- from the -- from the council.

21 So each member of the council here, with the
22 exception of Mr. Soubirous, I think Mr. Davis may have
23 gone -- been gone that evening, did vote unanimously,
24 we did on two different occasions. So what I'm just
25 trying to introduce here is that two votes did happen.

1 They happened in closed session, and I've already shown
2 to you that they were never reported. And this is by
3 Councilman Gardner -- Adams, who is no longer on the
4 council. He has no reason to be biased in this
5 whatsoever in his explanation of the events as they
6 occurred.

7 Okay. Page 885 of the record, I'd like to
8 talk about Mayor Rusty -- Rusty Bailey's surmising or
9 summary of -- of -- of the process. And he says the
10 closed session to the city council unanimously with
11 counsel, and that should be s-e-l, not c-i-l,
12 authorizing the mayor pro tem to hire an outside
13 investigator as required by state law and city policy.
14 We had a duty to investigate. Today's hearing agenda
15 was scheduled by unanimous vote of the city council in
16 closed session with our special counsel and the outside
17 investigator to review the evidence and facts of the
18 completed investigation.

19 We are here today to review findings of the
20 investigation as presented by Mr. Gumport, listen to a
21 response from Councilman Soubirous, encourage public --
22 public to comment, allow the council to ask questions,
23 discuss, deliberate, and take action if so necessary.

24 And so once again we have another member on
25 the dais, the mayor this time, saying that, you know,

1 these votes did occur. Once again, we have not seen
2 any -- any proof that they were ever recorded into open
3 session as required by the Brown Act immediately after
4 the votes were taken. And we also have what the intent
5 of the hearing was, as voted on unanimously by the
6 council, which was to have a hearing on Councilman
7 Soubirous and take punitive action if necessary, for
8 which we have no authority anywhere provided by Mr. --
9 Mr. Gardner, he had ample opportunity to do, that that
10 authority was -- was present in any document the city
11 ever created, okay?

12 Now, let's go to page 915 of the record. And
13 it's a comment by Mr. Gumport, who is the investigator
14 on this process.

15 MEMBER: What page?

16 MR. HUNTER: It's 915. And once again,
17 Mr. Gardner has made the -- the accusation that this
18 had to be investigated through this process. It
19 couldn't have gone through the Code of Ethics process,
20 right, because of the labor code. And the labor code
21 is very clear on this, that the hostile workforce
22 environment claim did need to be investigated. That
23 was all that was required to be investigated, okay?

24 And Mr. Gumport kind of says that right here.
25 He says, the claim was made that there was a hostile

1 workforce environment. And he says that while a
2 layperson might understand that a hostile workforce
3 environment is when your boss yells at you or treats
4 you badly, but, in fact, there's a technical legal --
5 legal meaning to the hostile workforce environment, and
6 that is that the harassment or hostility has to be
7 based upon race, religion, something like that.

8 Under the -- under the technical
9 requirements, on the next page, of the city's and the
10 state's anti-harassment laws, there was not a hostile
11 workforce environment. And honestly that's what he
12 should have been hired to investigate, and that was
13 all. When I made similar complaints, and the subpoena
14 I -- I -- I suggested earlier for the Hunter versus
15 Kerr and -- and -- and Wright complaint, you'll see
16 that that's how the city does these investigations.
17 They don't investigate the other complaints. They just
18 investigate the hostile workforce environment.

19 And that would have been relevant, because
20 that would have been done right around the time, or
21 within a couple year's time of -- of this investigation
22 into -- into Soubirous and Davis here, okay? That's
23 how they handle them. This -- this -- this was a
24 process they created for -- for -- for Councilman
25 Soubirous and Davis here was created out of thin air

1 with no authority, okay?

2 Let's go again to page 938 of the record.
3 And I don't want to beat a dead horse too much, so I'm
4 not going to, but once again Mayor Bailey says that
5 that was the will of the council to conduct closed
6 sessions, to vote in closed session to bring this to a
7 public hearing. It was a unanimous vote to bring this
8 to a public hearing for transparency purposes. Now,
9 I've shown you in -- in -- in the -- the documents we
10 put up on the screen that every time the council took a
11 vote after the Press Enterprise started reporting on
12 this story, it was reported out of closed session
13 immediately.

14 If it was, we're going to have a hearing,
15 they reported it. They took a vote, and they reported
16 it out of closed session immediately, okay? If they
17 were going to refer something in the DA, they took a
18 vote, they reported it out of closed session
19 immediately; and I don't see it covered anywhere under
20 the Brown Act. If -- if it's supposed to be all
21 inclusive, this list, as Mr. Gardner has -- has
22 suggested, it should be on there, but it's not.
23 Because you know why, this was never meant to be all
24 inclusive.

25 What was meant to be all inclusive was that

1 the legislative body of any local agency shall publicly
2 report any action taken in closed session and the voter
3 abstention on it, in every action. And I've proven now
4 beyond a reasonable doubt, forget about preponderance
5 of evidence, that those votes that took place on
6 April 21st and April 22nd, were never reported out of
7 closed session, and Mr. Gardner voted to approve those
8 minutes. End of story.

9 Be -- that's beyond a reasonable doubt
10 evidence. And if he violated the Brown Act and he was
11 trained in the Brown Act, then he violated the ethics
12 code per se, reckless indifference.

13 Okay. So let's go to page -- page 952 of the
14 record. And we haven't really touched on this one very
15 much, but it is important, okay, and it's important as
16 to why I need a subpoena of Councilman Davis and
17 Councilman Soubirous, in particular Councilman Davis.
18 Page 952. It is Councilman Davis stating here, I must
19 profess, and we have already deliberated this, folks,
20 behind closed doors to conclusion, each one of us took
21 a vote of exactly how we felt after we deliberated on
22 the charter section 407; we are in violation of the
23 Brown Act. We have no authority to do what we did. It
24 did occur, and it did -- the mayor influence -- I don't
25 know if that's really all that important.

1 I was a part of it unknowingly and later was
2 advised by another municipal attorney that what you
3 did -- what you did was wrong and is an illegal
4 violation of the Brown Act. It should have been
5 discussed in public and you should not ever have taken
6 an individual poll by name, and we did, okay?

7 So if this was adjudicated and voted on, and
8 once again we've seen the minutes from July 22nd, it's
9 included in your record, you will see that there was no
10 report out on July 22nd of a vote that adjudicated the
11 process prior to them stepping into the room, okay?

12 MEMBER: (Indiscernible).

13 MR. HUNTER: Oh, I'm sorry, I'm on page --

14 MEMBER: (Indiscernible).

15 MR. HUNTER: -- 953.

16 MEMBER: I apologize. Thank you.

17 MR. HUNTER: Okay. That could be your third
18 Brown Act violation if that vote was not reported out.
19 And secondly, they shouldn't have been discussing it in
20 closed session anyway prior to taking it into open
21 session. This is another Brown Act violation per se.

22 So let's go to page 961 of the record. It's
23 Councilman Melendrez. Once again, he's not -- he's --
24 there's no bias on account of -- on Councilman
25 Melendrez's part to like try to hide or cover up

1 things, I think. He says, I am concerned about how
2 this whole thing has been handled and some of the
3 processes that have been used. He says, the concern
4 here is generally as a city, when you have a hostile
5 workforce environment claim or complaint, it's one
6 that's given to a supervisor and then handled by our
7 human relations commission or committee or our
8 department, excuse me, human resources department, and
9 then it's up to the city attorney to represent us to
10 the city. It does not get to the council.

11 Which is precisely what I've been saying all
12 along, that an investigation was required for the
13 hostile workforce environment claim, it would have been
14 handled internally and -- and -- and adjudicated that
15 way and the rest of it should have gone through the
16 Code of Ethics process and Mike Gardner should have
17 known that because he had a copy of the Code of Ethics
18 and he understands that everybody is a member of the
19 public and can bring those complaints like everybody
20 had in the past for sections 407 violations or any
21 other violations under the sun against an elected
22 official, okay?

23 Why the process change going on with
24 Councilman Melendrez's statement, why the process was
25 changed, you heard a lot of comments about this, I

1 personally think that it was the wrong way to go. You
2 know, I -- I probably -- I'll probably bring that up
3 for Councilman Melendrez's hearing at some point in
4 time because it kind of says, well, why did you approve
5 the hearing if you thought it was the wrong way to go,
6 but I also believe that there was questions about
7 workplace, going to employees and inquiring and not
8 inquiring -- inquiring, whatever, he's going back and
9 forth here.

10 I think it was important for us to be made
11 aware of that and possibly refer to the Code of Ethics
12 complaint process. He's admitting this is how it
13 should have been handled in retrospect, that this was
14 completely botched. So the individuals in that process
15 could address that. Okay.

