

Ellis Investigation Report

Ellis Investigation Letter to City Attorney

City Attorney Memo to City Council

# **CONFIDENTIAL INVESTIGATION REPORT**

## **Attorney-Client Privileged Communication**

**Subject:** Bruce Silverstein, City Councilmember  
**Prepared for:** City of Malibu  
**Prepared by:** Leslie D. Ellis, Attorney Investigator  
**Date:** July 20, 2021

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## I. INTRODUCTION

The City of Malibu (City) retained Ellis Investigations Law Corporation to conduct an impartial investigation into the complaint from Reva Feldman, former City Manager, that Bruce Silverstein, Councilmember, mistreated her because of her gender. Among other things, Ms. Feldman complained that Mr. Silverstein's mistreatment included making disparaging comments about her and purposefully overwhelming her with emails and information requests.

The investigation began on May 3, 2021.

This Confidential Investigation Report (Report) contains detailed information, witness accounts, relevant documentation and findings relating to the concerns. It is anticipated that this Report will be maintained confidentially by the decision makers and will not be disseminated except as required by law or as determined by the City and its attorneys.

## II. SUMMARY OF ISSUE AND FINDINGS

A summary of the issue and findings is provided in this section. The more detailed findings and analyses is provided below in the Report.

This Report presented one issue for review: Did Mr. Silverstein mistreat Ms. Feldman because of her gender?

No. Mr. Silverstein did not mistreat Ms. Feldman because of her gender. Mr. Silverstein denied engaging in any conduct because of Ms. Feldman's gender and the evidence supported his account.

As an initial matter, it was the case that Mr. Silverstein's communications and conduct toward and about Ms. Feldman were frequently hostile and unprofessional. Ms. Feldman and witnesses described Mr. Silverstein's conduct as "harassment" and a "hostile work environment." These are legal terms that, under the law, apply to conduct based on a protected category—such as age, gender, race and others. Here, Ms. Feldman indicated gender as the underlying reason for Mr. Silverstein's conduct. If Ms. Feldman's gender were a factor, then Mr. Silverstein's pattern of hostile and unprofessional conduct toward her reflected "harassment" and a "hostile work environment." The evidence, however, did not support that Mr. Silverstein's conduct involved a gender-based animus toward Ms. Feldman. Rather, it reflected Mr. Silverstein's dissatisfaction with Ms. Feldman's performance in managing the City and that they disagreed over various business issues.

Among other things, this finding was supported by: (1) the lack of evidence reflecting that Mr. Silverstein's conduct involved Ms. Feldman's gender; (2) the evidence negating that Mr. Silverstein mistreated other women; and (3) the evidence that Mr. Silverstein also engaged in critical conduct toward men.

This finding was also supported by the evidence that Ms. Feldman and Mr. Silverstein began having conflicts over various City matters in the aftermath of the Woolsey Fire, which occurred in November 2018. There was no dispute that Mr. Silverstein's dislike of Ms. Feldman began before his election and that he wanted her removed from her City Manager position. He readily acknowledged—and multiple witnesses and documents corroborated—that he ran on a platform that included trying to have her removed from her position. The evidence reflected that Ms. Feldman and Mr. Silverstein continued to conflict over various City matters throughout Mr. Silverstein's onboarding and after he was sworn in as a new councilmember.

Mr. Silverstein's conduct toward Ms. Feldman throughout these conflicts often reflected hostility and unprofessionalism. His conduct, however, involved various disagreements over City business having nothing to do with Ms. Feldman's gender.

### **III. INVESTIGATION BACKGROUND**

#### **A. Independence**

The City allowed the investigator discretion to conduct the investigation as determined to be necessary. The City did not attempt to influence or direct the outcome of the investigation, but instead appropriately deferred to the investigator in all respects, including in granting access to witnesses and documents.

#### **B. Investigative Standard**

The conclusions in this Report are not legal determinations, but instead factual findings regarding the complaint.

The investigator reviewed, compared and analyzed the evidence to determine whether the concerns were with or without merit under a preponderance of the evidence standard. Preponderance of the evidence, for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side.

The investigator considered and weighed the rights of all parties to ensure both fairness and vigilance in the event that corrective action results from the investigation. The investigator did not obtain testimony given under oath. Nonetheless, the investigation proceeded under the good faith expectation that witnesses would answer truthfully. The conclusions in this Report were drawn from the totality of the evidence and a thorough analysis of all the information gathered.

#### **C. Credibility Determinations**

As appropriate, the investigator made credibility determinations. The investigator considered several factors to assess the credibility of witnesses when there were factual disputes:

- Corroboration with other evidence
- Motive to lie, fabricate or exaggerate
- Opportunity and capacity to observe
- Inherent plausibility
- Past record of similar conduct
- Consistency of statements
- Evidence of bias
- Admission of untruthfulness
- Reputation for honesty or deceit
- Demeanor

Because a witness' demeanor during an interview can be affected by many factors, such as nervousness, stress or emotion, the investigator did not rely on demeanor as a determinative factor in assessing credibility. Where necessary to resolve disputed facts, the investigator evaluated credibility on one or more of the remaining factors.

#### D. Witnesses

The following individuals were interviewed as witnesses in this investigation:

Name of Witness	Title	Dates Interviewed
Reva Feldman	Former City Manager. Ms. Feldman worked for the City from 2005 to May 1, 2021. She reported to the City Council.	May 3, 2021 (Video)
Karen Farrer	Councilmember. Ms. Farrer has sat on the City Council since 2018.	May 25, 2021 (Video)
Heather Glaser	Former City Clerk. Ms. Glaser worked for the City from 2012 to April 2021. She reported to Ms. Feldman.	June 7, 2021 (Video)
Christi Hogin	Former City Attorney and Of Counsel with Best Best & Krieger. Ms. Hogin worked in various capacities with the City since 1990. She retired from her City Attorney position in December 2020.	June 10, 2021 (Video)
Mikke Pierson	Councilmember. Mr. Pierson has sat on the City Council since 2018.	May 25, 2021 (Video)
Bruce Silverstein	Councilmember. Mr. Silverstein has sat on the City Council since 2020.	June 15, 2020 (In Person)
Lisa Soghor	Assistant City Manager. Ms. Soghor has worked for the City since 2016. She reports to the City Manager.	June 9, 2021 (Video)

The investigator interviewed directly involved witnesses or witnesses found to have relevant information. The investigator did not interview other individuals mentioned in the course of the investigation if, in the assessment of the investigator:

- They did not have direct, significant and relevant information related to the specific incidents within the investigation scope;

- The investigator already obtained the information the witnesses would have provided; or
- The information would not affect the outcome of the investigation.

#### **E. Admonitions to Witnesses**

The investigator advised all witnesses that the investigator was an attorney retained by the City to conduct the investigation. The investigator informed witnesses that while they were not under oath or subject to any court order, they were expected to answer truthfully. The investigator requested witnesses consider the confidential nature of the investigation before discussing the subject of the interview. The investigator informed witnesses that the investigator could not guarantee confidentiality. The investigator also advised witnesses that retaliation was prohibited—both retaliation for bringing a claim and for participating in an investigation.

#### **F. Documents**

This investigation received a volume of documents from the City and the witnesses. Due to their large volume, the documents are not included as attachments to this Report. Briefly, the documents included: (1) Ms. Feldman's January 2021 attorney letter; (2) City Council policies and meeting agendas, minutes and video recording; (3) Mr. Silverstein's December 2020 Human Resources (HR) Complaint about Ms. Feldman; (4) over five hundred emails between and regarding Ms. Feldman and Mr. Silverstein received from the City; (5) social media posts involving Mr. Silverstein's comments about Ms. Feldman; and (6) multiple emails and social media posts received from Mr. Silverstein.

### **IV. FACTUAL BACKGROUND**

The City of Malibu (City) is a general law city and operates under the council-manager form of government. The five City Council members are elected at-large to serve four-year terms. The Mayor's office rotates annually among councilmembers.

