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November 5, 2015
BY FEDERAL EXPRESS

RESPONDENTS' ARGUMENT

Re: Full Board Hearing on November 18, 2015

Board Secretary
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701



Re: Bruce V. Malkenhorst, Sr. and City of Vernon, Respondents
CalPERS Case No. 2012-0671, OAH Case No. 2013080917

To the CalPERS Board of Administration:

Respondent Bruce V. Malkenhorst, Sr., presents the following written argument in connection with the Full Board Hearing on the above-captioned matter.

Procedurally, the Board has not adopted the *Proposed Decision* and has undertaken to decide the case upon each Board member's independent examination of the extensive administrative record, including reading the transcript, and after taking additional evidence. (*Gov't. Code*, §11517(c)(2)(E).)

Administrative Law Judge Howard Cohen found in favor of Malkenhorst on core issues of his Appeal because Malkenhorst's legal rights to the higher pension are clearly supported with facts, legal authority, case law, and CalPERS' prior rulings. The evidence, documents, and testimony are well-cited, consistent, credible, independently reinforcing, and persuasive.

Significantly, the *Proposed Decision* finds that CalPERS' current method of calculating Malkenhorst's reduced final compensation is "arbitrary", "without sufficient legal authority", and "constitutes an abuse of discretion".

The legal and factual findings in the *Proposed Decision* deserve this Board's great respect and deep consideration. The ALJ heard the testimony, read all the arguments, and independently and objectively rendered factual and legal findings. As this Board now sits in its quasi-judicial mode (rather than its advocacy mode), it should review and give great weight to the ALJ's objective and persuasive logical reasoning.

After hearing all the evidence for days, ALJ Cohen made factual findings in the *Proposed Decision* in Malkenhorst's favor such as: (i) Malkenhorst was a full-time employee who did not work overtime and did not work part-time. (ii) The job duties did not require Malkenhorst to work overtime and they were not part-time positions. (iii) Many of the assigned non-routine tasks (or "titles") took only a nominal amount of time or work. (iv) Malkenhorst did not work

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fewer than 40 hours nor more than 45 hours per week. (iv) Vernon paid Malkenhorst a high salary for his work as City Administrator. (v) The salary for City Administrator was reviewed, determined independently, and approved by Vernon's Finance Committee and the City Council. (vi) The resolutions were adopted in open session, made publicly available, and posted in public places. (vii) Vernon paid contributions to CalPERS based on the salary paid. And (viii) Vernon fully funded its pension liability to CalPERS at that time.

Specifically, ALJ Cohen found that CalPERS' calculation of Malkenhorst's final compensation was arbitrary and constitutes an abuse of discretion. The ALJ has directed CalPERS to recalculate his final compensation in a manner that appropriately credits Malkenhorst for duties performed as City Administrator/City Clerk, excluding only the compensation associated with performing "additional" titles and responsibilities, if any.

The *Proposed Decision* does not make findings about the amount of "final compensation" that should be used in the pension calculation, although suggested basing the compensation on the salary earned by Malkenhorst's successor as City Administrator.

Procedurally, the Board has no power to hear or raise issues of repayment or recoupment of past pension payments as these issues were not raised in CalPERS' *Statement of Issues*. At this point in the procedural process, the authority of the agency itself to decide the case after rejecting a proposed decision includes authority to decide *some but not all* issues in the case. (*Gov't Code*, §11517(c)(2)(E)(iii).) The Board may not raise new issues or attempt to decide matters that were not raised in the administrative process. The Board can only address the issues raised in the *Statement of Issues*.

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. (*Gov't Code*, §11504.)

The ALJ found that no issues of recoupment or repayment were raised in CalPERS' *Statement of Issues*.

CalPERS has alleged in the *Statement of Issues* that the only issues in this matter are whether it previously erroneously calculated and has not correctly calculated respondent Malkenhorst's final compensation. Respondent Malkenhorst argues that any attempt at recoupment is time barred. CalPERS has not yet sought recoupment of past payments nor has it elected how it will proceed if it is determined that it made overpayment in this case. No determination about recoupment, therefore, may be made in this matter.

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(Finding 7(c) of the *Proposed Decision*.)

Because no issue of recoupment or repayment was raised by CalPERS in the hearing or in the *Statement of Issues*, no decision about recoupment or repayment can be made by this Board in this hearing. In order to seek repayment, CalPERS would have to initiate a new administrative process and a new statement of issues.

CalPERS' Case

CalPERS' case, here and in the administrative process, by contrast, suffers an irreconcilable inconsistency, relying on neither the documents nor the testimony.¹ Ignoring the facts and law, CalPERS' unwarranted second revision of Bruce Malkenhorst Sr.'s pension benefits fails under the weight of CalPERS' false assumptions, CalPERS' multiple irreconcilable inconsistencies, and CalPERS' refusal to accept proven facts. For example, CalPERS' witness Jimenez misunderstands, misstates, or conjectures that Malkenhorst held numerous separate jobs, each with separate compensation that was lumped together. Jimenez wrongly interprets the PERL, ignores the facts, wrongly applies the *Prentice* decision, and inappropriately applies new regulations retroactively.

CalPERS has failed to put on a *prima facie* case in the administrative hearing. ALJ Cohen made well-supported legal and factual findings that rejected CalPERS arguments.

Facts

Although the Board is holding its own hearing on the matter, it is bound by the following facts in the administrative record in its deliberations:

Vernon hired Malkenhorst into the City Administrator/City Clerk ("CACC") position in 1978. (Hilario Gonzalez ("HG") 110:15-111:12.) Ordinance 883 mandated that the CACC was appointed to serve as City Clerk, Municipal Employee Relations Representative and Personnel Director. (Exh. 9-4, 9-5.) The City *Code* confirmed this and appointed the CACC to serve as Purchasing Agent. (Exh. 10-2, 10-3, 10-9.) Ordinance 883 and the *Code* set forth various duties of the CACC, including that the CACC shall "perform such other duties and exercise such other powers ... as may be assigned or delegated to him, from time to time, by action of the Council." (Exh. 9-12, 10-8.)

Vernon's *Charter*, resolutions, ordinances and the Council required the CACC position to perform various duties and responsibilities within the single job of CACC. (HG 115:5-9, Gloria Orosco ("GO") 30:4-8.) The duties of director of personnel are fully and completely described

¹ CalPERS' *Post-Hearing Brief* asked ALJ Cohen to rely on Vernon's documents (and not the testimony) (*Brief*, 26:11-19) but CalPERS' Jimenez testified she did not rely on or believe Vernon's documents (Tomi Jimenez ("TJ") 2 119:15-120:18.)

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within the CACC duties. (GO 31:22-23:2, Exh. 9-8.) The CACC was tasked with purchasing. (GO 38:14-17.) City administrators sign documents under the titles, duties and responsibilities delegated by the city council to them, even though they only hold a single position as city administrator. (Robert Adams ("RA") 142:22-143:3, *Gov't Code*, §1220.) The titles merely informed the public of who to contact on specific issues and for internal chain of command purposes. (Bruce Malkenhorst ("BM") 50:3-17, 53:11-14.) As CACC, Malkenhorst was "responsible for the rest of the City and the other departments" but "he would be doing this under the administration as a City Administrator." (HG 115:13-14.)

When Malkenhorst became CACC, "he was responsible for all the departments" in the City, including the Light & Power and Water Departments. All department or administrative heads reported to him. (HG 125:1-8.)

Vernon's *Charter*, resolutions and ordinances assigned duties and responsibilities to the CACC position (not to Malkenhorst personally or individually).² Joaquin Leon of Vernon understood and agreed that the *Charter* authorizes the Council to appoint *the office* of CACC to hold and perform various duties. (Joaquin Leon ("JL") 130:3-8.) In its documents, the Council did not appoint the individual (Malkenhorst) holding the CACC office to personally perform any municipal duties outside the CACC position. (JL 129:10-25.)

