RESOLUTION NO. 2012-200


WHEREAS, a Special Municipal Election was held and conducted in the City of Vernon, California, on Tuesday, June 5, 2012, as required by law, for the purpose of electing one (1) Member of the City Council to fill a vacancy on the City Council with an unexpired term ending in 2014; and

WHEREAS, pursuant to Resolution No. 2012-17, the election was conducted entirely by vote-by-mail ballot pursuant to Section 4000, et seq., of the Elections Code of the State of California ("Elections Code", insofar as not inconsistent with the Charter and ordinances of the City of Vernon, and it all particulars not recited in Resolution No. 2012-17, the election was conducted as provided by law for holding municipal elections; and

WHEREAS, pursuant to Resolution No. 2012-19, the election was consolidated with the Statewide Direct Primary election held on the same date pursuant to Section 10403 of the Elections Code, and the county election department was authorized to canvass the returns of the Special Municipal Election; and

WHEREAS, the candidates for election were Ms. Luz Martinez, and Mr. Reno Bellamy; and

WHEREAS, notice of the election was given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were properly appointed; that vote-by-mail ballots were properly sent to all registered voters; that
in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the City Charter, the Elections Code, and the City’s resolutions; and

WHEREAS, the county election department provided a Certificate of the Canvass of the Election Returns reflecting that Reno Bellamy received 34 votes and Luz Martinez received 30 votes, which certification and results are received, attached and made part hereof as Exhibit A; and

WHEREAS, an election contest of the June 5, 2012 Special Municipal Election was filed with the City Council of the City of Vernon invoking its mandatory jurisdiction pursuant to Chapter 3.4 of the City Charter of the City of Vernon and contesting the legality of nine votes cast in the June 5, 2012, Special Municipal Election; and

WHEREAS, pursuant to its authority under Article XI, § 5 of the California Constitution and Chapter 3.4 of the City Charter, the City Council enacted Ordinance No. 1197, and Resolutions Nos. 2012-116, 2012-121, 2012-122, and 2012-123, establishing procedures for the determination of the election contest; and

WHEREAS, pursuant to Resolution No. 2012-124 the City Council appointed a neutral hearing officer to hear the election contest; and

WHEREAS, the Hearing Officer heard the election contest in the manner required by law, and on October 15, 2012, filed Findings of Fact and Conclusions of Law, which are attached and made part hereof as Exhibit B; and

WHEREAS, the Hearing Officer found that seven votes were cast illegally for Reno Bellamy, which, if taken from him would change
the result of the election so that Luz Martinez received 30 votes, and
Reno Bellamy received 27 votes; and

WHEREAS, the Hearing Officer found Luz Martinez elected in
the Special Municipal Election; and

WHEREAS, the Hearing Officer recommended that the City
Council annul the certification of the result of the Special Municipal
Election, and proclaim Luz Martinez as the winner; and

WHEREAS, the final determination of the City Council is that
seven votes were illegally cast for Reno Bellamy and that Luz Martinez
was elected.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF VERNON AS FOLLOWS:

SECTION 1: The City Council of the City of Vernon hereby
finds and determines that the recitals contained hereinabove are true
and correct.

SECTION 2: One (1) voting precinct was established for the
purpose of holding said Special Municipal Election, consisting of the
regular election precinct in the City as established for the holding
of State and County elections.

SECTION 3: The number of vote-by-mail ballots properly cast
in the City was 57, with no provisional ballots cast.

SECTION 4: The names of persons voted for at the election
for Member of the City Council are as follows:

Reno Bellamy and
Luz Martinez.

SECTION 5: The number of votes given in the one voting
precinct in the City to each of the persons above named for the office
of City council member for which the persons were candidates were: 30 for Luz Martinez and 27 for Reno Bellamy.

SECTION 6: The county election department’s Certificate of the Canvass of the Election Returns reflecting that Reno Bellamy received 34 votes and Luz Martinez received 30 votes is hereby annulled.

SECTION 7: The City Council does determine and declare that Luz Martinez was elected as Member of the City Council to fill a vacancy on the City Council with an unexpired term ending in 2014.

SECTION 8: The Acting City Clerk shall immediately make and deliver to the person so elected a Certificate of Election signed by the Acting City Clerk and authenticated.

SECTION 9: The Acting City Clerk shall also administer to the person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the Acting City Clerk. The person so elected shall then be inducted into the respective office to which she has been elected.
SECTION 10: The Acting City Clerk of the City of Vernon shall certify to the passage, approval and adoption of this resolution, and the Acting City Clerk of the City of Vernon shall cause this resolution and the Acting City Clerk's certification to be entered in the File of Resolutions of the Council of this City.

APPROVED AND ADOPTED this 23rd day of October, 2012.

Name: William J. Davis
Title: Mayor / Mayor Pro-Tem

ATTTEST: Dana Reed, Acting City Clerk
STATE OF CALIFORNIA ss
COUNTY OF LOS ANGELES ss

I, Dana Reed, Acting City Clerk of the City of Vernon, do hereby certify that the foregoing Resolution, being Resolution No. 2012-200, was duly passed, approved and adopted by the City Council of the City of Vernon at a special meeting of the City Council duly held on Tuesday, October 23, 2012, and thereafter was duly signed by the Mayor or Mayor Pro-Tem of the City of Vernon.

Executed this 25th day of October, 2012, at Vernon, California.

Dana Reed, Acting City Clerk

(SEAL)
EXHIBIT A
Los Angeles County
Registrar-Recorder/County Clerk

Certificate of the Canvass of the Election Returns

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) for

Vernon City

at the Presidential Primary Election, held on the 5th day of June, 2012.

I FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and that the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 2nd day of July, 2012.

DEAN C. LOGAN
Registrar-Recorder/County Clerk
County of Los Angeles
<table>
<thead>
<tr>
<th>CITY/PREC</th>
<th>REGISTRATION</th>
<th>BALLOTS CAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>COUNTYWIDE</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>40TH US CONGRESSIONAL</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>53RD STATE ASSEMBLY</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>1ST SUPERVISORIAL</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>3RD BOARD OF EQUALIZATION</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>SHIP OF URBAN</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>LOS ANGELES COMMUNITY COLLEGE</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
<tr>
<td>LOS ANGELES UNIFIED SCHOOL</td>
<td>VOTE BY MAIL</td>
<td>0</td>
</tr>
</tbody>
</table>
EXHIBIT B
Hearing Officer Debra Wong Yang's Findings of Fact and Conclusions of Law

OVERVIEW

On June 5, 2012, the City of Vernon held a special municipal election to fill a vacancy on the Vernon City Council ("Special Municipal Election"). The vote count in the Special Municipal Election is currently thirty votes in favor of Luz Martinez and thirty-four votes in favor of Reno Bellamy. Contestants Curtis Kirkland and John Kriste ("Contestants") challenge the votes of nine voters in that Special Municipal Election, all of which were cast in favor of Defendant, Reno Bellamy ("Defendant"). The challenged votes are of the following voters: Bernard Patrick Roberts, Dennis Eugene Roberts, David Timothy Roberts, Gary Edward Sabara Jr., Dean Allen Gulla, Glenn Davis Gulla, Victor Garcia, Denise Irene O'Connell, and Robin Andrew Miller (collectively, the "Challenged Votes").

