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October 9, 2024

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***Re: City of Santa Ana Investigation re Council Member Johnathan Ryan Hernandez –  
Executive Summary***

Dear Ms. Carvalho & Ms. Bogosian:

Please allow this correspondence to serve as our Executive Summary following our investigation into a Complaint received by the City of Santa Ana ("the City") on July 11, 2023 by an employee ("the Complainant"). The employee alleged that the planning process for the 2022 and 2023 Juneteenth Festival, Chicano Heritage Festival, and Indigenous Peoples' Day events presented unforeseen challenges due to Council Member Johnathan Ryan Hernandez ("the Subject"). The employee's Complaint highlighted specific circumstances in which Council Member Hernandez' conduct was alleged to have constituted interference with City administrative matters, in violation of Article IV, Section 408 of the City Charter.

The City engaged the Investigator to make factual findings and conduct a policy analysis regarding whether the complained-of conduct occurred, and if established as true, whether it violated the City of Santa Ana's City Charter and/or the City's Code of Ethics and Conduct. The City retained Hanson Bridgett LLP, through Alfonso Estrada, to investigate this allegation and to do so under the attorney-client privilege.

**Hanson Bridgett LLP**

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## **I. Methodology**

The Investigation included extensive review of documentary evidence, including hundreds of e-mail correspondence based on relevant search terms by and between relevant individuals. This included correspondence by and between Council Member Hernandez and vendors/entertainers concerning the City's relevant special events and correspondence by and between Council Member Hernandez and relevant City staff concerning the same.

After review of the relevant evidence, the Investigator interviewed seven individuals. This included the Complainant, the Subject, and five percipient witnesses.

## **II. Summary of Conclusions**

The Investigator employed the preponderance of the evidence standard in making his determinations with respect to the allegations contained in this Investigation. In so doing, the Investigator determined whether the evidence, on balance, more likely than not established that the facts occurred as alleged. The Investigator then considered whether the facts, as established by a preponderance of the evidence, constituted a violation of City of Santa Ana's Charter or the City's Code of Ethics and Conduct.

There were four allegations within the scope of the Investigation:

- 1. Whether City Council Member Johnathan Ryan Hernandez directed and/or interfered with City Staff in relation to any of the City's Juneteenth Festival, Chicano Heritage Festival and/or Indigenous Peoples' Day Events.**
- 2. Whether City Council Member Johnathan Ryan Hernandez solicited donations for the City's Juneteenth Festival, Chicano Heritage Festival and/or Indigenous Peoples' Day that were not received by the City of Santa Ana.**
- 3. Whether City Council Member Johnathan Ryan Hernandez engaged in conduct toward City staff relating to the City's Juneteenth Festival, Chicano Heritage or Indigenous Peoples' Day Events that could be deemed to violate the City's Charter.**
- 4. Whether City Council Member Johnathan Ryan Hernandez engaged in conduct toward City staff relating to the City's Juneteenth Festival, Chicano Heritage Festival or Indigenous Peoples' Day Events that could be deemed to violate the City's Code of Ethics and Conduct.**

The Investigator finds that the preponderance of the evidence supported factual findings to sustain Allegation #1, #3 and #4. The Investigator finds that the preponderance of the evidence did not support factual findings to sustain Allegation #2. Accordingly, Allegations #1, #3 and #4 are **SUSTAINED** and Allegation #2 is **NOT SUSTAINED**.

**Allegation #1:**

The Investigator found that a preponderance of the evidence did support a finding that Hernandez directed and interfered with City staff in relation to the City's Juneteenth Festival, Chicano Heritage Festival, and Indigenous Peoples' Day events (collectively "the special events"). The Complaint alleges that Council Member Hernandez interfered with the staff's planning and execution of these special events in several ways. In relevant part, Hernandez attended meetings uninvited, directed staff on who should be handling certain aspects of the event and interfered with the City's ability to choose and negotiate with vendors for the special events. The Investigator found that a preponderance of the evidence supported these allegations.