Typically, multiple responsibilities and duties (including personnel director, labor negotiator, and labor relations) were assigned by the city council to be responsibilities and duties within the city administrator position without additional pay. (RA 100:1-19, 102:3-14, 158:4-13, 163:24-164:25, 173:14-25, 174:8-12, 174:25-175:5, 176:7-15, 210:1-23.) For example, the various duties³ of city clerk and treasurer are often performed within the city administrator position without additional pay. (RA 209:16-210:23.)

More fundamentally, it is incorrect to assume that multiple tasks or titles could not be assigned to be performed within a single position paid one salary. This assumption is contrary to law and established practice. (*City of Long Beach v. Allen* (1956) 143 Cal. App. 2d 24, 30.) Typically, the City as employer determines the duties, title(s), and salary of each position. For example, state law for general law cities establishes bare minimum duties that cities, especially charter cities, are encouraged to expand on. (Vernon's resolutions show that the City Council assigned various tasks and titles to the position of City Administrator, not to Malkenhorst

² The redevelopment agency (RDA), Vernon Historical Preservation Society (VHPS), and Industrial Development Association (IDA) are/were separate entities or corporations with separate bylaws or existence outside city government. (RA 197:9-12, 207:2-7.) They do not contract with CalPERS. (See Respondent's *Request for Official and Judicial Notice* ("RFOAJN").) Malkenhorst individually served without pay in the RDA, VHPS and IDA. (JL 168:14-169: 8.)

³ Additional hours might be required in the first year of a new duty or responsibility, but in the second or third year, no additional hours might be required. (RA 195:2-15.)

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directly. Respondent's expert witness testified that it is common for city councils to assign multiple tasks or titles to a municipal executive to perform within one position.

CalPERS' assumption that Malkenhorst held separate job positions wrongly gives CalPERS the power to determine which tasks, titles, or duties should be performed within a specific position, which is also contrary to existing law.

Vernon provided no pay⁴ associated with the CACC assuming the duties and responsibilities associated with the CEO of Light and Power, and CEO of natural gas financing. (JL 175:24-179:14.) The City provided no compensation for the RDA, VHPS or IDA duties,⁵ for the municipal employees relations duties (JL 147:4-14, Exh. 18-8) or for personnel director (JL 147:15-25, BM 13-17-14:7.)⁶

Vernon's resolutions annually established the single pay for the single CACC position. (Exh. 11 to 30, 33 to 43, 49 to 60, 63 to 65) No resolution, contract, ordinance, or other document provided compensation directly or indirectly for any other or separate duties, responsibilities or positions. (JL 178:24-179:14.) Leon testified that if there was pay for any of these duties and responsibilities, it had to have been documented in a resolution. (JL 179:2-3.) Leon looked but found no resolution, contract, ordinance, or other document that indicated any pay for any duties, responsibilities or positions other than CACC. (JL 178:24-179:14.)

Leon testified that while personally working for Vernon, he was required to perform all of the duties that the Council placed in the office that he held, whether compensated or not. (JL 155:18-21.) He testified that the Council did not pay its management employees additional compensation for performing various responsibilities. (JL 142:20-25.) Leon was asked to take on various responsibilities but was not paid specifically or additionally for them. (JL 143:9-144:6.)

Orosco reviewed everything that came into the CACC office from 1981 to 2004. (GO 28:3-4, 72:16-73:11.) She was aware of the nature of work that Malkenhorst performed from 1981 to 2004. (GO 73:12-74:5.) Orosco testified that 100% of Malkenhorst's work was performed as CACC. (GO 74:6-19.)

⁴ Leon demonstrated that in 1983-1984 when the Council assigned the CACC the duties of purchasing agent, the CACC position received only a \$195 annual merit raise on the \$7,105 salary, even though the purchasing agent was previously paid \$2,746. (JL 160:21-163:12; Exh. 19-30, 20-38, KKKKK.) The \$195 or 1.3% was the only increase that year. (JL 163:7-20.)

⁵ Neither Vernon nor the separate RDA, VHPS, or IDA entities paid the CACC or Malkenhorst individually for duties associated thereof. (JL 175:24-179:14.)

⁶ CalPERS wrongly claimed Malkenhorst received separate pay as Treasurer after appointed as CACC (CalPERS' *Brief*, 11:15-21) but Malkenhorst clarified on cross-examination that the *Assistant* Treasurer received the small stipend, not him. (BM 104:4-105:2; Exh. 8-2.) Malkenhorst received no compensation separately for his Treasurer duties. (BM 44:2-45:1.)

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Vernon specified that the CACC position was full-time. (RA 149:8-16; Exh. 9-11, Ordinance 883, Ex 63-56) Orosco and Gonzales testified that Malkenhorst worked full-time as CACC position from 1981 to 2004. (GO 74:20-22, HG 116:19-21.)

The *Proposed Decision* found that although there were times when Malkenhorst's workload increased on a temporary basis, there was no evidence that he worked fewer than 40 hours or more than 45 hours per week. (Factual Findings 17-18.) Although at times pressing tasks consumed time, Malkenhorst typically spent only nominal amounts of time on those tasks over the years, despite retaining formal "titles" associated with those projects. (Factual Finding 20.) The *Proposed Decision* found that Malkenhorst was able to delegate many day-to-day duties to other city personnel while retaining overall responsibility. (Factual Finding 20.) The *Proposed Decision* also found that regardless of the nature and extent of the "additional" duties assigned to him by the City Council, Malkenhorst was still expected to perform all of the CACC duties. (Factual Finding 19.) In short, evidence demonstrated that Malkenhorst's "full time" employment was as CACC.

Malkenhorst worked regular hours at Vernon City Hall. (BM 37:1-15.)

From 1987 through the end of Malkenhorst's tenure, Vernon's pay resolutions explicitly stated that the CACC's full-time "hours of work [are] to be as necessary". (GO 130:25-131:5, JL 166:6-15; Exh. 27-3 through Exh. 65-47.) The normal working hours for City Managers and City Administrators are 8am to 5pm but obviously there are more hours. (RA 145:4-8) Orosco said Malkenhorst worked more than 32 hours a week. (GO 40:18-20.) Malkenhorst normally averaged 40-45 hours a week, all in the CACC position. (BM 23:14-16, 180:6-22.) Orosco was aware of when he came to work because he had to walk past her to get to his office. (GO 22:11-13, 25:24-26:2.) He was usually in the office before Orosco arrived. (GO 26:3-6.) Malkenhorst left at different times. (GO 26:13-16.) Even the hotly disputed ADP payroll reports show "full-time", 80 hours for 2 weeks. (Exh. 67, 68.) Gonzales considered Malkenhorst to be "on call" 24 hours a day. (HG 117:18-21.)

Vernon's resolutions exclude the CACC from a 40-hour week. (Exh. 27-3 through Exh. 65-47.) Vernon specifically forbade any compensation to the CACC for work beyond his full-time work week. (Ex 63- 45, 65-37.) The CACC was salaried and not paid an hourly rate. (See, e.g., Exh. 24-22, 24-23, Ex 63-56.) Leon recognized that Vernon's statement that all employees *other than* 24-hour shift fire department personnel, the CACC and the director of environmental health "shall be paid on an hourly basis" means that the CACC position is salaried, managerial, and will not be paid on an hourly basis. (JL 78:2-5, 170:14-17; Exh. 37-21, Ex 63-56.)⁷ Even when cities establish a 40-hour week, it only applies to regular employees and not to management such as City Administrator. (RA 187:21-189:24, 213:19-23.)

