

MINUTES OF THE REGULAR CITY COUNCIL MEETING OF  
THE CITY OF VERNON HELD MONDAY, DECEMBER 20, 2010,  
IN THE COUNCIL CHAMBER OF THE CITY HALL LOCATED  
AT 4305 SANTA FE AVENUE, VERNON, CALIFORNIA

MEMBERS PRESENT: Gonzales, McCormick, Davis, Newmire

MEMBERS ABSENT: Maisano

The meeting was called to order at 9:00 a.m. by Mayor Gonzales.

The City Clerk announced that there were no changes to the agenda.

The City Clerk announced that this was the time allotted for public comments.

The Mayor asked if there was anyone in the audience who wished to address the City Council. No one responded.

**PRESENTATIONS**

**1. Proclamations**

The Mayor presented the following proclamations to the recipients who were in attendance:

- a. Commending Sergeant Michael Chavez for his many years of service to the City of Vernon.
- b. Commending Fire Department Secretary Luz Martinez for her many years of service to the City of Vernon.
- c. Commending and honoring Bohnhoff Lumber on its 100 years in business.

The following proclamations would be delivered/presented to the recipients at a later date:

- d. Commending and honoring Eagle Scout Scott David Cardone for his service and support of his community.
- e. Commending and honoring Eagle Scout Brent Sterling Phelps for his service and support of his community.

**APPEALS**

1. The dataLOK Co. and Massachusetts Mutual Life Insurance Company ("dataLOK") have filed an appeal, dated November 30, 2010, of the City Clerk's denial decision, dated November 17, 2010, to their appeal of the Vernon Special Parcel Tax levied on three parcels on Malburg Way, dated August 24, 2010. *Staff recommends the appeal be denied.*

The City Clerk swore in Director of Community Services Kevin Wilson and confirmed the facts relating to dataLOK's appeal.

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Wilson gave a PowerPoint presentation citing and explaining dataLOK's three reasons for the appeal and staff's determination on each:

- a. The dataLOK facility is not a "warehouse" or "distribution facility" within the meaning of the Special Parcel Tax ordinance.
  - dataLOK operates a business records storage service in which the vast majority of the boxes stored remain in storage once placed there until they are picked up and destroyed by a destruction and recycling company upon the customers' orders.
  - Section 5.45(b)(11) of the Vernon City Code ("VCC") defines warehouse, distribution and wholesale uses as "a building or part of a building used or designed primarily for the storage of non-perishable goods or non-refrigerated perishable goods intended for distribution to other locations..."
  - dataLOK maintains that its customers' business records are not "goods intended for distribution to other locations," nor are the records distributed under the Webster's definition of "distribution" as "the marketing or merchandising of commodities."
  - While City staff does not agree with dataLOK's definition of "distribution," it maintains that the company would market the boxed records to find the most cost efficient destruction firm, and would therefore meet its own definition of "distribution."
  - City staff applies the Webster's definition of "distribution" as "the act or process of distributing," and the definition of "distribute" as "to give out or deliver." Staff maintains that dataLOK's boxed records are eventually distributed to another location, whether back to the owner or an off-site destruction company, and are therefore "goods intended for distribution," qualifying it as a "warehouse" under the VCC definition.
- b. The Special Parcel Tax violates Article XII, Section 1 of the California Constitution.
  - dataLOK maintains that the Special Parcel Tax, by Vernon's own definition (VCC Section 5.45(k)), is not ad valorem as constitutionally required of any property tax, nor does it meet the requirements necessary to qualify as a permissible excise tax.
  - Wilson cited several prior court rulings validating the Vernon Special Parcel Tax.
- c. The Special Parcel Tax ordinance is vague.
  - dataLOK maintains that neither the term "warehouse" nor "distribution facility" are clearly defined in VCC Section 5.45, and therefore cannot be applied or enforced.
  - City staff maintains that, although it bundles several terms together, VCC Section 5.45(b)(11) adequately defines both "warehouse" and "distribution facility." Staff upholds that dataLOK is a "warehouse" under VCC Section

5.45(b)(11), and therefore subject to the Special Parcel Tax.

