



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 24-0011-C/24-0020-C

SUBJECT MATTER: Alleged violation of personnel policy and abuse of position by Department Director resulting in the waste of City resources and Taxpayer monies.

STATUS: Final

INVESTIGATOR: M. Santistevan

DocuSigned by:

Melissa R. Santistevan

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MELISSA SANTISTEVAN
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL

February 1, 2024
Date of Completion

AGO vote failed

VICTOR GRIEGO
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

June 6, 2024
Date of Approval

DISTRIBUTION:

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

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates in accordance with the Association of Inspectors (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the city's accountability.

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.

On January 4, 2024, the Office of Inspector General (OIG) received a complaint alleging violations of personnel policy and abuse of position by a Department Director (D1). The allegation states that certain employees (identified as Directors, Mayors Office Staff, and Counsel Service Staff) are being allowed to exhaust all sick and vacation accruals after they have given their resignation or date of retirement so each could continue to receive payment for the time out of the office. On January 11, 2024, the OIG received a similar complaint that alleged waste of City of Albuquerque (City) resources and taxpayer monies through the abuse of power and double filling of the DFAS Director position.

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

The purpose of the investigation was to substantiate or not substantiate, through the collection of sufficient evidence, the allegations of violations of personnel policy and abuse of position by a Department Director resulting in the waste of City resources and taxpayer monies.

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:

- Violations of City policies related to the granting of additional sick leave.
- D1 abused its authority by directing city employees to deviate from policy, perpetuating the perception of favoritism and resulting in additional costs to the City.
- Administrators and D1 granted certain employees additional sick leave benefits, resulting in payouts before resignations, incurring unnecessary costs.
- Violations of City policies led to \$52,659.43 of payouts to certain employees considered a waste of City resources and taxpayer money.
- Additional sick leave provided in release waivers without a documented legal claim is extra compensation not meeting City criteria.

Recommendations:

- Review, recalculate, and recoup excess payments.
- Assess disciplinary action for involved personnel.
- Ensure consistent application of personnel policies.
- Provide additional training on the policy application.
- Outline exceptions in personnel policies for consistent application.
- Develop specific criteria for extra compensation.
- Ensure a documented claim exists for each agreement or include the claim in the release waiver.

ABBREVIATIONS

CITY: City of Albuquerque

A1: Former City Administrator

A2: Former City Administrator

A3: Former City Administrator

A4: City Administrator

D1: Director

D2: Director

D3: Former Department Director

D4: Former Department Director

E1: Former City Employee

E2: Former City Employee

E3: Former City Employee

E4: Former City Employee

E5: Former City Employee

E6: City Employee

HR: Human Resource Department

OIG: Office of Inspector General

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint

Alleged violation of personnel policy and abuse of position by Department Director resulting in the waste of City resources and Taxpayer monies.

Background

The City originally included the Merit System; Personnel Policy in the '74 Code, §2-9-3. Article 1 §3-1-1 to 3-1-28 has been revised throughout the years with the last revision being Ord. 2018-036.

The establishment of the merit system was to govern the hiring, promotion, and discharge of employees and provide for the general regulation of employees. According to the Chart, the Mayor designates the Chief Administrative Officer of the city to be responsible for the administration of the merit system. The Chief Administrative Officer is authorized to establish Rules and Regulations to implement the article. If the article conflicts with any federal law, federal law will control.

In addition to Article 1 §3-1-1 to 3-1-28, the City issued separate Personnel Rules and Regulations to establish the policies and practices that will be followed by the City of Albuquerque in personnel administrations. They define a system based on merit and the principles that govern the conditions of City employment. These regulations do not constitute an employment contract and may be amended by the Human Resource Department, as necessary, with the approval of the Chief Administrative Officer.

Both documents address vacation and sick leave policies that will be the basis for what is acceptable practice for the City.

SCOPE AND METHODOLOGY

Scope: Use of sick and vacation accruals for specified employees who resigned or retired between August 2022 and December 2023.

