



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: DECEMBER 1, 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 OCTOBER 15, 2020

ISSUES:

To determine whether the Hearing Panel committed clear error or an abuse of discretion based upon the October 15, 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 October 15, 2020, the Hearing Panel met to hear evidence related to an Ethics complaint filed by Roberta Allotta against Councilwoman Plascencia whereby Ms. Allotta 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 one count of Riverside Municipal Code 2.78.060(A) Use of official title or position for personal gain and two counts of Riverside Municipal Code 2.78.060(M) Violations of federal, State, or local law prohibited. The Hearing Panel determined that Councilwoman Plascencia violated all the violations listed out in Ms. Allotta's complaint. The Board of Ethics Hearing Panel Amended Statement of Findings and Decision is attached. As requested in the Amended Statement of Findings and Decision, the deliberation by the Hearing Panel is found on pages 173-229 of the Allotta v. Plascencia Hearing Panel attached transcript.

DISCUSSION:

On July 15, 2020, Roberta Allotta filed a Code of Ethics and Conduct Complaint with the City Clerk's Office. The complaint alleged that on January 21, 2020, Councilwoman Plascencia violated subsection (A) 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 removing Sean Mill from the Planning Commission. On September 3, 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. Councilwoman Plascencia did not file a timely response to the complaint.

On October 15, 2020, the Hearing Panel conducted a hearing on Ms. Allotta'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(A) Use of official title or position for personal gain and RMC 2.78.060(M) Violations of federal, State, or local law 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: Kristi J. Smith, Interim City Attorney

Attachment: Statement of Finding
Hearing Record
RMC Chapter 2.78