Based on staff's findings, Wilson recommended that the City Council deny the appeal filed by dataLOK. He advised that approval of the appeal on the basis of dataLOK's definition of "distribution" would open the door for appeals from other companies under the same premise.

Andrew P. Cipes, attorney for dataLOK, both tenant and owner, wished everyone a "Merry Christmas," and thanked the City Council for the opportunity to address them on this issue.

Cipes provided two handouts, one containing the pertinent portion of VCC Section 5.45(B)(11), and the second containing multiple definitions of the term "goods." He cited the definition of "goods" as the critical issue.

Cipes explained that he did not believe the Special Parcel Tax ordinance was adopted with the intent of taxing a business such as dataLOK, as the discussion in the ordinance cites the burden on the City of increased truck traffic relating to distribution to and from these locations as a primary basis for the tax. The majority of dataLOK's records just sit in storage; they are business records, not goods in commerce. Cipes maintained that the boxes are not widely distributed and should therefore not be subject to the Special Parcel Tax.

Wilson clarified that dataLOK's records are distributed to destruction companies and affirmed that dataLOK is definitely the type of business the Special Parcel Tax ordinance was intended to apply to. He explained the importance of the Special Parcel Tax for these types of companies.

Councilman Newmire asked Cipes what dataLOK's boxed records are if not goods.

Cipes contended that dataLOK's records are not goods because they don't move around and they are of no value to anyone except the originators of the records.

Newmire asked and received clarification from Cipes that dataLOK does send the records out to other companies for destruction.

The Mayor asked if dataLOK is the only records storage company in Vernon.

Wilson advised that there are two other records storage companies in Vernon: (1) Williams Records Management and (2) Iron Mountain, and confirmed that both pay the Special Parcel Tax, as dataLOK has been doing for a number of years.

The Mayor reiterated that prior court decisions have upheld the validity of the Special Parcel Tax and explained that it was imposed for specific reasons.

The City Clerk called for a determination from the City Council that dataLOK and staff had presented sufficient evidence respecting dataLOK's appeal of the levy of the Special Parcel Tax, and a decision to approve or deny the appeal.

It was moved by McCormick and seconded by Davis, to take the matter under submission. Motion carried, 4-0.

#### PUBLIC HEARINGS

1. Consider the adoption of Ordinance No. 1175 and a resolution amending the encroachment, license, and franchise fees and deposit schedules pursuant to Chapter 22, Article VI of the Vernon City Code. (Continued from meeting of December 6, 2010.)

Director of Community Services & Water Kevin Wilson requested that the hearing and first reading of Ordinance No. 1175 be continued one more meeting.

**ORDINANCE NO. 1175** - An Ordinance of the City Council of the City of Vernon Establishing a Five-Year Restriction on Cutting of Newly Paved or Resurfaced Streets and Amending the Vernon City Code Regarding Deposits, Surety Bonds and Liability Insurance for Encroachment Permits and Licenses. (First Reading - continued from meeting of December 6, 2010.)

At 9:36 a.m., it was moved by McCormick and seconded by Newmire, to continue the public hearing and first reading of Ordinance No. 1175 to the next City Council meeting. Motion carried, 4-0.

2. Consider the adoption of Ordinance No. 1178 and Ordinance No. 1179, which would amend the Redevelopment Plan for the Industrial Redevelopment Project to: (i) eliminate the time on incurring debt, (ii) extend the effectiveness of the Redevelopment Plan with respect to the Industrial Redevelopment Project and its Amended Area for one year, and (iii) extend by one year the time the Redevelopment Agency may receive tax increment revenues from the Industrial Redevelopment Project and its Amended Area.

At 9:37 a.m., it was moved by Newmire and seconded by McCormick, to open the public hearing. Motion carried, 4-0.

The Mayor asked if there was anyone who wished to address the City Council on this matter. No one responded.

At 9:38 a.m., it was moved by McCormick and seconded by Davis, to close the public hearing. Motion carried, 4-0.