For example, Hernandez attended planning meetings for the City's Juneteenth Festival where invites were exclusively made between the community-based organization ("CBO") the City partnered with and the City's Park and Recreation staff. For meetings not attended by Hernandez or communications he was not included in, the CBO's ██████████ would tell City staff that ██████ already discussed certain matters with Hernandez and there was no need to discuss further with City staff.

During one of the meetings Hernandez included himself in, Hernandez interjected that the CBO would be solely responsible for the event flyer because it was a decision he made as policy maker. Hernandez would also interject in e-mails sent by the CBO to the City by immediately supporting its position, and doing so in writing. As further example, Hernandez interfered with the City's partnership with the CBO concerning the Juneteenth Festival in June 2023 by explaining that because it was not in favor of a certain site plan, neither was he.

The facts further established that Hernandez was only requested to provide a list of potential entertainers to the Parks and Recreation Department. Hernandez was reminded of this request and the request to refrain from overreaching in his position on more than one occasion.

Hernandez did not comply with these requests and instead would routinely reach out to entertainers, obtain quotes for their performance rates and direct the City to enter into an agreement with them. Hernandez' e-mails to the City where he introduced the entertainers would also include the entertainers themselves. The Investigator found this imposition, whether intended or not, served as a further attempt to interfere and direct City staff to work with his pre-selected entertainers. Hernandez was further cautioned by the City on at least four occasions to refrain from this conduct. Yet, he continued to do so. Hernandez' self-imposed role into these special events became so apparent, even outside parties began believing he, instead of the City, was the point of contact for the events. While City Council Members would also receive inquiries for these special events, there was no evidence establishing that they would interfere with staff's efforts in the execution and planning. In fact, at least one did the opposite. Conversely, Hernandez interjected himself in the planning and execution of the City's special events and the Investigator also noted that Hernandez would represent to constituents, albeit on an unrelated issue, that he had the ability to direct staff. Even more, Hernandez' conduct continued *after* he received notice of the Complaint and was requested to refrain from directly contacting vendors. Specifically, for the 2024 Chicano Heritage Festival, a Parks and Recreation employee was asked by the City Manager to bring in a

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specific band to the Festival. The employee worked with one of the City's entertainment contractors to secure the band. However, the contractor seemingly contacted the wrong band of the same name. When the employee asked the band how they got in contact with the City, the band's contact told her that Hernandez had helped him book the event. The contact detailed that Hernandez told him the amount the entertainers would be paid and the timing/type of performance the band would be expected to provide at the event.

In light of the above facts, the preponderance of the evidence established that Hernandez directed and interfered with City staff in relation to the City's Juneteenth Festival, Chicano Heritage Festival, and Indigenous Peoples' Day events. Hernandez was not simply providing the City with a list of potential vendors/entertainers but rather affirmatively inserted himself in an attempt to direct and interfere with the planning and execution of these special events.

As such, this allegation against Council Member Hernandez is **SUSTAINED**.

**Allegation #2:**

The Investigator found that a preponderance of the evidence did not support a finding that Hernandez solicited donations for City events that were not received by the City of Santa Ana. While the preponderance of the evidence did establish that Hernandez spoke with potential sponsors, this alone did not evidence that he solicited donations. The Investigator relied on documentary evidence and statements made by the Complainant and Council Member Hernandez in their interviews. Hernandez denied soliciting donations, the Complainant explained that ■■■ belief of Hernandez' solicitation was based on speculation rather than fact and there was no documentary evidence, either direct or circumstantial, that made it more likely than not that these allegations were true. In fact, the documentary evidence established the opposite.

As such, the preponderance of the evidence did not establish a finding that Council Member Hernandez solicited donations for the City's Juneteenth Festival, Chicano Heritage Festival, and/or Indigenous Peoples' Day that were not received by the City of Santa Ana. As such, this allegation is **NOT SUSTAINED**.