The City Council appoints the City Attorney and City Manager. Christi Hogin, former City Attorney and Of Counsel with Best Best & Krieger, worked in various capacities with the City since 1990. She worked as the City Attorney until her retirement on December 15, 2020.

Reva Feldman, former City Manager, began working for the City in 2005. She became the City Manager in 2016. Effective May 1, 2021, Ms. Feldman resigned from her City employment through a negotiated separation.

In November 2020, the residents elected Bruce Silverstein, Councilmember, to the City Council. Among other things, Mr. Silverstein ran on a campaign platform that included a

goal to remove Ms. Hogin and Ms. Feldman from their City positions. He began his term on December 14, 2020.

On January 16, 2021, Ms. Feldman's attorney submitted a letter to the City on Ms. Feldman's behalf, complaining that Mr. Silverstein mistreated Ms. Feldman and asking for a separation agreement and buyout of her employment contract. Through the letter as well as in Ms. Feldman's interview in this investigation, Ms. Feldman complained that Mr. Silverstein mistreated her by engaging in unprecedented personal and professional attacks. For example, Ms. Feldman complained that Mr. Silverstein made disparaging comments about her and purposefully overwhelmed her with emails and information requests. Ms. Feldman complained that she believed Mr. Silverstein mistreated her because of her gender. This investigation followed.

## **V. DID MR. SILVERSTEIN MISTREAT MS. FELDMAN BECAUSE OF HER GENDER?**

This investigation found, based on a preponderance of the evidence, that Mr. Silverstein did not mistreat Ms. Feldman because of her gender. Mr. Silverstein denied engaging in any conduct because of Ms. Feldman's gender and the evidence supported his account.

As an initial matter, it was the case that Mr. Silverstein's communications and conduct toward and about Ms. Feldman were frequently hostile and unprofessional. Ms. Feldman and witnesses described Mr. Silverstein's conduct as "harassment" and a "hostile work environment." These are legal terms that, under the law, apply to conduct based on a protected category—such as age, gender, race and others. Here, Ms. Feldman indicated gender as the underlying reason for Mr. Silverstein's conduct. If Ms. Feldman's gender were a factor, then Mr. Silverstein's pattern of hostile and unprofessional conduct toward her reflected "harassment" and a "hostile work environment." The evidence, however, did not support that Mr. Silverstein's conduct involved a gender-based animus toward Ms. Feldman. Rather, it reflected Mr. Silverstein's dissatisfaction with Ms. Feldman's performance in managing the City and that they disagreed over various business issues.

### **A. Evidence of Gender-Based Conduct**

This finding was supported by: (1) the lack of evidence reflecting that Mr. Silverstein's conduct involved Ms. Feldman's gender; (2) the evidence negating that Mr. Silverstein mistreated other women who worked with the City, as Ms. Feldman complained; and (3) the evidence that Mr. Silverstein also engaged in critical conduct toward men.

#### **1. General Lack of Gender-Based Evidence**

First, this investigation received very little evidence to support that Mr. Silverstein's conduct reflected gender-based mistreatment.



Ms. Feldman, for example, complained that Mr. Silverstein's general rude tone and criticisms of her demonstrated his condescension toward women. She indicated that she believed that Mr. Silverstein did not communicate in the same hostile and aggressive manner toward men as he did toward her. Ms. Feldman, though, had no specific evidence that Mr. Silverstein had a gender bias. For example, Ms. Feldman did not indicate that Mr. Silverstein made negative comments about women. And, as discussed throughout this Report, the evidence reflected that Mr. Silverstein's critical conduct toward Ms. Feldman, while reasonably considered by some as unprofessional and hostile, at times, was unrelated to Ms. Feldman's gender.

This investigation considered that some witnesses shared Ms. Feldman's belief that Mr. Silverstein's conduct reflected gender-based mistreatment. However, as with Ms. Feldman, no witnesses provided any specific evidence to support that gender motivated Mr. Silverstein's actions. For example:

- Karen Farrer, Councilmember, stated a belief that Mr. Silverstein's conduct reflected "a strong element of misogyny." Nevertheless, she had no evidence of specific gender-based conduct. Indeed, she indicated that Mr. Silverstein did not do or say anything to specifically reflect that he was motivated by gender.
- Heather Glaser, former City Clerk, surmised that Mr. Silverstein would not treat a man the way he treated Ms. Feldman. She indicated, however, that she had no proof of this and she never heard Mr. Silverstein say anything that implicated gender.
- Mikke Pierson, Councilmember, indicated that he believed Mr. Silverstein would not treat a man the way he treated Ms. Feldman. Mr. Pierson, however, could not think of anything Mr. Silverstein said or did that related to gender.
- Lisa Soghor, Assistant City Manager, indicated that Mr. Silverstein's communications had "a flavor of misogyny." She, however, he did not witness him do anything specific because of Ms. Feldman's gender.

Moreover, as discussed below, each of these witnesses also provided information negating that Mr. Silverstein mistreated Ms. Feldman because of her gender.

For his part, Mr. Silverstein steadfastly denied engaging in any conduct toward Ms. Feldman because of her gender (or any other protected basis). Mr. Silverstein largely acknowledged much of the underlying conduct about which Ms. Feldman complained. Further, nearly all his communications with Ms. Feldman were in writing, and those writings corroborated much of conduct in Ms. Feldman's complaint.

However, Mr. Silverstein generally characterized his conduct differently and provided multiple reasons—unrelated to gender—for his underlying dislike of Ms. Feldman and

conflicts with her. For example, Mr. Silverstein indicated, and the evidence corroborated, that his issues with Ms. Feldman involved his perception of her job performance as City Manager (discussed further below). As well, Mr. Silverstein indicated that Ms. Feldman had no right to have respectful bosses. Thus, he indicated that, even if he acted like a jerk to her, doing so was not a violation of law or policy.

## **2. Conduct toward Other Women**

Second, to support her gender complaint, Ms. Feldman indicated that Mr. Silverstein mistreated three other women who worked with the City: (1) Ms. Glaser; (2) Ms. Hogin; and (3) Ms. Soghor. Ms. Feldman said that each of these women indicated that they, too, thought Mr. Silverstein treated women worse because of their gender.

For his part, Mr. Silverstein denied mistreating other staff members. While he agreed he was critical of Ms. Hogin, he indicated he only acted kindly to other City staff members. The witnesses supported Mr. Silverstein's account. As discussed further below, the evidence reflected that Mr. Silverstein's information requests on the City and conduct toward Ms. Feldman plausibly had a negative impact on various staff members. Still, the evidence negated that Mr. Silverstein mistreated the women Ms. Feldman identified or engaged in gender-based conduct toward them.

### **a) Ms. Glaser**

Regarding Ms. Glaser, Ms. Feldman indicated that Ms. Glaser left her employment with the City because of Mr. Silverstein. Ms. Feldman stated that Ms. Glaser interacted frequently with Mr. Silverstein due to her role as clerk. And, given Ms. Glaser's duties responding to Mr. Silverstein's voluminous information requests (discussed further below), she saw how Mr. Silverstein negatively communicated with Ms. Feldman.

For her part, Ms. Glaser corroborated that Mr. Silverstein's conduct made it difficult to do a good job and she did not want to continue working with him. Ms. Glaser indicated that, in her work responding to information requests, she saw how Mr. Silverstein communicated toward Ms. Feldman, which caused a lot of unnecessary drama and did not put him in a good light. While this evidence provided some support for Ms. Feldman's complaint, it was not evidence of mistreatment toward other women. Indeed, Ms. Glaser specifically stated that Mr. Silverstein never said anything inappropriate or unprofessional to her. Thus, on its face, Ms. Glaser observing Mr. Silverstein mistreat Ms. Feldman still only reflected his mistreatment toward one woman.

Notably, as well, Ms. Glaser stated that she applied for her current job with the City of Mountain View in October 2020—before the November 2020 election and before Mr. Silverstein became a councilmember in December 2020. Thus, while Ms. Glaser plausibly described that Mr. Silverstein's conduct made it easier for her to accept a

position with another organization, that she applied for a new job a month before the election further negated that she left the City because of Mr. Silverstein.