Contestants argue that the Challenged Votes were illegally cast by persons who were not eligible to vote in the City of Vernon because they were not legally domiciled in the City. Contestants' Pre-Trial Brief, at 5–6; Contestants' Closing Brief, at 5–6. Contestants also argue that two of the Challenged Votes, those of Gary Sabara Jr. and David Roberts, are illegal because the two voters did not return their vote-by-mail ballots in a manner complying with the California Elections Code. Contestants' Closing Brief, at 30; see also Contestants' Pre-Trial Brief, at 6–7.

1 Contestants originally disputed the legality of another vote, Gene Bradley Gulla, but that challenge was later dropped.
During the course of this hearing, forty-three witnesses were called to testify, and a number of exhibits were introduced into evidence. The hearing lasted much longer than originally estimated due to the number of witnesses and various evidentiary matters. The testimony was received in the Vernon City Council chambers, and was attended by many members of the community over all of the hearing days. The professionalism of the attorneys for Mr. Bellamy and Contestants was exemplary; both were respectful of the process and challenge ongoing. And those in attendance were likewise interested and courteous to all. Finally, the assistance of the staff at the City of Vernon is very much appreciated, as it was vital to the resolution of this matter.

STATEMENT OF LAW

It is well-established that a vote cast by a person who does not maintain a domicile in the city in which they have voted is illegal and subject to challenge in an election contest. Walters v. Weed (1988) 45 Cal.3d 1, 6-7; Wilks v. Mouton (1986) 42 Cal.3d 400, 403; Canales v. City of Alviso (1970) 3 Cal.3d 118, 125. Under California Elections Code section 359, a qualified “voter” is “any elector who is registered under this Code.” An “elector,” in turn, is defined in section 321 to mean “any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election.” Cal. Elec. Code § 321. In order to vote in an election, an individual must meet the following three requirements: (i) the individual must be qualified under article II, section 2, of the state constitution; (ii) the individual must be a resident of the election precinct in which he or she votes at least fifteen days prior to the election; and (iii) the person must have registered to vote at the address in which they currently reside. See Cal. Elec. Code §§ 2000, 2107, 10000; see generally Kagan v. Kearney (1978) 85 Cal.App.3d 1010.
For voting purposes, a person’s residence is defined to mean that person’s domicile. Cal. Elec. Code § 349(a). Under the California Elections Code, a domicile is the “place in which [a person’s] habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.” Cal. Elec. Code § 349(a). Thus, in order for a residence to be a person’s domicile, there must be “physical presence plus an intention to make that place his permanent home.” *Fenton v. Bd. Of Directors* (1984) 156 Cal.App.3d 1107, 1116. The court in *Fenton* went on to describe a domicile as the “one location with which for legal purposes a person is considered to have the most settled and permanent connection, which law may also assign to him constructively.” *Id.* at 1113–14.

While questions of domicile are inherently fact specific, the California Elections Code establishes guidelines to assist in this determination. For instance, while an individual may have multiple residences at any given time, he or she may have only one domicile for voting purposes. Cal. Elec. Code § 349(b). Once a person acquires domicile, the domicile continues until the person establishes a new domicile elsewhere. *Walters v. Weed* (1988) 45 Cal.3d 1, 7 (“To insure that everyone has a domicile at any given time, the statutes adopt the rule that a domicile is not lost until a new one is acquired.”). The court in *Walters* noted that even if a person abandons their old home, they are still domiciled in that precinct until they establish a new domicile. *Id.* at 8–9. The California Elections Code reflects this. For instance, when a person moves to another state, with the intention of making it his or her new domicile, the person loses his or her domicile in this state. Cal. Elec. Code § 2022. A temporary move with the intention to return, however, does not change a person’s domicile. Cal. Elec. Code § 2021. Moreover, “[t]he mere intention to acquire a new domicile, without the fact of removal avails nothing, neither does the fact of removal without the intention.” Cal. Elec. Code § 2024.
A person's domicile can be fluid, and may change from one year from the next. It is important to note that this case concerns the legality of the each Challenged Vote in this election. While the Defendant raised issues regarding several voters' prior votes, a challenged voter's history of voting in Vernon does not establish the legality of their vote for this Special Municipal Election.

Votes may also be disqualified in an election contest if not cast in a manner required by law. Gooch v. Hendrix (1993) 5 Cal.4th 266, 279. The California Elections Code imposes a number of requirements on the manner in which vote-by-mail ballots may be received and cast. Relevant to this case is California Elections Code section 3017, which requires all vote-by-mail ballots be mailed or returned in person by the voter himself or herself. Cal. Elec. Code § 3017(a). This rule is mandatory, and no ballot may be counted if it was delivered in violation with this section. Cal. Elec. Code § 3107(h).

STANDARD OF PROOF

Contestants bear the burden of establishing defects in this election by clear and convincing evidence. Gooch v. Hendrix (1993) 5 Cal.4th 266, 279; Hawkins v. Sanguinetti (1950) 98 Cal.App.2d 278, 283; Smith v. Thomas (1898) 121 Cal. 533, 536 (requiring "very clear" evidence). Thus, in order to demonstrate that a Challenged Vote lacked domicile or was illegally cast, Contestants must present clear and convincing evidence on each issue. Contestants may reach this burden by relying exclusively on circumstantial evidence. Canales v. City of Alviso (1970) 3 Cal.3d 118, 126–28. Due to the difficulties inherent to proving a negative, upon a sufficient showing of proof by Contestants, the burden may shift to Defendant for rebuttal. Russell v. McDowell (1890) 83 Cal. 70, 81.
ANALYSIS

Pursuant to Section 8(h) of the City of Vernon Resolution 2012-116, my written findings of fact and conclusions of law are as follows.

Bernard Patrick Roberts

I find clear and convincing evidence that Bernard Roberts was not domiciled in the City of Vernon during the relevant time period.

Mr. Roberts clearly testified that he never intended to make Vernon his fixed and permanent home. Reporter’s Transcript (“RT”) 1:67:11–18 (“Q. Is one of [the houses in this picture] the house that you say you live in in Vernon? A. I don’t live there. Q. You don’t live in Vernon? A. No. I visit there. Q. You visit in Vernon? A. Yes.”); id. at 1:69:14–17 (“Q. So your son, Jason, lives there. I’m sorry. Your Grandson, Jason, lives in that house [in Vernon]? A. Yes. Q. Your son, Dennis, rents it? A. Yes. Q. But you don’t live there? A. No. Q. You just go there to visit? A. I visit.”); id. at 1:82:11–12 (“A. I just visit here; I don’t live here. I visit all over the country, if I get the chance.”). This, on its own, is sufficient to find that Bernard Patrick Roberts is not domiciled in the City of Vernon. Fenton, 156 Cal.App.3d at 1116 (requiring physical presence and intention in order to establish domicile).