16 I shouldn't have that much more, sorry.
17 Let's go to the -- the -- the Davis and Soubirous
18 settlements so we can see -- well, actually let's --
19 let's just choose a little bit more here first. Page
20 38 of the record. And it's the summary of a legal
21 expert that was contacted by the Press Enterprise on
22 the -- on the issue, and he says officials acknowledge
23 that council discussed the -- the complaints in closed
24 session, but meeting minutes didn't -- don't show that
25 the city ever publicly recorded the council's decisions

1 to investigate or the related spending.

2 One expert on California's open government
3 law, known as the Brown Act, said it appears that the
4 city legally at least should have reported on the
5 council's closed-door decisions on the complaints and
6 may have been required to discuss them in public in the
7 first place. The -- okay. He goes on to say in page
8 39, he says, Francke said that it could be legal to
9 keep the investigations -- sorry -- he says, voting to
10 put the pro -- mayor pro tem in charge of hiring an
11 investigator wouldn't get the council any lawful
12 secrecy. That would have been a reportable action no
13 matter what kind of closed session you were claiming it
14 to be.

15 This is an expert on the Brown Act. The
16 mayor, on the same page, Mayor Bailey says the city
17 council made a mayor -- a decision to investigate and
18 give the mayor pro tem the ability to sign the contract
19 with Gumport. He said he thought that had been
20 reported as required, okay? So the mayor even is
21 saying, that should have been reported as required by
22 the Brown Act. All right. So we've heard quite a few
23 expert's opinion, and we've -- we've -- I don't think
24 we're disputing that these votes took place.

25 Let's get to the -- the -- what happened here

1 in -- in conclusion and summary. I think this is the
2 last thing I need to introduce today. Let's go to the
3 Davis and Soubirous settlements. It's page 123. And
4 this is on the Mike Davis -- Mike Soubirous settlement
5 at the very bottom of the page. It says city attorney
6 report on closed sessions. Maybe it's 129. Okay.
7 129.

8 It says, city attorney Geuss reported that in
9 closed session with the city council approved by a vote
10 of six in favor and none opposed with Councilman
11 Burnard absent and a request of Councilman Soubirous
12 for reimbursement of attorney fees in the amounts of
13 10,000 -- or 1,055 related to an investigation of
14 Councilman Mike Soubirous.

15 Further, the city council makes the following
16 statement: We regret, regret, the actions taken with
17 regard to the investigation of Councilman Soubirous.
18 This includes the process, once again we've talked a
19 lot about the process, of discussing the matter in
20 closed session, yet hearing the matter -- matter
21 publicly, denying the councilmember a right to rebut
22 the witnesses. We regret any damages to Councilman
23 Soubirous's reputation and sincerely hope this can move
24 the council forward in the spirit of cooperation.

25 Now, why would the council issue an apology

1 to Councilman Soubirous as part of a settlement, okay,
2 saying that they regret any damages to his reputation,
3 and they regret discussing the matter in closed
4 session, hearing it publicly, and then his due process
5 rights? I consider -- I consider that evidence per se
6 that they have broken the public trust here. And we'll
7 get into that in the closing -- the -- the -- the close
8 of my last piece of evidence that I'm going to -- I'm
9 going to be delivering today.

10 On page 130 of the record, and we'll talk
11 about the Paul Davis settlement. And this was, the
12 previous settlement was done on February 23rd, 2016,
13 okay? And this is once again city attorney report on
14 closed sessions. City attorney Geuss announced four
15 settlements approved by the city council as follows:
16 One, on November 10th, 2015, Paul Davis versus City of
17 Riverside; the claim was settled in the amount of
18 40,000 with the following public acknowledgment, no
19 charges were ever filed or brought against Councilman
20 Davis with regards to the events of 2014. The city
21 council regrets, regrets, these events took place and
22 hopes to put them behind us and move forward in the
23 spirit of cooperation.

24 Okay. So let's get back to the -- the -- the
25 Code of Ethics that -- I'll close with this reference,

1 okay? Let's get back to what it actually says in the
2 Code of Ethics and Conduct. And I believe this is
3 page -- under what I filed under, okay? This is page
4 19, and it is (2)(d), line 7, creating trust of local
5 government. Elected and appointed officials of the
6 City of Riverside shall aspire to operate the city
7 government and exercise their manners in --
8 responsibilities in a manner which creates a trust in
9 their decisions in the manner of delivery of the
10 programs through the local government.

11 Okay. If this -- if these people were
12 aspiring to operate the city government in that way,
13 they wouldn't be a year later issuing public apologies
14 and giving out public money to councilmembers they have
15 wronged admitting that the process was flawed,
16 admitting that due process rights were violated, and --
17 and reputational harm was given -- was done to some of
18 these -- these councilmembers. You wouldn't make that
19 apology, you would take this to court if you thought
20 you had a defensible action, okay?

21 Secondly, you wouldn't have Mike Gardner
22 making the statements he did towards the end of the
23 hearing on July 22nd about how irretrievably broken the
24 process was. Well, if the process was irretrievably
25 broken, why was he bringing it forward for a public

1 hearing to begin with, unanimously voted on it, okay?
2 Why would Andy Melendrez be saying, this should have
3 gone to the ethics -- Code of Ethics and once the
4 hostile workforce environment claim had been stripped
5 out of it.

6 If this was aspiring -- I could read all the
7 comments. I won't read the comment cards, I'll save
8 you that. There's probably 30 comment cards included
9 in the record of citizens coming forward to that
10 hearing on July 22nd, 2014, all complaining about the
11 process and what was being down to these
12 councilmembers. That does not -- the elected and
13 appointed officials shall aspire to operate the city
14 government and exercise responsibility in a manner
15 which creates a trust. That doesn't create trust.
16 That created a tremendous distrust in the community and
17 the city council.

18 Mr. Gardner says that on the record at the
19 hearing. And with that I close -- I close my evidence.
20 Thank you.

21 CHAIRMAN HOUSE: Thank you, Mr. Hunter.

22 Mr. Gardner.

23 COUNCILMAN GARDNER: There are a lot of dead
24 trees in the room. As -- as I said in my opening
25 statement back in February, this complaint was

1 presented to the council under the California labor
2 code. I do not know why the complaining parties
3 elected to file their complaint that way as opposed to
4 under the Code of Ethics and Conduct, but they did, and
5 therefore the city had no choice but to process the
6 complaint as an allegation of a violation of the
7 California labor code, and labor code contains things
8 beyond a hostile workplace.

9 Since the initial complaints were filed as
10 allegations of violation of the labor code, it would be
11 appropriate for the council to discuss those complaints
12 and how to investigate them and what, if any, action to
13 take in regard to them in closed session as either a
14 personnel matter or as potential litigation because
15 labor code violations tend to become litigious, often
16 lead to litigation, and actually in this particular
17 case there was a lawsuit filed.

18 Once a labor code violation is filed, the
19 employer, the city in this case, with the council
20 acting on behalf of the city, had no choice but to
21 process the complaint as a labor code violation. It
22 would have been highly improper for the council to say
23 to the complaining parties, why don't you take this
24 back and file it a different way, just as it would be
25 improper for the city to say, why don't you just let it

1 slide. You can't do that.

2 Once -- once the complaint is filed, you have
3 to follow -- you have to follow the proper process, and
4 you are guided by your human relations department and
5 human resources department and your -- your counsel, in
6 this case the city attorney.

7 I think it's important for you, as the
8 adjudicators in this case, to remember that
9 Mr. Hunter's presentation, he mentioned several times
10 that the complaints were filed and investigated as
11 violations of state law and city policy. Nowhere did
12 it say that the complaint was filed as an allegation of
13 violation of the Code of Ethics and Conduct. And in
14 fact, it was not, neither of the complaints were.

15 If you accept that a violation of the Brown
16 Act occurred, which I do not, again, remember it would
17 be appropriate for the council to discuss an allegation
18 of a violation of the labor code in closed session, and
19 it should have been reported out, that would be on the
20 person who reported it out, not on the council as a
21 whole. The city attorney or the mayor pro tem at the
22 time are the people who made the announcements of what
23 was reported out of city council.

24 City attorney, when no action was taken, no
25 reportable action was taken, typically the mayor pro

1 tem when an action was taken. I didn't make any of
2 those reports.

3 The minutes, which we spent a long time on,
4 only reflect what was actually said in the prior
5 council meeting. It doesn't say whether they're right,
6 wrong, or indifferent. The council can correct the
7 minutes as to whether that was what was said or not,
8 but the minutes don't -- they don't show a violation or
9 a nonviolation. They only -- only show what was -- was
10 said.