**Allegation #3:**

The Investigator found that the preponderance of the evidence did support a finding that Council Member Hernandez' conduct toward City staff relating to the City's Juneteenth Festival, Chicano Heritage Festival, and Indigenous Peoples' Day events violated Section 408 of the City Charter. Therefore, this allegation is **SUSTAINED**.

Section 408 of the City Charter reads, in pertinent part, that except for the purpose of inquiry, the City Council and its members shall deal with the administrative branch of the City government solely through the City Manager or their designated deputy, and neither the City Council nor any member thereof shall give orders to any subordinates of the City manager, either publicly or privately.

Here, the preponderance of the evidence established that Hernandez violated Section 408 of the City's Charter by attempting to communicate directly with City employees and provide them direction concerning, at least, the City's 2023 Juneteenth Festival. The Investigator differentiates providing direction to Parks and Recreation Director, which the evidence showed was seemingly welcomed and approved by both the City Manager and the Director, versus Hernandez' clear direction to City staff on March 28, 2023.

In this regard, the preponderance of the evidence supported the following facts. A March [REDACTED], 2023 meeting was scheduled to be held via videoconference between [REDACTED] City staff members and [REDACTED] members of the community-based organization the City had partnered with for the Juneteenth Festival, including its [REDACTED]. Council Member Hernandez joined the meeting approximately fifteen minutes in. One City staff member provided an update during the meeting on the City's marketing strategy for the upcoming Juneteenth Festival. The CBO's [REDACTED] responded that [REDACTED] had a draft version of a Juneteenth flyer and the City staff member explained that [REDACTED] was looking forward to seeing it so they could begin collaborative design discussions. Before City staff was able to review the flyer, Hernandez interjected and told the [REDACTED] City staff members that the CBO's flyer would be the one used for the event because, in his role as policy maker, the direction he gave as the main proponent of the Juneteenth Festival was that it should be designed, organized and operated by the Black community. Hernandez then asked the City staff members whether they had any Black staff members on their marketing team.

Hernandez' actions were in direct violation of Section 408 as he gave orders to City staff members on how the City must proceed with the planning of its Juneteenth Festival. Hernandez understood he was in a position of influence and power that made it difficult for staff members to disagree with his direction and he exerted this power in front of the City's partner for the event. This was evidenced by the contemporaneous e-mail sent by a City staff member to [REDACTED] supervisor. This was further evidenced by Hernandez' refusal to acknowledge his actions by relying on the CBO's alleged concerns with the event and his need to support his constituents. Reasonably, if Hernandez believed the City Council required City flyers to be produced by a CBO instead of the City, Hernandez could have mitigated this concern by reaching out to the City Manager or the Parks and Recreation Director.

As such, this allegation against Council Member Hernandez is **SUSTAINED**.

**Allegation #4:**

The Investigator found that the preponderance of the evidence did support a finding that Council Member Hernandez engaged in conduct toward City staff relating to the City's Juneteenth Festival, Chicano Heritage Festival or Indigenous Peoples' Day events that violated the City's Code of Ethics and Conduct. Therefore, this allegation is **SUSTAINED**.

The City's Code of Ethics and Conduct reads, in pertinent part, that its intent is to achieve fair, ethical and accountable local government for the City of Santa Ana. Attitudes, words and actions should demonstrate, support and reflect the following qualities and characteristics for the

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wellbeing of [the] community. The Code lists several characteristics including integrity/honesty, responsibility/ protecting the public's interests, fairness/accountability, respect for fellow elected or appointed officials, staff and the public, and proper and efficient use of public resources. Specific, relevant examples included within the Code are listed below:

- Safeguarding the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence and honesty.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual.
- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner; I make decisions based on the merits of the issue.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed.

