

1 government officials' practices of holding secret meetings. (*Sacramento Newspaper Guild v.*
2 *Sacramento Cty. Bd.*, (1968) 263 Cal. App.2d 41, 48-51.)

3 2. In furtherance of its objectives, the Brown Act outlines a series of transparency and
4 public accountability requirements, including requirements related to the open conduct of meetings,
5 proper notice of meetings and business, public access to information, opportunities for the public to
6 directly address members of legislative bodies, and the recording of votes and other actions. (Gov. Code,
7 Section 54950 et seq.)

8 3. Legislative bodies are required to post an agenda containing brief descriptions of each
9 item of business to be transacted at a meeting including items discussed in closed session. (Cal. Gov.
10 Code 54954.2.)

11 4. No action or discussion shall be undertaken on items not appearing on the posted agenda
12 other than brief responses to people exercising their public testimony rights. (Cal. Gov. Code
13 54954.2(a)(3).)

14 5. A majority vote of the legislative body can determine that an emergency exists that will
15 require them to talk about an item of business not appearing on the agenda. However, that item must be
16 publicly identified, and all other exceptions require public notification or disclosure. (Cal. Gov. Code
17 54954.2(b).)

18 6. A legislative body is required to conduct the public's business at an open meeting where
19 the public can observe and comment on the actions taken.

20 7. There are circumstances that allow the legislative body to meet in closed session to
21 discuss a limited list of items: Application from person with criminal record (Cal Gov. Code Section
22 54956.7.), review of final draft of audit report (Cal Gov. Code Section 54956.7.5.), negotiations
23 regarding real property(Cal Gov. Code Section 54956.8.), purchase or sale of pension fund investments
24 (Cal Gov. Code Section 54956.81.), health plan members (Cal Gov. Code Section 54956.86.), pending
25 litigation (Cal Gov. Code Section 54956.9.), and potential liability (Cal Gov. Code Section 54956.95.).

26 8. A legislative body may also hold a closed session to consider issues affecting employees
27 including consideration of appointment, employment, evaluation of performance, discipline, or
28 dismissal. (Cal Gov. Code Section 54957(b)(1).) The statute explicitly omits elected officials from being

1 included under the term “employee” for purposes of this specific subdivision. (Cal Gov. Code Section
2 54957(b)(4).)

3 9. On information and belief, the Ventura City Council has routinely used the closed session
4 to conduct business and discuss issues never put on an agenda and disclosed to the public. Petitioner
5 therefore seeks injunctive relief to prevent future violations and ensure that the Ventura City Council
6 complies with all pertinent requirements of the Brown Act.

7 10. Petitioner has a direct beneficial interest in an open and public meeting process in the
8 City of Ventura. Petitioner is a Ventura City Councilmember who has been charged with representing
9 the voices of those living in District 3 and the larger Ventura community. Petitioner has a duty and
10 responsibility to work with staff and other elected officials to ensure that the Ventura City Government
11 works in a way that is open, honest, and transparent with its citizens. Staff members made private
12 complaints about words that they construed as demeaning while they were being questioned about the
13 legitimacy of their work product and ability to carry out City Council directives. The City conducted a
14 private investigation into the complaints. Based on information and belief, those same City staff
15 members threatened the city with litigation for the statements made by Petitioner at an open meeting, in
16 his capacity as a City Councilmember. Based on those threats, the Mayor of the City of Ventura and
17 other City Councilmembers used the threat of litigation as a guise to not only talk about that threat but to
18 also evaluate the conduct of the Councilmember and propose punishments, including proposing a
19 resolution that would remove him from committees.

20 11. The public cannot observe the criticism of the Councilmember’s conduct when the
21 statements are made in closed session and behind closed doors. Petitioner cannot defend himself or
22 participate in the discussions regarding City Council conduct if he is threatened with potential
23 punishment for questioning the actions of staff and providing oversight of problematic behavior. Nor
24 can Petitioner defend himself if he is banished from a discussion held by the City Council following
25 threats of litigation regarding the conduct he exhibited while in public and in furtherance of his elected
26 position. Even when the City Council eventually allows the issue to be discussed in public, by
27 threatening the punishment of the Petitioner while also compromising his financial compensation for his
28 service, he becomes precluded from being able to participate in that discussion to defend his interests.

1 Petitioner cannot defend himself if he is kept out of the closed session discussion and due to Council
2 directive, is effectively excluded from public discussion.

3 12. As the subject of all discussions that occurred on May 10, 2023, at the special closed
4 session meeting and open session special meeting on June 5, 2023, Petitioner has an interest in
5 vindicating the public's right to know what its legislative bodies are doing and the public's ability to
6 ensure that bodies tasked with important public functions are following the law.

7 13. Unless Respondents are ordered to comply with their obligations Petitioner will be
8 irreparably harmed, and pecuniary compensation will be inadequate. Without judicial relief, Respondent
9 will continue to conduct their closed sessions in a manner which exceeds their authority and precludes
10 transparency with the public.

11 14. Petitioner holds a duty to represent his constituency and hold the staff of the City of
12 Ventura, as well as his fellow elected officials accountable. He cannot effectively do his job if he is
13 prevented from participating in discussions in closed sessions and before the citizenry. He cannot do his
14 job if simple criticism of staff and their inability to follow through on City Council direction is deemed
15 as bullying or harassment. He cannot do his job if he is never given an opportunity to defend himself in
16 public or to his fellow City Councilmembers.