Additionally, Ms. Farrer provided further corroboration that, aside from Ms. Feldman, Mr. Silverstein did not mistreat other staff members. Notably, Ms. Farrer supported Ms. Feldman and not Mr. Silverstein. Ms. Farrer nevertheless indicated that Mr. Silverstein was polite and complimentary toward staff, including being particularly complimentary about Ms. Glaser in a council meeting.

**b) Ms. Hogin**

Regarding Ms. Hogin, Ms. Feldman indicated that Mr. Silverstein consistently berated Ms. Hogin and “took her to task” on everything she said, such as questioning her interpretation of the Brown Act.

While several emails reflected that Mr. Silverstein and Ms. Hogin disagreed about various aspects of the Brown Act, Ms. Hogin’s account contradicted Ms. Feldman’s complaint. Specifically, Ms. Hogin stated that she believed that Mr. Silverstein did not engage in gender-based conduct. Further, Ms. Hogin stated that she never met Mr. Silverstein and had very little interaction with him beyond a couple of telephone conversations and some emails. Ms. Hogin indicated that she heard that Mr. Silverstein ran his campaign on a platform to get rid of herself and Ms. Feldman, but that she did not follow the election closely and understood that nobody took Mr. Silverstein’s candidacy seriously. Thus, his campaign comments did not impact her.

**c) Ms. Soghor**

Regarding Ms. Soghor, Ms. Feldman indicated that Ms. Soghor turned down the City Manager position that Ms. Feldman vacated because Ms. Soghor saw Mr. Silverstein’s conduct toward Ms. Feldman and she did not want to put herself in a similar position. For her part, Ms. Soghor corroborated Ms. Feldman’s account about this. She indicated that she declined the City Manager role because she surmised that, if Mr. Silverstein thought Ms. Feldman was corrupt, Mr. Silverstein plausibly thought the same for all staff since staff took direction from Ms. Feldman. Ms. Soghor stated that she did not want that target on her back.

This evidence, however, was not evidence of mistreatment toward other women. Indeed—as with Ms. Glaser, above—Ms. Soghor specifically stated that Mr. Silverstein never said anything inappropriate or unprofessional to her. Rather, Ms. Soghor indicated that Mr. Silverstein was only ever polite to her. Thus, Ms. Soghor observing Mr. Silverstein mistreat Ms. Feldman reflected only mistreatment toward one woman.

Further, the evidence reflected that the City asked multiple department heads whether they would step into the interim City Manager position while they sought to fill it, and

none of them—both men and women alike—took the role. Ms. Farrer stated this was the case. Ms. Farrer indicated that these staff members, having seen Mr. Silverstein's conduct toward Ms. Feldman, did not want to put themselves into a situation requiring they work closely with Mr. Silverstein. In turn, that various men felt the same way that Ms. Soghor felt further negated that Mr. Silverstein's conduct reflected a gender bias.

### 3. Conduct toward Men

Third, this finding was supported by the evidence that, in addition to Ms. Feldman, Mr. Silverstein was also challenging and hostile toward various men. While Ms. Feldman appeared to receive a higher volume of Mr. Silverstein's negative communications, this plausibly came about because of her position as City Manager, not her gender. More specifically, and as discussed further below, Mr. Silverstein's conduct toward Ms. Feldman involved conflicts over City business matters that she handled in her role as City Manager.

Multiple witnesses corroborated that Mr. Silverstein engaged in challenging and hostile communications toward men. For example, Mr. Silverstein's account supported that he opposed various men. Mr. Silverstein indicated that he had fiduciary responsibility to speak out in City Council meetings and was critical of other men, including other councilmembers, John Cotti, City Attorney and Partner at Best, Best & Krieger, and Richard Molica, Head of the Planning Department.

Other witnesses who provided further corroboration for Mr. Silverstein's critical conduct toward men included the following:

- Ms. Farrer indicated Mr. Silverstein acted intolerably to several men. Specifically, she identified that Mr. Silverstein did so to Mr. Molica, Mr. Cotti and councilmembers Mr. Pierson and Paul Grisanti. Further, Ms. Farrer described that Mr. Silverstein was obstructive at City Council meetings, which three male councilmembers as well as Mr. Cotti attended. For example, Ms. Farrer stated that, at his first meeting in January 2021, Mr. Silverstein objected to everything, including the posting of the meeting. This caused the meeting to last six hours though it included no substantive discussion.
- Ms. Glaser stated that Mr. Silverstein did not differentiate his treatment between men and women. Rather, he treated people awfully or well across the board, regardless of gender. For example, when he "threw a tantrum" at a City Council meeting, he directed his conduct toward both men and women councilmembers.
- Ms. Soghor stated that because Mr. Silverstein targeted people, it caused some dysfunction within the City Council. Councilmembers who disagreed with him showed a reluctance to step up against him because Mr. Silverstein blasted them

on social media. Specifically, Ms. Soghor indicated he did this with Mr. Pierson and Ms. Farrer.

- Mr. Pierson indicated that Mr. Silverstein also attacked men. Specifically, he identified himself and Mr. Grisanti.

Additionally, multiple emails corroborated Mr. Silverstein's conflicts and aggressive communications with various men, including Mr. Cotti and Mr. Pierson. For example, in December 2020, Mr. Silverstein sent emails to Mr. Cotti describing him as biased and prejudiced, accusing him of conduct constituting a cover up and threatening to file an ethics complaint with California State Bar.

This investigation considered Mr. Pierson's account that he felt that Mr. Silverstein's attacks on himself and Mr. Grisanti differed from his attacks on Ms. Feldman. Specifically, Mr. Pierson indicated that Mr. Silverstein went after Mr. Pierson and Mr. Grisanti based on the substance of what they said. In contrast, he believed Mr. Silverstein launched into attacks against Ms. Feldman because of a general overall dislike. The evidence, however, did not support Mr. Pierson's account in this regard. While the evidence supported that Mr. Silverstein disliked Ms. Feldman, as Mr. Pierson indicated, the evidence also reflected that Mr. Silverstein's various hostile communications toward and about Ms. Feldman stemmed from his conviction—well founded or not—that Ms. Feldman performed her job poorly, lacked transparency and treated him inappropriately in the course of their work on various City matters (discussed further below).

This investigation considered the evidence, suggested by some witnesses, that Mr. Silverstein did not mistreat Ms. Feldman's replacement—Steve McClary, Interim City Manager—like he did Ms. Feldman. The implication was that because Mr. McClary is a man holding the same position Ms. Feldman held, this reflected differential, gender-based treatment. The evidence, however, did not support this premise. Rather, Ms. Feldman's and Mr. McClary's situations were not comparable for several reasons. Primarily, and as discussed further below, the bulk of Mr. Silverstein's animosity toward Ms. Feldman stemmed from conflicts over how Ms. Feldman handled various City matters over the years. In contrast, Mr. McClary came from prior employment outside of the City and a history of conflicts did not exist between him and Mr. Silverstein. In turn, there was no reason for Mr. Silverstein to dislike Ms. Feldman's replacement who with whom he had no prior issues or interactions—whether that replacement was a man or a woman.

#### **B. Initial Conflicts between Ms. Feldman and Mr. Silverstein**

This finding was also supported by the evidence that Ms. Feldman and Mr. Silverstein began having conflicts over various City matters in the aftermath of the Woolsey Fire, which occurred in November 2018. In other words, their conflicts related to

Mr. Silverstein's dissatisfaction with Ms. Feldman's job performance and not her gender.

### **1. Ms. Feldman's Performance**

As an initial matter, this investigation considered that several individuals lauded Ms. Feldman's performance and considered her an excellent City Manager. For example, Ms. Feldman stated that she had a stellar career and was generally praised for her hard work and successes.

Multiple witnesses and documents corroborated Ms. Feldman's account. For example, Ms. Farrer described Ms. Feldman as an excellent City Manager, who was well connected and respected. Similarly, Mr. Pierson described Ms. Feldman as a great partner, and highly skilled and knowledgeable. As well, Ms. Soghor described Ms. Feldman as an amazing boss and City Manager who was devoted and took her job very seriously.