The methodology consisted of:

- Assessing the complaint allegations

- Obtain and review evidence related to the Allegation

- Prepare an investigation work plan and get it approved build an Excel work plan

Review the City Articles and Policies regarding sick and vacation and termination of employment

Request Kronos time data

Request VPN logs

Request emails

Review HRMPROD data

Collect and review evidence or statements related to the events

Conduct Interviews or inquiries

Contact Legal to see if there is any pending litigation that would prohibit OIG from pursuing the investigation.

Contact Risk Management to see if there is any pending litigation that would prohibit OIG from pursuing the investigation.

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records available during the investigation.

INVESTIGATION

Allegations:

Alleged violation of City policies

Alleged abuse of power by a Department Director

Alleged waste of City resources and Taxpayer monies

Authority:

Personnel Policy Sections 401, 402, 403, and 801

Article 1 §2-8-1-1 and § 2-8-1-4

Article 1 § 3-1-13, §3-1-14, and §3-1-20

Evidence:

Kronos timesheet

VPN Logs

Emails

Payroll Accrual reports

Pay Summaries

Analysis of Evidence and Policies:

In conducting our investigation, the OIG considered the following facts as a basis for our analysis of the facts for each allegation.

City Ordinance § 2-8-1-1 states “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.”

Articles 1 § 3-1-13 and § 3-1-14 are restated in the Personnel Policy as Sections 401.2 and 401.4.

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.

The Chief Administrative Officer and the Human Resource Director did not provide a documented plan. As such, this investigation was conducted on the basis that no such plan exists.

Policies:

Section 401.2 Vacation Leave states “Vacation leave will accrue on a biweekly basis from the date of current employment. No vacation leave may be granted before it is accrued. Vacation leave will accrue through December 31 each year and the excess of seventy-eight (78) biweekly accruals will be dropped from the record at the end of the pay period containing December 31 unless the employee is in Early Retirement or has an effective retirement date of 1/1 of the following year. An employee separating from city employment will be compensated for the balance of their unused vacation computed to the date of separation. When a legal holiday, which would have been a regular workday for the employee, occurs during vacation, it shall not be charged as vacation leave but as a holiday.

In the event an employee exhausts their paid vacation leave during a pay period the accruals must be prorated based on the number of paid hours during the pay period.”

401.4 Sick Leave states “Classified and unclassified employees working a forty (40) hour workweek shall accrue sick leave at the rate of 3.70 hours biweekly up to a maximum of 1,200 hours unless otherwise specified in a collective bargaining agreement. No sick leave may be granted before it is accrued.

In the event an employee exhausts their paid sick leave during a pay period the accruals must be prorated based on the number of paid hours during the pay period. Provided the employee has an accrued sick leave balance, sick leave may be granted for absence from duty because of personal illness, illness of a spouse, domestic partner, son, daughter, or parent as these terms are defined in Section 401.11, L.”

402.6 Administrative Leave states “Chief Administrative Officer approval must be obtained prior to placing an employee on administrative leave.

A. Administrative leave with pay may be authorized for a loaned executive. A written request for a loaned executive must be submitted to the Chief Administrative Officer, which includes the period of time, direct benefit to the City, and the specialty or expertise requested. The City will negotiate the terms and conditions of the loaned executive including salaries, benefits, and operating expenses.

Requests for a loaned executive will be for a period not to exceed six (6) months, however, the Chief Administrative Officer may extend the term under exceptional circumstances. The loaned executive will prepare and submit a report of accomplishment to the Chief Administrative Officer and department director upon completion of the assignment.

B. Administrative leave with pay may be authorized by the Chief Administrative Officer for services or activities of employees outside the scope of their employment, which can reasonably be anticipated, directly or indirectly, to benefit the City. Such leave will not exceed eighty (80) hours.

C. An employee may be placed on administrative leave status during the period of an investigation. Such leave may be given with or without pay for good and sufficient reason that the Chief Administrative Officer considers to be in the best interest of the City service. Administrative leave during an investigation shall be limited to thirty (30) workdays. Administrative leave in excess of fifteen (15) workdays shall require approval by a committee composed of the Director of the Human Resources Department, the Director of the Office of Employee Relations, and the City Attorney or their designees. During this period of time, the Chief Administrative Officer may assign the employee duties and responsibilities that are of benefit to the City.”

