

MINUTES OF THE REGULAR CITY COUNCIL
MEETING OF THE CITY OF VERNON HELD
MONDAY, FEBRUARY 8, 2010, AT 9:00 A.M.
IN THE COUNCIL CHAMBERS OF THE CITY HALL
LOCATED AT 4305 SANTA FE AVENUE,
VERNON, CALIFORNIA

MEMBERS PRESENT: Gonzales, McCormick, Davis, Maisano, Newmire

MEMBERS ABSENT: None

The meeting was called to order by Mayor Gonzales.

The Chief Deputy City Attorney advised that there were no changes to the agenda.

The Chief Deputy City Attorney announced that this was the time for public comments.

Mayor Gonzales asked if there was anyone in the audience who wished to address the City Council.

There was no one in the audience who wished to address the City Council at this time.

The Chief Deputy City Attorney announced that now was the time to open the administrative hearing to consider Stericycle, Inc.'s ("Stericycle") appeal of the assessment of business license tax penalties for 2007, 2008 and 2009.

It was moved by Davis, seconded by McCormick to open the administrative hearing, the time being 9:01 a.m. Motion carried.

Ms. Gena Stinnett, Assistant City Attorney, addressed the City Council and went over a power point slide presentation summarizing the information provided in the agenda packet related to Stericycle's appeal of the assessment of business license tax penalties for years 2007, 2008, and 2009.

Ms. Stinnett explained that business license tax penalties serve an important enforcement function, as such penalties create an incentive for the taxpayer to pay promptly and report accurately the factors upon which the tax is based. Stericycle did not accurately report its gross receipts for 2006, 2007 and 2008, upon which its hazardous waste business license taxes for 2007, 2008 and 2009 were based.

Ms. Stinnett explained that when City staff requested Stericycle file a revised tax statement, Stericycle refused to report its gross receipts in those years for any hazardous waste that was treated, stored or disposed of for businesses outside the city limits of the City of Vernon. In essence, Stericycle refused to cooperate with the City of Vernon in the City's investigation of its underpayment of taxes. The amount of penalty assessed by the City Clerk was calculated in accordance with the Vernon City Code. It was calculated in a manner that has been previously upheld by the United States Supreme Court as constitutional.

Ms. Stinnett indicated that the amount of the penalty sends an important message to the taxpayer. To be effective at inducing prompt payment, a penalty must be sufficiently substantial in amount. Stericycle gained, and the City lost, the time value of the tax money that was not timely paid. Additionally, the City

incurred increased staff and legal costs. Ms. Stinnett, speaking on behalf of City staff, asked the City Council to uphold the full penalty.

Mr. Richard Ayob with the Law Office of Ajalat, Polley & Ayob addressed the City Council on behalf of Stericycle, and asked that the City Council consider waiving the penalties based on Stericycle's timely and good faith response to the City's letters and Assessment Notice of Business License Tax fees. Mr. Ayob argued that Stericycle did not know the City's position on the underpayment until August 2009. Mr. Ayob stated that Stericycle promptly responded to the City's inquiries once it was made aware of the City's concern.

Mr. Ayob asked for relief of the penalties based on the fact that Stericycle did not know how to calculate the proper business tax amount for 2007, 2008 and 2009. Stericycle believed the business license tax was to be calculated based on the gross receipts generated from Vernon companies.

Mr. Ayob also explained that Stericycle had a difficult time determining its gross receipts for the Vernon facility. Stericycle's business activity consists of the collection of various types of medical wastes (red bag, chemotherapy, pathological, and sharps). Once collected some of these wastes would then be distributed from the Vernon facility to other facilities for proper disposal, making it difficult for Stericycle to determine from its books which type of medical waste had been processed by other facilities.

Mr. Ayob further addressed Stericycle's generous participation and involvement with the Vernon Rotary Club and other events within the City.

Ms. Stinnett advised the City Council that, in considering whether Stericycle was acting in good faith, the City had not yet received the 2010 business license tax from Stericycle which became delinquent February 1, 2010. Ms. Stinnett indicated that City staff was not asking the City Council to penalize Stericycle for its non-payment of 2010 taxes at this time, but that such non-payment undermined its claim that it was working in good faith with the City.

Mayor Gonzales noted that in one of the documents included in the hearing packet was a comment made by Stericycle claiming double taxation and asked the Assistant City Attorney for her point of view.

Ms. Stinnett responded that Stericycle had dropped its claim of double taxation when it paid the tax assessed and did not appeal the tax assessed. For the Council's information and without prejudice to the City's position that Stericycle's appeal did not encompass a claim of double taxation, Ms. Stinnett added that up until the point the double taxation claim was dropped, Stericycle submitted no evidence to the City of double taxation.

Councilman Newmire asked for confirmation of his understanding of the events that led to today's hearing, which was the underpayment of business license tax for those three years.

Ms. Stinnett confirmed and stated that Stericycle failed to calculate its business license tax on its full gross receipts for the Vernon facility.

Councilman Maisano observed that based on the comments given by Mr. Ayob it seems like Stericycle is not able to account for the business activities of the facility in Vernon like BFI, the predecessor company, did.

Mr. Ayob responded that Stericycle did not know how BFI calculated its tax because of a difference in charging for services. Furthermore, he confirmed that Stericycle is not pursuing the double taxation issue in this appeal. Instead, he asked that the City Council reconsider the assessment of the penalties due to the short time frame, August 2009 through December 2009, in which this matter was resolved.

