

**Examination of Certain Policies, Procedures, Controls, and  
Financial Activity of the City of Somerset**



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**ADAM H. EDELEN**  
**AUDITOR OF PUBLIC ACCOUNTS**

August 26, 2015

The Honorable Mayor Edward Girdler  
City of Somerset  
400 E. Mt. Vernon Street  
P.O. Box 989  
Somerset, Kentucky 42502

RE: Examination of Certain Policies, Procedures, Controls, and Financial Activity of the City of Somerset

Dear Mayor Girdler:

We have completed our Examination of Certain Policies, Procedures, Controls, and Financial Activity of the City of Somerset (City). This examination resulted in 29 findings and offers multiple recommendations to strengthen the management and internal controls of the City.

These findings identify serious concerns regarding questionable procurement, contracting, and use of funds; weak internal controls related to fiscal management and oversight; and disregard for policies, ordinances, and other laws. Due to the nature of certain findings discussed within this report, we are referring these issues to the Attorney General's Office, the Department of Revenue, the Department of Labor, the Department of Agriculture, and the City Board of Ethics for further consideration.

In performing this examination, auditors reviewed thousands of documents, conducted interviews, and examined the documentation for certain City financial and management activities. To address the objectives of the examination, this office interviewed over 30 individuals, including but not limited to, current and former City personnel, current and former City Council Members, the Mayor, the City CPA, and City contractors. In addition, the APA reviewed numerous City records, including but not limited to meeting minutes, ordinances, policies, budgets, credit card statements, vendor payments, personnel files, timesheets, payroll records, bid files, vendor contracts, and audited financial statements.

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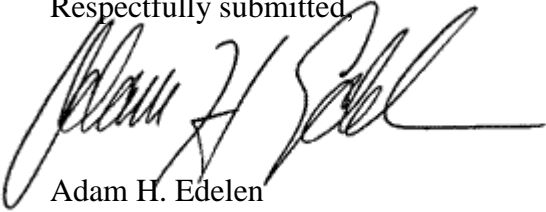
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Mayor Girdler  
August 26, 2015  
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The Auditor of Public Accounts requests a report from the City on the implementation of the examination recommendations within (60) days of the completion of the final report. If you wish to discuss this report further, please contact Libby Carlin, Assistant Auditor of Public Accounts, Brian Lykins, Executive Director of the Office of Technology and Special Audits, or me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam H. Edelen", written over a horizontal line.

Adam H. Edelen  
Auditor of Public Accounts





## **Examination of Certain Policies, Procedures, Controls, and Financial Activity of the City of Somerset**

### **Scope and Methodology**

The Auditor of Public Accounts (APA), in response to concerns expressed to this office regarding certain financial and other activity of the City of Somerset (City), initiated an examination of specific issues at the City. The purpose of this examination was not to provide an opinion on financial statements or activities, but to review these concerns with the following objectives:

- Determine whether policies governing procurement are adequate, consistently followed, and provide for a transparent process.
- Review City human resource policies and employment practices and determine whether such policies and practices are fair and equitable
- Analyze certain categories of financial activity for compliance with city policies and for various transaction activities, as well as to determine whether transactions appear reasonable, necessary, and have a related business purpose.
- Review other significant issues identified during the examination process.

Unless otherwise indicated, the examination period of this engagement was July 1, 2013 through December 1, 2014; however, the time period of certain documents reviewed and various issues discussed with those interviewed may have varied.

### **Background**

Located in southeast Kentucky, the City of Somerset serves as the county seat of Pulaski County. As of the 2010 US Census, the City had a population of 11,196. The City is organized and governed under a Mayor-Council form of government, the powers and duties of which are addressed in KRS 83A.130. The current Mayor was first elected into office in 2006 to serve a four-year term beginning January 1, 2007, and was subsequently reelected in 2010 and 2014. The Council is made up of 12 members, each elected from one of the 12 City wards and serves as the legislative body of the

City. Of the 12 current City Council members, 11 have served more than one term in office.

### **Personnel**

In 2014, City records indicate that the City employed 623 personnel, all of which are considered at-will employees that the Mayor, as the executive authority of the City, may hire and fire City personnel without recourse. Of the 623 personnel, the City has approximately five to six nonelected officers appointed by the Mayor and approved by City Council that include the positions of City Attorney, City Clerk, Chief Financial Officer (CFO), Fire Chief, and Police Chief. Full-time positions are established by City Council through an adopted Pay and Classification Plan and City Personnel Policies do not allow the Mayor to appoint an employee for a position not accounted for in the Pay and Classification Plan. The City participates in the County Employees Retirement System administered by the Kentucky Retirement Systems with contributions totaling \$3,489,873 for the year ending June 30, 2014.

### **Financial**

As required by KRS 91A.040, the City's financial statements are audited each year by an independent CPA. Based on these audits, the City's net position increased from \$98.3 million in FY 2013 to \$100.6 million in FY 2014. The City reported a deficit in its Governmental Funds of almost \$6.8 million for the year ending June 30, 2014, a slight improvement from the previous year's deficit of \$7.2 million. The majority of the deficit was derived from the City's General Fund. Conversely, the City Proprietary Funds provided operating income of over \$4 million to the City in 2014, down from the \$4.8 million in the previous year. During the examination period, City Proprietary Funds consisted of the City Gas, Water, Wastewater, Sanitation, and Water Park, with over 50 percent of revenue generated from the City Gas Department. The City Wastewater and Water Park were the only departments reporting losses.

### Utilities

Utility services include natural gas, water, and waste water. Utility services provided to City residents and others in the surrounding geographic area generated revenue of \$18.5 million in FY 2014. Utility rates have remained unchanged for the past seven years. According to the City's FY 2014 financial statements, the City's Gas Department generated \$12.6 million in operating revenue. The City owns a natural gas pipeline that extends approximately 175 miles through 5 counties within Kentucky, including: Leslie, Clay, Laurel, Pulaski, and Casey Counties. The City receives a fee for transporting the gas along the pipeline and can sell the gas directly to customers along the 175 mile line.

### Fuel Center

Prior to July 2014, the City operated its Fuel Center facility to maintain unleaded and diesel fuel storage for use by its own City fleet and for resale to other local non-profit organizations. For the year ending June 30, 2014, Fuel Center Fund expenditures exceeded revenues by \$332,834. In July 2014, the City began selling unleaded fuel to the general public in an effort to stabilize fuel costs for its residents. Financial information for this year has not yet been audited by the City's external auditor.

### Water Park

Since 2006, the City has operated a public Water Park, which is part of the City's Proprietary Funds because the City charges a fee to use the Water Park facilities. The Water Park's financial operations have been a source of public controversy because it has reported a loss each fiscal year. In each of the last two fiscal years the Water Park has reported a loss of over \$1 million.

### Downtown Somerset Development Corporation

Though a separate legal entity, the Downtown Somerset Development Corporation is a component unit of the City with varied financial dependence. According to the City's audited financial statements, the Corporation received 79 percent of its total revenues and transfers from City funds in FY 2010. In FY 2013, the dependency increased to 90 percent with a decrease to 85 percent in FY 2014.

## **Findings and Recommendations**

**Finding 1: Several City personnel expressed concern and were hesitant to assist auditors in the examination for fear of retaliation.**

Several City personnel in various departments stated that they were concerned about making statements to auditors during the examination process, and at times indicated to auditors that they were hesitant to assist in the examination for fear of retaliation. Several City

employees noted to auditors multiple times that they were at-will employees, and that the Mayor had the authority to terminate their employment for no cause. While the City Ethics Ordinance prohibits retaliation against persons who, in good faith, report facts and information related to possible violations of the City's code of ethics, it appears that these employees have a significant amount of concern and distrust as to whether they would be afforded appropriate protections. Although several concerns were expressed from various City personnel, Kentucky's "Whistleblower Act," KRS 61.101 *et seq.*, has been interpreted by Kentucky's highest court not to extend protections to City employees.

**Recommendations:** We recommend the Kentucky General Assembly consider revising the Kentucky Whistleblower Act to clearly include Kentucky cities as employers for the purpose of the Act. This action should be taken in an effort to provide additional protections to the thousands of public employees working in over 400 cities in Kentucky to provide efficient and effective services to the public. In addition, we recommend City management disseminate to all City employees information regarding the City's Ethics Ordinance, No. 94-14 Section 29, which prohibits reprisal against persons disclosing violations. City management should take steps to establish an appropriate tone that management is willing to be accountable and transparent.

**Finding 2: The City failed to competitively bid for at least \$280,000 of services.**

The City failed to consistently comply with City Ordinance 10-01 that required certain services exceeding \$20,000 to be competitively bid. This Ordinance, passed on March 8, 2010, adopted the Kentucky Model Procurement Code, KRS 45A.343 through 45A.460, requiring the City to seek competitive bids for certain procurements costing over \$20,000. The examination of a sample of vendor payments from July 2013 through February 2015, however, found the City expended over \$280,000 for tree trimming, brush removal, and excavation work without competitively bidding for these services.

**Recommendations:** We recommend the City consistently follow the Model Procurement Code that it adopted through City Ordinance 10-01. In accordance with this Ordinance, we recommend purchases over \$20,000 consistently be competitively bid, unless exempted by the Model Procurement Code, to ensure cost effective pricing and to increase transparency. We further recommend total project costs be considered in determining whether competitive bids are required. Project work activity should not be divided into smaller projects in an attempt to circumvent competitive bidding requirements. We recommend the City follow

a consistent process to collect relevant bid documentation and maintain this information in a central location. Specifically, we recommend the City clearly and consistently document the time and date when bids are received, a formal analysis of the bids received, along with the recommendation as to the winning bidder. Finally, once a winning bidder has been selected, a written statement should be maintained in the bid file identifying the winning bidder. We also recommend that the City provide formal training to all City personnel involved in the procurement process.

**Finding 3: City negotiations establishing special natural gas rates with industrial customers are not consistently documented in written contracts, even though the City states agreements exist.**

A review of Kentucky statutes found that municipal natural gas systems are not regulated by the Public Service Commission (PSC) nor do statutes provide for a local independent commission or for other safeguards to govern the operation of these systems. It was determined that the Mayor, on behalf of the City, negotiates special rates with industrial natural gas customers of the City's natural gas system. The special rates for the industrial customers resulting from these negotiations are not consistently documented in written contracts, even though the City states that agreements exist. Specifically, written contracts are not consistently developed subsequent to the Mayor negotiating special natural gas rates with industrial customers. Due to the lack of formal, written contracts resulting from these negotiations, questions and concerns were raised regarding the City's process to establish natural gas rates and whether the terms of the agreements are reasonable or fair.

**Recommendations:** We recommend that the general schedule of natural gas rates implemented by the City be presented to the City Council and posted on the City's website to provide transparency. We recommend the City ensure a consistent process to formally document, in writing, all rate agreements resulting from negotiations to ensure consistency, accountability, and transparency. Contracts should clearly define the roles and responsibilities of each party and the terms of the agreement. We recommend that all contracts be reviewed by the City Attorney to ensure the terms are fair, reasonable, and that the City's interests are protected. Contracts should also be executed by all parties to the contract and maintained by the City in a centralized location for access by appropriate City staff responsible for ensuring payments or charges for services are made in accordance with contract terms. Finally, we recommend the Kentucky General Assembly consider legislation to provide oversight and safeguards for the operation of city natural gas systems, including

providing cities authority to create natural gas commissions, similar to artificial gas commissions permitted by KRS 96.545.

**Finding 4: The City made a total of \$2.7 million in adjustments to City utility charges for all utilities from July 2012 through approximately January 2015, with no formal written policies.**

According to City records, total adjustments made to City utility charges for all utilities was over \$1.7 million for FY 2013, over \$580,000 for FY 2014, and over \$450,000 for approximately seven months of FY 2015. The City recorded adjustments electronically in a spreadsheet; however, this documentation does not provide sufficient information to document a valid authorization or purpose for an adjustment.

**Recommendations:** We recommend the City develop and implement a formal, written policy to address utility account fee adjustments that include criteria for making an adjustment, the process used to determine the amount adjusted, personnel who can authorize an adjustment, and the process to document and retain this information.

**Finding 5: The City did not consistently follow policy, had insufficient documentation, and at times did not obtain prior approval for certain vendor payments.**

An examination of a sample of vendor payments made between July 1, 2013 and January 2015, found invoices were paid despite a lack of sufficient supporting information including the dates, locations, description of work performed, the number of hours worked, the billing rate, the description and quantity of materials used, or whether written contracts existed in association with the services rendered. In addition, the City uses a PO system to authorize City employees to expend funds prior to making purchases. It was noted that POs were frequently issued after the dates of the invoices, indicating that the PO process is often being ignored by City employees.

**Recommendations:** We recommend vendor contracts require detailed invoices be submitted to appropriate City personnel. Details should be provided on an invoice regarding work performed including: date of service, description of service, number of hours worked, billing rate, and description and quantity of materials used. Invoices should be reviewed for accuracy and compliance with contract terms by appropriate City personnel prior to payment. We recommend the City adopt and implement a formal, written policy requiring POs to be approved by appropriate personnel prior to the purchase of goods or services. In an emergency situation, a PO should be completed as soon as possible after a purchase is made and with the justification for the emergency documented on the PO. Also, we

recommend that the City implement a centralized filing system for all contracts, making this documentation readily available and accessible to City personnel. Centralizing contract documentation provides greater assurance documentation can be located timely, is available to review, and is more transparent. Further, we recommend the City file purchase requisitions, with appropriate approval, with the related invoices and POs. See additional recommendations in Finding 2 related to the City procurement process.

**Finding 6: The City took no employee disciplinary action involving the Budget Director and did not require full restitution for the apparent personal use of almost \$3,000 in public funds.**

Auditors questioned the City Budget Director's unsettled debt to the City resulting from the apparent personal use of almost \$3,000 in public funds identified in FY 2010. Despite the Budget Director's questionable financial activity and the failure to make restitution, the City has neither taken disciplinary action involving the Budget Director, who has full access to the City's financial system, nor made continued attempts to recover the full amount of the funds expended for apparent personal use.

**Recommendations:** We recommend the City ensure the Budget Director's unsettled debt is fully repaid, including interest, for any unpaid portion of the debt. The City should fully document in writing the apparent personal use of funds by the employee and provide the Budget Director with written notice that the unpaid amount, including interest, is due upon receipt of the notification. Documentation of the apparent personal use of funds, along with the written notice, and repayment of debt, including interest, should be maintained in appropriate files by City officials. In addition, we recommend the City consider appropriate action regarding the employee's original activity and failure to repay the City, as directed, the public funds used for personal purposes. We recommend any action taken be documented in writing and maintained in appropriate files by City officials. The City should ensure all debt obligations and repayments are clearly identified in City records. We also recommend if improper financial activity is identified in the future, the City ensure the activity is clearly and adequately documented in City records, appropriate action, including contacting law enforcement and requiring restitution, is taken to address the issue, necessary follow-up is performed to ensure the issue is handled in a timely manner, and controls are strengthened to minimize the risk of the issue reoccurring.

**Finding 7: The City Fuel Center's inventory was not independently verified and a lack of controls did not prevent diesel sales to the public.**

Until recently, City personnel relied on the fuel vendor to report to them the amount of fuel delivered to the City, and Daily Card Sales Reports document that the City appears to have inadvertently sold diesel fuel to the public by not implementing the proper controls. Although the City indicated that daily fuel inventory reconciliations are performed by City personnel, the City accepted the delivery amount reported by the vendor on its bill of lading statements as the actual number of gallons received and then paid the vendor for the amount it reported to have provided to the City. Without performing an independent verification of the amount of fuel delivered to the City, it cannot be determined how much fuel was actually placed into the City's fuel tanks and the City runs the risk of paying for fuel it has not received. In addition, City employees and officials stated that diesel fuel is not sold to the general public. However, while examining Daily Card Sales Reports for August 20, 2014 through August 23, 2014, credit card activity was identified indicating that diesel fuel was purchased by the public on two occasions.

**Recommendations:** We recommend the City ensure that formal written fuel inventory procedures exist. We recommend these procedures require City personnel to perform calculations to independently verify fuel delivery amounts in a timely manner. The City should determine, based on fuel industry or other acceptable standards, reasonable variance limits. Once an acceptable fuel variance standard is established, we recommend the City include this information into the reconciliation calculation that should be performed after each fuel delivery. We recommend City personnel ensure fuel tank gauge readings are properly recorded on vendor bill of lading statements. If bill of lading statements are presented to City personnel without fuel tank gauge readings, City personnel should refuse to sign for the delivery. If variances in fuel delivery amounts are identified, the City should record these variances, along with an explanation of the variance. Further, significant unexplainable variances should be discussed with the vendor immediately and billings should properly reflect the agreed amount of fuel delivered. We further recommend the City, under no circumstances, pay for fuel not actually received. We recommend the City Council request a full reporting of all public diesel sales. Further, the City should work with the Kentucky Department of Revenue to address any potential tax liability or licensing issues resulting from the sale of diesel fuel to the public.

**Finding 8: The City does not adequately account for the number of free Water Park passes distributed, although it continues to report a net \$1.2 million operating loss.**

Although the City distributes free daily and seasonal City Water Park passes, no process was established to account for the distribution of these free passes. The Mayor's office maintained some information regarding free Water Park passes requested and distributed between calendar years 2011 and 2014; however, City records do not consistently identify the number of passes provided for each request, the type of passes distributed, and no record was made of the number or type of free passes given to the Mayor's office or others to distribute when no request was received by the City. Further, there was no process established to distinguish a "free pass" from a pass purchased as a gift certificate. For 2014, the City's audited financial statements reflect the Water Park showed a \$1.2 million operating loss.

**Recommendations:** We recommend that the City implement a system to account for and record the actual distribution of free Water Park passes. We recommend the free passes be numbered to identify the year the passes are valid and all numbered passes be accounted for annually. The system should clearly identify the name of the recipient, the pass number, the number and type of passes awarded, and the date of the award, in addition to the value of the donation. We also recommend, the City differentiate between gift certificates and actual free passes. Further, the pass should identify the year in which it can be redeemed. We further recommend the City keep a record of free Water Park pass usage. When recipients redeem a free pass card, the City should retain a portion of the card and stamp on the pass the date it was redeemed and any identifying information that may be available to link that free pass card to a pass issued at the Water Park. Finally, we recommend the number of passes used be reconciled to the number of passes distributed.

**Finding 9: The City's negotiated agreement with a property owner, which resulted in City expenditures for materials and labor, was not documented.**

The City negotiated with a City property owner to erect a shed and pour a driveway on the resident's property in exchange for the City demolishing a garage located on both the City and resident's property. The terms and conditions of this negotiated agreement, as well as a cost analysis of the damage to the property owner's portion of the garage, were not documented.

