

CITY OF VERNON

LEGAL COUNSEL'S OFFICE

REPORT ON CITY ADMINISTRATOR'S MISAPPROPRIATION OF PUBLIC FUNDS THROUGH THE MISUSE OF THE CITY PETTY CASH AND THE CREDIT CARD PROCESSES

Eduardo Olivo, Legal Counsel
September 3, 2004

**REPORT ON CITY ADMINISTRATOR'S MISAPPROPRIATION OF
PUBLIC FUNDS THROUGH THE MISUSE OF THE CITY PETTY
CASH AND THE CREDIT CARD PROCESSES**

TO: Vernon City Council Members -

Leonis C. Malburg, Mayor
Thomas A. Ybarra, Mayor Pro-Tem
William "Bill" Davis, Councilman
H. "Larry" Gonzales, Councilman
W. Michael McCormick, Councilman

FROM: Eduardo Olivo, Legal Counsel

DATE: September 3, 2004

I. INTRODUCTION

The City Administrator has improperly taken tens of thousands of dollars of City funds. The misappropriations analyzed in this report are large, but may only be the proverbial "tip of the iceberg." Regardless of the total amount, the City Administrator's systematic, illegal conduct has placed not only himself and the City Attorney in jeopardy, but has also exposed each City Council member to significant criticism and potential legal action.

In 2003, my office began investigating the City of Vernon's reimbursement of hundreds of thousands of dollars to the City Administrator for various alleged expenses. As discussed in detail below, the City Administrator has violated various City policies and has improperly and illegally appropriated large amounts of City funds. The issues raised by such conduct are extremely serious and constitute multiple violations of the law, including violations of the Penal Code.

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The investigation was prompted by various Public Records Act requests made by *The Los Angeles Times* regarding the City Administrator's compensation and expenses. Such requests required me to review thousands of City documents, which in turn raised various issues regarding the City Administrator's appropriation of City funds. I subsequently determined that the City Administrator had: (1) repeatedly and blatantly violated the City's petty cash policy and misappropriated over \$227,000 of City funds through the petty cash process over a 3 ½ year period; (2) taken City funds through the petty cash process to pay for his personal expenses; (3) taken City funds through the petty cash process to reimburse himself for gifts of cash to his family members; (4) caused the City to pay over \$91,000 in one year for his credit card charges in violation of the Vernon City Code; (5) charged over \$46,700 in one year for meals and golf fees; (6) let his family members use the City credit card for their personal travel costs; and (7) failed, in his capacity as City Clerk, to maintain proper documents for the City related to such expenses.¹

My office was forced to depend upon the City Administrator for the information needed in order to pursue and complete the investigation. The City Administrator and the City's Financial Legal Counsel/Financial Administrator² repeatedly promised me that they would provide the information I requested. However, they failed to do so. ~~Around October of 2003, after I requested additional information, the City Administrator told me that he would "handle the matter" with the City Council and told me to stop my investigation.~~ I recently learned that this matter was, in fact, never properly presented to nor addressed by the City Council. Because of the serious and troubling issues involved and the potential harm to the City and the City Council Members, my ethical and professional obligation to the City

¹ The City Administrator also serves as the City Clerk, the City Treasurer and the Finance Director. Thus, he was directly responsible and obligated to maintain City records to support and verify the propriety of the City's reimbursement of his own expenses.

² Eric Fresch, the current City Attorney, was then the City's Financial Legal Counsel/Financial Administrator. He is hereafter referred to as either Financial Legal Counsel or the City Attorney (starting November 2003), depending on his status at the relevant time.

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compelled me to complete this report and provide the City Council with as much information as possible.

II. SUMMARY OF FINDINGS

My investigation has revealed the following:

A. The Petty Cash Expenditures

1. The City Administrator is also the City Clerk, the City Treasurer and Finance Director and has a legal duty to assure that the City's funds are spent according to the law and for a proper public purpose and that proper documentation for such expenses is maintained by the City.
2. The City Administrator has failed to carry out his duties as the City Clerk, City Treasurer and Finance Director with regard to tens of thousands of dollars of City funds that he took for his own alleged expenses.
3. The City Council has established a petty cash policy that allows for the expenditure of cash on hand for *small purchases*. Such purchases must be *supported by sales slips*. The City Administrator has repeatedly and blatantly violated that policy.
4. The City Administrator appropriated at least \$227,783.01 of City funds through the petty cash process over a three year period of time. The City's records reflect additional appropriations that are not included in this total because we did not receive adequate information.
5. Although the City Administrator appropriated large sums of City funds as "petty" cash, many times in excess of \$2,000 at a time (he took \$7,325.31 on one day), he failed to support many of the appropriations with invoices or

proof of payment and failed repeatedly to identify the alleged proper purpose for such expenditures.

6. The City Administrator took thousands of dollars of City funds through the petty cash process that he used to reimburse himself for *personal expenses* that could never have been approved by the City Council. For example, he took City funds to reimburse himself for gifts of cash to his family and friends for Christmas.
7. The City Administrator took City funds under false pretenses by submitting documentation for expenses that had already been paid by the City or that he never paid himself.
8. The City Administrator improperly took City funds to reimburse himself for his political contributions and, thus, caused the City to violate the Political Reform Act.
9. The City Administrator's use of the petty cash process, in contravention of established City policy, hid his actions from the City Council.
10. Many of the expenses that the City Administrator ran through the petty cash process could never have been approved under the Vernon City Code.
11. Although some of the City Administrator's "petty" cash appropriations may relate to authorized or proper reimbursable expenses, they were never properly submitted to the City Council for review or analysis.
12. The City Administrator also used the petty cash process to improperly appropriate City of Vernon Redevelopment Agency ("RDA") funds. The issues related to the RDA have been analyzed in a separate report that has been submitted to the RDA Board of Directors.

13. After I began my investigation, the City Administrator attempted to stop me from completing my review of his expenses and from reporting his conduct to the City Council.
14. The City Attorney, who was then Financial Legal Counsel, prepared an admittedly misleading and false opinion regarding the propriety of the petty cash (and credit card) appropriations. He has also now caused City financial records, including records relating to the expenses addressed here, to have been destroyed in violation of the law.
15. The City Administrator's actions were illegal and the statute of limitations for criminal prosecution has not run on any of them.

B. The Credit Card Expenditures

1. The City Council adopted a credit card policy in 1983 that limited charges on the City credit card to \$2,000 for "reasonable and necessary" expenses. The credit card policy may have been discussed in a City Finance Committee meeting in an attempt to clarify that the City Administrator could use the City credit card for expenses incurred while traveling on behalf of the City.³
2. The City Administrator is the only City official/employee who controls a City credit card. According to the City Attorney, the City Administrator's credit card was not issued in the City's name, but was issued to him personally. In either case, his credit card charges have been paid directly with City funds.
3. The City Administrator charged at least \$91,600 in one year on the City credit

³ This was told to me by City staff but I could not find any discussion of the credit card policy in Finance meeting minutes that I reviewed for the period between 1996 through 2002. Further, a simple discussion or minute order adopted by the Finance Committee cannot change a City Council resolution.

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- card. Many of the charges are for his personal expenses.
4. The City Administrator used the City's credit card to charge at least \$35,878 in meals in one year. One meal alone cost \$1,200. Many of the meals were consumed on the weekends at restaurants near his home.
 5. The City Administrator used the City's credit card to charge at least \$10,840 in one year for golf green fees for himself and his friends.
 6. The City Administrator has failed to submit specific credit card charges or statements for analysis and approval by the City Council. Instead, he has caused City funds to be deposited and credited directly to his credit card account. The warrant registers simply reflect a payment to Wells Fargo Bank, which issued the credit card, with no specifics on the expenses incurred or any indication that such expenses were all incurred by the City Administrator. The City Council has never approved such a process.
 7. Although some of the credit card charges may be related to authorized and proper reimbursable expenses, they were never properly submitted to the City Council for analysis.
 8. The City Administrator and Financial Legal Counsel attempted to justify the City Administrator's expenditures by coming up with alleged related City purposes, including references to City Council Members. For example, the City Administrator alleged that he spent \$1,000 for "Sams" (Sam's Club) in the City of Industry on behalf of several Council Members and that he had dinner with a quorum of the City Council to discuss City business on a Saturday night at a restaurant near his home.
 9. Many of the expenses that the City Administrator charged on the credit card could never have been approved under the Vernon City Code.

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10. The City Administrator has attempted to prevent the reporting of the details of his expenditures to the City Council.
11. The City Administrator's actions were illegal and the statute of limitations for criminal prosecution has not run on any of them.

III. THE CITY ADMINISTRATOR HAS REPEATEDLY AND BLATANTLY VIOLATED THE CITY'S PETTY CASH POLICY BY TAKING LARGE SUMS OF CITY FUNDS FOR ALLEGED EXPENSES WITHOUT PROVIDING PROPER DOCUMENTARY SUPPORT

The City Administrator misappropriated at least \$227,783.01 in City funds through the petty cash process between July 1998 through March 2002.⁴ (Exhibit Number 1, Document Numbers 0 through 46)⁵ He frequently took large sums of the City's money, many times in excess of \$2,000 in one day. On one occasion, he took over \$7,300 in one day. (Ex. 2) Many of the appropriations were for "alleged" expenses that were not explained or supported by any documentation.

A. The City's Petty Cash Policy.

A petty cash account is normally used for the purchase of small dollar items, for example, COD payments, postage stamps, supplies, and other small expenditures that occur on a regular basis. A set amount of money is typically deposited in a petty cash fund. A person seeking reimbursement from the account prepares a request for payment that is made from the cash on hand. When a payment is made from the account, a voucher (evidence of an expense) is prepared and placed in the petty cash box in place of the cash that was paid. The vouchers are sorted periodically and then a check drawn to replenish the petty cash on hand.

⁴ He failed to provide records for his petty cash appropriations before or after this time period.

⁵ A complete set of the documents that support this report have been compiled and numbered. One complete set has been submitted to the Mayor; I have several other copies. Only some of those documents are attached here for convenience as exhibits. Further citations to the documents attached as exhibits shall be in either of the following formats: "Ex. __" or "Ex. __: (Document Number)."

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The various expenditures would then be recorded as expenses in the appropriate accounts. Baron's Accounting, Eisen (4th ed. 2000).

The City Council has established a petty cash policy. According to City Council Resolution No. 2224, "Petty Cash Funds, as authorized by the City Council from time to time, will be utilized for the purchase of *small items* by the Department Heads. The fund shall be replenished by periodic claims submitted to the City Clerk, *supported by sales slips for each purchase*, and indicating the department for which the purchase is made." (Emphasis added.) (Ex. 3) The Finance Department maintains a petty cash fund account and a petty cash drawer. We were informed that the petty cash drawer normally contains approximately \$600. A person draws from the petty cash fund by submitting a "Petty Cash" voucher or form (a "Petty Cash Form") to the Finance Department. The request must be approved by the Director of Finance/City Treasurer prior to payment. Thus, under the City's policy, the petty cash fund should operate as follows: (1) there should be a sum of money held by the City Treasurer; (2) an employee requests petty cash by submitting a Petty Cash Form; (3) petty cash funds are to be used for the purchase of only small items; (4) sales slips for the small items purchased must be provided to the City Clerk; (5) petty cash requests must be approved by the Director of Finance/City Treasurer before payment; (6) the fund can only be replenished with the appropriate supporting documentation; and (7) when the amount of disbursements from the fund begins to approach the amount of money established for the fund (in this case \$600), the fund is to be replenished by a check made out to "Petty Cash/City Clerk."⁶

B. The City Administrator's Misappropriation of City Funds Through the Petty Cash Process.

A complete set of the documents that I received could not practically be attached as exhibits (although some are) to this report. Instead, they have been bound (in multiple volumes) as "Documents Supporting Report on City Administrator's Misappropriation of City Funds" (hereinafter, referred to as the "Supporting Documents").

⁶ See e.g. Baron's Accounting, p. 221 Eisen (4th ed. 2000)

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The City Administrator provided City records for his petty cash transactions during the time period between 1998 and March 2002. (Supporting Documents, Numbers 0-1031)⁷ These records were incomplete. The most complete information provided was for 2001 and consisted of copies of petty cash checks, Petty Cash Forms and some backup that was attached to the checks. (SD Nos. 197-376) After I requested more documentation, the City Administrator and the Financial Legal Counsel provided ledgers that they had prepared and that identified most of the petty cash transactions for this period (Ex. 1) and a stack of documents that they labeled "Backup for Reimbursements." (SD Nos. 592-1031)

The Petty Cash Forms generally allocated claims for reimbursement among several categories and City account numbers; for example, "Med" (Medical), "L&P" (Light & Power), "Admin" (Administration), PERS (Public Employment Retirement System), "Fin" (Finance), "CR" (Community Relations), "Red" (Redevelopment). However, a great majority of times the alleged allocation amounts differed from the expenses shown on the alleged backup. As discussed in more detail below, this appears to have been intentionally done in order to disguise some of the actual expenditures.

The Deputy City Treasurer advised that for all other City employees, the petty cash that has been requested over the years has been small and was given to the requestor from the petty cash drawer. This is consistent with how the petty cash policy was supposed to work. The City Administrator, on the other hand, submitted frequent requests for petty cash for large amounts that typically could not be paid out of the petty cash drawer. Instead, he would direct the Finance Department (he is also the Finance Director) to issue a check payable to "Petty Cash/City Clerk" for the total amount he requested. The check would be stamped with the signature of Thomas Ybarra, the Mayor Pro Tem. The City Administrator would also endorse many of the checks as the City Treasurer. He would then have the Deputy City Treasurer go to the bank, cash the check and bring him back hundreds or thousands of dollars in cash. He

⁷ Further references to the Supporting Documents shall be in the following format: "SD Nos. ___ - ___".

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repeated this practice two to four times per month and on some occasions more than once in a day, sometimes taking and pocketing more than five, six or even seven thousand dollars of the City's funds as "petty cash" at a time.⁸

As previously noted, the City Administrator is also the City Clerk, the City Treasurer and the Finance Director. Therefore, he submitted the Petty Cash Forms on his own behalf (as City Administrator), to himself (as City Clerk) and then approved his own requests (as Finance Director or City Treasurer) for payment. The City Administrator repeatedly violated the City's Petty Cash Policy by frequently taking large sums of City funds through the petty cash process. Sometimes he submitted backup. However, he failed to submit sales slips for the great majority of his alleged expenses, many times appropriating several thousand dollars at a time, without any explanation or support. He also repeatedly submitted false claims in order to take City funds for purported expenses that he did not pay, or that the City had already paid to him once and sometimes several times before. The backup materials that he submitted also reveal that he took City funds through the petty cash process in order to pay for his personal expenses.

C. Some Instances of the City Administrator's Misappropriations.

1. At Least \$59,126.53 was Appropriated in 1999 (not including part of July and all of August).

I received copies of 73 petty cash checks and Petty Cash Forms for 1999 which totaled \$59,126.53. (SD Nos. 47-123) No backup was provided for the amounts claimed.

In 1999, the City Administrator appropriated an average (not including August) of over \$5,375 per month in City funds as "petty cash." The monthly totals were:

⁸ The Deputy City Treasurer advised that the City Administrator is the only employee in the City who would use the City's petty cash process in this manner.

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January	\$7,056.24
February	\$5,886.73
March	\$8,823.97
April	\$8,426.06
May	\$5,582.77
June	\$4,728.88
July	\$2,067.03
August	Missing
September	\$1,613.36
October	\$4,828.94
November	\$4,867.34
December	\$5,355.21

Notably, he took: \$2,034.28 on January 4, 1999 for CR; \$1,007 for L&P on February 2nd; \$900 for Admin on February 8th; \$1,090 for L&P on March 2nd; \$900 for Admin on March 8th; \$1,032 for Red on March 31st; \$2,761 for Red on March 31st; \$2,208 for Admin on April 14th; \$1,037 for L&P on May 3rd; \$885 for L&P on June 2nd; \$979 for CR on June 21st; \$830 for L&P on July 6th; \$747 for L&P on October 4th; \$608.61 for Admin on November 1st; and \$1,999.87 on December 9th for CR.⁹

(The documents supporting the above information are attached as Ex. 1: 28-39; see also SD Nos. 47-123).

2. \$46,099.27 was Appropriated in 2000.

For 2000, I received copies of 34 checks made out to "Petty Cash City Clerk" as well as copies of the Petty Cash Forms which totaled \$46,099.27. (SD Nos. 124-196) The City had no backup documents in its files.

⁹ The identification of these appropriations as "notable" should not imply that other claims for hundreds of dollars at a time are not significant. A list of all such claims would cause this report to be much longer. Therefore, only some of the larger ones are listed.