17 15. Petitioner has submitted a request to cure and correct to the Respondent so they can
18 address the Brown Act violations, but Respondent has refused to do so, denying that any violations have
19 occurred. Attached as Exhibit "D". A judicial declaration is necessary and appropriate at this time in
20 order that Petitioner may ascertain and enforce the rights and duties as set forth above.

21 16. Petitioner seeks declaratory and injunctive relief under California Government Code
22 Section 54960 to prevent violations from occurring in the future. The conduct reflects a pattern of
23 violations, and there is a threat the violations will reoccur. Respondent has taken the position that the
24 City Council is not required to comply with this aspect of the Brown Act, making future violations likely
25 to reoccur and difficult to monitor.

26 **Parties**

27 17. Mike Johnson is a City Council Member for the City of Ventura, elected December 15,
28 2020, to represent District 3.

1 26. On information and belief, the same employee filed another complaint with Human
2 Resources alleging that Petitioner’s accusations were in retaliation for their prior complaint to Human
3 Resources.

4 27. In August 2022, the City of Ventura hired Van Dermynen Makus Law Corporation to
5 commence an independent investigation of the City of San Buenaventura and the allegations made
6 against the Petitioner for statements made at the 2022 meeting. The investigation report is attached as
7 Exhibit “A.”

8 28. Petitioner was alleged to have acted “Unprofessionally” and “Hostile.” (*Id.*)

9 29. The allegation that Petitioner’s conduct was motivated by gender was unfounded.

10 30. Petitioner was alleged to have “called out” the staff member. (*Id.*)

11 31. The allegation that Petitioner retaliated against the staff member was unfounded.

12 32. The allegations that Petitioner was acting unprofessionally, and hostile were sustained
13 based on the “reasonable perception” of the investigator after viewing the recorded meeting and feeling
14 that his tone during questioning was harsh and repetitive. (*Id.*)

15 33. The allegation that the Petitioner “called out” the staff member in the public meeting was
16 sustained, however the investigator noted that the employee in question was amongst “many other staff
17 member employees” that were called out for the alleged involvement and therefore was not “singled
18 out”. (*Id.*)

19 34. In November 2022, the City of Ventura hired Van Dermynen Makus Law Corporation to
20 commence an independent investigation of the City of San Buenaventura and the allegations made
21 against the Petitioner for alleged behavior in the later 2022 meeting (*Id.*)

22 35. Petitioner was alleged to have targeted and bullied the staff member. (*Id.*)

23 36. Petitioner was alleged to have targeted and bullied the staff member after the meeting
24 through social media. (*Id.*)

25 37. Petitioner was alleged to have targeted and bullied the staff member through a public
26 records request. (*Id.*)

27 38. Petitioner was alleged to have continued to target and bully the staff member through
28 email, social media, and additional public records act requests. (*Id.*)

1 39. The report containing the findings as described above was issued on May 4, 2023. (*Id.*)

2 40. On May 10, 2023, the City Council of Ventura held a closed session to conference with
3 legal counsel about significant exposure to litigation. The agenda is attached as Exhibit “B.”

4 41. On June 2, 2023, a report was issued on behalf of Mayor Joe Schroeder, Deputy Mayor
5 Dr. Jeanette Sanchez-Palacios, Liz Campos, Doug Halter, Bill McReynolds, and Jim Duran requesting
6 that the City Council approve a resolution to censure Petitioner. The report is attached as Exhibit “C.”

7 42. On June 5, 2023, the City Council held a special open meeting to discuss this resolution
8 in public. (*Id.*) Petitioner’s income was put at issue should he be removed from boards and based on the
9 City Attorney’s denial to defend him, he therefore had to recuse himself from discussion. At no point
10 was Petitioner given an opportunity to address the allegations made against him, either in closed session
11 or before the public.

12 **CLAIMS FOR RELIEF**

13 **FIRST CAUSE OF ACTION**

14 **Writ of Mandate (Code of Civil Procedure Section 1085)**

15 **Violations of the Ralph M. Brown Act (California Government Code Section 54950 et seq.)**

16 43. Petitioner re-alleges and incorporates by reference all other paragraphs of this complaint
17 as though fully set forth herein.

18 **Violations of Government Code Section 54956 and 54954.5**

19 44. The Brown Act requires that all meetings of the legislative body of a local agency be
20 open and public. (Gov. Code, Section 54953, subd. (a).)

21 45. The Brown Act prohibits any closed session not expressly authorized by state law.
22 California Government Code Section 54962.

23 46. The Brown Act sets forth criteria for legislative bodies to describe the items they will
24 disclose in closed session. (Cal Gov. Code Section 54954.5.)

25 47. The Brown Act allows legislative bodies to hold special meetings after the presiding
26 officer or by a majority of the members of the legislative body, deliver written notice to each member of
27 the legislative body and post notice via prescribed mediums. (Cal Gov. Code Section 54956) “The call
28 and notice shall specify the time and place of the special meeting and the business to be transacted or
discussed. No other business shall be considered at these meetings by the legislative body.” (*Id.*)

1 48. Under California Government Code Section 54956.9, a legislative body cannot be
2 prevented from receiving advice from its legal counsel regarding pending litigation when discussion in
3 open session concerning those matters would prejudice the position of the local agency in the litigation.
4 Litigation is considered pending when litigation has been initiated formally, there is significant exposure
5 to litigation against the local agency, based on existing facts and circumstances, the legislative body of
6 the local agency is meeting only to decide whether a closed session is authorized, or the local agency has
7 decided to initiate or is deciding whether to initiate litigation.