**Recommendations:** We recommend that the City perform an analysis evaluating the potential costs of projects it is considering that will assist in making the best and most cost effect determination in how to reasonably proceed to address an issue. We further recommend negotiations resulting in the use of City

funds and City personnel be formally documented in writing and approved by the appropriate authorized parties to the agreement. This documented agreement should clearly identify the terms and conditions applicable to all parties to the agreement.

**Finding 10: The City did not consistently apply its Pay and Classification Plan, including not paying minimums to new employees.**

Each year, the City Council approves an Ordinance establishing a Pay and Classification Plan for all available full-time City employment positions and corresponding compensation for City personnel in accordance with KRS 83A.070(2). Once the Pay and Classification Plan is established and sufficient funding is provided by the Council through the annual budget, the Mayor, as the executive authority of the City, has the authority to fill positions within the approved Plan. It was found, however, that the Mayor employed and compensated City personnel not listed or authorized in the City Pay and Classification Plan established and approved by Council.

**Recommendations:** We recommend the Mayor comply with the compensation structure as established through ordinance by the City Council. We further recommend that City personnel conduct a full review of each City employee's compensation to ensure that salary and benefit requirements established through the City Pay and Classification Plan and the City Personnel Policy are being followed. Given that violations of ordinance and policy were identified, we recommend City Council seek a third party to perform this review and that the review be documented and results shared directly with the full City Council to ensure results of the review are complete and transparent. If additional violations are identified, these violations should be reported and rectified immediately to bring individual compensation and benefits into compliance with City ordinance and policy. We recommend the City Council discuss with legal counsel the potential risks associated with the noncompliance identified. Additionally, the City Council should discuss and consider whether any penalties for noncompliance with City ordinances will be imposed.

**Finding 11: The City undercompensated the Water Park Manager by thousands of dollars for "off-book" overtime income earned, in violation of federal and state law.**

From pay periods ending April 25, 2014 through October 24, 2014, City records document that the City Water Park Manager worked nearly 570 hours of overtime; however, he was compensated a total of \$8,616 for only 244 of the hours of overtime he worked. The remaining 326 hours were recorded on the Water Park Manager's timesheet as "extra hours

earned.” Through interviews, it was reported to APA auditors that the Mayor suggested to the Water Park Manager that he record on his timesheet only a portion of his overtime as paid overtime with the remaining overtime hours worked to be used for additional leave. This action resulted in the City under compensating the Water Park Manager by thousands for “off-book” overtime income earned, in violation of federal and state law.

**Recommendations:** We recommend the City Council consider this matter and discuss with its legal counsel the appropriate action to be taken, to attempt to determine the actual number of hours the Water Park Manager worked and for which he should be compensated, from the time this method of accounting for his overtime was initiated in 2008. In making this determination, we recommend the City Attorney contact the Kentucky Department of Labor to request assistance in determining how the City should proceed in addressing this issue. We also recommend the City Attorney contact the Kentucky Department of Revenue and the Internal Revenue Service to determine how to properly address any potential tax reporting issues resulting from the method used by the City to handle overtime worked by the Water Park Manager. We recommend the City consider whether it is cost effective for the City to retain three full-time and two part-time Water Park employees throughout the entire year. The City should consider whether any or all of these positions should be classified as seasonal. We also recommend the City consistently record all work hours in the City’s payroll system to provide a transparent and accurate means of accounting for and reporting the City’s actual labor costs. We recommend no employee’s hours worked be recorded “off-book” by any unofficial means. We recommend the Mayor and other City officials abide by federal and state law by allowing City employees to elect to appropriately be paid overtime or receive comp-time in lieu of paid overtime, in accordance with KRS 337.285. Finally, we recommend the City evaluate, within statutory requirements, the necessity for employees to accumulate overtime to minimize the cost to the City.

**Finding 12: City job vacancies were not consistently posted as required by City Personnel Policies.**

City records examined document the City hired over 70 full-time personnel between July 1, 2013 and February 8, 2015, in addition to several part-time, seasonal, and intermittent positions. According to City personnel, many of these positions for which individuals were hired were not posted or announced internally as required by City policy.

**Recommendations:** We recommend the City, when desiring to fill vacant positions, follow its established policy by posting the job position information internally

for a period of five business days. This information should include, at a minimum, the position title, the department for which the position is being employed, a summary of position duties, required or recommended qualifications, the approved pay range for the position and the time limit for applicants to apply for the position. We recommend the City Council further consider revising the City personnel policies to require external advertising of available positions in local and regional papers or publications when the City is seeking to fill a City position. We further recommend the City ensure a formal process is established and followed requiring written notification be submitted to the HR Manager to initiate the posting process when it has been determined that the City is seeking to fill an available position. This notification to the HR Manager should include the position title, the department for which the position is being sought, the name of the individual requesting the position be filled, along with signatures documenting proper approvals have been received to seek candidates for the position. This documentation should then be retained consistent with the City’s records retention schedule.

**Finding 13: The City paid salaries and benefits for, and later hired as City employees, Downtown Somerset Development Corporation employees without a formal agreement.**

The City assumed payment of the payroll and benefits for employees of the Downtown Somerset Development Corporation (Corporation), and later hired the two individual Corporation employees as City employees without any formal, written agreement establishing their roles and responsibilities. While serving the Corporation, the Executive Director and the Mainstreet Coordinator are compensated by the City and receive the City-provided benefits of health insurance, retirement, leave, and annual cost-of-living adjustments, the same as do full-time City personnel. These two individuals were hired as City employees, yet they continued to perform employment responsibilities for the Corporation. This appears to have created confusion and discord between the City and the Corporation for a number of years and may create a conflict for those individuals serving the Corporation.

**Recommendations:** We recommend the City develop a process, prior to initiating and adopting the City’s budget, for the Corporation to present its anticipated budget needs for the upcoming year to the City, thus providing an opportunity for the City to understand the financial needs of the Corporation. We recommend the City enter into an agreement with the Corporation through its annual budget process, to inform the Corporation of the amount of funding the City will provide to assist in operating the Corporation. We also

recommend the agreement establish any business or operational services the City will provide to the Corporation, as well as any the Corporation will provide to the City. Representatives from the City and the Corporation should document in the agreement a clear understanding of the Corporation Board's independence and authority to hire and terminate employees of the Corporation. Finally, we recommend any agreement between the Corporation and the City address a financial process and an independent employment structure that recognizes potential conflict of interests and clarifies the employees' duties, responsibilities, and organizational structure.

**Finding 14: The Mayor approved a City employee to be paid for a complete 80 hour pay period, even though the employee performed no work.**

City payroll records for the pay period ending December 17, 2013, document the Mayor approved compensating a City Parks Department employee for 80 hours, even though the employee did not work during that pay period. City personnel stated that the Parks Department employee who received the 80 hours of pay was temporarily off work due to illness and did not have sufficient leave to cover his absence. Though awarding the employee pay for time not worked may be a benevolent act, awarding compensation to a public servant for services not rendered is an inappropriate and possibly unconstitutional use of public funds, and provides for unfair and inconsistent treatment of City personnel.

**Recommendations:** We recommend the Mayor refrain from using City funds to compensate employees who do not perform required hours of work or do not have sufficient leave balances to compensate for the number of hours not worked during a pay period. If employees have no available leave balance to offset the number of work hours missed, employees should be required to take time without pay or be allowed to request donation of sick leave hours as provided for by City policy. We further recommend the Mayor take action to cause the \$1,233.85 in gross compensation paid to the employee to be refunded to the City.

**Finding 15: The City has not established or centrally maintained job classification descriptions or education and experience requirements for most City positions.**

Although the City established 290 full-time positions in its Pay and Classification Plan for 2014, it appears the City has not established position descriptions or education and experience requirements for most City job classifications. In some instances, City officials and other personnel were apparently unaware of established job duties and responsibilities for certain positions as these records were not located centrally in

the City HR department. In other instances, the City established an education requirement or the experience levels for key management positions, but filled those positions with individuals not having the established education or experience. Without clearly defining each classification's basic role, responsibilities, and employment qualifications, or maintaining the records centrally for ease of access or reference, the City cannot ensure positions are filled with qualified personnel, equal and fair treatment of employees, or efficient and effective use of personnel.

**Recommendations:** We recommend the City establish formal, written job classifications with clearly presented job descriptions for all City personnel. Each job classification should include the position title, the position series related to the formal Pay and Classification Plan adopted by the Council, the approved salary range, the general characteristics of the job, and the minimum education and experience requirements for the position, including any required certifications, licenses, and any substitutions for education or experience. The job classifications should also include any pre-employment or postemployment requirements, such as drug testing, medical examinations, or continuing education. Once formalized, the City should ensure that each employee receives a copy of their job classification and that the classification is maintained in a central location and accessible within the City's records. We further recommend the City establish a formal interview process for potential job candidates. Interviews for City positions should be conducted by a panel of City personnel, including those individuals the employee will directly report to as the first-line supervisor. This provides for those familiar with the daily department functions and the needed skill sets for the position to also evaluate candidates. We recommend the interview panel participate in establishing formal interview questions relevant to the position and assign points or weight to each question to assist the panel in evaluating each candidate. The questions established by the panel should be asked of all applicants with each panel member maintaining their own notes related to the candidates responses. Candidate assessments should contain only comments, which are relevant to the requirements of the position. Once interviews are completed, the panel should compile the individual assessments to make a formal written overall recommendation of the successful candidate for the Mayor's appointment consideration. All interview questions, individual panel notes or grading sheets, along with the formal recommendation to the Mayor should be retained by the City's HR Manager. We also recommend consideration of candidates include their education, experience, and that the City formally document the selection of the successful candidate.

**Finding 16: The City Building Inspector issued permits for approximately 22 months while having an expired license.**

Although required to be licensed by state law, the City Building Inspector issued building permits for the City for almost two years with an expired license. Between July 2013 and April 2015, City records show the City issued a total of 47 permits, all of which were issued by the City Building Inspector with most of the permits issued while the Inspector had no active license.

**Recommendations:** We recommend City employees responsible for providing building or other permits consistently meet the requirements to maintain appropriate certifications to perform their job duties. We recommend City permits not be issued by employees who fail to maintain certification requirements specified in state statute or regulation. To strengthen accountability, we recommend a copy of the employee's certification and documents for training or other requirements to maintain the certification be reviewed annually. In addition, also refer to Findings 15, 17, and 21 for recommendations related to job specifications, annual employee evaluations, and building permits.

**Finding 17: City building permits were not consistently issued or recorded and associated fees were not uniformly applied.**

During the examination period, the City Building Inspector did not maintain a complete record of all building permits issued by the City. In addition, the Building Inspector, in some instances, used his discretion regarding whether to issue a permit, the amount of fees assessed for permits, and the collection of building permit fees. The lack of a formal process to issue and account for building permits and the associated fees failed to ensure a consistent and appropriate method was followed to issue building permits and collect fees. The failure to record all permits issued by the City, to consistently charge established fees, and to collect fees for each permit, prohibits the City from properly accounting for the number of permits issued and the amount of fees collected.

**Recommendations:** We recommend the City implement a system to accurately and consistently document each building permit issued, including the permit number, property owner's name, address, estimated project cost, and the permit fee charged and collected. In addition, we recommend permits be consistently issued and fees charged be uniformly applied. We recommend upon issuing a permit that the City retain a copy of the signed permit as an official record of the City for five years as required by the KDLA retention schedule for L4982. We also recommend the City building permit fees be deposited

directly into the City's General Fund rather than first being deposited into the City's Utility Billing/Collections Fund and subsequently transferred to the General Fund. Finally, we recommend the Accounting Department periodically reconcile the permits issued to the receipts collected to ensure documentation is maintained and to enable a proper accounting for permit fees.

**Finding 18: Over \$8,900 in public funds were expended on parties/dinners and retirement gifts.**

A sample of City credit card transactions for the period July 1, 2013 through December 2014, found over \$8,900 in City funds were expended on parties/dinners and retirement gifts. While a review of City policy found limited public funds are allowed to be used for parties/dinners and retirement gifts, the policy does not require sufficient documentation to be submitted to ensure compliance and to adequately support meal expenditures by requiring the business purpose of the meal and the number or names of individuals attending.

**Recommendations:** We recommend the City revise its credit card and travel policies to require employees and officials to submit sufficient supporting documentation of expenditures. Credit card charges should be supported by detailed receipts, and should document the official business purpose. Expenditures associated with meals should also document the names and number of attendees for which the meals were purchased. The policy should explicitly state that expenditures not supported by detailed, itemized receipts within a specified period will not be paid by the City. We recommend the policy state the consequences of not providing adequate supporting documentation, including under what circumstances the City will disallow an expenditure that is inadequately documented. We recommend the policy specifically state that credit card transactions will be reviewed for appropriateness, reasonableness, public benefit provided, and necessity. Once the policy is revised, it should be distributed to all City employees and officials, and enforced uniformly and consistently. We also recommend the City develop and implement a user agreement for individuals assigned a City credit card to sign, acknowledging their understanding of the City's expectations and that they have received, read, and understand the City's credit card usage policy. These forms, once completed and signed by individual card holders, should be maintained in the City's records or other central secure location. We recommend the Mayor abide by established City policies, and not expend funds in a manner inconsistent with the intent of the policies. While the Mayor does have discretion, that discretion should be applied in a manner that allows for fair, consistent, and efficient use of City funds. We further recommend that the City reevaluate



its policy of allowing the use of public funds for parties/dinners and retirement gifts. If individuals wish to have a party or provide a retiree with a gift, we recommend that, rather than using public funds, the City consider having individuals contribute personal funds for the party or gift.

**Finding 19: City personnel were paid over \$8,500 in advances and expense reimbursements with incomplete travel information, or lack of supervisory approval, or both.**

Examination of mileage expense reimbursements made to certain City personnel found three employees were paid over \$8,500 in expense reimbursements that had incomplete travel information, or no supervisory approval, or both. Without complete travel information, such as travel destinations listed, and the stated business purpose of the travel, City personnel responsible for approving travel vouchers cannot adequately determine whether a legitimate need existed for the travel, and City financial personnel cannot determine the appropriate department and fund to charge the expense.

**Recommendations:** We recommend the City abide by its policy and require all travel vouchers, including for both mileage reimbursements and advance travel payments, to provide all supporting documentation or information required by the travel voucher form, be signed and dated by the employee, and be approved by the employee's direct supervisor before processing a travel voucher payment. If travel vouchers are submitted to Accounts Payable without the proper supervisory signature indicating the expense was reviewed and approved as a legitimate expense of the City, Accounts Payable staff should return the unsigned travel vouchers directly to the employee's supervisor. We recommend the City Council revise its Travel Voucher Policy to require employees to clearly state the business purpose of each trip for which an employee is seeking mileage reimbursement. This will provide for greater transparency, and may also assist the City in certain management decisions such as vehicle assignments, cost allocations, or the necessity for the travel.

**Finding 20: The City does not consistently require timesheets or requests for leave to be signed and approved by an employee's supervisor.**

A review of timesheets sampled from July 1, 2013 to April 21, 2015, found the City does not consistently require timesheets to be signed and approved by an employee's supervisor. While certain City personnel indicated the three-day period required to process payroll did not provide much time to approve timesheets, some supervisory approvals were identified

on timesheets, indicating time was available to review and approve timesheets for payment.

**Recommendations:** We recommend that the City develop a policy and process to allow sufficient time to be given to City personnel to ensure timesheets are reviewed and approved by City supervisors before payroll is processed. We recommend the City require supervisors to demonstrate the review and approval of each timesheet by placing their signature and date of review on the timesheet. We also recommend the Payroll Department identify any timesheet submitted that is incomplete or not properly signed and dated, and return it to the employee's supervisor for appropriate action.

**Finding 21: City has not required a standardized formal process to evaluate City personnel.**

The City has not required a standardized, formal process by which the work performance of City personnel is evaluated. While it was noted that a few City departments, such as the City police and City parks departments, provide formal evaluations to personnel, no required evaluation process has been established for all City departments. By not conducting formal performance evaluations of City employees on a regular basis, the City has failed to establish clear work performance expectations for its employees. Further, the lack of routine performance evaluations offers no formal means to document personnel job performance, and restricts management's ability to impact employee efficiency, effectiveness, and accountability.

**Recommendations:** We recommend the City require implementation of a fair and consistent annual performance-based evaluation system. This system should apply to all City personnel and should be the basis for all personnel actions. The performance evaluation process established should require all evaluations to be performed by direct line supervisors and completed in writing on a standard evaluation form. The performance evaluation should consist of applicable job duties, performance expectations, and clear evaluation criteria upon which employees will be evaluated. Evaluation criteria should be clear and measurable to reduce confusion and the risk of dispute. We recommend the evaluation process implemented by the City include a point system, or other measurable criteria, that will provide a clear evaluation of each performance category. We further recommend the City consider including within the evaluation system a process for reviewing employee progress throughout the year, such as a mid-year progress review meeting. If an employee is not performing to required standards, the mid-year progress meeting would serve as an opportunity to communicate issues with the employee, and enable him or her to improve. Finally, we recommend, after evaluations are performed and

completed, including the signatures of the evaluator and employee, and maintain the evaluation documents in the employee's personnel file.

**Finding 22: The City lacks a formal organizational structure, resulting in unclear lines of authority, responsibility, and supervision, creating confusion, distrust, and inefficiencies.**

The City has not established a formal organizational structure with clear lines of authority, responsibility, and supervision. In some instances, City personnel appear to operate with little or no direct accountability. This lack of formal structure has created confusion, distrust, and concern among various City personnel, officials, and the public. Clear lines of authority and supervision are part of a basic foundation for operating an efficient and effective organization, and if established, would provide greater transparency and accountability to the public and City employees.

**Recommendations:** We recommend the Mayor and City Council work together to establish and adopt a formal, written, organizational chart under which the City will operate. The reporting established through this formal organizational structure should ensure a systematic and consistent approach for each City function to be appropriately supervised. The lines of authority established through this formal structure should be reasonable, and not burdensome to employees or management, to allow for effective and quality oversight. This formal organizational chart should be reviewed periodically, with revisions made as necessary to reflect any changes implemented in the actual lines of authority and supervision followed by the City. Further, once the formal organizational structure is adopted by the City Council, we recommend the City make the organizational chart available to employees. See recommendations related to annual evaluations, timesheets, and other HR related matters in Findings 15, 20, and 21.

**Finding 23: The City has not required and maintained financial interest statements as required by City Ordinance 94-14.**

The City has not required and maintained employee financial interest statements as required by City Ordinance 94-14. Although the ordinance requires employees authorized to expend over \$500 to complete a financial interest statement, City records provided to this office indicate that most employees with such authorization have not been required by the City to complete a financial interest statement. Further, recent attempts to update the financial interest statement have led to incomplete disclosures, as questions required by the ordinance to be on the statement were omitted from the statements recently completed by officials and employees.