Still, while Ms. Feldman had ample supporters and was considered a good City Manager by many, this did not mean that others—including Mr. Silverstein—did not hold a contrary view. Indeed, it was neither surprising nor remarkable that public figures such as Ms. Feldman had some supporters and some detractors. Such is frequently the case in public offices at all levels of government. And, such was the case here. Multiple witness accounts and documents corroborated that Ms. Feldman had her share of critics. Indeed, Ms. Feldman readily acknowledged receiving criticism from various people about her work.

For example, Ms. Feldman shared that, in the aftermath of the November 2018 Woolsey Fire, many residents in Malibu viewed the City's response as a failure and blamed Ms. Feldman for it. Ms. Feldman disagreed that she was to blame regarding some of the issues attributed to her. However, regardless of who was at fault, Ms. Feldman acknowledged that many, including Mr. Silverstein, formed a poor view of her performance during these events. And, Mr. Silverstein corroborated that Ms. Feldman's handling of the Woolsey Fire was one of the many things that concerned him about her performance. He indicated that she did a terrible job in the aftermath of the fire.

### **2. Early Conflicts between Ms. Feldman and Mr. Silverstein**

In addition to the Woolsey Fire, the evidence reflected other reasons existed—unrelated to gender—for Mr. Silverstein's low opinion of Ms. Feldman. These reasons came about before he assumed his councilmember role. There was no dispute that Mr. Silverstein's dislike of Ms. Feldman began before his election and that he wanted her removed from her City Manager position. He readily acknowledged—and multiple witnesses and documents corroborated—that he ran on a platform that included trying to have her removed from her position. Mr. Silverstein indicated that he felt that Ms. Feldman had little integrity and he planned to propose to the City Council that she be terminated.

Regardless of the merits of Mr. Silverstein's critiques, multiple witnesses provided examples of several events that formed the bases of Mr. Silverstein's opinion of Ms. Feldman.

**a) City Lot Conflict**

For example, Ms. Feldman pointed to a 2019 conflict between her and Mr. Silverstein over the City's permitting process for a lot of land used by Southern California Edison. She indicated that Mr. Silverstein contended that the lot was protected habitat and appealed the City's decision on that issue, which was still pending. Multiple witnesses brought up this conflict, as well, when describing the history of issues Mr. Silverstein raised.

Mr. Pierson, for example, indicated that Mr. Silverstein started contesting City projects in 2019, including a permit that the City approved for a lot next to City Hall. Further, Mr. Pierson indicated that Mr. Silverstein contested the approval of a road project that he believed went into protected wetlands.

Mr. Silverstein also mentioned the City lot conflict when he described the history of Ms. Feldman's conduct that troubled him. He indicated that Ms. Feldman had a field covered in concrete, which Mr. Silverstein believed constituted mismanagement and a violation of environmental law. Mr. Silverstein stated that he believed Ms. Feldman did not represent the City well and did not respond to residents' concerns.

**b) Anti-Ms. Feldman Resident Group**

Similarly, multiple witnesses indicated that Mr. Silverstein was not alone in his critiques. Rather, the evidence reflected that he was part of a group of vocal residents critical of Ms. Feldman that arose years before Mr. Silverstein became a councilmember. Further, the evidence reflected that these early conflicts and criticisms involved various disagreements unrelated to Ms. Feldman's gender.

For example, Ms. Soghor pointed to a core group of anti-Ms. Feldman residents who espoused a narrative that Ms. Feldman could not do her job. Among others, Ms. Soghor indicated that members of this group included: (1) Cece Woods, a local reporter; (2) Jefferson Wagner, former Councilmember, and his partner Candace Brown; and (3) residents David Saul and Susan Saul. Ms. Soghor gave three examples of early conflicts and criticisms about Ms. Feldman from this group:

- First, Ms. Soghor indicated that Ms. Feldman and Mr. Wagner, who was part of this group, conflicted during Mr. Wagner's first term as councilmember over five years earlier when Ms. Feldman held the Assistant City Manager position.
- Second, Ms. Soghor indicated the group's negative feelings stemmed from Ms. Feldman not hiring one of the group members, Mr. Saul, for multiple



positions to which Mr. Saul applied in the City's Public Safety Department.

- Third, Ms. Soghor indicated that the group had animosity toward Ms. Feldman over the 2016 departure of Brad Davis from his Community Service Manager position. She indicated that Mr. Davis was well liked and the group blamed Ms. Feldman for his leaving.

Ms. Soghor indicated that this core group of anti-Ms. Feldman residents encouraged Mr. Silverstein to run for City Council and supported his campaign. Other witnesses, including Ms. Feldman, corroborated that Mr. Silverstein was part of a larger group of residents critical of Ms. Feldman. For example:

- Ms. Feldman indicated that Mr. Silverstein was part of a group of six to eight other residents who pushed false narratives about Ms. Feldman's poor performance—including: (1) matters involving the Woolsey Fire; (2) that Ms. Feldman went to Paris for eight days in February 2019 when Malibu experienced heavy rain and mudslides and some residents had to evacuate; and (3) matters involving a Spring 2019 Yves St. Laurent fashion show that did not have a proper permit.
- Ms. Farrer stated that she started seeing Mr. Silverstein write critical social media posts about Ms. Feldman consistent with a small group of residents who made no secret of their desire to remove Ms. Feldman from her City Manager position. She indicated that Ms. Woods led this group, and that they had a constant social media presence criticizing Ms. Feldman. Ms. Farrer described the group as conspiracy theorists and indicated that others in the group included Ms. Woods' ex-husband, Mr. Wagner and John Massa, Planning Commissioner. Ms. Farrer surmised that this group recruited Mr. Silverstein to help them get rid of Ms. Feldman.
- Mr. Pierson indicated that he understood that a group of residents had problems with Ms. Feldman for years and tried to get her fired. Mr. Pierson further stated that, during his own City Council campaign in 2018, this same group tried to get Mr. Pierson to commit to firing Ms. Feldman upon election, but he would not make such a commitment without getting to know Ms. Feldman first. Mr. Pierson indicated that he understood that Mr. Silverstein became part of this group, and they attacked Ms. Feldman on social media before and during Mr. Silverstein's election.

That Mr. Silverstein was part of this larger group that was critical of Ms. Feldman's work for many years further supported the finding that his conduct toward her was unrelated to her gender. Regardless of the merits of this group's criticism of Ms. Feldman, this evidence reflected that the criticisms involved various disagreements over how she managed City matters.



This investigation considered Ms. Soghor's account that, during the Woolsey Fire aftermath, she saw a gender-based social media post from Ms. Saul about the City Manager position. Specifically, Ms. Soghor indicated that the post included words to the effect that one "really had to have a penis to do the job." While this comment reflected a gender bias against Ms. Feldman, it was not enough to support a gender bias by Mr. Silverstein for several reasons. For one, assuming the post existed—and this investigation did not receive evidence of the post beyond Ms. Soghor's account—Mr. Silverstein did not write the post. One stray remark by an individual associated with Mr. Silverstein was too tenuous a connection to attribute gender-based animus to Mr. Silverstein.

This was especially so given the evidence of the multiple underlying conflicts between Ms. Feldman and Mr. Silverstein that did not relate to gender. For example, Ms. Feldman pointed to criticisms of her February 2019 Paris trip that coincided with heavy rains and mudslides. Though Ms. Feldman indicated that she was daily in contact with her staff to whom she delegated essential tasks, it was unsurprising that her political opponents used the opportunity to highlight her poor management of the City. Regardless of whether Ms. Feldman's trip was beyond reproach, it was nevertheless one of several matters with which Mr. Silverstein and other residents took issue long before he became a councilmember. Like the other conflicts and criticisms discussed throughout this Report, it had no apparent connection to Ms. Feldman's gender.