The other evidence presented at the hearing only bolsters this point, while also demonstrating that Mr. Roberts never established a physical presence in the City of Vernon. In 2002, before his son signed a lease for a home in Vernon (Ex. C-U), Mr. Roberts purchased a house in Surprise, Arizona (Ex. C-S). Ever since this time, Mr. Roberts has domiciled in that house. Mr. Roberts is currently registered to vote in Maricopa County, Arizona. Ex. C-AH; RT 1:77:10–11. Mr. Roberts has had an Arizona driver’s license since 2004 and most recently renewed it in December 2, 2011. RT 1:78:3–24. Mr. Roberts’ vehicles are registered in

As final evidence that Mr. Roberts' vote was illegally cast, Mr. Roberts testified that he did not know there was an election in Vernon in June, and that he did not remember voting in the Election. RT 1:77:23–1:78:2 ("Q. Do you know that there was an election in the City of Vernon in June this year? A. I have no idea. Q. Do you remember voting in that election? A. No, I don't.").

For these reasons, and because Defendant did not produce any evidence to the contrary, I find that Bernard Roberts was not domiciled in Vernon during the relevant time period. Instead, clear and convincing evidence demonstrates that Mr. Roberts is domiciled in Arizona. Accordingly, under the California Elections Code, Mr. Roberts' vote was illegally cast.

**Dennis Eugene Roberts**

Contestants have not established by clear and convincing evidence that Dennis Roberts is not domiciled in the City of Vernon.

In 2006, after Dennis Roberts' mother passed away, Mr. Roberts moved from California to Arizona to care for his father, Bernard Roberts. RT 1:90:8–19. Prior to Mr. Roberts' move to Arizona, there is no evidence in the record to establish that Mr. Roberts was domiciled in Vernon. The question, then, becomes whether Contestants have established by clear and convincing evidence that Mr. Roberts has not acquired a domicile in Vernon since 2006.

In early 2010, Mr. Roberts entered into a lease at 3550 Vernon Avenue in Vernon. Ex. C-U. It appears that for a time, Mr. Roberts was the sole occupant of the Vernon Avenue property, and even placed all of the bills in his name. RT 1:111:2–10; Ex. D-A; Ex. D-B; Ex. D-
E. Only after Mr. Roberts entered into the lease on Vernon Avenue did Mr. Roberts’ son Jason move into the property. RT 1:111:2–10. The evidence indicates that Mr. Roberts initially leased the house in Vernon for himself due to the “cheap rent.” RT 1:111:11–17.

Circumstances may have required Mr. Roberts to spend a large amount of time in Arizona, but Mr. Roberts’ testimony indicates that he always intended Vernon to be the place where he has the “most settled and permanent connection,” Fenton, 156 Cal.App.3d 1113–14. See, e.g., RT 1:103:16–19 (“[I]f you had to ask me what my legal residence would be, I’d have to tell you Vernon.”); see also RT 1:104:18–21 (referring to the Arizona house as a temporary place to stay); id. at 1:103:25–104:3 (“Q. Okay. Now, if your father passed away, and the house was foreclosed on, where would you live? A. I would come back to California. My family’s here.”); id. at 1:114:25–115:2 (“Q. I understand that you say you come back here with your dad from time to time. A. Very often.”); id. at 1:97:8–13 (“Q. But your dad says you only visit this place. A. Visit? Q. Yeah. A. I stay here quite a bit of time. We’re out here at least once a month. We come here at least -- I have three sons and a grandson out here.”). Because he never intended to take care of his father for seven years, Mr. Roberts still considers Arizona to be a temporary address. Id.; RT 1:104:15–17 (“Q. You have been helping your dad for a long period of time, correct? A. We never knew it was going to be seven years.”); RT 1:104:4–11 (“Q. So Vernon and this apartment that’s leased in your name, it’s your anchor? A. It’s a house, it’s not an apartment. Yes. Q. A house. A. If something happened to my dad, I’d be back here within 30 days. Whatever it takes to clear, legally, up there. Whatever. I would definitely -- my immediate family is in Southern California. So, yes.”).

2 The bills are paid, however, by Mr. Roberts’ son, Jason Roberts, who lives at the apartment “24/7.” RT 1:108:16–109:17.
In light of the above evidence, Contestants have not sufficiently demonstrated that Mr. Roberts is not domiciled in Vernon. While Contestants present evidence to attempt to circumstantially disprove domicile—such as the Arizona driver’s license, the Arizona vehicle registration, and the fact that Jason Roberts pays the bills at the Vernon apartment—this evidence does not meet Contestants’ high burden. Instead, these facts could arguably be practical realities that accompany caring for a parent who maintains a residence in a different state. Moreover, while Contestants cite Bragg v. Bragg (1939) 32 Cal.App.2d 611, 614, for the proposition that a person who actually removes themselves to another place with an intention of remaining there for an indefinite time does not maintain a domicile in a place where he only has a floating intention to return at some future period, I do not find this to be the case with Mr. Roberts. First, though Mr. Roberts spends time in Arizona, he testified that he spends significant time in Vernon as well. RT 1:114:25–115:2 (“Q. I understand that you say you come back here with your dad from time to time. A. Very often.”); id. at 1:97:8–13 (“Q. But your dad says you only visit this place. A. Visit? Q. Yeah. A. I stay here quite a bit of time.”). Thus, unlike in Bragg, Mr. Roberts is able to spend time in Vernon whenever he like, and has not completely removed himself from a city. Second, Mr. Roberts’ intention to return to Vernon is not a “floating” intent; Mr. Roberts returns to Vernon with frequency. Id. And Mr. Roberts has indicated he intends to return to Vernon after he no longer needs to care for his father. The only uncertainty for Mr. Roberts is when he will be able to permanently remain in Vernon, but there is no requirement that person physically remain in one residence once a domicile has been acquired. Walters v. Weed (1988) 45 Cal.3d 1, 12–14.

For these reasons, Contestants have not met their high burden of establishing that Vernon is not Mr. Roberts’ true, fixed, permanent home and the principal establishment to which, when
he is absent, he intends to return. Therefore, I find that Dennis Roberts legally cast his vote in the Special Municipal Election.

**David Timothy Roberts**

David Roberts testified that he did not mail or return his ballot himself, but rather gave his vote-by-mail ballot to his brother to return on his behalf. RT 3:13:22–14:4 ("Q. How did you return this absentee ballot to the Registrar’s Office? A. I actually gave it back to my brother. Q. You just gave it back to him and he returned it for you? Q. Yeah. A. Do you know how he returned it? A. No."). This is a violation of California Elections Code section 3017, which requires that all vote-by-mail ballots must be mailed or returned in person by the voter himself or herself. While section 3017 provides an exception to this rule when the voter is physically ill or disabled, Defendant presented no evidence at the hearing of Mr. Roberts’ sickness or disability. Moreover, Mr. Roberts did not check the box on his vote-by-mail ballot stating that he was ill or disabled. Ex. C-AX. For these reasons, I find that David Roberts delivered his vote-by-mail ballot in violation of California Elections Code section 3017(a), and therefore cast an illegal vote in the Special Municipal Election. This vote must not be counted. Cal. Elec. Code § 3017(h).