11 So in -- in sort short, I think the council,
12 and I in particular, acted appropriately. We were
13 presented with a claim. We had to process it as the
14 law and the city policy dictate. We did that. The
15 actions that were reported out of closed session were
16 on the advice of the city attorney, which I accepted, I
17 have no reason to question. So I -- I feel that I have
18 done nothing wrong, and I would ask that you find that
19 this complaint is unfounded as is with regard to me.
20 Thank you.

21 CHAIRMAN HOUSE: Thank you, Mr. Gardner. And
22 at this time we'll move to closing statements. Jason,
23 you have, I think --

24 COLLEEN NICOL: Four minutes.

25 CHAIRMAN HOUSE: Yes, thank you. -- four

1 minutes remaining.

2 MR. HUNTER: Can I ask a technical question
3 before I -- before I begin my statements here? Now,
4 I'm not introducing this as evidence, this is my
5 closing, I'd like to put my charts back up. I'm
6 just -- this is not evidence for you to consider as
7 evidence, I'm making a closing statement now, correct,
8 now I can put my -- my calendar back up?

9 CHAIRMAN HOUSE: He was allowed to do so in
10 the other hearings, so does anybody have a problem with
11 that?

12 Okay, go ahead, sir.

13 MR. HUNTER: All right. So let's rebut all of
14 Mr. Gardner's statements he just made there really
15 quickly. Number one he's saying that, hey, I didn't do
16 it, the city attorney did it if there were Brown Act
17 violations. Guess what, that is not an excuse for
18 violating the Brown Act. Voting on the minutes, you've
19 violated the Brown Act when you've had proper training
20 on the Brown Act. You have violated the Brown Act per
21 se, not only by doing all the things they did in closed
22 session, then not reporting out.

23 There's no excuse. Reckless indifference of
24 the law is the same thing as, you know, breaking the
25 public trust aspiring. It's -- it's -- it's the same

1 thing, okay? There's no excuse. He can't say he
2 should -- he didn't -- you know, he didn't know better.
3 He had, what did he say, five Brown Act trainings,
4 okay? He's also had Code of Ethics he's had to sign
5 that he was -- he was -- he was aware of all of this.
6 He knew the way to bring it.

7 He says that there was a labor code, there
8 was a separate complaint process for a labor code. I
9 can prove to you beyond a reasonable doubt that labor
10 code investigations, hostile workforce environment, if
11 you grant me the subpoena on my complaint against Kerr
12 and Wright, are not handled the way he says they are,
13 by -- by -- by -- by process by the -- by the -- by the
14 city manager's office. I know that.

15 He's provided no evidence of some alternate
16 process by which to bring the complaints that weren't
17 the hostile workforce environment, either under the
18 labor code or any other city policies, provided no
19 evidence that there was another process that was
20 preapproved by the city council, which it would have
21 had to have been. And secondly, you can't discuss this
22 thing as a person -- as a personnel matter.

23 City councilmembers who -- who were the
24 subjects of the allegations are not considered city --
25 employees of the city under the Brown Act per se. And

1 we can go back and I can quote that for you, okay? So
2 the whole idea that the complaints are made unto city
3 councilmen and that allowed them to -- to -- to hear
4 these things under the closed session is preposterous.
5 If it -- if it was complaints about employees, correct,
6 but the complaints were against the councilmembers,
7 okay?

8 So you see here on April 8th what happened
9 April 2014. There were votes taken, and then a week or
10 two later, the -- the minutes were approved. The --
11 the -- votes were made under the Brown Act. They were
12 required to be recorded.

13 Okay. Next page, please. And -- and the
14 Brown Act violations per se, and if they broke --
15 broke -- if you violated the Brown Act, you violated
16 the ethics code per se, okay, there's no excuse for
17 ignorance, on June 24th closed session to have an open
18 hearing. Once again they -- they -- they were
19 discussing the process by which to bring this complaint
20 forward. They were creating a new process that wasn't
21 allowed in closed session.

22 It's a Brown Act violation -- violation to
23 discuss it, and it was also a violation of our Code of
24 Ethics process -- process, right? Because we had
25 a process to -- to -- to dispose of these -- these

1 additional complaints. We didn't use it.

2 Next please. And then we had an adjudicating
3 vote pass before they even walked into the closed
4 session. That's another Brown Act violation per se.
5 And if there was a vote taken and not recorded, another
6 Brown Act violation.

7 Okay. If you can flip -- flip to the back,
8 please. If you sustain on my allegations that there
9 were secreted votes not recorded in the minutes, and if
10 you sustain on my allegations that the process, not the
11 investigation, itself, I'm not saying they couldn't
12 talk about the investigation and the legal liability
13 in -- in closed sessions, the process of bringing the
14 complaint forward to a hearing, okay, that should have
15 been discussed in open session including any punitive
16 punishments, all right? It should have been discussed
17 in open session regarding the investigations and
18 hearings and if you sustain on my allegations that the
19 Code of Ethics was violated by allowing the complainant
20 to take allegations -- allegations directly to the city
21 council, bypassing our existing process at the time,
22 okay?

23 Hostile workforce environment, different
24 story, but everything else in the past, and I've shown
25 you the proof in the past, they've always gone through

1 the Code of Ethics and -- and -- and conduct complaint
2 process. If -- if you sustain on those, if you believe
3 those things actually did happen, then the Code of
4 Ethics that was in place at the time was violated per
5 se. The electeds have Brown Act -- training on the
6 Brown Act and the Code of Ethics and Conduct. They
7 cannot claim ignorance as a defense.

8 I don't have to go through, oh, they aspired
9 to create public trust and blah, blah, blah. Reckless
10 indifference and negligence is the same thing.

11 CHAIRMAN HOUSE: Your -- your time is up,
12 Mr. Hunter.

13 MR. HUNTER: Yeah.

14 CHAIRMAN HOUSE: Could you please wrap?

15 MR. HUNTER: Yeah. Please -- please find this
16 to be an ethics code violation, and also additionally,
17 I think within your powers, to file a bar complaint
18 against Greg Priamos, as it seems he was a serial Brown
19 Act violator and not reporting out of closed session.
20 Thank you.

21 CHAIRMAN HOUSE: Thank you.

22 And, councilman, your closing statement.

23 COUNCILMAN GARDNER: Thank you. I won't take
24 very long. This will be perhaps --

25 CHAIRMAN HOUSE: You -- you have 12 minutes.

1 COUNCILMAN GARDNER: I don't think I need
2 them.

3 CHAIRMAN HOUSE: Okay.

4 COUNCILMAN GARDNER: I -- I hope that this is
5 the correct time to ask the city attorney for some
6 guidance on whether there are things that are decided
7 in closed session that are not reportable actions.

8 MR. HUNTER: I object to that.

9 CHAIRMAN HOUSE: I'm -- I'm going to refer to
10 my -- to my colleagues here. I think that the
11 objection is -- is well stated. This should have been
12 done under evidence.

13 MEMBER NELSON: I have some objection to
14 putting our city attorney on the hot seat, because in
15 the ethics rules we've tried to say the city attorney
16 does not testify or provide evidence.

17 CHAIRMAN HOUSE: That's correct.

18 Wendel, did you want to add to that?

19 MEMBER TUCKER: Yeah. I -- I -- I agree. And
20 in -- in -- in some other circumstances that we've
21 encountered on this, there has been concern that --
22 that the -- that the attorney was approaching
23 testimony.

24 CHAIRMAN HOUSE: Yes. I think we're -- we're
25 going to -- we're going to disallow that one,

1 councilman.

2 COUNCILMAN GARDNER: Okay. Well, I will -- I
3 will tell you that on a regular basis there are things
4 that are discussed in closed session that do not
5 constitute reportable action and that are not reported
6 out. Sometimes they lead down the road to something
7 that is reportable and the end result is reported out.
8 Again, in this case the complaints, for whatever
9 reason, were not filed as complaints under the Code of
10 Ethics and Conduct, they were filed as complaints under
11 the state labor code.

12 And as such, it would be appropriate for the
13 council to discuss them as potential litigation because
14 frequently labor code complaints end up as litigation,
15 and in fact, this one did. And as under -- under
16 personnel, because the complaints were filed by and
17 affected employees of the city, regardless of how you
18 want to regard the elected officials. I'll tell you
19 that is a tough one to figure out, how you classify an
20 elected official.

21 We are paid by the city. We are elected by
22 the electorate. We have multiple responsibilities. We
23 have fiduciary responsibility to operate the city. We
24 have a responsibility to our constituents. It -- it
25 really is mixed, and it is not easy to say an elected

1 official needs to be treated as an employee or not as
2 an employee.

