



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 23-0011-C

SUBJECT MATTER: Alleged Violations of AI-7-26, AI-7-49, and Article 1 §3-1-13 and §3-1-14 and §3-1-20

STATUS: Final

INVESTIGATOR: J. O'Connell

DocuSigned by:

Jo Vonne O'Connell

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JOVONNE O'CONNELL
INVESTIGATOR
OFFICE OF INSPECTOR GENERAL

3/4/2024

Date of Completion

DocuSigned by:

Melissa R. Santistevan

369279ECC7574BA

MELISSA SANTISTEVAN
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL

3/13/2024

Date of Completion

AGO vote failed

VICTOR GRIEGO
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

6/6/2024

Date of Approval

DISTRIBUTION:

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Deputy Chief Administrative Officer**
- Members, Accountability and Government Oversight Committee**
- File**

EXECUTIVE SUMMARY

The City of Albuquerque Office of Inspector General (OIG) conducts investigations, inspections, evaluations, and reviews following Association of Inspectors General (AIG) standards.

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

The OIG received an anonymous complaint alleging that a Deputy Director (D1) with the City of Albuquerque (City) was a new employee with the City in an unclassified position when D1 received a "significant raise" and "hundreds of vacation leave hours" after being employed with the City for a short time. The referring party (RP) stated that as a result, D1 is paid more and has more benefits than other employees. This includes D1 having a higher salary than another employee in the department who is a long-time City employee and who has the same title as D1. The RP stated that there are violations of Administrative Instructions (AI) 7-26 and AI 7-49. According to the complaint, D1 received vacation leave when D1 allegedly was going to leave the City to pursue another job opportunity. The referring party alleges that D1's boss "bribed" D1 with a raise and vacation leave so that D1 would stay.

The OIG determined that the allegations contained elements of fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation.

As defined in the Inspector General Ordinance §2-17-3 fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority that is contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

The purpose of the investigation was to determine if D1 received an increase in vacation hours and pay, and if there was a violation of AI 7-26, AI 7-49, and Article 1 §3-1-13 and §3-1-14 and §3-1-20.

As a result of the investigation, the OIG was able to substantiate that D1 received enhanced accruals in leave and increases in pay. The investigation revealed that D1 was awarded additional vacation and sick leave hours, as well as an increase in D1's leave accrual rate for vacation leave. The investigation also revealed that D1 received six (6) pay increases since becoming employed with the City. The allegation that these enhanced accruals violated of AI 26 and AI 49 was unsubstantiated. AI 7-26 refers to classified employees. Given that D1 is an unclassified employee, AI 7-26 does not apply. AI 7-49 references unclassified employees entering the

classified service, and therefore does not apply concerning D1. However, during the course of the investigation, the OIG found that the increases in accruals violated City Ordinance § 3-1-13, §3-1-14, and § 3-1-20.

In addition, the OIG noted two (2) Subsequent Matters and provided a recommendation for improvement.

The following is a summary of the OIG's findings and recommendations aimed at rectifying the identified issues, enhancing accountability, and preventing future occurrences of fraud, waste, or abuse within the City's operations.

Findings:

- D1 was awarded additional vacation and sick leave hours.
- D1 received an increase in their leave accrual rate for vacation leave.
- The granting of excess leave accruals totaling \$12,116.25 appears to be a violation of Article 1 §3-1-13 and §3-1-14.
- D1 received six (6) pay raises within one year and nine months of becoming employed with the City. The extra compensation appears to violate City Ordinance §3-1-20 based on the fact that the required three conditions could not be met.
- FE was awarded additional sick leave hours. The granting of excess leave accruals appears to be a violation of Article 1 §3-1-14 and § 3-1-20.
- E1 was awarded additional sick leave hours. The granting of excess leave accruals appears to be a violation of Article 1 §3-1-14 and § 3-1-20.

Recommendations:

- The City should calculate the value of all additional benefits provided to D1 and recoup the cost of those benefits.
- The City should ensure that all personnel consistently follow all City policies and procedures, so as not to give the appearance that there are policies and procedures which only apply to certain situations or certain individuals and not to others.
- The City should calculate the value of all additional benefits provided to E1 and recoup the cost of those benefits.
- The City should ensure that all personnel consistently follow all City policies and procedures, so as not to give the appearance that there are policies and procedures which only apply to certain situations or certain individuals and not to others.
- The City should establish a plan outlining the specific criteria required for additional compensation.
- The City should ensure they are following the City Ordinance by seeing to it that there is a Settlement Advisory Committee and by having all settlements reviewed and approved by the Settlement Advisory Committee. If the City does not wish to do this, then the City should consider updating the Ordinance.