I do not find, however, that Contestants met their burden of establishing that David Roberts was not domiciled in Vernon during the relevant time period. However, because Mr. Roberts’ ballot was returned in a manner in direct violation of the California Elections Code, his vote was illegally cast and must not be counted. Cal. Elec. Code § 3107.

**Gary Edward Sabara Jr.**

Like David Roberts, Gary Sabara Jr. testified that he did not mail or return his ballot himself, but rather gave his vote-by-mail ballot to Gabriel Early to return for him. RT 3:128:7–16 ("Q. And how did you return this ballot to the registrar of voters? A. It was put in the mail – I
gave it to Gabe and he took care of it. . . . Q. So Gabe returned it for you? A. Yeah.""). Defendant presented no evidence to rebut this, nor did Defendant present evidence to establish that Mr. Sabara could not return the ballot due to sickness or disability. See Cal. Elec. Code § 3107(a).

For the reasons described above, this is a violation of California Elections Code section 3017(a), and the vote must not be counted, California Elections Code § 3017(h). For these reasons, I find that Mr. Sabara delivered his vote-by-mail ballot in violation of California Elections Code section 3017(a), and therefore cast an illegal vote in the Special Municipal Election. This vote must not be counted. Cal. Elec. Code § 3017(h).

I do not find, however, that Contestants met their burden of establishing that Gary Sabara Jr. was not domiciled in Vernon during the relevant time period. However, because Mr. Sabara’s ballot was returned in a manner in direct violation of the California Elections Code, his vote was illegally cast and must not be counted. Cal. Elec. Code § 3107.

**Dean Allan Gulla**

Contestants have not met their burden to establish that Dean Gulla is not a resident of Vernon.

Mr. Gulla first began living in Vernon in 2006 in an apartment on Fruitland Avenue. RT 1:177:7–20. In 2007, Mr. Gulla moved to a new apartment in Vernon at on Furlong Place. RT 1:178:13–20. According to Mr. Gulla, he later moved out of that apartment, which his sister now occupies, and began to reside at 3378 East 50th Street in Vernon ("50th Street Apartment"). RT 1:178:15–179:13. The lease at the 50th Street Apartment is in Mr. Gulla’s name. RT 1:198:2–3. The water bill is also in Mr. Gulla’s name. RT 1:198:10–14. Moreover, Mr. Gulla’s voting

---

3 Moreover, like David Roberts, Mr. Sabara did not check the box on his vote-by-mail ballot stating that he was ill or disabled. Ex. C-AT.

4 The gas bill is in Dean Gulla’s brother, Duane Gulla’s, name. RT 1:198:10–14.
history shows he has voted continuously in Vernon since 2006. Ex. C-H. Further, he testified that his roots are in Vernon and that he has never voted anywhere else. RT 1:198:15–20.

Contestants assert that Mr. Gulla is not domiciled in Vernon, but instead in Lucerne Valley. Because the Lucerne Valley property was not purchased until 2009 (Ex. C-AAI), Mr. Gulla was clearly domiciled in Vernon before that time. The issue, then, is whether his domicile changed to Lucerne Valley at some later time. Mr. Gulla testified that until the Lucerne Valley property was acquired in 2009, he spent approximately five days a week in Vernon. RT 1:197:23–198:1. After acquiring the Lucerne Valley property, Mr. Gulla began to sleep and shower there. Mr. Gulla also registered vehicles in his name at the address and changed his driver’s license address to the Lucerne Valley address. Ex. C-AN. According to Mr. Gulla, he did this because the trailers he uses in his business cannot be legally registered or stored in Vernon. RT 1:198:21–199:14. Although Contestants attempt to use the above-referenced facts to establish that Mr. Gulla is in fact domiciled in Lucerne Valley, I find this, and other factors, to credibly negate Contestants’ evidence.

Mr. Gulla has several legitimate reasons explaining the amount of time he spends in Lucerne Valley, which only bolster his claim that he is not domiciled there. Mr. Gulla maintains a series of vending machines spread throughout Southern California. RT 1:170:14–175:19. These machines require that Mr. Gulla spend a large amount of time on the road and require Mr. Gulla to keep hours not typical of someone with a nine-to-five job. Id. Because of the nature of his profession, it is reasonable that neighbors of the 50th Street Apartment do not recall seeing Mr. Gulla at the apartment. Further, it is not unusual that Mr. Gulla spends time sleeping at the Lucerne Valley home. Because the Lucerne property has been vandalized in the past, it is necessary for someone to stay on the property in order to keep it safe. RT 1:167:5–168:1.
Finally, while it may seem unusual to some that four people live in a two bedroom apartment, economics might require people to live in such close proximity. While it may be tight quarters for this many people to share an apartment, it is not physically impossible for four people to stay in the 50th Street Apartment.

For these reasons, I find that Contestants have not shown with clear and convincing evidence that Mr. Gulla was not domiciled in Vernon.

Glenn Davis Gulla

From 2001 to 2010, Glenn Gulla lived in Winchester, and was registered to vote there during this time. RT 1:149:8–150:9; id. at 1:152:5–7. The evidence indicates that Mr. Gulla was domiciled in Winchester up until early 2010.⁵ Thus, the issue becomes whether Mr. Gulla established a domicile in some other place after this time. When a person leaves their previously established domicile, but fails to establish a domicile elsewhere, they retain their old domicile for voting purposes. Walters v. Weed (1988) 45 Cal.3d 1, 7–9. Because the evidence does not show that Mr. Gulla established a new domicile in Vernon after this time, Contestants have met their burden of establishing that Glenn Gulla is not domiciled in Vernon.

Upon leaving Winchester, Mr. Gulla claims that he moved to the 50th Street Apartment in Vernon. RT 1:151:15–19. Around the same time, Mr. Gulla also began staying at the Lucerne Valley property, which his brother purchased in 2009. RT 1:153:8–12. But even to this date, Mr. Gulla has never updated his driver’s license to either of these addresses. RT 1:56:2–3 (“Q. What’s the address on [your driver’s license]? A. That’s my Winchester address.”). Sometime after leaving Winchester, Mr. Gulla registered his vehicles at the Lucerne address. RT 1:158:6–17. Furthermore, in March 2011, Mr. Gulla registered to vote in Lucerne Valley. RT 1:152:12–

⁵ Unlike his brother, Dean Gulla, Glenn Gulla was not domiciled in Vernon before the purchase of the Lucerne Valley home in 2009.
Although Mr. Gulla offered testimony that he did not know he was registering to vote in San Bernardino County when he filled out the voter registration, RT 1:154:6–155:20, his testimony did not appear candid and was not believable. It cast doubt on the truthfulness of his entire testimony concerning domicile.