**Recommendations:** We recommend the City ensure compliance with City Ordinance 94-14 by first requiring all employees with purchasing authority over \$500 to complete a financial interest statement. We also recommend the City complete the financial interest statements each year as required by the City Ethics Policy. We further recommend the City Clerk, at the beginning of each year, send a reminder to all required individuals to complete and submit to the City Clerk's office a new financial interest statement by March 31 of that year. Finally, we recommend the statements be retained as prescribed by the Ordinance.

**Finding 24: The Mayor has not appointed members to the City Ethics Board as required by the City Ethics Policy.**

The Mayor has not appointed, for approval by the City Council, the necessary number of Ethics Board members as required by City Ordinance and the City Code of Ethics. Also, two Ethics Board members hold positions on other City-affiliated Boards and Commissions, which is in violation of the City Ordinance and Code of Ethics.

**Recommendations:** We recommend that the City adhere to the requirements set forth by Ordinance 94-14 and the Code of Ethics regarding the appointments of members to the Board of Ethics. We recommend the Mayor make appointments to the Board of Ethics, subject to the approval of the City Council, so that the Board of Ethics is comprised of five members. Further, we recommend the two Board of Ethics members that also serve on other City boards or commissions resign from one of the appointments to comply with the requirements previously reported.

**Finding 25: The City did not document and consistently apply procedures governing access to its accounting software.**

Discussions with City personnel revealed they did not implement adequate logical security controls governing user access to the City's accounting software. Therefore, it was not possible for auditors to ensure that all users were authorized and granted appropriate access to the accounting software.

**Recommendations:** We recommend the City develop a written policy to ensure staff obtains appropriate access to the accounting software. This policy should:

- explain the process for staff to request access to the software;
- limit privileges, or rights, within the system to actions essential to that user's work;
- establish the process to request access to be modified or removed; and

- specify the supporting documentation to be maintained to support the access being granted to staff.

We further recommend that the City no longer allow the copying of access rights from existing employees due to the potential for providing unknown, unnecessary access. This policy should also explain the vendor's involvement with establishing user access within the accounting software and the process to request the vendor to establish a new account. Further, the IT department should consider developing and completing a form to identify the permissions and roles requested for a user to access the accounting system. This form, or other comparable communication, should be submitted and approved by the individual's supervisor. As necessary, the form should be provided to the vendor. In addition, we recommend the City review all user accounts currently established with access to the accounting software to ensure user accounts are only granted privileges, or rights, within the system which are essential to that user's work; all other privileges should be restricted. As this review is performed, all pertinent user contact information should also be updated. Further, we recommend all group accounts be disabled. The associated functionality, if still needed, should be transitioned to individual user accounts to allow for closer monitoring of the actions taken by users of these accounts. If required for business purposes and the transition to individual user accounts is not feasible, then justification for having the group account should be documented and approved by management. Management should also monitor use of any retained group accounts to ensure they are being used as intended. Also, we recommend a primary and backup employee be formally designated as being responsible for providing employees with appropriate system access. We recommend these employees receive training to ensure they have a clear understanding of how to effectively and efficiently perform this function. City management should perform, at a minimum, an annual review of the active user accounts within the accounting software to ensure users are still employed by the City and require access to support their job duties. Actions taken to change access levels should be thoroughly documented. All documentation supporting this annual review should be maintained for audit purposes.

**Finding 26: The Expenses Report produced from the City's accounting system did not provide sufficient information to support Budget to Actual reporting.**

During the review of the City's budgeting procedures, we determined the Expenses Report used to support the Budget to Actual reporting to the City Council did not consistently produce Budget Balance amounts as

expected. Specifically, there were instances noted where the Budget Balance did not reflect the difference between the Amended Budget and the Year to Date (YTD) Expenses. The City's accounting system produced this report and there was no identified manipulation of the report after its creation.

**Recommendations:** We recommend the City of Somerset work with the vendor to include additional fields of information in the report and rename some of the report headings in order to more accurately represent the purpose of the report. Specifically, we recommend that the report be expanded to include the following fields of information:

- Original Budget;
- Amended Budget;
- Month To Date (MTD) Expenses;
- YTD Expenses;
- MTD Encumbrances;
- YTD Encumbrances;
- Available Budget Balance; and
- Percentage of Budget Available.

Additionally, we recommend the title of the report be changed to 'Expense/Encumbrance Report.' Once this change has been completed, the new report should be provided to the City Council along with an explanation as to how the accounting system processes expenses and encumbrances, how the budget balance is affected, and how this report should be used to make decisions for future expenditures.

**Finding 27: The City did not consistently log transactional activity within the accounting system.**

Discussions with City staff indicated that the accounting system had the functionality to log transactional activity within the individual accounting system modules. However, it was determined the City has not implemented this feature in all modules, nor are the logs being created consistently for the modules where the feature was activated.

**Recommendations:** We recommend the City work with the accounting system vendor to determine the feasibility of activating the audit logging functionality within the remaining system modules. Once this determination is made, the audit feature should be activated in all applicable modules and logs should be created. Logs should be maintained in a secured location and made available as needed for monitoring and audit purposes. We further recommend that City management review these logs on a regular basis. Particular attention should be paid to actions taken by those staff with the highest levels of access and authority within the modules. Access to the logs should be restricted to appropriate personnel with the responsibility of reviewing this information. Identified concerns should be thoroughly reviewed and

documented to ensure the actions were appropriate. This review should be documented and retained for audit purposes.

**Finding 28: The City did not develop or implement formal, written IT policies and procedures.**

The City did not develop or implement formal, written IT policies and procedures that specified individual responsibilities established for management and staff. The City has documented information regarding personal safety and office physical security within its Employee Handbook. In addition, an Identity Theft Prevention Program has been documented. However, these documents do not include information regarding specific responsibilities of staff related to the use and protection of the City's IT resources and data. Furthermore, IT staff confirmed that employees are not required to read or sign an acceptable use policy pertaining to the use of their network, internet, and email.

**Recommendations:** We recommend the City develop and implement written IT policies and procedures. These policies may include, but are not limited to:

- physical security;
- logical security procedures for network accounts;
- creation of network user groups;
- network configuration;
- logical security procedures for applications;
- data classification and protection;
- incident handling and response;
- system maintenance;
- data backups;
- hardware and software supported by the city;
- the dial-up network;
- cellular phone usage;
- acceptable use of internet, network resources, and email; and
- system change procedures.

These policies and procedures should be detailed, complete, and approved by management. These documents should be kept current and communicated to staff, in order to ensure all key staff is aware of their responsibilities. Further, we recommend the City develop and implement a security program that explains all employees' responsibilities related to network security. This program should include periodic training and communications sent to staff concerning specific topics, such as acceptable use of resource, physical security, password strength, etc. On a periodic basis, staff should be required to review the acceptable use policy and sign a form confirming that they have read and understand their responsibilities in relation to usage of the internet, network resources, and email.

**Finding 29: The City has not established criteria to identify the items to present to the City Council, reducing transparency and causing confusion among City Council members.**

The City has not established criteria to determine the types of information to be presented to the City Council, leading to inconsistent reporting and confusion among City Council members. Although City Council members interviewed understood their legislative role at the City, confusion was expressed by some of those members regarding their responsibility related to contract bidding and expenditures over \$20,000.

**Recommendations:** We recommend that the City establish clear and defined criteria for items to be presented to the City Council to assist in providing continuity and transparency. We further recommend the established criteria be distributed to the City Council and made available to the public.

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## Chapter 1

# Introduction and Background

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### **Scope of and Methodology for Examination**

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The Auditor of Public Accounts (APA), in response to concerns expressed to this office regarding certain financial and other activity of the City of Somerset (City), initiated an examination of specific issues at the City. The objectives developed by the APA for this examination include:

- Determine whether policies governing procurement are adequate, consistently followed, and provide for a transparent process.
- Review City human resource policies and employment practices and determine whether such policies and practices are fair and equitable.
- Analyze certain categories of financial activity for compliance with city policies and for various transaction activities, as well as to determine whether transactions appear reasonable, necessary, and have a related business purpose.
- Review other significant issues identified during the examination process.

The purpose of this examination was not to provide an opinion on the financial statements or to duplicate work of routine annual financial statement audits. Unless otherwise indicated, the examination period of this engagement was July 1, 2013 through December 1, 2014; however, the time period of certain documents reviewed and various issues discussed with those interviewed may have varied.

To address these objectives, the APA conducted interviews with over 30 individuals, including but not limited to, current and former City personnel, current and former City Council Members, the Mayor, the City CPA, and City contractors. In addition, the APA reviewed numerous City records, including but not limited to meeting minutes, ordinances, policies, budgets, credit card statements, vendor payments, personnel files, timesheets, payroll records, bid files, vendor contracts, and audited financial statements.

### **Background**

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*Governance*

Located in southeast Kentucky, the City of Somerset serves as the county seat of Pulaski County. As of the 2010 US Census, the City had a population of 11,196. The City is organized and governed under a Mayor-Council form of government, the powers and duties of which are addressed in KRS 83A.130. The Mayor administers the executive authority of the City and is elected to serve a four-year term. Kentucky law does not restrict the number of terms a mayor may serve. The current Mayor was first elected into office in 2006 to serve a four-year term beginning January 1, 2007, and was subsequently reelected in 2010 and 2014.

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## Chapter 1

# Introduction and Background

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The Council is made up of 12 members, each elected from one of the 12 City wards and serves as the legislative body of the City. KRS 83A.040(4) provides for elected members of this legislative body to serve a two-year term. As with the office of mayor, Kentucky law does not restrict the number of terms a Council member may serve. Of the 12 current City Council members, 11 have served more than one term in office.

### *Personnel*

In 2014, City records indicate that the City employed 623 personnel, all of which are considered at-will employees. City at-will employment means that the Mayor, as the executive authority of the City, may hire and fire City personnel without recourse. Of the 623 personnel, the City has approximately five to six nonelected officers which are appointed by the Mayor and approved by City Council in accordance with KRS 83A.080. Nonelected City officers include the positions of City Attorney, City Clerk, Chief Financial Officer (CFO), Fire Chief, and Police Chief. While still considered at-will, if terminated from any of these positions, the Mayor must provide a written statement setting forth the reason or reasons for removal.

Full-time positions are established by City Council through an adopted Pay and Classification Plan. While the Mayor has authority to appoint and remove City personnel, as is reflected through City Personnel Policies, these policies do not allow the Mayor to appoint an employee for a position not accounted for in the Pay and Classification Plan.

The current City Pay and Classification Plan, adopted on June 23, 2014, through City Ordinance 14-05, established 290 full-time positions. Since 2008, the number of available full-time positions has steadily increased by 59 persons.

The City participates in the County Employees Retirement System, which is administered by the Kentucky Retirement Systems. Employee and Employer contributions for the year ending June 30, 2014, totaled \$3,489,873, down marginally from the prior year.

### *Financials*

As required by KRS 91A.040, the City's financial statements are audited each year by an independent CPA. Based on City audited financial statements for the fiscal years (FY) ending 2013 and 2014, the City's net position increased for FY 2014 from \$98.3 million to \$100.6 million.

The City reported a deficit in its Governmental Funds of almost \$6.8 million for the year ending June 30, 2014, a slight improvement from the previous year in which a deficit of \$7.2 million was reported. The majority of the deficit from these funds in both years was derived from the City's General Fund. Since FY 2012, revenues from City property taxes have remained approximately \$1.3 Million.

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## Chapter 1

# Introduction and Background

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Conversely, the City Proprietary Funds provided operating income of over \$4 million to the City in 2014, down from the \$4.8 million in the previous year. During the examination period, City Proprietary Funds consisted of the City Gas, Water, Wastewater, Sanitation, and Water Park. While the Gas, Water, and Sanitation Departments reported positive operational income, the City Wastewater and Water Park reported losses. Over 50 percent of all Proprietary revenue is generated from the City Gas Department.

### *Utilities*

Utility services provided to City residents and others in the surrounding geographic area generated revenue of \$18.5 million from customer sales for the City in FY 2014. Utility services include natural gas, water, and waste water. Included in the \$18.5 million is almost \$2.4 million derived from Sanitation Services provided to residents. Utility rates have remained unchanged for the past seven years.

The City owns a natural gas pipeline that extends approximately 175 miles through 5 counties within Kentucky, including: Leslie, Clay, Laurel, Pulaski, and Casey Counties. The City's natural gas pipeline is used to provide natural gas to individual, commercial and industrial customers locally and across these counties. In addition, the City contracts with various natural gas producers and delivers gas from producers to the Texas Eastern Pipeline. From this endeavor, the City receives a fee for transporting the gas along the pipeline and can sell the gas directly to customers along the 175 mile line. According to the City's FY 2014 financial statements, the City's Gas Department generated \$12.6 million in operating revenue.

### *Fuel Center*

Prior to July 2014, the City operated its Fuel Center facility to maintain unleaded and diesel fuel storage for use by its own City fleet and for resale to other local non-profit organizations. In July 2014, the City began selling unleaded fuel to the general public in an effort to stabilize fuel costs for its residents. In addition to unleaded fuel, the City also sells compressed natural gas. According to the City's audited financial statements for the year ending June 30, 2014, Fuel Center Fund expenditures exceeded revenues by \$332,834. Financial information for the City's Fuel Center Fund, since opening sales to the general public in July 2014, has not yet been audited by the City's external auditor.

### *Water Park*

Since 2006, the City has operated a public Water Park, which today, according to the City, sits on approximately 86 acres of land, much of which has not yet been developed. For the purposes of the City's audited financial statements, during the examination period the Water Park was considered to be a proprietary fund as the City charges customers a fee to use the Water Park facilities. Rates charged may vary depending upon the type of Water Park pass purchased, such as a daily pass or a season pass, and when during the day or in the season the pass is purchased.

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## Chapter 1

# Introduction and Background

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The Water Park's financial operations have been a source of public controversy over the last several years as the City's audited financial statements have reported the Water Park operating at a loss each fiscal year. Table 1 documents the operational loss incurred from City Water Park operation for FY 2010 through 2014.

**Table 1: Water Park Annual Operational Loss**

<b>Fiscal Year</b>	<b>Amount of Operational Loss</b>
2010	\$ 812,927
2011	672,383
2012	719,413
2013	1,177,558
2014	1,196,150

Source: City of Somerset Audited Financial Statements

*Downtown  
Somerset  
Development  
Corporation*

Though a separate legal entity, the Downtown Somerset Development Corporation is reported as a component unit of the City, as it is fiscally dependent upon the City for its operations. According to the City's audited financial statements for FY 2010 through FY 2014, the component unit's dependence on the City varied. In FY 2010, the Corporation received 79 percent of its total revenues and transfers from City funds. In FY 2013, the dependency increased to 90 percent of the component unit's total revenues and transfers originating from City funds. In FY 2014, the amount decreased to 85 percent.



## Findings and Recommendations

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**Finding 1: Several City personnel expressed concern and were hesitant to assist auditors in the examination for fear of retaliation.**

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Several City personnel in various departments stated that they were concerned about making statements to auditors during the examination process, and at times indicated to auditors that they were hesitant to assist in the examination for fear of retaliation. Several City employees noted to auditors multiple times that they were at-will employees, and that the Mayor had the authority to terminate their employment for no cause. While the City Ethics Ordinance prohibits retaliation against persons who, in good faith, report facts and information related to possible violations of the City's code of ethics, it appears that these employees have a significant amount of concern and distrust as to whether they would be afforded appropriate protections. Although several concerns were expressed from various City personnel, Kentucky's "Whistleblower Act," KRS 61.101 *et seq.*, has been interpreted by Kentucky's highest court not to extend protections to City employees.

On occasion, City employees stated to auditors that they and other City employees were concerned about what would happen to them after the APA examination is completed. This was expressed not only by employees, but, at times, was also reported to this office by other individuals on behalf of City personnel. In some instances, City employees asked auditors whether their statements would be linked back to them in the report for this reason. Auditors explained that position titles may be used to reference the source of information; however, individuals' names would not be identified in the report. On at least three occasions, City personnel who were interviewed by auditors expressed concern that the Mayor would change employees' job duties or workstations as a form of retribution for sharing information, stating to auditors that this had been done previously to discipline employees the Mayor did not trust. While auditors were able to collect pertinent information during the examination despite fears expressed by several City personnel, it appears that, based on some employee statements to auditors, information provided to this office was limited or filtered, at times, and statements made by some personnel and officials were conflicting, causing additional concern.

City at-will employment means that the Mayor, as the executive authority of the City, organized under the "mayor-council plan" set out at KRS 83A.130, may hire and fire City personnel without cause or recourse. City policy specifically states:

Unless the City has otherwise expressly agreed in writing, or your position is a statutory exemption from the at-will doctrine, your employment is at-will and may be terminated by you or by the City of Somerset at any time, including both before and after your evaluation period. Said termination may take place without cause, and without a hearing before the Council in regards to the termination, so long as an ordinance or statute is not in effect stating that good cause is required for termination from your particular employment position.

## Findings and Recommendations

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As is noted in City policy, certain positions at the City are considered nonelected offices. KRS 83A.080 establishes provisions for nonelected offices, which requires individuals filling these positions to be appointed by the executive authority of the city and approved by the city legislative body. However, KRS 83A.080(3) further states:

The officers may be removed by the executive authority at will unless otherwise provided by statute or ordinance. Upon removal of a nonelected officer at will, the executive authority shall give the officer a written statement setting forth the reason or reasons for the removal. However this requirement shall not be construed as limiting in any way the at-will dismissal power of the executive authority.

It is our understanding, based on information provided by City personnel, that the City currently has five to six nonelected offices including the position of City Attorney, City Clerk, CFO, Fire Chief, and Police Chief. While still at-will, individuals in these positions are afforded a reason or reasons for removal if terminated. While this is not a substantial protection to individuals in those positions, it is more protection than state statutes or City policies provide to all other City personnel.

Section 29 of the City Ethics Ordinance, No. 94-14, prohibits reprisal against persons disclosing violations, specifically stating:

- (A) No officer or employee of the city or any city agency shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Board of Ethics or any other agency or official of the city or the Commonwealth any facts or information relative to an actual or suspected violation of this ordinance.
- (B) This section shall not be construed as:
  - (1) Prohibiting disciplinary or punitive action if an officer or employee of the city or any city agency discloses information which he or she knows:
    - (a) To be false or which he or she discloses with reckless disregard for its truth or falsity.
    - (b) To be exempt from required disclosure under provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884.
    - (c) Is confidential under any provision of law.