3 In this case we took the advice that we were
4 given and followed a process, but regardless of whether
5 you accept the -- the -- the justification for
6 discussing the complaint in closed session as -- as
7 employment related or employee related, the potential
8 litigation is clear and would have been justification
9 for the council to have discussed these things in
10 closed session.

11 So once again, I think I acted in good faith.
12 I think the council acted in good faith. I don't
13 believe there was any violate -- Brown Act violation in
14 the processes. My comments on the process being broken
15 referred to the whole thing from the beginning, the
16 fact that a complaint was even filed, rather than the
17 complaining parties trying to work out their problems
18 with the people they had a problem with or asking for
19 the city manager's performance review in closed session
20 and saying, look, I've got a problem with a couple
21 councilmembers, we can't solve it, council, fix it for
22 us.

23 Those were other paths that could have been
24 taken. For whatever reason they weren't. We were
25 presented with a complaint. I think we dealt with it

1 correctly. I don't believe there were any violations.
2 And I will again ask you to find this complaint
3 unfounded. Thank you.

4 MEMBER WRIGHT: Time for questions?

5 CHAIRMAN HOUSE: Thank you, Councilman
6 Gardner.

7 It -- it says at this point that the chair
8 shall facilitate -- shall facilitate that the
9 deliberations and it is at this point the hearing panel
10 shall discuss any requests by the parties for the
11 issue -- pardon me, issuances of subpoenas or waivers
12 of privilege. Do you want to do that first?

13 MEMBER NELSON: Yes, please.

14 CHAIRMAN HOUSE: Okay.

15 MR. HANSEN: (Indiscernible).

16 CHAIRMAN HOUSE: Yeah. I think -- I think,
17 Jason, you did have a request for subpoena. Did you
18 want to bring that forward at this point, then we can
19 discuss it?

20 MR. HUNTER: Yeah. There were -- there were
21 two requests --

22 CHAIRMAN HOUSE: Okay.

23 MR. HUNTER: -- specifically for subpoenas.
24 One was to subpoena the testimony of Councilman Davis
25 and Councilman Soubirous, and secondly to subpoena the

1 investigatory report dealing with hostile workforce
2 environment, et cetera, of Hunter versus Kerr and
3 Wright in 2012.

4 MEMBER NELSON: Well, to start with, Hunter
5 versus Wright versus Kerr, I don't even know who Wright
6 and Kerr are, so we have to start with who they are.

7 MR. HUNTER: Reiko Kerr was assistant general
8 manager of RPU; Dave Wright was the general manager of
9 RPU, whom I filed complaints about in 2012, part of
10 which it consisted of a hostile workforce environment
11 complaint. And you'll see that once you file a
12 complaint, and this was a whistleblower complaint, the
13 city does not actually investigate your whistleblower
14 complaint, it only investigates the hostile workforce
15 environment complaint and moves on.

16 So it's totally inconsistent with what they
17 did with Soubious and -- and -- and Davis.

18 CHAIRMAN HOUSE: Okay. Jeff.

19 MEMBER WRIGHT: Mr. Hunter, did -- do you not
20 have copies of those original complaints in your
21 personal files?

22 MR. HUNTER: No. I was -- I've -- I've
23 requested the complaint many, many, many times over the
24 years, and I -- the city refuses to give it to me.

25 MEMBER WRIGHT: But you filed the complaint?

1 You --

2 MR. HUNTER: I filed --

3 MEMBER WRIGHT: -- didn't -- you didn't keep
4 records of your submissions?

5 MR. HUNTER: Yeah, but I never received a copy
6 of the investigatory report from the investigator,
7 right, that's the report.

8 MEMBER WRIGHT: So you're specifically asking
9 for an investigator's report?

10 MR. HUNTER: Yes.

11 MEMBER WRIGHT: Okay.

12 MR. HUNTER: Yes. Sorry if -- if that was
13 unclear.

14 CHAIRMAN HOUSE: Are there any other -- are
15 there any other questions or comments on
16 Mr. Hunter's --

17 MEMBER WRIGHT: I have one more.

18 CHAIRMAN HOUSE: All right. Jeff, I'm sorry,
19 go ahead.

20 MEMBER WRIGHT: Can -- has the city given you
21 any -- have -- have they stated any reason as to why
22 they haven't provided you with that investigatory
23 report?

24 MR. HUNTER: I think the most recent reason
25 they gave me was it was exempt from disclosure under

1 the CPRA because of privacy issues due -- dealing with
2 the people I was making the complaints about, because
3 their information or whatever, something was in there
4 that was private for them.

5 MEMBER WRIGHT: And when did you receive that
6 information?

7 MR. HUNTER: I got that as part of the record.
8 The most recent thing I got was part of the records
9 request when I submitted this complaint back in
10 December, I put in a request for evidence, and that was
11 one of the things I -- I asked for, and that was the
12 response I got back from the city attorney's office.

13 MEMBER WRIGHT: And was there a reason why
14 that wasn't part of our submission that we received in
15 these hearings?

16 MR. HUNTER: Well, I -- I can't -- I can't
17 provide something that the city attorney's office won't
18 give me.

19 MEMBER WRIGHT: You didn't get a communication
20 from the city attorney's office saying, we're not
21 giving you this information because?

22 MR. HUNTER: Oh, I -- I do have that.

23 MEMBER WRIGHT: Is there a reason why you
24 didn't submit that in the packet that we received?

25 MR. HUNTER: Well, I don't -- I don't

1 understand the relevance of submitting that to --

2 MEMBER WRIGHT: If you're making a --

3 MR. HUNTER: -- the --

4 MEMBER WRIGHT: If you're making a case that
5 you need it and the city attorney isn't giving it to
6 you for some reason, certainly --

7 MR. HUNTER: I'm bringing up --

8 MEMBER WRIGHT: -- letting the hearing --

9 MR. HUNTER: Sure.

10 MEMBER WRIGHT: -- hearing panels know about
11 that would --

12 MR. HUNTER: That's why --

13 MEMBER WRIGHT: -- might have been very
14 helpful.

15 MR. HUNTER: That's why I brought up the
16 objection, right, that's why I made the request for the
17 subpoena. I made it previously on -- on Councilman
18 Gardner's case when we convened back in February, and
19 I'm making it again here today.

20 MEMBER WRIGHT: All right, thank you.

21 CHAIRMAN HOUSE: Any other discussion on
22 Mr. Hunter's requests for subpoena? Okay.

23 MEMBER WRIGHT: Point of order. Are we
24 considering -- he's made two requests for subpoenas or
25 two or three, are we considering them in block, or are

1 we considering them sequentially?

2 CHAIRMAN HOUSE: I was going to ask if the
3 councilman had any requests to make, and then we would
4 take them as a group.

5 Keith.

6 MEMBER NELSON: I kind of divided it out
7 individually --

8 CHAIRMAN HOUSE: All right.

9 MEMBER NELSON: -- by my question.

10 COUNCILMAN GARDNER: Mr. Chairman, members, I
11 don't have a request. I would simply tell you that I
12 think those documents are irrelevant to the case at
13 hand. What's before you is whether the council acted
14 appropriately in meetings, and --

15 CHAIRMAN HOUSE: Okay. It -- it --

16 COUNCILMAN GARDNER: -- we did.

17 CHAIRMAN HOUSE: Okay.

18 COUNCILMAN GARDNER: So thank you.

19 CHAIRMAN HOUSE: Thank you.

20 Okay. So should we take these one at a time?
21 Subpoenaing the testimony for Councilman Soubious and
22 Councilman Davis, any discussion? Not seeing
23 anybody --

24 MEMBER TUCKER: Are you going to -- are you
25 ruling -- are you ruling, or are you asking us to

1 assist you in ruling?

2 CHAIRMAN HOUSE: I -- I thought we would get a
3 little discussion, and then -- and then we'll -- we'll
4 come to a ruling here.

5 MEMBER TUCKER: Well, this whole process is --
6 has been an interesting process, because it's difficult
7 as an individual to sit here and totally put it into
8 this hearing only and having sat through three previous
9 ones. So I -- I -- I do not feel that the -- that
10 subpoenaing Soubirous and Davis, as we've decided
11 previously, is -- is appropriate or necessary.

12 CHAIRMAN HOUSE: All right. Anybody else?
13 Gloria.

14 MEMBER HUERTA: Well, I concur. I think that
15 the allegations that were made, we have enough evidence
16 before us to deliberate on without adding any
17 additional documents and without the testimony of
18 either city councilmember as requested. So I would
19 recommend that we not subpoena them.

20 CHAIRMAN HOUSE: Very good. Jeff, Keith,
21 anything you want to adhere before I rule? All right.
22 I am --

23 MEMBER NELSON: Yes.

24 MR. HUNTER: Yes, go ahead, sir.

25 MEMBER NELSON: I don't know if I can say this

1 correctly. Hindsight overflows with wisdom. I do
2 think there was Brown Act violations; however, I think
3 on July 22nd they made the remedy, not specifically
4 within Brown Act time. So that's just my opinion on
5 it. I don't know if it any additional testimony from
6 either side will change that conclusion for me.