8 49. On May 9, 2023, the Ventura City Council posted an agenda for a special closed session
9 to be held on May 10, 2023, listing only item on the agenda: CONFERENCE WITH LEGAL
10 COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION, One case, Authority: Government Code
11 Section 54956.9(d)(2).” (Exhibit B.)

12 50. Ventura City Council only gave notice that they would discuss one case for concerns of
13 potential litigation. (*Id.*)

14 51. Legislative body actions should not be nullified so long as the body’s reasonable efforts
15 to notify interested persons of what will be discussed in the closed session. (*Castaic Lake Water Agency*
16 *v. Newhall County Water Dist.* (2015) 238 Cal.App.4th 1196, 1207.) The Ventura City Council did not
17 state that they would be discussing the performance or actions of City Councilmember Mike Johnson.
18 Here, the description of meeting with legal counsel to discuss potential litigation is not sufficient to
19 prevent confusion to the public.

20 52. City Council members are not allowed to discuss items that are not on the agenda except
21 in a brief response to a comment during public testimony. (Cal Gov. Code Section 54954.2(a)(3).)
22 Discussing the performance of Petitioner and deciding to take action to condemn Petitioner does not
23 meet any exception to this law by providing a reference for factual information, requesting staff to report
24 back at a subsequent meeting, or placing an item on the agenda for a future meeting. (*Id.*) The public
25 lacked adequate notice that the City Council intended to take any action on items not listed on the
26 agenda.

27 53. According to the minutes of the May 10, 2023, meeting, after closed session, no decision
28 was announced or disclosed to the public even though the Council had directed staff to prepare a

1 resolution censuring Petitioner, removing him from committee appointments, and compelling him to
2 speak by submitting an apology to the City staff. Minutes are attached as Exhibit “E.”

3 54. On information and belief, Interim City Manager Akbar Alikhan attended the closed
4 session meeting despite being in the chain of command regarding Human Resource issues, presenting a
5 potential conflict by participating in the meeting.

6 55. On information and belief, City Councilmember Liz Campos was repeatedly bullied and
7 intimidated by her fellow City Council members and the Interim City Manager to vote with the rest of
8 the City Council members in attendance.

9 56. Petitioner’s censure and punishment was not the listed topic for discussion on the closed
10 session agenda.

11 Violations of Government Code Section 54952.2

12 57. A majority of members of any legislative body must only hear, discuss, deliberate, or act
13 on any item that is within the subject matter jurisdiction of the legislative body at a meeting of the
14 legislative body. (Cal Gov. Code Section 54952.2(a).)

15 58. A majority of the members of a legislative body shall not use a series of communications
16 of any kind, directly or through intermediaries, to discuss, deliberate, or act on any time of business that
17 is within the subject matter jurisdiction of the legislative body. (Cal Gov. Code Section 54952.2(b)(1).)

18 59. An “action taken” is when a collective decision is made by a majority of the members of
19 a legislative body, or a collective commitment or promise to make a positive or negative decision when
20 sitting as a body or entity upon a motion, proposal, resolution, order, or ordinance. (Cal Gov. Code
21 Section 54952.6.)

22 60. On June 2, 2023, a staff report was issued on behalf of Mayor Joe Schroeder, Deputy
23 Mayor Dr. Jeanette Sanchez-Palacios, Councilmember Liz Campos, Councilmember Doug Halter,
24 Councilmember Bill McReynolds, and Councilmember Jim Duran requesting that the City Council
25 approve a resolution to censure Petitioner and remove him from committees. (Exhibit “C.”)

26 61. The Mayor and five City Council members constitute a majority of the City Council.
27
28

1 71. California Government Code Section 87100 prohibits a public official from making,
2 participating in making, or otherwise using his or her official position to influence a governmental
3 decision in which the official has a financial interest. A conflict of interest may occur whenever a public
4 official makes a government decision which may reasonably be foreseen as materially affecting one or
5 more of his or her financial interests. (*Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050,
6 1055.)

7 72. Government Code Section 995 requires a city to defend City Councilmembers in pending
8 litigation stemming from their duties as an elected official, upon their request. This obligation is limited
9 by the public entity's right to refuse to provide a defense if it determines individual did not act in the
10 scope of employment, acted with actual fraud, corruption, or actual malice, or that the defense of the
11 action would create a conflict of interest between the public entity and the employee. Courts have
12 routinely held that elected officials are considered employees for these purposes. (*DeGrassi v. City of*
13 *Glendora* (9th Cir. 2000) 207 F.3d 636, 641, citing *Stewart v. City of Pismo Beach* (1995) 35
14 Cal.App.4th 1600, 1605.) Here, the City Council never publicly disclosed any discussion or vote
15 showing any qualified finding that would negate the City's obligation to defend.

16 73. When the costs of litigation including attorney's fees are borne by the City and he will be
17 indemnified against any decision awarding damages for his official conduct, his economic interest in his
18 personal finances are not involved in the decision concerning litigation. So long as a public official is
19 insulated from the foreseeable costs of litigation, he or she ordinarily has no conflict of interest in any
20 decision regarding such litigation. (FPPC Advice Letter A-05-071)

21 74. On information and belief, on August 11, 2022, the City Attorney of Ventura notified
22 Petitioner that he was under investigation. Petitioner inquired with the City Attorney what the
23 investigation concerned but the City Attorney claimed that because the complaint was filed by an
24 employee against the Council member his office had a conflict, and he could not discuss it further.

25 75. Petitioner initially was unaware about the nature of the allegations.

26 76. According to California Government Code section 995.2, the City Council is charged
27 with deciding whether to render defense in pending litigation stemming from actions done in furtherance
28 of an individual's capacity as an employee of the public entity.

