

\_\_\_\_\_ INVESTIGATIVE REPORT:  
Executive Summary

Prepared for the City of Santa Ana  
Sonia Carvalho, City Attorney

Prepared by:  
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Dated: June 21, 2016

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## I. INTRODUCTION

### A. Background Investigation

This Investigation arises out of concerns raised by Mayor Miguel Pulido and councilmember Michelle Martinez in an email to Sonia Carvalho, City Attorney for the City of Santa Ana (the "City"). This investigation focused on the following concerns identified in that email:

1. Did City Manager Cavazos claim that Council Member Martinez sexually harassed him? And if so, is that allegation sustained?
2. Did [redacted] allege that Mayor Pulido created a hostile work environment for him, with the guidance and consent of City Manager Cavazos?
3. Does Mr. Cavazos's admitted relationship with a subordinate, current city employee have consequences or create exposure to the City?
4. Did Mr. Cavazos take the position that a relationship between [redacted] and a subordinate should be considered a private matter that the City need not address?
5. Did Mr. Cavazos cause [redacted] with the City Attorney's approval, to conduct an unauthorized search of Mayor Pulido's City emails?
6. Did Mr. Cavazos improperly influence the selection of an employment selection panel?

The City requested that Atkinson, Andelson, Loya, Ruud & Romo ("AALR&R"), conduct an attorney-client privileged investigation regarding the above-listed concerns and prepare a written summary containing factual findings regarding [redacted]. AALR&R attorneys Irma Rodriguez Moisa and Marilou Mirkovich (the "Investigators") conducted the investigation and prepared this summary.

### B. Background Regarding Complaints

To provide context for the remainder of this report, the Investigators provide a summary of the circumstances that resulted in concerns identified above.

#### I. Councilmember Martinez's Alleged Sexual Harassment of Mr. Cavazos

Councilmember Martinez was advised that Mr. Cavazos claimed she had treated him in an aggressive manner, e.g. questioning his housing allowance, his eligibility for a bonus, and his performance evaluation, because he had rejected her romantic interest. [redacted] confirmed in writing that Mr. Cavazos had made such remarks to her. Mr. Cavazos, however, has stated that he never said that Councilmember Martinez "sexually" harassed him — meaning he did not expressly use the word "sexual."

2. Mr. Cavazos's alleged Encouragement of [redacted] to Write the May 27, 2015 Memo

[redacted] asserts that on May 21, 2015, Mayor Pulido initiated a telephone conversation with him, wherein he asserts Mayor Pulido communicated to [redacted] that [redacted] would not be selected for the [redacted] position and that he, Mayor Pulido, had the votes necessary to secure that result. [redacted] told Mr. Cavazos about this conversation with Mayor Pulido, and Mr. Cavazos encouraged him to document the May 21, 2015 conversation with Mayor Pulido. Thus, [redacted] prepared such a memorandum, and Mr. Cavazos provided the memorandum to [redacted] and [redacted]. Mayor Pulido admits that he initiated the May 21, 2015 phone call with [redacted] however, Mayor Pulido denies he told [redacted] that he had the votes necessary to ensure that the City did not select [redacted] for the [redacted] position.

3. Mr. Cavazos's relationship with a City employee

Mr. Cavazos has admitted to a consensual relationship with a City employee, [redacted]. Mr. Cavazos did not disclose to City Council the existence of this relationship when it began. To assess potential exposure and liability, the City requested the Investigators to investigate aspects of that relationship including, when the relationship began, the consensual nature of the relationship, when the City became aware of the relationship, and the circumstances surrounding Mr. Cavazos's disclosure of that relationship to City Council.

4. Mr. Cavazos's alleged position that a claimed relationship between a [redacted] Employee and a subordinate was a private matter that the City should not address.

A City employee, [redacted], in August 2015, asserted that [redacted] supervisor, was having a relationship with a subordinate. A discussion occurred among [redacted] Mr. Cavazos, and [redacted] regarding whether an investigation concerning the existence of that relationship should occur. Mayor Pulido and Councilmember Martinez assert that Mr. Cavazos's position was that the matter should not be investigated because it was a "private" matter. Mr. Cavazos contends that he advocated for an investigation, and he provided the Investigators an email in support of that position.

5. Alleged Unauthorized Search of Mayor Pulido's emails

[redacted] initiated a search of Mayor Pulido's emails on September 18, 2015, which was signed off on by [redacted]. Mayor Pulido, however, contends that [redacted] conducted an earlier unauthorized search of his emails that was not authorized.