In turn, that, after becoming a councilmember, Mr. Silverstein continued to take issue with Ms. Feldman's City Manager decisions and performance was not surprising. And, without more, it was not an indication that he disliked her or acted against her because of her gender.

### **C. Early Post-Election Conflicts**

The evidence reflected that Ms. Feldman and Mr. Silverstein continued to conflict over various matters in November and December 2020, while onboarding Mr. Silverstein as a new councilmember. These communications all occurred by email because Mr. Silverstein refused to meet with Ms. Feldman unless they recorded their meetings, to which Ms. Feldman would not agree. A review of these emails reflected that Mr. Silverstein frequently used an aggressive and hostile tone toward Ms. Feldman. The evidence, however, did not support that Mr. Silverstein's conduct involved a gender-based animus against Ms. Feldman. Rather, the evidence reflected they disagreed over various business issues.

Among others, for example, their conflicts included whether to record their meetings. However, nothing about Mr. Silverstein's demand to record their meetings reflected gender-based treatment. While Mr. Silverstein's distrustful and contentious approach to their new business relationship plausibly contributed to their continued struggles, their disputes did not implicate gender.

Rather, Mr. Silverstein stated, and the emails corroborated, that he wanted their meetings recorded so that he had an accurate record of what transpired. Certainly, this reflected Mr. Silverstein had a high level of distrust for Ms. Feldman, but Mr. Silverstein made no secret this was the case. Mr. Silverstein readily acknowledged, and the emails corroborated, that he did not trust Ms. Feldman and had concerns about her transparency and conduct. In many ways, Ms. Feldman was reasonable in not allowing a recording of their meetings. Generally, recording conversations changes their tenor and could obstruct progress in many ways. Still, nothing about Mr. Silverstein's conduct here implicated gender.

This investigation considered the witness accounts that Mr. Silverstein did not similarly require recordings when he spoke with men. However, that was the case for other women, as well. Indeed, this investigation received evidence that Mr. Silverstein only insisted on recordings when speaking with Ms. Feldman and no one else. For example, Ms. Hogin indicated that she spoke to Mr. Silverstein a couple of times and he never asked to record their conversations. Similarly, Ms. Soghor indicated that when she and Mr. Silverstein met for the first time in May 2021, he did not ask to record the meeting.

Similarly, Ms. Feldman and Mr. Silverstein had conflicts and tense communications over whether Mr. Silverstein would receive a City-issued cellphone. Those communications, however, did not reflect gender-based animus. Rather, Ms. Feldman described—and the emails corroborated—that Mr. Silverstein's aggression involved whether he would receive a City-issued cellphone.

Indeed, most of the emails between them generally reflected a level of discontent and aggression by Mr. Silverstein. Still, the evidence reflected that Mr. Silverstein's conduct derived from his perception of prior experiences with Ms. Feldman. By all accounts, he came from a place of distrust toward her. Indeed, he readily acknowledged that he interpreted many of Ms. Feldman's emails as evasive, non-responsive and obstructionist.

Ultimately, regardless of who was in the right with respect to their various conflicts over City matters, the evidence did not support that Mr. Silverstein's aggressive and hostile communications with Ms. Feldman involved her gender.

#### **D. Conduct Following Mr. Silverstein Becoming a Councilmember**

Ms. Feldman complained that Mr. Silverstein's mistreatment continued after he took his councilmember seat on December 14, 2020. For example, she pointed to Mr. Silverstein: (1) submitting a one-hundred-page Human Resources (HR) Complaint against her; (2) attacking her over the City Council meeting agendas; and (3) barraging her with information requests and emails. Mr. Silverstein denied that his continued disputes with Ms. Feldman and conduct toward her involved her gender, and the evidence supported his account.

## 1. HR Complaint

First, the evidence did not support that Mr. Silverstein's December 27, 2020 HR Complaint about Ms. Feldman reflected gender-based mistreatment. Ms. Feldman complained that the lengthy HR Complaint contained false and misleading statements about her and that Mr. Silverstein went against protocol by trying to have it placed in Ms. Feldman's personnel file without going through the appropriate internal process. Mr. Silverstein denied that the HR Complaint reflected gender-based animus and the evidence supported his account.

Indeed, nothing in the HR Complaint involved gender. Rather, a review of the HR Complaint reflected that Mr. Silverstein complained about Ms. Feldman for insubordination and violation of City Council Policy Nine, which mandated City services be administered with friendliness, firmness and fairness to all. Among other things, Mr. Silverstein's letter reflected his complaints that:

- Ms. Feldman refused to speak with Mr. Silverstein.
- Ms. Feldman refused to answer Mr. Silverstein's questions and requests.
- Ms. Feldman failed and refused to honor Mr. Silverstein's information requests.
- Ms. Feldman interfered and refused to allow the senior media technician to explain to Mr. Silverstein the process for setting Outlook to automatically forward City emails to Mr. Silverstein's personal email for recordkeeping.
- Ms. Feldman failed to institute a "litigation hold" for records that might have bearing on sworn allegations set forth in an affidavit submitted by Mr. Wagner.

As well, Mr. Silverstein stated in his HR Complaint that Ms. Feldman's "hostility, recalcitrance, impertinence, and insubordination" was unlike anything he ever experienced with a managerial employee. Regardless of the merits of Mr. Silverstein's underlying complaints, this evidence reflected that his various complaints involved his ongoing conflicts with Ms. Feldman over her performance and City business. In other words, they did not involve her gender.

Moreover, there was no dispute that, as Ms. Feldman complained, Mr. Silverstein asked that the HR Complaint be placed in Ms. Feldman's personnel file. The document reflected this. Further, in the document, Mr. Silverstein requested that HR make his complaint available to the City Council at an appropriate time for consideration in connection with Ms. Feldman's next performance evaluation. However, to the extent placing such a document in Ms. Feldman's personnel file was contrary to City policy and practice, this did not support that Mr. Silverstein harbored a gender-based animus. Rather, it more plausibly reflected Mr. Silverstein's unfamiliarity with City process.

As well, this finding was further supported by Mr. Silverstein's willingness to put his grievances in a lengthy written complaint, with exhibits, for the City Council to review. Regardless of the merits of Mr. Silverstein's complaints, doing so reflected that Mr. Silverstein had a genuine belief that Ms. Feldman acted inappropriately. In turn, this further negated that a gender bias motivated Mr. Silverstein's conduct.

## **2. Conflicts over City Council Meeting Agendas and Other Business**

Similarly, Mr. Silverstein's challenges to Ms. Feldman's conduct in setting City Council meeting agendas did not reflect gender-based animus. Rather, the evidence reflected that Mr. Silverstein disagreed with Ms. Feldman's practices that did not align with the City's written rules and procedures. As well, the evidence reflected that Mr. Silverstein felt that Ms. Feldman treated him differently—and less favorably—than she did the councilmembers with whom she had a good relationship.

It was the case that Mr. Silverstein went about much of his communications with Ms. Feldman in an unfriendly and challenging fashion. Still, these communications and actions about the City Council meeting agendas consistently focused on work matters that had nothing to do with Ms. Feldman's gender. For example, many of these conflicts involved disagreements around Mr. Silverstein's camping permit proposal. He and Ms. Feldman exchanged emails about whether the proposal was lawful and the process by which his proposal would be brought before the City Council. Similarly, witnesses described Mr. Silverstein's challenges to Ms. Feldman's practices with respect to reviewing City warrants.

In another example, Mr. Silverstein sent challenging communications about his concerns over how Ms. Feldman implemented changes around City Council meetings during the COVID-19 pandemic. Specifically, he indicated that before the pandemic, residents were seen at City Council meetings, given six minutes to speak and allowed to donate time. However, when moving to Zoom videoconference City Council meetings during the pandemic, residents were not shown on video, were given only three minutes and were not allowed to donate their time. Thus, Mr. Silverstein asked for the protocols around these changes and how they came about. Ms. Feldman, however, responded with, "It was determined." Mr. Silverstein indicated that he did not expect the City Manager to respond that way to a councilmember, and he sent various aggressive emails to her over this issue.