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The monthly amounts were:

January	\$1,946.13
February	\$4,401.51
March	\$3,032.58
April	\$2,262.57
May	\$3,864.91
June	\$3,237.02
July	\$1,639.82
August	\$5,979.77
September	\$5,334.64
October	\$3,627.01
November	\$1,250.00
December	\$9,523.31

The following appropriations are notable: \$1,458.31 total for CR in January;¹⁰ \$3,686.95 for CR in August; \$1,500 for CR on September 5th, with a total of \$2,718 for CR in September; \$720 on December 4th for "Comm Rel Xmas"; \$7,325.31 on December 4th; \$2,010.23 on December 10th for "Admin" and \$1,212.12 for "Personnel" on that same date. (The documents supporting the above information are attached as Ex. 1: 16-27; see also SD Nos. 124-196).

3. \$58,156.90 was Appropriated in 2001.

For 2001, I received copies of 60 petty cash checks and Petty Cash Forms that totaled \$58,156.90. Most of these checks were endorsed only with what appears to be a stamp signature for Thomas Ybarra, the Mayor Pro Tem. Most of the checks were copied along with corresponding Petty Cash Forms. (SD Nos. 197-376)

¹⁰ He received four petty cash checks in January of 2000.

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The monthly totals are:

January	\$5,948.22
February	\$8,502.97
March	\$8,176.51
April	\$2,069.92
May	\$7,836.13
June	\$4,634.63
July	\$1,712.21
August	\$6,258.01
September	\$5,715.29
October	\$8,941.00
November	\$4,310.22
December	\$6,665.39

The following are notable: \$2,213.73 on January 3rd, for Admin; \$2,152.82 on February 6th, for Admin; \$1,999.07 on March 6th, for Admin; a total of \$1,680 for CR in March; \$642 and \$724.80 for CR on April 24th; \$1,850.67 on May 3rd for Admin; \$1,350.16 on June 26th for CR; \$1,000 for CR on August 14th; \$1,538.31 for Admin on September 24th; \$2,724.67 for Admin on October 24th; \$2,559.16 on November 27th for CR and \$780.06 on November 7th for CR.

(The documents supporting the above information are attached as Ex. 1: 3-15; see also SD Nos. 197-376).

4. \$12,279.24 was Appropriated in the First Three Months of 2002.

From January through March of 2002, the City Administrator appropriated \$12,279.24 in "petty" cash funds; we were not provided with information for the rest of 2002. The monthly totals are:

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January	\$4,582.43
February	\$4,020.58
March	\$3,676.23

The following are notable: \$1,369.17 on January 3rd without identifying the purpose for the expense; \$640 for CR on March 20th.

(The documents supporting the above information are attached as Ex. 1: 0-2; see also SD Nos. 377-399).

The term "petty cash" obviously refers to small amounts of cash. Incredibly, on one occasion, the City Administrator took \$7,325.31 in one day. (Ex. 2) The City Administrator repeatedly failed to comply with the City's Petty Cash Policy that limited use of petty cash to *small purchases* and *required* sales slips to substantiate the expense. In fact, he did not take petty cash out of the petty cash fund in any manner consistent with the Petty Cash Policy. Instead, he had "petty cash" checks for several thousand dollars cashed and simply put that money into his pocket. The City Administrator used the petty cash process to take over two hundred thousand dollars of City funds for what he alleged were City-related expenses. Even if, contrary to all logic, his appropriation of such amounts, thousands of dollars at a time, sometimes several times per month and more than once per day, could be construed as within the "petty cash" policy, his failure to provide supporting documentation makes it impossible to justify the reimbursement. The City's policy clearly reflects that such funds were not to be taken repeatedly, thousands of dollars at a time, without support or explanation. *Finally, the limited information provided by the City Administrator reveals that he actually took thousands of dollars of City funds as petty cash for clearly improper purposes.*

IV. THE CITY ADMINISTRATOR SUBMITTED FALSE CLAIMS IN ORDER TO IMPROPERLY TAKE CITY FUNDS THROUGH THE PETTY CASH PROCESS

On multiple occasions, the City Administrator submitted documents that were intended to mislead or confuse anyone reviewing such records. The petty cash records reveal

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that on various occasions he submitted copies of different documents at different times for the *same expense* in order to take more money than to which he may have been entitled. The following are specific incidents that we were able to identify.

1. On February 5, 2001, he took petty cash funds¹¹ which included \$463 for medical expenses. In support, he submitted an Information Sheet from Berkley Heartlab that has a payment section indicating that \$463 was paid for services. Sixteen days later, on February 22, 2001, he took another \$463 in petty cash funds for alleged medical expenses. This time he submitted a statement dated February 15, 2001, from Berkley Heartlab for \$463 for the same services provided on February 6, 2001. In fact, he paid the \$463 amount on February 23, 2001, with the City credit card. On February 28, 2001, he then took \$2,404.17 in petty cash funds, with medical subtotals of \$100, \$463 and \$738. This time, he submitted a copy of the City credit card receipt dated February 23, 2001, for payment of \$463 to Berkley Heartlab. In total, he submitted copies of different documents on three separate occasions for the same \$463 amount that he had charged on the City credit card. In other words, he never actually paid the expense; the City had already paid it. Thus, he took \$1,389 in City funds to which he was not entitled. (The documents supporting the above information are attached as Ex. 4).

2. On February 23, 2001, he charged \$675 on the City credit card for medical services from Dr. Daniel K. Mircheff, DDS rendered at that time. On March 7, 2001, he took \$1,159.28 in petty cash funds for alleged medical expenses. He submitted backup of: \$128.10, \$148.69, \$197.45 and \$675, for a total of \$1,149.14 (\$100 short of the amount taken). He included a statement dated February 23, 2001, for \$675 from Dr. Mircheff, DDS for services rendered on that day. The statement actually indicates payment of \$675 by credit card and a "zero" balance. On March 21, 2001, he took another \$675 in petty cash funds for

¹¹ The reference to "petty cash funds" throughout this document does not mean that funds were taken from the petty cash fund. The City Administrator used the petty cash process to take City funds. Such amounts were not petty. The phrase "petty cash funds" refers to the petty cash process and is used for convenience.

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alleged medical expenses. This time he submitted a copy of a bill from Daniel K. Mircheff, DDS, with a billing date of March 19, 2001, for \$675, as well as a copy of the City credit card receipt. On September 24, 2001, he took \$1,866.45 in petty cash funds, with a medical subtotal of \$1,766.45.¹² This time he submitted a copy of a document that explained the insurance benefits that had been paid for the same services from Dr. Mircheff, DDS and which indicated \$1,215 was due to the health care provider.¹³ One of the line items on this document was \$675 for the same service he paid on February 23, 2001. *Thus, the City Administrator took petty cash on three different occasions (a total of \$2,025) for the same \$675 expense that he had never paid; it had already been paid with City funds through the City credit card.* (The documents supporting the above information are attached as Ex. 5).

3. On March 7, 2001, he took \$1,159.28 in petty cash for medical expenses. He submitted backup that included a Quest Diagnostics bill (No. 1550900322) for \$128.10, dated February 20, 2001, for services provided on February 2, 2001. On April 12, 2001, he took \$292 in petty cash. He submitted backup for \$128.10 which was an invoice indicating "Second Notice" dated April 31, 2001, from Quest Diagnostics for the same services on February 2, 2001. He took City funds twice for this same \$128.10 expense. (The documents supporting the above information are attached as Ex. 6).

4. On March 13, 2001, he received petty cash which included an expense reimbursement of \$550 for "CR". In support, he submitted a copy of an invoice (No. 57) dated March 8, 2001, for \$550 from the Vernon Chamber of Commerce. One week later, on March 20, 2001, he took another \$550 which he again categorized as "CR" and that was supported by the exact same Chamber of Commerce invoice (No. 57) dated March 8, 2001. He again took City funds (\$550) twice for the exact same expense. (The documents supporting the above information are attached as Ex. 7).

¹² Again, the backup does not support the total amount requested. This was also the same date on which he sought duplicate recovery for the Dr. Foreman expense. See No. 5 below.

¹³ This was not a bill and was not evidence of payment.

5. On March 27, 2001, he took \$609.31 in petty cash funds, which included a medical reimbursement. In support, he submitted a copy of a Mutual of Omaha Statement of Insurance Benefits document that indicated \$157.62 was due to the health care provider, Scott Foreman, MD, for services rendered on February 6, 2001. Less than one month later, on April 24, 2001, he took petty cash funds to "reimburse" himself for this amount for a second time. He sought medical expenses totaling \$217.64. This time he produced a statement from Dr. Foreman for services rendered on February 6, 2001, in the amount of \$157.62, the same amount shown on the Mutual of Omaha document.¹⁴ Approximately five months later, on September 24, 2001, he took \$1,866.45 in petty cash funds which, for a third time, included this same medical expense. As backup he submitted a partial copy of a statement, showing an amount of \$157.62 that was 30-60 days past due for the same services rendered on February 6, 2001, and requesting payment to be made to Dr. Foreman. Less than one month later, on October 15, 2001, he took petty cash funds for a fourth time for this same expense. He again claimed a medical expense of \$157.62. This time he provided a copy of an invoice from Scott Foreman, MD. In fact, this was a piece of the same statement from Dr. Foreman that he submitted in April and that was to be detached and returned with the payment. *The City Administrator appropriated \$630.48 in City funds for the same \$157.62 expense that he submitted four times, with different "alleged" backup.* (The documents supporting the above information are attached as Ex. 8).

6. On April 24, 2001, he received \$366.64 in petty cash funds, \$217.64 of which was for medical.¹⁵ He submitted backup which included one statement from Magnetic Imaging Group for services by Dr. Burnett on December 13, 2000, which showed a balance due of \$60.02. On May 1, 2001, he recovered this same \$60.02 amount by submitting a copy

¹⁴ The balance for medical expenses was supported by a bill for \$60.02, which, along with the \$157.62 bill, added up to \$217.64. (SD No. 256)

¹⁵ He received another \$1,411.28 in petty cash funds in a separate check on that same day. (SD No. 251)

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of a Mutual of Omaha Companies Explanation of Benefits document, indicating that amount was due to the health care provider for the same service from Dr. Burnett on December 13, 2000. He took City funds twice for the same expense. (The documents supporting the above information are attached as Ex. 9).

7. On May 29, 2001, he took \$281 in petty cash funds for medical expenses. The backup added up to only \$270 (\$250 + \$20). He submitted a copy of a cash receipt dated May 21, 2001, from the Good Samaritan Hospital indicating payment of \$250 for an insurance deductible. The receipt indicates payment by "credit card Visa". In fact, on May 21, 2001, he charged the \$250 amount to the City credit card. **Thus, he again claimed and took City funds for an expense that he did not pay; the City had already paid it through the credit card.** (The documents supporting the above information are attached as Ex. 10).

8. On August 15, 2001, he took \$1,062.11 in petty cash funds of which \$306.61 was medical expenses. The backup was for \$301.46 and \$5.15, a total of \$306.61. He submitted a statement dated August 9, 2001, from the Los Angeles Cardiology Association, indicating an amount due of \$301.46 and that the amount was past due or pending for 30-60 days. On August 29, 2001, he took \$829.56 in petty cash funds for medical expenses. He indicated two medical items for \$234.81 and \$400.46. He submitted backup for \$99 and \$301.46, a total of \$400.46. The \$301.46 amount was on a statement for services from the Los Angeles Cardiology Association. This was the same \$301.46 charge for the same service reflected in the statement submitted on August 15th. The only difference was the date of the statement and the fact that the one submitted on August 14th was past due. **He took another \$301.46 in City funds to which he was not entitled.** (The documents supporting the above information are attached as Ex. 11).

9. On September 24, 2001, he took \$1,886.65 in petty cash funds, with a medical subtotal of \$1,766.4. He included as backup a copy of a document explaining that \$743.03 for services rendered on July 27, 2001, by the City of Huntington Beach Paramedic Services, had been submitted for payment to the insurance company and that \$378.21 was not covered.

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On October 1, 2001, he took \$1,759.36 of petty cash funds, with medical subtotals of \$164.88, \$833.03 and \$179.54.¹⁶ This time, he submitted a copy of the statement from the City of Huntington Beach for the same \$743.03 amount for the same ambulance service on July 27, 2001. He submitted two claims and received \$1,486.06 in City cash for the same expense. (The documents supporting the above information are attached as Ex. 12).

10. On October 2, 2001, he took a total of \$749.29 of petty cash funds. He identified one item as "Admin" for \$155 and submitted as backup a copy of a credit card receipt dated September 26, 2001, for Morton's of Chicago Steakhouse. The receipt identified the server as "Luis" at "table 154/1" and showed the amount charged was \$129.43 plus a tip of \$25.57, which totaled \$155. On October 24, 2001, he took a total of \$3,588.05 in petty cash funds. Notably, he submitted a copy of a \$129.43 receipt from Morton's of Chicago, dated September 26, 2001, the same date on the credit card receipt for \$155. This receipt identified the food purchased and identified the server as "Luis" for "Table 154/1," the same server and table identified on the credit card receipt. The only difference was that, unlike the credit card receipt, the total did not include the tip (\$25.57) that he added after getting the bill. The presentation of these two different documents for different amounts makes it appear that the receipts supported different expenses. In fact, the City Administrator took another \$129.43 in City funds to which he was not entitled. (The documents supporting the above information are attached as Ex. 13).

11. On October 10, 2001, he identified two medical items for \$240 and \$10 on the Petty Cash Form. The petty cash backup shows a Good Samaritan Hospital bill with a balance of \$140. He also sought \$10 for Longs Drugs. There was no additional backup. He inexplicably added an extra \$100 to the \$140 hospital bill. (The documents supporting the above information are attached as Ex. 14).

¹⁶ The backup does not match these amounts: \$90, \$743.03 (which totals \$833.03) and \$179.54, for total of \$1,012.57.

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12. On October 24, 2001, he received \$3,588.05 in petty cash funds, including \$126 for what he justified as "Fin." He submitted a receipt dated October 10, 2001, from the Pacific Grille restaurant for \$81. On that same day he charged \$97 for the Pacific Grille on the City credit card and justified it as "Finance..." This was apparently the same meal charged to the City credit card. The difference is that the receipt does not include the tip amount of \$16, approximately 20%. The City had already paid the full amount. Thus, he was not entitled to take an additional \$81 in City funds. (The documents supporting the above information are located at Ex. 15).

13. On September 24, 2001, he took petty cash funds which included \$63 for what he justified as "CC." He submitted a credit card receipt from the Pacific Grille Restaurant for \$63. On September 17, 2001, he charged \$62 for the Pacific Grille Restaurant that he justified as "City Clerk's Office..." This was the same expense; he added a \$1 to the ledger prepared in response to my request for explanation of his expenses. (The documents supporting the above information are attached at Ex. 16).

14. On April 5, 1999, he took \$2,761 "petty" cash for RED. Handwritten notes on the City check stub indicate that it was for "hotel costs." No backup was provided. If he charged the hotel cost on the City credit card (which would be likely), his receipt of City funds for this same amount was clearly improper. Alternatively, if this claim was based upon an invoice for an approved Redevelopment Agency trip, his taking of City funds for this amount would improperly exceed the authorized expense allowance. (The documents supporting the above information are attached as Ex. 17).

It should be noted that the "Explanation of Insurance Benefits" documents that the City Administrator submitted to purportedly support his requests for reimbursement of expenses are not bills and do not evidence payment. As discussed above, he used such documents in order to obtain duplicate payments of City cash for services identified in actual statements from the health care providers that he submitted at different times. We did not

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have complete records and, therefore, all such insurance explanation backup would need to be checked.

The City Administrator also used City funds to pay for his credit card charges. (See part VI below). The City Attorney and the Deputy City Treasurer advised that he caused City funds to be deposited and credited directly to his own personal credit card account so that he could charge various expenses.¹⁷ Thus, he did not spend money for any expense paid with that credit card. He was, therefore, clearly not entitled to take additional City funds through the petty cash process as reimbursement for such expenses. In addition, to the specific matters analyzed above, he submitted the following credit card receipts with the same City credit card number as backup for petty cash reimbursements: January 29, 2001-\$35.13 for Sav-On Drug; February 5, 2001-\$450 for University Heart Imaging; October 24, 2001-\$10.50 for BJ's Restaurant & Brewery. (SD Nos. 210-212, 215, 358)

The items analyzed above are false claims for "petty cash" that we were able to readily identify for 2001. The City Administrator repeatedly submitted the same invoice/receipt or different documents at different times for the same expense in an attempt to disguise the fact that he had already submitted a claim for the same alleged expense. His use of the City credit card receipts to get more City cash as "petty" cash, is blatantly improper. The fact that we did not have complete records for 2001 or any backup for 1999, 2000 and 2002, causes concern as to whether we have just scratched the surface of such conduct.

It should also be noted that many of the invoices submitted as backup for alleged expenses paid by the City Administrator were sent to the Vernon City Hall address. (See e.g., SD Nos. 893-913) It is curious that he makes out personal checks, or makes payment for these expenses with his own money, rather than have the City (the party being billed) make the payments. The fact that he did not submit proof of payment for many of these expenses

¹⁷ The illegality of this process is discussed in part VI below.

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causes suspicion that some of the payments, in fact, may have been paid by the City and not the City Administrator.