1 77. If the City Council determined that the requesting Respondent’s actions were not within
2 the scope of their position, the act was committed with fraud, corruption or actual malice, or a conflict of
3 interest would be created by initiating that defense then the public entity can refuse that defense. (Cal
4 Gov. Code Section 995.2)

5 78. On information and belief, Petitioner later learned that the allegations against him were
6 derived from statements he made in public meetings in his capacity as a City Council member.

7 79. On information and belief, Petitioner requested the City provide for his defense in
8 response to these allegations.

9 80. On information and belief, the City Attorney Andy Hugland denied the request for
10 defense without referring the matter to the City Council for its determination.

11 81. According to California Government Code Section 995.2, the City Council is charged
12 with deciding whether to render defense in pending litigation stemming from actions done in furtherance
13 of an individual’s professional capacity as an elected official.

14 82. If the City Council determined that the requesting Respondent’s actions were not within
15 the scope of their position, the act was committed with fraud, corruption or actual malice, or a conflict of
16 interest would be created by initiating that defense then the public entity can refuse that defense. (Cal
17 Gov. Code Section 995.2)

18 83. Petitioner was given notice of the May 10, 2023, closed session and was instructed not to
19 attend because the meeting concerned him and therefore would pose a conflict. However, Petitioner had
20 no existing conflict that would preclude him from participating in the conversation. As a City Council
21 member, Petitioner is entitled to participate in closed sessions unless he has a financial conflict. At the
22 time of the meeting, he did not have a conflict with the issue addressed in closed session and should
23 have been able to participate in the discussion until such a conflict arose.

24 84. Respondent City of Ventura had a duty to consider Petitioner’s request and render a
25 decision. In accordance with the Brown Act, any decision regarding this matter should be announced to
26 the public in compliance with California Government Code Section 54957.1(a)(2) and the minutes do
27 not reflect that this decision was made or recorded.

1 to be transacted or discussed at the meeting as required under Government Code
2 Section 54954.2(a)(3).

- 3 c. Restrict all conversations during closed session or special closed sessions to only the
4 items listed in the agenda.
- 5 d. Publicly report any action taken and the vote or abstention on that action of each
6 member present for the action, as required under Government Code Section 54953(c);
- 7 e. Make available for public inspection the materials distributed to the legislative body
8 or a majority of the members of the legislative body, as required under Government
9 Code Section 54947.5.

10 3. Issue a writ of mandate, pursuant to Government Code Section 54960, ordering
11 Respondent to audio record its closed sessions and preserve the audio recordings for the period and
12 under the terms of security and confidentiality the court deems appropriate to ensure that discussions and
13 actions conducted in closed session adhere to the Brown Act.

14 4. Grant Petitioner reasonable attorneys' fees and costs of litigation under Code of Civil
15 Procedure Section 1021.5, Government Code Section 54960.5, and any other applicable provisions of
16 law.


17 5. Award such other relief as this Court may deem just and proper.

18 Respectfully submitted,

19
20 DATED: September 15, 2023,

BAMIEH AND DE SMETH PLC

21
22
23 By: _____

24 
25 RON BAMIEH
26 DANIELLE DE SMETH
27 ALEX DE ARANA-LEMICH
28 Attorneys for Petitioner and Plaintiff
Mike Johnson

1 **VERIFICATION**

2 I, MIKE JOHNSON declare that as resident of the City of San Buenaventura and as City Council
3 member of District 3 of the SAN BUENAVENTURA CITY COUNCIL, I am the petitioner in the
4 above-entitled action. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and
5 know the contents thereof to be true of my knowledge, except as to those statements made upon
6 information and belief, and as to those I believe them to be true.

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct.

10
11
12
13 Executed on 09 / 18 / 2023



14 _____
Mike Johnson

Exhibit A

AGENDA ITEM
1

Date: June 2, 2023

Council Action Date: June 5, 2023

TO: Honorable Mayor and City Council

FROM: Mayor Joe Schroeder, Councilmember, District 7
Deputy Mayor Dr. Jeannette Sanchez-Palacios, Councilmember, District 4
Liz Campos, Councilmember, District 1
Doug Halter, Councilmember, District 2
Bill McReynolds, Councilmember, District 5
Jim Duran, Councilmember, District 6

SUBJECT: Censure of Councilmember Mike Johnson

SUMMARY

Investigations into two complaints filed by City employees found that Councilmember Johnson acted unprofessionally toward one of the employees in a hostile and bullying manner. Because of these findings, the City Council is considering a resolution censuring Councilmember Johnson.

RECOMMENDATION

Approve the Resolution censuring Councilmember Mike Johnson.

DISCUSSION/ANALYSIS

In 2022, two City staff members formally complained to Human Resources that Councilmember Johnson had acted unprofessionally and in a hostile and bullying manner towards them. Given the sensitive nature of the complaints, the City Attorney retained an independent, third-party investigations law firm to investigate the two complaints and report back on its findings.

After conducting a thorough investigation of the two complaints (which cost the City approximately \$75,000), including interviewing relevant witnesses, the law firm determined that Councilmember Johnson did act unprofessionally toward one of the employees in a hostile and bullying manner. The content of those investigations remains a confidential personnel matter and will not be disclosed. Two attached executive summaries prepared by the third-party law firm outline the findings in the investigation reports.

When the reports were complete, a closed session was conducted on May 10, 2023, to discuss the complaints and findings of the investigator. By a 6-0 vote (Councilmember Johnson was not present), the City Council unanimously directed the City Attorney to prepare the attached resolution censuring Councilmember Johnson for unprofessional and hostile behavior towards City staff and place the matter on the agenda for a special open session City Council meeting.