403.10 Early Retirement States “Immediately prior to retirement from active service with the City of Albuquerque an employee may take leave with pay equivalent to the amount of sick and vacation leave the employee has accumulated. Employees who are eligible for retirement and are under the provisions of a collective bargaining agreement will be governed by the provisions of that agreement.

Employees in Early Retirement are not entitled to salary increases afforded to other City employees. Employees in Early Retirement are entitled to all benefits except vacation and sick leave accruals, donated leave, and hardship leave.”

801. Resignation states “Resignation is the voluntary termination of employment, prior to retirement. City employees who wish to resign in good standing shall submit a letter to their immediate supervisor at least two (2) weeks before leaving employment. The letter shall include the date the resignation will become effective.”

Evidence:

The OIG reviewed the sick and vacation use of eleven (11) identified employees alleged to have been authorized to utilize their sick and vacation leave in place of working out the term of their resignation or retirement.

The OIG reviewed the PeopleSoft data for A2, D5, E1, E2, E3, and E5 noting that the use of accruals was properly recorded and appeared to follow City policies.

The OIG reviewed the PeopleSoft data for A1 which revealed that A1 elected early retirement effective December 2, 2023. A1 worked in the City until November 3, 2023. A1 continued to earn vacation and sick leave between November 2023 and December 2023.

On December 31, 2022, A1 had an accrued vacation balance totaling 458.66 hours. During 2023, A1 earned 110.88 vacation hours, used 0 hours, and had an adjustment of accrued vacation totaling 16 hours.

On December 31, 2022, A1 had an accrued sick balance totaling 468.62 hours. During 2023, A1 earned 88.80 sick hours, used 152 sick hours, and had an adjustment of accrued sick hours totaling 72 hours. The adjustment represented a reduction in accrued sick leave hours.

The pay summaries reflect that A1 was paid for regular hours worked through December 1, 2023. Pay summaries for A1 did not reflect vacation or sick time used through December 1, 2023. Since December 2, 2023, A1 has been paid as sick leave early retirement.

An OIG review of A1’s KRONOS timesheet and pay summaries confirmed the allocation of time denoted above.

The OIG was not provided any documentation to support the granting or the approval of regular hours worked from November 3, 2023 to December 1, 2023. The 136 hours allocated to regular hours worked resulted in a cost to the City and a benefit to A1 of \$14,923.28.

The OIG requested VPN logs for A1 for November 2023 and December 2023 and was advised that there were none.

An OIG review of emails reflected a delegation of duties effective November 3, 2023, and an email from A1 to City employees on A1's last day.

The OIG reviewed the PeopleSoft data for A3 which revealed that A3 resigned effective August 2022. A3 physically worked in the City through April 2022. A3 continued to earn vacation and sick leave between April 2022 and August 2022. A3 was paid full-time hours coded to vacation through June 2022 and then to Paid Leave Other from June to August 2022. On July 1, 2022, A3 received a pay increase per the City’s approved budget.

On December 31, 2021, A3 had an accrued vacation balance totaling 300.41 hours. During 2022, A3 earned 61.60 vacation hours, used 327.37 hours, and had an adjustment of accrued vacation hours totaling 34.64. The adjustment represented a loss of vacation hours. The pay summaries do not reflect that A3 was paid out for 34.64 hours of vacation time per City policy. A3 was paid for 312.63 hours of Paid Leave Other between June 2022 and August 2022.

An OIG review of A3's KRONOS timesheet and pay summaries confirmed the allocation of time denoted above.

The OIG found no evidence to support that D1 authorized or approved the Paid Leave Other for A3.

The OIG requested VPN logs for A3 for April 2022 through August 2022 and was advised that there were none.

The OIG was not provided any documentation to support the granting or the approval of Paid Leave Other for A3. The 312.63 hours allocated to Paid Leave Other resulted in a cost to the City and a benefit to A3 of \$33,145.03.

