



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: OCTOBER 27, 2020
FROM: CITY ATTORNEY'S OFFICE WARDS: ALL
SUBJECT: APPEAL OF THE FINDING OF PROHIBITED CONDUCT OF THE CODE OF ETHICS AND CONDUCT BY THE BOARD OF ETHICS HEARING PANEL ON SEPTEMBER 30, 2020

ISSUES:

To determine whether the Hearing Panel committed clear error or an abuse of discretion based upon the September 30, 2020 hearing record.

RECOMMENDATIONS:

That the City Council:

1. Determine whether the Hearing Panel committed clear error or an abuse of discretion based upon the hearing record.
2. If the City Council finds there is a violation of the Prohibited Conduct of Riverside Municipal Code Chapter 2.78, the City Council may determine sanctions in accordance with the enforcement and sanctions section of that chapter.

HEARING PANEL DECISION:

On September 30, 2020, the Hearing Panel met to hear evidence related to an Ethics complaint filed by Jason Hunter against Councilwoman Plascencia whereby Mr. Hunter alleged multiple violations of the City's Code of Ethics and Conduct. Based upon all the evidence and after due consideration, the Hearing Panel found that Councilwoman Plascencia violated Riverside Municipal Code 2.78.060(M) Violations of federal, State, or local law prohibited and Riverside Municipal Code 2.78.060(D) Advocacy of private interests of third parties in certain circumstances prohibited. The Hearing Panel did not find any other violation of the Code of Ethics and Conduct. The Board of Ethics Hearing Panel Statement of Findings and Decision is attached.

DISCUSSION:

On June 16, 2020, Jason Hunter filed a Code of Ethics and Conduct Complaint with the City Clerk's Office. The complaint alleged that on December 17, 2019, Councilwoman Plascencia violated subsection (C), (D), (E), (F), and (M) of RMC 2.78.060 Prohibited Conduct. The basis of the complaint arises out of the City Council's consideration and discussion of allowing a "union bug" on Councilwoman Plascencia's City business card. On August 6, 2020, the Hearing Panel conducted a pre-hearing and determined that the evidence was sufficient to move forward and conduct a full hearing on the complaint. On September 10, 2020, Councilwoman Plascencia filed a timely response to the complaint.

On September 30, 2020, the Hearing Panel conducted a hearing on Mr. Hunter's complaint against Councilwoman Plascencia. After the presentation of evidence and deliberation of the panel, the Hearing Panel found that there were facts to sustain violations of RMC 2.78.060(M) Violations of federal, State, or local law prohibited and RMC 2.78.060(D) Advocacy of private interests of third parties in certain circumstances prohibited. Pursuant to RMC 2.78.100, the decision of the Hearing Panel finding violations of RMC 2.78.060 are automatically appealed to the City Council.

RMC 2.78.090(E) provides that "[t]he City Council shall review the record of the hearing to determine whether the hearing panel committed a clear error or an abuse of discretion based upon the record. If no such finding is made by a majority of the City Council, then the City Council shall adopt the decision of the hearing panel as the findings of the City Council on appeal. If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be referred back to the Board of Ethics for a *de novo* (new) re-hearing of the matter in light of the findings on appeal."

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

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

Lastly, RMC 2.78.090(F) provides that "[i]f the City Council finds there is a violation of the Prohibited Conduct section of this chapter, then the City Council may determine sanctions in accordance with the enforcement and sanctions section of this chapter."

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Brandon S. Mercer, Sr. Deputy City Attorney

Approved as to form: Gary G. Geuss, City Attorney

Attachment: Statement of Finding
 Hearing Record
 RMC Chapter 2.78