Assistant City Attorney Craig Steele recommended that if there were no more questions on this matter that the City Council close the hearing; consider the facts provided during the hearing; and make a decision on whether to uphold or deny the appeal of the penalties assessed to Stericycle, Inc., for the years 2007, 2008, and 2009.

Mayor Gonzales asked if there were any more questions on this matter.

There were no further questions on this matter at this time.

It was moved by Newmire, seconded by Davis, that the administrative hearing be closed, the time being 9:24 a.m. Motion carried. 5-0

It was moved by Davis, seconded by Newmire, to deny the appeal made by Stericycle, Inc. and uphold the penalties assessed on business license tax for the years of 2007, 2008, and 2009. Motion carried. 5-0

Assistant City Attorney Steele advised that written findings on this matter would be brought to the City Council for its consideration at a future meeting.

ORDINANCE NO. 1166 - An Uncodified Ordinance of the City Council of the City of Vernon Temporarily Suspending Acceptance and Review of Non-Exclusive Solid Waste Franchise Agreement Applications, was read by title.

It was moved by McCormick, seconded by Maisano, that the full reading be waived and that Ordinance No. 1166 be adopted. Motion carried.

Ayes:	Gonzales, McCormick, Davis, Maisano, Newmire
Noes:	None
Absent:	None
Abstained:	None

The Consent Calendar was presented.

CONSENT CALENDAR

Community Services & Water

1. 2009 Building Department Annual Report

Fire

1. Activity Report for the period from January 16 through January 31, 2010.

Light & Power

1. Resource Procurement Report for October 2009.

Police

1. Activity Log and Statistical Summary of Arrest and Activities for the period from January 16 through January 31, 2010.

Treasurer

Approval of Warrant Registers – January 26 through January 28, 2010.

1. Ratification of the issuance of wire transfers for Warrant Register No.1301, totaling \$3,365.15.
2. Ratification of the issuance of early checks for Warrant Register No. 1301, totaling \$83,028.85.
3. Warrant Register No. 1301, totaling \$194,801.57.
4. Ratification of wire transfers for Light & Power Warrant Register No. 266, totaling \$252,032.63.
5. Ratification of the issuance of early checks for Light & Power Warrant Register No. 266, totaling \$14,538.10.
6. Light & Power Warrant Register No. 266, totaling \$37,961.86.
7. Ratification of the issuance of wire transfers for Gas Warrant Register No. 56, totaling \$3,450,874.46.
8. Ratification of early checks for Gas Warrant Register No. 56, totaling \$4,103.17.
9. Gas Warrant Register No. 56, totaling \$25,682.82.
10. There was no BNY Report for this period.

END OF CONSENT CALENDAR

It was moved by Maisano, seconded by Davis, that the items listed on the Consent Calendar be approved as recommended. Motion carried. 5-0

RESOLUTION 2010-22 of the City Council of the City of Vernon Approving and Authorizing the Execution of a Services Agreement with Physio-Control, Inc., in Connection with On-Site Repair and Annual On-Site Inspection of the Lifepak 12 Defibrillator/Monitor Equipment, was read by title.

It was moved by McCormick, seconded by Newmire, that Resolution No. 2010-22 be adopted. Motion carried. 5-0

RESOLUTION 2010-23 of the City Council of the City of Vernon Approving and Authorizing the Purchase of Respiratory Protection Equipment Pursuant to the Terms of the County of Los Angeles Contract Awarded to L.N. Curtis & Sons and Authorizing the Issuance of a Purchase Order for Said Equipment Under the Contract, was read by title.

It was moved by Maisano, seconded by McCormick, that Resolution No. 2010-23 be adopted. Motion carried. 5-0

STAFF DISCUSSIONS

Gas Department

1. Report on the Southern California Gas proposed agreement for wholesale transportation services to move the City of Vernon's gas across the SoCalGas System into Vernon.

Gas Department Manager, Dan Bergmann, provided a summary of the relationship between the City and Southern California Gas (SoCalGas) through years past; addressed the new SoCalGas proposed agreement's transportation rate which allows wholesale customers to elect a reserved daily capacity at a lower rate; and summarized the City's actual load profile for 2009 using a Powerpoint slide.

Mr. Bergmann reported that there would be a resolution brought forth at the meeting on February 22, 2010, for the Council's consideration of the approval of the new gas transportation agreement with SoCalGas, for the three-year period beginning February 1, 2010.

END OF STAFF DISCUSSIONS

Mayor Gonzales called a short recess at 9:35 a.m.

The City Council reconvened in regular session at 9:40 a.m., all members present before the recess again being present.

The Chief Deputy City Attorney announced that this was the time to go into closed session.

It was moved by McCormick, seconded by Newmire, to go into Closed Session, the time being 9:40 a.m. Motion carried. 5-0

It was moved by McCormick, seconded by Newmire, that the City Council go out of closed session and resume open session, the time being 9:45 a.m. Motion carried. 5-0

OPEN SESSION

Closed Session Reports: The Assistant City Attorney reported that there were no reportable actions.

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There being no further business to come before the City Council at this time, it was moved by McCormick, seconded by Davis, that the meeting be adjourned, the time being 9:45 a.m. Motion carried. 5-0

Mayor Hilario Gonzales

ATTEST:

Willard G. Yamaguchi
City Clerk