An OIG review of emails reflected the departure of A3 in April 2022.

The OIG reviewed the PeopleSoft data for D4 which revealed that D4 resigned effective December 31, 2023. D4 physically worked in the City through August 31, 2023. D4 continued to earn vacation and sick leave between August 2023 and December 2023. On August 31, 2023, D4 had a sick leave balance of 0. On September 1, 2023, D4 received an adjustment of 500 hours of accrued sick leave. D4 utilized sick leave from September 1, 2023 through December 22, 2023.

On December 31, 2022, D4 had an accrued vacation balance totaling 18.30 hours. During 2023, D4 earned 156.59 vacation hours, used 108 vacation hours, had an adjustment of accrued vacation hours totaling 10 hours, and was paid out for 76.89 hours of accrued vacation time. The pay summaries do reflect that D4 was paid out for 76.89 hours of accrued vacation time.

On December 31, 2022, D4 had an accrued sick balance totaling 72.80 hours. During 2023, D4 earned 94.05 sick hours, used 661.60 sick hours, and had an adjustment of accrued sick hours totaling 500 hours. The OIG calculated the cost, to the City, of the restored 500 hours of sick leave utilized by D4 to be \$40,365.

The OIG was provided a memo from D1 to D2 as support for restoring 500 hours of sick leave to the bank for D4. This memo was carbon copied to A1, A2, and D3. The OIG was advised by D2 that a memo from HR is usually related to a settlement. D1 stated that D1 was directed to restore the sick leave hours through conversations with D3 and A2. D1 provided a copy of a release waiver signed by D4, D1, and A1.

The OIG reviewed City ordinance §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's review of the pay summaries for D4 reflected that D4 used 148 vacation hours. As noted above the vacation accrual history for D4 reflects that D4 used 108 vacation hours resulting in a discrepancy of 40 hours. If the pay summaries are correct, D4 was paid out for 40 hours of vacation time that should not have been available, resulting in an overpayment. This overpayment resulted in a cost to the City and a benefit to D4 of \$3,229.20.

The OIG's review of the pay summaries for D4 also revealed that Paid Leave Other was granted in the amount of 8.60 hours in one pay period, then was reversed in the following pay period and the 8.60 hours were then coded to sick leave. This was done to ensure D4 was paid for 80 hours for the pay period. D4 was short accrued sick leave of 8.60 hours, due to sick leave being exhausted.

An OIG review of emails revealed that D4 was on personal leave and that a delegation of Authority for D4 was granted to a Deputy Director effective September 1, 2023. An email from D1 to D4 stated that it is understood that D4 would be resigning effective December 23, 2023, which is the conclusion of the available sick leave.

The OIG requested VPN logs for D4 for September 2023 through December 2023 and was advised that there were none.

The OIG reviewed the PeopleSoft data for E4 which revealed that E4 resigned effective December 29, 2023. E4 physically worked in the City through December 21, 2023. E4 continued to earn vacation and sick leave between December 21, 2023 and December 29, 2023. E4 did not physically work on December 15, 2023, and December 22, 2023 through December 29, 2023.

On December 31, 2022, E4 had an accrued vacation balance totaling 10.45 hours. During 2023, E4 earned 98.37 vacation hours, used 92.95 vacation hours, and was paid out for 15.87 hours of accrued vacation time. The pay summaries do reflect that E4 was paid out for 15.87 hours of accrued vacation time.

On December 31, 2022, E4 had an accrued sick balance totaling 10.90 hours. During 2023, E4 earned 94.54 sick hours, used 90.90 sick hours, and had an adjustment of 14.54 accrued sick hours. The adjustment was for the loss of accrued sick hours.

The OIG obtained email evidence dated December 27, 2023, of D1 directing HR staff to process E1's resignation on Friday, December 29, 2023, and stating that E1 is "working all the way through Friday but may be on sick leave throughout the week."

The OIG reviewed the revised paycheck summaries and timecards for E4 revealing that E4 was paid for 32 hours of regular pay, 8 hours of holiday pay, 14.54 hours of sick leave, 15.87 hours of vacation leave, 3.39 hours of vacation termination payout, and an adjustment of 3.26 hours of sick leave.