V. THE CITY ADMINISTRATOR IMPROPERLY USED THE PETTY CASH PROCESS TO PAY FOR HIS PERSONAL BILLS AND EXPENDITURES

I requested that the City Administrator provide details for the large amounts of City funds that he had taken through the petty cash process without backup or explanation. In response, he provided copies of receipts (many were duplicates of receipts attached to the petty cash checks) and personal checks¹⁸ which were collectively labeled as "Backup for Reimbursements." (SD Nos. 592-1031) The backup establishes that the City Administrator took City funds as reimbursement for personal expenses that have absolutely no relation to any City business. For example, he apparently took City funds to reimburse himself for gifts of cash to his family members for Christmas, to pay the balance due on another personal credit card, for snacks while golfing, beach passes, and other personal expenditures. The use of City funds for such expenses could never be authorized. See Vernon City Code Section 2.7-2.

In addition to the fact that the City Administrator failed to keep backup or explain his petty cash appropriations, he randomly allocated portions of certain expenses so that the actual expense amount was not readily discernible on the Petty Cash Form and could not easily be matched to the invoice for the expense.¹⁹ Further, in many instances, his backup did not add up to the amount claimed on the Petty Cash Form. Thus, it was extremely difficult to match the backup that was provided to specific petty cash appropriations. Nevertheless, I was able to match a number of the receipt/personal check amounts to specific "Petty" Cash Form

¹⁸ Many of the personal checks included the City Administrator's name and the City Hall address.

¹⁹ This practice has no apparent rationale and seems intended to disguise the expense.

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amounts and verified that he, in fact, took City funds through the petty cash process for improper purposes.²⁰

A. The City Administrator's Gifts of City Funds to His Family Members and Others.

1. Around December 25, 2000, he wrote checks in the amount of \$100 each to his children and son-in-laws as Christmas gifts. He wrote checks to: Rachel Malkenhorst, Dana Malkenhorst, Ymara Malkenhorst, Bruce Malkenhorst, Jr., Reuben Salazar, Stephanie Salazar, Jennifer McNabb and Mark McNabb. There is absolutely no basis for taking City funds for such gifts of cash. The total of these checks (\$800) is not easy to match to a Petty Cash Form. However, he claimed \$2,213.73 for Admin on January 3, 2001, \$244 for Admin on January 10, 2001 and a total of \$932.94 for CR on January 3, 10, 15 and 24, 2001. Such appropriations were not explained or supported and could easily have included the \$800 gift total.

(The documents supporting the above information are attached as Ex. 18).

2. On January 3, 2000, he wrote a check for \$300 to "A. Reynoso," a City employee for a "donation." On January 5, 2000 he took \$300 in petty cash funds that he claimed was for CR.

²⁰ The following are examples of some of the "Backup for Reimbursement" documents that obviously match claimed expenses on the Petty Cash Forms. On May 2, 2000, he wrote a check for \$151.54 to Vince Rodriguez, a City employee. That same day he took \$154.54 in petty cash funds for CR. On January 31, 2001, he wrote a check for \$250 to the Vernon Police Officer Association. On February 2, 2001, he claimed \$250 as CR. On February 28, 2001, he wrote a check to Cal PERS for \$738. That same day he received petty cash funds reimbursing him for the same amount. On March 12, 2001, he wrote a check for \$550 to the Vernon Chamber of Commerce. One day later, on March 13, he requested petty cash funds for \$550 for CR. On April 24, 2001, he wrote a check for \$46.48 to Cingular Wireless. On April 12, 2001, he took \$46.48 in petty cash under Admin. On April 24, 2001, he wrote a check for \$640 to John Paul Guerrero for "BB cds." That same day he requested \$640 in petty cash as CR. On May 1, 2001, he wrote a check for \$574.70 to See More Golf Sales Corporation. That same day he obtained petty cash funds for \$574.70 for CR and submitted a copy of the same invoice.

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3. On May 9, 2000, he wrote a check for \$500 to "Chressa" James for a "donation." On May 30, 2000, he claimed \$613.69 in petty cash funds as reimbursement for CR that was not explained or supported.

4. June 4, 2000 - \$85 to "S. K. Wilson," a City employee, as a Christmas gift.

5. On June 8, 2000, he wrote a check for \$250 to "Tennie Whitney" for a "donation." That same day he claimed \$250 in petty cash funds as reimbursement for CR.

6. On March 12, 2001, he wrote a check to Don Quiroz (a City employee) for \$250 for a "donation." That same day, he claimed \$250 in petty cash funds for what he allocated as "CR."

7. April 3, 2001 - \$60 to Manuela Giron, a City employee, for a "donation."

8. On July 26, 2001, he wrote a check for \$275, without identifying the name of the payee. On July 25, 2001, he claimed petty cash funds of \$100 for CR and \$250 for "EE Relations" without any backup.

9. August 2, 2001 - \$250 to Chris Romero, a City employee for a "donation."

10. On September 19, 2001, he obtained a (certified) check for \$2,001.75 by NCO "epayments" that identified him as the party paying the amount to MBNA America (Maine). MBNA is a credit card company. He did not explain this expense or why it was proper to take City funds as reimbursement. Nevertheless, 5 days later, he took \$2,050.75 in petty cash funds, which he allocated as follows: \$1,538.31 for "Admin", \$361.82 for Medical, \$100 for "CR" and \$50.62 for "Medical," totaling \$2,050.75. The only backup for this petty cash request was a medical bill for \$10.62 and Longs Drugs receipts for \$40.00.

11. On September 24, 2001, he wrote a check for \$100 for a donation to the Salvation Army. On that same day, he claimed \$100 in petty cash funds as reimbursement for CR.

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12. October 24, 2001 – \$50 donation to Teen Challenge.
13. On October 29, 2001, he wrote a check for \$100 to Downey High School and in the memo portion “Vanessa Hinojoso.” On November 13, 2001, he claimed \$150 and \$500 for CR that was not explained or supported.
14. On November 23, 2001, he wrote a check to Marisa Medal for \$75 which indicated “Belated Happy Bday.” On November 28, 2001, he claimed \$186 for CR that was not explained or supported.
15. On December 10, 2001, he wrote a check to “Kids” for \$175. He indicated that it was a “donation.” On December 27, 2001, he claimed \$176.95 for “Fin” that was not explained or supported.
16. January 31, 2001 – Vernon Police Officer Assoc. for \$250.
17. May 10, 2001 – Natl Right to Work for \$100.
18. April 30, 2001 – Old Timers Foundation for \$875.
19. May 7, 2001 – Seniors Coalition for \$50.
20. On June 27, 2001, he wrote a check to Lillian Giron for \$25 for a “donation.” On July 3, 2001, he received \$50 for CR that was not explained or supported.
21. June 21, 2001 – Downey YMCA for \$100 for a “donation.”
22. On November 7, 2001, he wrote a check to SRS Coalition for \$50. On November 13, 2001, he claimed \$150 for CR that was not explained or supported.
23. October 31, 2001 – Vernon Lions Club for \$100 for “donation.”

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24. December 27, 2001 – Holy Angels Church of the Deaf for \$99 for a “donation.”
25. March 1, 2001 – TSCL for \$25 for donation.
26. - March 5, 2001 - \$450 to Albert De La Cruz.
27. December 23, 2000 – A Better Way for \$350.
28. February 22, 2001 – \$25 to TSCL that he labeled “donation.”
29. February 22, 2001 – \$300 to RBA for “donation.”

(The documents supporting the above information are attached as Ex. 19).

B. The City Administrator Caused the City to Reimburse Him for His Political Contributions.

Government Code Section 85300 states, “[no] public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.” Where contributions or independent expenditures are in fact made from public funds, the Political Reform Act requires disclosure of the payments by the recipient or the local government agency. Under certain circumstances the agency making the contribution may have to file a campaign statement. 2 Cal. Code of Regs. § 18420(d).

The City Administrator took City funds through the petty cash process to reimburse himself for political contributions and, thus, caused the City to indirectly make such contributions. The City Administrator reimbursed himself for the following political contributions:

- July 12, 2000 – \$99 contribution to Soboroff for Mayor;
- August 1, 2000 – \$600 contribution to Ed Vasquez for Council. On that same day, he requested a total of \$776.95 for CR without explanation or backup;

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- August 15, 2000 – \$125 contribution to Napolitano for Congress;
- September 20, 2000 – \$99 to Committee to Elect Lazio;
- April 24, 2001 – \$99 to Napolitano for Congress. On April 24, 2001, he claimed \$99 in petty cash funds for CR;
- July 9, 2001 – \$100 contribution to Ed Vasquez for City Council. On July 10, 2001, his Petty Cash Form identified an expense of \$100 for CR;
- August 14, 2001 – \$99 to Molina – 2002. That same day he claimed \$99 in petty cash funds for CR;
- September 11, 2001 – \$99 contribution to Lucille Roybal-Allard for Congress;
- September 12, 2001 – \$99 contribution to T. Torlakson for Senate;
- September 24, 2001 – \$99 contribution to Supervisor Kanabe Office Holder. On that same day, his Petty Cash Form identified an expense of \$99 for CR;
- November 27, 2001 – \$99 contribution to Friends of Fuentes. On that same day, he submitted a Petty Cash Form that identified an expense of \$99 for CR;
- December 27, 2001 – \$99 for Friends of Chuck Fuentes;
- December 27, 2001 – \$99 for Friends of Pedro Carillo.

(Documents supporting the above information are attached as Ex. 20).

The City Administrator was never authorized to take City funds to pay for his political contributions. In addition to taking these funds without authorization, he violated and caused the City to violate Government Code Section 85300.

C. The City Administrator Took City Funds to Pay for a Golf Country Club Membership Near His Condominium in the Desert, for Snacks While Golfing and for His Condominium Homeowner's Association Dues.

I have been advised that the City Administrator owns a condominium in Bermuda Dunes, California, near Palm Springs. The backup shows that he took City funds to pay for dues and other expenditures related to Bermuda Dunes Country Club and his condominium

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homeowners association ("HOA") dues. He submitted the following backup for petty cash reimbursements:

1. *Bermuda Dunes Country Club Dues*

- December 29, 1997 - \$575.87.
- January 28, 1998 - \$685.
- March 3, 1998 - \$528.10.
- March 30, 1998 - \$613.80.
- April 30, 1998 - \$485.
- May 27, 1998 - \$485.
- June 30, 1998 - \$601.07.
- August 6, 1998 - \$996.79.
- August 27, 1998 - \$455.
- September 29, 1998 - \$512.50.
- November 3, 1998 - \$535.
- November 30, 1998 - \$511.87.
- December 28, 1998 - \$685.34.
- December 29, 1998 - \$512.50.
- January 31, 2000 - \$629.78. That same day he received \$1,229.78 in petty cash funds. The allocation did not match the Bermuda Dunes amount but he received a total of \$635.78 for CR and L&P which appears to include the \$629.78 amount.
- March 29, 2000 - \$539.50. That same day he requested \$575.42 in petty cash funds. He disguised the Bermuda Dunes total by breaking up the amount as follows: \$494 for "L&P" and \$45.50 for "Admin" for a total of \$539.50.
- April 28, 2000 - \$1,225.13. That same day he requested \$1,225.13 in petty cash funds. The Form broke up the amount as follows: \$814 for "L&P" and \$411.13 for "Admin" for a total of \$1,255.13.

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- May 30, 2000 – \$609.43.
- June 29, 2000 – \$521.50. That same day he requested \$542.94 in petty cash funds. The Form did not indicate the \$521.50 Bermuda Dunes amount. This time he disguised the total by breaking up the amount as: \$321.50 for “Admin” and \$200 for “L&P” for a total of \$521.50.
- August 1, 2000 – \$1,164.03. That same day he requested \$1,233.15 in petty cash funds which was not explained.
- August 3, 2000 – \$599.52.
- August 29, 2000 – \$578.50. He requested petty cash funds of \$1,766.52 and disguised the Bermuda Dunes amount: \$506 for Admin and \$72.50 for L&P, totaling \$578.50.
- September 26, 2000 – \$536. One day later, he requested \$736 and disguised the Bermuda Dunes expense: \$200 for L&P and \$336 for Admin, totaling \$536.
- October 30, 2000 – \$639.85. That same day his Petty Cash Form requested \$506 and \$133.85 for “L&P” for a total of \$639.85.
- January 2, 2001 – \$838.87. That same day he requested \$938.87 in petty cash funds. The Form did not indicate an expense for \$838.87 or refer to the Bermuda Dunes. He disguised the payment total by breaking up the amount as follows: \$506 for “L&P” and \$332.87 for “Admin” for a total of \$838.87.
- January 28, 2001 – \$506. His Petty Cash Form requested \$884.13. He hid the Bermuda Dunes amount as follows: \$253 for L&P and \$253 for Admin, totaling \$506.
- February 28, 2001 – \$1,103.17. That same day he requested \$2,404.17 in petty cash funds. Again, the allocation did not indicate the amount paid to Bermuda Dunes. This time, he broke up the amount as follows: \$597.17 for “L&P” and \$506 for “Admin” for a total of \$1,103.17.

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- March 27, 2001 – \$536. That same day, he requested \$536 in petty cash funds which he allocated to “L&P”. There was no indication that this expense was for Bermuda Dunes.
- April 2, 2001 – \$180.
- April 30, 2001 – \$839.10.
- May 30, 2001 – \$506.00.
- June 28, 2001 – \$665.20.
- August 6, 2001 – \$662.50. His Petty Cash Form requested a total of \$863.22. He broke up the Bermuda Dunes amount as follows: \$526 for L&P and \$136.50 for Admin. Totaling \$662.50.
- September 6, 2001 – \$627.49.
- September 27, 2001 – \$594.29.
- October 29, 2001 – \$576.
- November 29, 2001 – \$610. On November 28, 2001, he had requested petty cash funds of \$1,910.24 and broke up the Bermuda Dunes amount as: \$310 for L&P and \$300 for Admin, a total of \$610.
- December 8, 2001 – \$506. On January 29, 2001, he requested \$884.13 in petty cash funds. He disguised the Bermuda Dunes amount as: \$253 for “L&P” and \$253 for “Admin” for a total of \$506, the same amount paid on December 8th.
- January 2, 2002 – \$588.09.
- December 5, 2002 – \$739.

(Documents supporting the above information are attached at Ex. 21; see also SD Nos. 821, 822, 824-830, 832-836).

2. *Bermuda Dunes Country Club Snacks*

A few of the Bermuda Dunes invoices were produced and provide further detail as set forth below.

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April 7, 2001	Dining Room-Food	\$71.21
	Snack Bar-Food	\$39.08
April 8, 2001	Dining Room-Food	\$37.61
April 19, 2001	Snack Bar-Food	\$18.49
	Snack Bar-Food	\$6.30
April 20, 2001	Snack Bar-Food	\$51.13
	Snack Bar-Food	\$30.60
April 21, 2001	Snack Bar-Food	\$52.28
	Snack Bar-Food	\$26.40
April 25, 2001	Regular Dues	<u>\$506.00</u>
		\$839.10

On April 30, 2001, he sought petty cash funds but did not identify the Bermuda Dunes expense. Instead, he disguised the amount by claiming \$303.10 under "L&P" and \$536 under "Admin"; a total of \$839.10, the amount of the invoice. There is no explanation for why the dues and the City Administrator's snacks are allocated in this fashion.

July 31, 2001

Unused minimum	\$136.50
Cart license	\$300.00
Regular dues	<u>\$526.00</u>
	\$962.50

September 25, 2001

August	Snack Bar-Food	\$32.19
	Snack Bar-Bar	\$2.10
September 25	Dues	\$526.00
	Security Dues	<u>\$34.00</u>
		\$594.29

Around October 2, 2001, he sought \$ 749.29 in petty cash funds. The Petty Cash Form has an entry for \$560 for "Admin" and \$34.29 for "L&P", which equals \$594.29, the

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same amount of the Bermuda Dunes invoice. There is no explanation of why he chose to allocate the amount in this fashion. It appears that he broke up the amount in an attempt to disguise the amount.

October 25, 2001

Dues	\$526.00
Christmas Fund	<u>\$50.00</u>
	\$576.00

(The documents supporting the above information are attached at Ex. 22).

3. *Bermuda Dunes HOA*

- December 11, 2000 – \$275.
- January 2, 2001 – \$275.
- January 29, 2001 – \$275. On February 7, 2001, he requested \$275 in petty cash funds: \$250 for CR and \$25 for Admin.
- March 7, 2001 – \$275.
- Around March 31, 2001 – \$275.
- April 25, 2001 – \$275.
- May 25, 2001 – \$275.
- June 26, 2001 – \$3,275.
- July 9, 2001 – \$208.25.
- August 28, 2001 – \$275.
- September 26, 2001 – \$208.25.
- September 27, 2001 – \$275.
- October 29, 2001 – \$275.
- November 29, 2001 – \$275.
- December 27, 2001 – \$275.
- January 2, 2002 – \$208.25.

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(The documents supporting the above information are located at SD Nos. 217, 594, 598, 600, 605, 608, 612, 617, 626, 629, 631, 636, 638, 645, 646).

