



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 12, 2017
FROM: CITY CLERK WARDS: ALL
SUBJECT: APPEAL OF BOARD OF ETHICS PANEL DECISION - HUNTER - BAILEY

ISSUE:

On August 3, 2017, Jason Hunter filed an appeal of the Board of Ethics hearing panel decision of no violation in the matter of his complaint against Mayor Bailey for an alleged violation of the Code of Ethics and Conduct on December 6, 2016.

RECOMMENDATIONS:

That the City Council:

1. Find that the hearing panel did not commit a clear error or an abuse of discretion based upon the record in determining that Mayor Bailey did not violate the Code of Ethics and Conduct on December 6, 2016, and adopt the decision of the hearing panel as the findings of the City Council on appeal; **or**
2. Find that the hearing panel committed a clear error or abuse of discretion based upon the record in determining that Mayor Bailey did not violate the Code of Ethics and Conduct on December 6, 2016, and refer the matter back to the Board of Ethics for a *de novo* (new) re-hearing of the matter.

BACKGROUND/LEGISLATIVE HISTORY:

On July 20, 2017, the Board of Ethics hearing panel conducted a hearing for the Code of Ethics and Conduct attached complaint filed on June 2, 2017, by Jason Hunter against Mayor Bailey alleging a violation of Riverside Municipal Code Section 2.78.060 M. by Mayor Bailey for violating certain sections of City Council Resolution No. 23035 during the City Council meeting on that date. Specifically, the complaint alleges the following violations of City Council Resolution 23035: (a) Section X, subsection C, is alleged to have been violated when Mayor Bailey allowed a speaker to speak past three minutes without a majority vote of the City Council for Item 7 on the City Council Agenda; (b) Section V (D, 4) is alleged to have been violated when Mayor Bailey did not treat members of the public equally at that same meeting; (c) Sections IV (A) and XVI (B) are alleged to have been violated when Mayor Bailey, as the presiding officer at that meeting, failed to enforce the meeting rules and failed to publically admonish the City Manager for repeatedly interrupting a speaker, contrary to Section VI (D); and (d) Section X (F) is alleged to have been violated when Mayor Bailey allowed the applicant to speak for 10 minutes on Item 7 without a majority vote of the City Council. It is alleged by Mr. Hunter that Item 7 on the City Council Agenda was not a quasi-judicial public hearing.

Following presentation of evidence by both parties and panel deliberations, the panel unanimously found no violation of the Code of Ethics and Conduct by Mayor Bailey.

On August 3, 2017, Mr. Hunter filed an appeal of the hearing panel's decision pursuant to Section 2.78.090(B) of the Riverside Municipal Code. Preparation of a transcript of the hearing is underway by an outside agency and will be distributed upon receipt. RMC Section 2.78.090(E) provides that the City Council shall review the record of the hearing to determine whether the hearing panel committed a clear error or an abuse of discretion based upon the record. If no such finding is made by a majority of the City Council, then the City Council shall adopt the decision of the hearing panel as the findings of the City Council on appeal. If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be referred back to the Board of Ethics for a *de novo* (new) re-hearing of the matter in light of the findings on appeal.

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

FISCAL IMPACT:

The cost for preparation of related transcripts is estimated at \$2,000 and will be absorbed within the City Clerk's Office Professional Services Account 1200000-421000. All remaining processing and duplication costs were absorbed within the City Attorney and City Clerk's Office Budgets.

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

Attachments:

- Appeal
- Complaint and response documents
- Hearing transcript of July 20, 2017
- Hearing panel minutes of July 20, 2017