Section V.2.C. of the City Council Protocols, in relevant part, states that:

The professional and personal conduct of officials must be above reproach **[City Council] Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of City Council; Council Advisory Boards, Commissions, and Committees; the public; and staff.** Respect, for each other, the institution, the staff, and the public is critical to maintaining an environment where free and open discussion leads to better decision-making for the City. As such, **the City Council and each of its members will act respectfully at all times.** [emphasis added]

Not only does unprofessional, hostile, and bullying behavior violate the Council's protocols, it reflects poorly on the Council and the city as a whole and is not in line with the City's values. The decision to censure demonstrates the City's commitment to following protocols and respecting each other, city staff, and members of the public. It is essential that City Councilmembers demonstrate respect when they interact with City staff and treat them as the professionals that they are.

By taking this action, the City Council hereby reaffirms its commitment to protect City staff from hostile and bullying behavior by others, including City Councilmembers.

The Council hopes that through this censure Councilmember Johnson will understand the importance of professionalism and civility in all matters, including when he is representing the City on outside committees and commissions. With many important decisions facing the Council, both in the immediate future and going forward, having a full Council that works in harmony will best reflect the values of the City of Ventura.

It is essential that the names of the City employees and the circumstances related to their complaints remain confidential and protected.

ATTACHMENT(S):

- A Executive Summaries
- B Resolution

ATTACHMENT A



VAN DERMYDEN MAKUS
Investigations Law Firm

**EXECUTIVE SUMMARY OF
INVESTIGATIVE FINDINGS**

City Of San Buenaventura
May 4, 2023

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II. Investigative Methodology 1

III. Summary Of Findings 1

I. Brief Introduction

In November 2022, Van Dermyden Makus Law Corporation (Firm) commenced an independent investigation for the City of San Buenaventura (City). The City initiated this investigation in response to allegations by a staff member against one of the City Councilmembers.

This serves as the Executive Summary of Investigative Findings (Executive Summary). It is not intended to be a comprehensive recitation of the evidence. Instead, it provides an overview of the investigative methodology and a summary of my findings.

II. Investigative Methodology

I conducted the investigation using specific methodology following industry standards. This section provides an overview of the investigative processes.¹

Witnesses and Documents. I conducted 21 interviews of 14 witnesses. All interviews were conducted via videoconference. I reminded interviewees they were subject to governing policies prohibiting retaliation for either bringing a claim or participating in this review process. I also reviewed documents provided by the parties and witnesses.

Credibility Determinations. In reaching the findings, I carefully considered the perspectives, observations, and information from all interviewees. I have drawn the conclusions in this Executive Summary from the totality of the evidence and a thorough analysis of all the facts, and where necessary, I made credibility determinations.

Standard of Review. I reviewed, compared, and analyzed the information provided under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this Executive Summary, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

Independence. The City and its representatives allowed me discretion to conduct this review as I determined to be necessary. The City gave me complete access to all requested witnesses and documents. No person interfered with, or attempted to influence, the findings in this Executive Summary.

III. Summary Of Findings

After a thorough review of the evidence, I reached the following findings by a preponderance of the evidence:

¹ I was retained to use my legal skills to assist the City in developing a response to the allegations. Specifically, I used my expertise in employment law to arrive at findings based on a professional evaluation of the evidence.

Findings Pertaining To City Council Meeting:

- **Allegation The City Councilmember Targeted And Bullied The Staff Member During The Meeting – Not Sustained.** While the City Councilmember identified the staff member by name during the City Council meeting, among many other staff member employees, the City Councilmember did not do so to target or bully the staff member.
- **Allegation The City Councilmember Targeted And Bullied The Staff Member After The Meeting Through Social Media – Not Sustained.** I do not find the City Councilmember’s subsequent social media activity indicative of continued targeting or bullying.

Allegation The City Councilmember Targeted And Bullied The Staff Member Through A Public Records Act Request – Not Sustained. I find the City Councilmember issued the Public Records Act Request at issue seeking information unrelated to the staff member.

Allegation The City Councilmember Continued To Target And Bully The Staff Member Through Email, Social Media, And Additional Public Records Act Requests – Not Sustained. I do not find the City Councilmember issued the Public Records Act Requests or made the social media posts at issue, nor do I find the City Councilmember left the staff member off City-related emails intentionally.



This concludes the investigation.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Matthew D. Rose".

Matthew D. Rose



VAN DERMYDEN MAKUS
Investigations Law Firm

**EXECUTIVE SUMMARY OF
INVESTIGATIVE FINDINGS**

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This serves as the Executive Summary of Investigative Findings (Executive Summary). It is not intended to be a comprehensive recitation of the evidence. Instead, it provides an overview of the investigative methodology and a summary of my findings.

II. Investigative Methodology

I conducted the investigation using specific methodology following industry standards. This section provides an overview of the investigative processes.¹

Witnesses and Documents. I conducted 18 interviews of 13 witnesses. All interviews were conducted via videoconference. I reminded interviewees they were subject to governing policies prohibiting retaliation for either bringing a claim or participating in this review process. I also reviewed documents provided by the parties and witnesses.

Credibility Determinations. In reaching the findings, I carefully considered the perspectives, observations, and information from all interviewees. I have drawn the conclusions in this Executive Summary from the totality of the evidence and a thorough analysis of all the facts, and where necessary, I made credibility determinations.