**ORDINANCE NO. 1178** - An Ordinance of the City Council of the City of Vernon Extending the Existing Time Limits for the Effectiveness of and the Receipt of Tax Increment for the Industrial Redevelopment Project. (Second Reading)

It was moved by McCormick and seconded by Newmire, that Ordinance No. 1178 be approved and adopted. Motion carried, 4-0.

**ORDINANCE NO. 1179** - An Ordinance of the City Council of the City of Vernon Eliminating The Existing Time Limits On Incurring Debt For The First Amended Industrial Redevelopment Project. (Second Reading)

It was moved by Davis and seconded by McCormick, that Ordinance No. 1179 be approved and adopted. Motion carried, 4-0.

**CONSENT CALENDAR**

**1. City Administration**

- a. Pursuant to Government Code Sections 810.2, 995, and 995.2, confirm the extension of defense in civil actions brought against employees or former employees, provided that the act or omission accrued was within the scope of employment and is not subject to a finding of actual fraud, corruption, or actual malice, or would create a conflict of interest to the City.

**2. City Attorney**

- a. **RESOLUTION NO. 2010-187** - A Resolution of the City Council of the City of Vernon Approving and Ratifying the Execution of a Contract Services Agreement Between the City of Vernon and Aleshire & Wynder, LLP for Special Counsel Services.

**3. Community Services & Water Department**

- a. **RESOLUTION NO. 2010-188** - A Resolution of the City Council of the City of Vernon Approving and Authorizing the Execution of a Memorandum of Agreement By and Between the City of Vernon and the Gateway Cities Council of Governments Regarding the Administration and Cost Sharing to Conduct Scientific Studies to Develop Site Specific Objectives in Response to the Los Angeles River and Tributaries Metals TMDL.
- b. Authorization to utilize the services of Golden Bell Products to apply the Insecta roach eradication product to 990 sewer manholes in the City, at a total cost of \$16,830.00.
- c. Building Department Report for the month of November 2010, to be received and filed.

**4. Fire Department**

- 1. Activity Report for the period of November 16 through November 30, 2010, to be received and filed.

**5. Health Department**

- a. Authorization to schedule a Used Oil Calendar Awards presentation for the February 1, 2011 City Council meeting.
- b. November 2010 Monthly Report, to be received and filed.

## 6. Personnel Department

- a. **RESOLUTION NO. 2010-189** - A Resolution of the City Council of the City of Vernon Amending Previously Amended Resolution No. 9639 Regarding the Compensation, Costs and Benefits of its Employees ("Salary Resolution") By Amending Schedule Nos. VII and XV of the Salary Resolution. (Amendment No. 24)

## 7. Police Department

- a. **RESOLUTION NO. 2010-190** - A Resolution of the City Council of the City of Vernon Adopting a DUI Emergency Response Cost Recovery Program for Incidents Caused by Persons Driving While Under the Influence of Alcohol and/or Drugs.
- b. **RESOLUTION NO. 2010-191** - A Resolution of the City Council of the City of Vernon Authorizing the Issuance of a Purchase Order for the Upgrade and Maintenance of the E911 System for the Police Department.
- c. Activity Log and Statistical Summary of Arrest and Activities for the period of November 16 through November 30, 2010, to be received and filed.

## 8. Risk Management

- a. **RESOLUTION NO. 2010-192** - A Resolution of the City Council of the City of Vernon Amending Resolution No. 2010-97 Regarding the Payment of Premiums for Insurance for Life, Medical, and Dental Benefits for Employees during the 2010-2011 Fiscal Year ("Employee Insurance Resolution"), By Amending Sections 2 and 3 of the Employee Insurance Resolution. (Amendment No. 1)
- b. **RESOLUTION NO. 2010-193** - A Resolution of the City Council of the City of Vernon Approving and Ratifying the Continued Payment of Premiums for Medical-Dental Insurance for Certain Categories of Retired Employees During the 2010-2011 Fiscal Year.
- c. **RESOLUTION NO. 2010-194** - A Resolution of the City Council of the City of Vernon Approving and Authorizing the Execution of a Cobra Administrative Service Agreement By and Between the City of Vernon and Igoe Administrative Services.
- d. **RESOLUTION NO. 2010-195** - A Resolution of the City Council of the City of Vernon Approving and Authorizing the Execution of a Flexible Plan Administrative Service Agreement By and Between the City of Vernon and Igoe Administrative Services.