The OIG analyzed the revised paycheck summary and found several discrepancies. The 8 hours of sick taken on December 15, 2024, adjusted on the original check that was reversed were not

calculated into the revised check causing incorrect leave balances, resulting in an overpayment of vacation termination payout. Additionally, the OIG noted that the paycheck summary reflected the utilization of sick and vacation accruals that had not yet been earned/accrued.

The OIG calculated that E4 was overpaid resulting in a cost to the City and a benefit to E4 of \$1,404.92 in gross payroll expense.

The OIG requested VPN logs for E4 for December 2023 and was advised that there were none.

The OIG found no statement in the policies that discretion could be used when determining leave accruals, use, or payouts.

E4 was advised of an overpayment and required to reimburse the City \$526.86. The receipt of reimbursement was recorded on January 29, 2024, by the City's Human Resources Department.

Based on a tip, the OIG reviewed the PeopleSoft data for E6 on February 22, 2024, which revealed that E6 is a current employee and continues to accrue vacation and sick leave.

On December 29, 2023, E6 had an accrued sick leave balance totaling 190.45 hours. On January 12, 2024, E6 earned 3.7 hours of accrued sick leave and received an adjustment of 220 hours of sick leave bringing the accrued sick leave balance to 342.15 hours. On January 26, 2024, E6's sick leave accrual balance reflects a beginning balance of 190.45 hours, 7.40 hours earned, 152 hours taken, and 220 hours adjusted resulting in a balance of 265.85 hours.

The OIG was provided a memo from D1 to D2 as support for restoring 220 hours of sick leave to the bank for E6. The OIG was provided a copy of a release waiver signed by E6 and A4.

The OIG reviewed City ordinance §2-8-1-1 permitting the City Attorney maximum freedom would appear that this agreement would be considered an ordinary case permitting the City Attorney maximum freedom. §2-8-1-3 provides criteria for events requiring Council Approval. §2-8-1-4 requires that a Settlement Advisory Committee review and approve all settlements before they are finalized. The releases of waiver were ambiguous and did not provide the basis of the claim resulting in the OIG's inability to ensure that the agreement was not subject to the review and approval of the Settlement Advisory Committee.

The OIG calculated the cost, to the City, of the restored 220 hours of accrued sick leave for E6 to be \$17,760.60.

In addition to the money each recipient received, the recipients may also benefit from extended city-provided insurance and other benefits such as service credits for PERA.

FINDINGS AND RECOMMENDATIONS

Allegation 1:

Alleged violation of City policies

Finding:

The OIG's investigation of eleven (11) city employees who allegedly received benefits not afforded to other employees revealed deviations from City Ordinances Article 1 §2-8-1-1 and § 2-8-1-4, Article 1 § 3-1-13, §3-1-14, and §3-1-20 as well as City Policies and procedures, sections 401, 402, 403, and 801. The investigation revealed that six (6) of the employees received additional sick leave in violation of the policy and were able to utilize the sick leave as paid time off, up to their date of resignation. Management override and deviations from City laws, regulations, policies, and procedures create the perception of preferential treatment for certain employees resulting in a benefit to certain employees and an additional cost to the City.

The OIG was able to substantiate deviations from the City policies for six (6) of the investigated employees.

Allegation 2:

Alleged abuse of power by a Department Director

Finding:

The OIG's investigation of eleven (11) city employees who allegedly received benefits not afforded to other employees revealed deviations from City Ordinances Article 1 §2-8-1-1 and § 2-8-1-4, Article 1 § 3-1-13, §3-1-14, and §3-1-20 as well as City Policies and procedures, sections 401, 402, 403, and 801. The investigation revealed that D1 directed other city employees to process deviations in the City policies for three (3) of the eleven (11) employees investigated.

The OIG was able to partially substantiate the alleged abuse of power by D1 because D1 directed other city employees to process deviations in City policy, resulting in the perception of preferential treatment for certain employees resulting in a benefit to certain employees and an additional cost to the City.