6. Mr. Cavazos's alleged improper influence over recruitment

## II. SUMMARY OF CONCLUSIONS

The Investigators find by a preponderance of the evidence as follows:

1. Mr. Cavazos asserted that Councilmember Martinez invited him to her hotel and a happy hour. When asked if he had given staff the impression that Councilmember Martinez was romantically interested in him he said: "I would definitely give the impression to \_\_\_\_\_ and he said ..." a lot of people whether they want to admit it, or not, probably felt the same way. Michele was giving David way too much attention." Mr. Cavazos also "gave the impression" to \_\_\_\_\_ that Councilmember Martinez was romantically interested in him. Then, when \_\_\_\_\_ addressed his complaint with Councilmember Martinez, Mr. Cavazos denied he had claimed Councilmember Martinez had sexually harassed him.

Given that Mr. Cavazos conveyed to \_\_\_\_\_ that Councilmember Martinez was romantically interested in him, that Mr. Cavazos told \_\_\_\_\_ that perhaps Councilmember Martinez was acting negatively towards him because he had spurned her romantic overtures, and such statements were followed by a text message to \_\_\_\_\_ that Councilmember Martinez was harassing him, the reasonable and logical conclusion is that Mr. Cavazos had made a complaint of sexual harassment against Councilmember Martinez. Nevertheless, Mr. Cavazos maintains he has never stated that Councilmember Martinez sexually harassed him. The fact that Mr. Cavazos may not have used the precise words "sexual harassment" vis-à-vis Councilmember Martinez, does not negate the conclusion that the information he provided to \_\_\_\_\_ concerning his belief that Councilmember Martinez was romantically interested in him, was acting negatively towards him because he had spurned her interest, and was "harassing" him represents a sexual harassment claim and Mr. Cavazos's denial that he made such a claim is not believable. Thus, the Investigators find that Mr. Cavazos complained about sexual harassment by Councilmember Martinez; however, the Investigators find that Councilmember Martinez did not engage in sexual conduct towards Mr. Cavazos.

2. \_\_\_\_\_ without equivocation admitted that Mr. Cavazos encouraged him to prepare the memorandum. \_\_\_\_\_ was reluctant to memorialize the conversation with Mayor Pullido "because there can be retaliation when you document something like this"; however, he also felt that he had "to build the credibility and the trust with my manager," and as a result, he prepared the May 27, 2015 memo.

3. Mr. Cavazos began a consensual, romantic relationship with a subordinate City employee in August or September 2014, however, he did not disclose that relationship to City Council until August 2015. Mr. Cavazos stated that to assess whether he should disclose to the City Council his relationship with \_\_\_\_\_ he relied on the following: (1) his observations while he was the City Manager of Phoenix and observations of familial relationships in other municipalities; (2) his

conversations with two union officials, whose names he does not remember, and (3) a review of the International City/County Management Association ("ICMA") code of ethics.

In that regard, Mr. Cavazos's anecdotal observations of the existence of familial relationships in other municipalities provide no guidance on the issue of disclosure, i.e. whether Mr. Cavazos should have disclosed as City Manager the existence of the relationship with a City employee. Furthermore, seeking guidance from two unidentified union officials, who apparently have no involvement with the City and whom Mr. Cavazos did not describe as having specialized knowledge on such issues, is not an action that would likely result in objective and reliable advice on this issue.

Finally, Mr. Cavazos's statement that he reviewed the ICMA code of ethics does not reflect a true interest in obtaining thorough and objective guidance on the issue of disclosure. Had Mr. Cavazos thoroughly reviewed the ICMA website, he would have noted the website contains a private censure of a City Manager who failed to "immediately disclose" a relationship with an employee. Another option to obtain a more objective assessment of his disclosure obligations would have been to the contact the ICMA ethics advisor, whose name and contact information are listed on the ICMA website. The facts as presented indicate that Mr. Cavazos did not avail himself of such options.

4. [redacted] and Mr. Cavazos had communication regarding [redacted] allegation concerning [redacted] alleged romantic relationship with a subordinate, and in that conversation, Mr. Cavazos stated, "Something to the effect of, 'I wouldn't investigate it if it were me because there's not a policy against it,' because the matter involved employee's "personal lives." Mr. Cavazos however, said, with respect to investigating the allegation, "You guys [redacted] want to do it [investigate], do it."