Orosco testified from her review of the payroll from 1981 to 2004 that Malkenhorst was

⁷ The director of environment health also was not paid on an hourly basis. (*Ibid.*)

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never paid any overtime. (GO 57:2-12.) City Administrator is a managerial position paid a salary; there is no overtime pay. (Ex 63- 45, RA 152:2-6, 176:16-18.) Sharon Duckworth defined an exempt employee as "they don't get overtime." (Sharon Duckworth ("SD") 150:23-151:1.) \

City leaders are paid a single payroll check from the city's general fund. (RA 144:2-11.) Gonzales testified that Vernon paid Malkenhorst a single payroll check for the performance of his CACC position. (HG 115:16-19.) Malkenhorst was paid by payroll check drawn only from the City's general fund. (GO 75:6-10, JL 125:12-13, 126:1-7.) In review of the payroll from 1981 to 2004, Orosco said Malkenhorst was never paid in any position other than CACC. (GO 57:13-58:4.)

More importantly, the *Proposed Decision* finds that Malkenhorst received no increase in salary directly attributable to any new title, task, or duty given to the City Administrator position by Vernon's City Council.

From 1978 to 2005, Vernon listed the CACC pay rate (and longevity pay) on its pay schedules. (Exh. 11 to 30, 33 to 43, 49 to 60, 63 to 65.) Vernon paid the CACC a single monthly salary of \$35,302 in 2005. In the pay resolutions, there is no separate finance, personnel, or treasury department. Those are all included in the CACC department. (JL 174:5-17, 182:10-15; Exh. 65-73.) Generally, cities do not list a position with no pay on a "pay schedule" because the position was not paid. (RA 211:23-212:16.)

More specifically, the *Proposed Decision* correctly notes that increases in Malkenhorst's salary over his last 15 years "do not constitute the basis for CalPERS' claim that respondent Malkenhorst's 'final compensation' included payments that do not comply with the PERL." In short, the *total amount* of Malkenhorst's salary is not grounds for a reduction.

From 1986 to 2004, Orosco prepared the Council minutes, pay rates, ordinances, agendas, salary resolutions and other resolutions of the City and made them publicly available pursuant to the Brown Act. (GO 81:10-82:7, 83:9-84:6.) Upon request, Orosco would make "everything and anything" of Vernon's documents (except those privileged) publicly available. (GO 83:9-14.) Agendas were posted prior to meetings. (GO 84:11-18.) CalPERS' Jimenez testified that there was no issue that the resolutions were adopted in open meetings and publicly available. (TJ3 72:16-73:3.)

CalPERS' Rodgers looked at Vernon documents that "showed that [Malkenhorst] had served in several capacities with the City of Vernon" (Terrence Rodgers ("TR") 12:22-13:1) and a chart prepared by CalPERS (TR 16:22-24) that listed several positions (TR 14:11-23, Exh. MMMMM.) But Rodgers concluded that "it appears that there's only one position." (TR 15:2, Exh. MMMMM.) Further, "it appears no compensation is related when additional positions are added." (TR 18:7-14.) Rodgers answered that zero compensation was not "compensation" with reference to *Gov't Code* §20630. (TR 26:10-11.) With respect to whether an unpaid duty or position had to be reported on a pay schedule or otherwise, "The definition of pay rate [in *Gov't*

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Code §20636(b)(1)] is rendering service *and* receiving compensation." (TR 24:7-8, emphasis added.)

With reference to the chart in Exh. MMMMM, Rodgers found disjuncture in time between pay increases and the addition of new positions or responsibilities and noted pay increases at times when no positions were added to the chart. (TR 18:3-21.) Rodgers found that there were no multiple jobs and that the pay increases were independent of changes in the CACC job duties. (Exh. MMMMM.)

Rodgers testified there could be differing interpretations in CRU of PERL compliance. (TR 12:8-17, 38:3-13; Exh. ZZ, OOOOO.) Doing his best to interpret the PERL, Rodgers determined that Malkenhorst "was only in the position of City Administrator/City Clerk." (TR 14:4-19, 48:1-9; Exh. MMMMM.) Based on the chart, pay increases after 1979 were not associated with various titles or responsibilities. (TR 19:3-18.) Rodgers has learned nothing since the date of his email in May 2012 that would have changed his opinion. (TR 19:19-21.)

Rodgers said that the employer (i.e. Vernon) determines whether a position is full-time. (TR 29:5-23.) CalPERS' CRU would be satisfied by the employer determination that a managerial employee worked full-time, especially if the hours were within the 34-60 hours range. (TR 29:24-30:3, 30:13-18.) In Rodgers' review of 70 or so high level employees, he never saw CalPERS divide a single full time position into multiple part-time positions. (TR 36:10-15.)

CalPERS' CRU employee Lueras reviewed Vernon's payroll reporting to CalPERS. (Lolita Lueras ("LL") 62:22- 67:15.) Vernon reported Malkenhorst as a full-time salaried employee, including using code 173. (*Ibid.*, 81:14-23; Exh. FFFFFF.) Lueras still believes him to be a full-time employee. (LL 67:15.)⁸

LAW – STANDARD OF REVIEW BY BOARD IN FULL HEARING

The Board Has No Power to Hear or Review the Repayment or Recoupment Issues As They Were Not Raised in the *Statement of Issues* or in the Administrative Process

The authority of the agency itself to decide the case after rejecting a proposed decision includes authority to decide *some but not all* issues in the case. (*Gov't Code*, §11517(c)(2)(E)(iii).) The issues in the case are bound by the issues raised in the *Statement of Issues*.

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The

⁸ CalPERS credited Malkenhorst with full-time service credit every year. (LL 67:25-68:3.) Lueras acknowledged that Vernon's pay resolutions disclosed a CACC position and a pay rate associated with that CACC position. (LL 81:24-82:3.)

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statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. (*Gov't Code*, §11504.)

The ALJ found that no issues of recoupment or repayment were raised in the *Statement of Issues* or by CalPERS.

CalPERS has alleged in the Statement of Issues that the only issues in this matter are whether it previously erroneously calculated and has not correctly calculated, respondent Malkenhorst's final compensation. Respondent Malkenhorst argues that any attempt at recoupment is time barred. CalPERS has not yet sought recoupment of past payments nor has it elected how it will proceed if it is determined that it made overpayment in this case. No determination about recoupment, therefore, may be made in this matter. (*Finding 7(c) of the Proposed Decision.*)

In order to seek repayment, CalPERS would have to initiate a new administrative process and a new statement of issues.

Credibility Determination

The Administrative Adjudication Bill of Rights limits an agency head's ability to substitute credibility findings different from those made by the ALJ or other presiding officer, and it also imposes a constraint on trial judges reviewing administrative decisions under the independent judgment test:

If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement [by the presiding officer] shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give *great weight* to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it. (*Gov't Code*, §11425.50(b).)

Substantive Law

Even under the more restrictive general law, the City establishes the duties or position. (*Gov't Code*, §§36501, 36505, 41005.) By ordinance, the City may authorize or require one position to perform various duties, including of other positions. (*Gov't Code*, §40805.5, 40812.) For example, the City by ordinance may transfer or require performance of the City Clerk's duties and responsibilities by other offices. (*Gov't Code*, §40805.5; see also §§51505, 51507.)

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The City can require the City Clerk and other positions to perform "additional duties". (*Gov't Code*, §40812.) (Once a charter city in 1988, Vernon had vastly greater power to establish duties or position. *Gov't Code* § 34004) When not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal. (*Gov't Code*, §1194.) When an officer discharges *ex officio* the duties of another office than that to which he is elected or appointed, his official signature and attestation shall be in the name of the office the duties of which he discharges. (*Gov't Code*, §1220.)