## 9. Treasurer's Department

- a. Ratification of the following warrant registers to record the following voided checks:
  - 1. Warrant Register No. 1319 to record voided Check No. 330661 in the amount of \$90.00; and

2. Warrant Register No. 1321 to record voided Check No. 331088 in the amount of \$315.00.
- b. Approval of Payroll Warrant Register No. 654, totaling \$2,609,893.49, which covers the period of October 10 through November 6, 2010, and consists of the following:
  1. Ratification of electronic fund transfers (EFTs) totaling \$2,594,569.33; and
  2. Checks paid through prior General Fund Warrant Register totaling \$15,324.16.
- c. Approval of City Warrant Register No. 1326, totaling \$588,499.81, which covers the period of November 30 through December 13, 2010, and consists of the following:
  1. Ratification of wire transfers totaling \$283,818.37;
  2. Ratification of the issuance of early checks totaling \$107,555.22; and
  3. Authorization to issue pending checks totaling \$197,126.22.

It was moved by McCormick and seconded by Newmire, that the matters on the Consent Calendar be approved as recommended. Motion carried, 4-0.

#### ORDINANCES

1. **ORDINANCE NO. 1180** - An Ordinance of the City Council of the City of Vernon Amending Section 2.1 of the Vernon City Code Relating to the Time and Place of City Council Meetings. (Second Reading)

It was moved by Davis and seconded by McCormick, that Ordinance No. 1180 be approved and adopted. Motion carried, 4-0.

2. **ORDINANCE NO. 1181** - An Ordinance of the City Council of the City of Vernon Extending the Existing Time Limits for Commencement of Eminent Proceedings to Acquire Property Within the Industrial Redevelopment Project. (Second Reading)

It was moved by McCormick and seconded by Davis, that Ordinance No. 1181 be approved and adopted. Motion carried, 4-0.

#### NEW BUSINESS

1. **RESOLUTION NO. 2010-196** - A Resolution of the City Council of the City of Vernon Establishing a Vehicle Inspection Fee for Services Provided by the Vernon Police Department.

At the request of the Mayor, Interim Police Chief Danny Calleros provided additional information on this matter.

It was moved by McCormick and seconded by Newmire, that Resolution No. Resolution No. 2010-196 be approved and adopted. Motion carried, 4-0.

**ORAL REPORTS**

**1. City Administrator Reports.**

City Administrator Mark Whitworth invited Department Heads up to report on recent activities in their respective departments.

Interim Police Chief Danny Calleros reported as follows:

- a. December 6, 2010, the Automated License Plate Reader (ALPR) system alerted officers to a stolen vehicle in the area of 37<sup>th</sup> Street and Santa Fe Avenue. The suspect was taken into custody and further investigation is being conducted by the detective assigned to the Task Force for Regional Auto Theft Prevention (TRAP).
- b. December 8, 2010, a Vernon detective, who is a member of the Cargo Theft Interdiction Program (CTIP), recovered approximately \$1 million of stolen general merchandise. A search warrant was later served at the same warehouse by the City of Los Angeles, and additional stolen and counterfeit items were recovered. The investigation is ongoing.
- c. December 10, 2010, the department's two canine officers assisted the DEA Southwest Borders Narcotic investigators on a large narcotics search warrant in the cities of Inglewood and Los Angeles.
- d. December 11, 2010, three individuals were killed in a hit-and-run traffic accident at the intersection of Alameda Street and Vernon Avenue. The suspect was later apprehended by LAPD officers who assisted in the investigation, and faces three counts of murder, one count of felony DUI, and one count of felony hit-and-run.
- e. December 14, 2010, patrol officers arrested an individual who was selling counterfeit collectable coins at the business located at 5218 Santa Fe Avenue.
- f. December 15, 2010, an indecent exposure masturbation of a lone male suspect in parked car was reported by a female passerby in the area of Ayers North and Bandini Boulevard. There is very limited suspect and vehicle information on this case.
- g. Patrol staff will be conducting a DUI checkpoint on December 30, 2010, the location of which has yet to be determined. This is one of four DUI checkpoints that will be conducted using Office of Traffic Safety grant funds.