Some individuals reasonably disagreed with Mr. Silverstein's various challenges to City practices. As well, Mr. Silverstein's communications with Ms. Feldman were frequently aggressive and hostile in tone. Still, the underlying substantive topics were matters involving City business, reasonably within the bounds of his councilmember role and unrelated to Ms. Feldman's gender.

This investigation considered that some of Mr. Silverstein's challenges appeared to target Ms. Feldman. For example, there was no dispute that Mr. Silverstein proposed a

measure, called “Transparency, Accountability and Ethics in all Aspects of Malibu City Government,” that was critical of Ms. Feldman and would remove some of the City Manager’s involvement in setting the City Council meeting agenda. Indeed, Mr. Silverstein readily acknowledged that he did not like some of the City’s current practices and wanted more transparency within the City. And, Mr. Silverstein’s proposal was reasonably viewed as a challenge to the way Ms. Feldman managed the City. However, regardless of the merits of his proposal, the evidence reflected that Mr. Silverstein genuinely believed his proposal was the right course of action. Indeed, by all accounts, he felt so strongly about it that he sent a draft of the proposal to several neighboring cities for their own potential adoption.

In turn, that Mr. Silverstein’s conduct invariably involved his disagreements with and challenges to current City practices negated that a gender bias motivated his actions.

### **3. Information Requests**

Additionally, Mr. Silverstein’s numerous information requests did not support that he engaged in gender-based mistreatment toward Ms. Feldman.

As an initial matter, there was no dispute that Mr. Silverstein submitted multiple information requests to the City. Mr. Silverstein acknowledged doing so and the witnesses and documents corroborated this was the case. Mr. Silverstein indicated that, before he became a councilmember, he made information requests as a resident utilizing the City’s public record act (PRA) request mechanism. And, upon becoming a councilmember, he utilized the City Council Policy Eight process to make requests for the information to which he previously could not obtain as a resident (such as attorney-client privileged information). Mr. Silverstein indicated that while he understood others described his requests as inappropriate, he disagreed and asserted that it was his right to make the requests he did.

Indeed, regarding his PRA requests, the evidence supported that Mr. Silverstein’s requests: (1) were made in his role as a resident and so outside the scope of his conduct as a councilmember; (2) focused on City matters to which he sought information, which was his right; and (3) on their face, were unrelated to gender.

By all accounts, Mr. Silverstein’s PRA requests began at least as early as July 2020, when the City Council nomination period opened. Ms. Glaser—who had a role in responding to PRA requests—indicated this was the case. Ms. Soghor corroborated the same. That Mr. Silverstein made requests during his election campaign plausibly reflected that he made them in an effort to learn about the City he hoped to represent as councilmember. In turn, this negated that he made the requests to target Ms. Feldman because of her gender. And, to the extent Mr. Silverstein continued to make various PRA requests as a resident after he became a councilmember, he still did so in his role as a member of the public. Mr. Silverstein stated that becoming a councilmember did not

extinguish his status or rights as a resident and this investigation received no evidence to the contrary.

Further, to the extent Mr. Silverstein invoked his councilmember right to request information under Policy Eight, doing so was in line with his prior conduct. In other words, he continued to seek information about the City so that he could learn about how the City functioned, seek to change what he did not like and perform his duties as a councilmember. And, as with his PRA requests, the evidence supported that his Policy Eight requests for information were unrelated to gender.

This investigation considered the toll that Mr. Silverstein's information requests entailed, both on Ms. Feldman and her staff. There was little dispute on this. Multiple witness accounts reflected that responding to the volume of Mr. Silverstein's requests took significant time and effort. Witnesses described that the information requests exhausted and demoralized staff members, who felt underwater with the work. For example:

- Ms. Feldman plausibly described feeling overwhelmed and exhausted by Mr. Silverstein's requests. For example, Ms. Feldman highlighted that, due to an affidavit by Mr. Wagner that Mr. Silverstein brought forward in December 2020, Mr. Silverstein asked for an excessive number of documents relating to Mr. Wagner's accusations of corruption. In response, Ms. Feldman pulled all the paper documents they had in boxes, which took several hours to complete.
- Ms. Glaser indicated that the City Clerk's office was understaffed, and Mr. Silverstein's requests were labor intensive and time consuming. Ms. Glaser stated that she could not focus on her regular work because of them.
- Ms. Hogin described Mr. Silverstein's requests and emails as bringing down "an extraordinary barrage" on Ms. Feldman, that seemed obsessive-compulsive and required the City to spend numerous hours responding to him. Ms. Hogin further indicated that, when the City responded, it seemed that the responses triggered Mr. Silverstein to ask even more questions.

Notably, however, none of the witnesses indicated that Mr. Silverstein's requests sought information unrelated to City business. For example, while Ms. Hogin described that Mr. Silverstein's requests and emails contained various "crackpot conspiracy theories," she indicated that they were all related to City business. In other words, his conduct did not involve gender.

Further, while burdensome, the City was not left without recourse when faced with an increase in workload for staff. For example, the City could bring on additional staff to assist with managing the requests. Additionally, the City could—and did—ask for more time to respond to Mr. Silverstein's various requests. And, this investigation received no

evidence that Mr. Silverstein unreasonably denied such requests for more time when made.

This investigation also considered that many of Mr. Silverstein's PRA and Policy Eight requests sought information specifically about Ms. Feldman's conduct, which was reasonably disconcerting for Ms. Feldman. In various respects, Mr. Silverstein appeared to be targeting Ms. Feldman in this way and, in turn, Ms. Feldman reasonably felt a high degree of pressure and scrutiny and found it difficult to do her job.

Ms. Glaser further corroborated this. She indicated that Mr. Silverstein's information requests appeared to focus on trying to catch Ms. Feldman doing something wrong. For example, Ms. Glaser indicated that he made a request for all Ms. Feldman's emails, text messages and phone logs. Thus, Ms. Glaser indicated that the requests were disturbing and unprofessional, and that this was especially so given the combative way he made the requests.

Mr. Silverstein largely acknowledged this focus of many of his information requests. He indicated that he investigated Ms. Feldman to figure out what it was that she did in her work and how she did it. He wanted to know what she did of value and to see if there was room for improvement. Mr. Silverstein indicated that, upon becoming a councilmember, he acquired the ability to look around and "kick the tires" more than he previously could. He believed that seeking the information and being critical about various workings within the City was what an elected official was supposed to do. And, the evidence supported that, while burdensome and frequently aggressive, Mr. Silverstein's requests involved City business having nothing to do with Ms. Feldman's gender.

Indeed, this investigation received no compelling evidence that Mr. Silverstein would have acted differently if Ms. Feldman were a man. This investigation considered that Mr. Silverstein's information requests became less frequent after Ms. Feldman left her City employment—i.e., when a man took over as Interim City Manager. Multiple witnesses indicated this was the case. To some extent, this provided further evidence that Mr. Silverstein targeted Ms. Feldman. But, that he targeted Ms. Feldman was, alone, not enough to reflect that he did so because of her gender.

Rather, Mr. Silverstein acknowledged that many of his information requests came about because he was new to his councilmember position, wanted to learn about how the City worked and suspected Ms. Feldman of various wrongs. Thus, it was not surprising that Mr. Silverstein's requests subsided after Ms. Feldman left because he already received a large volume of the information he sought before Ms. Feldman left her City employment. As well, once Ms. Feldman left, her potential wrongdoing presumably became less relevant and urgent to Mr. Silverstein.



#### 4. Volume, Timing and Tone of Emails

Additionally, Mr. Silverstein's frequent and aggressive emails did not support that he engaged in gender-based mistreatment toward Ms. Feldman. In tandem with the volume of PRA and Policy Eight information requests, Mr. Silverstein sent numerous emails to Ms. Feldman about his various requests, as well as about other City matters. Ms. Feldman complained that the volume, timing and tone of these communications was part of Mr. Silverstein's campaign of mistreatment toward her. While the evidence supported that Mr. Silverstein sent frequent, demanding and aggressive emails to Ms. Feldman, the evidence did not support that Ms. Feldman's gender motivated him to do so.