The limitations on performing multiple duties are against an individual simultaneously being elected to "incompatible offices" (which does not apply to this situation). (*Gov't Code*, §1099; *Eldridge v. Sierra View Local Hospital Dist.* (1990) 224 Cal.App.3d 311.)⁹

Other than the CACC salary and longevity, neither the CACC position nor Malkenhorst (either inside or outside the CACC position) was paid separately or additionally for various duties. Since zero compensation is not "compensation" under *Government Code* section 20630, CalPERS cannot attribute any compensation, time, or service to any duty or position except CACC. (See also TR 26:7-11.)

"Overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid". (*Gov't Code*, §20635.) Vernon as the employer determined the CACC to be a full-time position. (Exh. 27-3 through Exh. 65-47) Vernon only paid Malkenhorst for his full-time work performing the various duties of the single managerial CACC position within the normal time established by Vernon. The CACC was not paid any overtime.

Every percipient witness testified that Malkenhorst worked full-time and performed all of his duties in the single position of CACC. The Vernon documents say the same. Since the VHPS, RDA, and IDA are independent entities that are not CalPERS contracting agencies, Malkenhorst could not perform services for them as a member. In any case, he was not paid for those.

CalPERS cites a CalSTRS case, *O'Connor*, where teachers worked 2 separate full time jobs with 2 separate paychecks. Under the *Education Code*, a second job is required to be overtime. *O'Connor* is irrelevant (other than to show that no PERL statute or case law supports CalPERS).

The controlling documents, resolutions, ordinances, and pay schedules of Vernon clearly establish the CACC as a single full-time managerial position tasked with performing various duties during normal work as assigned by the City's *Charter* and resolutions. From its general fund, Vernon paid the CACC one single base salary in cash pursuant to publicly available pay

⁹ Jimenez admitted she was not familiar with these code sections. (TJ3 9:16.25.)

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schedules. The monthly base pay or pay rate for the CACC satisfies the PERL definition of "pay rate" and "compensation earnable"

With respect to whether an unpaid duty or position had to be reported on a pay schedule or otherwise, "[t]he definition of pay rate in Government Code 20636(b)(1) is rendering service *and* receiving compensation." (TR 24:7-8, emphasis added.) If no pay and no benefit arises from an act or designation by the City, the PERL cannot reach out and attempt to control it.

Vernon determines the "normal" full time duties and responsibilities to be performed within a single position, the work schedule, the number of hours for full-time status and the pay rate. "It has been beyond dispute that pay received for the performance of all normally required duties ... constitutes compensation under PERS law." (*City of Fremont v. Board of Administration* (1989) 214 Cal.App.3d 1026, 1031; *City of Sacramento v. Pub. Employees Ret. Sys.*)1991) 229 Cal.App.3d 1470.) CalPERS cannot construe the performance of the normal duties that Vernon assigned in and to the CACC *position* by Malkenhorst as separate jobs or positions, especially for purposes of reducing Malkenhorst's retirement allowance.

CalPERS has not provided any fact or document that indicates that Malkenhorst held separate positions or received separate pay. (JL 179:1-14.) The pay resolutions and testimony prove that he received no salary but his CACC salary.¹⁰

CalPERS could not provide any PERL authority to divide a single salary for a single full time position into multiple salaries related to titles or duties assigned to be performed in that position. Without any facts in Vernon's records, CalPERS cannot construe a large salary for one position as multiple separate salaries.

CalPERS wrongly cited the *Ramirez* and *Prentice* cases as authority.

First, Ramirez's and Prentice's increases occurred within three years of their retirement and thus were limited by "look back" provisions. (See *Gov't Code* section 20636(e)(2) which limit pay increases in the final compensation and "look back" period to the average of those in the same group.) Malkenhorst had no above-average or significant pay increases in the three to five years preceding retirement.¹¹

Second, Ramirez and Prentice received pay *specifically for and concurrently with* taking specific new and different responsibilities *outside* their current position. Vernon's resolutions assigned various duties and responsibilities *within* the CACC position itself, and the CACC position did not receive a pay increase for or simultaneously with any increased responsibilities.

¹⁰ CalPERS offers disproven speculation that Malkenhorst's pay increases "seemed a clear indicator that ... his increase [] included multiple positions" (TJ2 16:6-9); or that CalPERS "could see that [Vernon was] adding positions.... They're labeled positions." (TJ2 15:15-20.)

¹¹ CalPERS has not sought to limit the increases in Malkenhorst's pay in the last 5 years.

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(See TR 18:7-13; Exh. MMMMM.)

Third, Prentice's higher pay was not included *at all* on any publicly available pay schedule. (Prentice's pay was above the amount listed for the position Prentice held.) The *Prentice* court said "Because [the increase] was not reflected in the city's published salary range, it was not part of the manager's regular payrate." (*Prentice v. Bd. of Admin., California Pub. Employees' Ret. Sys.* (2007) 157 Cal.App.4th 983, 987.) While requiring the pay to be disclosed, *Prentice* does not require or imply that an employer must list duties or unpaid "positions". In *Ramirez*, the City of Indio indicated the City Manager job was not part of the "normally required duties" of Police Chief so the City Manager compensation was not part of "payrate" for Police Chief and was instead "overtime".¹² (*In re Ramirez* (2000) CalPERS' Prec. Decis. 00-06, pg. 8.)

CalPERS must apply statutes in the PERL and/or the *California Code of Regulations* that were in effect on July 1, 2005. Even the term "publicly available pay schedule" was added in statute in 2006, after Malkenhorst retired. (See *RFOAJN; Prentice, supra.*) CalPERS cites *CCR* §570.5, even though it did not become operative until August 10, 2011, more than six years after Malkenhorst's retirement.

Because Malkenhorst retired in 2005, the laws and regulation that govern his pension are those that were in effect in 2005. In 2005 before *Prentice*, there was no requirement to list the separate duties. (See Fn. 4 in *Prentice, supra*, at 990.) Vernon properly listed the salary of the CACC on publicly available pay schedules and satisfied the publicly available pay schedule "requirement" as it existed in 2005.

While CalPERS has subsequently formulated new regulations about publicly available pay schedules that may require listing additional information, the law and regulation applicable to 2005 did not required the pay schedules to detail each task, duty, or title assumed by a position. The law in 2005 did not require that the pay schedules list, create or delineate a separate salary associated with each duty, task, or title performed within a job. In Vernon, the titles were "organizational signposts" and most of the tasks or duties associated with them required intermittent or minimal time and little ongoing work. The resolutions explicitly indicated that there was no pay associated with performing the positions other than for City Administrator.

If the administrative process upholds CalPERS' reduction of Malkenhorst's pension, CalPERS may *prospectively* seek to reduce the benefit only after the decision becomes final but cannot seek "overpayments". In 2006, CalPERS determined the amount of the higher benefit. CalPERS cannot seek to recollect an overpayment of the pension that it has determined is

¹² Ramirez was Police Chief of Indio working well over 40 hours a week and nearing retirement when the council paid Ramirez an extra \$2,500 a month to serve as City Manager.

Board Secretary
California Public Employees' Retirement System
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Page 13

correct.¹³ In addition, the statute of limitations of three or four years has run in 2009, so CalPERS is barred completely. (*Code Civ. Proc.*, §337(1).)

In this case, there is no factual or legal support for repayment of any monies.

CalPERS' Biased and Arbitrary and Capricious Decision

In this case, CalPERS' staff including Tomi Jimenez interpret the PERL, whether certain or ambiguous, *against* Malkenhorst at every step. For example, Jimenez focuses on Malkenhorst's increased pay over 30 years, his entire career. (TJ2 16:1-5.) Jimenez refused to limit her salary comparison to the final compensation period (one year) plus the two preceding years in *Government Code* section 20636(e)(2) (TJ2 128:12-16)¹⁴ but could provide no authority for looking beyond the 3 years to the whole career (TJ2 132:23-133:20.)¹⁵ Similar unsupported and arbitrary efforts to simply reduce Malkenhorst's pension (because it is large) are contrary to the facts and law and should not be supported by this Board.