## Findings and Recommendations

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It is clear that some level of protection is afforded by the City Ethics Ordinance to City employees who report possible violations of the City's code of ethics. City personnel policies also reflect a similar message that employees may raise legitimate concerns and make good faith reports without fear of reprisal. There still appears to be, however, distrust among City employees that there exist any protections from possible adverse employment actions that could be taken against them by the City's executive authority, given their employment is at-will and little is required to be documented for action to be taken against them.

During the examination process, auditors were asked whether there were protections afforded to them through the Kentucky Whistleblower Act, which was enacted in 1986 and last amended in 2012. There is a common misconception that all public employees are covered by Kentucky's "Whistleblower Act." Per KRS 61.102(1), "employer" is defined as "the Commonwealth of Kentucky or any of its political subdivisions." The Kentucky Supreme Court, however, in *Charles L Wilson, JR. v. City of Central City, Kentucky*, 372 S.W.3d 863, 870 (Ky. 2012) has held "that cities are not political subdivisions under Kentucky's Whistleblower Act, and city employees are therefore not protected by the Act." As part of its analysis the Court noted that the legislative history of the Whistleblower Act indicates a deliberate intention by the General Assembly to exclude cities from its prohibitions.

Although this examination was to address specific concerns related to financial and other activity of the City of Somerset, the APA has routinely over many years received and addressed concerns relating to cities throughout the state. Concerns received by this office relating to Kentucky cities are reported by citizens, employees, vendors, and legislators, and it is not uncommon for city employees or others to express concern regarding information shared with the APA being reported to the individuals about whom the concerns are expressed. The ability of individuals to be able to report matters to this office without fear of retaliation is vitally important to the public taxpayers who are served by city, county, and state employees. According to the Association of Fraud Examiners in its 2014 Report to the Nations on Occupational Fraud and Abuse, "tips are consistently and by far the most common detection method. Over 40% of all cases were detected by a tip – more than twice the rate of any other detection method. Employees accounted for nearly half of all tips that led to the discovery of fraud."

Whether fraud, abuse, or questionable actions are detected from a tip or not, it is clear that employees are the first-line of defense in any organization who may be able to identify questionable activity which may indicate misconduct or wrongdoing. Although an organization can establish internal processes to afford employees an opportunity to come forward with those issues, the process is only effective if there is trust in the administration of the process.

**Findings and Recommendations**

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Concerns expressed to APA auditors by employees and others regarding certain activities at the City have assisted in identifying a number of issues, which resulted in findings included throughout this report. This was only possible because individuals felt it was their responsibility and duty to the public to report the issues despite the perceived personal risks they took by cooperating during the examination. The APA takes seriously the concerns expressed to this office and appreciates the cooperation provided by City personnel and others during this process.

**Recommendations**

We recommend the Kentucky General Assembly consider revising the Kentucky Whistleblower Act to clearly include Kentucky cities as employers for the purpose of the Act. This action should be taken in an effort to provide additional protections to the thousands of public employees working in over 400 cities in Kentucky to provide efficient and effective services to the public.

In addition, we recommend City management disseminate to all City employees information regarding the City's Ethics Ordinance, No. 94-14 Section 29, which prohibits reprisal against persons disclosing violations. City management should take steps to establish an appropriate tone that management is willing to be accountable and transparent.

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**Finding 2: The City failed to competitively bid for at least \$280,000 of services.**

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The City failed to consistently comply with City Ordinance 10-01 that required certain services exceeding \$20,000 to be competitively bid. This Ordinance, passed on March 8, 2010, adopted the Kentucky Model Procurement Code, KRS 45A.343 through 45A.460, requiring the City to seek competitive bids for certain procurements costing over \$20,000. The examination of a sample of vendor payments from July 2013 through February 2015, however, found the City expended over \$280,000 for tree trimming, brush removal, and excavation work without competitively bidding for these services.

In FY 2014, three vendors were paid a total of over \$56,000 for tree trimming and brush removal services. Two of the three vendors were each paid over \$20,000.

In a seven-month period, from July 1, 2014 to January 23, 2015, the City paid a total of approximately \$115,000 for tree trimming and brush removal in the City, as well as along the City's natural gas lines. Of this amount, the City paid approximately \$75,000 to three vendors for tree trimming and brush removal. Over \$50,000, or approximately 66 percent of the \$75,000 amount, was paid to one of the three vendors. In addition to the \$75,000 in payments previously identified, two payments totaling over \$40,000 were made to one vendor in December 2014 and January 2015 for clearing underbrush, tree removal, and tree trimming along the City's natural gas lines.

**Findings and Recommendations**

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Finally, a City park referred to as Rocky Hollow Amphitheater that, according to City personnel, was originally planned to be constructed using internal City resources, required almost \$112,000 of City funds to be expended for excavation work done by a vendor. This work was broken into multiple phases and was not competitively bid.

City records document that tree trimming and brush removal services were not bid but were, instead, procured as independent projects or jobs. While street or address locations were often noted on vendor invoices for tree and brush removal, City records examined did not provide sufficient details regarding the purposes or exact locations of the work performed on City property, but only that trees, tree limbs, or brush was removed.

City personnel indicated that some of the tree and brush removal work performed by vendors resulted from an initiative by the Mayor to remove trees and limbs that may be a potential hazard to City residents. City employees and the Mayor referenced an event in late 2009 in which a falling tree limb resulted in the death of a mother and child. This event led to legal action and ultimately a financial judgment against the local housing authority. The City Attorney stated that the verdict got the attention of the local housing authority and the City, and as a result the City “did clean up a lot of trees.” The City Attorney stated that the City had to consider whether it had a responsibility to make sure trees “don’t fall out into the street.”

In addition to safety concerns, City personnel noted that the City received an order from the Environmental Protection Agency (EPA) in early 2014 to remove tree limbs and brush stored behind the City Street Department office, as it posed a potential hazard to a nearby stream. The tree limbs and brush stored behind the Street Department were previously collected by the City Street Department from City residents. As a result of the EPA order, one City employee stated that the City had to seek outside vendor services to collect and grind trees and brush across the City and dispose of the material properly. The employee stated that a specific vendor was selected to perform the work but noted that the City did not seek bids to select the vendor because there would not be “that much to pick up.” The vendor identified by this City employee was found to have received over \$50,000 for tree and brush removal services between July 1, 2014 and December 19, 2014. Because the vendor invoices and purchase orders (PO) do not document the purpose for the work performed, auditors are unable to determine how much of this total amount paid to the vendor over the six-month period specifically related to this issue.

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## Chapter 2

# Findings and Recommendations

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Though the City procured these services as individual jobs through its small purchase authority, it appears, based on City records and statements made by City personnel and the Mayor, that the services performed were generally related. Further, it appears reasonable that the City could have anticipated that these services in aggregate would cost in excess of \$20,000. KRS 45A.385 states:

The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand (\$20,000) dollars if small purchase procedures are in writing and available to the public.

In addition to the tree and brush removal services described above, auditors found two payments, each for \$20,760, made to a vendor on December 30, 2014 and January 29, 2015, for “[c]learing of underbrush, tree removal and tree trimming” along the City’s natural gas lines. After examining these payments totaling \$41,520, auditors attempted to determine whether the project performed by the vendor was competitively bid. After reviewing bid files maintained by the City Procurement Officer, however, auditors found no related bid file for these services. Through a review of City purchase requisitions submitted in December 2014, auditors found a contract for these services attached to a requisition documenting the Mayor’s approval for the purchase.

The contract for these services dated November 19, 2014 states:

Whereas [vendor] agrees to provide the following services for the City of Somerset Gas Transmission and Gathering Lines. Clearing of underbrush, tree removal and tree trimming as required that the right-of way shall be clear of all brush, briars and tall weeds. Refuse to be burned or disposed of leaving a neat appearance.

The Gas line is approximately 175 miles more or less in Leslie County, Clay County, Laurel County, Pulaski County and Casey County.

The price per mile unit is \$519.00

Based on these contract terms, the costs for services associated with this contract could reach as much as \$90,825. According to the City Attorney, this contract was an addendum to an original contract entered into by the City on September 3, 2008, and the November 2014 contract simply increased the fee for these services, as an additional five miles of natural gas line was identified. It was not explained to auditors why the unit fee for each mile of work was increased rather than simply increasing the approximate number of miles of brush and weeds to be cleared.

While the City was able to provide auditors a contract with the vendor from 2008, the City could not find a critical piece of the contract, referred to in the contract as “exhibit A,” which, according to the contract, fully describes the plans and specifications of the services to be performed and method and amount by which the City will pay the contractor. Further, although requested, auditors were not provided with bid documentation from 2008 to evidence that a competitive bid process was followed.

The Mayor stated that he researched the contract dating back to 2002 and found the City sought bids for this biannual service in 2002, 2004, and 2008. The Mayor noted that the service for which the vendor was paid requires extreme safety as the vendor is clearing right-of-way around 175 miles of high pressure natural gas pipelines. The Mayor stated that City natural gas personnel indicated to him that they felt comfortable with the vendor and its safety record. For this reason, the Mayor stated that City personnel recommended to him that the contract be renewed rather than to seek bids after 2008. While the 2008 contract does allow for amendments to be made, the contract dated and signed by the vendor on November 19, 2014, then subsequently signed by the Mayor on December 1, 2014, does not refer back to the 2008 agreement or otherwise identify the contract as an amendment to a previous contract.

Regarding the construction of a City park referred to as the Rocky Hollow amphitheater project, the City initiated construction in late April 2014, and between May 8, 2014 and November 7, 2014, the City paid \$111,983 for excavation services which were not competitively bid. Of the 24 invoices the vendor submitted to the City for the excavation services, 22 invoices were for amounts just under the former City Park Director’s individual small purchase authority of \$5,000.

According to various City employees and officials interviewed, the City originally planned to perform the work for the Rocky Hollow project internally using City employees; however, as the project progressed, it was determined that additional outside vendor services would be needed to complete the project. Though it was stated many times that the work was anticipated to be performed internally, auditors found the City paid over \$20,000 on excavation for this project within the first three weeks of construction between April 29, 2014 and May 20, 2014. POs and vendor invoices dated between April 29, 2014 and June 3, 2014, referenced “phases” of work numbered one through 10. Though City employees stated that the phases may have indicated different areas of the amphitheater project, they were not certain why records were referenced in this manner. Phases of work were not referenced on POs or vendor invoices after June 3, 2014.

The City Business and Economic Coordinator indicated that the former City Parks Director was overseeing this project and understood City policy regarding when items were to be advertised for bid but was known to not strictly adhere to policies. The Business and Economic Coordinator stated that the Mayor requested several times that he visit the former Parks Director to remind him that he was to follow City policy regarding when items were to be advertised for bid because the former Director had a history of not following policy. The Mayor also stated that he “sent word” to the former Parks Director that City policy regarding advertising for bid was to be followed. Though it was stated that the Mayor expressed these concerns during the process, it appears the City did not take effective measures to determine whether policies were properly followed. Because the former Parks Director is deceased, auditors were unable to obtain additional information regarding this project.

While examining concerns involving procurement practices, auditors reviewed various City bid files maintained at City Hall. In examining City bid files, auditors found that documentation and information recorded and maintained was not consistent or complete. Auditors selected a sample of eight City bid files from FY 2014 and FY 2015 to review. Of the eight project bid files reviewed, auditors found only two files contained analysis of the bids received. In both instances, the project bid files were associated with projects involving external engineering firms who assist the City in performing the bid process. Of the 19 bids documented in these eight project bid files, only one clearly documented a time when a bid was received. While dates were often documented, the bids had no time stamps. Further, no files reviewed or examined while onsite identified the winning bidder.

***Recommendations***

We recommend the City consistently follow the Model Procurement Code that it adopted through City Ordinance 10-01. In accordance with this Ordinance, we recommend purchases over \$20,000 consistently be competitively bid, unless exempted by the Model Procurement Code, to ensure cost effective pricing and to increase transparency. We further recommend total project costs be considered in determining whether competitive bids are required. Project work activity should not be divided into smaller projects in an attempt to circumvent competitive bidding requirements.

We recommend the City follow a consistent process to collect relevant bid documentation and maintain this information in a central location. Specifically, we recommend the City clearly and consistently document the time and date when bids are received, a formal analysis of the bids received, along with the recommendation as to the winning bidder. Finally, once a winning bidder has been selected, a written statement should be maintained in the bid file identifying the winning bidder.

We also recommend that the City provide formal training to all City personnel involved in the procurement process.

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## Findings and Recommendations

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**Finding 3: City negotiations establishing special natural gas rates with industrial customers are not consistently documented in written contracts, even though the City states agreements exist.**

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A review of Kentucky statutes found that municipal natural gas systems are not regulated by the Public Service Commission (PSC) nor do statutes provide for a local independent commission or for other safeguards to govern the operation of these systems. It was determined that the Mayor, on behalf of the City, negotiates special rates with industrial natural gas customers of the City's natural gas system. The special rates for the industrial customers resulting from these negotiations are not consistently documented in written contracts, even though the City states that agreements exist. Specifically, written contracts are not consistently developed subsequent to the Mayor negotiating special natural gas rates with industrial customers. Due to the lack of formal, written contracts resulting from these negotiations, questions and concerns were raised regarding the City's process to establish natural gas rates and whether the terms of the agreements are reasonable or fair.

While reviewing City natural gas rates charged to City customers in January 2015, auditors were advised by City employees and the Mayor that, in addition to establishing a general schedule of natural gas rates, the Mayor negotiates special gas rates with large industrial customers. The City Gas Manager noted that while the Mayor makes the final decision, the Gas Manager was present at various discussions when natural gas rates were negotiated with different industrial customers. The Gas Manager noted that industrial customers, at times, want to lower the rate they are charged for natural gas. As a result, the City evaluates the request considering the cost to procure and supply the natural gas to ensure the City makes a profit from the negotiated rate. Circumstances surrounding each situation may be different, and there does not appear to be an exact formula followed to determine the rate that will be charged to each large industrial customer. In some instances, the City will agree to run a pipeline to the industrial customer and for that reason the City will have to factor into the agreed rate the costs associated with running the pipeline. When discussing negotiated industrial natural gas user rates with the City Gas Manager, he indicated that the City had contracts documenting the rates. Auditors requested a copy of those contracts from the City Gas Manager subsequent to the interview.

After requesting the contracts discussed during the interview, auditors were notified that written contracts did not exist as a result of all negotiated industrial natural gas rates awarded by the Mayor over the past three years. In an email exchange sent to auditors from the City Attorney, the City Gas Manager advised the City Attorney that for a certain industrial customer, "contracts are just copies of emails between the Mayor" and this customer. For another industrial customer, it is just a letter sent to the customer "confirming the price and term after meeting with them." For another customer, the Gas Manager stated the only information available "is the cost sharing agreements. We agreed on the [\$] per DTH price at that time but did not enter it on the cost sharing agreement." The Gas Manager continued by stating that a particular customer was the "only one that we have a written contract on."

Utilities regulated by the PSC are defined in KRS 278.010(3). Subsection (3)(b) of this statute exempts from the definition of “utility” “a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses.” Given that this activity is by definition not a utility subject to PSC regulation, the PSC has no regulatory oversight and the statutes pertaining to utilities regulated by the PSC do not apply to a city’s natural gas system. Further, KRS 96.545, which addresses the operation and management of a municipality’s “artificial” gas system, does not appear to be applicable to a city’s operation of a natural gas system.

It appears that Kentucky statutes are silent regarding the regulation and oversight of a city’s natural gas system and the process to establish customer rates. Statutes applicable to PSC-regulated utilities and a city’s artificial gas system provide specific provisions that include oversight, safeguards, and the process to establish customer rates; however, these statutes apparently do not apply to natural gas.

For example, KRS 278.170(1) that addresses PSC-regulated utilities states that “[n]o utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.”

In addition, KRS 96.545(1) regarding a city’s artificial gas system under the provision of KRS 96.541 and 96.546 “may delegate the authority to operate the system to a commission created for the operation of some other public works in the city... .” Subsection (2) of this statute provides specific requirements “[i]n order that the commission may be nonpartisan and nonpolitical.” In addition, subsection (5) of the statute specifies the appointed terms for members of a municipality’s artificial gas commission.

This statute also provides, in subsection (1), “for the operation of the [artificial gas] system under the direction of an official of the city as designated by the legislative body... .” The statute provides no safeguards or other requirements for the city official delegated to operate the artificial gas system, which appears to provide less oversight, safeguards, and independence than the delegation of authority to a commission.

## Findings and Recommendations

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The significance of natural gas sales and its impact on economic development for the City were expressed often by the Mayor during his interview. According to the City's FY 2014 financial statement audit, \$12.7 million, or 50 percent, of the City's operating revenue from proprietary activities was generated by the City's Gas Department. While the City determined it to be necessary to negotiate reduced rates with large industrial customers, developing formal, written negotiated contracts is a fundamental business practice to clearly define the terms agreed to by both parties, provide accountability, and to ensure transparency to the public.

According to the City Attorney, the natural gas rates established by the City do not have to be approved by the City Council. Further, the City Attorney stated that the negotiated special industrial natural gas rates are "administrative tasks related to the economic development that are not taken before the council in most instances. The rates can change any time, sometimes daily, sometimes long term."

A review of City ordinances and resolutions from 2000 to present found Ordinance 00-10, which established natural gas rates. This was the last ordinance identified pertaining to the City's natural gas rates identified over the 15 year period reviewed.

### ***Recommendations***

We recommend that the general schedule of natural gas rates implemented by the City be presented to the City Council and posted on the City's website to provide transparency. We recommend the City ensure a consistent process to formally document, in writing, all rate agreements resulting from negotiations to ensure consistency, accountability, and transparency. Contracts should clearly define the roles and responsibilities of each party and the terms of the agreement. We recommend that all contracts be reviewed by the City Attorney to ensure the terms are fair, reasonable, and that the City's interests are protected. Contracts should also be executed by all parties to the contract and maintained by the City in a centralized location for access by appropriate City staff responsible for ensuring payments or charges for services are made in accordance with contract terms.

Finally, we recommend the Kentucky General Assembly consider legislation to provide oversight and safeguards for the operation of city natural gas systems, including providing cities authority to create natural gas commissions, similar to artificial gas commissions permitted by KRS 96.545.

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## Findings and Recommendations

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**Finding 4: The City made a total of \$2.7 million in adjustments to City utility charges for all utilities from July 2012 through approximately January 2015, with no formal written policies.**

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According to City records, total adjustments made to City utility charges for all utilities was over \$1.7 million for FY 2013, over \$580,000 for FY 2014, and over \$450,000 for approximately seven months of FY 2015. The City recorded adjustments electronically in a spreadsheet; however, this documentation does not provide sufficient information to document a valid authorization or purpose for an adjustment.