Standard of Review. I reviewed, compared, and analyzed the information provided under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this Executive Summary, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

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III. Summary Of Findings

After a thorough review of the evidence, I reached the following findings by a preponderance of the evidence:

¹ I was retained to use my legal skills to assist the City in developing a response to the allegations. Specifically, I used my expertise in employment law to arrive at findings based on a professional evaluation of the evidence.

Findings Pertaining To City Council Meeting #1:

- **Allegation The City Councilmember Acted “Unprofessionally” And “Hostile” – Sustained.** I find that during a City Council meeting, the City Councilmember acted in a manner reasonably perceived by the staff member as bullying, based on the City Councilmember’s “unprofessional” and “hostile” questioning. Considering the City Councilmember’s harsh tone and repetitive style of questioning, it is understandable the staff member felt “belittled” and “demoralized,” as alleged.
- **Allegation The City Councilmember’s Conduct Was Motivated By Gender – Not Sustained.** While a close call, I do not find the City Councilmember bullied the staff member and acted “unprofessionally” and “hostile” during the City Council meeting on account of gender.

Findings Pertaining To City Council Meeting #2:

- **Allegation The City Councilmember “Called Out” The Staff Member – Sustained.** I find that during a City Council meeting, the City Councilmember “called out” the staff member by name, among many other staff member employees, for alleged involvement in the misuse of City funds.
- **Allegation The City Councilmember “Retaliated” Against The Staff Member – Not Sustained.** I do not find that during the City Council meeting, the City Councilmember “called out” the staff member by name for alleged involvement in the misuse of City funds in order to “retaliate” against the staff member for filing a previous complaint.



This concludes the investigation.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Matthew D. Rose".

Matthew D. Rose

ATTACHMENT B

RESOLUTION NO. 2023-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, CENSURING COUNCILMEMBER MIKE JOHNSON FOR UNPROFESSIONAL AND HOSTILE BEHAVIOR TOWARDS CITY STAFF

WHEREAS, In 2022, two City staff members formally complained to Human Resources that Councilmember Johnson had acted unprofessionally and in a hostile and bullying manner toward them; and,

WHEREAS, The City Attorney retained an independent, third-party investigations law firm to investigate the two complaints and report back on its findings; and,

WHEREAS, After conducting a thorough investigation of the two complaints, including interviewing relevant witnesses, the law firm determined that Councilmember Johnson did act unprofessionally toward one of the employees in a hostile and bullying manner; and,

WHEREAS, Section V.2.C. of the City Council Protocols, in relevant part, states that:

The professional and personal conduct of officials must be above reproach [City Council] Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of City Council; Council Advisory Boards, Commissions, and Committees; the public; and staff. Respect, for each other, the institution, the staff, and the public is critical to maintaining an environment where free and open discussion leads to better decision-making for the City. As such, the City Council and each of its members will act respectfully at all times.

; and,

WHEREAS, It is essential that City Councilmembers demonstrate respect when they interact with City staff and treat them as the professionals that they are; and,

WHEREAS, The City Council hereby reaffirms its commitment to protect City staff from hostile and bullying behavior by others, including City Councilmembers; and,

WHEREAS, If the City Council does not act, it is also responsible for allowing the hostile and bullying behavior to continue.

NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby resolve, find, determine and order as follows:

Section 1: The unprofessional, hostile, and bullying behavior demonstrated by Councilmember Mike Johnson toward City staff is unacceptable and in conflict with the City Council Protocols established to encourage a collaborative and respectful environment.

Section 2: Councilmember Johnson is, hereby, suspended from his duties as a City Council representative or alternate representative on his external committees and boards, including, but not limited to, the Clean Power Alliance, Fair Board Liaison, Gold Coast Transit, Housing Authority of the City of San Buenaventura Liaison, Regional Defense Partnership 21st Century, Ventura Council of Governments, Ventura County Transportation Commission, Ventura Unified School District City/School Liaison Committee, and Ventura Visitors & Convention Bureau Liaison until December 31, 2023, at which time the City Council will reconsider reinstating Councilmember Johnson to those committees and boards if the following actions occur:

1. Councilmember Johnson issues a written apology to the City Council and staff, in general, acknowledging his unprofessional, hostile, and bullying behavior and violation of the City Council Protocols.
2. Councilmember Johnson participates in and successfully completes six sessions of workplace behavior training, paid for and approved by the City. The trainer will be asked to report back to the Council on the success of the training.
3. Councilmember Johnson consistently demonstrates respect for City Council, City staff, and members of the public from the dais and in his personal interactions with them and encourages an environment free from unprofessional and hostile behavior.

PASSED AND ADOPTED this 5th day of June, 2023.

Joe Schroeder, Mayor

ATTEST:

Michael B. MacDonald, CMC
City Clerk

APPROVED AS TO FORM
Andrew Heglund, City Attorney

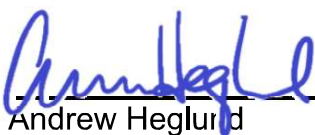
BY:  _____ 6/2/2023 _____
Andrew Heglund Date
City Attorney

Exhibit B



CITY COUNCIL AGENDA

WEDNESDAY, MAY 10, 2023

SPECIAL CLOSED SESSION – 5:00 P.M.

CITY COUNCIL CHAMBERS – CITY HALL - 501 POLI STREET, VENTURA, CA 93001

JOE SCHROEDER, MAYOR

Councilmembers:

DISTRICT 1 – LIZ CAMPOS
DISTRICT 2 – DOUG HALTER
DISTRICT 3 – MIKE JOHNSON

DISTRICT 6 – JIM DURAN
DISTRICT 5 – BILL MCREYNOLDS
DISTRICT 4 – JEANNETTE SANCHEZ-
PALACIOS, DEPUTY MAYOR

Akbar Alikhan
Interim City Manager

Andrew Heglund
City Attorney

Michael B. MacDonald
City Clerk

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED WITH IN-PERSON ATTENDANCE ONLY.