Contestants have raised significant questions about whether Mr. Gulla ever intended Vernon to be his fixed and permanent home. Instead, the evidence indicates that after Mr. Gulla left Winchester, he failed to establish new domicile. The court in Walters noted that in situations where a person leaves their previously established domicile, but fails to establish a domicile elsewhere, they retain their old domicile for voting purposes. Walters, 45 Cal.3d at 7–9. Thus, due to the conflicting nature of Mr. Gulla’s actions, in particular his dual voter registration in Lucerne Valley and Vernon, Mr. Gulla never established a new domicile in Vernon. The only evidence Defendant has put forth on this issue is leading testimony that I do not find to be credible. RT 1:166:19–24 (“Q. So at the time in 2010, when you left Winchester and you moved to Vernon - - that’s correct? A. Yes. Q. -- Your intent was to lay your roots down in Vernon, correct? A. I had nowhere else to go.”); RT 1:167:9–12 (“Q. Okay. And so for purposes of your residence, your roots are in Vernon and not in Lucerne Valley, correct? A. Yeah. Correct.”).

For these reasons, I find that Mr. Gulla was not domiciled in Vernon at the time of the Special Municipal Election and therefore cast his vote illegally.

**Victor Garcia**

Contestants have established by clear and convincing evidence that Victor Garcia is not domiciled in Vernon.

The evidence demonstrates that as of 2006, Mr. Garcia was domiciled in Garden Grove, California. RT 3:86:21–87:11 (“Q. And when did you receive this California I.D. card? A. I got
that when I first turned 18. So I'm going to go ahead and say about six years ago. Q. The address on here is -- well, the address on here is 13202 Aspenwood Avenue, Garden Grove? A. Yeah. Q. What does that address represent? A. The house that we actually used to live in there. Q. And you say 'we.' Who used to live there with you? A. Me, my dad, my sister, her husband, their four kids, my other brother. At one point, Gabe lived with us. At one point, two of my friends lived with us. It was, like, a really big house."

Ex. C-AAE.
The issue, then, is whether after 2006, Mr. Garcia intended to make Vernon his true and permanent home.

Currently, it appears that Mr. Garcia splits time between Garden Grove and Vernon. However, there is overwhelming evidence to suggest that Mr. Garcia never abandoned his domicile in Garden Grove, and there is no evidence demonstrating that Mr. Garcia intended to make Vernon his new domicile. Mr. Garcia testified that he spends time at an apartment in Garden Grove owned by his father. RT 3:80:2–25. Mr. Garcia’s employer is in Anaheim and he therefore spends his workweek in Garden Grove. RT 3:80:2–82:10. Mr. Garcia testified that he gave a Garden Grove address to his current employer as his residence address. RT 3:90:8–12.

Mr. Garcia listed Garden Grove as his residence on his 2011 income tax return. RT 3:90:13–18. Mr. Garcia’s bills go to his father’s address in Garden Grove. RT 3:90. Mr. Garcia’s Facebook page also represents that he lives in Garden Grove. Ex. C-AF.

Defendant presented testimony to attempt to establish Mr. Garcia’s domicile in Vernon. For instance, Mr. Garcia testified that when he is not working he spends time in Vernon, and he referred to Vernon as his primary home. RT 3:98:21–99:9. But most of Defendant’s evidence is either irrelevant or not believable. Evidence of Mr. Garcia voting in prior elections is unconnected to the specific issues in this case. See RT 3:95:22–96:12. The relevant issue in this hearing is whether Mr. Garcia was a legal voter in this election. Moreover, throughout his
testimony, Mr. Garcia lacked clarity and candor. As an example, upon being questioned on the
manner in which he returned his absentee ballot, Mr. Garcia failed to recall how he returned his
attempted to refresh Mr. Garcia’s recollection by pointing out the ballot did not have a postmark,
Mr. Garcia still could not recall. RT 3:86:7–11. Mr. Garcia also stated that he was not sure
whether the signature on his vote-by-mail ballot was his signature. RT 3:83:5–23.

For these reasons, I find that Contestants have established that Victor Garcia is not
legally domiciled in Vernon. His vote, therefore, was illegally cast in the Special Municipal
Election.

Denise Irene O’Connell and Robin Andrew Miller

Contestants set forth sufficient evidence that Denise O’Connell and Robin Miller were
not domiciled at the 50th Street Apartment. Respondent put forth no evidence that Ms.
O’Connell or Mr. Miller lived at the 50th Street Apartment. Notably, neither Ms. O’Connell nor
Mr. Miller appeared to testify at this hearing.

Ms. O’Connell and Mr. Miller were both registered to vote at the same two-bedroom
apartment as Glenn and Dean Gulla. Ex. C-J; Ex. C-H. I find it significant that when counsel
for the Contestants asked Dean Gulla, Gene Gulla, and Duane Gulla (who all assert residence at
the 50th Street Apartment), who lived in their apartment, not a single witness mentioned Ms.
O’Connell or Mr. Miller. RT 1:151:3–14 (“Q. Did anybody else live there with you at that
period of time in 2010 besides Dean? A. Yeah. My brother, Duane. Q. He was living there as
well? A. Yeah. Q. Any other? A. My brother, Brad. Q. Your brother, Brad, was living there,
too? A. He lives there. And - - yeah. Q. If I ask you again, am I going to keep getting more
names? Or can you give them all at once? A. That will do it.”); RT 2:66:13–16 (“Q. And who
else resides with you at 3378 East 50th Street? A. My brother, Duane, and off and on Dean and Glenn.”); RT 2:253:16–18 (“Q. And who resides there with you? A. My brother, Brad, and Glenn and Dean. They stay there when I’m at work.”).

Circumstantial evidence also demonstrates that neither Ms. O’Connell nor Mr. Miller is domiciled in Vernon. None of the witnesses who lived in the same apartment complex mentioned ever seeing Ms. O’Connell or Mr. Miller. RT 1:205:1–210:24; RT 3:154:17–157:15; see also RT 2:221:24–224:14 (process server unable to locate Ms. O’Connell or Mr. Miller). A DMV records search showed Ms. O’Connell registered two cars to an address in Lucerne Valley. Ex. C-AP; RT 2:87:3–89:3. DMV records searches for both Ms. O’Connell and Mr. Miller for the Vernon address returned no results. RT 2:87:6–8; RT 2:93:1–13. A credit report search was also run on Ms. O’Connell and the only address returned was the Lucerne address. RT 2:90:7–10. A credit search was run on Mr. Miller and no information returned to connect him to the Vernon address. RT 2:91:19–21.