5. [redacted] initiated one authorized search of Mayor Pulido's emails; however, in 2014, [redacted] initiated an unauthorized search of Councilmember Martinez's emails. The 2014 searches that [redacted] ran using the Barracuda program do not show that [redacted] ran searches for Mayor Pulido.

6. [redacted]

### III. SUMMARY OF ANALYSIS AND FINDINGS

Concern No. 1: City Manager Cavazos's allegation that Councilmember Martinez sexually harassed him.

Analysis Concern No. 1:

Mr. Cavazos states he never used the words "sexual harassment" vis-à-vis Councilmember Martinez, and confirms that Mr. Cavazos stated that he did not want to file a complaint against Councilmember Martinez.

However, after Mr. Cavazos's August 2014 performance evaluation, Mr. Cavazos said to that he thought that Councilmember Martinez was "trying to get him to quit. Or trying to get him fired," and that he thought, "Maybe she's treating me this way because I didn't respond to her [romantic interest]." Thereafter, when Mr. Cavazos would complain about Councilmember Martinez, he would mention that Councilmember Martinez had been romantically interested in him. As a result, prepared a memo that gave to documenting communications with Mr. Cavazos. Mr. Cavazos continued to tell that he thought that Councilmember Martinez acted negatively towards him because he did not respond to her romantic interest. Then, on May 13, 2015, Mr. Cavazos sent a text message stating that Councilmember Martinez was harassing him. In light of these credited facts, the Investigators find that Mr. Cavazos communicated to that he believed that Councilmember Martinez had taken actions to negatively affect the terms and conditions of employment because he had rejected Councilmember Martinez's romantic interest, which the Investigators find constitutes a sexual harassment complaint, although Mr. Cavazos did not use the specific words "sexual harassment."

The Investigators do not credit Mr. Cavazos's contention that Councilmember Martinez invited him to her hotel room, that she invited him to non-professional related happy hours, and that she tried to invite herself to his apartment during the 2013 holiday party. The Investigator credits Councilmember Martinez's statements that she provided Mr. Cavazos with the bicycle shorts as a friendly gesture and that she has regularly given gifts to staff and other elected officials.

The Investigator also credits Councilmember Martinez's statement that she was not romantically interested in Mr. Cavazos. That fact is also supported by the fact that other credible witnesses—, and —confirmed that Councilmember Martinez had never expressed any romantic interest in Mr. Cavazos or that she was attracted to Mr. Cavazos. Based on the above, the Investigators find that a preponderance of the evidence establishes that Councilmember Martinez did not engage in sexual conduct towards Mr. Cavazos.

Finding Concern No. 1: A preponderance of evidence has been established to show Mr. Cavazos's comments constitute a complaint of sexual harassment against Councilmember Martinez. The Investigators find by a preponderance of the evidence that Councilmember Martinez's did not engage in sexual conduct towards Mr. Cavazos.

Concern No. 2: Mayor Pulido's assertion that Mr. Cavazos encouraged to make an allegation that Mayor Pulido created a hostile work environment for him.

Analysis Concern No. 2: The Investigators find \_\_\_\_\_'s description of the telephone call with Mayor Pulido more credible than Mayor Pulido's version. In light of that determination, the Investigators find that a preponderance of the evidence has been established to show that Mayor Pulido communicated to \_\_\_\_\_ that he, Mayor Pulido, had sufficient Council support to ensure that \_\_\_\_\_ would not be selected for the \_\_\_\_\_ position. When \_\_\_\_\_ advised his supervisor, Mr. Cavazos, about this communication with Mayor Pulido, Mr. Cavazos advised \_\_\_\_\_ to memorialize the conversation in writing, which \_\_\_\_\_ did. After \_\_\_\_\_ prepared the memo, unbeknownst to \_\_\_\_\_, Mr. Cavazos showed the memo to both \_\_\_\_\_ and \_\_\_\_\_.

Finding Concern No. 2: The Investigators find by a preponderance of the evidence that Mayor Pulido communicated to \_\_\_\_\_ that he, Mayor Pulido, had the necessary votes to determine that \_\_\_\_\_ would not be selected as \_\_\_\_\_. The Investigators also find by a preponderance of the evidence that Mr. Cavazos did encourage the writing of the memorandum by \_\_\_\_\_ and that unbeknownst to \_\_\_\_\_, Mr. Cavazos showed the memorandum to both \_\_\_\_\_ and \_\_\_\_\_.