7 CHAIRMAN HOUSE: All right. Yeah. And -- and
8 I'm going to chime in at this point that I -- I
9 certainly agree that I don't really think we need to
10 hear it. So I'm going to rule against issuing that
11 subpoena. And then we have --

12 MR. HANSEN: Chair, if I may interrupt for a
13 second --

14 CHAIRMAN HOUSE: Yes, sir.

15 MR. HANSEN: -- chair. The vote on
16 subpoenas -- the decision on subpoenas is required to
17 be voted on by the hearing panel.

18 CHAIRMAN HOUSE: Ah. So then I'll -- I'll --
19 Gloria.

20 MEMBER HUERTA: I'll make the motion that we
21 do not issue subpoena for testimony by either of the
22 two city councilmembers.

23 CHAIRMAN HOUSE: Thank you. Is there a
24 second?

25 MEMBER TUCKER: Second.

1 CHAIRMAN HOUSE: Motion and a second. Any
2 discussion? Okay. The motion is to not subpoena the
3 two councilmen as requested by Mr. Hunter. Let's go
4 ahead and vote, please.

5 MEMBER NELSON: So yes is a no?

6 CHAIRMAN HOUSE: So yes is to not subpoena.
7 And we have a vote of five to one to not subpoena.

8 MEMBER TUCKER: Four to one.

9 CHAIRMAN HOUSE: Pardon me, four to one. I
10 can't count. I'm in the restaurant business. Four to
11 one not to subpoena the council -- the councilmen.
12 Thank you. The other request that he -- that
13 Mr. Hunter made for subpoena was for his action in 2012
14 against Kerr and Wright in a job action. Again, any
15 conversation here?

16 Gloria.

17 MEMBER HUERTA: I don't see a benefit to
18 asking for a subpoena for that record either. I do
19 think we've had enough testimony regarding how things
20 were processed. We have a lot of information in our
21 packet about other complaints that were filed. And I
22 don't see -- I don't believe we need that, so I would
23 make a motion that we not request a subpoena for those
24 records regarding the allegation.

25 CHAIRMAN HOUSE: We have a motion. Is there a

1 second?

2 MEMBER TUCKER: Second.

3 CHAIRMAN HOUSE: And any further discussion?
4 All right. The motion on the table is to not subpoena
5 the records from the action of Hunter versus Kerr and
6 Dodge in 212. A vote of yes is to not subpoena.
7 Please vote. And the vote is five to nothing to not
8 subpoena those records. Thank you very much.

9 As we move on to deliberations, I want to
10 read our -- our list of possible motions here. The --
11 so --

12 MR. HANSEN: Chair --

13 CHAIRMAN HOUSE: Yes, sir, I'm sorry.

14 MR. HANSEN: -- if I may interrupt again.

15 CHAIRMAN HOUSE: You may.

16 MR. HANSEN: During deliberations would be
17 time for questions by the panel members if they so
18 desire --

19 CHAIRMAN HOUSE: Very good.

20 MR. HANSEN: -- of the parties.

21 CHAIRMAN HOUSE: Does anybody have any
22 questions for either of our -- our -- our two folks
23 here?

24 MEMBER NELSON: I do have a question for
25 Councilman Gardner.

1 COUNCILMAN GARDNER: Yes, sir.

2 MEMBER NELSON: You had mentioned, either in
3 your presentation of evidence or closing, and I don't
4 recall which one, that a lawsuit was filed, but you
5 didn't say by whom.

6 COUNCILMAN GARDNER: Mr. Davis filed a lawsuit
7 against the city.

8 MEMBER NELSON: Okay, thank you.

9 CHAIRMAN HOUSE: Gloria.

10 MEMBER HUERTA: I have several questions, so
11 please bear with me. In the Brown Act, as mentioned by
12 Mr. Hunter, in that section that's on page 68 in my
13 copy, 5497 -- 54957.7, it definitely says that after
14 any closed session in section (b), the legislative body
15 shall reconvene into open session prior to
16 adjournment -- adjournment and shall make any
17 disclosures required by section 54957.1. So it very
18 specifically references a few items and not a hundred
19 percent of all actions taken in closed session.

20 Additionally, on page 63 and 64 of the same
21 Brown Act, there is -- are some exceptions to when
22 closed session -- closed sessions can or should or
23 should not be done. One of them is on page 64. It is
24 section two -- 54956.9(d)(2); a point has been reached
25 where, in the opinion of the legislative body of the

1 local agency, on the advice of its legal counsel, based
2 on existing facts and circumstances, there is
3 significant exposure to litigation against the local
4 agency.

5 So the public agency can go into a Brown Act
6 session if that is a circumstance under which they are
7 acting. I would like to ask Mr. Gardner if he is
8 willing or able to share with us if that was a possible
9 concern and a reason why the council went into closed
10 session regarding allegations made by two city
11 employees against a city councilmember.

12 COUNCILMAN GARDNER: I -- I cannot say what
13 did or didn't occur in closed session. I will
14 reiterate my earlier statement that precisely what you
15 read, the threat of litigation is a justification, and
16 an appropriate justification, for taking up a matter in
17 closed session. And I'm -- I'm sorry I can't answer, I
18 just, the council has not waived closed session
19 privilege. I'm not going to step out and do it on my
20 own.

21 MEMBER HUERTA: Well, I'm fine with that. I
22 have another question about a city policy if you don't
23 mind staying there for another --

24 COUNCILMAN GARDNER: Not at all.

25 MEMBER HUERTA: -- moment. On page 74 in our

1 packet, there is a city policy that is effective date
2 of 6/13, it's called harassment-free workplace, in
3 this, in the middle section when it defines harassment,
4 indeed some of the definitions of harassment that
5 Mr. Hunter -- Hunter brought up to us to -- from our
6 investigator -- from the investigator are indeed in
7 here, but there is a statement that says, and I quote,
8 under section C, "The offensive conduct has the purpose
9 or effect of unreasonably interfering with an
10 individual's work performance or creates an
11 intimidating, hostile, or offensive work environment."

12 In my reading this, and I'm not a legal
13 beagle by any means, I have been a supervisor, I
14 interpret this that if there's any action made by any
15 individual, whether they are -- and -- and let me go
16 back a minute. It also says that this policy applies
17 to all officers and employees of the city including,
18 but not limited to, and while the city councilmembers
19 and the mayor are not included in this, they are not
20 excluded from this policy. Is that a fair statement?

21 COUNCILMAN GARDNER: I believe it to be, yes.

22 MEMBER HUERTA: If that is and indeed a fair
23 statement, would not the actions and the complaints
24 made by the two city employees fall under this
25 harassment policy?

1 COUNCILMAN GARDNER: I would interpret it that
2 way. In fact, I did interpret it that way.

3 MEMBER HUERTA: I have no other questions at
4 this time.

5 CHAIRMAN HOUSE: Thank you.
6 Jeff.

7 MEMBER WRIGHT: Hold on, councilman. Sorry.

8 Yes, sir, I -- I -- I have a number of
9 questions. Let me -- let me try to see if I can
10 organize this appropriately.

11 First of all, could you describe to us how --
12 how does the city council organize itself
13 administratively? In other words, how -- how are
14 committee assignments made or regional, you know,
15 intergovernmental appointments made?

16 COUNCILMAN GARDNER: It has changed over time,
17 but appointments to those bodies are made by the full
18 council. Most recently councilmembers have requested
19 by -- by level of seniority, which they would like to
20 be appointed to, and that has been largely what the
21 council has done.

22 MEMBER WRIGHT: Are -- are appointments to
23 committees, mayor pro tem rotation, regional bodies,
24 are they made on at-will basis?

25 COUNCILMAN GARDNER: They are.

1 MEMBER WRIGHT: So there wouldn't necessarily
2 need to be documentation in place anywhere in a -- in a
3 manual that describes that process? It's simply an
4 informal way in which the council organizes itself or
5 reorganizes itself?

6 COUNCILMAN GARDNER: I -- I believe that to be
7 correct.

8 MEMBER WRIGHT: Okay. Would -- and -- and
9 this is just speculation on my part, so if I'm -- if
10 I'm missing the point, please correct me. Would an
11 allegation of a hostile workforce environment that
12 involved an elected member of the city council, in and
13 of itself, be a problem under charter section 407?

14 COUNCILMAN GARDNER: It -- it's something that
15 has to be followed up on. So you know, from that
16 perspective, yeah, an allegation against a
17 councilmember is -- is always a problem. It depends on
18 whether -- what you do about the problem depends on
19 whether you find that there was a violation or not.