D. The City Administrator Took City Funds to Pay for His Personal Credit Card.

The backup documents show that the City Administrator took City funds to pay for an additional credit card with account number 5410654294655813. The records indicate that this account number is the City Administrator's MasterCard credit card. Thus, he apparently also took City funds to pay for expenses he charged on his personal credit card. We have no specific detail of such expenses, but they would logically be for personal expenditures.

- May 24, 2001 – \$1,178.15 to Citi Cards for 5410654294655813.
- July 3, 2001 – \$4,140.84 to CITI Platinum for 5410654294655813.
- July 26, 2001 – \$35.20 to Chase.
- August 1, 2001 – \$2,251.67 to Citi Cards for 5410654294655813.
- Early September (no date) of 2001 – \$1,055.74 to Citi Cards for 5410654294655813.
- September 24, 2001 – \$2,649.18 for Citi Cards for 5410654294655813.
- October 24, 2001 – \$3,938.89 to Citi Cards for 5410654294655813.
- October 24, 2001 – \$35.73 to Chase Plat M.C. for 5491046840633413. This appears to be payment for a different MasterCard credit card.
- November 26, 2001 – \$2,361.78 to Citi Platinum for 5410654294655813.
- January 2, 2002 - \$1,386.26 to CITI for 5410654294655813.
- January 3, 2002 – \$4,232.29 to Citi.
- January 7, 2002 – \$79.20 to Chase for 5491046840633414.

(The documents supporting the above information are located at SD Nos. 614, 616, 617, 624, 632, 635, 640, 644, 648).

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E. The City Administrator Took City Funds to Pay for His Personal Property Tax Bills.

- December 7, 2000 – \$4,269.20 for LA County Tax Collector.
- December 7, 2000 – \$1,252.12 for Riverside County Tax Collector.
- Early December (no date) of 2001 – \$14,276.42 for Orange County Tax Coll.
- December 4, 2001 – \$1,297.90 for P McDonnell Riverside County Trea.
- December 4, 2001 – \$605.36 for LA County Tax Collector.

(The documents supporting the above information are located at SD Nos. 639, 640, 862).

F. The City Administrator Took City Funds to Pay for Various Miscellaneous Expenses.

- May 17, 2000 – \$60 to Lawndale for "3 children."
- January 31, 2001 – \$8,454 for Los Angeles Dodgers.
- June 11, 2001 – \$185.79 to Target.
- May 15, 2001 – \$275 to LAG S F Z for "Tour Fee."
- July (no date) of 2001 – \$100 to LA House of Ruth for "ID 95 3411454."
- July 3, 2001 – \$3,000 to BV Malkenhorst for "Windows."
- August 28, 2001 – \$4,000 to Bob Hope Classic.
- October 30, 2001 – \$100 to Rio Hondo Men's Club for "Dues 2002."
- November 19, 2001 – \$7,732 to Canvasback .
- December 18, 2001 – \$10,000 to Woodbury University for "SDG 50050."
- December 27, 2001 – \$100 to Wallenbrock Assoc.

(The documents supporting the above information are attached as Ex. 23).

G. The "Backup for Reimbursement" Show Additional Improper Personal Expenses.

On May 1, 2001, the City Administrator wrote a check to See More Golf Sales Corp. for \$524.70. An invoice dated April 24, 2001, for \$524.70 from "The See More Golf Sales Corporation" was attached to the petty cash check dated May 1, 2001. A copy was also included in the "Backup to Reimbursements" documents. The invoice indicates that the City Administrator ordered various golf-related items that were billed to him at the City Hall

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address. The items purchased were: 34 inch brass-plate, right-handed; a triangulator, and a See More training video. There is no way to justify this use of City funds.

(The documents supporting the above information are attached as Ex. 24).

On March 12, 2001, he wrote a check to the Vernon Chamber of Commerce for \$550. On August 8, 2001, he wrote another check to the Chamber of Commerce for \$1,000. He allocated them to "CR." These expenses may have been proper under the Community Promotions budget item. However, the Chamber of Commerce is a tenant in a building owned by the Mayor and, thus, he would have been required to abstain from participating in the approval of this expense by the City in order to avoid a violation of the Political Reform Act and Government Code Section 1090. The process utilized by the City Administrator to collect on this amount did not give the Mayor that opportunity.

(The documents supporting the above information are located at SD Nos. 604, 622).

On December 4th, 11th and 27th of 2001, the City Administrator received a total of \$6,665.39 in petty cash funds, without submitting backup. Around the same time period, the "Backup to Reimbursements" documents show that he incurred expenses for: \$1,297.90 to "P McDonnel Riverside County Trea"; \$605.36 to the LA County Tax Collector; \$2,361.78 and \$4,265.04 to Citi-Platinum; and \$275 to the Dunes Prop HOA. These amounts do not equal the \$6,665.39 of City funds that he took as petty cash around this same time. However, the City Administrator provided this backup as support for his petty cash reimbursements. Considering his practice of disguising certain expense totals, it is apparent that he was paying his own personal bills with City funds that he was taking through the petty cash process.

(The documents supporting the above information are attached as Ex. 25).

There are a number of other personal expenses identified in the "Backup to Reimbursements" documents. It is impractical to list them all here. Nevertheless, the information contained in those documents raises additional issues and mandates that more information for additional years be obtained and analyzed.

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VI. THE CITY ADMINISTRATOR VIOLATED THE CITY'S CREDIT CARD POLICY AND CHARGED IMPROPER EXPENSES ON THE CITY PAID CREDIT CARD

The City Council adopted a credit card policy in 1983. Pursuant to Resolution No. 5058, the City Council limited charges on a City credit card to \$2,000 for use by the City Administrator for "reasonable and necessary" expenses. (See Resol. No. 5058, attached as Ex. 26) The bank referenced in the policy (First Interstate Bank) is no longer in existence. However, the basic policy has not been changed or amended by the City Council. I was advised that the Finance Committee may have discussed the credit card policy at some time after 1983. However, the Finance Committee minutes from 1996 through 2002 do not reflect such discussion. Moreover, a City Council resolution cannot be rescinded or amended by discussion or minute order in a Finance Committee meeting.

The City Attorney also advised that the City itself did not actually have a credit card. He stated that the City Administrator was actually using a credit card issued to him personally. His credit card was issued by Wells Fargo Bank, the same bank where the City maintains several checking accounts. The City Attorney, the Deputy City Treasurer and other City staff have informed me that he has caused the City to pay thousands of dollars in City funds to Wells Fargo Bank which were credited to his personal credit card account. Such general payments are reflected on the warrant register as a payment to Wells Fargo Bank for "credit card." No additional information is referenced. There is no detail about the expenses charged or any indication that the amount paid is for the City Administrator's charges on his credit card.

In just one year, the City Administrator caused the City to pay at least \$91,000 for his credit card charges. Such charges included expensive meals, golf-related fees and travel and dining expenses for his family. The City apparently never received or maintained the detailed credit card statements; they were not able to provide them to me when requested. Thus, nobody but the City Administrator reviewed the charges in order to analyze the propriety of his expenses. He was "reimbursed" for several hundred thousand dollars of expenses without

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providing support or detail. This process violated the City's Credit Card Policy and Section 2.7-2 of the Vernon City Code. The City Council never authorized the City Administrator's use of City funds in such a manner.

VII. THE CITY ADMINISTRATOR MAY ONLY SEEK REIMBURSEMENT FOR EXPENSES ACCORDING TO THE CRITERIA AND PROCESS ESTABLISHED IN THE VERNON CITY CODE

Even if the City Administrator's blatant and repeated violations of the City's petty cash and credit card policies can be ignored (which they cannot), analysis of specific expenses shows that they were not reimbursable under the Vernon City Code ("VCC"). Thus, they could not have been approved (and cannot now) even if the City Administrator had followed the required reimbursement procedures.

A. The City Council May Only Reimburse the City Administrator in Accordance With the Requirements of the Vernon City Code.

A city council manages city funds as a trustee and has no power to dispose of municipal property except for the benefit of the city. Cities may not spend public monies except for public purposes and benefits. 61 Atty. Gen. Ops. 342, 345 (1978). "[T]he Legislature shall have no power to...make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever...." Cal. Const. art. XVI, § 6 (the "gift clause"). The Attorney General has rejected the suggestion that a charter city is not restricted by the gift clause and has concluded that a public purpose analysis must be undertaken to justify an expenditure of public funds. 58 Atty. Gen. Ops. 100, 102 (1975). If the City Council enacts an ordinance to provide for a particular city expense with a declaration that such constitutes a public purpose, the declaration is presumed to have a reasonable basis. *Id.* at 103; see also *City of Roseville v. Tulley* 55 Cal. App. 2d

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601, 608 (1942).²¹ In the *absence of fraudulent or arbitrary action*, a court will not interfere with a city council's decisions on such issues.²² See, California Assn. of Prof. Emp. v. COLA 74 Cal. App. 3d 38, 43 (1977).

The Vernon City Council determined the limits and public purpose associated with the City Administrator's expenses when it enacted the ordinance which is codified at VCC Section 2.7-2. Section 2.7-2 provides that:

The city administrator shall be reimbursed for all sums *necessarily incurred or paid by him in the performance of his duties, or incurred when traveling on business pertaining to the city under the direction of, or with the express consent, of the council*. Reimbursement shall be made *only* in accordance with an *itemized claim* setting forth the sums expended or obligations incurred in the manner provided by the council for the presentation of claims for reimbursement of expenses of other city officers and employees. (Emphasis added.)

The city administrator shall receive such compensation and expense allowances as the council shall, from time to time, determine, and such compensation and expenses shall be a proper charge against such funds of the city as the council shall designate.

²¹ The courts consider the public purpose associated with allegedly improper expenditures on a case by case basis. The City of Roseville Court stated:

Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general wellbeing of society, and advance the present and prospective happiness and prosperity of the people

... (citation omitted)

Id. at 608-09.

Rc.

²² The payment of compensation and expenses to a city's employees is a municipal affair. Cal. Const. art. XI § 5(b).

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The VCC imposes several requirements for reimbursement of the City Administrator's expenses: (1) the claim must be itemized; (2) the reimbursement request must be processed in the manner established for other employees; (3) the expenses must be necessarily incurred in the performance of his duties or when traveling on business with the consent of the City Council; (4) alternatively, the expenses may be pursuant to expense allowances approved by the City Council.

The City Council establishes the City Administrator's compensation package (pursuant to Section 2.7-2) in Salary Resolutions that are approved every fiscal year. The City Council has determined the following compensation package for the City Administrator:

- Salary
- 100% medical and dental expenses for he and his spouse
- Limousine service for personal and business use as needed
- Reimbursement for all expenses incurred for sponsorship and participation in employee activities such as sports leagues (softball, basketball, etc.)
- Vehicle lease and all operations expenses
- Executive leave
- Deferred compensation
- IRA
- Membership in a country club
- Automobile insurance
- Life insurance
- PERS long-term health care benefit for he and his spouse

(See, e.g., City Council Resolution No. 7885)

When we started our review of the expense issues, the City's Financial Legal Counsel recommended that the City Council approve the following expense language in the Salary Resolutions:

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- In the discretion of the City Council, reimburse [the City Administrator] for all or some of the expenses incurred on behalf of the City, for expenses incurred as an employee of the City and for all other expenses, as such are submitted by the City Administrator to the City. (Resol. No. 7828)
- The City may, in the discretion of the City Council, pay for expenses on behalf of the City Administrator/City Council, from time to time. (Resol. No. 7828)
- Expenses for reimbursements shall meet the following requirements: (1) business connection for expenses in connection with his services as an employee; (2) substantiation consistent with Internal Revenue Service Code Section 274(d) and i; (3) the requirement that he return to the City, within a reasonable time, any amount paid under the arrangement in excess of the expenses substantiated. (Resol. No. 7885, § 24(f))
- In addition to the Accountable Plan,²³ the City Council shall, in their discretion, reimburse the City Administrator/City Clerk for any expenses incurred *on behalf of the City* ... (Resol. No. 7885)

None of this language was in existence when the City Administrator incurred the expenses that are the subject of this report. Nevertheless, such resolution language does not change the requirements of VCC Section 2.7-2. Section 2.7-2 and all other VCC sections are enacted by ordinances approved by the City Council. They cannot be changed by resolution or minute order. Rather, all resolutions and minute orders must be consistent with such ordinances or they are invalid.²⁴ Unless they expressly rescind or amend prior resolutions,

²³ An Accountable Expense Reimbursement Plan is in essence what was established by VCC Section 2.7-2.

²⁴ An ordinance stands in the same relationship to a city charter as does a statute to the constitution of the state. Porter v. City of Riverside 261 Cal. App. 2d 832, 836 (1968).

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newly adopted resolutions and minute orders must also be interpreted in conjunction with existing resolutions or minute orders.

Thus, Section 2.7-2, the Petty Cash Policy and the Credit Card Policy must be considered in order to determine the limits and the proper manner of reimbursement for the type of expenses approved as part of the City Administrator's compensation package in the Salary Resolutions. For example, where a Salary Resolution provides for the reimbursement of the City Administrator's medical expenses, there is express authority and an implied public purpose for the reimbursement of such expenses. Nevertheless, pursuant to VCC Section 2.7-2, such expenses must still be properly itemized and presented pursuant to an established method for reimbursement. Further, pursuant to the Petty Cash Policy, they may not be reimbursed as petty cash unless they are the type of "small items" contemplated by that policy and are supported by sales slips.

As analyzed in detail below, the City Administrator repeatedly violated VCC Section 2.7-2. First, he took advantage of the City Council's determination to provide reimbursements of certain benefits in order to take City funds for expenses that were not authorized. Second, he failed to itemize his expenses. Third, he failed to seek reimbursement in a manner established for other employees. Finally, many of his expenses were completely improper; he allowed family members to charge their travel expenses and meals on the City credit card; he paid for his groceries and for golf green fees for him and his friends; and he paid for unnecessary expensive meals, many of which were on weekends near his home.

B. The City Administrator Abused the City Council's Provision in the Budget for Certain Categories of Expenses and Their Decision in the Salary Resolutions to Reimburse Him for Certain Expenses.

The City Council generally approved certain categories of expenses in the City's budget. Additionally, as discussed above, the City Council determined the City Administrator's compensation package in annual Salary Resolutions. Amongst other things, the City Council provided for a "Community Promotion" account in the budget and generously determined, in Salary Resolutions, to pay for the City Administrator's "medical"

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expenses. Nevertheless, the City Administrator improperly used these expense categories to take City funds to pay for expenses that were not approved and could not be reimbursed.

1. *Community Relations*

In order to properly spend funds, the City Council must appropriate funds for expenditure in the City budget. The appropriation of such funds in the budget allows the City to then spend City funds up to the appropriated amount pursuant to specific expense authorizations. 15 McQuillen, Municipal Corporations (3rd ed. rev.) § 39.03.

The City Council has approved a category of expenditures in the City budgets that it has described as:

Community Promotion – Department Supplies/Services: this account includes the annual Christmas party & related items, annual city picnic & related items, funds for local projects & functions in and around city/chamber tour, luncheons, meeting, etc., service pins for employees service years. The total amount budgeted for FY 2002-2003 and is \$98,000.

(See City Budget, FY 2002-2003). Such an appropriation obviously refers to City related functions, promotions or luncheons and meetings that are conducted in the City for the betterment of the City. For example, a Chamber of Commerce luncheon, dinner or mixer would fall within this scope.

The City Council also decided in the Salary Resolutions to provide the City Administrator with: "Reimbursement for all expenses incurred for sponsorship and participation in employee activities such as sport leagues (softball, basketball, etc.)." (See Resol. No. 7796). Expenses for employee activities, such as sports leagues and other organized employee activities, is what was obviously intended.

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Nevertheless, the City Administrator used these categories as a basis for taking at least \$54,426.44 of City funds for alleged expenses that were either not documented or explained or were obviously improper. He categorized such alleged expenses as "CR" or Community Relations. (See Ex. 1) Amongst other things, he frivolously used this category for gifts of cash to his family for Christmas; gifts of cash to his friends for their birthdays; donations of cash to certain employees; political donations; and a number of other unidentified expenses. Such matters do not fall under the scope of the "Community Promotions" budget appropriation. Further, they do not qualify as proper employee activity reimbursements. His taking of City funds to pay for such expenses was illegal.

2. *Medical Expenses*

As discussed in Section IV above, the City Administrator used the City Council's authorization to reimburse medical expenses as a vehicle to inappropriately take City funds through the petty cash process for alleged expenses that had already been paid by the City. He also liberally and improperly interpreted the term "medical" to pay for his haircuts, massages and manicures.

The Salary Resolutions provide for "medical" reimbursement for the City Administrator and his spouse. The term "medical" is not specially defined in such resolutions or in the VCC. Therefore, the normal meaning of the term was what must have been intended. The term medical is defined as: "relating to or used in medicine or treatment given by doctors." EnCarta Dictionary North America; "of or relating to the study or practice of medicine" or "requiring treatment by medicine." The American Heritage Dictionary of the English Language (3rd ed.)(1992). Section 213(d) of the Internal Revenue Service Code defines "medical care" as follows: (1) The term "medical care" means amounts paid -- A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting the structure or function of the body, ..." The use of the term "medical" in the Salary Resolutions clearly refers to such matters relating to treatment or diagnosis provided

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by or prescribed by a doctor for the City Administrator or his spouse. The following expenses do not fall within this basic definition.