Concern No. 3: Mr. Cavazos's relationship with a subordinate City employee.

Analysis Concern No. 3: Both Mr. Cavazos and \_\_\_\_\_ agree that they began a romantic in August or September 2014. Furthermore, both Mr. Cavazos and \_\_\_\_\_ agree that as of their first meeting, both individuals knew the other was employed by the City. Both \_\_\_\_\_ and Mr. Cavazos agree that their relationship is consensual. Mr. Cavazos efforts to determine whether he had an obligation to disclose the relationship to the City consisted of allegedly checking with two unidentified union officials, his anecdotal observations of familial relationships in other cities, and a cursory review of the ICMA website. Mr. Cavazos did not disclose the existence of his relationship with \_\_\_\_\_ until August 21, 2015—one year after the relationship began—the day after he was asked by both \_\_\_\_\_ and \_\_\_\_\_ about whether he was romantically involved with \_\_\_\_\_.

Finding Concern No. 3: The Investigators find a preponderance of the evidence has been established to show that Mr. Cavazos began a romantic relationship with a subordinate, \_\_\_\_\_ in August or September 2014 and that at the time Mr. Cavazos began that relationship he knew \_\_\_\_\_ was a City employee. The Investigators find that a preponderance of the evidence establishes that the relationship between Mr. Cavazos and \_\_\_\_\_ has been consensual throughout their relationship. The Investigators also find that a preponderance of the evidence has been established to show that Mr. Cavazos intentionally did not disclose the existence of that relationship until August 2015.

Concern No. 4: Mr. Cavazos's alleged position that a relationship between a \_\_\_\_\_ employee and a subordinate should be considered a private matter that the City need not address.

Analysis Concern No. 4: During his interview, Mr. Cavazos asserted that he advocated for an investigation to be conducted of the allegation that \_\_\_\_\_ was having a relationship with a subordinate employee and he provided an email that he claims supports that assertion. However, both \_\_\_\_\_ and \_\_\_\_\_ whom the Investigators found credible, confirm that Mr. Cavazos opposed investigating that alleged relationship because it was a private matter. \_\_\_\_\_ confirmed that it was only after their persistence in the need to investigate the matter did Mr. Cavazos acquiesce to the investigation.

**Finding Concern No. 4:** The Investigators find that a preponderance of the evidence establishes that Mr. Cavazos's position regarding the alleged relationship between \_\_\_\_\_ and his subordinate was that the relationship should not be investigated because the relationship was a "private matter."

**Concern No. 5:** Mr. Cavazos caused \_\_\_\_\_ to conduct an authorized search of all Mayor Pulido's City emails.

**Analysis Concern No. 5:** The Investigators credited \_\_\_\_\_ statement that he initiated only one search of Mayor Pulido's email. The Investigation, however, revealed that \_\_\_\_\_ had, in 2014, conducted a search using Barracuda and search conditions that would produce Councilmember Martinez's emails.

**Finding Concern No. 5:** The Investigators find by a preponderance of the evidence that initiated an authorized search of Mayor Pulido's emails on September 18, 2015 and that conducted no other searches of Mayor Pulido's emails. Also, the Investigators find by a preponderance of the evidence, that in 2014, \_\_\_\_\_ conducted a search of Councilmember Martinez's emails.

**Concern No. 6:** Mr. Cavazos improperly influenced the employment selection of an employment selection panel.

**Analysis Concern No. 6:** \_\_\_\_\_

Neither Mr. Cavazos, nor \_\_\_\_\_ had any communication with the panelists concerning the scoring of the candidates.

\_\_\_\_\_ In light of these facts, the Investigators find that a preponderance of the evidence has not been established to show that that Mr. Cavazos improperly influenced the Planning Manager recruitment.

**Finding Concern No. 6:** The Investigators find that a preponderance of the evidence has not been established to show that Mr. Cavazos improperly influenced the recruitment panel for the Planning Manager position.

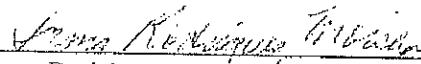
## V. CONCLUSION

For the reasons discussed above, the Investigators find by a preponderance of the evidence as follows:

- Mr. Cavazos complained about sexual harassment by Councilmember Martinez.
- Councilmember Martinez did not engage in sexual conduct towards Mr. Cavazos.