Here, the preponderance of the evidence established that Hernandez' continuous interference into the City's special events described above violated the City's Code of Conduct and Ethics. The preponderance of the evidence supported the following facts. Despite only being requested to provide the City with a list of vendors (i.e. entertainers), Hernandez would contact City staff on multiple occasions directing they include a specific entertainer for either the City's Juneteenth, Chicano Heritage, or Indigenous Peoples' Day events. Even more, Hernandez would *include* the specific entertainer in the e-mail which compromised or gave the appearance of compromising objectivity, independence, and honesty. Hernandez' actions also failed to promote meaningful public involvement in the City's decision-making processes as he directed, and continuously demanded, that the City enter into agreements with the artists of his liking. Hernandez' claim that the given entertainer was who the community wanted appeared to be spin, and was not supported by credible evidence.

Hernandez further gave special treatment and consideration to a certain CBO beyond that available to others. This was evidenced by his comments during the April 16, 2024 City Council meeting. Despite a RFP process in place for the City's 2024 Juneteenth Festival, which the relevant CBO did not submit an application for, Hernandez requested Council direct staff to bring a report on the City's Juneteenth Festival where the City *commits* to hosting the event with this specific CBO taking the lead as the City's partner for the event. While the agenda item did not state the report would be made following the 2024 event that was subject to a RFP, Hernandez only later clarified the request was for the 2025-2026 fiscal year during the meeting. Even still, the fact that Hernandez

would rather the City make a determination of who to partner with outside the bounds of a transparent public contracting process was evidence to the Investigator of special treatment and consideration to this community-based organization beyond that available to others. The Investigator further found that Hernandez' comments at the meeting, specifically that "[b]lack history should be led by the Black community..." showed special consideration beyond that available to others in violation of the Code. The Investigator also found Hernandez' comments to inhibit meaningful public involvement in the City's decision-making processes and discouraged full participations of all persons and groups, in further violation of the Code.

Lastly, Hernandez failed to respect the distinction between his Council Member role and staff. To start, the Investigator incorporates by reference its analysis of the factual findings for Allegation No. 1 and No. 3 above. Moreover, Hernandez would routinely not involve staff in meetings with entertainers/vendors and would not keep staff informed until a decision to involve said entertainer/vendor had already been made. Hernandez would also schedule meetings with CBOs without staff involvement. Further, when confronted with his improper behavior in his interview, Hernandez would not acknowledge the issue but rather explain the City's issue was a result of racism, an attempt to criminalize him and impeded his role of doing whatever was needed to ensure his constituents felt "supported and validated". Hernandez was not merely serving the interests of his constituents but rather attempting to take responsibility, and credit, for the City's special events without the involvement of City staff.

As a result, the Investigator found that the preponderance of the evidence did support this allegation and it is **SUSTAINED**.

### **III. Credibility Analysis of Complainant**

The Investigator found the Complainant to be credible, in part. However, it appeared to the Investigator that the Complainant made allegations in [REDACTED] Complaint that were either overreaching and/or that [REDACTED] knew lacked factual support. For example, Complainant claimed that Hernandez was improperly involving himself with the City's special events despite constant admonishment from the City to refrain from doing so. However, Complainant initially neglected to explain to the Investigator that Hernandez was originally asked for input on these events. When confronted with this information in [REDACTED] second interview, [REDACTED] only asked for suggestions in an initial meeting and specifically did not ask for a list a vendors. However, the documentary evidence suggested otherwise.

Moreover, when the Investigator asked for information relating to Hernandez' alleged solicitation of donations, Complainant responded in conclusory terms and admitted that [REDACTED] did not have specific knowledge of Hernandez' involvement but only *suspected* this was the case. As further example, when asked about the allegation that Hernandez was involved in a vendor's donation of shirts that were sold by a CBO at a Chicano Heritage Festival, Complainant stated that this was only [REDACTED] *assumption* because [REDACTED] saw Hernandez wearing and promoting the shirt. Complainant's speculation on these two serious accusations detracted from [REDACTED] credibility given [REDACTED] admission that [REDACTED] opinion was based on personal belief rather than concrete facts and/or direct evidence.