Police Captain Jim Rodino reported that no incidents of vandalism had been reported since the last meeting.

Mayor Pro Tem McCormick reported graffiti at the Southeast corner of Slauson and Boyle Avenue.

Assistant Fire Chief Mike Wilson reported as follows:

- a. The department is wrapping up another very successful Spark of Love Toy Drive.
- b. The department is conducting live fire exercises at the Long Beach Training Facility this month.

- c. The department is recruiting new Reserve Firefighters for another class that will be conducted in early 2011.
- d. December 8, 2010, crews responded to an incident at 2035 37<sup>th</sup> Street, in which a male subject fell off a tractor trailer and then had 4,000 pounds of glass fall on top of him. Crews stabilized his cervical spine and transported him to USC Hospital with a severe laceration to his right arm and no feeling in his legs.
- e. December 10, 2010, crews extinguished a fire in a trash pile at Innovative Waste Transfer Station at 4133 Bandini Boulevard. An investigation revealed that a bucket of discarded chlorine tablets spontaneously ignited and started the fire.
- f. December 12, 2010, crews responded to a large hazardous spill at Dunn Edwards at 4961 52<sup>nd</sup> Place, containing hundreds of gallons of paint spilling into the storm drain. Crews contained the spill prior to any paint products entering the Los Angeles River, and notified the Health Department to oversee the clean-up.
- g. December 13, 2010, the department provided coverage to the City of Compton Fire Stations while their staff attended the funeral of Captain Perez, and also participated in the funeral procession.
- h. December 14, 2010, Truck No. 111 assisted Los Angeles County Fire on a mutual aid response with ventilation operations on the roof of a building at 6355 Pacific Boulevard in Huntington Park that had been involved in a structure fire.
- i. December 18, 2010, crews responded as part of a mutual aid call to a third alarm structure fire in Montebello at Beacons Storage Facility. Engines 13, 14, and 161 assisted in extinguishing the fire, and Battalion 104 assisted with Command Operations until released.

Fire Chief Mark Whitworth reported that, as part of the department's two-year rotation of administrative staff, Battalion Chief Andy Guth would be stepping into the Assistant Fire Chief position at the start of the new year, and Mike Wilson would be returning to the floor and resuming his Battalion Chief post.

The Mayor wished everyone and their families a "Happy Holidays" on behalf of the City of Vernon.

The City Clerk announced that there were no further items on the open session portion of the agenda, but there were items for closed session.

At this time, the Mayor called a short recess.

At 9:59 a.m., it was moved by McCormick and seconded by Newmire, that the City Council enter into closed session to discuss the items listed on the closed session agenda. Motion carried, 4-0.

At 10:03 a.m., the City Council resumed open session.

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**CLOSED SESSION REPORT OUT**

The Interim City Attorney reported as follows:

**1. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

Government Code Section 54957

The City Council unanimously approved the issuance of a written reprimand to the respective employee in accordance with the respective department head's recommendation.

**2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Government Code Section 54956.9(a)

James Dunn vs. City of Vernon

Workers Compensation Appeals Board Case No. ADJ7028184

The City Council unanimously authorized settlement of the matter titled James Dunn vs. City of Vernon. The details of the settlement will be made available once finalized by all parties.

The City Clerk announced that there were no further items on the agenda.

At 10:04 a.m., it was moved by McCormick and seconded by Davis, that the meeting be adjourned. Motion carried.

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Hilario Gonzales  
Mayor

ATTEST:

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Willard G. Yamaguchi  
City Clerk