The evidence set forth above raises a significant question as to whether Ms. O’Connell or Mr. Miller were ever domiciled in Vernon, and whether they had any intention to permanently remain there. In response, Defendant put forth no evidence to establish that either person was domiciled in Vernon. For these reasons, I find that Denise O’Connell and Robin Miller were not domiciled in Vernon during the relevant time period. Their votes were therefore cast illegally and shall be removed from the election count.

CONCLUSION

For the reasons stated above, I find that the following votes were cast illegally: Bernard Patrick Roberts, David Timothy Roberts, Gary Edward Sabara Jr., Victor Garcia, Glenn Davis
Gulla, Denise Irene O’Connell, and Robin Andrew Miller. These findings would alter to vote count to twenty-seven votes in favor of Reno Bellamy and thirty votes in favor of Luz Martinez.

Pursuant to Section 8(h) of the City of Vernon Resolution 2012-116—which states that if “a person other than the defendant has the highest number of legal votes, the hearing officer shall find that person elected”—I find Luz Martinez elected in the Special Municipal Election. As required by the same Section, I recommend that the City Council therefore annul the certification of the result of the Special Municipal Election, and proclaim Luz Martinez as the winner.

Dated: October 15, 2012

[Signature]

Hearing Officer Debra Wong Yang
Gibson Dunn & Crutcher LLP
333 S. Grand Avenue
Los Angeles, CA 90071
DWongYang@gibsondunn.com
DATE: October 18, 2012

TO: Honorable Mayor Pro Tem and City Council

FROM: Mark C. Whitworth, City Administrator

RE: 1. FINAL DETERMINATION OF THE CONTEST OF THE JUNE 5, 2012 SPECIAL MUNICIPAL ELECTION PURSUANT TO THE FINDINGS AND RECOMMENDATION OF HEARING OFFICER DEBRA WONG YANG
3. CERTIFICATE OF ELECTION TO BE DELIVERED BY ACTING CITY CLERK TO THE PERSON DECLARED TO BE ELECTED
4. OATH (AFFIRMATION) OF OFFICE TO BE ADMINISTERED BY THE ACTING CITY CLERK TO THE PERSON DECLARED TO BE ELECTED
5. ELECTION OF MAYOR AND MAYOR PRO TEM.

Recommendation

The recommendation of the Hearing Officer will become the Final Decision of the City Council unless the council votes affirmatively to reject it.

If the City Council wishes to reject the Hearing Officer's recommendation, then the City Council should take the following action:

1. Reject the recommendation of Hearing Officer Yang, upon a Motion to Reject Recommendation of Hearing Officer Yang in the Contest of the June 5, 2012 Special Municipal Election, and then introduce and adopt alternative 2 for "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON, CALIFORNIA, RECITING THE FACT OF THE SPECIAL MUNICIPAL ELECTION HELD ON JUNE 5, 2012, DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY
LAw”), which reflects the election of candidate Reno Bellamy. The Council must state on the record its reasons for rejecting the recommendation and its reasons will then be reduced to a writing for Council to approve at a later meeting.

In the alternative, if the City Council wishes to affirmatively support the recommendations of Hearing Officer Yang as the Final Decision of the City Council, then the City Council should take the following action:


Summary

The Vernon City Charter section 3.4 provides in relevant part: “The city council shall be the final judge of election results and the qualifications of its members.”

This provision, which has been in the Vernon City Charter for many years prior to the June 2012 Special Municipal Election, requires the City Council of the City of Vernon to receive and adjudicate election contests. People v. Metzker (1874) 47 Cal. 524; Carter v. Superior Court (1902) 138 Cal. 150; McGregor v. Bd. of Trustees of Town of Burlingame (1911) 159 Cal. 441.

On June 18, 2012, an election contest of the June 5, 2012 Special Municipal Election was filed with the City Council of the City of Vernon invoking its jurisdiction pursuant to Chapter 3.4 of the City Charter of the City of Vernon. (On July 11, 2012 the election contest was re-filed in the form prescribed by Resolution No. 2012-116, see below.)

On June 27, 2012, the City Council adopted Ordinance No. 1197 (“ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VERNON AMENDING CHAPTER 2, ARTICLE XII OF THE VERNON CITY CODE ESTABLISHING PROCEDURES FOR ELECTION CONTESTS”) to establish procedures by which the City Council would exercise its authority under Vernon City Charter Section 3.4. In line with the purpose of the Ordinance, Ordinance No. 1197 provides that, “The City Council of the City of Vernon may adopt by resolution additional procedures for election contests which shall provide for fair, transparent, and expedited adjudication consistent with due process and equal protection of the law.”

The City Council adopted such a resolution, Resolution No. 2012-116 (“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON ADOPTING RULES AND PROCEDURES TO GOVERN ELECTION CONTESTS FILED WITH THE CITY COUNCIL PURSUANT TO VERNON CITY CHARTER SECTION 3.4”); at its Special Meeting on July 10, 2012.

On July 17, 2012, the City Council adopted two additional resolutions to facilitate the adjudication of the election contest and to ensure fairness and transparency, Resolution No. 2012-122 (“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON
AUTHORIZING MAYOR OR MAYOR PRO TEM TO ISSUE SUBPOENAS AT REQUEST OF PARTIES TO ELECTION CONTESTS FILED WITH THE CITY COUNCIL PURSUANT TO VERNON CITY CHARTER SECTION 3.4”), and Resolution No. 2012-123 (“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON ADOPTING CONFLICT OF INTEREST GUIDELINES AND DISCLOSURE FORM FOR NEUTRAL HEARING OFFICER FOR ELECTION CONTESTS FILED WITH THE CITY COUNCIL PURSUANT TO VERNON CITY CHARTER SECTION 3.4”).

Also on July 17, 2012, the City Council adopted Resolution No. 2012-124 (“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON APPOINTING NEUTRAL HEARING OFFICER FOR ELECTION CONTEST FILED ON JULY 11, 2012 WITH THE CITY COUNCIL PURSUANT TO VERNON CITY CHARTER SECTION 3.4”), appointing Hon. Debra Wong Yang as the Neutral Hearing Officer for the Election Contest.

Hearing Officer Yang heard the election contest on September 10, 11 and 20, 2012, heard closing arguments from counsel for the parties on October 4, 2012, and issued her Findings and Recommendation on October 15, 2012. A copy of the Findings and Recommendation is attached hereto.

Pursuant to Vernon City Charter section 3.4—as reflected in section 9 of Resolution No. 2012-116—the City Council is required to make the final determination of the election contest. Should the Council wish to do so, it can vote to reject the Hearing Officer’s recommendation. If there is not a majority vote to reject the recommendation of the Hearing Officer, the recommendation shall become the decision of the City Council.

Pursuant to the determination of the City Council, as described above, the Council is then required to declare the results of the June 5, 2012 Special Municipal Election, and install the newly elected officer as a member of the City Council. Because there is a vacancy in the office of Mayor, the City Council must also elect a Mayor from among its membership.

The attached alternative resolutions and certificates implement the City Council’s final determination under Charter section 3.4 and Section 9 of Resolution No. 2012-116.