Instead, the Board should follow the ALJ's suggestion and ascertain an appropriate payrate such:

- 1) Actual Payrate. The documents are clear about the actual payrate for the City Administrator during Malkenhorst's career.
- 2) Alternatives Considered in the CalPERS Audit Process, such as the suggestion to look at the highest payrate of the new positions created after Malkenhorst's retirement. During CalPERS' audit and review process, Terrance Rodgers, Compensation Review Unit Staff Service Manager I, testified that he felt the City Council pay resolutions satisfy the pay schedule requirements and that a "payrate" for a comparable position in the Light & Power Department "may be more in alignment with the 'spirit' of SB 53 and the definition of payrate in GC 20636(b)(2)." (Attached as *Ex. 2* is his email, *Ex. "NNNNN"*.) Minimally this would qualify

¹³ At most, the look back period would start to run only when and if the CalPERS Board makes a final determination that it can reduce the pension (i.e. some time in the future). (*City of Oakland v. Oakland Police and Fire Retirement System* (2010) 224 Cal.App.4th 210, fn. 18.)

¹⁴ Jimenez also admitted CRU only looked at pay increases of "some" of the department heads, but she has no documentation even of those increases. (TJ2 134:23-135:5.)

¹⁵ Jimenez also claims Section 20635 disallows alleged overtime by wrongly assuming Malkenhorst held multiple positions *since 1981*, but she ignores that Section 20635 says "[t]his provision shall apply *only to service rendered on or after July 1, 1994*". In 1994, Malkenhorst had a base salary of \$26,493, which is triple the amount after CalPERS' recent reduction. Although Jimenez repeatedly said CalPERS had no policies and provisions, CalPERS' printed procedures say if "the participant holds more than one part-time position with the same CalPERS covered employer ... [a]ll part-time positions are reportable to CalPERS as the law does not specifically provide for the exclusion of such positions." (*RFOAJN*; *Exh. HHHH-2413*.)

Board Secretary
California Public Employees' Retirement System
November 5, 2015
Page 14

Malkenhorst for the \$24,000 monthly salary for Acting Director L&P position (attached as *Ex. 3*) Exh.75-11), a "position" CalPERS claims Mr. Malkenhorst held in his City Administrator position , (rather than the \$7,875 salary for Acting City Clerk) (Exh. 75-22 attached as *Ex. 4*.)

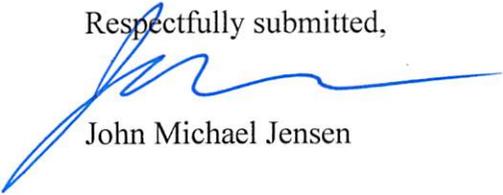
3) Successor City Administrator's Payrate. Sometime after Malkenhorst retired, Vernon hired a part time City Administrator at a salary of \$335,000 per year, plus longevity. In 2009, Vernon hired a different City Administrator and paid him a salary of \$384,000 a year, plus longevity. Attached as *Ex. 5* is Vernon's Resolution No. 9942, dated May 11, 2009, setting the salary for City Administrator at \$32,000 per month (\$384,000 per year). Attached as *Ex. 6* is Vernon's Resolution No. 10057, dated August 31, 2009, again setting the salary for City Administrator at \$32,000 per month. Attached as *Ex. 7* is Vernon's Resolution No. 2010-33, dated March 1, 2010, maintaining the salary for City Administrator at \$32,000 per month.

4) Payrate of Current City Administrator. Currently in 2015, Vernon pays its City Administrator a salary of \$293,436, plus longevity. See *Ex. 8* attached.

Conclusion

The Board has the opportunity to follow the law and end this protracted dispute between CalPERS and Malkenhorst by following the ALJ suggestion. We urge the Board to address in good faith the proposal of ALJ Cohen in the *Proposed Decision* to seek a fair "final compensation" amount with respect to the law and facts determined in the administrative process.

Respectfully submitted,


John Michael Jensen

JMJ:gm
Attachments

Exhibits 1-8 attached to Respondent's Argument

Bruce V. Malkenhorst, Sr. and City of Vernon, Respondents
CalPERS Case No. 2012-0671, OAH Case No. 2013080917

Exhibit 1 Salary Schedule in 2005

Publicly Available Salary Schedule for City Administrator in 2005

Exhibit 2 Exhibit "NNNNN" CalPERS Staff email

Terrence Rodgers, Compensation Review Unit ("CRU") *Staff Service Manager I* email that he thought the City Council pay resolutions satisfy the pay schedule requirements and that a "payrate" for a comparable position in the Light & Power Department "may be more in alignment with the 'spirit' of SB 53 and the definition of payrate in GC 20636(b)(2)."

Exhibit 3 Exh. 75-11 , City of Vernon Pay Schedule

\$24,000 monthly salary for Acting Director L&P position , a "position"
CalPERS claims Mr. Malkenhorst held in his City Administrator position.

Exhibit 4 Exh. 75-22, City of Vernon Pay Schedule

\$7,875 salary for Acting City Clerk

Exhibit 5 City of Vernon *Resolution No. 9942*

City of Vernon *Resolution No. 9942*, dated May 11, 2009, setting the salary for City Administrator at \$32,000 per month (\$384,000 per year);

Exhibit 6 City of Vernon *Resolution No. 10057*

City of Vernon *Resolution No. 10057*, dated August 31, 2009, again setting the salary for City Administrator at \$32,000 per month

Exhibit 7 City of Vernon *Resolution No. 2010-33*

City of Vernon *Resolution No. 2010-33*, dated March 1, 2010, maintaining the salary for City Administrator at \$32,000 per month

Exhibit 8 City Of Vernon, Current Salary of City Administrator

Currently in 2015, Vernon pays its City Administrator a salary of \$293,436, plus longevity.

Exhibit 1

SCHEDULE II

0.03

CITY ADMINISTRATOR/CITY CLERK DEPARTMENT SALARY SCALE

		MONTHLY SALARY
CITY ADMINISTRATOR/CITY CLERK - 4001	STEP 1	35,302.00
DIRECTOR OF ENVIRONMENTAL HEALTH - 4310	STEP 1	10,986.00
	2	10,413.00
	3	9,870.00
	4	9,355.00
	5	8,867.00
	6	8,405.00
	7	7,967.00
CHIEF DEPUTY DIRECTOR ENVIRONMENTAL HEALTH - 4320	STEP 1	8,900.00
	2	8,436.00
	3	7,996.00
	4	7,579.00
	5	7,184.00
	6	6,809.00
	7	6,454.00
ASSISTANT TO THE CITY ADMINISTRATOR - 4100	STEP 1	8,580.00
	2	8,133.00
	3	7,709.00
	4	7,307.00
	5	6,926.00
	6	6,565.00
	7	6,223.00
SENIOR ENVIRONMENTAL SPECIALIST - 4440	STEP 1	7,996.00
	2	7,579.00
	3	7,184.00
	4	6,809.00
	5	6,454.00
	6	6,118.00
	7	5,799.00
SPECIAL ASST TO THE CITY ADMINISTRATOR - 4050	STEP 1	7,409.00
OFFICE MANAGER - 4120	STEP 1	6,655.00
RISK MANAGER/PERSONNEL ASSISTANT - 4260	STEP 1	6,308.00
BUDGET AUDITOR - 4330	2	5,979.00
	3	5,667.00
	4	5,372.00
	5	5,092.00
	6	4,827.00
	7	4,575.00
	8	4,336.00
LEGAL COUNSEL - 9700	STEP 1	26,000.00