While reviewing adjustment reports for July 2012 through January 2015, 29 special or non-routine adjustment requests, totaling almost \$15,000, were made by City employees for both individuals and businesses. Thirteen of these special requests, totaling over \$12,000, were made by the Mayor for both individual and business accounts. The remaining 16 adjustments for a total of approximately \$3,000 were requested by the Street and Water Department Managers and other personnel.

According to the City's Utility Billing Supervisor, the City does not use a standard form requiring supervisory signatures to approve of an adjustment to an account. The Utility Billing Supervisor stated that instead of completing forms to document the adjustments, as was previously done several years ago, the Utility Billing Supervisor maintains a record of adjustments in a spreadsheet. The Utility Billing Supervisor stated that, if adjustments are requested by a supervisor or the Mayor, a notation of who made the request is placed in the spreadsheet.

City policy does not require documented written authorization for utility fee adjustments or to write-off fees. Although City personnel stated that most adjustments are routine in nature, no signed documentation is required to indicate formal authorization of utility fee adjustments.

According to the City Utility Billing Supervisor, the most common adjustments performed are: sanitation fee adjustments due to unoccupied rental properties, water bill adjustments due to water leaks, and gas and water fee adjustments due to meter reading errors. Any City utility clerk can perform adjustments for sanitation fees and all other adjustments must be done by the Utility Billing Supervisor or her backup. The City Utility Billing Supervisor stated that for each adjustment, City personnel will review certain records to confirm the adjustment is appropriate. An adjustment will be made if the reason is valid.

City personnel indicated "write-offs" are performed systematically in batches at the end of every quarter. The City will notify customers who have outstanding balances that their account must be settled or the City will transfer their account balance to another active account in the customer's name or their account will be sent to collections. The Utility Billing Supervisor indicated a standard process exists to make adjustments and write-offs; however, this is a general practice and no formal written policies exist.

## Findings and Recommendations

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For sanitation adjustments due to vacant property, City personnel will review consumption of water or natural gas for the property. If there is little or no consumption of water or natural gas, indicating the property is vacant, an adjustment will be made to remove the sanitation fee for that month. For water leaks, the Utility Billing Supervisor stated the basic criteria used to determine an adjustment is whether a water line was dug up. The adjustment amount is determined based on a calculation performed by the City. The Utility Billing Supervisor stated that City personnel will determine the water customer's average consumption and will adjust the customer's bill by one-half the loss above the average consumption.

An adjustment to water fees results in an adjustment to the wastewater bill because a leak will not result in the use of the City's sewer system. The wastewater bill will be adjusted to the amount the customer is routinely invoiced. Finally, meter reading errors will simply be corrected to adjust the fee based on an accurate reading.

Further, a review of documentation for natural gas utility customer billings for January 2015 found 34 customers were possibly incorrectly charged a lower City rate instead of the higher County rate. After presenting this finding to the City Utility Billing Supervisor, it was confirmed that 16 County natural gas customers were incorrectly charged the lower City rate. The Utility Billing Supervisor stated that most of those identified as having been charged an incorrect rate were located in areas of the County where the City boundary "is very spotty."

### ***Recommendations***

We recommend the City develop and implement a formal, written policy to address utility account fee adjustments that include criteria for making an adjustment, the process used to determine the amount adjusted, personnel who can authorize an adjustment, and the process to document and retain this information.

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**Finding 5: The City did not consistently follow policy, had insufficient documentation, and at times did not obtain prior approval for certain vendor payments.**

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An examination of a sample of vendor payments made between July 1, 2013 and January 2015, found invoices were paid despite a lack of sufficient supporting information including the dates, locations, description of work performed, the number of hours worked, the billing rate, the description and quantity of materials used, or whether written contracts existed in association with the services rendered.

As an example, on October 13, 2014, the City paid three undated vendor invoices totaling \$5,100 to a vendor for tree removal services with no specific address documenting the location of the services performed. The first invoice with a location of Chaudoin Street, stated, “removed 7 large white pines...ground stumps removed chips graded with dirt, seeded and strawed” for a lump sum of \$3,600. The second invoice with a location of Crawford Street listed a description of work performed as, “removed 1 large limb overhanging st. 2 growing into power line 2 cleaned up” for a lump sum of \$300. The third invoice with a location of Ogden Street denotes services performed as “trimmed white pine off prop fence, cleared approx 80 ft. of fence row, removed 2 hemlock pines and one large dead tree stump, approx 6 ft. tall,” for a total fee of \$1,200. The three invoices were not dated, were not signed by a City employee verifying work performed, did not document specific work locations, and had the same PO number.

The City uses a PO system to authorize City employees to expend funds prior to making purchases. In many instances, however, the POs associated with services provided were obtained after the date of the vendor invoice indicating personnel was either not previously aware of the work performed or did not get the proper pre-approvals for the expense. In the instance previously described, while the vendor invoices were not dated, based on the PO description, it appears that the PO was created after the services were provided. The City Procurement Officer stated that the City tries to issue POs before most purchases, except monthly routine bills; however, he noted that City personnel will often make purchases before a PO is issued.

It was noted that POs were frequently issued after the dates of the invoices, indicating that the PO process is often being ignored by City employees. The auditors examined a sample of vendor payments for the City and found that, of the 930 invoices reviewed, 296 transactions had POs issued after the date of the purchases, and 83 had no PO associated with the purchase. Also, 61 of the invoices reviewed were missing dates, making it impossible to determine whether the PO was issued prior to purchase. Of the items reviewed, only 53 percent had a PO issued prior to the invoice date.

An invoice for \$8,126 submitted for concrete work, dated November 17, 2014, and paid eight days later, documented the work as “Job #1 – pour retaining walls and footer, labor and materials.” No additional information or supporting documentation was provided by the contractor, including neither the date of the work performed nor the location of the work performed. The invoice contained no City employee signature verifying work was completed. A PO with the same date as the invoice was on file and provided a location of Ohio Street; however, the specific address was not provided, no contract or other documentation was available to identify how the contractor was selected, or the terms agreed to by the City. This amount exceeds the small purchase authority of the City Building Inspector and no approval by the Mayor was noted on documentation.

A second invoice in the amount of \$4,910, from the same vendor, dated November 25, 2014, and paid December 23, 2014, documented the work was “Job #2 – pour retaining walls and footers, labor and materials.” No additional information or supporting documentation was provided by the contractor, including neither the date of the work performed nor the location of the work performed. The invoice contained the City Building Inspector’s signature verifying work was completed. A PO stating that the work was to include the replacement of a sidewalk was on file; however, no reference to a sidewalk was noted on the invoice.

A third invoice in this series for the amount of \$7,308, from the same vendor, also dated November 25, 2014, and paid December 23, 2014, documented the work was “Job #3 – pour retaining walls and footers, labor and materials.” No additional information or supporting documentation was provided by the contractor, including neither the date of the work performed nor the location of the work performed. The invoice contained the City Building Inspector’s signature. This amount exceeds the small purchase authority of the City Building Inspector and no approval by the Mayor was noted on documentation. A PO was on file stating that the work was to include the replacement of 300 feet of sidewalk on Ohio Street.

The total for these three invoices is over \$20,000 for the work performed on one project. The work was initiated by the Building Inspector who indicated that he did not understand why the vendor invoiced the work in this manner. According to the Building Inspector, once a project approaches \$15,000 he will “try to come up with specs or a bid list and advertise” because it is difficult to determine after that point whether a project may actually exceed the \$20,000 threshold requiring a bid. No bid file was found for this project. The Building Inspector stated that this was expected to be a small project but once the project was initiated, it escalated. According to the Building Inspector, he knew this project would entail more than was originally anticipated on the first day of work on this project and that he did not submit a change order because there was no contract. The Building Inspector stated that he contacted “two or three guys who do demolition work” and all offered similar pricing to perform the work. Neither the invoice nor the POs document an hourly rate or the number of hours worked. The Building Inspector stated he had not documented this work due to insufficient time; see Findings 15 and 17. Also, see Finding 2, regarding the City’s failure to competitively bid.

## Findings and Recommendations

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According to Executive Order 07-02, issued by the Mayor on January 2, 2007, “no purchase order/contract/change order/materials/vehicles or any other item shall be authorized or purchased in an amount more than \$5,000 without the express approval of the Mayor’s Office or designee.” Because it appears the Mayor has not delegated his authority, all procurements over \$5,000 are to be approved by the Mayor; however, the Mayor’s approval was not consistently documented on POs or vendor invoices retained in accounts payable files. In an attempt to identify whether certain purchases were approved by the Mayor, as required by Executive Order 07-02, auditors selected a sample of monthly purchase requisition files maintained separately by the Purchasing Officer for review. Purchase requisitions are filed by the month in which the request was made and the related PO was issued. Given the number of requisitions filed each month, it was difficult to locate specific requisitions.

A review of the purchase requisition files sampled identified a purchase requisition, dated December 22, 2014, for the clearing of brush and right of ways for 40 miles of the City’s natural gas pipeline. Attached to this purchase request was a copy of a contract dated November 19, 2014, signed by the contractor on November 19, 2014, and the Mayor on December 1, 2014, establishing services to be performed at a rate of \$519 per mile. Payments made to the contractor performing this work were included in a sample of vendor payments reviewed; however, at the time of the review no payments for this contract were in the vendor payment files.

Accounts Payable personnel noted the payments had not been filed but were placed in a large stack of paid unfiled vendor invoices. An Accounts Payable employee stated that the invoices were not filed because the Budget Director told staff several issues related to the documentation had to be addressed. The Accounts Payable employee noted there had not been sufficient time to address all the issues, though some invoices were paid three months prior. See Finding 2 for further details related to these transactions.

**Recommendations** We recommend vendor contracts require detailed invoices be submitted to appropriate City personnel. Details should be provided on an invoice regarding work performed including: date of service, description of service, number of hours worked, billing rate, and description and quantity of materials used. Invoices should be reviewed for accuracy and compliance with contract terms by appropriate City personnel prior to payment.

We recommend the City adopt and implement a formal, written policy requiring POs to be approved by appropriate personnel prior to the purchase of goods or services. In an emergency situation, a PO should be completed as soon as possible after a purchase is made and with the justification for the emergency documented on the PO.



**Findings and Recommendations**

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Also, we recommend that the City implement a centralized filing system for all contracts, making this documentation readily available and accessible to City personnel. Centralizing contract documentation provides greater assurance documentation can be located timely, is available to review, and is more transparent. Further, we recommend the City file purchase requisitions, with appropriate approval, with the related invoices and POs.

See additional recommendations in Finding 2 related to the City procurement process.

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**Finding 6: The City took no employee disciplinary action involving the Budget Director and did not require full restitution for the apparent personal use of almost \$3,000 in public funds.**

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Auditors questioned the City Budget Director’s unsettled debt to the City resulting from the apparent personal use of almost \$3,000 in public funds identified in FY 2010. Despite the Budget Director’s questionable financial activity and the failure to make restitution, the City has neither taken disciplinary action involving the Budget Director, who has full access to the City’s financial system, nor made continued attempts to recover the full amount of the funds expended for apparent personal use.

In 2009, the City Budget Director was found by City personnel to have cashed five cold checks from City funds totaling \$1,350, and to have used a City credit card to incur over \$1,577 in improper charges, including over \$1,500 paid to a state university athletic ticket office. While the Mayor directed the Budget Director to fully repay the \$2,926, no formal written documentation or agreement was made identifying the full amount to be repaid, the terms of the repayment, the time period to repay the amount, or the actions that would be taken if repayment was not made, as directed. City records indicate an outstanding balance of approximately \$2,427 has not been reimbursed approximately five years after the apparent personal use occurred. Further, although the issue was reported to the City’s CPA and the City has taken steps to expand oversight of the City’s finances over the last few years, no employee disciplinary actions have been taken and no documentation of the Budget Director’s actions was maintained in the employee’s personnel file or other City records.

In 2009, the City Attorney learned of City employees cashing personal checks with City funds resulting in personal checks being returned from banks marked “insufficient funds.” The Mayor subsequently issued a memo/executive order dated December 28, 2009 that stated “[e]ffective immediately, no department shall permit any personal checks for any employee or any other person/business to be cashed in any city department.” According to the Mayor, the Budget Director had to make restitution to the City, the City credit card was taken away, and he was no longer authorized to use a City credit card. The Mayor and the City Attorney, however, did not know whether the City Budget Director repaid the full amount. The Mayor stated that the issue was reported to the CPA firm conducting the audit and the City Council at that time.

## Findings and Recommendations

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Consistent with Statements of Auditing Standards No. 114, the CPA retained by the City, after conducting the City's financial statement audit for the year ending June 30, 2010, presented the City Council with a letter documenting *The Auditor's Communication With Those Charged With Governance*. In a letter dated May 18, 2011, the CPA shared with the City Council other matters that were identified during the audit, including those issues related to personal check cashing and credit card usage. The information in the CPA's letter did not specify activity related to one employee, the City Budget Director, but discussed the issues in general and provided recommendations to the City to recover outstanding amounts.

In April 2013, the City Council added a CFO position to the City Pay and Classification Plan and the Mayor retained an outside accounting firm with no relationship to the City that reportedly performed all internal auditing for the City. However, according to the outside accounting firm retained by the Mayor,

The services we are hired to do is not an audit at all, internal or external. We have been engaged starting with June 30, 2011 through this fiscal year ending June 30, 2014 to assist the City with reconciling their books at June 30 and drafting the financial statements for the auditors. We prepare journal entries for the City to record and reconciling schedules to document balances for the auditors.

Further, an accounting firm representative stated that while he was aware of the general issue involving personal check cashing and use of credit cards, he had no specific knowledge or documentation of the details associated with the issue. Additionally, while the CFO was hired in June 2013, she stated that the first year of her employment was spent primarily addressing payroll and HR issues and that she and her staff had not had much time to closely monitor account activity until more recently, beginning in the fall of 2014.

The documentation related to any repayment made by the Budget Director was maintained in the City Clerk's office. The file provided to auditors from the City Clerk's office did not clearly define the purpose of the records contained in the file, or summarize the total owed to the City, or clearly state the remaining balance due to the City. The file documented five personal checks totaling \$1,350, written between October 30, 2009 and December 11, 2009, from the Budget Director to the City that were returned by the City's bank to the City for insufficient funds. The file also documented two credit card charges, which were placed on the Budget Director's City issued credit card in June and July of 2009. One charge was for \$1,535 and another for \$41.96, totaling \$1,576.96. The only documentation to support the \$1,535 charge on June 27, 2009, to a state university athletic ticket office was a typed note stating that the purpose of the charge was for "Registration fees for Local Conference" which had been "[c]ompleted by phone" and charged to the Budget Director's City issued credit card. According to the former City Clerk, this typed note was provided by the City Accounting Department to support the \$1,535, but the former City Clerk had discovered the charge was actually for season football tickets for a state university.

Notes were made in the City Clerk's file documenting receipt and deposit of two payments totaling \$500 made by the Budget Director toward his debt owed to the City. The former City Clerk's records document the first receipt of \$200 paid in cash on May 20, 2011 and deposited on May 25, 2011. The second, and final, repayment amount documented in the former City Clerk's file was the receipt and deposit of \$300 paid in cash from the Budget Director on March 22, 2012. Based on the records maintained and provided by the City in the file at the time of the auditor's review, it appears an outstanding debt of \$2,426.96 remains.

The former City Clerk stated that the Budget Director had not fully repaid the debt he owed to the City for the credit card charges and cold checks before the former City Clerk left office in July 2014, approximately five years later. The former City Clerk was not aware of any formal written agreement establishing a payment plan between the City and the Budget Director and stated he was not certain the exact amount of the debt owed, but believed the amount was "a few thousand dollars."

Auditors asked the former City Clerk whether he recalled any other payments made by the Budget Director toward his outstanding debt in addition to the two payments identified in the file. The former City Clerk stated that he was not aware of any additional payments made by the Budget Director, unless he had made payments in the City utility office without notifying the former City Clerk. The former City Clerk was unaware whether a plan was established for the Budget Director to continue making payments after the former Clerk retired in July 2014, stating that he mentioned to the City Attorney that he did not think anything had been resolved and "she needed to get back with him and try to get that justified." Though the current City Clerk was aware of the issue and of the file maintained by the former City Clerk, he stated at the time of our review that he had not been involved in the process and did not know what had been paid.

Auditors reviewed the Budget Director's personnel file and found no written reprimand or other written documentation pertaining to the improper financial transactions perpetrated by the Budget Director. Further, no salary adjustments or agreed upon deductions were made in an attempt by the City to recoup these misused funds.

The Budget Director has served in this capacity since July 1994 and described his general duties as running "the centralized accounting department of the City," which consists of supervising three Accounts Payable staff and the Procurement Officer. While the Budget Director acknowledged having had a debt to the City, he thought he had repaid the debt and all documentation associated with his payments was maintained by the former City Clerk. The Budget Director stated that there was no formal written agreement established but that the issue was discussed with him verbally by the Mayor and the former City Clerk. Auditors asked whether the Budget Director had any additional documentation of the amounts repaid to the City, but the Budget Director stated that the former City Clerk's records would contain everything he repaid and that he would repay any unpaid debt.

## Findings and Recommendations

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The Mayor stated that he took all the administrative action he thought was necessary and again acknowledged that he did not know whether the City Budget Director actually repaid the funds, as he had directed. When asked what personnel action was taken by the Mayor, if any, to discipline the Budget Director and if anything was documented in the employee's personnel file, the Mayor reiterated that he had taken away the Budget Director's City issued credit card user rights. The Mayor stated that when the improper activity was identified, the Budget Director was "a critical employee if we let him go at that point we wouldn't have any staff" noting that the City, at that time, had a limited number of accounting personnel and the City had not yet hired a CFO. The Mayor stated that he had thought there was a written statement but didn't know for sure.

While the City appears to have initially requested repayment of the funds expended for apparent personal use and revoked the Budget Director's use of City issued credit cards, the issue was not documented in the employee's personnel file, no repayment plan was established and monitored, the employee has not repaid the City over \$2,400, and the City neglected to ensure the public funds were fully repaid.

### **Recommendations**

We recommend the City ensure the Budget Director's unsettled debt is fully repaid, including interest, for any unpaid portion of the debt. The City should fully document in writing the apparent personal use of funds by the employee and provide the Budget Director with written notice that the unpaid amount, including interest, is due upon receipt of the notification. Documentation of the apparent personal use of funds, along with the written notice, and repayment of debt, including interest, should be maintained in appropriate files by City officials. In addition, we recommend the City consider appropriate action regarding the employee's original activity and failure to repay the City, as directed, the public funds used for personal purposes. We recommend any action taken be documented in writing and maintained in appropriate files by City officials. The City should ensure all debt obligations and repayments are clearly identified in City records.