1. On February 22, 2001, the City Administrator purchased three "AB slides" for \$148.69 and claimed that the expense was for "medical." (Ex. 27) An AB slide is a piece of exercise equipment that is used to work out the stomach muscles. The invoice indicates the sale to the City Administrator and the City Hall address. Nevertheless, the items were shipped directly to his home in Huntington Beach.

2. The City Administrator incurred numerous charges for "Solange Reflexology." Reflexology is "a method of massage that relieves nervous tension through the application of finger pressure, especially to the feet." The American Heritage Dictionary of the English Language, supra. There is no basis to conclude that he needed foot massages as part of some prescribed treatment or therapy by any medical doctor. Nevertheless, he charged the City at least \$1,867.00 for reflexology within a one year period. (Ex. 28) The individual charges range from \$65 to \$100 per session.

3. He also incurred numerous charges for massages:

- January 13, 1998 – massage at Desert Massage for \$85;
- January 20, 1998 – massage at All About Massage for \$75;
- May 13, 1998 – massage at Desert Massage for \$125;
- May 14, 1999 – massage at Desert Massage for \$95 (included a \$10 tip);
- May 15, 1999 – massage at Desert Massage for \$95 (included a \$10 tip);
- January 10, 2001 – "in room" massage for \$80 (included a \$10 tip);
- January 11, 2001 – "in room" massage for \$80 (included a \$10 tip);
- January 24, 2001 – hotel charges for "Health Club" (appear to be massages) for \$134, \$102 and \$104;
- January 25, 2001 – "in room" massage at Spanon Plaza for \$135.05 (included a \$16.05 tip);
- February 2001 – massage at Desert Massage for \$140 (included a \$20 tip);

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- February 13, 2001 – massage at Desert Massage Associates for \$275;
 - February 17, 2001 – massage at Desert Massage for \$270; and
 - July 15, 2001 – massage at Ranch Bernardo for \$165.
- ** He also had 6 charges incurred on June 16, 2001, of \$165.59 (a total of \$993.54) while he was at Rancho Bernardo in San Diego that he did not explain (SD No. 1151); these charges are in the same range (\$165) for the massage charge from Rancho Bernardo that he incurred on July 15, 2001 (see above).

(The documents supporting the above information are attached as Ex. 29).

The fact that he provided gratuities and had the massages while at resorts or in his hotel room, establishes that they are the type of “pleasure” massages that one might splurge on while on vacation. They were not for “medical” purposes and were improper.

4. On July 27, 2001, he charged \$14 for a hair cut at Super Cuts. He charged another \$14 at Super Cuts on October 19, 2001. (SD Nos. 1074, 1712) The expenses are relatively small, but they are significant because he again justified charging his haircut to the City as a “medical” expense. Everybody cuts their hair. The medical justification is ludicrous.

5. He had the following charges from the Top Nails in Huntington Beach: August 31, 2001-\$23; September 7, 2001-\$35; September 10, 2001-\$28; September 21, 2001-\$45; September 28, 2001-\$40; October 26, 2001-\$50. (SD Nos. 1075, 1121, 1127, 1641, 1643, 1647, 1662, 1721) These charges were apparently for manicures and were justified as “medical.”

C. The City Administrator Failed to Support Numerous Reimbursement Requests with Properly Itemized Claims.

An itemized claim is required to determine the validity of a presented claim or demand and is required for all employees. According to Section 2.10-1 of the VCC, “[a]ll claims or

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demands against the city shall be made in writing and shall set forth in reasonable detail for what such claim or demand is presented." Such claims include "[c]laims by public employees for fees, salaries, wages, mileage or other expenses and allowances." (Emphasis added.) The City Administrator's failure to provide reasonable detail to support hundreds of thousands of dollars of expenses violated VCC Sections 2.10-1, as well as 2.7-2, the Petty Cash Policy and the Credit Card Policy.

In fact, the manner in which the City Administrator took City funds through the petty cash process and the manner in which he utilized the credit card, demonstrates intent to hide the fact that he was taking hundreds of thousands of dollars as "reimbursement" for golfing-related expenses, expensive meals, gifts of cash and a variety of personal expenses. The City Administrator (as City Clerk) did not identify himself as the individual receiving thousands of dollars through the petty cash payments or the basis for such payments. The warrant registers simply indicated that a check was made out to "Petty Cash/City Clerk" apparently to replenish the petty cash fund. Similarly, the credit card expenditures were never detailed on the warrant register. The claim was only identified generally as a payment to the bank (Wells Fargo) for the credit card. These funds were paid directly for the City Administrator's credit card account so that he could continue charging expenses (at his discretion) on the credit card. He failed to provide any detail regarding his expenses for the City Council's analysis of the propriety of such expenses. Considering the fact that the City Council oversees and approves millions of dollars in expenditures, the relatively smaller payments for "petty cash" and "credit card" would understandably not raise suspicion. Nevertheless, those smaller amounts added up to large amounts over time.

The manner in which the City Administrator utilized the petty cash fund and the credit card prevented true analysis of his purported expenditures and allowed him, as the City Clerk, City Treasurer and Finance Director, to completely control the process and hide his activities. The City Clerk or his authorized deputy must certify the accuracy of all claims paid pursuant to the warrant register process. VCC Section 2.13-2.14. The City Administrator improperly certified his own claims as accurate, in spite of the fact that he violated the Petty Cash Policy,

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the Credit Card Policy, VCC Section 2.7-2 and that many of his expenses were, in fact, obviously improper. Such conduct would never be proper in any organization, much less a public entity.

D. The City Administrator Also Failed to Seek Reimbursement in the Manner Provided for Other City Employees.

The City has several established methods for reimbursement of employee expenses. The City has an "Expense Accounting Voucher" form that is primarily used for travel-related expenses when the travel is done on such short notice that pre-approval of the expenses could not be obtained. The City Council has also traditionally approved travel expense allowances ahead of time during City Council meetings. The employee may submit a "Business Seminar/Conference and Expense Request" and/or the City Administrator may issue a communication to the City Council requesting approval of specified expense allowances. Such matters are put on the agenda and the purpose and amount of the allowance is identified. The City Council then considers and votes on the matter. The approval is then recorded in the City Council minutes. Finally, as discussed above, the City Petty Cash Policy provides for the reimbursement of small expenses.

The appropriation of several hundred thousand dollars of City funds through the petty cash process and the use of City funds that have, in essence, been funneled into an employee's personal credit card account, are not methods authorized for City employees to seek reimbursement of expenses. The Deputy City Treasurer advised that the City Administrator was the only City employee that used the "petty" cash process and the credit card in this manner. The proper reimbursement procedures established for City employees would have revealed the detail of the expenses, the individual incurring the expenses and would have allowed the City Council to assess the propriety of the expenses. The processes used by the City Administrator were not authorized and violated VCC Section 2.7-2.

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E. Many of the City Administrator's Expenses Were Not Necessarily Incurred in the Performance of His Duties or While Traveling on City Business.

VCC Section 2.7-2 identifies two situations in which the City Administrator would be entitled to reimbursement: (1) when the expenses are "necessarily incurred or paid by him in the performance of his duties"²⁵ and (2) when the expenses are incurred "when traveling on business pertaining to the city under the direction of, or with the express consent, of the council." Thus, whether an expense is properly reimbursed turns on the meaning of "necessarily incurred," "performance of his duties" and "business pertaining to the city."

1. *Necessarily Incurred*

The VCC does not define "necessarily incurred." The Attorney General has opined that there must be some connection between the services being reimbursed and the performance of official duties to make the services "necessary" thereto. 65 Atty. Gen. Ops. 517, 522 (1982). In California Teachers Assn. v. Board of Trustees 70 Cal.App.3d 431 (1977), the Court of Appeals determined that a good working definition of "necessity" is something that cannot be done without." Id. at 435. For example, necessary traveling expenses include an expenditure for a hotel room and meals. Collins v. Riley 24 Cal.2d 912, 918 (1944). However, the courts have not required "necessity" in any absolute sense. 65 Atty. Gen. Ops. at 523. The courts seem to indicate that a practical necessity is all that is required under the "reimbursement statutes - a practical need based upon the prevailing business practices." Id.

2. *The Performance of the City Administrator's Duties*

The City Administrator's expenses must be necessarily incurred or paid by him in the performance of his duties. The Attorney General has used the following scope of authority test for a grant of immunity to determine the scope of "official duties": [d]uties of public

²⁵ This standard is slightly different from that presently imposed by the Legislature on general law cities. General law cities must employ a standard of "actual and necessary expenses" in deciding which expenses to reimburse. Government Code Section 36514.5.

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office include those lying squarely within its scope, those essential to accomplishment of the main purposes for which the office was created, and those which, although only incidental and collateral, serve to promote the accomplishment of the principal purpose." 60 Atty. Gen. Ops. 16, 19-20 (1977). Thus, the City Administrator's expenses must be tied to duties lying squarely within the scope of his duties.

The City Administrator has both general and specific duties. According to the City Charter (CH: 6.4):

The city administrator shall be responsible to the city council for the proper and efficient management of all the affairs of the city and those specific duties assigned to the city administrator by this Charter or by the city council. The specific duties of the city administrator may be specified by ordinance, resolution or order of the city council.²⁶

Acts within scope of the City Administrator's duties are those essential to the accomplishment of the main purposes for which his office was created and those which, although only incidental and collateral, serve to promote the accomplishment of the principal purpose. The same acts serve as a basis for reimbursement. Of course, municipal expenditures made for the purpose of improving the administration of municipal affairs must have a reasonable connection with the object sought to be obtained. City of Roseville, supra, 55 Cal. App. 2d at 607.

²⁶ VCC Section 2.8 indicates that in addition to the general powers of the City Administrator as the administrative head, the City Administrator also has specific powers and duties in the areas of, but not limited to: (1) general supervision, (2) enforcement, (3) personnel and organization, (4) rules and regulations, (5) compensation plan, (6) assisting the council, (7) carrying out council decision, (8) budget, (9) purchasing, (10) recommendations to the council, (11) studies and reports, (12) council agendas, (13) mail, (14) financial conditions, (15) investigations, (16) full-time duties, (17) duty of other officers, and (18) other powers and duties.

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3. *Traveling on Business Pertaining to the City*

VCC Section 2.7-2 requires that travel is to be undertaken after direction by the City Council or with *prior consent*.²⁷ Thus, the City Council presumably has determined that the travel pertains to the City's business before the travel is begun. See Madden v. Riley 53 Cal.App.2d 814, 819 (1942). Conversely, if the City Council has not authorized or previously consented to the travel, it would not be a reimbursable expense. The expenses discussed in the following sections cannot be justified as being "necessary" to the performance of the City Administrator's duties or incurred while traveling on business pertaining to the City.

F. The Petty Cash Appropriations Cannot Be Justified.

As discussed above, the City Administrator failed to document or explain the purpose of most of his "petty" cash appropriations. Further, he provided very minimal and insufficient explanation for the credit card charges. The failure to provide such explanation (other than a reference such as "L&P" or "CR") makes it impossible to analyze or conclude that such expenses were necessarily incurred while the City Administrator was performing his duties or traveling on behalf of the City. All such appropriations fail to meet the criteria of VCC Section 2.7-2.

G. Many of the Expenses That Were Documented Were Clearly Improper.

The backup documents reveal that many of the appropriations were for personal expenses that cannot meet the 2.7-2 criteria and were not approved in the Salary Resolutions. Notably, the City Administrator allowed his family to use the City's credit card.

1. The City Administrator's son-in-law and/or daughter charged \$1,310.57 on the

²⁷ The City Council may only act as a body and does so pursuant to the provisions of the Ralph M. Brown Act. (Gov. Code § 54950 et. seq.) Thus, any such authority or consent must necessarily be documented in an ordinance, resolution or minute order that was approved by the City Council at a City Council meeting.

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City credit card for lodging and food at the Ritz-Carlton in Boston. He produced a copy of a receipt from the Ritz-Carlton dated December 4, 2000, which is addressed to Rueben Salazar at the City Hall address, 4305 Santa Fe Avenue, in Vernon. Mr. Salazar is married to the City Administrator's daughter, Stephanie Salazar. The invoice indicates an arrival date of December 4, 2000 and a departure date of December 8, 2000. The room rate was \$225 per night. Amongst other things, Mr. Salazar incurred charges for "Street Bar Food" of \$34.35, \$51.00, \$80.46 and Café breakfasts for \$42.44 and \$47.38. As discussed below, the City Council had authorized the City Administrator to attend the National League of Cities Conference in Boston around this same time, between December 6th and 9th. The City Administrator's family apparently went to Boston ahead of time and used the City credit card for their expenses. The City Council never authorized (and could not authorize) the City Administrator to charge \$1,310.57 in hotel and food expenses on the City credit card for his daughter and son-in-law. Such expenses were clearly improper. It should also be noted that the City Administrator filled out two Petty Cash Forms that he dated December 4, 2000, and took \$6,605.31 in City funds without identifying the purpose or providing any support. Whether he used such funds for his trip in Boston is uncertain. (The documents supporting the above information are attached as Ex. 30).

2. A Ritz-Carlton Boston invoice with an arrival date of dated December 4, 2000 and a departure date of December 8, 2000, for Mr. & Mrs. Bruce Malkenhorst shows a total charge of \$3,044.39. There are charges for room service dinners of \$29.19, \$28.28 and \$28.28 and a café breakfast for \$95.00. As discussed in No. 1 above, the City Administrator was authorized to attend the National League of Cities in Boston between December 6th and 9th. The City Council did not (and could not) authorize charges for his wife who apparently arrived in Boston on the 4th along with other family members and began improperly charging their expenses on the City credit card. Charges that covered items already provided for in expense allowances, were also improper. (This invoice is attached as Ex. 31)

3. The City Administrator's daughter, Rachel Malkenhorst, charged \$942 on the City credit card. A receipt from the Hotel New Otani in Japan shows credit card charges in

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March 2001, for Rachel Malkenhorst. The receipt shows approximately²⁸ \$21.30 in telephone charges, \$79.65 for room service and a total charge of 104,763 yen or \$942 in US Dollars. The City Administrator attempted to justify these charges (along with others) as: "Redevelopment-Asian Foreign Trade Mission." (SD No. 1087) There is absolutely no justification for his daughter's use of City or Redevelopment Agency funds for her trip to China. (This invoice is attached as Ex. 32)

4. He also produced a copy of a hotel receipt for the same hotel in Japan where he and his wife stayed in March of 2001. In addition to the room charges, he charged \$1,013.85 in-room service charges and 102,060 yen or \$915.91 US Dollar for "Taikan-En" (a restaurant within the Otani Hotel). The total bill was 774,750 yen or \$6,972.75 US Dollars. Expenses incurred on behalf of his wife were improper. (This invoice is attached as Ex. 23)

5. The City Administrator included a copy of one page from a Wells Fargo credit card statement along with the backup materials. It is uncertain whether this was also a credit card account that he caused the City to pay; further information would be required. If so, the charges on this one page reveal severe problems. For example, there are several entries for the Vons Market in Huntington Beach totaling \$394.87. He lives in Huntington Beach and these appear to be charges for his family's groceries. There are also entries for November 13, 2000, for \$450.00 for American Air Ticket and November 16, 2001, for \$21.46 for the Cannery Row Antique Mall in Monterey, California. (Ex. 34) Such charges cannot be justified under VCC Section 2.7-2.

H. The City Administrator Frivolously Asserted that His Improper Credit Card Charges Were Incurred for "Business Contacts."

After I started my investigation, the City Administrator, with Financial Legal Counsel's assistance, attempted to provide justification for some of the credit card charges paid by the City. He did so for 2001; he provided some information for 2000, but none for 1999 and 2002. Nevertheless, he could not provide any specific information. He simply

²⁸The exchange rate used would affect the conversion of the Yen to US Dollars.

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indicated that they were for "business contacts" for different City departments. (SD Nos. 1032 - 1169) Such vague and general descriptions do not satisfy the requirements of VCC Section 2.7-2.

Moreover, his general allegation that various expenses were for business purposes is highly suspect and illogical. He primarily attributed his expenses to "Light & Power" or "Administration." The City Council has generally identified in the City Budget the types of expenses that were intended under these categories:

City Administrator – Department Supplies/Services: this account includes deferred comp., IRAs, annual physical, life ins. premiums, Fleetwood services, executive leave/vacation pay, med/dental reimbursement, sporting activity expenses, business development center furnishings, CCCA Ed. Tour/Ed. Symposium, Supp. Executive Retirement Plan, necessary compensation related software and hardware, legal expenses, and consulting fees. The total amount budgeted for FY 2002-2003 is \$530,000.

City Administrator – Travel/meeting expenses: this account includes CSMFO, ICMA, LCC, League of Cities, Sister Cities, City Clerk election seminars, ICA, National League of Cities, California Contract, CCC, and ICA conference. The total amount budgeted for FY 2002-2003 is \$73,000.