SCHEDULE II
 EXHIBIT "B" PAGE 13

07/01/04

Exhibit 2

EX
NNNNN
Page 744

From: Rodgers, Terrance
Sent: Tuesday, May 08, 2012 02:21 PM
To: Jimenez, Tom; Montez, Marlon; McGinity, Teresa; Lueras, Lolita; Ray, Angelina T.
Subject: Ff: Malkehhorst, Sr. Compensation

Good Afternoon,

Per Tom's request, I wanted to provide explanation and another option to determine the "compensation earnable" for Mr. Malkehhorst, Sr. The explanations are as follows:

1. Accept payrate as reported, but reduce Longevity to 20% as provided to the group or class, for a total F/C amount of \$42362.40 (#1 in attached)
2. Use \$4797 payrate and 20% Longevity for a total F/C amount of \$5756.40. This was the last verified, full-time payrate and allowable special compensation (e.g. Plotkin with CSBA)-(#2 in attached)
3. Using the \$4797 payrate, allow the actuarially assumed cost-of-living increase (for all miscellaneous members) of 3% per year since 1978. This would provide a monthly payrate of \$10656 plus a 20% Longevity payment of \$2131.20 for a total monthly F/C of \$12787.20. Because we use the actuarially assumed COLA increase, this may help mitigate any unfunded liability issues and, based on experience, is a relatively reasonable monthly F/C for an equivalent position at a comparable city/organization (#3 in attached)

4. Another possible course of action that has been discussed is as follows:

Because the member took on multiple positions and due to the lack of specific information to establish a full-time payrate, another option is to limit the member to an amount on an approved publicly available pay schedule for which a full-time payrate has been established in the next most closely related group or class. This approach potentially provides more consistent application for all affected members, it may be more in alignment with the "spirit" of SB 53 and the definition of payrate in GC 20636(b)(2). Also, this approach is provided as a possible solution in situations where reported compensation does not conform to GC 20636(b)(2) in OCR 570.5(b). For example, when one of the positions listed for the member is the "CEO of the Electrical Department," determine the most closely related group or class on the pay schedule that conforms to the publicly available requirements and for which we can determine was a full-time payrate (e.g. the position is not cited in any resolution for which one person is serving in multiple positions such as Generation Operations Manager which is a subordinate position to CEO of the Electrical Department). By taking this approach, we can establish a full-time rate of pay for the most closely related, similarly situated group or class for services rendered on a full-time basis and pursuant to a publicly available pay schedule.

I hope this makes sense, but please let me know if I need to elaborate.

Regards,

Terrance Rodgers
Compensation Review
918/753.5523

Exhibit 3

SCHEDULE II

LIGHT & POWER DEPARTMENT SALARY SCALE

		MONTHLY SALARY
ACTING DIRECTOR L&P	STEP 1	24,000.00
GENERATION OPERATIONS MANAGER - 5197	STEP 1	9,924.00
ENGINEERING OPERATIONS MANAGER - 2550	STEP 1	9,924.00
ELECTRICAL ENGINEER - 5301	STEP 1	8,437.00
OPERATIONS ENGINEER - 5400	2	7,997.00
	3	7,580.00
	4	7,185.00
	5	6,810.00
	6	6,455.00
	7	6,118.00
	8	5,799.00
ASSOCIATE ENGINEER - 5302	STEP 1	7,185.00
	2	6,810.00
	3	6,455.00
	4	6,118.00
	5	5,799.00
	6	5,497.00
	7	5,210.00
	8	4,938.00
	9	4,681.00
ELECTRIC SERVICE PLANNER - 5204	STEP 1	6,414.00
ASSISTANT ENGINEER - 5312	2	6,080.00
ASSOCIATE ENERGY MGMT REP - 5317	3	5,763.00
	4	5,463.00
	5	5,178.00
	6	4,908.00
	7	4,652.00
	8	4,409.00

SCHEDULE II
EXHIBIT "B" PAGE 4

7/1/05

EX. 75 - 11

CalPERS143432

Exhibit 4

SCHEDULE II

CITY ADMINISTRATOR/CITY CLERK DEPARTMENT SALARY SCALE

		MONTHLY SALARY
ACTING CITY CLERK - 9851	STEP 1	7,875.00
DIRECTOR OF ENVIRONMENTAL HEALTH - 4310	STEP 1	10,986.00
	2	10,413.00
	3	9,870.00
	4	9,355.00
	5	8,867.00
	6	8,405.00
	7	7,967.00
CHIEF DEPUTY DIRECTOR ENVIRONMENTAL HEALTH - 4320	STEP 1	8,900.00
	2	8,436.00
	3	7,996.00
	4	7,579.00
	5	7,184.00
	6	6,809.00
	7	6,454.00
SENIOR ENVIRONMENTAL SPECIALIST - 4440	STEP 1	7,996.00
	2	7,579.00
	3	7,184.00
	4	6,809.00
	5	6,454.00
	6	6,118.00
	7	5,799.00
SPECIAL ASST TO THE CITY ADMIN - 4050	STEP 1	7,409.00
SR PERSONNEL ASST/ PURCHASING AGENT - 4120	STEP 1	7,875.00
ACTING CITY TREASURER - 4330	STEP 1	7,875.00
BULK POWER MANAGER - 5304	STEP 1	9,793.00
	2	9,282.00
	3	8,798.00
	4	8,339.00
	5	7,904.00
	6	7,492.00
	7	7,101.00
POWER RESOURCE COORDINATOR - 5102	STEP 1.	8,572.00
	2	8,125.00
	3	7,701.00
	4	7,300.00
	5	6,919.00
	6	6,558.00
	7	6,216.00
	8	5,892.00
LEGAL COUNSEL - 9700	STEP 1	25,000.00

Exhibit 5

RESOLUTION NO. 9942

1
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3 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
4 VERNON AMENDING RESOLUTION NO. 9639 BY AMENDING
5 SCHEDULE NOS. III AND XXIV, OF SAID RESOLUTION
6 REGARDING THE COMPENSATION, COSTS AND BENEFITS OF
7 ITS EMPLOYEES (AMENDMENT NO. 8)

8 WHEREAS, on June 16, 2008, the City Council of the City of
9 Vernon adopted Resolution No. 9639 to be effective on July 6, 2008,
10 regarding the compensation, costs and benefits of its employees (the
11 "Salary Resolution"); and

12 WHEREAS, Schedule No. XXIV, Exhibit X, of the Salary
13 Resolution provides for positions and salary scales of positions
14 within the Utilities & Government Infrastructure Department; and

15 WHEREAS, on May 11, 2009, the City Council of the City of
16 Vernon introduced Ordinance No. 1156 for first reading concerning the
17 reorganization of City Departments by eliminating the Utilities &
18 Government Infrastructure Department, which Ordinance is scheduled for
19 adoption on June 1, 2009; and

20 WHEREAS, the City Council of the City of Vernon desires to
21 eliminate the salary scales of the Director of Utilities & Government
22 Infrastructure and Legal Counsel within the Utilities & Government
23 Infrastructure Department from the Salary Resolution; and

24 WHEREAS, Schedule No. III, Exhibit C, of the Salary
25 Resolution provides for positions and salary scales of positions within
26 the City Administration Department; and

27 WHEREAS, the City Council of the City of Vernon desires to
28 create a salary scale for the position of City Administrator and create
the position and salary scale of an Executive Secretary to the City
Administrator position within the City Administration Department; and

1 WHEREAS, the City Council of the City of Vernon wishes to
2 amend Schedule Nos. III (Exhibit C) and XXIV (Exhibit X) of the Salary
3 Resolution to implement the aforementioned changes.