**Background**

On June 5, 2012, a special municipal election was held in the City of Vernon to fill a vacancy on the City Council. Because that date coincided with the date of the statewide primary election the City Council election was consolidated with the statewide primary and was administered by the Los Angeles County Registrar of Voters.

On May 10, 2012, attorney Frederic Woocher of Strumwasser & Woocher LLP, on behalf of a Vernon voter and the Vernon Chamber of Commerce, submitted a letter to the Los Angeles County Registrar of Voters challenging for lack of residency in the City of Vernon any vote-by-mail ballots cast in the special municipal election by 21 named voters. Included with that submission were written evidentiary materials related to each of the challenges.

Mr. Woocher submitted supplemental evidentiary materials to the County Registrar on June 5, 2012. In both the May 10 and in the June 5 submissions, Mr. Woocher requested that the County
Registrar hold an evidentiary hearing to adjudicate the challenges and indicated that he was prepared to present the testimony of many Vernon residents who could attest to the non-residency of the challenged voters.

On June 5, 2012, the County Registrar responded that he would not receive the live testimony, and that he would instead rule on the pending challenges to voters based only on the written documentation previously submitted. The Registrar indicated that he would issue his determinations on the challenged ballots by the close of business on Friday June 8, 2012, and keep the challenged ballots secured and unopened until June 22, 2012, in order to allow any of the affected parties the opportunity to seek relief from his determinations.

On June 8, 2012, the County Registrar issued his determinations on the voter challenges, indicating that ten of the challenged voters had submitted vote-by-mail ballots for the June 5, 2012 special municipal election. In each case, the Registrar acknowledged that the written evidence submitted raised questions concerning the residency of the challenged voter, but he ultimately determined that the written evidence submitted was not a sufficient basis upon which to disqualify the ballots of these ten challenged voters prior to the processing of their ballots. The County Registrar emphasized, however, that he wanted to ensure that appropriate due process is afforded both to the challenger and to the voters whose ballots were challenged, and that "[b]ecause the Elections Code is not specific in identifying a process that serves that purpose, I want to further ensure that there is adequate time available for any party subject to the proceedings to seek additional review." Accordingly, the Registrar stated that the ten ballots subject to challenge would remain secured and unopened until Friday, June 22, 2012.

On June 18, 2012, an election contest of the June 5, 2012 Special Municipal Election was filed with the City Council of the City of Vernon by an elector of the City invoking its mandatory jurisdiction pursuant to Chapter 3.4 of the City Charter of the City of Vernon. The contest challenged the legality of various votes, including those of the following voters: Bernard Patrick Roberts, Dennis Eugene Roberts, David Timothy Roberts, Gary Edward Sabara, Jr, Dean Allen Gulla, Glen David Gulla, Victor Garcia, Denise Irene O'Connell and Robin Andrew Miller. These voters were among those challenged in Mr. Woocher's filing with the Los Angeles County Registrar of Voters on May 10, 2012.

On June 20, 2012, the City Council discussed the contest at its duly noticed special meeting and the importance to the integrity of Vernon elections of Vernon residents being accorded the opportunity to a hearing before the City Council on an election contest and to provide testimony concerning the residency of persons who have cast votes in Vernon elections. The City Council unanimously voted to ask the Registrar that the challenged ballots remain secured and unopened until Friday, June 29, 2012, to provide any impacted parties additional time to seek appropriate relief. In a letter to City Clerk Willard Yamaguchi dated June 21, 2012, the Registrar declined the City Council's request.

On June 27, 2012, the City Council adopted Ordinance No. 1197, which amended the Municipal Code of the City of Vernon to establish procedures by which the City Council would exercise its mandatory duty to hear election contests under Vernon City Charter Section 3.4. Ordinance No. 1197 provides that, "The City Council of the City of Vernon may adopt by resolution additional procedures for election contests which shall provide for fair, transparent, and expedited adjudication consistent with due process and equal protection of the law."
After a duly noticed public hearing held in conjunction with the July 10, 2012 special City Council meeting, the City Council adopted Resolution No. 2012-116, which established the specific procedures to govern election contests in the City of Vernon, which will provide for fair, transparent, and expedited adjudication of such matters. At its meeting on July 17, the City Council passed three additional resolutions, Nos. 2012-122, 2012-123 and 2012-124, providing for, respectively, the issuance of legislative subpoenas at the request of parties to election contests, conflict of interest guidelines and required disclosures for neutral hearing officers for election contests, and the appointment of Hon. Debra Wong Yang, former Judge of the Los Angeles County Superior Court, and former United States Attorney for the Central District, as the Hearing Officer for the contest of the June 5, 2012 Special Municipal Election. The City Council overruled a challenge to Hearing Officer Yang on August 7, 2012, determining that Hearing Officer Yang had fully complied with the required disclosures and no conflict of interest was presented.

On July 11, 2012, the same elector of the City of Vernon who originally filed the contest on June 18, 2012, timely filed a contest statement in accordance with the requirements of Resolution No. 2012-116 incorporating the challenges set forth in the contest document filed on June 18, 2012 by the same elector. The contest statement was amended on August 7, 2012 to add a second contestant who was also an elector of the City.

After a postponement mutually requested by the parties to the election contest, the hearing on the election contest took place before Hearing Officer Yang on September 10, 11, and 20. During the course of the hearing, forty-three witnesses were called to testify, and many exhibits were introduced into evidence by the parties. The parties were both represented by counsel, who subpoenaed witnesses, filed legal briefs, made motions and raised arguments on behalf of their clients. The hearing took place in the Vernon City Council chambers, and was attended by many community members.

At the close of the hearing, Hearing Officer Yang requested the filing of closing briefs, which were filed on October 2 and 3, 2012, and heard closing oral arguments by telephone conference on October 4, 2012. Closing arguments by telephone conference were broadcast in City Council Chambers for members of the public to hear the full proceedings.

On October 15, 2012, Hearing Officer Yang filed her Findings of Fact and Conclusions of Law, with Acting City Clerk Dana Reed, including her Recommendation. Hearing Officer Yang ruled:

For the reasons stated [within], I find that the following votes were cast illegally: Bernard Patrick Roberts, David Timothy Roberts, Gary Edward Sabara Jr., Victor Garcia, Glenn Davis Gulla, Denise Irene O’Connell, and Robin Andrew Miller. These findings would alter the vote count to twenty-seven votes in favor of Reno Bellamy and thirty votes in favor of Luz Martinez.

Pursuant to Section 8(h) of the City of Vernon Resolution 2012-116 – which states that if “a person other than the defendant has the highest number of legal votes, the hearing officer shall find that person elected” – I find Luz Martinez elected in the Special Municipal Election. As required by the same Section, I recommend that the City Council
therefore annul the certification of the result of the Special Municipal Election, and proclaim Luz Martinez as the winner.

**Final Determination by City Council**

The City Council must now make the final determination of the Election Contest. All the briefs of the parties, the rulings of Hearing Officer Yang, and the transcripts of the three days of hearings have previously been provided to each City Council member.