ABBREVIATIONS

CAO:	Chief Administrative Officer
City:	City of Albuquerque
D1:	Deputy Director
D2:	Deputy Director 2
DFAS:	Department of Finance and Accounting Services
E1:	Employee 1
FE:	Former Employee
OIG:	Office of Inspector General
RP:	Referring Party

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to provide independent and objective insight, oversight, and foresight in promoting integrity, efficiency, overall effectiveness, accountability, and transparency in government to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint:

A Deputy Director (D1) with the City of Albuquerque (City) was a new employee with the City in an unclassified position when D1 received a “significant raise” and “hundreds of vacation leave hours” after being employed with the City for a short time. The referring party (RP) stated that as a result, D1 is paid more and has more benefits than other employees. This includes D1 having a higher salary than another employee in the department who is a long-time City employee and who has the same title as D1. The RP stated that there are violations of Administrative Instructions (AI) 7-26 and AI 7-49. According to the complaint, D1 received vacation leave when D1 allegedly was going to leave the City to pursue another job opportunity.

Background:

D1 became employed with the City of Albuquerque (City) effective February 12, 2022 and is still currently employed. D1 was hired into an unclassified position and remains in an unclassified position.

INVESTIGATION

Allegation:

D1 received enhanced accruals in leave and pay raises within months of becoming employed with the City. As a result, D1 is paid more and has more benefits than other employees, including a long-time City employee who holds the same title as D1. The RP stated that there are violations of Administrative Instructions (AI) 7-26 and AI 7-49.

Authority:

AI NO: 7-26 POLICY FOR COMPENSATION ADJUSTMENTS FOR RETENTION OF MISSION CRITICAL EMPLOYEES

Purpose

To establish a compensation plan to retain qualified management and professional employees in mission critical positions, by providing competitive compensation adjustments to certain employees who have received outside offers of employment.

Policy

The City will implement a system to permit competitive compensation adjustments to retain classified management and professional employees in mission critical positions, who have received a bona fide offer of employment from another employer outside City government. The criteria for such adjustments and the procedure to determine when such adjustments will be awarded is as follows:

1. Criteria: A competitive compensation adjustment must meet **all of** the following criteria.
 - a. The employee must currently hold a classified position within City government as a permanent, non-probationary employee, and the City must reasonably anticipate some tangible or intangible benefit in retaining the employee.

AI NO: 7-49 LIMITATION OF COMPENSATION AND BENEFITS

The administrator of the Merit System Ordinance shall not enter into any Agreement with an unclassified city employee such that the salary or benefits of that employee upon entering the classified service are greater than that to which the employee would be entitled under the then-current city of Albuquerque classified pay plan or benefits schedule.

§ 3-1-13 VACATION LEAVE.

(A) Vacation leave will accrue on a biweekly basis from the day of a city employee's current permanent employment. Vacation leave may be taken as accrued, upon approval of the employee's department head or designee. Hours worked in addition to a regular work week as given below, shall not entitle an employee to additional vacation. The city shall not compensate employees and officials for unused vacation time, except:

- (1) Pursuant to a collective bargaining agreement; or
- (2) Any permanent employee separating from the city service is eligible to be compensated for accrued vacation leave as provided for in the Personnel Rules and Regulations.

(B) Vacation leave will accrue as follows:

Continuous Service	Regular Workweek	Bi-weekly Accruals	Accrual Per Year
Less than 5 years:	40 hours	3.85 hours	100 hours
	56 hours	5.39 hours	140 hours
More than 5 years BUT less than 10 years:	40 hours	4.62 hours	120 hours
	56 hours	6.47 hours	168 hours
More than 10 years BUT less than 14 years:	40 hours	5.54 hours	144 hours
	56 hours	7.76 hours	201.60 hours
More than 15 years:	40 hours	6.16 hours	160 hours
	56 hours	8.62 hours	224 hours

(C) The Mayor and the City Councilors do not accrue vacation time. The Mayor sets his or her own hours and days of work, consistent with his Charter position as a full-time official. Similarly, Councilors set their own hours and days of work, consistent with their duties to attend meetings and attend to their other responsibilities.

(D) Vacation accumulation will be computed as of the pay period including December 31 each year. The excess over 78 biweekly accruals shall be dropped from the record.

(E) No vacation time may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with § [3-2-1](#) et seq., Labor- Management Relations.

Policies regarding vacation leave can also be found under the City's Personnel Rules and Regulations 401.2 Vacation Leave.

§ 3-1-14 SICK LEAVE.

(A) Permanent city employees on a regular work week of 40 hours will accrue sick leave at the rate of 3.70 hours biweekly with a maximum accumulation of 1,200 hours allowed. Employees on a regular work week of over 40 hours shall accumulate additional sick leave both biweekly and

maximum accumulation on a basis proportional to the 40-hour week. Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the city; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours.

(B) Sick leave will accrue on a biweekly basis from the date of current, permanent, full-time, probationary or non-probationary employment. Hours worked in addition to a regular work week as listed above shall not entitle an employee to additional sick leave accumulation.

(C) Pro-rata conversion to cash payment or to vacation time of sick leave exceeding certain accumulations will be provided for in the Personnel Rules and Regulations. Pro-rata or full conversion of sick leave to early retirement will be provided for in the Personnel Rules and Regulations. Personnel Rules and Regulations providing for conversion to cash payment or to vacation time of sick leave exceeding certain accumulations shall be the same for classified and unclassified employees.