Light and Power Administration – Travel, meetings and memberships: this account includes APPA, CMUA, League of Cities, COTP, various meetings regarding power supply and transmission projects, gas supply, SCPA, etc. for the Director of Utilities and other staff. The total amount budgeted for FY 2002-2003 is \$69,000.

Light and Power – Travel, meetings and memberships: this account includes WSPP, CMUA, and various meetings. The total amount budgeted for FY 2002-2003 is \$32,500.

The Budget language reflects that the City Council intended to approve expenses for seminars, conferences, regular business meetings and events. For example, the Budget refers to the CSMFO, League of Cities, National League of Cities and other conferences. The Budget also refers to WSPP, COTP, CMUA and other meetings regarding power supply, transmission projects and gas supply. These types of meetings and seminars are clearly related to City business and were contemplated by the City Council. They did not contemplate tens of thousands of dollars for sushi lunches, golf for the City Administrator and his friends, or expensive meals on weekends for the City Administrator near his home with alleged business contacts that he could not identify.

I. Instances of Abuse.

It should first be noted that the City Administrator lives in Huntington Beach. Like most people, it is not surprising that he dines at restaurants near his home, especially on weekends. In 2001 he claimed he was doing business on behalf of the City on weekends at restaurants near his home on at least 119 occasions (approximately \$14,400). (SD Nos. 1032 - 1169) Not surprisingly, he could not identify the names of the alleged business contacts or explain why it was necessary for him to eat with such people near his home on weekends. His vague justifications are unbelievable.

The City Administrator identified some names that he used repeatedly in an attempt to support the alleged "business purpose." For example, he repeatedly referred to his secretary and other staff in an attempt to explain sushi lunches and other meals ranging from \$60-\$150 per lunch. Such repeated expenses with the same individuals, most of whom were City employees, do not qualify as "necessary" expenses that were incurred in the performance of his duties. It was not "necessary" (under any standard) for the City Administrator to take certain employees out to lunch on almost a daily basis in order to perform his duties.

The City Administrator charged the City for a great number of other meals that he ate near his home on the weekends and for which he could not specifically identify the alleged business contact or purpose. The following is a brief list of some of these unjustifiable use of City funds.

1. On Monday, December 10 and Tuesday, December 11, 2000; he charged a total of \$390 for golf at Strawberry Farms Golf Course. He failed to explain.
2. On December 22, 2000, at 3:56 p.m., he charged \$13.96 at a Chevron Gas Station in Westminster. Approximately one hour later, he charged \$19.12 for gas at the same gas station. Approximately one hour after that, he charged \$28.00 for gas at the same gas station. The Salary Resolutions provide the City Administrator with the benefit of all costs related to the vehicle the City leases for him; this would include gas. However, it is extremely unusual that he would need to go to the same gas station 3 times in one day, within a 2 ½ hour period, in order to get gas for the same vehicle. These expenses are relatively small but demonstrate extremely suspicious conduct.
3. On Thursday, December 21, 2000, at 9:00 p.m., he charged \$99 at Knott's Berry Farm at the Chicken Dinners Restaurant. He claimed this expense as a meeting with the Chief Deputy City Clerk. It seems highly unusual and unbelievable that he would be meeting, or need to meet the Chief Deputy City Clerk on a Thursday night at Knott's Berry Farm in order to discuss business related to the City Clerk's office.²⁹
4. On Saturday, December 23, 2000, at 7:25 p.m. he charged \$51.35 at Sebastiani's Italian Bistro in Huntington Beach, near his home. He failed to explain.
5. On January 6, 2001, he charged \$130.03 for "The Grant Boys" in Costa Mesa for "camp/fish." This appears to be for camping or fishing gear or fees.

²⁹ City employees only work through Thursday. Thursday night is the beginning of their weekend.

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6. On Thursday, January 18, 2001, at 6:45 p.m., he charged \$39.35 at the Sebastiani's Italian Bistro in Huntington Beach. He claimed this was for "Administration." It is curious that he works in Vernon on Thursday and then goes home to Huntington Beach in the evening, around dinner time, and incurs charges for food that he attributes to doing business on behalf of the City. There is no logical reason why it would be necessary for him to leave the City, travel to a restaurant near his home and conduct City business at dinner time. He could not identify the name of a business contact or explain the purpose.

7. On Friday, January 26, 2001, he charged \$164 and \$121 (\$285) at the Del Monte Golf Course. He does not explain why it was necessary for him to go to the Del Monte Golf course (in Pebble Beach) and spend \$285 golfing in order to perform his duties. To the extent this was in connection with an authorized conference, as discussed below, he would also be taking City funds in excess of the authorized expense allowance.

8. On Friday, January 26, 2001, at 8:13 p.m. he charged \$49.88 at Sebastiani's Italian Bistro in Huntington Beach. He is again having dinner (see no. 1 above) at the same Italian restaurant near his home on a Friday, when he does not work at the City. This was after his golf charges of \$285 that same morning at Pebble Beach, which he also claims was for business purposes. Again, it is hard to understand why it is necessary to charge the City for a dinner near his home on a weekend in order for him to perform his duties. No business purpose or contact was identified.

9. On Saturday, February 3, 2001, at 7:49 p.m. he charged \$63 at the restaurant Kikuya, in Huntington Beach. No reason was given to support the conclusion that he needed to have dinner near his home on a Saturday night in order to perform his duties.

10. On Saturday evening, February 4, 2001, he charged \$37.46 at Chicago Ribs in Huntington Beach. No explanation was given.

11. On Thursday, February 6, 2001, he charged \$19 at Mamma Gina's in Newport Beach, near his home. There is no explanation of the business purpose.

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12. On Thursday, February 6, 2001, at 10:40 p.m. he charged \$11.90³⁰ at Marie Callendar's in Huntington Beach. He justified this expense as "Office Pie." Even if buying pies for the office was justifiable, it is unbelievable that he was buying pies for the office near his home on a Thursday at 10:40 p.m.; the City would not be open again until Monday.

13. On Thursday, February 3, 2001, at 6:42 p.m. he charged \$19.90 at Carl's Junior in Huntington Beach. He again claims "Administration." Again, it appears that he stops by local restaurants near his home in order to get dinner. Considering the difference in the type of restaurant (Carl's Jr. versus a nice Italian or steak restaurant) one would think he could recall the person he met with at this hamburger restaurant to discuss City business. He could not.

14. On Monday, February 12, 2001, he charged \$227.37 at the Augusta Restaurant in Palm Desert. There is no explanation as to why this meal in Palm Desert was necessary for him to perform his duties for Vernon.

15. On Monday, February 12, 2001, he charged \$21.79 at Shield's Date Gardens Restaurant in Indio. On Wednesday, February 14, 2001, he charged \$80 at Lord Fletcher's Inn in Rancho Mirage. On Thursday, February 15, 2001, he charged \$253 at Le St. Germain Indian Wells Restaurant. On Friday, February 16, 2001, he charged \$379.43 at Walley's Desert Turtle in Rancho Mirage. On Saturday, February 17, 2001, at 2:21 p.m., he charged \$31.03 at the Shield's Date Gardens Restaurant. No business purpose was identified. He claims these expenses were for the City Manager's Conference and identified three Council Members. Again, such an expense would exceed an authorized expense allowance and is improper. (See Section VIII below.)

16. On Saturday, February 17, 2001, at 7:47 p.m., he charged \$34.34 (\$41 with the tip) at Sebastiani's Italian Bistro in Huntington Beach. He incurred this charge for dinner on

³⁰Some charges may actually have included the tip, which would make the charge higher than what is reflected on the receipt.

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the evening of the same day that he ate at Shield's Gardens in Indio at the City Manager's Conference. (See No. 15 above.) He claims this was for "Administration." Thus, he apparently claims that on his way home from the conference he had a scheduled meeting near his home on a Saturday night in order to discuss "Administration" issues. This is unbelievable and not supported. He again appears to be charging the City for his weekend meals.

17. On Thursday, February 22 or 23, 2001, he charged \$285 for food at the Citrus City Grill in Orange, near his home. He claims this was for "Administration." He fails to identify why it was necessary for him to charge such an expensive meal to the City on what is his Friday, near his home in order for him to perform his duties. He could not identify any other person at the dinner.

18. On Friday, February 23, 2001, he charged \$19 at Kathy May's Restaurant in Huntington Beach. No explanation was given, except "Administration."

19. On Thursday, February 27, 2001, he charged \$190 at Kosian on Katella Avenue which is near Huntington Beach. He did not explain the purpose.

20. On Saturday, March 3, 2001, at 7:21 p.m., he charged \$199.50 at Pinot Provence in Costa Mesa, near his home. He again claimed "Administration."

21. On Thursday, March 8, 2001, at 10:34 p.m., he charged \$217 at Aubergine in Newport Beach, near his home for Administration. He did not explain.

22. On Saturday, March 17, 2001, at 8:58 p.m. he charged \$379.21 at The Ritz Restaurant in Newport Beach, near his home. He did not explain why it was necessary for him to spend nearly \$400 on food at a restaurant near his home on a Saturday night in order to perform his duties.

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23. On Saturday, March 24 or 25, 2001, at 7:33 p.m., he charged \$166.63 or \$199.95 (which would include the tip) at the Sorrento Grille in Huntington Beach. He indicated "Administration," but provided no explanation.

24. On Monday, April 2, 2001, at 7:29 p.m., he charged \$30 at Lido Shipyard Sausage Co., in Newport Beach, near his home. He did not explain.

25. On Saturday, April 14, 2001, at 9:42 p.m., he charged \$246.77 at Fleming's Prime Steakhouse & Wine Bar in Newport Beach, near his home. He again failed to explain why it is necessary for him to have dinner on a Saturday night near his home in order to perform his duties. He simply states "Administration."

26. On Friday, April 27, 2001, he charged \$150 at Landmark Golf Club in Riverside. He explains that this was for the CMTA Conference. Again, he was provided an expense allowance. Therefore, taking additional City funds for expenses at the conference was improper. (See Section VIII below.)

27. On Sunday, April 29, 2001, at 1:40 p.m., he charged \$611 at Five Feet, a restaurant in Laguna Beach. He claimed this was for: "Finance Department-Dinner for Office, S. Johnson, Martha Valenzuela, Dolores Fonseca." The idea that City staff is having dinner with the City Administrator near his home on a Sunday and that this was necessary to perform his duties, is incredulous. He does not explain the purpose or the necessity.

28. On Saturday, May 5, 2001, he charged \$561.05 (\$611 with the tip) at Fleming's Prime Steakhouse in Newport Beach, near his home. He claimed the expense was for: "Administration - City Council Members, Davis, Gonzales, Ybarra." The receipt indicates the dinner was for five people and finished at 9:52 p.m. It is impossible to conclude that the City Administrator needed to have dinner with a quorum of the City Council Members near his home on a Saturday night, with one other unidentified person, in order to conduct City business. Amongst other things, such a meeting would violate the Brown Act.

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29. On Tuesday, May 8, 2001, at 11:14 p.m., he charged \$82 at Five Feet Restaurant in Laguna Beach, near his home for "Administration."

30. On Saturday, May 12, 2001, at 9:08 p.m., he charged \$115 at Harpoon Harry's in Sunset Beach for "Administration." He does not explain.

31. On Friday, May 18, 2001, he charged \$165 at the Tahquitz Creek Golf Resort which is near Palm Springs. The receipt indicates a quantity of "3." He charged \$470 at the Le Vallauris Restaurant that same day in Palm Springs. He claims this was for "Contract Cities." (See expense allowances analysis below.)

32. On Friday, May 25, 2001, he charged \$19 at the Bonadonna's Shore House in Huntington Beach, near his home for "Administration."

33. On Saturday, May 26, 2001, at 7:44 p.m., he charged \$274.60 (or \$320, which includes the tip) at Pinot Provence in Costa Mesa for Administration. He does not explain.

34. On June 14, 2001, he charged \$300.95 at Westlake Landing in Thousand Oaks for Administration. (SD No. 1102) He does not explain.

35. On June 16, 2001, he had 6 charges of \$165.59 (a total of \$993.54) at the Rancho Bernardo Inn in San Diego for "CR." (SD No. 1103) He does not explain. As discussed above, these may be charges for massages; if so, they were clearly improper.

36. On Sunday, June 3, 2001, he charged \$44.40 at Baskin Robbins in Huntington Beach near his residence. It is unbelievable that he decided to have a meeting at an ice cream shop near his home on a Sunday to discuss City business. He does not explain.

37. On Tuesday, June 19, 2001, at 7:05 p.m., he charged \$40 at the Ruby Palace in Huntington Beach, near his home. This again appears to be a purchase of his own dinner after work.

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38. On Friday, June 22, 2001, at 7:33 p.m., he charged \$237.28 at Café Pinot. He fails to explain.

39. On Thursday, June 28, 2001, at 8:00 p.m., he charged \$52.25 at Chevy's Fresh Mex in Fountain Valley, near his home. He fails to explain.

40. On Friday, June 29, 2001, at 12:40 p.m., he charged \$27 at the Lido Shipyard Sausage Co., in Newport Beach, near his home for "Administration." He fails to explain.

41. On Friday, July 6, 2001, he charged \$28.45 at Basilico's in Huntington Beach, near his home for "Administration." He failed to explain.

42. On Saturday, July 7, 2001, at 7:34 p.m., he charged \$45 at Restaurant Kikuya in Huntington Beach, near his home for "Administration." He failed to explain.

43. On Sunday, July 15, 2001, he charged \$3,438.45 at the Rancho Bernardo Inn relating to the ICA. The charges include RBI green fees and cart rentals totaling \$659.00. There are additional charges for the "RBI Pro Shop" for \$485.86, \$84.93, \$154.26, \$6.44, \$160.13, and \$86; a total of \$977.62. These are separate than the charges for green fees and carts. There is also a charge for \$70.47 for "Gift Shop." There is a massage charge for \$165, a charge of \$500 for "El Bizcocho" (a restaurant) and an additional charge on July 14th "paid out" for \$410; this charge is not explained. If the trip was approved with an expense allowance, the charges on the credit card would be improper if the City paid the allowance in a check; if the conference was not approved, the expenses would also obviously be illegal. Nevertheless, there would be no justification for the golf fees, the gift shop charges and the additional golf shop expenses of almost \$980.

44. On Monday, July 16, 2001, he charged \$47 at the Full Moon restaurant in Fountain Valley, near his home. That same evening, at 6:42 p.m. he charged \$12.15 at Marie Callendar's near his home for a Sour Cream Lemon Pie and two muffins. He failed to explain the business purpose for his food, pie and muffins.

45. On Saturday, July 21, 2001, he charged \$55 at Tupelo's restaurant in Hillsborough, North Carolina. On Sunday, July 22, he charged \$26 at the TXS Steakhouse in Danville, VA. On July 28, 2001, he charged \$49.52 at Outback restaurant in Danville, VA. There is no indication that he was authorized to travel on behalf of the City to Virginia or North Carolina. If not, these expenses would violate VCC Section 2.7-2. (See also the expense allowance analysis below).

46. On Sunday, July 29, 2001, he charged \$30 at BJ's Restaurant & Brewery in Huntington Beach, near his home for "Administration." He did not explain.

47. On Friday, August 3, 2001, he charged \$76 (receipt indicates \$63.96) for food from Marie Callendar's. He claimed the expense as: "Administration-Pie for Office." The receipt shows two charges for \$10.95 for two pies, as well as a charge for a "kid's pasta" and other food. Even if his purchase of pies for the office can be construed as an expense necessary to carry out his duties, he did not spend \$76 for that purpose. The fact that this expense was incurred on a Friday evening and included kid's pasta during a purported business meeting is unusual. It seems that he should be able to recall the name of the person he dined with to discuss a "business" issue on a Friday in the presence of a child. He could not.

48. On Saturday, August 4, 2001, he charged \$16.83 for Baskin Robbins in Huntington Beach. He claimed this purchase of ice cream was for: "Administration-Ice Cream for Office. It is difficult to believe that the City Administrator is stopping by the local ice cream shop near his home on a Saturday to buy ice cream for the office and that such an expense is necessary to perform his duties.

49. On Friday, August 14, 2001, at 9:47 p.m., he charged \$113 at the Five Feet restaurant in Laguna Beach, near his home for "Administration." He fails to explain.

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50. On Sunday, August 19, 2001, at 10:09 p.m., he charged \$261.20 at George's at the Cove, in La Jolla, near his home for "Light & Power - Business Contact." He does not explain.

51. On Tuesday, August 21, 2001, at 9:41 p.m. he charged \$70 at the Five Feet restaurant in Laguna Beach, near his home for "Administration." He does not explain.