20 MEMBER WRIGHT: Okay. A few more questions.
21 I -- these may sound silly, but I think they are
22 important to ask. Did you ever aspire to or
23 deliberately intend to not create a transparent
24 decision-making process?

25 COUNCILMAN GARDNER: No, sir.

1 MEMBER WRIGHT: Did you ever make access to
2 all public information about actual potential conflicts
3 with your private interest and public responsibilities?
4 The -- did you ever intend to not make access to those
5 issues?

6 COUNCILMAN GARDNER: I did not.

7 MEMBER WRIGHT: Did you ever aspire or --
8 to -- to not make yourself available to people to hear
9 and understand their concerns?

10 COUNCILMAN GARDNER: No, sir.

11 MEMBER WRIGHT: Did you ever aspire to not
12 ensure that there was accurate information to guide
13 council decisions?

14 COUNCILMAN GARDNER: No.

15 MEMBER WRIGHT: Did you ever show reckless
16 indifference to your role as a city councilman in
17 relationship to the acts of July 22nd, 2014?

18 COUNCILMAN GARDNER: Not to my belief, no,
19 sir.

20 MEMBER WRIGHT: Okay. Thanks, councilman.

21 COUNCILMAN GARDNER: Thank you.

22 MEMBER WRIGHT: Mr. Hunter, could -- could I
23 ask you a couple questions?

24 MR. HUNTER: Sure.

25 MEMBER WRIGHT: Are you an interested person

1 as defined in the Brown Act section 54960?

2 MR. HUNTER: What page is that?

3 MEMBER WRIGHT: I don't know the page, but
4 section 54960.

5 MR. HUNTER: (Indiscernible).

6 MEMBER TUCKER: It's going to be on 65 or so.

7 MR. HUNTER: All right.

8 CHAIRMAN HOUSE: It's on 64 in mine.

9 MEMBER TUCKER: On where?

10 CHAIRMAN HOUSE: In mine it's on -- it's on
11 page 64, but mine tends to be a little strange.

12 MEMBER TUCKER: Cite the number again.

13 MEMBER WRIGHT: Sorry, let me, it's page 69 in
14 mine.

15 MEMBER TUCKER: Yeah, that's --

16 MEMBER WRIGHT: Section 54960.

17 Are you an interested person --

18 MR. HUNTER: Yes, I am.

19 MEMBER WRIGHT: -- as defined by that? Did
20 you at any time seek remedy under the Brown Act in
21 54960A.1 or .2?

22 MR. HUNTER: No.

23 MEMBER WRIGHT: And just another question, on
24 page 953 of the submission, Mr. Davis is quoted as
25 saying, I violated the Brown Act. Why wasn't a filing

1 made by you in regards to his confession of a
2 violation?

3 MR. HUNTER: I'm -- I'm not compelled to -- to
4 file --

5 MEMBER WRIGHT: Simply --

6 MR. HUNTER: -- violations.

7 MEMBER WRIGHT: Well, I'm simply asking a
8 question.

9 MR. HUNTER: I -- I don't have the money nor
10 the legal wherewithal to do that before the --

11 MEMBER WRIGHT: I mean, why --

12 MR. HUNTER: -- (indiscernible) Superior
13 Court.

14 MEMBER WRIGHT: Why -- no, I'm not asking
15 about money or wherewithal. I'm -- I'm asking about
16 why doesn't his name appear as one of the ethics
17 violations that we've been hearing?

18 MR. HUNTER: That's -- that's a -- that --
19 that is a really good question actually. You know,
20 because I thought about that after I filed my
21 complaint. And as you know, you know, this is the
22 first time one of these complaints has been heard in
23 years, certainly the first time I've brought one
24 forward in years and under the new process, and I
25 thought about, after I filed it, and I filed it on the

1 last possible day that I could have filed this
2 complaint; and after I filed it, about a week later, I
3 thought to myself, you know what, I should have filed
4 against Paul Davis, too.

5 I just made a mistake. That's it.

6 MEMBER WRIGHT: Okay. Fair enough. Thank
7 you.

8 MEMBER HUERTA: I do have a few more
9 questions. And I apologize. If --

10 CHAIRMAN HOUSE: Gloria, please go ahead.

11 MEMBER HUERTA: If anyone else wants to go
12 first?

13 I noticed in the city's harassment
14 information that they give to, I'm assuming to
15 employees or anyone who asks for it. And on my packet
16 it begins on page 258. And the -- again, I'm sorry,
17 Mr. Gardner, this question is for you. It talks about
18 complaint resolution, and it talks about investigation.
19 And this particular process very specifically gives the
20 investigatory authority to human resources director, as
21 well as or the city manager.

22 Are you able to address why this process that
23 was in place was not used?

24 COUNCILMAN GARDNER: Yes, because the
25 complaint was filed by the city manager, who

1 supervises, hires and fires the human resources
2 director.

3 MEMBER HUERTA: Okay. And then I'd like both
4 of you, if you don't mind, to answer this question.
5 But does a settlement or a notice of apology or any
6 feeling or -- or statement of remorse indicate
7 wrongdoing to the point that a violation, a misdemeanor
8 violation has occurred?

9 COUNCILMAN GARDNER: Not in my opinion, no.

10 MEMBER HUERTA: And I'd like Mr. Hunter to
11 answer the same question.

12 MR. HUNTER: Sorry, could you repeat that
13 question one more time?

14 MEMBER HUERTA: I said, does a settlement or
15 acknowledgment, such as we saw in the minutes from city
16 council or the -- the -- the narrative that was typed
17 up for us, does that feelings or statements of remorse
18 or apologies truly indicate that this is a violation
19 of -- a misdemeanor violation of state law?

20 MR. HUNTER: Not of state law.

21 MEMBER HUERTA: A violation -- a violation of
22 the Brown Act is a misdemeanor violation of state law.

23 MR. HUNTER: Can I -- can I just grab a copy
24 of what -- what was stated in the -- I -- I don't have
25 it front of me right now.

1 MEMBER HUERTA: That's okay. I'm just
2 questioning -- I'm just questioning, should we construe
3 that the fact that two settlements were made to city
4 councilmembers and that some of the city
5 councilmembers, including Mr. Gardner, apologized for
6 the process and for the angst I -- that comes through
7 in reading all of the hundreds of pages of that
8 transcript; should we, as a panel, believe that
9 wrongdoing occurred and therefore we should sustain
10 your allegations?

11 MR. HUNTER: Oh, for sure, for sure, yes. You
12 know, I don't know who issues an apology without
13 thinking they've done something wrong.

14 CHAIRMAN HOUSE: Anybody else? I don't see --

15 MEMBER NELSON: Yes, I do. I do for --

16 CHAIRMAN HOUSE: Go ahead.

17 MEMBER NELSON: -- Mr. Hunter.

18 I -- I get somewhat -- I think I'm smart, but
19 maybe not, somewhat confused by the verbiage used in
20 your complaint because it -- I don't know what you're
21 alleging. It basically says the decisions of the
22 city council and mayor regarding both investigations
23 and hearing were done in closed session violating the
24 Brown Act, which we don't have direct jurisdiction
25 over; then go on to say the decision to have an

1 independent investigation filed by the council violates
2 our ethics code at the time, finally concluding that
3 both created distrust in local government.

4 What is, specifically, and maybe point it
5 out, what is the specific ethics violation you're
6 making?

7 MR. HUNTER: The ethics violation is two --
8 you mean like I'm making it under (2)(d) of the -- of
9 the ethics code? That -- that it's --

10 MEMBER NELSON: Okay.

11 MR. HUNTER: That their actions, that the --
12 they didn't -- they did not aspire to operate the city
13 government and exercise their responsibilities in the
14 mayor which creates trust, and they just created the
15 exact opposite within the community. I mean, the --
16 the proof is in the pudding -- pudding, with the -- you
17 know, with the angst that this created and with the
18 settlements that had to be paid by the city.

19 I mean, the proof is in the pudding. This
20 did exactly the opposite of what's stated in the ethics
21 code.

22 MEMBER NELSON: Thank you.

23 CHAIRMAN HOUSE: Anybody else?

24 And in that case, I've got, Mr. Hunter, if
25 you would, please, just a couple of questions for you.

1 Again going back to what one of my colleagues started
2 referring to earlier, when -- when Mr. Davis came out
3 and said that there was clearly a violation of the
4 Brown Act here and you stated that you didn't have the
5 financial wherewithal to follow that up in the -- in
6 the legal system; is that correct, sir?