We also recommend if improper financial activity is identified in the future, the City ensure the activity is clearly and adequately documented in City records, appropriate action, including contacting law enforcement and requiring restitution, is taken to address the issue, necessary follow-up is performed to ensure the issue is handled in a timely manner, and controls are strengthened to minimize the risk of the issue reoccurring.

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## Findings and Recommendations

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**Finding 7: The City Fuel Center's inventory was not independently verified and a lack of controls did not prevent diesel sales to the public.**

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While reviewing City Fuel Center records, auditors found City Fuel inventory was not independently verified and a lack of controls did not prevent diesel sales to the public. Until recently, City personnel relied on the fuel vendor to report to them the amount of fuel delivered to the City, and Daily Card Sales Reports document that the City appears to have inadvertently sold diesel fuel to the public by not implementing the proper controls.

In July 2014, the City began selling unleaded fuel from the City Fuel Center to the general public in an effort to stabilize fuel costs for its residents. Prior to July 2014, the City used its Fuel Center facility to maintain unleaded and diesel fuel storage for use by its own City fleet and for resale to other local non-profit organizations the City contracts with to provide fuel. In order to help effectively manage its operations, the City has attempted to record daily fuel level readings of City-owned fuel storage tanks each morning, maintain an electronic recording of all fuel sales through its system software, and maintain vendor bills of lading to document the amount of fuel purchased and placed into the City's tanks. The daily fuel level readings are used to assist the City in determining when additional fuel is needed, while sales and purchase information is necessary for the City to reconcile fuel inventory. Until recently, however, the City has not independently verified the amount of fuel that was actually delivered by the vendor and as a result has not been able to properly reconcile its fuel inventory.

Although the City indicated that daily fuel inventory reconciliations are performed by City personnel, auditors found the City process followed to reconcile fuel inventory did not require the City to perform an independent verification to substantiate the amount of fuel actually delivered into the unleaded and diesel fuel tanks. Rather, the City accepted the delivery amount reported by the vendor on its bill of lading statements as the actual number of gallons received and then paid the vendor for the amount it reported to have provided to the City. Without performing an independent verification of the amount of fuel delivered to the City, it cannot be determined how much fuel was actually placed into the City's fuel tanks and the City runs the risk of paying for fuel it has not received.

Auditors inquired of the Fuel Center Manager how the City verifies the amount of fuel the vendor delivered. In response to this inquiry, the City Attorney, after discussing the process with the Business and Economic Coordinator, the Fuel Center Manager, and the Mayor, stated:

The delivery ticket is signed and a comparison is made the following morning between the readings and the gallons sold. Additionally, an inventory on unleaded and diesel fuel is performed. On receiving product, the tank is gauged before the fuel is unloaded and after the pumping of the load is completed and any sales that occurred during the pumping of the load are subtracted. Also, balancing is performed for the purposed (sic) of any corrections that are required for temperature conditions. Diesel fuel is handled the same way.

The Fuel Center Manager who performs daily sales reconciliations and maintains all records relating to the fuel center, confirmed to auditors directly that tank readings are recorded prior to and after delivery of fuel; however, the readings used in this process are recorded by the vendor on the vendor bill of lading and not by Fuel Center employees. Beginning sometime in May 2015, the City Fuel Center Manager stated that she began reconciling the fuel tank gauge readings on the vendor bill of lading statements to the gallons reportedly received. To determine the number of gallons actually delivered to the City in its tanks, the Fuel Center Manager must perform a calculation to convert the fuel tank measurements into gallons. After performing this calculation and noting variances between her calculation of the fuel received and the gallons reportedly delivered by the vendor, the Fuel Center Manager stated she began to review records from April 2015. The Fuel Center Manager acknowledged that there are natural variances due to weather conditions. Variances identified by the Fuel Center Manager between April 3, 2015 and May 21, 2015, ranged from the City receiving between 722.86 gallons less than, and 103.82 gallons more than, the vendor had stated it had delivered to the City.

Although the Fuel Center Manager was able to perform this calculation on some bill of lading statements dating back to April 3, 2015, auditors found one statement, dated April 10, 2015, contained no tank measurements from which a calculation could be performed. A review of bills of lading from July 16, 2014 through April 10, 2015, identified an additional 15 instances in which the vendor failed to record before and after fuel tank measurements on the bill of lading statements. Without this information, there is no means by which the City can fully reconstruct its inventory records.

City employees and officials stated that even though the City maintains diesel fuel at the City Fuel Center, the diesel fuel is not sold to the general public. Rather, it is used internally by the City and is sold to other local non-profit organizations. Further, to purchase diesel from the City system, the purchaser would need a City-issued fuel card, which is only provided to City personnel and those local non-profit organizations under contract to purchase fuel from the City. Daily Card Sales Reports record all fuel sales in which a card was used. When a City fuel card is used at the Fuel Center, the report will state "Private" as the card type; any other card type identified on the report indicates a public sale. While examining Daily Card Sales Reports for August 20, 2014 through August 23, 2014, credit card activity was identified indicating that diesel fuel was purchased by the public on two occasions.

## Findings and Recommendations

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After identifying these two instances, auditors shared this information with the Fuel Center Manager. The Fuel Center Manager stated that she was concerned by the finding, noting that she herself had called the vendor to request the vendor block the use of credit cards on the diesel pumps. The Fuel Center Manager was not certain the date that she contacted the vendor but believed it was only a couple of weeks after the Fuel Center opened to the public in July 2014. She stated the request was made to the vendor after City personnel had noticed vehicles pulling up to the diesel pumps. While auditors were present, and on her own initiative, the Fuel Center Manager randomly selected another date to review the Daily Card Sales Report. A review of the report for September 2, 2014, found two additional public purchases of diesel fuel. One of the diesel fuel purchases was made during the day when City Fuel Center employees were on duty. The City Fuel Center Manager then contacted the vendor to determine when the vendor had implemented the credit card restriction on the diesel fuel pumps.

Auditors asked the Fuel Center Manager to contact the vendor and request documentation identifying when the diesel fuel pumps were programmed to no longer accept credit cards. Instead of receiving documentation from the vendor, auditors received a response from the City Attorney. According to the City Attorney, “the fuel center manager was alerted to the issue that the credit card software was apparently not turned off as intended at the diesel pumps on or about the 12<sup>th</sup> of September, 2014. The manager contacted the software company to turn off the credit card readers for those machines once she was made aware on September 12<sup>th</sup>. To the best of my knowledge, the City was not aware, nor did the City ever intend, that the diesel pumps’ credit card software be turned on prior to that date.” Though the City may have been unaware that public sale of diesel fuel from City inventory occurred, such activity may create tax liability or licensing issues for the City.

**Recommendations** We recommend the City ensure that formal written fuel inventory procedures exist. We recommend these procedures require City personnel to perform calculations to independently verify fuel delivery amounts in a timely manner. The City should determine, based on fuel industry or other acceptable standards, reasonable variance limits. Once an acceptable fuel variance standard is established, we recommend the City include this information into the reconciliation calculation that should be performed after each fuel delivery. We recommend City personnel ensure fuel tank gauge readings are properly recorded on vendor bill of lading statements. If bill of lading statements are presented to City personnel without fuel tank gauge readings, City personnel should refuse to sign for the delivery. If variances in fuel delivery amounts are identified, the City should record these variances, along with an explanation of the variance. Further, significant unexplainable variances should be discussed with the vendor immediately and billings should properly reflect the agreed amount of fuel delivered. We further recommend the City, under no circumstances, pay for fuel not actually received.

## Findings and Recommendations

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We recommend the City Council request a full reporting of all public diesel sales. Further, the City should work with the Kentucky Department of Revenue to address any potential tax liability or licensing issues resulting from the sale of diesel fuel to the public.

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**Finding 8: The City does not adequately account for the number of free Water Park passes distributed, although it continues to report a net \$1.2 million operating loss.**

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Although the City distributes free daily and seasonal City Water Park passes, no process was established to account for the distribution of these free passes. The Mayor's office maintained some information regarding free Water Park passes requested and distributed between calendar years 2011 and 2014; however, City records do not consistently identify the number of passes provided for each request, the type of passes distributed, and no record was made of the number or type of free passes given to the Mayor's office or others to distribute when no request was received by the City. Further, there was no process established to distinguish a "free pass" from a pass purchased as a gift certificate. The Water Park is considered a public service by City officials and personnel; however, it has been criticized for continuing to report a net loss. For 2014, the City's audited financial statements reflect the Water Park showed a \$1.2 million operating loss.

According to the Mayor and City records maintained by the Mayor's office, free Water Park passes have been distributed annually to various local non-profits, charities, and school systems dating back to at least calendar year 2011. Before April 2015, requests and distribution of free Water Park passes was managed by the Mayor's office.

Records provided by the Mayor clearly document distribution of 71 Water Park passes by the City since June 2, 2011 to 11 different non-profit organizations. Of these 71 Water Park passes, 10 were identified as season Water Park passes, 52 were identified as day Water Park passes, and nine were not clearly documented as to the type of pass distributed. In addition, auditors found documentation indicating two additional passes, a season pass and an unidentified type of pass, were distributed to two other non-profit organizations. No documentation was located providing the date these passes were distributed. Finally, records also included several requests and eight letters of appreciation from non-profit organizations with no documentation of the number or type of free Water Park pass distributed. In four of those eight cases, the organization specifically requested between two and 31 passes. Due to the lack of uniform process and consistent documentation, it is not possible to determine how many free passes of any type were distributed.



## Findings and Recommendations

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Free Water Park passes are supplied to the Mayor's office annually by the City Water Park Manager at the request of the Mayor's office. The Water Park Manager stated he does not record or track the number of passes he presents to the Mayor's office and he does not know how many passes are distributed or to whom they are given. According to the Water Park Manager, when free passes are distributed by the Mayor's office, the recipient receives a colored card reading "free pass" that is exchanged by the recipient at the Water Park for an actual bar-coded Water Park pass and the free pass is then destroyed so it cannot be used again. The Water Park does not track the number of free passes presented at the park or the number destroyed. The Water Park Manager also noted that the card distributed for free passes is also distributed to individuals when they purchase a pass as a gift, indicating that there is no distinguishable feature between a free pass and a pass that was paid for as a gift certificate.

Passes presented to the Water Park are treated identically, with the free pass card destroyed and a bar-coded pass issued. Without maintaining a record of the number of free pass cards issued and redeemed at the Water Park and without differentiating between actual free passes and prepaid gifts, the City has no process established to determine the number of free passes distributed, the aggregate costs of the free passes, or assurance that passes are distributed as intended to benefit the City as a whole and not select individuals.

According to City records, the City's accounting for free Water Park passes has been a concern for several years. On April 9, 2012, the issue of distributing free Water Park passes was discussed by a resident with the City Council. At the following City Council meeting on April 22, 2012, the issue was again discussed among the Council and City Mayor. It was suggested at that time by one former City Council member that the City implement an accounting system to track the distribution of free Water Park passes. During that Council meeting, the City Attorney stated that she already discussed the matter with the City Water Park Manager, asking him to document those requesting a pass, the number of passes distributed, and the purpose of the distribution. Though the City had some documentation in the Mayor's Office of passes distributed since that time, it is apparent from the condition of the records and statements made by City employees that a complete accounting of free Water Park passes has still not been implemented by the City.

As of April 2015, after auditors interviewed the Water Park Manager, the City began an online request process for organizations and individuals to request donations from the Water Park. According to the City Water Park website, a customary donation is two tickets to the Water Park and organizations that may request a donation include:

- Non-profit Organizations
- Church/Youth/School Programs
- Organizations raising funds for other charities

## Findings and Recommendations

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- Individual (Special Requests)

The Mayor noted that the process is more formal recently as the City has placed information, including a formal application, online and “it’s really taken us out of the entire process.” The process as described online states that organizations should complete the Donation Request Form, submit a description of the event and organization on letterhead, make requests through mail and submit requests at least four weeks prior to the event.

While the steps recently taken by the City to address this issue may assist the City in controlling the distribution of passes, additional steps should be taken to ensure this process is consistently followed, no other method is used to distribute free passes, and a proper accounting is made of these donations.

### **Recommendations**

We recommend that the City implement a system to account for and record the actual distribution of free Water Park passes. We recommend the free passes be numbered to identify the year the passes are valid and all numbered passes be accounted for annually. The system should clearly identify the name of the recipient, the pass number, the number and type of passes awarded, and the date of the award, in addition to the value of the donation. We also recommend, the City differentiate between gift certificates and actual free passes. Further, the pass should identify the year in which it can be redeemed. We further recommend the City keep a record of free Water Park pass usage. When recipients redeem a free pass card, the City should retain a portion of the card and stamp on the pass the date it was redeemed and any identifying information that may be available to link that free pass card to a pass issued at the Water Park. Finally, we recommend the number of passes used be reconciled to the number of passes distributed.

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### **Finding 9: The City’s negotiated agreement with a property owner, which resulted in City expenditures for materials and labor, was not documented.**

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The City negotiated with a City property owner to erect a shed and pour a driveway on the resident’s property in exchange for the City demolishing a garage located on both the City and resident’s property. The terms and conditions of this negotiated agreement, as well as a cost analysis of the damage to the property owner’s portion of the garage, were not documented.

According to City personnel and the Mayor, the work was performed as a result of the City tearing down an old garage behind the City Cemetery Office, which was shared by the public Cemetery Office and the neighboring private resident. Documentation provided by the City indicated this was a shared garage because the property line of the City Cemetery Office and the private residence ran through the center of the garage. While there may have been cause to negotiate with the private property owner, the terms of any agreement between the City and the private property owner were not documented.

## Findings and Recommendations

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The Mayor noted that the garage was in poor condition as the Cemetery Board, which was previously responsible for the property, had not maintained the property for several years and that the City had to do something about the situation as kids were getting into the garage and it was a code enforcement issue. The City Attorney stated that the garage structure needed to be removed “because our side of the garage was unfit for use and it was too costly to make repairs in order to bring it up to code as the entire structure would have had to be rehabilitated given that another property owner had a half interest in the garage itself, and anything done to our side would have needed to be done to the other property owner’s side as well.”

The City Attorney noted that when the garage was demolished, the City had also removed the property owner’s driveway, stating “[i]t was simple strips of concrete to the best of my knowledge and once the garage debris was removed, he was left with no type of driveway on his property leading back to where the agreed shed would sit. He agreed to accept as full compensation a simple shed that would be placed on his side of the property line with the condition that we replace the driveway that we had torn out when the garage was taken down.”

Vendor invoices for concrete used for this project documented that concrete was delivered to the Cemetery Office address. Concrete was actually delivered, however, to a property located behind the Cemetery Office on an adjoining street. As described in Finding 5, multiple vendor invoices did not consistently provide specific addresses or adequate description of the work performed. Auditors were not consistently able to determine through observation the work performed associated with a sample of invoices for concrete services.

City personnel directed by the Mayor to perform and oversee the work on the Cemetery Office property stated that they were not certain of the terms of the agreement reached by the City and the private property owner. One employee stated he was told “to go ahead and fix it up nice” because it would be City property one day as it was his understanding that the property owner would leave the property to the City upon his passing. PVA records document the property currently belongs to the resident. No indication of such an arrangement described by the City employee was made during interviews with other City personnel or the Mayor.

## Findings and Recommendations

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According to the City Attorney, the Mayor recalled that the property owner had attended a council meeting “to request that the shed be placed in a particular direction on his property so that it would accommodate his disabilities in order for him to continue to use the shed to store his personal property, and that some sort of driveway be installed so that he would continue to have access to the shed once it was placed on his property.” The City Attorney also stated that “the Mayor recalls that more than one council member was also involved in the matter and was supportive of the City compensating the property owner with a shed and new driveway leading back to the shed that would allow him to be able to access the shed given his disability.” Auditors reviewed City Council minutes during this time in 2014 and found no mention of this matter in the City Council meeting minutes.

The Mayor stated that he had negotiated directly with the property owner to allow the City to demolish the garage structure, stating that the resident could have gotten \$20,000 to \$30,000 for the shared garage and that it was cheaper for the City to provide the storage building and new driveway to the property owner. However, the City did not perform a formal cost analysis or appraisal to reach this conclusion and did not document the final terms of the City’s agreement with the property owner. The lack of documentation of the negotiated agreement does not provide sufficient transparency of the process and could result in additional liability for the City if the property owner disputed the work was sufficient to satisfy his claim.

Expenses associated with this project included: \$1,745 for a new shed, \$2,589 for concrete, and \$1,700 for labor to pour a new driveway and sidewalk apron at the residence. Those expenses cost the City \$6,034, and do not include additional expenses for demolition, landscaping, and City personnel time to perform work, including oversight and management of the project. City records show an additional \$8,845 was expended by the City for demolition and landscaping for a total project cost of \$14,879 charged to the City Cemetery Fund.

**Recommendations** We recommend that the City perform an analysis evaluating the potential costs of projects it is considering that will assist in making the best and most cost effect determination in how to reasonably proceed to address an issue.

We further recommend negotiations resulting in the use of City funds and City personnel be formally documented in writing and approved by the appropriate authorized parties to the agreement. This documented agreement should clearly identify the terms and conditions applicable to all parties to the agreement.

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**Findings and Recommendations**

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**Finding 10: The City did not consistently apply its Pay and Classification Plan, including not paying minimums to new employees.**

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Each year, the City Council approves an Ordinance establishing a Pay and Classification Plan for all available full-time City employment positions and corresponding compensation for City personnel in accordance with KRS 83A.070(2). Once the Pay and Classification Plan is established and sufficient funding is provided by the Council through the annual budget, the Mayor, as the executive authority of the City, has the authority to fill positions within the approved Plan. It was found, however, that the Mayor employed and compensated City personnel not listed or authorized in the City Pay and Classification Plan established and approved by Council.

According to the City Employee Handbook:

The Pay and Classification Plan enacted by ordinance by the Council shall dictate the positions available in the city, the number of each of those positions available, and the pay range available for each of those positions (KRS 83A.130 and KRS 83A.070).

and

The Mayor *shall not* hire/appoint an employee for a position not accounted for in said plan and must determine a pay amount for an employee within the salary limits of said plan (OAG 82-385).

While examining City payroll reports for January 1, 2013 through March 13, 2015, auditors found the CFO was compensated an additional \$30,248 in overtime, even though the Pay and Classification Plans in effect during those periods established the position as exempt from overtime. In calendar year 2014 alone, the CFO earned an additional \$22,998 in overtime pay.