##### a) Email Volume and Timing

First, regarding the timing and volume of emails, Ms. Feldman complained that Mr. Silverstein sent frequent emails at all hours and consistently told Ms. Feldman that she did not reply fast enough to his emails. For example, she complained that in one instance, Mr. Silverstein criticized her after she took longer than four hours to respond to an email. Witness accounts and multiple emails corroborated Ms. Feldman's complaint about Mr. Silverstein's demands on her time and attention. For example, Mr. Pierson described Mr. Silverstein sending nonending, long, repetitive emails, one after the other. Similarly, Ms. Soghor stated that Mr. Silverstein treated Ms. Feldman as if she was accountable to him every second. She said he constantly barraged Ms. Feldman with emails demanding outrageous amounts of access to her time.

For his part, Mr. Silverstein acknowledged his frustration and dissatisfaction with Ms. Feldman's responses to his various emails and requests. He described her responses as untimely, non-responsive and manipulative in the way that she failed to respond directly to his questions. He described her communications as stonewalling and shocking. Mr. Silverstein further acknowledged—and the emails corroborated—that he sometimes asked for faster responses from Ms. Feldman. He indicated that this occurred when the communications involved public safety issues. For example, he described this occurred once when a car show occurred in the City with no permit during the COVID-19 pandemic. Mr. Silverstein indicated he emailed Ms. Feldman but did not receive a response, so he emailed again.

Indeed, Mr. Silverstein indicated that Ms. Feldman frequently did not respond at all or for many days to some of his emails, and the emails corroborated his account. Mr. Silverstein stated that he believed that, rather than ignoring his emails completely, she should have at least responded with "received" or "I will look into this." He indicated that many of the problems between him and Ms. Feldman would not have occurred if she responded to his emails.



Several witnesses also pointed to an instance, in early April 2021, when Mr. Silverstein continued to email and request information from Ms. Feldman though it was a weekend and she was dealing with a family emergency when her twenty-six-year-old daughter was hospitalized on April 3, 2021. Ms. Feldman stated that she responded to Mr. Silverstein's email that evening, copying Mr. Pierson, saying she was unavailable. Ms. Feldman stated that she also emailed the entire City Council the next day about her family emergency and unavailability. She complained that, despite this, Mr. Silverstein continued to email her and, on April 5, 2021, submitted a PRA request to Ms. Feldman's office. Ms. Feldman did not think Mr. Silverstein would treat his male colleagues in a similar manner.

For his part, Mr. Silverstein acknowledged that he had a high expectation for Ms. Feldman and a belief that she did not work enough. He indicated that, as the highest-ranking City employee, he expected Ms. Feldman to work weekends and evenings. While he believed she had a right to personal time, he also expected her to respond when problems arose during off hours. Such was the City Manager's job. Still, Mr. Silverstein denied mistreating Ms. Feldman with emails and information requests after learning she had a family emergency. Mr. Silverstein sent an email before learning of Ms. Feldman's family emergency and, upon learning of it, he believed she should take time off from her job. Ms. Feldman, however, did not take time off.

Mr. Silverstein also disputed that his volume of emails reflected mistreatment. Rather, he explained that he was a prolific emailer and writer in general—and not just with Ms. Feldman. For example, he indicated he regularly communicated to others in writing: (1) with lengthy emails; (2) through his various social media platforms, such as Facebook, NextDoor and Twitter; and (3) through the various writings and proposals he drafted in his councilmember role. Thus, in the context of his regular practice, the volume of emails he exchanged with Ms. Feldman was not mistreatment.

Ultimately, there was little dispute on the communications between Ms. Feldman and Mr. Silverstein. The emails largely corroborated both their accounts and the evidence reflected that Mr. Silverstein was unrelenting in various respects. Still, while the volume and timing of Mr. Silverstein's emails were sometimes excessive and demanding, they did not reflect gender-based mistreatment. Rather, as discussed throughout this Report, Mr. Silverstein's unpleasant communications toward Ms. Feldman involved City business and were unrelated to her gender.

#### **b) Email Tone**

Ms. Feldman also complained that Mr. Silverstein engaged in unprecedented personal and professional attacks against her in his emails. For example, she complained that he called her incompetent, unprofessional, a horrible person, a fascist, unethical, lacking in integrity, nontransparent and clandestine. She complained that Mr. Silverstein's emails

were egregious, unprofessional and hostile. The evidence supported her complaint about the tone of Mr. Silverstein's communications.

Specifically, multiple witnesses—and the emails—corroborated Ms. Feldman's account. For example, Ms. Soghor indicated that Mr. Silverstein posted on social media that Ms. Feldman was a fascist, duplicitous, deceitful and a tyrant toward staff and staff would be so happy when she was gone. Ms. Soghor surmised that, if Ms. Feldman were a man, she would be described as a strong leader, instead.

Similarly, this investigation reviewed various social media posts in which Mr. Silverstein made harsh and critical comments about Ms. Feldman, including Mr. Silverstein's following posts on his personal Facebook page:

- A post describing Ms. Feldman as “the non-transparent, unaccountable and unethical City Manager”
- A post referring to Ms. Feldman as “deceitful, duplicitous and unethical” and a “narcissistic control-freak”
- A post indicating that Ms. Feldman “arrogantly, recalcitrantly and insubordinately refused to provide anything that remotely constitutes a responsive answer”
- A post describing Ms. Feldman as having “an authoritarian approach . . . with little regard for the will of the community”

And, a review of the emails further reflected that Mr. Silverstein regularly disparaged Ms. Feldman. Among other things, his emails described Ms. Feldman as arrogant, clandestine, deceitful, dishonest, disrespectful, duplicitous, a horrible person, lacking in integrity, narcissistic, passive aggressive, tyrannical and terse.

For his part, Mr. Silverstein acknowledged that he wrote things that were “a harsh reality” to and about Ms. Feldman. However, he did not believe he was wrong. He also indicated that he did not intend to be disrespectful, unprofessional or hostile in his communications. He stated that, while he did not try to be kind to her, he did not go out of his way to be unkind. Mr. Silverstein further indicated that his communications were context specific and that while some might feel his communications were unprofessional, others had the opposite view and saw his communications as warranted in the context. And, multiple emails and social media posts supported Mr. Silverstein's account that members of the public shared his critical view of Ms. Feldman. Indeed, as discussed above in this Report, there was no dispute that Ms. Feldman had her share of critics.

Among other things, Mr. Silverstein also acknowledged describing Ms. Feldman as an “unelected fascist.” He explained this meant that he found Ms. Feldman autocratic, and

that “fascist” described someone with whose political views one disagreed. He further described fascists as those who sought to control the electorate though the electorate was supposed to control. Mr. Silverstein stated that he believed Ms. Feldman had fascist qualities. Regardless of the merits of Mr. Silverstein’s explanation, his use of the word fascist, on its face, did not involve Ms. Feldman’s gender. Indeed, this was further supported by other communications this investigation received, in which Mr. Silverstein described various men as fascists. Notably, he wrote these communications before Ms. Feldman’s attorney’s letter that included Ms. Feldman’s complaint about being called a fascist. This further negated that Ms. Feldman’s gender motivated Mr. Silverstein’s description of her as a fascist.

Similarly, Mr. Silverstein acknowledged describing Ms. Feldman as incompetent, unprofessional, unethical, a narcissist, a horrible person and a tyrannical leader. He believed these things to accurately describe her conduct. For example, he stated that Ms. Feldman misrepresented things multiple times, which was unethical. He indicated that this occurred, for example, when she represented that the Coastal Commission prohibited the City from taking action to remediate damages on a City project. Mr. Silverstein stated that he told Ms. Feldman that it was not true, but she continued to misrepresent the information. Further, Mr. Silverstein stated that he heard that Ms. Feldman terminated an employee for taking a bribe, but did not tell the auditors, which he described as unethical.