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

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

9 SECTION 2: Effective May 15, 2009, Schedule No. XXIV
10 (Exhibit X) of the Salary Resolution is hereby amended as indicated on
11 Exhibit A, which is attached hereto and made a part hereof by this
12 reference to implement the elimination of the salary scales of the
13 Director of Utilities & Government Infrastructure and Legal Counsel in
14 the Utilities & Government Infrastructure Department.

15 SECTION 3: Effective May 15, 2009, Schedule No. III
16 (Exhibit C) of the Salary Resolution is hereby amended as indicated on
17 Exhibit B, which is attached hereto and made part hereof by this
18 reference, to implement the creation of a salary scale for the position
19 of City Administrator within the City Administration Department and the
20 creation of the position and the appropriate salary scale for the
21 position of Executive Secretary to the City Administrator in the City
22 Administration Department.

23 SECTION 4: The provisions of Resolution Nos. 9639, as
24 amended by Resolution Nos. 9664, 9672, 9678, 9728, 9815, 9888 and 9906,
25 not consistent with or in conflict with this resolution are hereby
26 repealed; in all other respects, Resolution Nos. 9369, 9664, 9672,
27 9678, 9728, 9815, 9888 and 9906, shall remain in full force and effect..

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SECTION 5: The City Clerk of the City of Vernon shall certify to the passage of this resolution, and thereupon and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this 11th day of May, 2009.

Hilario Gonzales

Name: Hilario Gonzales

Title: Mayor / ~~Mayor Pro-Tem~~

ATTEST:

Manuela Giron
MANUELA GIRON, City Clerk

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)

4 I, MANUELA GIRON, City Clerk of the City of Vernon, do hereby
5 certify that the foregoing Resolution, being Resolution No. 9942, was
6 duly adopted by the City Council of the City of Vernon at a regular
7 meeting of the City Council duly held on Monday, May 11, 2009, and
8 thereafter was duly signed by the Mayor or Mayor Pro-Tem of the City of
9 Vernon.

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11 
12 MANUELA GIRON, City Clerk

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EX "B"

CITY ADMINISTRATION
SALARY SCALE

	MONTHLY SALARY	
CITY ADMINISTRATOR	STEP 1	32,000.00
EXECUTIVE SECRETARY TO THE CITY ADMINISTRATOR -	STEP 1	6,844.00
	2	6,487.00
	3	6,149.00
	4	5,828.00
	5	5,524.00
	6	5,236.00
	7	4,863.00
	8	4,704.00

SCHEDULE III
EXHIBIT "C"

cityadministration

Exhibit 6

RESOLUTION NO. 10,057

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 SECTIONS 12.b and 13.a(10) AND SCHEDULE NOS. III, XV AND XXII OF THE SALARY RESOLUTION (AMENDMENT NO. 13)

WHEREAS, on June 16, 2008, the City Council of the City of Vernon adopted Resolution No. 9639 to be effective on July 6, 2008, regarding the compensation, costs and benefits of its employees, which has subsequently been amended by Resolution Nos. 9664, 9672, 9678, 9728, 9815, 9888, 9906, 9942, 10,001, 10,021, 10,029 and 10,053 (the "Salary Resolution"); and

WHEREAS, Schedule No. III, Exhibit C, of the Salary Resolution provides for positions and salary scales of positions within the City Administration Department; and

WHEREAS, the City Council of the City of Vernon desires to create the position of Budget Auditor in the City Administration Department with the appropriate salary scale; and

WHEREAS, Schedule No. XV, Exhibit O, of the Salary Resolution provides for positions and salary scales of positions within the Office of the Treasurer; and

WHEREAS, the City Council of the City of Vernon desires to leave the salary scale for the City Treasurer blank because when an employee serves in more than one position in more than one department some positions are indicated in schedules without a salary scale; and

WHEREAS, Sections 12.b and 13.a(10) of the Salary Resolution and Schedule XXII (Exhibit V) provide for uniform allowances for the Fire and Police Departments for the 2008-2009

1 fiscal year; and

2 WHEREAS, the City Council of the City of Vernon desires to
3 amend Sections 12.b and 13.a(10) and Schedule XXII (Exhibit V) to
4 provide for uniform allowances for the 2009-2010 fiscal year; and

5 WHEREAS, the City Council of the City of Vernon wishes to
6 amend Sections 12.b and 13.a(10) and Schedule Nos. III (Exhibit C), XV
7 (Exhibit O) and XXII (Exhibit V) of the Salary Resolution to implement
8 the aforementioned changes.

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

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

14 SECTION 2: Effective August 30, 2009, Schedule Nos. III
15 (Exhibit C) and XV (Exhibit O) of the Salary Resolution are hereby
16 amended in their entirety as indicated on Exhibit A, which is attached
17 hereto and made part hereof by this reference.

18 SECTION 3: Effective as of July 1, 2009, Sections 12.b and
19 13.a(10) of the Salary Resolution are hereby amended to read as
20 follows:

21 12.b. Uniform Allowance.

22 The City shall provide a uniform allowance as specified in
23 Schedule XXII, Exhibit V, for the 2009-2010 fiscal year of the City,
24 for the purchase of Uniforms and related equipment.

25 13.a(10) Uniform Allowance for Miscellaneous
26 Personnel in the Police Department.

27 Vernon shall provide a uniform allowance as
28 specified in Schedule XXII, Exhibit V, for the 2009-2010 fiscal year of

1 the City for the purchase of uniforms for dispatchers, Records
2 Personnel, Department Secretary and Administrative Aide positions in
3 the Police Department.

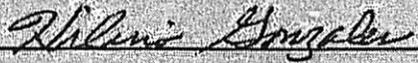
4 SECTION 4: Effective as of July 1, 2009, Schedule XXII
5 (Exhibit V) of the Salary Resolution is hereby amended in its entirety
6 as indicated on Exhibit B, which is attached hereto and made a part
7 hereof by this reference. Any payment provided for in Schedule XXII
8 that was to occur prior to September 1, 2009, and that has not yet been
9 paid, shall be paid on the next payroll check following the adoption of
10 this resolution, or as soon thereafter as is practicable.

11 SECTION 5: The provisions of Resolution Nos. 9639, as
12 amended by Resolution Nos. 9664, 9672, 9678, 9728, 9815, 9888, 9906,
13 9942, 10,001, 10,021, 10,029 and 10,053 not consistent with or in
14 conflict with this resolution are hereby repealed; in all other
15 respects, Resolution Nos. 9639, 9664, 9672, 9678, 9728, 9815, 9888,
16 9906, 9942, 10,001, 10,021, 10,029 and 10,053 shall remain in full
17 force and effect.

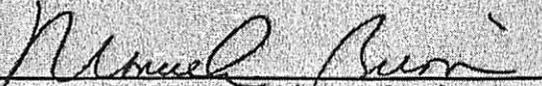
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1 SECTION 6: The City Clerk of the City of Vernon shall
2 certify to the passage, approval and adoption of this resolution, and
3 the City Clerk of the City of Vernon shall cause this resolution and
4 her certification to be entered in the Book of Resolutions of the
5 Council of this City.

6 APPROVED AND ADOPTED this 31st day of August, 2009.

7
8 
9 Name: Hilario Gonzales
10 Title: Mayor / -Mayor Pro-Tem

11 ATTEST:

12 
13 MANUELA GIRON, City Clerk

1 STATE OF CALIFORNIA)
2) SS
3 COUNTY OF LOS ANGELES)
4

5 I, MANUELA GIRON, City Clerk of the City of Vernon, do hereby
6 certify that the foregoing Resolution, being Resolution No. 10,057, was
7 duly passed, approved and adopted by the City Council of the City of
8 Vernon at a regular meeting of the City Council duly held on Monday,
9 August 31, 2009, and thereafter was duly signed by the Mayor or Mayor
10 Pro-Tem of the City of Vernon.