52. On Thursday, August 23, 2001, at 11:07 p.m., he charged \$532 at the Beau Rivage in Malibu. He justified the expenses as: "Administration-McKinney-Travers Co., Phil Vitella (sic), Realtors regarding the sale of property to the City." Mr. Attalla (McKinney-Travers) has an office in the City of Vernon, in the Mayor's building. There is no way to support the idea that it was necessary for the City Administrator to travel to Malibu on a Thursday night to have a \$532 meal with Mr. Attalla in order to discuss the potential acquisition of property for the City. The next morning, Friday, August 24, 2001, he charged \$252 at the Malibu Country Club in Malibu. He again justified this expense as: "Administration-McKinney-Travers Co., Phil Vitella (sic), Realtors regarding the sale of property to the City." Thus, he had a \$532 meal with Mr. Attalla on Thursday night and then went to play golf with him the next morning for \$252, a total of \$752, in order to talk about property in the City. He could easily have discussed such "issues" at City Hall or at Mr. Attalla's office in the City. The purported necessity of eating and golfing in Malibu at a cost of \$752 is ludicrous.

53. On Thursday, August 30, 2001, at 8:37 p.m., he charged \$105 at Restaurant Matsu in Huntington Beach, near his home for "Administration." He failed to explain.

54. On September 4, 2001, he charged \$843.82 at Morton's of Chicago in Costa Mesa.

55. On Tuesday, September 11, 2001, he charged \$119.27 at Morton's of Chicago in Costa Mesa, near his home for Administration. He went golfing that same morning. This is the day on which terrorists crashed airplanes into the Twin Towers in New York. It is

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difficult to understand what meeting he would be having on this day at a fancy steakhouse in order to discuss City business. He could not identify the business contact for the dinner or the golf.

56. On Thursday, September 13, 2001, at 9:01 p.m., he charged \$240 at Michael's in Santa Monica for the League of California Cities. (See expense allowance analysis below.)

57. On Saturday, September 15, 2001, he charged \$330.48 at the Montebello Plaza Hotel in the City of Montebello. He identified Chuck Montoya and Phil Vitella (sic) as the alleged business contacts but did not explain the alleged purpose. It is difficult to understand the purpose of a local hotel charge of \$330.48 for an alleged meeting with a consultant who works in City Hall and a real estate broker who has offices in the City. He did not explain.

58. On Thursday, September 27, 2001, he charged \$37 at Shimura Restraunt in Fountain Valley for: "Treasurer's Office-City Contact, Gloria Orosco, Chief Deputy City Clerk." Earlier that day, at 11:43 a.m., he had charged \$59 at Taipan in Los Angeles. Later that evening, at 8:17 p.m., he charged \$21.90 for two pies at Marie Callendar's for: "Finance-Pie for Office." It is hard to understand why it was "necessary" for the City to pay for two of his meals that day and two pies later that evening in order for him to perform his duties. It is even more difficult to understand why he would need to have lunch with the Deputy City Clerk and then have dinner with her later that same night in order to discuss City business. Further, it is unbelievable that he bought a pie for the office at 8:00 p.m. on a Thursday when the City was closed until Monday.

59. On Tuesday, October 2, 2001, at 9:25 p.m. he charged \$69 at the Five Feet Restaurant in Laguna Beach, near his home. He failed to explain.

60. On Tuesday, October 16, 2001, at 9:54 p.m. he charged \$60 at the Five Feet Restaurant in Laguna Beach, near his home for "Administration." He failed to explain.

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61. On Wednesday, October 24, 2001, at 7:18 p.m., he charged \$40 at Lido Shipyard Sausage Co., in Newport Beach. He again appears to be stopping off on his way home from work to get something to eat for dinner and claiming it was for "Administration."
62. On Tuesday, October 30, 2001, at 11:50 p.m. he charged \$135 at the Five Feet Restaurant in Laguna Beach, near his home. He fails to explain.
63. On Saturday, November 10, 2001, at 10:44 p.m. he charged \$1,200 at Spago's Restaurant in Beverly Hills. He justified this expense as Administration. Although this was a very expensive dinner, he could not identify the names of the people he needed to eat with on a Saturday night in Beverly Hills, in order to perform his duties.
64. On Tuesday, November 13, 2001, at 11:20 p.m., he charged \$58 at the Five Feet Restaurant in Laguna Beach, near his home for "Administration." He could not explain.
65. On Friday, November 16, 2001, he charged \$22 at the Five Feet Restaurant in Laguna Beach, near his home. He did not explain.
66. On Saturday, November 17 or 18, 2001, at 10:01 p.m. he charged \$481 at Ti Amo Restaurant in Laguna Beach, near his home for: "Administration-Business Contact." He failed to explain the necessity of spending over \$400 for dinner on a Saturday near his home in order for him to perform his duties.
67. On Sunday, November 18, 2001, he charged \$20 at the Harbor House Café in Sunset Beach, near his home for "Administration." He failed to explain.
68. On Saturday, November 24, 2001, he charged \$74.06 at the Vons Supermarket in Huntington Beach for groceries, including top sirloin steak and a fudge cake. He failed to explain.
69. On Saturday, November 24, 2001, at 7:54 p.m. he charged \$25.40 at Restaurant Kikuya in Huntington Beach. He failed to explain.

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(The documents supporting the above information are located at SD Nos. 1035-37, 1043, 1054-57, 1071, 1084, 1087, 1089, 1102, 1105, 1108, 1109, 1111-17, 1119, 1120-22, 1124, 1126, 1128, 1130-31, 1133, 1138, 1178, 1192, 1203-05, 1214-15, 1219, 1221, 1223-24, 1228-32, 1236, 1238, 1241, 1244, 1247, 1252, 1262, 1271, 1283, 1298, 1309, 1311, 1319, 1323, 1327, 1335-36, 1343, 1345, 1372, 1376, 1383, 1386, 1392, 1394, 1396-97, 1399, 1400, 1404-06, 1414, 1421, 1429, 1434, 1438, 1442, 1451, 1455, 1466, 1470, 1480-82, 1489, 1503, 1515, 1527, 1537-38, 1545, 1547, 1553, 1576, 1580-81, 1666).

VCC Section 2.7-2 authorizes reimbursement for "necessary" expenses for the performance of the City Administrator's duties, as well as travel on behalf of the City. The Credit Card Policy actually requires that his charges also be "reasonable." The City initially had no explanation for the purpose of the expenses. When I persisted, the City Administrator came up with a great number of general references to supposed "Administration" and "Light & Power" contacts. As set forth above, many of these "meetings" took place on Fridays, Saturdays or Sundays at restaurants near his home. The City Administrator's trips to Knott's Berry Farm or the restaurants near his house on a weekend do not qualify as travel on behalf of the City. Further, the "prevailing business practice" cannot justify his purchase of ice cream, pies, golf equipment or expensive meals (\$1,200 for one meal) as "necessary" or "reasonable" for him to perform his job duties.

I. The Expenses Cannot be Approved as Falling Within the Scope of an Approved Expense Allowance.

I was advised that the City Council used to provide the City Administrator with a monthly expense allowance that authorized him to incur expenses each month up to the authorized limit and that the allowance was last established at approximately \$300 per month.³¹ Nevertheless, I was advised that the expense allowance was eliminated around 1993 and that, instead, his salary was simply increased by the expense allowance amount. No such general expense allowance was provided from 1995 through 2002 (See City Council

³¹The approval of such an expense allowance was authorized by VCC Section 2.7-2.

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Resolution Nos. 6651, 6811, 7165, 7796, 7828 and 8007). Thus, the only way for the City Administrator to receive expense reimbursements was pursuant to VCC Section 2.7-2.

VIII. THE CITY ADMINISTRATOR SEEMS TO HAVE SUBVERTED THE CITY COUNCIL'S APPROVAL OF EXPENSE ALLOWANCES FOR SPECIFIC CONFERENCES AND TRIPS

The City Council has historically approved expense allowances for the City Administrator (and other employees) to attend various conferences. By approving the expense allowance, the City Council establishes a limit on the amount of City funds that it is authorizing to be spent by the City Administrator. He did not have authority to take additional City funds through the petty cash process or by charges on the City credit card for expenses that he incurred while at the conference.

The allowances approved by the City Council include expenses for travel, food and other miscellaneous expenses that the City anticipates (based upon the amount requested by the City Administrator) will be incurred in connection with the conference. Occasionally, the City needs to charge the first night of the hotel stay and will typically issue a check for the balance of the allowance to the individual. The City has not necessarily required an accounting of the expense actually incurred or the re-payment of amounts that were not actually incurred. These matters are properly approved pursuant to minute order at the City Council meetings. With regard to the City Administrator, such expense allowances were also authorized by VCC Section 2.7-2.

The records raise the issue of whether the City Administrator accepted the expense allowances and also took additional City funds through use of the credit card or the petty cash process for expenses related to those same trips. The following are examples of potential abuse.

On October 3, 2000, the City Council approved an expense allowance of \$2,579.77 for the City Administrator to attend the National League of Cities Conference in Boston from December 6-9, 2000. (See City Council Minutes, pp. 2-3). The records establish that the

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City Administrator charged \$3,044.39 at the Ritz-Carlton Boston starting December 4, 2000 for him and his wife. Among other things, he charged room service dinners of \$29.19, \$28.28 and \$28.28 and a café breakfast for \$95.00. He produced another Ritz-Carlton invoice that showed that his son-in-law and/or daughter charged an additional \$1,310.57 on the City credit card for lodging and food at the Ritz-Carlton in Boston starting December 4, 2000. (See Exs. 30 and 31 and SD Nos. 1571-1575) Based upon these invoices alone, the City Administrator charged the City \$1,775.19 (\$4,354.96 - \$2,579.77) more than the approved expense allowance amount of \$2,579.77. He illegally took all funds in excess of the approved amount. If he received an expense check for the trip (which is normal practice), that amount, as well as any other charges related to the Boston trip, would need to be considered to determine the exact amount of City funds that he misappropriated.

Further, he clearly exceeded the authorization; he was not allowed to have his wife and family check in on December 4th, two days before he was to arrive, and start charging their expenses (at least \$1,310.57) on the City credit card. He also filled out two Petty Cash Forms that he dated December 4, 2000, and took \$6,605.31 in City funds on that day without identifying the purpose or providing any support. (See Ex. 30) If he used such funds for this trip, amongst other things, he violated the City Council's established expense allowance for this trip. Such expenses were clearly improper.

On December 19, 2000, the City Council approved an expense allowance for the City Administrator to attend the California Contract Cities Association Conference in Sacramento from January 8 through 10, 2001. The City Council approved an expense allowance of \$515.00. (City Council Minutes, p. 9). He charged \$214.78 on January 8, 2001, for a meal at Morton's of Sacramento, as well as other expenses, while at the conference. On January 10, 2001, he sought petty cash as reimbursement for another meal on January 9, 2001, at Morton's in Sacramento; he claimed the expense was for "Admin". (SD Nos. 201-202) This was the same time that he was at the conference. The Hyatt Regency statement where he stayed during the conference also shows that he incurred food charges on the credit card that were paid by the City: breakfast - \$65.00 and lunch - \$56.00, as well as movies - \$16.00. His use

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of the City credit card (or other City funds) to pay for expenses that exceeded the authorized expense allowance was improper.

On December 19, 2000, the City Council approved an expense allowance for the City Administrator to attend the League of California Cities Employees Relations Annual Conference from January 24 through 26, 2001. The City Council approved an expense allowance of \$1,053.00. (City Council Minutes, p. 9). He received a check for \$548.00 (Check No. 81646). He charged the following on the credit card: on January 26th -\$164 and \$121 for Del Monte Golf Course at Pebble Beach. (SD No. 1204) He also sought a petty cash reimbursement based upon a Monterey DoubleTree Hotel invoice for \$791 for services between January 24 through 25, 2001. The statement reflects Health Club charges for those two days, totaling \$340.³² (SD No. 684) Again, the expenses in excess of the expense allowance amount are improper.

On June 27, 2001, the City Council approved an expense allowance for the City Administrator to attend the Independent Cities Association Annual Seminar (the "ICA Seminar") in San Diego from July 11 through July 15, 2001, with an expense allowance of \$915.50. (City Council Minutes, p. 4). On July 15, 2001, he charged \$3,438.45 at the Rancho Bernardo Inn relating to the ICA Seminar. The charges include green fees and cart rentals of \$659.00; additional charges for the "RBI Pro Shop" totaling \$977.62; a \$70.47 charge for "Gift Shop"; a massage charge for \$165, a charge of \$500 for "El Bizcocho" (a restaurant) and an additional charge on July 14th "paid out" for \$410; this charge is not explained. (See SD Nos. 1396-1397) On July 16, 2001, he charged \$719.69 for Rancho Bernardo. (SD No. 1108) In total, the documents indicate that he spent at least \$4,158.14 for the ICA Seminar. As discussed previously regarding these expenses, there is no independent basis to justify the golf fees, golf accessories, gift shop, massage or a \$500 meal. Moreover,

³² It is difficult to determine when this amount was reimbursed through petty cash. However, it appears that it may have been reimbursed on January 29, 2001, when he received \$884.13 in petty cash funds without support, or February 6, 2001, when he received an unsupported reimbursement of \$2,264.80, with one item being \$2,152.82 for "Admin." (SD Nos. 210, 216).

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these charges were clearly improper because they exceeded the specific amount authorized for this seminar. He exceeded the expense allowance amount by \$3,242.64.

A complete analysis of the issues regarding the expense allowance limits is beyond the scope of this report. The City Administrator's abuse of the petty cash process and the credit card demonstrates the need for such further analysis. Nevertheless, further information would be required.

IX. THE CITY ATTORNEY (WHEN HE WAS FINANCIAL LEGAL COUNSEL/FINANCIAL ADMINISTRATOR) ISSUED AN OPINION THAT WAS IMPROPERLY INTENDED TO CONFUSE THE EXPENSE ISSUES AND INTERFERED WITH THE INVESTIGATION

While I was still City Attorney, Mr. Fresch was Financial Legal Counsel/Financial Administrator. When I began the investigation, Mr. Fresch was assigned to assist in obtaining needed information from the City Administrator.³³ I later learned that he was also helping the City Administrator resolve significant IRS audit issues that related to expenses that he claimed on behalf of the City and were the subject of the investigation. I advised Mr. Fresch of the conflict of interest issues that he had triggered, but was forced to continue to rely upon him for the information that I needed. After I continued my requests for information, Mr. Fresch advised me that I needed to meet with him and John Karns, outside counsel for the City. Mr. Fresch advised that the City Administrator was upset at my inquiries and thought that Mr. Karns "had already taken care of the expense issues."³⁴

Mr. Karns insisted that the expense issues had already been addressed. I explained that he was wrong. Mr. Fresch agreed with me and advised that he had prepared a

³³ The City Administrator would only deal with Mr. Fresch on these issues. Since Mr. Fresch was the Financial Administrator and an attorney for the City, his involvement seemed very appropriate at the time.

³⁴ Mr. Karns refers to himself as "General Counsel" for the City. I am not aware of any resolutions, ordinances or changes to the City Charter that have created such a position and that would have empowered Mr. Karns to provide the type of advise to the City that would normally be provided by the City Attorney.

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memorandum addressed to the Finance Committee that simply addressed tax issues, including the question of whether the City Administrator's W-2 forms had to be amended in order to report the expense reimbursements as "income" for tax purposes. This was apparently necessary because the City Administrator (as City Treasurer and Finance Director) had apparently failed to cause the City to report the thousands of dollars of City funds he received as "expense reimbursements" as "income" on his W-2.

I later determined that Mr. Fresch had in fact prepared such an opinion without my knowledge, but that the opinion had never been properly received by the Finance Committee and was never provided to the City Council. (The opinion is attached as Ex. 35) To my surprise, Mr. Fresch improperly stated in the opinion that:

"I have examined all of the employment related business expenses incurred by the City Administrator during the relevant time period. From my examination I have concluded that all such expenses which were either reimbursed or paid by the City and which were incurred by the City Administrator, were appropriate and proper, and authorized by the City Council."

(Ex. 35, p. 1730) This was clearly false and directly contradicted the limited information that I had started to receive at that time. Moreover, this statement was made before I was provided any of the petty cash information and without reviewing documents related to 1998, 1999, 2000 and 2002.

Mr. Fresch admitted that the opinion did not actually address whether the City Administrator had been properly authorized to take the City's funds as "expense reimbursements"³⁵; he commented that, based upon the statement in his opinion, he "had made himself a witness." In fact, the opinion does not analyze any of the expenses. Mr. Fresch merely attached a very general tax analysis (without discussing any facts) from the

³⁵ As recently as late May of this year, Mr. Fresch acknowledged that nothing had been done to address the lack of authority issues that are now addressed in this report.

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City's auditors and discussed when expense reimbursements, in general, are treated as "income" for income tax purposes.

Mr. Fresch's opinion, in effect, concluded (without analysis) that no matter how much money the City Administrator took without authorization, as long as his W-2 reported such matters as "income," such appropriations were proper. Mr. Fresch's logic would lead to the conclusion that any City employee can take (or steal) as much of the City's funds as they want, regardless of the requirements of the VCC, the Petty Cash Policy, the Credit Card Policy or the Salary Resolutions, as long as they pay their taxes. Such a proposition is patently absurd! Mr. Fresch's opinion was disingenuous, was issued secretly while I was just beginning to obtain information from him and the City Administrator, and seems to be intended to serve the self-interests of the City Administrator at the expense of the City.