For the pay period ending May 20, 2014, the CFO claimed 31.75 hours of overtime and stated on the timesheet:

Pay an additional 15 hours of overtime per week per Mayor as long as extra duties are done until paid in full. See attached email. Additional 16.75 hours of overtime from the Battle of the Bass. Mayor authorized as overtime needed to the event. Actual time worked for the event was as follows: 5/14 – 7.5 hours, 5/15 9 hours, 5/16 – 4.25 hours, 5/20 1 hour for follow up meeting.

The email attached to the timesheet for the pay period ending May 20, 2014, documents the CFO’s request to the Mayor for authorization to receive overtime for hours the CFO had worked since the former HR Manager retired. In this email, the CFO reported working a total of 81.25 hours of overtime for pay periods ending September 10, 2013 through October 8, 2013. The Mayor responded “ok” on October 22, 2013. The email then contained a note written by the CFO that states:

15 per week until paid as long as additional duties are done per Mayor Girdler 10/22/13.

According to the CFO, the Mayor authorized her to be paid no more than 15 hours per week in overtime, but that she had typically only received 15 hours in overtime pay per pay period. The time the CFO earned was allowed to be accumulated and paid to the CFO in 15-30 hour increments each pay period. By May 24, 2014, the CFO accumulated an additional 293.75 hours and had been paid for 256.75 hours in overtime. Current and former City Council members interviewed indicated that they were not aware of any exempt employees receiving overtime.

Auditors also examined over 20 personnel files, 10 of which were full time personnel employed between April 2013 and March 2015. While examining this sample of personnel files, it was found that three full-time Gas Department Business/Economic/Marketing positions filled between April 2013 through January 2015, were all initially undercompensated in comparison to the Council's adopted Pay and Classification Plan.

A Payroll/Status Change Notice is a form used by the City to document the Mayor's approval for personnel actions affecting an individual's pay, such as establishing a new hire, a promotion, a demotion, awarding longevity pay, or a cost of living adjustment. Once completed, these forms should be in each individual's personnel file maintained by the City.

On April 9, 2013, the Mayor approved hiring an individual for the Gas Department having no assigned title with a beginning salary of \$40,000. A month later, on May 20, 2013, the Mayor approved a Payroll/Status Change Notice giving the individual the title of "Gas Business & Development Specialist." The Pay and Classification Plan in effect at that time, established through City Ordinance 12-04, documented the minimum pay for the Business/Economic position class series at \$45,000, which is \$5,000 more than the Mayor authorized this individual to be compensated.

The original Payroll/Status Change Notice documenting the employee's initial hire on April 9, 2013, indicated the position filled by the individual was "Temporary Full Time;" however, according to City personnel, no such position status exists as City employment is classified as full-time, part-time, seasonal, or intermittent. Additionally, a report provided for calendar year 2013 by the City of all employees' hire and termination dates by these four categories identified this individual as hired full-time on April 9, 2013. The employee's position status remained unchanged throughout the examination period.

## Findings and Recommendations

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The positions available and the pay structure for the Business/Economic class series was revised through Ordinance 13-12, which went into effect July 1, 2013. Under the revised scale, the minimum for this classification was reduced to \$40,000, which was consistent with the compensation the Mayor authorized for the employee three months previously.

The personnel file for the “Gas Business & Development Specialist,” who now has the title Business and Development Coordinator, documented that the Mayor authorized an increase for the employee for the purpose of completing the probationary period, raising the employee’s salary to \$42,016 on August 28, 2013. While the employee’s salary was within the new limits established by Council through Ordinance 13-12, the probationary increase was awarded more than a month before the employee was eligible per City Employee policies. According to City personnel, the probation period is referred to in policy as the “evaluation period” in City Personnel policies. The policy states, in part:

During the first six months of your employment with the City of Somerset, or the first six months in a new position after changing positions, you will be in an “evaluation period.” During this time, your supervisor and/or the Mayor will continually evaluate your performance and compatibility with the City of Somerset.

and

Upon satisfactory completion of the evaluation period, you may be eligible for additional benefits or a pay increase if applicable.

Though the policy refers to an evaluation period, the City has no standard, formal process to evaluate City personnel. See Finding 21 for performance evaluation recommendations.

In another instance, City documentation shows the Mayor hired a Gas Marketer under the Business/Economic/Marketing class series on September 24, 2014, at a rate of \$14.43 an hour, which equates to a \$30,014 annual salary. The Pay and Classification Plan effective July 1, 2014, established through City Ordinance 14-05, again increased the number of available positions within the City by seven positions and renamed the class series Economic/Business/Marketing with a minimum pay at \$40,000. In this instance, the employee was undercompensated by almost \$10,000 annually when compared to the minimum pay established by the Council for this class series. The amount this female employee was compensated was significantly less than the two males hired into this position.

On December 31, 2014, a second Payroll/Status Change Notice was documented in the Gas Marketer's file, documenting that the Mayor approved an increase of \$0.50 per hour for the employee, increasing her salary to just over \$31,054, as the result of a performance evaluation, even though no formal written evaluation document was found, and she was not eligible for such an increase, per City employee policies, until March 2015. While the employee was not eligible for this increase until March 2015, she was still compensated approximately \$9,000 less than she should have received in accordance with the established Pay and Classification Plan. Although this employee was hired as a Gas Marketer, City personnel stated that she actually served as a temporary secretary in the Mayor's Office until around the time of this pay increase. City personnel were not aware whether she was tasked with Gas Marketer duties at the time she worked in the Mayor's Office.

On January 12, 2015, the City hired a third individual into the Business/Economic/Marketing class series. According to City personnel, the employee's pay was established at \$16.83 an hour, equivalent to \$35,006 a year, which again is almost \$5,000 lower than the minimum according to the Pay and Classification Plan approved by Council through Ordinance 14-05. A completed Payroll/Status Change Notice was not found in the employee's personnel file. While the Mayor stated that employees are not hired and compensated until a Payroll/Status Change Notice is approved, the HR Manager stated that the Mayor had not signed the initial Payroll/Status Change Notice establishing this person as a City employee or specifying the person's pay rate. Further, the Mayor asked the original Payroll/Status Change Notice to be reviewed to increase the employee's pay to \$19.43, which would increase the employee's salary slightly over the minimum. According to the HR Manager, the person's pay rate would remain at \$16.83 an hour until the Mayor signed the proper documentation because she was not comfortable raising the salary until the Mayor approved the Payroll/Status Change Notice. Auditors were advised, on April 10, 2015, the Payroll/Status Change Notice to establish this employee's pay at \$19.43 had still not been signed by the Mayor and returned to HR to be maintained in the employee's personnel file.

In addition to employees compensated below the minimum, City personnel identified two individuals hired on September 25, 2013, as full-time personnel serving as City Safety Officers, though only a single full-time Safety Officer position ever existed on the City Pay and Classification Plan approved by Council. Although the Pay and Classification Plan was reviewed and approved through the budget process in 2014, over eight months after the reported hire date for these two individuals, no additional positions for second Safety Officer were added to the Pay and Classification Plan. The minimum pay rate for the Safety Officer remained at \$8.75 an hour, \$18,200 annually, since the full-time position was established through Ordinance 13-12 in 2013. Based on information provided by the City, the two Safety Officers were hired at different starting pay, one at \$9.00 an hour and the other at \$7.95 an hour.



## Findings and Recommendations

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When discussing beginning compensation practices and the City Pay and Classification Plan with the Mayor, he stated he had discretion to compensate individuals between the minimum and the maximum of the plan but acknowledged that he had compensated individuals below the minimum established in the plan. In discussing his discretion to compensate individuals below the minimum pay rate, the Mayor initially stated that there are times when they consider employees to be “trainees” and that “generally everybody gets up to the minimum” after six months, referring to the “evaluation period” established in the City Personnel policies. However, the policies and the Pay and Classification Plan do not identify or establish “trainee” positions with pay less than the minimum. By definition, “minimum” indicates the lowest amount possible. The Mayor stated that he tries to save money and noted that individuals at times have approached him stating that they are entitled to additional pay. The Mayor then stated, “my discretion really goes out the...when they read the pay and classification plan, goes out the window.”

As has been noted previously in this finding, and throughout other findings of this report, the executive authority of the City is vested in the Mayor. As the executive authority of the City, the Mayor has a responsibility to abide by the ordinances established by City Council. The intent of the Pay and Classification Plan is to establish a fair and equitable system under which City personnel are compensated. The Pay and Classification Plan establishes parameters within which the executive authority should operate.

KRS 83A.065 allows for penalties to be established by the City for noncompliance with City ordinances. According to KRS 83A.065(1):

Every city shall have the power to establish fines, penalties, and forfeitures that may be imposed for violation of its ordinances, and may secure injunctions and abatement orders, when appropriate, to insure compliance with its ordinances.

While auditors are unaware of penalties, fines or forfeitures established by the City for noncompliance with City ordinances 12-04, 13-12, or 14-05, KRS 83A.065(3) further states:

If an ordinance fails to prescribe any penalty for noncompliance with its provisions, any noncompliance shall be deemed a violation and a criminal fine not to exceed the amount set forth in KRS 534.040(2)(c) may be imposed for the offense.

## Findings and Recommendations

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**Recommendations** We recommend the Mayor comply with the compensation structure as established through ordinance by the City Council. We further recommend that City personnel conduct a full review of each City employee’s compensation to ensure that salary and benefit requirements established through the City Pay and Classification Plan and the City Personnel Policy are being followed. Given that violations of ordinance and policy were identified, we recommend City Council seek a third party to perform this review and that the review be documented and results shared directly with the full City Council to ensure results of the review are complete and transparent. If additional violations are identified, these violations should be reported and rectified immediately to bring individual compensation and benefits into compliance with City ordinance and policy.

We recommend the City Council discuss with legal counsel the potential risks associated with the noncompliance identified. Additionally, the City Council should discuss and consider whether any penalties for noncompliance with City ordinances will be imposed.

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**Finding 11: The City undercompensated the Water Park Manager by thousands of dollars for “off-book” overtime income earned, in violation of federal and state law.**

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From pay periods ending April 25, 2014 through October 24, 2014, City records document that the City Water Park Manager worked nearly 570 hours of overtime; however, he was compensated a total of \$8,616 for only 244 of the hours of overtime he worked. The remaining 326 hours were recorded on the Water Park Manager’s timesheet as “extra hours earned.” Through interviews, it was reported to APA auditors that the Mayor suggested to the Water Park Manager that he record on his timesheet only a portion of his overtime as paid overtime with the remaining overtime hours worked to be used for additional leave. This action resulted in the City under compensating the Water Park Manager by thousands for “off-book” overtime income earned, in violation of federal and state law.

The Water Park Manager is a full-time, non-exempt salaried position that is eligible for overtime, or comp-time, as documented by the City Pay and Classification Plan approved by City Council. An examination of a sample of City personnel timesheets from July 1, 2013 through December 2014, found that the Water Park Manager routinely recorded hours for both overtime and “extra hours earned” when the City’s Water Park is in operation during the summer season. According to the Water Park Manager, his schedule, while the Water Park is open, requires him to work 7 days a week, noting that he works several hours each day. There is no distinguishable difference between the work he performs and reports as overtime hours and “extra hours earned.” The only difference is the method used by the City to account for the hours worked by the Water Park Manager. Based on City records and information from City personnel, the Water Park Manager appears to be the only City employee whose overtime is recorded in this manner. The recording and payment of another employee’s overtime hours, however, is discussed in Finding 10.

## Findings and Recommendations

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City policy, in accordance with the Federal Fair Labor Standards Act (FLSA), states that non-exempt employees are eligible to receive overtime pay and are to be paid time and one-half for actual hours worked in excess of 40 hours during a scheduled workweek. The City requires employees to “provide all overtime information on their required time sheet or time card, with all overtime hours having been approved by the appropriate supervisor” so that the City can track hours worked and appropriately calculate compensation to employees. City policy further allows non-exempt City personnel to earn compensatory time, or comp-time, in lieu of overtime pay, as is established through KRS 337.285(4), which states, in part:

Upon the written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is not exempt from the provision of the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be granted compensatory time in lieu of overtime pay, at the rate not less than one and one-half (1- ½) hours for each hour the county or city employee is authorized to work in excess of forty (40) hours in a work week.

The Water Park Manager was not certain why he was splitting his overtime hours between paid overtime and “extra hours earned” rather than receiving overtime pay for all his hours in excess of 40 per week, but stated that he thought it had to do with the City Council not wanting to pay overtime. The Water Park Manager noted that in 2007, during his first year as manager, he originally was compensated for overtime for all hours worked in excess of 40 each week, but then the Council became concerned by the amount of overtime he was paid. It does not appear, based on statements by the Water Park Manager, that he requested this arrangement as is required by state law; however, he stated that after a discussion with the Mayor he agreed to be paid for only a portion of the total overtime hours he worked.

In 2007, the City Council members expressed concern regarding the amount of overtime paid to the Water Park Manager. A local newspaper reported that the Manager was paid over \$14,000 in overtime for the summer season. While the article did indicate concern regarding the amount of overtime paid, the article quotes one former City Council member as having said, “[w]e’re doing a disservice to him if he’s working that much.”

Though the Water Park Manager stated that he agreed to be paid for only part of the overtime he worked and was “okay” with it, he acknowledged that the arrangement was not entirely fair to him. The Water Park Manager estimated that during each season the park was open he accumulated approximately 500 hours of “extra hours earned.” The Water Park Manager estimated that he probably loses about \$10,000 a season by not being fully paid for overtime and then stated that the City gets its “money’s worth out of me.” In addition, the overtime hours provided to the employee as comp-time were not accumulated at time and one-half, as required by the statute. Furthermore, KRS 337.285(5)(b) requires that a city employee who has accrued a total of 240 hours of comp-time shall, for additional overtime hours worked in excess of 240 hours, be paid overtime at time and one-half compensation instead of accruing additional comp-time.

While City policy requires non-exempt employees to document all hours worked on their timesheets so that the City may track work hours and compensate employees appropriately, the City has not executed a written agreement with the Water Park Manager to be granted comp-time in lieu of overtime pay as required by KRS 337.285(4), or maintained a formal record of the Water Park Manager’s “extra hours earned” in its payroll system. Former and current City personnel confirm that the City payroll system does not record the extra hours earned by this employee. A former City employee stated that she was to compensate the Water Park Manager for overtime pay for the hours he reported as overtime, and that nothing was recorded or tracked for the time that the employee reported as additional or extra hours. The former employee recalled that the Water Park Manager began submitting his timesheet to the Mayor around the time when he began reporting extra hours earned on his timesheet.

Despite the City not recording or tracking these additional hours, the Water Park Manager has historically been allowed to use the “extra hours earned” periodically as leave time, rather than using other forms of leave time such as personal days or vacation time. The extra hours are in essence comp-time that can be accrued by the Water Park Manager. During the examination, auditors were advised that City Accounting Department personnel began tracking these additional hours in a spreadsheet beginning April 25, 2014. The spreadsheet maintained by the City accounts for each hour of the “extra hours earned” as recorded on the timesheet and not as overtime accrued and incremented for time and one-half.

When the Water Park Manager uses “extra hours earned,” or comp-time, as leave on his timesheet, the employee is compensated at his regular pay rate, not at time and one-half. For example on his timesheet for the pay period ending December 31, 2013, the Water Park Manager reported that he worked 56.5 hours, used 3.5 extra hours, and had 20 hours for holidays. A payroll report for this pay period documents the employee received pay for 60 hours at base rate, and 20 hours for holidays. The Water Park Manager’s timesheet was not consistently approved. See Finding 20 regarding timesheet review and approval.

**Findings and Recommendations**

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KRS 337.285, in accordance with the FLSA, establishes limitations for accumulating comp-time by local public employees, and requires employees who have accrued the maximum number of hours allowed per statute to be paid overtime for any additional hours worked. Specifically KRS 337.285 (5) (a) and (b) state:

- (a) Upon request of the county or city employee, and as provided in subsection (4) of this section, compensatory time shall be awarded as follows:
  - 1. A county or city employee who provided work in excess of forty (40) hours in a public safety activity, an emergency response activity, or a seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not more than four hundred eighty (480) hours of compensatory time; or
  - 2. A county or city employee engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time
- (b) A county or city employee who has accrued four hundred eighty (480) hours of compensatory time off pursuant to (a)1. Of this subsection, or two hundred forty (240) hours of compensatory time off pursuant to paragraph (a)2. of this subsection, shall for additional overtime hours of work, be paid overtime compensation.

While the City Water Park Manager reported his overtime using timesheets to the Mayor, as required by City policy, the City does not have an official record of the time accumulated by the employee. As of April 25, 2014, the Accounting Department maintained a spreadsheet of the Water Park Manager’s accrual and use of “extra hours earned;” however, this information was maintained “off-book,” not recorded in the City’s payroll system, and did not provide transparency or report the actual expense to the City. According to City personnel, it appears the City only retained the Water Park Manager’s timesheets dating back to early 2011 and has not maintained timesheets dating back to 2008 when the Water Park Manager first began reporting or using “extra Hours earned.” As such, the City does not have adequate records to compile a complete and accurate accounting of the comp-time balance owed or available to the Water Park Manager.

**Findings and Recommendations**

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If City records for April 25, 2014 through October 30, 2014, represent a typical work schedule for the Water Park Manager, auditors estimate the employee may have accumulated almost 2,282 hours of overtime since 2008. This does not account for the hours that may have been used as leave by the employee during that seven-year period. Further, based on this information, it appears that the Water Park Manager would have exceeded the maximum allowed accumulation of 240 hours for comp-time during the first year this process was followed, and as such should have been paid overtime for the additional hours in excess of the 240 hour comp-time maximum. While a complete and detailed inspection of all timesheets submitted by the Water Park Manager since 2008 would have to be completed to determine the actual amount he may have been undercompensated by following this process, based on the information available to auditors, the City may have underpaid the Water Park Manager up to \$70,000.

**Recommendations** We recommend the City Council consider this matter and discuss with its legal counsel the appropriate action to be taken, to attempt to determine the actual number of hours the Water Park Manager worked and for which he should be compensated, from the time this method of accounting for his overtime was initiated in 2008. In making this determination, we recommend the City Attorney contact the Kentucky Department of Labor to request assistance in determining how the City should proceed in addressing this issue. We also recommend the City Attorney contact the Kentucky Department of Revenue and the Internal Revenue Service to determine how to properly address any potential tax reporting issues resulting from the method used by the City to handle overtime worked by the Water Park Manager.

We recommend the City consider whether it is cost effective for the City to retain three full-time and two part-time Water Park employees throughout the entire year. The City should consider whether any or all of these positions should be classified as seasonal.

We also recommend the City consistently record all work hours in the City's payroll system to provide a transparent and accurate means of accounting for and reporting the City's actual labor costs. We recommend no employee's hours worked be recorded "off-book" by any unofficial means.