Allegation 3: Alleged waste of City resources and Taxpayer monies

Finding:

The OIG's investigation of eleven (11) city employees who allegedly received benefits not afforded to other employees revealed deviations from City Ordinances Article 1 §2-8-1-1 and § 2-8-1-4, Article 1 § 3-1-13, §3-1-14, and §3-1-20 as well as City Policies and procedures, sections 401, 402, 403, and 801. The investigation found that both Administrators and D1 granted additional benefits of sick leave to certain employees and permitted it to be paid out to the employees before their resignations. The payouts to the employees are additional monies that the City would not have otherwise had to pay out.

The OIG was able to substantiate that the violation of City policies resulted in the City paying out an additional \$52,659.43, to certain employees absent a settlement, which is considered a waste of City resources and Taxpayer monies. The OIG is considering the \$40,365 and the \$17,760.60 paid under the release waivers as a questioned cost as this was not a formal settlement but rather an agreement entered into with no basis of a legal claim. If considered extra compensation, the \$58,125.60 paid did not meet all criteria outlined in Article 1 § 3-1-20 as required. Additionally, the City did not provide a pre-existing plan or program authorized by the Chief Administrative Officer which sets up specific criteria for such extra compensation.

Recommendations:

The City should review, recalculate, and recoup excess payments to A1, A3, D4, and E4.

The City should determine if disciplinary action is warranted for City Personnel authorizing these transactions and if so take appropriate action.

The City's Human Resource Department should consistently adhere to and apply the Personnel policies to all employees.

The City's Human Resource Department should undergo additional training on the Personnel Policy and how to apply the policies.

All exceptions should be outlined in the Personnel Policy so that the rules and regulations can be applied consistently amongst all employees.

The Chief Administrative Officer should promulgate a plan or program identifying specific criteria for the award of extra compensation as referenced in Article 1 § 3-1-20.

The best practice would be for City Legal to review each settlement agreement and assess whether it derives from a documented claim that provides the basis for settlement. If agreements were made without a documented claim, then City Legal should assess the financial and risk liability that entering into such agreements creates for the City.

Management's 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 identify the employees who were permitted to exhaust sick and vacation leave. The summary also criticizes a Department Director for directing personnel to deviate from policy, but does not indicate what

direction was given. Without this information, it is difficult for the administration to determine whether the use of leave complied with City rules and regulations.

The administration also disagrees with the OIG's findings. The OIG finds that the City violated policy by 1) granting additional sick leave to individual employees and 2) allowing employees to exhaust their sick leave after giving notice. The OIG asserts that these practices violate multiple ordinances, without distinction. It appears however, that the OIG believes the granting of additional sick leave violates ROA §§ 3-1-13, 3-1-14 and 3-1-20. The City disputes this contention. The City 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 administration also disputes that it is improper to permit City employees to exhaust sick leave after they have given notice. The City's personnel rules specify that employees "may convert 100% of accumulated sick leave to be applied to early retirement leave immediately prior to the effective date of retirement" and that "may convert 100% of both sick and vacation leave accumulation to cash payment at the time of retirement." Personnel Rule 401.4(D). The rules further provide that "Immediately prior to retirement from active service with the City of Albuquerque an employee may take leave with pay equivalent to the amount of sick and vacation leave the employee has accumulated." Personnel Rule 401.4(D). Thus, the administration was following its written rules and regulations when permitting the employees in question to exhaust sick leave prior to retirement.

The administration also finds it concerning that the OIG would assert that release agreements were entered "with no basis of a legal claim." This assertion is simply false. While the administration cannot discuss the details, some of the employees in question did assert claims and the additional sick at issue was part of the consideration for the release of those claims.

The OIG appears to suggest, by referencing ROA §§ 2-8-1-1 and 2-8-1-4, that the administration was required to get approval for those agreements. This is incorrect. ROA §§ 2-8-1-1 and 2-8-1-4 establish a process for City Council to approve specific types of claims. Those ordinances have no application to claims brought by employees. The administration has the authority to resolve such claims.

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 (15) business 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.