Vernon City Charter section 3.4 provides in relevant part: “The city council shall be the final judge of election results and the qualifications of its members.” Section 9(a) of Resolution 2012-116 further provides:

**SECTION 9: Final Determination by City Council.**

a) At a duly noticed City Council meeting held not less than 5 days after the hearing officer files the written findings and recommendation with the City Clerk, the City Council shall convene in a regular or special meeting. At the public City Council meeting, the City Council may, by a majority vote of the membership of the City Council, reject the hearing officer's recommendation. If there is not a majority vote of the membership of the City Council to reject the recommendation of the hearing officer, the recommendation shall become the decision of the City Council. If the City Council decides to reject the hearing officer's recommendation, it must expressly state in writing its reason(s) for doing so. The parties shall have an opportunity to address the City Council about the hearing officer's findings and recommendation, or any aspect of the proceedings at the meeting before the City Council makes its decision. The City Council may review the record or any portion of the record of the proceedings prior to making its decision.

**Consideration of a Motion to Reject Hearing Officer Yang’s Recommendation.**

If it wishes, the City Council is authorized to reject the recommendation of Hearing Officer Yang that Candidate Luz Martinez be proclaimed elected. This can be done by motion.

If there is no motion to reject Hearing Officer Yang’s recommendation, Hearing Officer Yang’s recommendation becomes the final decision of the City Council.

If a motion is made to reject Hearing Officer Yang’s recommendation, the City Council can do so by majority vote of the membership on the motion. If the City Council decides to reject the recommendation of the hearing officer, it must expressly state in writing its reasons for doing so. Therefore, if the City Council rejects the recommendation, it must state on the record its reasons. Those reasons will then be reduced to written form and brought back to the City Council for approval at a future City Council meeting.

If the motion to reject Hearing Officer Yang’s recommendation fails, Hearing Officer Yang’s recommendation becomes the final decision of the City Council.
**Proposed Alternative Resolutions**

Section 9(b) of Resolution No 2012-116 provides:

b) The City Council shall forthwith declare elected the person receiving the highest number of legal votes in the contested election pursuant to subdivision (a), above, and install the newly elected officer as a member of the City Council.

Staff has prepared alternative forms of a “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON RECITING THE FACT OF THE SPECIAL MUNICIPAL ELECTION HELD ON JUNE 5, 2012, DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY LAW”.

If Hearing Officer Yang’s recommendation becomes the final decision of the City Council, alternative 1 of the Resolution declares candidate Luz Martinez to be elected, requires the Acting City Clerk to deliver to her a Certificate of Election and to administer the Oath of Office to her.

If the City Council rejects Hearing Officer Yang’s recommendation, alternative 2 of the Resolution declares candidate Reno Bellamy to be elected, requires the Acting City Clerk to deliver to him a Certificate of Election and to administer the Oath of Office to him.

**Subsequent Actions Following City Council’s Declaration of Person Elected – Certificate of Election, Oath of Office, Selection of Mayor and Mayor Pro Tem**

Section 9(c) – (e) of Resolution No 2012-116 provide:

c) The person declared elected by the City Council is entitled to a certificate of election. If a certificate has not already been issued to him or her, the City Clerk shall immediately make out and deliver to that person a certificate of election signed by him or her. The City Clerk shall also administer to each person elected the oath of office prescribed in the California Constitution.

d) If an elections official has issued any certificate for the same office to any other person than the one declared elected by the City Council, or if the Council finds a tie vote, the certificate is annulled by the City Council’s decision in the election contest.

e) Whenever an election is annulled or set aside by the decision of the City Council, the commission of office, if any has issued, is void and the office is vacant.

In accordance with the foregoing provisions, the agenda reflects that the Acting City Clerk will deliver a Certificate of Election and administer the Oath of Office to the person declared to be elected by the City Council. Staff has prepared alternative forms of the Certificate of Election and the Oath of office for use of the City Clerk, as appropriate.

Sections 3.5 & 3.6 of the City Charter of the City of Vernon provide:

1.5 At the Council meeting at which any Council member is installed following a regular municipal election, and at any time when there is a vacancy in the office of Mayor, the City Council shall meet and shall elect one of its members as Mayor. The Mayor shall
be the presiding officer of the City Council. The Mayor shall be a member of the City Council for all purposes and shall have all the rights, powers and duties of a member of the City Council in addition to those powers and duties conferred upon the Mayor by virtue of his or her office.

1.6 At the time that a mayor is selected, the City Council shall also designate one of its members as Mayor Pro Tempore. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the City Council and may be removed by a majority vote of the members of the Council. The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability.

The Office of Mayor is currently vacant because the City Council did not elect a mayor after the regular municipal election in April 2012, the various motions nominating a mayor failing to garner a majority vote. Therefore, after the installation of the new City Council member, the City Council should attempt once again to nominate and elect a new Mayor and Mayor Pro Tem.

Authorization for City Council Action

The authorization for the above actions is found in Article XI, § 5 of the California Constitution, Chapter 2 of the City Charter of the City of Vernon, which states that: "The city shall have full power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions in respect to municipal affairs, without limitation, which may lawfully be adopted, made, exercised, taken or enforced under the Constitution of the State of California subject only to such limitations as may be provided by this Charter," and in the sections of the City Charter, Ordinance No. 1197, and Resolution No. 2012-116, as cited and quoted above.
DATE: November 8, 2012

TO: Mark C. Whitworth, City Administrator

FROM: Ana Barcia, Deputy City Clerk

RE: Resolution No. 2012-200 — A Resolution of the City Council of the City of Vernon, California, Reciting the Fact of the Special Municipal Election Held on June 5, 2012, Declaring the Results and Such Other Matters as Provided by Law

Transmitted herewith is a copy of Resolution No. 2012-200 referenced above, which was approved by City Council on October 23, 2012.

Thank you.

AB: yb

Attachment

c: Resolution No. 2012-200
Dana Reed
Ana Barcia
Kristen Enomoto
United States of America

Certificate of Election

State of California  )
County of Los Angeles  ) SS.

I, Dana Reed, Acting City Clerk, of the City of Vernon, State of California, certify, that a Special Municipal Election was held in the City on the 5th day of June, 2012, and at a special meeting of the City Council held on the 23rd of October, 2012,

LUZ MARTINEZ

was officially declared elected to the office of

MEMBER OF THE CITY COUNCIL

as shown by the Minutes of the City Council now on record in my office.

I affix my hand and official seal this 23rd day of October, 2012.

Dana Reed, Acting City Clerk
OATH OR AFFIRMATION
OF ALLEGIANCE
FOR PUBLIC OFFICERS AND
EMPLOYEES

State of California  }
County of Los Angeles  ) SS.
City of Vernon  }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, LUZ MARTINEZ, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 23rd day of October, 2012

[Signature of Officer Administering Oath]

[Signature of Person Taking Oath]