11 Executed this 31st day of August, 2009, at Vernon, California.

12 
13 MANUELA GIRON, City Clerk

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EX "A"

CITY ADMINISTRATION
SALARY SCALE

		MONTHLY SALARY
CITY ADMINISTRATOR	STEP 1	32,000.00
BUDGET AUDITOR -	STEP 1	11,708.00
EXECUTIVE SECRETARY TO THE CITY ADMINISTRATOR -	STEP 1	6,844.00
	2	6,487.00
	3	6,149.00
	4	5,828.00
	5	5,524.00
	6	5,238.00
	7	4,983.00
	8	4,704.00

**SCHEDULE III
EXHIBIT "C"**

cityadministration

Exhibit 7

RESOLUTION NO. 2010-33

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 SECTION 4 AND SCHEDULE NOS. III, IV, XIII AND XIV OF THE SALARY RESOLUTION (AMENDMENT NO. 16)

WHEREAS, on June 16, 2008, the City Council of the City of Vernon adopted Resolution No. 9639 to be effective on July 6, 2008, regarding the compensation, costs and benefits of its employees, which has subsequently been amended by Resolution Nos. 9664; 9672; 9678; 9728; 9815; 9888; 9906; 9942; 10,001; 10,021; 10,029; 10,053; 10,057; 10,075 and 2010-06 (the "Salary Resolution"); and

WHEREAS, Section 4 of the Salary Resolution provides for contributions to be made to the California Public Employees' Retirement System (PERS); and

WHEREAS, the City Administrator has recommended that the City continue paying the employer's contribution to the PERS, but no longer pay the employees' contributions on behalf of City employees to the PERS; and

WHEREAS, Schedule No. III, Exhibit C, of the Salary Resolution provides for positions and salary scales of positions within the Office of City Administration; and

WHEREAS, by memo dated February 23, 2010, the Director of Personnel has recommended that the position and salary scale of Budget Auditor be eliminated in the Office of City Administration; and

WHEREAS, Schedule No. IV, Exhibit D, of the Salary Resolution provides for positions and salary scales of positions within the Office of City Clerk; and

WHEREAS, by memo dated February 24, 2010, the Director of Personnel has recommended that the salary scale for the position of City Clerk be eliminated; and

WHEREAS, the City Council of the City of Vernon desires to leave the salary scale for the City Clerk blank because when an employee serves in more than one position in more than one department some positions are indicated in schedules without a salary scale; and

WHEREAS, Schedule No. XIII, Exhibit M, of the Salary Resolution provides for positions and salary scales of positions within the Light & Power Department; and

WHEREAS, by memo dated February 23, 2010; the Director of Personnel has recommended the position and salary scale of Administrative Assistant to Engineering Manager be eliminated in the Light & Power Department; and

WHEREAS, Schedule No. XIV, Exhibit N, of the Salary Resolution provides for positions and salary scales of positions within the Office of the City Attorney/Public Prosecutor; and

WHEREAS, by memo dated February 23, 2010, the Director of Personnel has recommended the position and salary scale of Legal Services Administrative Secretary be eliminated in the Office of the City Attorney/Public Prosecutor; and

WHEREAS, the City Council of the City of Vernon wishes to amend Section 4; and Schedule Nos. III (Exhibit C), IV (Exhibit D), XIII (Exhibit M) and XIV (Exhibit N) of the Salary Resolution to implement the aforementioned changes.

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: The City Council of the City of Vernon hereby amends Section 4 of the Salary Resolution to read as follows:

"SECTION 4: PERS CONTRIBUTIONS

The City shall make the required employer's contribution to PERS. Employees shall make the required employees' contribution to PERS."

SECTION 3: Effective March 1, 2010, Schedule Nos. III (Exhibit C), IV (Exhibit D), XIII (Exhibit M) and XIV (Exhibit N) of the Salary Resolution are hereby amended in their entirety, copies of which are attached hereto as Exhibit A.

SECTION 4: The provisions of Resolution Nos. 9639, as amended by Resolution Nos. 9664; 9672; 9678; 9728; 9815; 9888; 9906; 9942; 10,001; 10,021; 10,029; 10,053; 10,057; 10,075 and 2010-06, not consistent with or in conflict with this Resolution are hereby repealed; in all other respects, Resolution Nos. 9664; 9672; 9678; 9728; 9815; 9888; 9906; 9942; 10,001; 10,021; 10,029; 10,053; 10,057; 10,075 and 2010-06, shall remain in full force and effect.

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SECTION 5: The City Clerk of the City of Vernon shall certify to the passage, approval and adoption of this Resolution, and the City Clerk of the City of Vernon shall cause this Resolution and the City Clerk's certification to be entered in the File of Resolutions of the Council of this City.

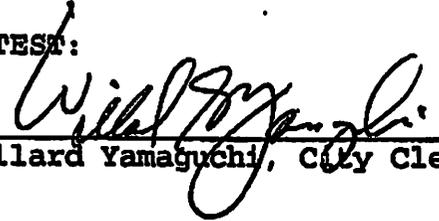
APPROVED AND ADOPTED this 1st day of March 2010..



Name: Hilario Gonzales

Title: Mayor / ~~Mayor Pro Tem~~

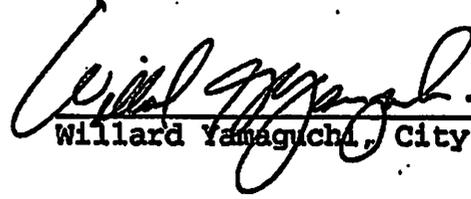
ATTEST:


Willard Yamaguchi, City Clerk

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, Willard Yamaguchi, City Clerk of the City of Vernon, do hereby certify that the foregoing Resolution, being Resolution No. 2010-33, was duly passed, approved and adopted by the City Council of the City of Vernon at a regular meeting of the City Council duly held on Monday, March 1, 2010, and thereafter was duly signed by the Mayor or Mayor Pro-Tem of the City of Vernon.

Executed this 1 day of March 2010, at Vernon, California.



Willard Yamaguchi, City Clerk

(SEAL)

EX "A"

CITY ADMINISTRATION
SALARY SCALE

	MONTHLY SALARY	
CITY ADMINISTRATOR	STEP 1	32,000.00
EXECUTIVE SECRETARY TO THE CITY ADMINISTRATOR -	STEP 1	6,844.00
	2	6,487.00
	3	6,149.00
	4	5,828.00
	5	5,524.00
	6	5,238.00
	7	4,963.00
	8	4,704.00

**SCHEDULE III
EXHIBIT "C"**

cityadministration

Exhibit 8



Effective June 28, 2015

City Council Monthly Compensation

The City Council receives the following compensation from the City of Vernon as authorized by California Law.

Name & Title	Monthly Council Compensation
W. Michael McCormick, Mayor	\$2,146
William Bill Davis, Mayor Pro-Tem	\$2,146
Luz Martinez	\$2,146
Yvette Woodruff-Perez	\$2,146
Melissa Ybarra	\$2,146

Executive Management

City Administrator

Mark C. Whitworth, the current City Administrator, receives a yearly compensation of \$293,436.

Top Executive Management

Job Title	Monthly Compensation (a)
City Attorney	\$21,120
City Clerk	\$11,203
Police Chief	\$20,117
Director of Public Works, Water & Dev. Services	\$20,117
Director of Health & Environmental Control	\$17,378
Director of Human Resources	\$16,333.34
Director of Gas & Electric	\$22,180
Director of Finance	\$17,500
Fire Chief*	\$18,379

(*) Monthly compensation does not include premium pay

To view the entire City of Vernon salary schedule please click here.