- In a telephone call with \_\_\_\_\_ on May 21, 2015, Mayor Pulido communicated to \_\_\_\_\_ that he, Mayor Pulido had sufficient support from other councilmembers to ensure that \_\_\_\_\_ would not be selected for the \_\_\_\_\_ position.
- Mr. Cavazos began a consensual, romantic relationship with a subordinate City employee in August or September 2014, however, he intentionally did not disclose that relationship to City Council until August 2015.
- \_\_\_\_\_ initiated one authorized search of Mayor Pulido's emails; however, in 2014, \_\_\_\_\_ initiated a search of Councilmember Martinez's emails.
- Mr. Cavazos did not improperly influence the August-September 2015 recruitment.

  
\_\_\_\_\_  
Irma Rodríguez Mélsa  
Marilou Mirkovich

-----Original Message-----

From: [miguelpulido2727@gmail.com](mailto:miguelpulido2727@gmail.com) [mailto:[miguelpulido2727@gmail.com](mailto:miguelpulido2727@gmail.com)]

Sent: Sunday, September 27, 2015 8:33 AM

To: Sonia Carvalho

Cc: Michele Martinez

Subject: Letter

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>>> As Santa Ana elected officials it is our duty and obligation to protect the city. To that end, when information comes to our attention that may relate to alleged violations of the City's harassment policies, we are compelled to share this information with the City Attorney's Office and request the City Attorney undertake any and all legally required investigations consistent with that policy to protect the City in possible subsequent litigation. The concern is that somehow by not conducting an appropriate investigation, the City may fail to address actual violations of the policy.

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>>>> We find ourselves in such a situation at this time and request that the City Attorney's Office consider this request to conduct an investigation using an outside investigator to review the matters below. It is our view that the City Attorney must act in compliance with state law and has no choice but to proceed to protect the City's interest in conducting such an investigation.

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>>>> Specifically, the following items should be investigated by an outside investigator:

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>>>> 1. The allegation made by City Manager Cavazos against Councilmember Martinez claiming sexual harassment.

>>>> 2. The allegation by \_\_\_\_\_ with the guidance and consent of City Manager Cavazos, claiming a hostile work environment by Mayor Pulido.

>>>> 3. Consequences and exposure to the city associated with the declaration in writing by City Manager Cavazos to Mayor Pulido admitting to a relationship with a current city employee/subordinate.

>>>> 4. Consequences and exposure to the city due to the City Manager's expressed position that a division manager having a known relationship with a subordinate \_\_\_\_\_ should be considered a private matter and does not need to be addressed by city authorities.

>>>> 5. Consequences and exposure related to the unauthorized investigation being conducted by City Manager Cavazos, without the approval of the city attorney, to direct \_\_\_\_\_ review all emails to and from Mayor Pulido.

>>>> 6. Consequences and exposure to the city for possible undue influence/tampering by the City Manager of an employment selection panel.

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>>>> Therefore, we are submitting this request and seek written guidance from the City Attorney's Office, including when the retention of an outside investigator occurs. We also seek a written opinion from the City Attorney, if no investigator is hired, as to the reasons why and who is permitted to make such decisions, keeping in mind the city's adopted harassment policy. Finally, we seek guidance as to whether any one or more persons should exclude themselves from the decision making process

concerning the selection and retention of outside counsel.

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>>>> Sincerely,

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>>>> Mayor Miguel Pulido

>>>> Councilwoman Michele Martinez

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August 27, 2015,


Dear Mayor Pulido,

Yesterday I learned "second hand" that you have a question about my personal life and that you actually provided a name of an individual working for the City of Santa Ana involving a personal relationship with me.

I met with Ed Raya this morning and confirmed that I met a person outside of work and soon thereafter learned about their employment with Santa Ana. Given that this individual is not a direct subordinate, works in a different department and I have had no work interaction and absent a policy, we decided to keep this matter private. I have confirmed with Ed Raya that this relationship neither violates City policy nor is prohibited by any federal, state or city rule or statute.

Further, he explained no disclosure policy, process or form exists, and no record exists in Santa Ana for any such declaration. If you believe that a City rule or policy or term of my contract has been violated, please advise immediately.

Absent some proof that I have violated my contract, rule, policy or any law, I would appreciate that you respect my privacy and the privacy of City employees. Thank you.

C: Ed Raya 

Sonia Carvallo