To submit written comments (up to 1,000 characters) for the City Council's consideration and inclusion in the public records, email cityclerk@cityofventura.ca.gov by 4:00 p.m. on the meeting date, or by using the public comment form at www.cityofventura.ca.gov/publicinput. Please include the Agenda Item Number in the subject

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Michael B. MacDonald, City Clerk, (805) 654-4787. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. Any items outstanding at that time will be deferred until the next regularly scheduled meeting.

CALL TO ORDER – CLOSED SESSION – 5:00 p.m.

ROLL CALL

PUBLIC COMMUNICATIONS: *Public comments on Closed Session Items only.*

CLOSED SESSION: Teleconference/Video Conference Meeting. The Public may not participate in the Closed Session, other than for Public Comments.

1. CONFERENCE WITH LEGAL COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION

One Case

Authority: Government Code Section 54956.9(d)(2)

ADJOURNMENT

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk's Office at 501 Poli Street, Room 204, Ventura, CA 93001. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

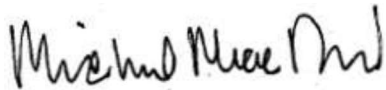
In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the City Clerk's Office at (805) 658-4787 or the California Relay Service at (866) 735-2929. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Administrative Reports relating to this agenda are available on the City's website – <https://www.cityofventura.ca.gov/AgendaCenter>.

Resource Items for the Public:

- [City Council Protocols](#) which includes Rules of Decorum for the Public
- [City Council Goals](#)
- [Budget Principles](#)
- [City Charter](#)

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This agenda was posted on Tuesday, May 9, 2023, at 5:00 p.m. in the City Clerk's Office, on the City Hall Public Notices Board and on the internet.



Michael B. MacDonald, CMC  
City Clerk

## Exhibit C



CITY COUNCIL AGENDA

MONDAY, JUNE 5, 2023

SPECIAL MEETING – 5:00 P.M.

CITY COUNCIL CHAMBERS – CITY HALL - 501 POLI STREET, VENTURA, CA 93001

JOE SCHROEDER, MAYOR

Councilmembers:

DISTRICT 1 – LIZ CAMPOS  
DISTRICT 2 – DOUG HALTER  
DISTRICT 3 – MIKE JOHNSON

DISTRICT 6 – JIM DURAN  
DISTRICT 5 – BILL MCREYNOLDS  
DISTRICT 4 – DR. JEANNETTE SANCHEZ-  
PALACIOS, DEPUTY MAYOR

Akbar Alikhan  
Interim City Manager

Andrew Heglund  
City Attorney

Michael B. MacDonald  
City Clerk

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION.**

Live broadcasts of City Council meetings are available on Cable TV (Channel 15) and via internet accessible video stream at <https://www.cityofventura.ca.gov/718/Videos> or on YouTube at <https://www.YouTube.com/cityofventura/live>.

To access the meeting remotely: Join the WebEx meeting live at: <https://cityofventura.webex.com/cityofventura/j.php?MTID=m6c595d3beb4b8bc7f510df785387c819>

To request to speak on an item, use the chat function to notify the City Clerk by including the Item Agenda Number in your comment. The City Clerk will announce public speakers and promote them to a panelist, which will allow the use of camera and microphone. To join with audio only, call (213) 306-3065 and use access code: 2567 806 9243

Please be mindful that the meeting will be recorded, and all rules of procedure and decorum apply for in-person attendees and those participating virtually.

To submit written comments (up to 1,000 characters) for the City Council's consideration and inclusion in the public records, email [cityclerk@cityofventura.ca.gov](mailto:cityclerk@cityofventura.ca.gov) by 4:00 p.m. on the meeting date, or by using the public comment form at [www.cityofventura.ca.gov/publicinput](http://www.cityofventura.ca.gov/publicinput). Please include the Agenda Item Number in the subject

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Michael B. MacDonald, City Clerk, (805) 654-4787. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. Any items outstanding at that time will be deferred until the next regularly scheduled meeting.

**CALL TO ORDER – REGULAR SESSION – 5:00 p.m.:** *The regular meetings of the San Buenaventura (Ventura) City Council also serve as regular meetings of the Successor Agency and Public Facilities Financing Authority when Successor Agency and Public Facilities Financing Authority items are listed on the agenda.*

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **CLOSED SESSION REPORT**

**FORMAL ITEM:** *The public may comment on each item listed on the agenda for Formal Items as the item is taken up. Formal Items may be reordered at the discretion of the Chair. The public may speak up to three (3) minutes on each agenda item.*

### **1. Censure of Councilmember Mike Johnson**

Introduced by: Mayor Joe Schroeder, Councilmember, District 7  
Deputy Mayor Dr. Jeannette Sanchez-Palacios,  
Councilmember, District 4  
Liz Campos, Councilmember, District 1  
Doug Halter, Councilmember, District 2  
Bill McReynolds, Councilmember, District 5  
Jim Duran, Councilmember, District 6

### **RECOMMENDATION**

Approve the Resolution censuring Councilmember Mike Johnson.