(D) Proper and reasonable provisions for controlling and verifying the use of sick and emergency leave will be established in the Personnel Rules and Regulations.

(E) In the event that collective bargaining agreements make reference to sick leave benefits, the reference will be to the ordinance as it was in effect at the time the agreement was ratified.

(F) No sick leave may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with § [3-2-1](#) et seq., Labor-Management Relations.

Policies regarding vacation leave can also be found under the City's Personnel Rules and Regulations 401.4 Sick Leave.

Article 1 § 3-1-20 Disposition of Awards states "(A) Nothing contained in this article shall prohibit the city from developing methods of rewarding employees by the giving of a reward, bonus, leave with pay or any other form of remuneration or extra compensation in addition to the regular compensation and employee benefits to a classified or unclassified employee so long as all of the following conditions are met:

- (1) The employee renders service that is outside of and in addition to the normal requirements and expectations of his or her employment;
- (2) The city reasonably anticipates some tangible or intangible benefit from such service; and
- (3) The service rendered results from a pre-existing plan or program authorized by the Chief Administrative Officer which sets up specific criteria for such extra compensation.

Analysis:

Review of Accruals

The OIG reviewed the PeopleSoft database and the leave accrual balances for D1. A review of the leave accrual balances revealed that for the pay period ending 10/21/2022 D1 had a vacation leave balance of 29.30 hours and accrued vacation leave at the rate of 3.85 hours per pay period. Given that D1 had been employed with the City for less than a year, this was the appropriate accrual rate (Continuous Service 0 to 4 years).

For the pay period ending 11/04/2022, D1's vacation leave balance increased to 43.15 hours. D1 was still accruing vacation leave at the rate of 3.85 hours per pay period. However, for this same pay period end date, leave accrual balance records revealed that D1's hours were adjusted (increased) by 10.0 hours. The adjusted 10.0 hours, in addition to D1's regular accrual of 3.85 hours is what brought D1's vacation leave balance to 43.15 hours.

For the pay period ending 11/18/2022, D1's vacation leave balance increased to 53.63 hours. The leave accrual balance record revealed that D1 used 8.0 hours of vacation leave. However, it also revealed that D1's hours were adjusted (increased) by 13.86 hours. In addition, the record revealed that D1 was now accruing vacation leave at the rate of 4.62 hours per pay period, which is the accrual rate for Continuous Service 5 to 9 years. D1 had still been employed with the City for less than one year. The adjusted 13.86 hours, in addition to D1's increased accrual rate of 4.62 hours, along with subtracting the 8.0 hours D1 took during this pay period, is what brought D1's vacation leave balance to 53.63 hours.

The OIG's review of D1's leave accrual balances between 11/18/2022 and 04/21/2023 revealed that D1 continued to accrue vacation leave at the rate of 4.62 hours per pay period. For the pay period ending 04/21/2023, D1's vacation leave balance was 48.45 hours. For the pay period ending 05/05/2023, the leave accrual balance record revealed that D1 used 8.0 hours of vacation leave. However, it also revealed that D1's hours were adjusted (increased) by 90.0 hours. The adjusted 90.0 hours, in addition to D1's accrual rate of 4.62 hours per pay period, along with subtracting the 8.0 hours D1 took during this pay period, left D1 with a vacation leave balance of 135.07 hours.

The OIG also reviewed D1's sick leave accruals. All City employees accrue sick leave at a rate of 3.70 hours per pay period. A review of the leave accrual balances revealed that for the pay period ending 10/21/2022 D1 had a sick leave balance of 66.60 hours.

For the pay period ending 11/04/2022, D1's sick leave balance increased to 150.30 hours. Leave accrual balance records revealed that D1's hours were adjusted (increased) by 80.0 hours. The adjusted 80.0 hours, in addition to D1's regular accrual of 3.70 hours is what brought D1's sick leave balance to 150.30 hours.

The OIG reviewed a memo dated 11/02/2022 from the Chief Administrative Officer (CAO) to D1 stating the following:

This memorandum is in regards to a review of your current salary as D1. Upon review it has been determined that your salary will be increased to \$62.50 per hour (\$130,000.00 annualized) effective October 8, 2022, representing a 12.31% increase.

I am happy to hear that you have made the decision to continue serving in this role. In addition to the salary increase, your leave accrual balances will be increased:

- *Sick Leave: 80 hours*
- *Vacation: 100 hours*

In addition, your vacation accrual rate will be set to mirror that of an employee with five to nine years of service. You will accrue 120 hours of vacation per year.

Thank you for your continued hard work and dedication to the residents of the City of Albuquerque.

The OIG also reviewed an email dated 11/30/2022 from an employee with the City's Central Human Resources (HR) Classification/Compensation and Employment division. The email stated the following:

Good morning,

Effective 10/08/2022, D1's leave balances have been increased so that D1 earns 4.62 hours of Annual leave per pay period.

Can you please add 13.86 hours of annual leave to D1's bucket?

Please let me know if you have any questions.

Based on the OIG's review of Article 1 §3-1-13 (E) No vacation time may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with §§ [3-2-1](#) et seq., Labor- Management Relations.