X. **THE CITY COUNCIL'S ABILITY TO RATIFY THE CITY ADMINISTRATOR'S MISAPPROPRIATION OF CITY FUNDS IS VERY LIMITED AND CANNOT BE DONE FOR THE GREAT MAJORITY OF MATTERS**

A municipal corporation may ratify an action (such as the approval of contracts) that is not *ultra vires*, void, or illegal. 10A McQuillin, Municipal Corporations, (3rd ed. 1999), § 29.104. An invalid action can be ratified only by observance of the same formalities and provisions necessary to be complied with in the taking of such action in the first case. *Id.* at § 29.106. Knowledge is a condition precedent to ratification. Ratification is based upon knowledge and intention and, in order to constitute ratification, it is necessary that the officers ratifying be fully advised of all the facts connected with the act claimed to be ratified. Knowledge of individual members of the common council is not knowledge of the council as a body. *Id.* at § 29.107.

In this case, as analyzed above, the City Council could not have approved the great majority of "petty" cash appropriations because they violated the Petty Cash Policy and VCC Section 2.7-2. The credit card charges could not have been approved without proper support, a sufficient explanation of the business purpose and the City Council's conclusion that the

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expense was proper under VCC 2.7-2. To the extent that "some" of the expenses "may" be tracked to proper expenses, they would have to be carefully analyzed and considered with complete knowledge. Nevertheless, the expenses referred to above, such as gifts of cash, political contributions, expensive meals near his home on weekends and the tens of thousands of dollars of City funds taken as "petty" cash are illegal and could not be approved or ratified under any circumstances. Further, the City Council must consider the negative implications of now attempting (improperly) to ratify such matters. Any attempt to take such action now, especially with the participation of the City Administrator, the City Attorney and "General Counsel" Karns, could be viewed as a conspiracy and cause further significant issues for the City Council itself. Finally, if any City Council Member has benefited financially from any of the subject expenses, the provisions of the Political Reform Act and Government Code Section 1090 would have to be addressed.

XI. THE CITY ATTORNEY HAS CAUSED THE CITY'S FINANCIAL RECORDS TO BE IMPROPERLY DESTROYED

In April of this year I needed to verify that the City had received a payment of over \$1 Million in 1999 from the Alameda Corridor Transportation Authority ("ACTA"). I needed to verify receipt of the payment before I was able to recommend the execution of a final settlement agreement with ACTA. Nevertheless, to my great surprise, the Finance Department advised that the City Attorney had caused the records retention schedule to be amended and that they no longer kept any financial records that went back to 1999. In fact, I have recently been advised that the Finance Department does not have any financial records (hard copy or computer records) that are more than two years old. One employee advised recently that when he advised the City Attorney that the City was required to keep certain financial records permanently, the City Attorney responded that he wanted them all "burned" and that the City had hard copies; this was not true.

Government Code Section 34090 provides that a City's records must be kept for a minimum of two years, unless otherwise provided by statute. Government Code Section 12236 provides that the Secretary of State shall establish the Local Government Records

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Program to be administered by the State Archives to establish guidelines for local government records retention and to provide archival support to local agencies in the state. In an effort to comply with its statutory mandate, the State Archives has consolidated information resources to provide local government with a single source for archival and records management support and guidance. The guidelines are applicable to charter cities.

According to the State Archives, financial records are generally to be retained for four to seven years depending on whether state or federal funds are involved in the expenditures the local government is making. The State Archives also refers to the City Clerk's Association of California Local Government Records Retention Guidelines. These guidelines represent the minimum legal requirements for the retention of local government records. They require that accounts payable documents (invoices, check copies, supporting documents) and vouchers (account postings with supporting documents) be kept for four years after they have been audited. Checks (including payroll canceled and voided checks) and bank reconciliation documents (statements, summaries for receipts, disbursements and reconciliation) shall be kept for five years after an audit. Invoices (copies sent for fees owed, billing and related documents) and warrant registers are to be retained for two years after they have been audited. The general ledger must be kept permanently.

The guidelines refer to Government Code Section 34090 and Code of Civil Procedure Section 337, which establishes a four year statute of limitations for causes of action based on written instruments, book accounts and other matters. The significance of Section 337 is that all public entities are subject to lawsuits, which may involve the public entity's financial records, for up to four years. Thus, most financial information, except the general ledgers (which must be kept forever), has a minimum retention requirement of four years.

With regards to the City Administrator's expenses, I have repeatedly advised the City Attorney of the importance of the expense documentation. I recently asked him if the destruction of records includes all financial information, including computer data. He confirmed that this was correct and volunteered that it also included the City Administrator's

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expense records.³⁶

The destruction of the City's financial information is unfathomable and cannot be properly explained. There is no legitimate reason for the City Attorney or the City Administrator to have ordered the destruction of such financial information. The City has never authorized such a wholesale destruction of information in the past. The City Attorney and the City Administrator both knew that the expense issues were very serious and problematic. Even if the matters had already been addressed by the City Council, it would still be improper to destroy the information. The only explanation seems to be that, as the City Attorney confirmed, there was a deliberate intent to destroy evidence. Such activities were highly improper and illegal.

XII. POTENTIAL CRIMINAL VIOLATIONS

The City Administrator's repeated violations of the City's Petty Cash and Credit Card Policies are extremely problematic. He wears many "hats" in the City and has many corresponding duties. He improperly took several hundred thousand dollars through the petty cash process and improperly charged several hundred thousand dollars, including many obviously improper expenses, on the City credit card. He also violated his duties as City Clerk, City Treasurer and Finance Director to assure that his own expenditures were proper, that they were properly documented and that they were submitted for analysis by the City Council in accordance with the City's policies and ordinances.

Penal Code Section 424(a) states:

Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

It was shortly after this conversation that I confirmed that the issues raised in this report had never been submitted to or analyzed by the City Council.

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1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or
- * * *
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or
4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; ... [1] Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state. (Emphasis added.)

Penal Code Section 425 states:

Every officer charged with the receipt, safe keeping, or disbursement of public moneys, which neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of a felony.

Penal Code Section 504 states:

Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, servant of that officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of that person's trust, any property in his or her possession or under his or her control by virtue of that trust, or secretes it with a fraudulent intent to appropriate it to that use or purpose, is guilty of embezzlement. (Emphasis added.)

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Embezzlement is defined as the fraudulent appropriation of property by a person to whom it has been intrusted (sic). Penal Code § 503.

Government Code § 6200 also prohibits public officers from stealing, removing, secreting, destroying, mutilating, defacing, altering or destroying any record or paper placed in his hands for any purpose. The violation of Section 6200 constitutes a crime punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by fine not exceeding one thousand dollars or both.

The office of the City Treasurer was created by and the through the Vernon City Charter. According to Section CH: 7.2 of the Charter: "There shall be a city treasurer who shall receive and safely keep the funds of the city and shall disburse the same for public purposes pursuant to appropriations and directions by the city council..." (Emphasis added.) As City Treasurer and Finance Director, the City Administrator was charged with the receipt, safekeeping and disbursement of funds for public purposes pursuant to the direction of the City Council. The City's Petty Cash Policy was established for reimbursement for "purchase of small items" and requires a sales slip and itemization of that expense. VCC Section 2.7-2 also requires itemization and the use of an established process for reimbursement of expenses. VCC Section 2.10-1 requires all employees to submit detailed claims. In this case, the City Administrator submitted numerous petty cash claims that were not properly documented and that he used to pay for his personal expenses. He also submitted false or misleading documentation in order to take City funds to which he was not entitled. Additionally, rather than comply with the reimbursement process established by ordinance, he caused the City to directly deposit funds that were blindly credited to his credit card account that he used to pay for personal expenses which he falsely claimed were for City related matters.

The use of "petty cash" funds for personal expenses and receipt of multiple reimbursements for false expenditures, was without authority of the law and appears to violate Penal Code Section 424(a)(1). The preparation of Petty Cash Forms and ledgers that falsely

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identified an alleged City purpose, constitutes knowingly keeping or making a false entry on an account and appears to violate Penal Code Section 424(a)(3). The destruction of documents that allegedly supported the many large petty cash claims, or the manipulation of alleged expense totals in order to disguise certain expense amounts, constitutes fraudulently altering, falsifying, concealing or destroying such account and appears to violate Section 424(a)(4). The City Administrator, as City Treasurer, City Clerk and as Finance Director, violated numerous provisions of City law regulating how City funds can be paid for claimed reimbursements. As such, the above state law provisions are implicated.

Penal Code Section 182 also makes it a crime for two or more persons to conspire:

(1) To commit any crime.

* * *

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

* * *

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

I was not given proper documentation during my investigation. When I persisted, I was told, in late 2003, that the matter had already been handled. Financial Legal Counsel (without my knowledge) had prepared a misleading opinion which asserted that he had audited the expenses and determined they were proper and had been authorized by the City Council. (Ex. 36) This was false and was never submitted to the City Council. I advised him and the City Administrator that I still needed the documents. They again promised to comply. I received some additional documents after that time; however, they were not complete. I repeatedly asked Financial Legal Counsel about the status of his assignment to obtain such information. Many months passed and I still did not receive the requested information.

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The City Administrator subsequently told me that he was personally handling the matter with the City Council and told me to stop my investigation. I had not yet carefully analyzed all of the (incomplete) information provided and set it aside for some time. However, this matter was never placed on the City Council agenda (as required) for consideration and analysis. Therefore, around May of 2004, I asked the City Attorney (the City Administrator had advised me that the City Council desired to have Financial Legal Counsel become the Acting City Attorney) for documentation of such action so that I could properly document and close my file. He stated that nothing had been done and told me that he "thought" I still needed to address the issues. I asked him in writing to confirm the status of the matter. In response, he asked me to box the documents related to the expenses and send them to him; I made copies and provided him with one set. I was later advised that he had met with outside counsel that same evening and the next day. I subsequently asked him to tell me what happened to the documents. He responded that they were "stashed" in Mr. Karns' office downtown. I understood him to be telling me that the documents had been hidden away.

The City Attorney never responded in writing to my letter. Instead, on June 24, 2004, I received a letter from Mr. Karns in which he advised that the expense issue was not my concern. He did not confirm that the matter had been properly addressed. The City Attorney later advised me that he was not aware that Mr. Karns had written such a letter; he apparently had not authorized the response.

As an attorney for the City, I was clearly obligated to make sure that these problematic issues were properly presented to the City Council. The failure by me, or any other attorney for the City who has knowledge of these issues, would be improper and tantamount to participating in a conspiracy to hide multiple potential crimes. Any attempt to cover up the expense issues or falsely prepare documents to make it appear that they were proper, raises additional issues.

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The passage of time has not caused the problems to go away. Each and every instance of a misappropriation of public funds remains a viable criminal action. According to Penal Code Section 799, prosecutions for the embezzlement of public money may be commenced at any time. In addition, Penal Code Section 801.5 states that prosecution for any offense described in subdivision (c) of Section 803 shall be commenced upon the discovery of the offense, or within four years after the completion of the offense, whichever is later. Section 803(c) states:

A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of fiduciary obligation, the commission of crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is **misconduct in office** by a public officer, employee, or appointee, including, but not limited to, the following offenses (Emphasis added):

- (1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

* * *

- (4) A violation of Section 1090 or 27443 of the Government Code. ...

XIII. RECOMMENDATIONS

The issues raised by the City Administrator's conduct and the attempts to hide the specific details of such issues from the City Council, raises some of the most serious and problematic issues that will ever be addressed by the City. The City Administrator's conduct has compromised the City Council Members, as individuals, as well as the City as a whole. *If the City Council does nothing with the information that has been provided, they may be*

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deemed complicit in the improper taking of tens of thousands of dollars in public funds and in covering up crimes. In fact, the information provided by the City Administrator, if true, raises individual issues for the City Council Members that must be addressed and resolved.

Based upon the information reviewed and analyzed in connection with this report, I recommend the following actions:

1. The City Administrator must immediately be put on administrative leave so that the investigation of his improper use of City funds can continue, as it must, without his undue influence or interference. Considering the fact that he is also the City Clerk, the City Treasurer, the Finance Director, the Personnel Director, the Purchasing Agent, the Chief Executive Officer of Light & Power and the Executive Director of the Redevelopment Agency, there is no possible way to properly complete this investigation and make a decision in the best interests of the City and the City Council, without his removal.
2. The City Attorney must also be put on administrative leave. His participation in destroying City records related to the expenses, as well as other City records, is highly problematic. His further participation in this matter would be illegal. The fact that he was used by the City Administrator to help with a personal income tax audit that covered many of the same expense issues addressed in this report, creates a severe and in-correctable conflict of interest that cannot be ignored. To do so will cause further violation of the law.
3. The City Council must not allow the City Administrator, the City Attorney or Mr. Karns, who has apparently advised the City Attorney throughout this process, to become involved in recommending any particular action to resolve these issues or in recommending any outside counsel or consultants to help address these issues. Such participation would again result in additional violations of the law and compromise the entire City Council. Such participation may also be viewed as acts in furtherance of a conspiracy.

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Instead, the City Council should authorize me to retain, on behalf of the City, a well-respected municipal law firm, such as Richards, Watson & Gershon or Burke, Williams & Sorenson or some other qualified law firm to assist in completing the investigation.

4. To the extent that any particular City Council Member has benefited uniquely from the City Administrator's abuse of the City's funds, he must not participate, in any way, in the decision-making process or attempt in any way to influence that process. Such actions could also constitute a violation of the law.
5. If City staff is destroying City financial records, such destruction must stop immediately.
6. The City Council must cancel the City Administrator's credit card and/or stop the payment of City funds into the credit card account.
7. The investigation must continue into all aspects of the payment of City funds to the City Administrator, or on behalf of the City Administrator. As discussed above, the bulk of the information reviewed was for 2001. We did not receive sufficient information for that year, much less other years. Amongst other things, the investigation should continue in the following areas:
 - a. Review of any other backup documents that the City may have in its possession.
 - b. The Finance Department should determine whether other invoices that were submitted by the City Administrator in support of "petty" cash fund appropriations were paid directly by the City and not by the City Administrator.

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- c. Mr. Fresch must be ordered to provide all documents that allegedly support his statement in his opinion to the Finance Committee that he has reviewed and audited all of the City Administrator's expenses and determined that they were proper and authorized by the City Council. Some of those documents apparently relate to the City Administrator's income taxes and normally would be considered private information. However, the City Administrator provided these documents to Mr. Fresch while Mr. Fresch was an attorney for the City and while he was working on the expense issues for the City. Mr. Fresch also chose to rely upon such records and the IRS audit itself (See Ex. 36) to support the opinion that he addressed to the City Finance Committee while he was working for the City. The fact that Mr. Fresch ignored his serious conflicts of interest, is problematic. Nevertheless, the end result is that such income tax information is now public record.
- d. If the credit card being used by the City Administrator was actually issued in the name of the City, the City Council should authorize and officially request that the bank provide copies of such credit card statements for at least the last five years. If the credit card was actually issued personally to the City Administrator, the City Council should demand copies of all of his statements for as far back as he has them. The same should be demanded from Mr. Fresch who apparently had access to such documents as part of this City investigation.
- e. The City Council should authorize an investigation under the Government Code in order to allow subpoenas to be issued to the bank, the City Administrator, Mr. Fresch and Mr. Karas, if necessary, in order to obtain the financial information needed.

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- f. The City should cause witnesses to be interviewed under oath for additional information regarding the City Administrator's potential misuse of City funds.
- g. The City should retain an independent CPA firm or auditor to provide an independent audit of the petty cash account, the City Administrator's credit card accounts and any other City account related to the City Administrator. Such action is consistent with CH: 8:11 of the Charter.³⁷

The City's current auditors were retained or recommended by Mr. Fresch. They were involved in providing a general analysis regarding the tax implications with respect to Mr. Fresch's review of the City Administrator's income tax issues. They have also been assigned to handle various other tasks for Mr. Fresch. I have recently been advised that Mr. Fresch refers to their work area at City Hall as the "hide out." The use of this term has dubious connotations. I do not have any evidence that they have acted improperly. Nevertheless, it would be wise to obtain an obviously independent firm to assist in addressing these issues.

- h. After the remainder of the investigation is completed, the City Council must determine the proper course of action. Submitting the matter to the proper authorities must be considered. Other alternatives and options must also be investigated.

³⁷ That Charter section provides, in part, that "[t]he city council shall appoint a California certified public accountant or firm of certified public accountants to provide an independent, annual audit of all city accounts, including the accounts of all departments, officers, and employees who receive, handle or disburse public funds. ..." (Emphasis added.)

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The City Council must recognize the extreme severity of the issues presented in this report. The preparation of this report and the obstacles presented throughout, have been extremely difficult and upsetting. Nevertheless, the information contained here was required by law to be presented to this City Council and requires further action. The City Council must have the fortitude to correctly address these matters.

I am ready and able to assist the City Council in completing the investigation and retaining additional help to properly advise the City on how to proceed.