7 MR. HUNTER: That's correct.

8 CHAIRMAN HOUSE: Okay.

9 MR. HUNTER: Nor do I have the expertise
10 really.

11 CHAIRMAN HOUSE: I understand. But it -- a
12 violation Brown Act is a misdemeanor under state law?

13 MR. HUNTER: I believe so.

14 CHAIRMAN HOUSE: Yes, sir.

15 MR. HUNTER: I'm not a legal expert, but --

16 CHAIRMAN HOUSE: Yes, sir.

17 MR. HUNTER: -- I assume so.

18 CHAIRMAN HOUSE: And were you not aware that
19 you can go to the city -- pardon -- pardon me, the
20 district attorney's office, and I believe it's a writ
21 of attainder.

22 Am -- am I correct there, Bob? Is that --
23 because I don't want to misspeak.

24 MR. HANSEN: Well, it's not a writ of
25 attainder. The -- the district attorney would

1 investigate allegations of violation of the Brown Act
2 through its public integrity unit and then make a
3 decision as to whether or not to file charges.

4 CHAIRMAN HOUSE: I see.

5 Were you -- were you aware of that process?

6 MR. HUNTER: No, I don't think I was at the
7 time.

8 CHAIRMAN HOUSE: Uh-huh.

9 MR. HUNTER: I am now, right? I mean, I
10 wasn't really an expert in the Brown Act until I
11 probably started preparing this case, right?

12 CHAIRMAN HOUSE: I see. All right. Well,
13 that's -- that's what I have for you. Thank you.

14 MR. HUNTER: All right. Well --

15 MEMBER NELSON: One last --

16 MR. HUNTER: -- now I consider myself an
17 expert, by the way.

18 MEMBER NELSON: One last question. Your final
19 request for us of action to take is against
20 Mr. Priamos.

21 MR. HUNTER: Uh-huh, that's correct.

22 MEMBER NELSON: However, he's not listed on
23 the complaint either.

24 MR. HUNTER: No. I can't -- I can't make a
25 complaint, an ethics complaint against an employee of

1 the city, only electeds.

2 MEMBER NELSON: Okay.

3 MR. HUNTER: And that was voted on by the
4 council. The ad hoc ethics committee actually
5 suggested that to the council as part of their changes
6 back in January of this year, and it was -- it was
7 voted against by the council, I assume because they're
8 okay with being held directly responsible for the
9 action of their reports. It's the only thing I can
10 draw a conclusion as far as.

11 CHAIRMAN HOUSE: All right. Are there any
12 other questions? And are we ready to start
13 deliberating on this? Does anybody need a break before
14 we do?

15 MEMBER NELSON: (Indiscernible).

16 CHAIRMAN HOUSE: Yeah, let's take five
17 minutes, just kind of clear our brains. It's exactly 4
18 o'clock, so let's come back --

19 (Off the record - 04:00:20 p.m.)

20 (On the record - 04:05:30 p.m.)

21 CHAIRMAN HOUSE: We're back into session, and
22 we're going to begin our deliberations at this point.
23 Before we do, I do want to read again, just for the --
24 for the review and reminder; the sole issue for
25 consideration by this hearing panel of the Board of

1 Ethics is whether Councilman Gardner violated section
2 (2)(d) of resolution 22461, which replaced resolution
3 22318, by participating in decisions in closed session
4 on July 22nd, 2014, only regarding, one, the
5 investigations of Councilman -- Members Soubious and
6 Davis; and/or, two, the decision to hold a hearing
7 concerning Councilman -- Member Soubious, either of
8 which hearing -- the hearing panel determines was a
9 violation of the Brown Act. And with that we will open
10 up the floor.

11 And, Jeff.

12 MEMBER WRIGHT: Thank you, Mr. Chairman. I --
13 I -- I would recognize that as we have these hearing
14 panels, we get better at them.

15 And so at -- at -- in -- in -- in that
16 respect, Mr. Hunter, thank you for this process,
17 because we practice, I don't know if it makes perfect,
18 but it -- it -- it helps us get a little closer each
19 time.

20 My -- at -- at the end of the day, my -- my
21 concern here is that Mr. Hunter seems to have brought a
22 shotgun to a deer hunt. It's the wrong tool to the
23 wrong event. Further, I've -- I've struggled today
24 with -- with threats that I don't find particularly
25 useful, nor do I find some of the elasticity with which

1 rule 9 in our guidelines has been treated, to be
2 particularly helpful in feeling like this case is --
3 is -- is -- is one that -- that helps us move forward
4 and find some sort of measure of closure to -- to -- to
5 this event.

6 The Board of Ethics has been asked by
7 Mr. Hunter to adjudicate on the question of whether or
8 not we believe a Brown Act violation took place. And
9 I'm not sure, still I'm not sure whether this board has
10 any particular or special authority to adjudicate on
11 the question of an alleged violation of state law, even
12 if it's a misdemeanor. As the technical standards of
13 evidence do not apply to our deliberations, it seems to
14 me that if we were to find that legally the sky is
15 blue, a good lawyer would need about 15 minutes to have
16 a court vacate our decision.

17 If we did have the ability to adjudicate on
18 matters of alleged violation of state law, and -- and I
19 repeat, I -- I see nothing in council resolution 22461
20 that permits us that avenue, I'm of the conclusion that
21 the impending litigation shield provides members of the
22 council with sufficient reasons for their actions
23 related to the July 22nd city council hearing.

24 Should the impending litigation standard not
25 be congruent, I -- I would simply say a diagram of the

1 sentence in the Brown Act 54957.1 means the, as
2 follows, is an important clause to that sentence that
3 has been consistently left out of presentation today.
4 But to return directly to the question of alleged
5 violation of the Brown Act, I find it curious at best
6 and disingenuous at worst, that no one, not Councilman
7 Davis, not Councilman Soubirous, nor it must be said,
8 Mr. Hunter, nor any one of the 21 members of the public
9 that made submissions on the record on July 22nd, 2014,
10 ever availed themselves to the legal benefits provided
11 under the Brown Act in section 54960, et cetera.

12 They are interested persons, and -- and as
13 interested persons, they could have invoked the
14 available remedy under the Brown Act. No remedy under
15 54960 is costly except for time, paper, and postage.
16 In fact, in 54960.5, there is provision for cost
17 recovery of legal fees and expenses by people alleging
18 a Brown Act violation, and that no one, including the
19 district attorney, who I think one may presume is an
20 interested person under the Brown Act and a reader of
21 the Press Enterprise, sought relief as provided by the
22 Brown Act, indicates to me that there may be no there,
23 there, that Mr. Soubirous and Mr. Davis joined the rest
24 of the council in asserting their confidentiality
25 privileges simply for me adds icing to the cake of

1 unlikeliness.

2 So there's a questionable standing to
3 adjudicate Brown Act violations, the impending
4 litigation exemption, and the lack of the district
5 attorney, Mr. Davis, Mr. Soubirous, Mr. Hunter, or any
6 member of the public seeking relief as prescribed by
7 the Brown Act leads me to the conclusions that no Brown
8 Act violations took place to the best of my nonlegal
9 discernment. And that if a Brown Act violation took
10 place, this board, operating under the council
11 resolution, is not sufficiently structured to
12 adjudicate that question.

13 So that leaves me with the language of
14 council resolution 224612(d). Now the issue becomes
15 one of aspiration and trust. Neither of these seem
16 like standards that lend themselves to the cannon of
17 proof that's provided -- that's demanded by
18 quasi-judicial, somewhat adversarial, and sort of legal
19 format.

20 I can ask councilmen questions under oath of
21 what they aspire to do or be in relationship to the
22 events in question, but their answers require faith on
23 my part. Do I believe them, yes or no. Do I trust
24 them, yes or no. Here I believe Mr. Hunter and I have
25 fundamentally different world views. I'm inclined to

1 believe councilmembers until demonstrated otherwise,
2 it's called presumed innocence.

3 I've formed an impression in this proceeding
4 today that Mr. Hunter doesn't believe councilmembers
5 and requires proof of veracity. I may be wrong, but
6 that's my impression. As to the issue of trust, we
7 can, I think, all agree that the issue -- that the --
8 the events of July 22, 2014, were awkward and messy.
9 We can agree that everyone present on this dais that
10 night said things that they now might wish they could
11 recalibrate.

12 But did these actions, in and of themselves,
13 foster mistrust? And I'm sorry, but not in my opinion.
14 I was present that night. And in fact, if one redacts
15 the name calling from the documents, I think there's a
16 reasonable narrative available that suggests the city
17 council had a robust, if heated, discussion on
18 understanding its powers, limits, roles, and abilities
19 to act. I'm not sure these electeds liked each other
20 that night. As a citizen of the city, I don't care. I
21 care that they make good decisions.