Additionally, Article 1 §3-1-14 (F) states "No sick leave may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with § [3-2-1](#) et seq., Labor-Management Relations."

The OIG found nothing in the Ordinances that provided the authority to any City employee, outside of a legal settlement, to grant benefits above the established ordinances, policies, and procedures. The granting of 113.86 hours of accrued vacation leave totaled \$7,116.25 based on D1's rate of pay. The granting of 80 hours of accrued sick leave totaled \$5,000.00 based on D1's rate of pay.

Combined, the additional leave granted resulted in a cost to the City and a benefit to D1 of \$12,116.25. This amount represents a minimum cost to the City due to the fact that D1 continued to earn and use accrued leave at an amount higher than allowable based on the ordinance. The OIG did not determine the exact cost of providing the additional benefits to D1.

Review of Pay History

The OIG reviewed the PeopleSoft database and the pay history for D1. The pay history revealed the following:

- Effective 07/02/2022 D1's pay increased from \$53.00 to \$55.65: Cost of Living Increase (COLA) for all City employees;
- Effective 10/08/2022 D1's pay increased from \$55.65 to \$62.50: Jobs Note stated "CAO approved Wage adjustment effective 10.8.22. Memo in EE file."
- Effective 06/17/2023 D1's pay increased from \$62.50 to \$64.38: Reason stated "Other – See Job Notes", however, there were no notes entered;
- Effective 07/01/2023 D1's pay increased from \$64.38 to \$66.63: COLA increase for all City employees;
- Effective 09/23/2023 D1's pay increased from \$64.38 to \$73.29: Job Note stated "CAO approved acting director assignment effective 9/23/23. Current Rate (\$66.63). New approved temp rate (\$73.29) - 10% increase (\$6.66). Rate will decrease by \$6.66 once assignment ends. Memo in EE file."
- Effective 11/04/2023 D1's pay increased from \$73.29 to \$80.73: Job Note stated "Temp assignment title change w/increase approved by CAO w/increase. Title change from Acting to Interim Director Pay change: Base salary = \$66.63. New rate = \$80.73 (21.16% increase). After temp assignment has ended pay will decrease by \$14.10. Memo in EE file."

The OIG reviewed the PeopleSoft database and pay history for the employee (D2) mentioned in the complaint who held the same title as D1 and who was a long-time City employee. A review of the PeopleSoft database for the same time period that D1 was employed revealed that D2 received two (2) Cost of Living Increases (COLA), which were given to all City employees. D2 did not receive any other pay increases other than the COLA increases. D2's current rate of pay is \$57.32. The database also revealed that D2 is a classified employee.

The OIG reviewed § 3-1-20 DISPOSITION OF AWARDS and found that there are three conditions and that all three must be met to grant additional compensation. One of the conditions requires that there be a pre-approved established plan authorized by the Chief Administrative Officer that creates specific criteria for extra compensation.

The OIG reached out to the Chief Administrative Officer (CAO) to inquire if there was a pre-existing plan or program. The CAO did not provide a documented plan. As such, this investigation was conducted on the basis that no such plan exists. Because this pre-existing plan is one of the conditions required under §3-1-20, the absence of a pre-existing plan to create specific criteria for extra compensation means that all three conditions were not met.

Review of Administrative Instructions

AI 7-26 refers to classified employees. Given that D1 is an unclassified employee, AI 7-26 does not apply. AI 7-49 references unclassified employees entering the classified service, and therefore does not apply concerning D1.

Allegation Conclusion:

As a result of the investigation, the OIG was able to substantiate the allegation that D1 received enhanced accruals in leave and increases in their pay. The allegation that these enhanced accruals violated AI 26 and AI 49 was unsubstantiated.

Finding 1:

The investigation revealed that D1 was awarded additional vacation and sick leave hours, as well as an increase in D1's leave accrual rate for vacation leave.

The granting of excess leave accruals totaling \$12,116.25 appears to be a violation of Article 1 §3-1-13 and §3-1-14.

Recommendation:

The City should calculate the value of all additional benefits provided to D1 and recoup the cost of those benefits.

The City should ensure that all personnel consistently follow all City policies and procedures, so as not to give the appearance that there are policies and procedures which only apply to certain situations or certain individuals and not to others.

Management Response:

The administration continues to object to a process whereby it is only permitted to respond to a cursory summary of the OIG's findings. As the administration has noted in the past, it is standard practice for auditors to provide a complete draft of an investigative report. This process allows those reviewing to respond to and address specific factual allegations that may underlie the findings. The administration encourages AGO to support an amendment to the Inspector General Ordinance to require the Inspector General to provide the administration with a complete draft

before the administration's response is due and permit the Department Director to attend the appropriate AGO meeting.

As has generally been the case, the summary for this matter does not provide sufficient information for the administration to provide a response. In particular, the summary does not indicate when the employee in question received pay increases and what justification was given for the increase. Without this information, it is difficult for the administration to determine whether the pay increases complied with City rules and regulations.