Mr. Silverstein also stated that he believed it was unethical for Ms. Feldman to not respond to his direct questions in his multiple emails. Regardless of who was in the right about this, and their various disputes, the emails corroborated Mr. Silverstein’s account. For example, in multiple emails, Mr. Silverstein communicated to Ms. Feldman that he felt her responses were untimely, evasive and inadequate.

Moreover, Mr. Silverstein indicated that he believed the words he used to critically describe Ms. Feldman were legally appropriate words and, as the City Manager and a public figure, it was appropriate for Ms. Feldman to receive this kind of criticism. In contrast, for example, Mr. Silverstein stated he would not use those descriptors toward a reception employee—even if true—because a reception employee was not a public figure.

Ultimately, this investigation found that Mr. Silverstein’s communications and conduct toward and about Ms. Feldman was frequently hostile and unprofessional. Nevertheless, for the reasons discussed throughout this Report, the evidence did not support that his conduct involved a gender bias on his part against Ms. Feldman.

**VI. CONCLUSION**

This Report concludes the investigation.

Respectfully Submitted,



Leslie D. Ellis  
Ellis Investigations Law Corporation



July 20, 2021

John Cotti  
City Attorney  
City of Malibu  
23825 Stuart Ranch Rd.  
Malibu, CA 90265

Re: Investigation involving Bruce Silverstein, Councilmember

Dear Mr. Cotti:

Ellis Investigations Law Corporation thanks you for the opportunity to work on the investigation matter at the City of Malibu (City). We have completed the investigation. The confidential investigation report is provided under separate cover.

In brief, the Firm reviewed whether Bruce Silverstein, Councilmember, mistreated Reva Feldman, former City Manager, because of her gender and found that he did not.

As an initial matter, it was the case that Mr. Silverstein's communications and conduct toward and about Ms. Feldman were frequently hostile and unprofessional. Ms. Feldman and witnesses described Mr. Silverstein's conduct as "harassment" and a "hostile work environment." These are legal terms that, under the law, apply to conduct based on a protected category—such as age, gender, race and others. Here, Ms. Feldman indicated gender as the underlying reason for Mr. Silverstein's conduct. If Ms. Feldman's gender were a factor, then Mr. Silverstein's pattern of hostile and unprofessional conduct toward her reflected "harassment" and a "hostile work environment." The evidence, however, did not support that Mr. Silverstein's conduct involved a gender-based animus toward Ms. Feldman. Rather, it reflected Mr. Silverstein's dissatisfaction with Ms. Feldman's performance in managing the City and that they disagreed over various business issues.

Among other things, this finding was supported by: (1) the lack of evidence reflecting that Mr. Silverstein's conduct involved Ms. Feldman's gender; (2) the evidence negating that Mr. Silverstein mistreated other women; and (3) the evidence that Mr. Silverstein also engaged in critical conduct toward men.

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This finding was also supported by the evidence that Ms. Feldman and Mr. Silverstein began having conflicts over various City matters in the aftermath of the Woolsey Fire, which occurred in November 2018. There was no dispute that Mr. Silverstein's dislike of Ms. Feldman began before his election to the City Council and that he wanted her removed from her City Manager position. He readily acknowledged—and multiple witnesses and documents corroborated—that he ran on a platform that included trying to have her removed from her position. The evidence reflected that Ms. Feldman and Mr. Silverstein continued to conflict over various City matters throughout Mr. Silverstein's onboarding and after he was sworn in as a new councilmember.

Mr. Silverstein's conduct toward Ms. Feldman throughout these conflicts often reflected hostility and unprofessionalism. His conduct, however, involved various disagreements over City business having nothing to do with Ms. Feldman's gender.

Thank you again for the opportunity to handle this matter.

Sincerely,



Leslie D. Ellis  
Ellis Investigations Law Corporation

## Memorandum

**To:** Mayor Grisanti and Honorable Members of the City Council  
**From:** John C. Cotti, Interim City Attorney  
**Date:** February 2, 2022  
**Re:** Summary of Closed Session Legal Advice related to the Allegations in the January 16, 2022 Letter from Therese Cannata

### *Background*

On January 16, 2021, the City received a letter on behalf of former City Manager Reva Feldman (“Ms. Feldman”) from attorney Therese Cannata asserting allegations of workplace harassment and gender discrimination. The letter notified the City of Ms. Feldman’s desire to separate from City employment based on these alleged claims. Over the course of two closed session meetings convened pursuant to Government Code §§54956.9 (Anticipated Litigation), the Council discussed the allegations raised in the Cannata letter with the Interim City Attorney and outside counsel having as their specialty labor and employment law.

On January 24, 2022, the City Council voted to waive the attorney client privilege and closed session confidentiality relative to the legal advice provided to the Council regarding the allegations contained in Cannata letter and directed the City Attorney to prepare and release a summary of that legal advice.

### *The January 22, 2021 Closed Session*

The Council first met in closed session on January 22, 2021, to discuss the contents of the Cannata letter. In addition to the Council, Interim City Attorney John Cotti and attorney Cynthia Germano, from Best Best & Krieger’s labor and employment section, were also present to advise the Council. During the course of the closed session hearing, the Council was advised on the impact of Ms. Feldman’s request to separate from City service on the terms of Ms. Feldman’s operative employment agreement. Specifically, the Council was advised on the following:

- The Council was advised as to the remaining term of the employment agreement (the agreement was set to expire on May 3, 2022).
- The Council was advised as to the termination and resignation provision in Ms. Feldman’s agreement, including the requirement to pay severance equal to six months’ salary if Ms. Feldman agreed to sign a release of claims.
- The Council was advised of my and Ms. Germano’s opinion that the Cannata letter did not allege facts that would support a claim of gender-based discrimination.

- The Council was advised that the disparaging comments and allegations of harassment attributed to Councilmember Silverstein, among other actions alleged in the Cannata letter, did not meet the standard for legal harassment. Interim City Attorney Cotti noted that employees are not entitled to a kind boss, but rather one who does not discriminate on the basis of gender or other protected basis.
- The Council was advised of the risks of a potential adverse judicial decision given the nature of the facts alleged in the Cannata letter, but that such risks in our opinion were outweighed by the facts that the Cannata letter did not assert facts giving rise to a viable discrimination claim.
- The Council was also advised that to resolve any risk associated with the allegations in the Cannata letter, the Council could consider a separation agreement to conclude Ms. Feldman’s employment relationship and resolve any potential claims before any judicial action is filed.
- The Council was advised to refer the January 16, 2021, letter to the Joint Powers Insurance Authority (the “JPIA”) for a determination of coverage.

*The January 29, 2021 Closed Session*

The Council also convened a closed session meeting to discuss the Cannata letter on January 29, 2021. In addition to the Council and Interim City Attorney John Cotti, Paul Zeglovitch, JPIA Liability Program Manager, and Elizabeth M. Kessel, JPIA litigation counsel, were also present. During the closed session, the Council was advised as follows:

- The Council was again advised that the Cannata letter did not allege facts that would support a claim of gender-based discrimination, as opposed to conduct that was inappropriate, harsh or distasteful.
- The Council was advised as to potential defenses available to the City were litigation to arise as a result of Ms. Feldman’s allegations, including the potential for filing an Anti-SLAPP motion. Other considerations were also expressed to the Council regarding potential litigation, including the requirement that Ms. Feldman would have to waive severance, her reputational damage, and the length of time necessary to prosecute an action through the judicial process.
- The Council was also advised as to the risks and costs of potential litigation in that a favorable trial result, even with a strong case, is inherently unpredictable and very costly.
- The Council was advised about separation agreements, typical provisions of such agreements, and the benefit such agreements have towards mitigating the risk and cost of potential litigation that could result based on the allegations in the Cannata letter.





*Subsequent Closed Sessions*

The Council also met in closed session pursuant to Government Code §54956.9 on February 11, March 1, March 11 and April 19, 2021. While the information set forth above was briefly reiterated at times during those closed session meetings, those closed session meetings did not focus specifically on the allegations contained in the Cannata letter and therefore fall outside the scope of the Council's waiver of attorney client privilege or closed session confidentiality.