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The Investigator also noted that Complainant's demeanor changed in [REDACTED] second interview when asked for further information to corroborate some of the claims in [REDACTED] Complaint. For example, when asked for e-mails where Hernandez is providing [REDACTED] with a list of vendors, [REDACTED] appeared annoyed and deflected the question, stating the information was, or should have already been provided, by [REDACTED] or by other witnesses [REDACTED]. When the Investigator's office later followed up with Complainant on the e-mails [REDACTED] claimed to have provided or would provide, Complainant did not respond. This further detracted from [REDACTED] credibility.

Lastly, Complainant's statements regarding Hernandez' violation of City policy were not always logical to the Investigator. For example, Complainant explained that [REDACTED] had spoken with Hernandez since [REDACTED] initial investigation interview and still believed he was violating City policy and procedure because he told Complainant that an entertainer had been underpaid. Complainant's attempt to frame Hernandez' opinion as a violation of City policy tended to show some bias on Complainant's part toward Hernandez.

Although the Investigator found Complainant lacked credibility in some areas, the Investigator still credited Complainant on points either corroborated by other witnesses and documents or that the Complainant was able to credibly explain during [REDACTED] interview. As such, the Investigator credited the following statements from Complainant:

- Hernandez attended meetings between the City and its proposed vendors that he was not invited to. Specifically, he attended meetings related to the Juneteenth Festival, Chicano Heritage Festival, and Indigenous People's Day.
- During a March 2023 meeting between a community-based organization and the City, Hernandez asked City staff attending whether there were any Black staff members on the City's planning team. [REDACTED]
- The City offered vendor booths for the 2023 Juneteenth Festival at no charge to vendors. After the City learned that the CBO they had partnered with for the event was selling vendors booths they informed it, that it could not do so. However, the day of the event, the City had a large number of vendors appear without prior City approval, many of whom told the City that Hernandez authorized them to be there.
- Hernandez stated at a City Council Meeting that the City's Juneteenth events should be in sole partnership with a certain CBO.
- Hernandez told Complainant that neither [REDACTED] nor the City understood the culture after [REDACTED] did not approve two potential entertainers to perform at the Chicano Heritage Festival due to budget constraints.
- The City's Parks and Recreation Department would routinely reach out to Council Members for events that they may be aligned with and they did have an initial meeting



with Hernandez concerning the Juneteenth Festival, Chicano Heritage Festival, and Indigenous People's Day events.

- The Parks and Recreation Department never asked Hernandez to reach out to vendors directly for the Juneteenth Festival, Chicano Heritage Festival, and Indigenous People's Day events.

#### **IV. Credibility Analysis of Subject, Council Member Hernandez**

On balance, the Investigator did not find Council Member Hernandez to be credible. Hernandez' explanations in defense of the allegations were self-serving, sanctimonious and he displayed an apparent bias against City staff.

To start, Hernandez would often evade the Investigator's questions and go on long tangents, causing the Investigator to have to re-ask the question on multiple occasions. Hernandez' continuous attempts to skirt the Investigator's questions and frame the narrative in a manner favorable to him greatly undermined his credibility.

Another critical factor in assessing Hernandez' credibility was his refusal to acknowledge the City's role with the Juneteenth Festival, Chicano Heritage Festival, and Indigenous Peoples' Day events. The Investigator went through several e-mails with Hernandez in which Hernandez would introduce an entertainer to the City, explain that the City needed to work with the entertainer and provide the entertainer's performance rate. While Hernandez denied any involvement in reaching out to entertainers or negotiating their rates, it was simply not plausible to the Investigator that this was true given the wording of the e-mails. Hernandez also relied on his responsibility to advocate for his constituents as an excuse for getting involved with the events and he also told the Investigator he believed it was this advocating for a group of "constituents that I feel the City did not care for" that caused him to be attacked and targeted. The Investigator found this to be an attempt to sidestep the allegations, which further diminished Hernandez' credibility.