The administration also disagrees with the OIG's findings. The OIG first concludes that the administration violated ROA § 3-1-13 or § 3-1-14 by awarding the employee in question additional vacation and sick leave. The City, however, has a longstanding practice of negotiation over vacation and sick leave. The administration has never interpreted these ordinances to preclude this practice, and is not aware that prior administrations had adopted such an interpretation.

The OIG next finds that the employee's pay raises violated ROA § 3-1-20. That ordinance is inapplicable. Section 3-1-20 identifies criteria for the payment of bonuses and other "extra compensation." This ordinance does not govern the issuance of pay raises. The amount of pay for unclassified employees is set by the Chief Administrative Officer.

Finding 2:

The investigation also revealed that D1 received six (6) pay raises within one year and nine months of becoming employed with the City. The extra compensation appears to violate City Ordinance §3-1-20 based on the fact that the required three conditions could not be met because there was no pre-existing plan setting forth specific criteria.

Recommendation:

The City should ensure that all personnel consistently follow all City policies and procedures, so as not to give the appearance that there are policies and procedures which only apply to certain situations or certain individuals and not to others.

The City should establish a plan outlining the specific criteria required for additional compensation.

Management Response:

The administration continues to object to a process whereby it is only permitted to respond to a cursory summary of the OIG's findings. As the administration has noted in the past, it is standard practice for auditors to provide a complete draft of an investigative report. This process allows those reviewing to respond to and address specific factual allegations that may underlie the findings. The administration encourages AGO to support an amendment to the Inspector General Ordinance to require the Inspector General to provide the administration with a complete draft before the administration's response is due and permit the Department Director to attend the appropriate AGO meeting.

As has generally been the case, the summary for this matter does not provide sufficient information for the administration to provide a response. In particular, the summary does not indicate when the employee in question received pay increases and what justification was given for the increase. Without this information, it is difficult for the administration to determine whether the pay increases complied with City rules and regulations.

The administration also disagrees with the OIG's findings. The OIG first concludes that the administration violated ROA § 3-1-13 or § 3-1-14 by awarding the employee in question additional vacation and sick leave. The City, however, has a longstanding practice of negotiation over vacation and sick leave. The administration has never interpreted these ordinances to preclude this practice, and is not aware that prior administrations had adopted such an interpretation.

The OIG next finds that the employee's pay raises violated ROA § 3-1-20. That ordinance is inapplicable. Section 3-1-20 identifies criteria for the payment of bonuses and other "extra compensation." This ordinance does not govern the issuance of pay raises. The amount of pay for unclassified employees is set by the Chief Administrative Officer.

SUBSEQUENT MATTERS AND RECOMMENDATION

Subsequent Matter 1:

During the course of the investigation, the OIG identified that a former City employee (FE) received enhanced leave accruals.

Authority:

401.4 Sick Leave

E. Sick Leave Conversion at Termination

An employee who has an accumulation of sick leave of between 500 hours and the maximum accrual will, upon termination from city employment, be allowed to convert accumulated sick leave in excess of 500 hours on the basis of three (3) hours of sick leave to one (1) hour of case payment. This applies regardless of the option the employee selects in November of each year.

This benefit does not apply to employees terminated for cause. Employees terminated for cause will not be allowed to convert their accrued sick leave to case payment.

§ 3-1-14 SICK LEAVE.

(A) Permanent city employees on a regular work week of 40 hours will accrue sick leave at the rate of 3.70 hours biweekly with a maximum accumulation of 1,200 hours allowed. Employees on a regular work week of over 40 hours shall accumulate additional sick leave both biweekly and maximum accumulation on a basis proportional to the 40-hour week. Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the city; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours.

(B) Sick leave will accrue on a biweekly basis from the date of current, permanent, full-time, probationary or non-probationary employment. Hours worked in addition to a regular work week as listed above shall not entitle an employee to additional sick leave accumulation.

(C) Pro-rata conversion to cash payment or to vacation time of sick leave exceeding certain accumulations will be provided for in the Personnel Rules and Regulations. Pro-rata or full conversion of sick leave to early retirement will be provided for in the Personnel Rules and Regulations. Personnel Rules and Regulations providing for conversion to cash payment or to vacation time of sick leave exceeding certain accumulations shall be the same for classified and unclassified employees.

(D) Proper and reasonable provisions for controlling and verifying the use of sick and emergency leave will be established in the Personnel Rules and Regulations.

(E) In the event that collective bargaining agreements make reference to sick leave benefits, the reference will be to the ordinance as it was in effect at the time the agreement was ratified.

(F) No sick leave may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with § [3-2-1](#) et seq., Labor-Management Relations.

Policies regarding vacation leave can also be found under the City's Personnel Rules and Regulations 401.4 Sick Leave.

Article 1 § 3-1-20 Disposition of Awards states "(A) Nothing contained in this article shall prohibit the city from developing methods of rewarding employees by the giving of a reward, bonus, leave with pay or any other form of remuneration or extra compensation in addition to the regular compensation and employee benefits to a classified or unclassified employee so long as all of the following conditions are met:

- (1) The employee renders service that is outside of and in addition to the normal requirements and expectations of his or her employment;
- (2) The city reasonably anticipates some tangible or intangible benefit from such service; and
- (3) The service rendered results from a pre-existing plan or program authorized by the Chief Administrative Officer which sets up specific criteria for such extra compensation.