22 And I think at -- at the end of the process,
23 no action was, in fact, taken, thereby again begging
24 the question of what kind of specific relief invoking
25 the Brown Act might actually supply. If anything, in

1 my opinion, the outcomes of July 22nd serve to
2 underscore vigorous disagreement. Disagreements and
3 dissent ultimately, I think, are good for democracy.

4 Questionable standing to adjudicate
5 violations of the law, complete and across the board,
6 unwillingness from anyone to pursue the remedies
7 contained within the Brown Act; the elasticity --
8 elasticity inherent in governmental claims of impending
9 litigation; the inappropriateness of a quasi-judicial
10 body to discern malice over aspiration; and a
11 recognition that trust seems always to be in the eye of
12 the -- of the beholder would lead me to move that this
13 hearing panel of the Board of Ethics find that
14 Councilman Gardner did not violate section (2)(d) of
15 resolution 22461.

16 CHAIRMAN HOUSE: We have a motion on the
17 table.

18 MEMBER TUCKER: I will second that motion.

19 CHAIRMAN HOUSE: We have a second to that
20 motion.

21 MEMBER NELSON: He didn't make a motion.

22 MEMBER TUCKER: There was a motion.

23 CHAIRMAN HOUSE: Yes, he's made a motion.

24 MEMBER TUCKER: So you can just --

25 CHAIRMAN HOUSE: So --

1 MEMBER NELSON: Oh, I (indiscernible).

2 CHAIRMAN HOUSE: So discussion on the motion,
3 please.

4 And, Keith.

5 MEMBER NELSON: Well, to my esteemed
6 colleague, I think we disagree, and that we're going to
7 come to the same conclusion on many things. First of
8 all, I just personally disagree. I think there was a
9 Brown Act violation, though I'm not an attorney either
10 or a expert; however, I think the statute of
11 limitations expired and the city council tried the
12 appropriate remedy, as I understand the Brown Act from
13 the various commissions and boards I am -- I'm on, is
14 that when you find a violation, you take the next
15 opportunity to correct the violation, which is what
16 seemed to have occurred, quite ugly -- uglily, using a
17 Trumpism, on July 22nd.

18 I think -- there's a lot of stuff I don't
19 like about it, that the city manager's budget was used
20 to pay for an investigation of his own complaint,
21 however, that's not listed directly in Mr. Hunter's
22 complaint. It's just my personal opinion.

23 I guess my only hope would be in -- in -- in
24 reading that, that this city council move forward
25 from -- from what was quite a series of events that

1 were something that weren't in the best light of -- for
2 the city. The question of trust and distrust really
3 seem -- I -- I struggle with, because there's always
4 something the city council is going to do that I can
5 find quite a few members of the city that are going to
6 go, I don't trust that or I don't like it. It's part
7 of your job, regrettably.

8 So did the events cause some distrust? Well,
9 just the public comments made that night say it did.
10 Did it overall, I guess I can't answer that. So that's
11 just kind of my opinion on it.

12 CHAIRMAN HOUSE: Thank you, Keith.

13 Gloria.

14 MEMBER HUERTA: Well, I -- I do believe there
15 was no violation of the Brown Act. I am not a legal
16 expert. I have had years of experience as a county
17 employee, being responsible for ensuring that the
18 people I served, that we did not violate the Brown Act.
19 So I -- I don't find a violation. I do think that it
20 created a great deal of angst and a great deal of
21 discomfort among many people, not just city
22 councilmembers.

23 I think that this raises the issue of whether
24 or not the city council, human resources, should take a
25 look at what would we do tomorrow if a similar

1 complaint were filed. And maybe it's time to define a
2 process so that we all can say that something is fair
3 and equitable and as much as possible under the law is
4 transparent. There are many things involving employees
5 that cannot be shared openly, cannot be shared as part
6 of a hearing, but I think that as much as possible, we
7 need to address that so that the community feels
8 comfortable if something like this ever happens again,
9 that we have a process that doesn't seem to scapegoat
10 any one individual or cause someone to feel like their
11 rights were violated.

12 And if there's anything I would have to say
13 it would be to recommend that city council do address
14 that and -- and see if this is something that could
15 be -- could be -- occur in the future as a new process
16 or policy.

17 CHAIRMAN HOUSE: All right, thank you.

18 Keith.

19 MEMBER NELSON: One thing I forgot. In part
20 of the testimony from Councilman Gardner, there was a
21 comment that the city council had reservations about
22 going through human relations because they came under
23 the city manager. I happened to sit as chairman of a
24 rather large agency, and -- and what I would have said
25 to -- what I would have thought exactly at that time is

1 definitely we have the wrong city manager, because the
2 city manager should have been mature enough never to
3 take repercussions and there should never have been any
4 fear of that.

5 Irrespective, that's not part of the
6 complaint. That's just something I wanted to -- to
7 say.

8 CHAIRMAN HOUSE: Thank you.

9 Anybody else? Wendel?

10 MEMBER TUCKER: Well, I concur with Jeff's
11 statement. I particularly appreciate the fact that he
12 detailed each of the items and that -- and Gloria's
13 statement also relative to the violation of the Brown
14 Act. And -- and as -- as I have previously stated, I
15 -- I feel that -- that there was no violation of the
16 Brown Act. And because of the -- because of the
17 clauses relative to litigation, the -- the clauses in
18 there that are very specific to only the final actions
19 that need to be reported out, again, as Gloria has,
20 I -- I also have participated with agencies relative to
21 the Brown Act and decisions were made that -- that we
22 didn't report out until the final decision.

23 So -- so we're not making a judgment on the
24 Brown Act per se except that Jason has made that the --
25 the integral part of his testimony. So -- so it forces

1 us then to -- to -- to make judgments or -- or to think
2 about the ramifications of the Brown Act.

3 So as I stated previously in another, but
4 must be restated in each -- each case, the -- I feel
5 that -- that the city council, and therefore -- and
6 therefore each of the individual members that
7 participated in that process, did so in good conscience
8 under the direction and guidance of legal counsel and
9 that the way -- the appropriate report out is left to
10 the city manager to do such on behalf of the city
11 council, I believe that they acted in -- in good faith.

12 On the issue of violation of the -- of -- of
13 the Code of Ethics, to me the preponderance of -- of
14 evidence that must be -- must be dealt with or proven
15 is the aspiration aspect. And -- and I think -- I
16 think the word you have to look at is conspire as -- as
17 it goes along with aspire. Did they willingly conspire
18 to violate the -- the -- the trust?

19 And -- and one of my -- one of my colleagues
20 here has already used a word that the transparency.
21 And -- and I believe, Jeff, you asked Councilman
22 Gardner, did -- did he feel that they in any way
23 violated transparency. My -- my opinion is that, no,
24 that they did -- they did not wilfully conspire to
25 violate the trust of the people.

1 We had a -- we had a very difficult political
2 environment in -- in that particular era of our -- of
3 our history. We also had a circumstance that had no
4 previous history, therefore a process had to be
5 created. There was -- and -- and I -- and an example
6 that came to my mind today as we were -- as we were
7 talking, this panel came about because of -- of -- of
8 previous situations. A commission was put together to
9 study at length what to do with Code of Ethics
10 violations in -- in the future. The city council then
11 created the -- the overall Board of Ethics and -- and
12 this panel process.

13 So my point on that I'm trying to make --
14 trying to make is, the city council was the only body
15 that could go through the process of figuring out how
16 are we going to deal with a violation, a work -- a work
17 violation, a labor violation, how are we going to deal
18 with a labor violation filed by one of our colleagues
19 against the -- the employee of the council.

20 And I have no problem at all understanding
21 why. And I don't think that -- that regardless of
22 personalities, I don't believe that the city manager
23 has -- has the -- the authority to -- to make decisions
24 relative to his claim and -- and others that are
25 claiming that. It only can be done by their

1 supervisors. And the city council is their
2 supervisors.

3 So with all of that lengthy statement made, I
4 support the motion.

5 CHAIRMAN HOUSE: All right, thank you, sir.

6 That leaves me to speak, and I don't really
7 think there's too much I could say here that hasn't
8 already been very eloquently said by smarter people
9 than me sitting on this panel. So with that, I'm going
10 to ask the clerk to read the motion so that we can get
11 a vote here.

12 COLLEEN NICOL: Motion made by Member Wright,
13 seconded by Member Tucker to find that Councilmember
14 Gardener did not violate the Code of Ethics.

15 CHAIRMAN HOUSE: Thank you.

16 So a vote of yes is to vote that the code was
17 not violated. A vote of no is that it was violated.
18 Please vote. The vote is unanimous that the code was
19 not violated. Thank you very much. And with that,
20 this hearing is adjourned.

21 - - -

22 (Whereupon, the proceeding was concluded at 04:24 p.m.)

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