Hernandez also stated on several occasions his understanding that City events needed to be handled by the City Manager's office and the *only* reason he was involved with the events were due to the City's pleas for him to assist. The documentary evidence simply did not show this was the case. While the Investigator found one e-mail where the Parks and Recreation Director asked for a list of vendors (i.e. entertainers), there was no documentary evidence where any City staff member asked Hernandez to reach out to vendors/ entertainers or to connect the vendors/ entertainers with the City by way of 'cc'. Indeed, there are several e-mails where Hernandez is asked to refrain from his conduct regarding the same. These e-mails were direct evidence that Hernandez understood the request to refrain and consciously chose not to do so. Hernandez' refusal to concede this obvious point also negatively impacted his credibility.

The Investigator also noted that Hernandez often tried to turn the interview to a discussion on race rather than the facts related to the Complaint against him. For instance, when asked if

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Hernandez was involved in choosing vendors for one of the City's Juneteenth events, he said no *because* he was not Black. Hernandez further explained that he was not involved in the City's 2024 Juneteenth event because there was a RFP in place which constituted the silencing of the Black community. When asked about a meeting between a CBO and the City where it was alleged he admonished staff members for not being more culturally sensitive and careful when speaking to members of the Black community, he deflected by stating that if his constituents felt they were not being valued, racially targeted, and did not want to work with racists, he could see why they would be offended. When questions were asked about his conduct, such as whether he told staff that a certain partner CBO were to create the marketing and imagery for the Juneteenth Festival, Hernandez responded that it was an inflammatory, incorrect statement in an attempt to "criminalize him" for advocating for Black people. Hernandez' attempt to use perceived issues of race as a shield for his behavior was an exercise in hyperbole aimed to deflect from his own behavior that was clearly established through independent documentary evidence, and witness statements. This also substantially diminished Hernandez' credibility.

Moreover, Hernandez attempted to equivocate and claim the Investigator was being misled and lied to when he was asked whether he requested at a City Council meeting that the Council provide direction to the City Manager concerning the Juneteenth Festival being led by a certain CBO for 2024. While neither the requested report, nor the agenda nor Hernandez' opening comments of his agenda item explained that the request was only for 2025, Hernandez took it as an opportunity to explain his ethics, rather than confirm whether he provided the requested direction. Hernandez' refusal to admit the nature of his agenda item regarding the CBO further detracted from his credibility.

Lastly, Hernandez' explanation of his former policy aide's termination was simply not logical to the Investigator. First, Hernandez conveniently explained the policy aide's termination was due to a May █, 2022 e-mail wherein he contacted a vendor without Hernandez' approval. This explanation would be beneficial to Hernandez' position that he never contacted vendors related to City events. However, Hernandez later explained that he terminated the policy aide's agreement "for cause" almost seven months later – in December 2022. When the Investigator asked what constituted "for cause", Hernandez clarified that it was related to a Christmas event where the aide opened the door an hour earlier than Hernandez had requested. The employment and subsequent termination of a policy aide is not directly relevant to the allegations present. However, the fact that Hernandez would attempt to couch the termination of the aide's agreement as evidence that he would not authorize or approve the contacting of vendors, yet admit that the termination was the result of a much later, separate event, also detracted from his credibility.

Based on all of the above, the Investigator found Hernandez lacked credibility overall, and was not forthcoming with factual information.

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**V. Conclusion**

The Investigator ultimately found that the preponderance of the evidence supported factual findings to sustain Allegation #1, #3 and #4. The Investigator ultimately found that the preponderance of the evidence did not support factual findings to sustain Allegation #2. Accordingly, Allegations #1, #3 and #4 are **SUSTAINED** and Allegation #2 is **NOT SUSTAINED**.

Sincerely,

Hanson Bridgett LLP



Partner

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