Analysis:

The OIG reviewed the PeopleSoft database and the leave accrual balances for FE. A review of the leave accrual balances revealed that for the pay period ending 08/25/2023 FE had a sick leave balance of 67.70 hours.

For the pay period ending 09/08/2023, the leave accrual balance record revealed that FE used 71.40 hours of sick leave. However, it also revealed that FE's hours were adjusted (increased) by 500.00 hours. The adjusted 500.00 hours, in addition to FE's accrual rate of 3.70 hours per pay period,

along with subtracting the 71.40 hours FE took during this pay period, left FE with a sick leave balance of 500.00 hours.

Further review of the PeopleSoft database revealed that FE terminated employment with the City on 05/21/2021. At this time, FE had a sick leave balance of 535.63 hours. A review of FE's paycheck summary revealed that per Personnel Rules and Regulations 401.4 E., FE's sick leave was adjusted (subtracted) by 500.00 hours and FE was paid out for the remaining 35.63 hours at one-third (1/3) the rate of FE's regular hourly pay rate.

FE became re-employed with the City on 01/29/2022 and began accruing sick leave at the rate of 3.70 hours per pay period from 02/11/2022 (the first pay period end date after FE's rehire) through the pay period ending 08/25/2023. It was around the time of the pay period ending 8/25/2023 that FE was no longer physically working for the City.

The following pay period ending 09/08/2023 FE's sick leave balance was adjusted (increased) by 500.00 hours. A memo dated 09/18/2023 from Central HR to the Department of Finance and Accounting Services (DFAS) requested that five hundred (500) hours of sick leave be restored to the accrual bank of FE.

The OIG calculated the cost to the City of the restored 500 hours of sick leave utilized by FE to be \$40,365.

The OIG reviewed Personnel Rules and Regulations 401.4 Sick Leave, which does not include language stating that if an employee terminates their employment with the City and then returns to City employment at a later time, that employee can have their previous sick leave balance restored.

However, during the course of the investigation, the OIG learned that FE entered into an agreement with the City, in which FE and the City agreed that FE would end FE's employment with the City and both would enter into a mutual release of all claims FE has or may have had against the City. As part of this agreement, the City's obligation was as follows:

The City shall restore five hundred (500) hours of previously accrued sick leave to Employee's current leave bank. The City shall permit Employee to utilize these hours of sick leave and other accrued sick leave until exhausted or until the effective date of their resignation. These restored hours of leave and their use is in full and complete settlement and release of any and all claims Employee has against the City that may exist, known or unknown, through Employee's Termination Date. Employee will not seek anything further from the City for any reason whatsoever for any events preceding the Termination Date. Employee understands, acknowledges, and agrees that they would not otherwise be entitled to the consideration for this Agreement were it not for the covenants, promises, and releases set forth in this Agreement.

The OIG reviewed City Ordinance § 2-8-1-1 **STATEMENT OF PURPOSE**, which states the following:

The City Council recognizes that, while the City Attorney must have maximum freedom in dealing with ordinary cases involving the city, the City Council must keep informed about the

settlement of cases of a serious nature, whether for financial or policy reasons. There are also cases of sufficient non-monetary importance to the city, that they should not be settled without City Council approval.

The OIG also reviewed City Ordinance § **2-8-1-4 SETTLEMENT ADVISORY COMMITTEE**, which states the following:

- (A) The Settlement Advisory Committee shall be constituted on an ad hoc basis for cases which, pursuant to § [2-8-1-3](#) require Council approval for settlement.
- (B) The Settlement Advisory Committee shall consist of the City Attorney, the Risk Manager, one Department Head or Senior Official appointed by the Mayor to consider the particular case at issue and two City Councilors appointed by the Council President. If the settlement under consideration involves property or activity uniquely within a Council district, the councilor from that district shall be considered for the Settlement Advisory Committee for that matter.
- (C) The Committee shall be strictly advisory to whoever is representing the city in a particular matter. The Committee shall take no votes. Any opinions expressed during a meeting of the Committee shall be the opinion of that member.
- (D) A settlement offer presented to the Settlement Advisory Committee shall satisfy an attorney's obligation to the city to present settlement offers to the city for consideration. Any individual member of the Committee may request that a settlement offer be presented to the full City Council. If such a request is made the offer shall be presented to the Council at the earliest possible Council meeting.

The OIG reviewed City ordinance Section 2-8-1-1 which permits the City Attorney maximum freedom to settle “ordinary cases”. While the above-noted agreement might well be considered an ordinary case, there was no underlying documentation provided to determine whether or not this situation would be considered an ordinary case. Section 2-8-1-3 provides criteria for cases requiring Council Approval. Section 2-8-1-4 requires that a Settlement Advisory Committee review and approve all settlements that meet the above-noted criteria before they are finalized. The release of waiver is ambiguous as to any underlying claim or complaint and thus did not provide the basis for settlement. As such, the OIG was unable to ensure that the agreement was not subject to the review and approval of the Settlement Advisory Committee.