## **ADJOURNMENT**

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*Live Spanish interpretation will be available. No advanced request for interpretation services required.*

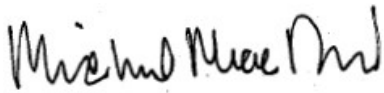
*La traducción al español estará disponible en vivo. No es necesario solicitar la traducción al español anticipadamente.*

*Administrative Reports relating to this agenda are available on the City's website – <https://www.cityofventura.ca.gov/AgendaCenter>.*

Resource Items for the Public:

- [City Council Protocols](#) which includes Rules of Decorum for the Public
- [City Council Goals](#)
- [Budget Principles](#)
- [City Charter](#)

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This agenda was posted on Friday, June 2, 2023, at 5:00 p.m. in the City Clerk's Office, on the City Hall Public Notices Board and on the internet.



Michael B. MacDonald, CMC
City Clerk

Exhibit D

Dear Mr. Heglund,

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act and Article 1, Section 3 of the California Constitution.

On May 10, 2023, the Ventura City Council held a special Closed Session meeting. The sole agenda item was:

“CONFERENCE WITH LEGAL COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION

One Case

Authority: Government Code Section 54956.9(d)(2)”

The Brown Act lists the only situations that warrant a Council meeting in Closed Session. Council can meet behind closed doors to *"consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee"*. Specifically, The Brown Act states *"the term 'employee'... shall not include any elected official"* (Government Code Sections 54957(b)(4) and 54957.6(b)).

While the public notice claimed that the meeting was to discuss significant exposure to litigation, this was clearly a guise to meet primarily to evaluate my actions and discuss disciplining me. In advance of the meeting, you let my attorney know I was not invited, and that the meeting was actually about me. Prior to the meeting, I sent you an email, objecting to the way the meeting was noticed, and objecting to being prevented from attending.

As I pointed out, I had no knowledge regarding a conflict relating to any city exposure to significant litigation. I also am not aware of being a party to any litigation. Nevertheless, any resulting lawsuit derived from my words during a City council meeting would have resulted in me being sued in my official capacity as a City Councilmember. If I were sued in my capacity as a City Councilmember, the City would have a legal obligation to indemnify and defend me in such a suit. *“Thus, where the lawsuit challenges the councilmember’s conduct in his official capacity, such as here, the councilmember will have no financial interest in the decision provided the city is obligated to pay the damages.” 1995 Cal. Fair-Pract. Olivas Advice Letter, No. A-95-068.* Without a financial interest in the decision, I should have been permitted to participate in any closed session item as a Councilmember. To be excluded from such a meeting absent a finding of this kind would be an infringement of my duties as City Councilmember.

Before the meeting took place, I requested you postpone it, notice it properly, and provide a written explanation for why I was excluded. Instead, you allowed the meeting to proceed, and I have never received any written explanation for my exclusion.

The staff report for the June 5, 2023, Open Session meeting refers to a vote taken to discipline me at the May 10, 2023, Closed Session meeting. Even if the City were to find a valid means of keeping me from attending the meeting, the exposure to litigation would not be grounds for discussing and executing a decision to discipline a City Councilmember. No discussion of such a vote was noticed to the public for comment or awareness that these actions were taking place.

That entire discussion and vote were prohibited under the Brown Act, and it was not noticed properly. It was not noticed at all. It could not be noticed properly, because it is not one of the handful of Closed Session agenda items allowed by statute. Thus, the closed session meeting was in violation of Government Code Section 54953(a). Moreover, the agenda item was not listed properly per Government Code Section 54954.2.

So, I hereby demand that the City cure and correct these violations under Government Code Section 54960.1. The City must declare null and void all actions taken at that meeting, including any directions to staff, on all topics; rescind the staff report for the June 5, 2023 Open Session meeting; and report these corrections on the record at a regular Open Session Council meeting.

The City has 30 days to cure and correct or inform me of their decision not to do so. If the City fails to act or refuses to act, I will have no choice but to file a claim with the court and ask a judge to enforce the Brown Act and invalidate related actions. I would also be entitled to ask the court to award me any court costs and reasonable attorney fees.

Respectfully,

Mr. Mike Johnson
[add title]

Exhibit E

CITY OF VENTURA
CITY COUNCIL MINUTES



WEDNESDAY, MAY 10, 2023

SPECIAL CLOSED SESSION – 5:00 P.M.

CITY COUNCIL CHAMBERS – CITY HALL - 501 POLI STREET, VENTURA, CA 93001

JOE SCHROEDER, MAYOR

Councilmembers:

DISTRICT 1 – LIZ CAMPOS
DISTRICT 2 – DOUG HALTER
DISTRICT 3 – MIKE JOHNSON

DISTRICT 6 – JIM DURAN
DISTRICT 5 – BILL MCREYNOLDS
DISTRICT 4 – JEANNETTE SANCHEZ-
PALACIOS, DEPUTY MAYOR

Akbar Alikhan
Interim City Manager

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City Attorney

Michael B. MacDonald
City Clerk

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CALL TO ORDER – CLOSED SESSION: 5:01 p.m.

ROLL CALL

Present: Councilmembers Duran, McReynolds, Halter, Deputy Mayor Sanchez-Palacios and Mayor Schroeder

Absent: Councilmembers Johnson and Campos

Mayor Schroeder presiding

PUBLIC COMMUNICATIONS: None

CLOSED SESSION: *Teleconference/Video Conference Meeting. The Public may not participate in the Closed Session, other than for Public Comments.*

1. **CONFERENCE WITH LEGAL COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION**

One Case

Authority: Government Code Section 54956.9(d)(2)

ADJOURNMENT: 7:30 p.m.

I hereby certify that this is a true and correct record of the City Council meeting held on May 10, 2023.



Michael B. MacDonald, CMC
City Clerk