The OIG contacted the City’s Legal Department to inquire if the Settlement Advisory Committee reviewed and approved the settlement agreement between the City and FE. The OIG was informed that FE was not in the Legal Department’s system for any matters. In addition, the OIG was informed that the Deputy City Attorney was not aware of any matter involving FE and that the City Attorney stated they were not involved in any matter or settlement involving FE. The City’s Legal Department did not have knowledge of there being a requirement in the Ordinance for a Settlement Advisory Committee.

The OIG contacted Council Services to find out which two City Councilors serve on the Settlement Advisory Committee. The Council Services employee the OIG spoke with stated that after checking into this, there was no information found relating to a Settlement Advisory Committee.

Before the initiation of the investigation into the subsequent matter, the OIG inquired with the City's Legal Department and City Risk Management and found no pending claims against the City by FE. Absent a documented claim against the City, there would be no basis for a settlement to pay any amount to a current or departing employee.

The Agreement granted additional benefits to FE which may violate Article 1 § 3-1-20 if all three conditions are not met. The OIG reached out to the Chief Administrative Officer (CAO) to inquire if there was a pre-existing plan or program. The CAO did not provide a documented plan. As such, this investigation was conducted on the basis that no such plan exists. Because this pre-existing plan is one of the conditions required under §3-1-20, the absence of a pre-existing plan to create specific criteria for extra compensation means that all three conditions were not met.

Subsequent Matter 1 Conclusion:

As a result of the investigation, the OIG was able to substantiate that FE received enhanced accruals in leave.

Subsequent Matter Finding 1:

The investigation revealed that FE was awarded additional sick leave hours. Administration entered into an Agreement and General Release with FE that granted additional leave beyond what the policy permits. The granting of excess leave accruals appears to be a violation of Article 1 §3-1-14 and § 3-1-20.

Subsequent Matter 2:

During the course of the investigation, the OIG identified that a City employee (E1) received enhanced leave accruals.

Authority:

§ 3-1-14 SICK LEAVE.

(A) Permanent city employees on a regular work week of 40 hours will accrue sick leave at the rate of 3.70 hours biweekly with a maximum accumulation of 1,200 hours allowed. Employees on a regular work week of over 40 hours shall accumulate additional sick leave both biweekly and maximum accumulation on a basis proportional to the 40-hour week. Permanent employees employed for a regular work week of 20 hours shall be entitled to half the leave benefits authorized for full-time, permanent employees of the city; leave benefits shall be prorated for employees employed for a regular work week of more than 20 hours.

(B) Sick leave will accrue on a biweekly basis from the date of current, permanent, full-time, probationary or non-probationary employment. Hours worked in addition to a regular work week as listed above shall not entitle an employee to additional sick leave accumulation.

(C) Pro-rata conversion to cash payment or to vacation time of sick leave exceeding certain accumulations will be provided for in the Personnel Rules and Regulations. Pro-rata or full conversion of sick leave to early retirement will be provided for in the Personnel Rules and Regulations. Personnel Rules and Regulations providing for conversion to cash payment or to vacation time of sick leave exceeding certain accumulations shall be the same for classified and unclassified employees.

(D) Proper and reasonable provisions for controlling and verifying the use of sick and emergency leave will be established in the Personnel Rules and Regulations.

(E) In the event that collective bargaining agreements make reference to sick leave benefits, the reference will be to the ordinance as it was in effect at the time the agreement was ratified.

(F) No sick leave may be accrued or accumulated by classified or unclassified employees or officials except as provided by this section or as provided by a collective bargaining agreement entered into consistent with § [3-2-1](#) et seq., Labor-Management Relations.

Policies regarding sick leave can also be found under the City's Personnel Rules and Regulations 401.4 Sick Leave.

Article 1 § 3-1-20 Disposition of Awards states “(A) Nothing contained in this article shall prohibit the city from developing methods of rewarding employees by the giving of a reward, bonus, leave with pay or any other form of remuneration or extra compensation in addition to the regular compensation and employee benefits to a classified or unclassified employee so long as all of the following conditions are met:

- (1) The employee renders service that is outside of and in addition to the normal requirements and expectations of his or her employment;
- (2) The city reasonably anticipates some tangible or intangible benefit from such service; and
- (3) The service rendered results from a pre-existing plan or program authorized by the Chief Administrative Officer which sets up specific criteria for such extra compensation.

Analysis:

The OIG reviewed the PeopleSoft database and the leave accrual balances for E1. A review of the leave accrual balances revealed that for the pay period ending 12/29/2023 E1 had a sick leave balance totaling 190.45 hours.

For the pay period ending 1/12/2024 the leave accrual balance record revealed that E1 used 72 hours of sick leave. However, it also revealed that E1's hours were adjusted (increased) by 220 hours. The adjusted 220 hours, in addition to E1's accrual rate of 3.70 hours per pay period, along

with subtracting the 72 hours E1 took during this pay period, left E1 with a sick leave balance of 342.15 hours.

The OIG calculated the cost, to the City, of the restored 220 hours of accrued sick leave for E1 to be \$17,760.60.

The OIG learned that E1 also entered into a settlement agreement with the City, in which E1 and the City agreed that E1 would end E1's employment with the City and both would enter into a mutual release of all claims E1 has or may have had against the City. As part of this agreement, The City's obligation was as follows:

The City shall provide two hundred and twenty (220) hours of sick leave to Employee's current leave bank. The City shall permit Employee to utilize these hours of sick leave and other accrued sick leave beginning January 15, 2024 until exhausted. These hours of leave and their use is in full and complete settlement and release of any and all claims Employee has against the City that may exist, known or unknown, through Employee's Termination Date. Employee will not seek anything further from the City for any reason whatsoever for any events preceding the Termination Date. Employee understands, acknowledges, and agrees that they would not otherwise be entitled to the consideration for this Agreement were it not for the covenants, promises, and releases set forth in this Agreement.

The OIG reviewed City ordinance Section 2-8-1-1 which permits the City Attorney maximum freedom to settle "ordinary cases". While the above-noted agreement might well be considered an ordinary case, there was no underlying documentation provided to determine whether or not this situation would be considered an ordinary case. Section 2-8-1-3 provides criteria for cases requiring Council Approval. Section 2-8-1-4 requires that a Settlement Advisory Committee review and approve all settlements that meet the above-noted criteria before they are finalized. The release of waiver is ambiguous as to any underlying claim or complaint and thus did not provide the basis for settlement. As such, the OIG was unable to ensure that the agreement was not subject to the review and approval of the Settlement Advisory Committee.

Before the initiation of the investigation into the subsequent matter, the OIG inquired with the City's Legal Department and City Risk Management and found no pending claims against the City by E1. Absent a documented claim against the City, there would be no basis for a settlement to pay any amount to a current or departing employee.

The Agreement granted additional benefits to D1 which may violate Article 1 § 3-1-20 if all three conditions are not met. The OIG reached out to the Chief Administrative Officer (CAO) to inquire if there was a pre-existing plan or program. The CAO did not provide a documented plan. As such, this investigation was conducted on the basis that no such plan exists. Because this pre-existing plan is one of the conditions required under §3-1-20, the absence of a pre-existing plan to create specific criteria for extra compensation means that all three conditions were not met.

Subsequent Matter 2 Conclusion:

As a result of the investigation, the OIG was able to substantiate the allegation that E1 received enhanced accruals in leave.

Subsequent Matter Finding 2:

The investigation revealed that E1 was awarded additional sick leave hours. Administration entered into an Agreement and General Release with E1 that granted additional leave beyond what the policy permits. The granting of excess leave accruals appears to be a violation of Article 1 §3-1-14 and § 3-1-20.

Recommendations:

The City should calculate the value of all additional benefits provided to E1 and recoup the cost of those benefits.

The City should ensure that all personnel consistently follow all City policies and procedures, so as not to give the appearance that there are policies and procedures which only apply to certain situations or certain individuals and not to others.

The City should establish a plan outlining the specific criteria required for additional compensation.

The City should ensure they are following the City Ordinance by seeing to it that there is a Settlement Advisory Committee and by having all settlements reviewed and approved by the Settlement Advisory Committee. If the City does not wish to do this, then the City should consider updating the Ordinance.

Management Response:

The administration continues to object to a process whereby it is only permitted to respond to a cursory summary of the OIG's findings. As the administration has noted in the past, it is standard practice for auditors to provide a complete draft of an investigative report. This process allows those reviewing to respond to and address specific factual allegations that may underlie the findings. The administration encourages AGO to support an amendment to the Inspector General Ordinance to require the Inspector General to provide the administration with a complete draft before the administration's response is due and permit the Department Director to attend the appropriate AGO meeting.

As has generally been the case, the summary for this matter does not provide sufficient information for the administration to provide a response. In particular, the summary does not indicate when the employee in question received pay increases and what justification was given for the increase. Without this information, it is difficult for the administration to determine whether the pay increases complied with City rules and regulations.

The administration also disagrees with the OIG's findings. The OIG first concludes that the administration violated ROA § 3-1-13 or § 3-1-14 by awarding the employee in question additional vacation and sick leave. The City, however, has a longstanding practice of negotiation over vacation and sick leave. The administration has never interpreted these ordinances to preclude this practice, and is not aware that prior administrations had adopted such an interpretation.

The OIG next finds that the employee's pay raises violated ROA § 3-1-20. That ordinance is inapplicable. Section 3-1-20 identifies criteria for the payment of bonuses and other "extra compensation." This ordinance does not govern the issuance of pay raises. The amount of pay for unclassified employees is set by the Chief Administrative Officer.

Note: This report was presented at the Accountability in Government Oversight (AGO) Committee on May 15, 2024. The motion to approve the report failed on a 2-2 vote causing a fifteen business (15) day delay in publishing to allow the AGO committee the opportunity to include a cautionary statement. The AGO Committee did not provide a cautionary statement to be added to the report.