We recommend the Mayor and other City officials abide by federal and state law by allowing City employees to elect to appropriately be paid overtime or receive comp-time in lieu of paid overtime, in accordance with KRS 337.285. Finally, we recommend the City evaluate, within statutory requirements, the necessity for employees to accumulate overtime to minimize the cost to the City.

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## Findings and Recommendations

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**Finding 12: City job vacancies were not consistently posted as required by City Personnel Policies.**

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City records examined document the City hired over 70 full-time personnel between July 1, 2013 and February 8, 2015, in addition to several part-time, seasonal, and intermittent positions. According to City personnel, many of these positions for which individuals were hired were not posted or announced internally as required by City policy.

The City Personnel policy established through City ordinance 08-15 states:

When a job vacancy occurs in the City, an internal announcement of the position will be posted in order to give notice to all current employees. The notice shall be written and placed on all departmental bulletin boards for a term of 5 business days. The notice shall include information such as the position title, summary of duties, required or recommended qualifications, pay range as set forth in the city's pay and classification plan, and the time limit to apply.

City Personnel policy only requires job vacancies to be posted internally, leaving the decision to post positions externally at the discretion of the Mayor.

Personnel responsible for the Human Resource (HR) function of the City acknowledge that most positions for which individuals were hired between July 1, 2013 and February 8, 2015, were not posted internally or externally to publically notify City personnel or others of an available position. Statements made by the former HR Manager, who retired August 31, 2013, and who had served in that position since approximately 2008, indicated that the practice of posting available positions was not consistently followed during her time as HR Manager. The former HR Manager stated that sometimes vacant positions would be posted and no one would respond expressing interest; then, when another attempt was made to fill the position, it would not be posted at all. It was noted, however, that positions available in the City Police, Fire, and EMS departments are routinely posted, but those position postings are handled by the individual departments and not centrally by the HR Manager.

No clear explanation was provided by the CFO or current and former HR Managers as to why positions were not consistently posted internally as required by City policy. It was noted that the City encountered turnover in the HR manager position starting September 1, 2013, after the former HR Manager retired. Between September 1, 2013 and October 2014, the City has had two individuals serve in the HR manager position. The current HR Manager served as the Mayor's Secretary until October 2014, when she accepted the HR manager position. Although the City experienced turnover in this position, the failure to post job positions occurred prior to turnover in this position. Positions filled but not posted or advertised by the City include, but are not limited to, two Gas Department Economic/Business/Marketing positions, an Executive Planning Assistant, a HR Manager, a Housing and Community Development Coordinator, and a Community Planner. It appears that most, if not all, of these positions require certain expertise and experience.

In discussing how the City identifies applicants, the Mayor stated that the City has used a variety of ways to identify applicants, including sometimes advertising for positions, posting positions, recruiting through a local high-school natural gas program, and contacting local trade associations and local area churches to reach out to various groups in the community. While the Mayor noted advertising for certain positions, specifically mentioning positions such as the CFO that was filled in early June 2013, and City police and fire department positions that initiate their own job postings, the Mayor acknowledged that not many position postings were made for a period of a year to a year and a half. The Mayor indicated that postings had not been done during that period because of a HR problem.

Although auditors are aware of no state or federal law requiring cities to post available positions, posting positions internally is required by City policy. Internal position postings and externally advertising a job position provides the City an opportunity to identify potential qualified candidates of which the City would otherwise be unaware. Restricting the search to verbal inquiries rather than posting a position internally and advertising in a local or regional paper or publication limits the City's ability to identify qualified applicants available in the local area. Further, according to information available on the website of the Kentucky League of Cities, of which the City is a member and on which the Mayor serves on the board, "[e]ven if it is not a requirement, the best way to prevent a discrimination complaint or lawsuit filed against a city is to advertise a job opening and then ensure that the city hires the applicant that is best qualified for the position."

Posting positions with notice of the position title, summary of position duties, along with required or recommended position qualifications and established pay range for the position, at a minimum, internally, as is required by City policy, allows for better transparency, reduces the City's risk of legal actions due to discrimination, and encourages competition.



## Findings and Recommendations

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**Recommendations** We recommend the City, when desiring to fill vacant positions, follow its established policy by posting the job position information internally for a period of five business days. This information should include, at a minimum, the position title, the department for which the position is being employed, a summary of position duties, required or recommended qualifications, the approved pay range for the position and the time limit for applicants to apply for the position.

We recommend the City Council further consider revising the City personnel policies to require external advertising of available positions in local and regional papers or publications when the City is seeking to fill a City position.

We further recommend the City ensure a formal process is established and followed requiring written notification be submitted to the HR Manager to initiate the posting process when it has been determined that the City is seeking to fill an available position. This notification to the HR Manager should include the position title, the department for which the position is being sought, the name of the individual requesting the position be filled, along with signatures documenting proper approvals have been received to seek candidates for the position. This documentation should then be retained consistent with the City's records retention schedule.

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**Finding 13: The City paid salaries and benefits for, and later hired as City employees, Downtown Somerset Development Corporation employees without a formal agreement.**

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The City assumed payment of the payroll and benefits for employees of the Downtown Somerset Development Corporation (Corporation), and later hired the two individual Corporation employees as City employees without any formal, written agreement establishing the respective roles and responsibilities of the City, the Corporation, and the employees. While serving the Corporation, the Executive Director of the Corporation and the Mainstreet Coordinator are compensated by the City and receive the City-provided benefits of health insurance, retirement, leave, and annual cost-of-living adjustments, the same as do full-time City personnel. These two individuals were hired as City employees, yet they continued to perform employment responsibilities for the Corporation. This appears to have created confusion and discord between the City and the Corporation for a number of years and may create a conflict for those individuals serving the Corporation.

The Corporation was created in 1982 as a non-profit Kentucky corporation, recognized by the Internal Revenue Service as a 501(c)(3) organization, and is considered by the CPA performing the City's annual financial statement audit to be a component unit of the City, as the majority of the Corporation's revenue originated from financial support provided by the City. The City's FY 2014 financial statement audit reported funding from the City comprised 85 percent of the Corporation's total revenues and transfers. Each year, the City Council budgeted funds for the operation of the Corporation and the budgeted funds were paid to the Corporation in quarterly payments. Amounts distributed to the Corporation from FY 2012 through 2014 totaled \$572,174. City personnel stated that this funding covered the Corporation's payroll and benefit expenses for the Executive Director and Mainstreet Coordinator. Funding would be paid to the Corporation in August, October, January, and May of each fiscal year, and the City would subsequently bill the Corporation for these expenses.

According to City records, the City processed the payroll of the Corporation's Executive Director and the Mainstreet Coordinator. The two employees of the Corporation are paid directly through the City payroll system with employee W-2 statements issued from the City documenting these employees are working in full-time positions of the City. However, these full-time positions are not included in the City Council's adopted Pay and Classification Plan established as required by KRS 83A.070(2). Auditors found City personnel files maintained for both the Corporation's Executive Director and the Mainstreet Coordinator. Documentation in the Executive Director's personnel file included contracts between the City and the Corporation for the City to employ the Executive Director for a one-year period, with the option of a one-year renewal. The most recent contract in the Executive Director's personnel file was dated December 1997.

Other records in the Executive Director's personnel file included Payroll Change Status forms documenting the award of longevity pay to the Executive Director in August 2010, and an employee vehicle maintenance agreement signed in January 2013. In addition, the Executive Director's personnel file included annual cost-of-living increments awarded by the City Council to all full-time City personnel with at least one year of continuous service from 2011 through 2013. Documentation maintained in the Executive Director's personnel file did not appear to be complete, and no documentation was found to identify formal action taken to address the employment status of the Executive Director.

The personnel file for the Mainstreet Coordinator included a Payroll Change Notice dated July 5, 2001, indicating the City hired the individual as the Mainstreet Coordinator. A note on the Payroll Change Notice relating to her previous employment stated:

## Findings and Recommendations

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According to the records at Downtown Development [employee name] has accrued 215 hours sick leave and 56 hours vacation leave that she will keep and add to her records with the City. Also, she will earn 80 hours vacation this first year of employment with the City, due to her having been employed with DD since 5/1/94 and already earning 80 hours vacation.

Though this documentation indicated that the individual was formally employed as the new Mainstreet Coordinator in July 2001, no such position exists in the Pay and Classification Plans adopted by the City Council between 2008 and 2014. Again, the personnel file documentation did not appear complete given no documentation was available to explain the individual's pay increase from \$10.10 per hour on July 1, 2001 to \$16.77 per hour as of July 1, 2014.

According to the Mayor, the question regarding whether these two individuals are employees of the Corporation or employees of the City has been an ongoing issue for approximately 15 to 20 years. The Mayor noted that the Executive Director and the Mainstreet Coordinator never knew who they reported to and that he has "seen it where they've been City employees and I've seen it where Downtown said it's their employees, depending on the situation." Per the Mayor, as of April 2015, the City will no longer send any payroll funds to the Corporation and the two personnel will be considered City employees. Although this action was taken, the Mayor noted that the City does not have a formal agreement with the Corporation clearly defining how the arrangement will work.

The Mayor acknowledged that a formal agreement needed to be established and stated that he had taken action to bring the employees back under the City in April 2015, as the Board of the Corporation threatened to fire the Mainstreet Coordinator. The Mayor stated the question then came up, "are they City employees or not, do they have the right to fire them?" The Mayor noted that he did not know the answer and agreed that the relationship needs to be formally defined.

Despite the Mayor's recent actions to no longer provide payroll funds to the Corporation and to consider these individuals to be City employees, the roles and responsibilities of the individuals serving the Corporation continue to be confused and conflicted. The Corporation's Board of Directors, as the independent governing body of the Corporation, has the responsibility and the authority to hire and terminate Corporation employees to meet the mission and objectives of the Corporation. If the employees of the Corporation are paid by the City as employees of the City, it is unclear whether the Corporation's Board has any requirement or responsibility to have these individuals continue to work for the Corporation. In addition, the situation where individuals who are employed and paid by the City, but who are performing services for the Corporation's Board, appears to create a conflict of interests for the employees, and diminishes the authority and independence of the Corporation's Board to govern the Corporation in a manner that assures activities are performed in compliance with the directives of the Board and not that of the City.

## Findings and Recommendations

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**Recommendations** We recommend the City develop a process, prior to initiating and adopting the City’s budget, for the Corporation to present its anticipated budget needs for the upcoming year to the City, thus providing an opportunity for the City to understand the financial needs of the Corporation. We recommend the City enter into an agreement with the Corporation through its annual budget process, to inform the Corporation of the amount of funding the City will provide to assist in operating the Corporation. We also recommend the agreement establish any business or operational services the City will provide to the Corporation, as well as any the Corporation will provide to the City. Representatives from the City and the Corporation should document in the agreement a clear understanding of the Corporation Board’s independence and authority to hire and terminate employees of the Corporation. Finally, we recommend any agreement between the Corporation and the City address a financial process and an independent employment structure that recognizes potential conflict of interests and clarifies the employees’ duties, responsibilities, and organizational structure.

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**Finding 14: The Mayor approved a City employee to be paid for a complete 80 hour pay period, even though the employee performed no work.**

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City payroll records for the pay period ending December 17, 2013, document the Mayor approved compensating a City Parks Department employee for 80 hours, even though the employee did not work during that pay period. City personnel stated that the Parks Department employee who received the 80 hours of pay was temporarily off work due to illness and did not have sufficient leave to cover his absence. Though awarding the employee pay for time not worked may be a benevolent act, awarding compensation to a public servant for services not rendered is an inappropriate and possibly unconstitutional use of public funds, and provides for unfair and inconsistent treatment of City personnel.

To address various concerns expressed to this office regarding employee compensation, auditors reviewed select City payroll records from July 1, 2013 through December 31, 2015. Through this review and in interviews with various City personnel, it was found that a City Parks Department employee was granted 80 hours of salary by the Mayor and received gross pay of \$1,233.85, even though the employee did not work during the two-week pay period for which payment was received.

Based on review of payroll records, it appears work hours for this Parks Department employee are typically recorded through the use of a time clock; however, reports from the time clock system for the pay period ending December 17, 2013, reflect no work information for this employee, indicating that the employee did not use the time clock system during the two-week period. Rather, 80 hours of time were reported for this employee through a Payroll Exception Report. Payroll Exception Reports are used by the City to record hours of leave or hours worked that are not recorded by a time clock, referred to as “off-clock” hours.

## Findings and Recommendations

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The Payroll Exception Report submitted by the Parks Department Assistant Director for the pay period ending December 17, 2013, documents the employee received “40 hours per week per Mayor[ ]” for “12/04 – 12/10” and “12/11 – 12/17,” for a total of 80 hours. The Mayor then authorized the Parks employee to receive pay for the two-week period. Payroll records document that the 80 hours awarded to the employee were presented as “base hours,” which typically reflect hours worked by employees in the system, rather than leave time. The Assistant Director stated that he was not aware of other instances where an employee received pay for work not performed, but noted he understood it could not be done for all employees.

Regardless of the reason for the employee’s absence from work, City funds should not be used to compensate employees for services not rendered or work not performed. Such payments of public funds to the City’s public servants for work not performed could violate Section 3 of the Kentucky Constitution, as interpreted in opinions of Kentucky’s Attorney General and Kentucky’s appellate courts. Furthermore, use of public funds in this manner creates inappropriate compensation for personnel, which undermines the intent of a legislatively developed Pay and Classification Plan. Public funds should be administered in a fair and consistent manner for all employees and should be used solely for a public purpose.

**Recommendations** We recommend the Mayor refrain from using City funds to compensate employees who do not perform required hours of work or do not have sufficient leave balances to compensate for the number of hours not worked during a pay period. If employees have no available leave balance to offset the number of work hours missed, employees should be required to take time without pay or be allowed to request donation of sick leave hours as provided for by City policy. We further recommend the Mayor take action to cause the \$1,233.85 in gross compensation paid to the employee to be refunded to the City.

**Finding 15: The City has not established or centrally maintained job classification descriptions or education and experience requirements for most City positions.**

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Although the City established 290 full-time positions in its Pay and Classification Plan for 2014, it appears the City has not established position descriptions or education and experience requirements for most City job classifications. In some instances, City officials and other personnel were apparently unaware of established job duties and responsibilities for certain positions as these records were not located centrally in the City HR department. In other instances, the City established an education requirement or the experience levels for key management positions, but filled those positions with individuals not having the established education or experience. Job classification descriptions are a fundamental resource for employees and their employers to establish the job duties of the individuals in the organization, clearly communicate responsibilities and authority, and identify the experience, education, and characteristics needed by an individual to effectively perform the job. Without clearly defining each classification’s basic role, responsibilities, and employment qualifications, or maintaining the records centrally for ease of access or reference, the City cannot ensure positions are filled with qualified personnel, equal and fair treatment of employees, or efficient and effective use of personnel.

According to City personnel interviewed, few position descriptions with education and experience requirements exist in the City. Many position descriptions currently identified by City personnel, with the exception of the City Police Department, appear to have been created only within the last two years. Specific position descriptions identified through the HR Manager include: a CPA, Accounting Clerk, HR Manager, Staff Accountant, Gas Department Manager, and a Gas Department Finance and Contracts Manager. Although most of these classification descriptions do not clearly document the date the descriptions were established, it is our understanding through interviews with City employees and through the review of other City records that these descriptions were created in or around 2013.

The CFO and HR Manager were not certain what City classification descriptions exist or were established over time, as they have only been employed in their current positions for less than two years. The City HR records were reportedly in disarray after the former HR Manager retired in August 2013. The former HR Manager stated that few classification descriptions actually existed when she worked at the City and that she left the existing position descriptions when she retired. The current HR Manager, however, stated that she has found no such position descriptions. In addition, personnel records of the former HR Manager could not be found by the current HR Manager.

Though current and former City personnel were unaware of the existence of certain job descriptions, auditors found City ordinances that summarized job duties and responsibilities established by the City Council for five of its 10 nonelected positions through ordinance in calendar year 2007. Specifically, summarized duties and responsibilities were documented by the City Council in 2007 for the following nonelected positions: Assistant Police Chief, Assistant Fire Chief, Assistant EMS Chief, Building Inspector, and City Engineer. Auditors searched City ordinances for similar documentation relating to the remaining nonelected positions; however, no such documentation was readily identified. As transitions occur in employee positions naturally over time in all organizations, it is essential for records to be maintained in a central location. The City personnel's inability to locate and lack of awareness of these position descriptions emphasize the need for a centralized formal personnel process to ensure consistency with current and previous personnel actions taken.

While examining various City financial records, including a sample of vendor payments and POs processed from July 2013 through January 2015, auditors identified numerous instances of personnel that requested and approved transaction payments related to matters that appear to fall outside their anticipated areas of responsibility. Individuals requesting POs and approving vendor invoices for work that appears unrelated to their expected job duties or areas of responsibility increases the risk of inappropriate activity occurring and not being identified.

One example of work performed by an employee that appears outside their anticipated area of responsibility involves work requested or approved, or both, by the City Building Inspector. In the sample of vendor payments examined by auditors, the Building Inspector either requested POs or approved vendor payments for over \$112,500 for sidewalk and retaining wall replacement, and over \$35,000 in tree and brush removal between July 2013 and January 2015. As established through Ordinance 07-13, it appears the duty and responsibility of the City building inspector position is to focus on enforcement of building codes, regulations and laws, and to issue building permits and inspect buildings and other structures in the City. However, the Building Inspector acknowledged that he will “pick up where ever there is a need,” noting that he knows how to do a lot of things, including drafting and construction.

According to the Building Inspector, much of his work is the result of complaints he receives from various City personnel such as secretaries, City Clerk staff, City Utility Billing personnel, and the Mayor. Depending on the issue addressed, the Building Inspector determines whether to work with City department heads to address the matters. If a City project involves city utility lines, he stated that he discusses the issue with a department head. The Building Inspector also acknowledged that the work he performs is not always documented as he does not like paperwork. The process by which the Building Inspector works appears haphazard and lacks continuity and transparency. See Findings 16 and 17 for more detailed information related to building inspections.

Another example of an employee performing work not associated with their apparent job responsibilities involved work requested or approved, or both, by the City Business and Economic Coordinator. Auditors found the City Business and Economic Coordinator requested POs totaling over \$46,340 for tree and brush removal from April 2014 through October 2014, as well as \$41,640 for trash carts. According to City personnel, the City Business and Economic Coordinator is a marketing position established to advertise the City’s natural gas pipeline. In discussing his duties, the Business and Economic Coordinator stated he was “one of those guys that whatever it takes to get the job done,” and later stated he “was actually hired to market natural gas to grow our business, form relationships with our current industry and also new industry, and also our producers in eastern Kentucky.”

The Business and Economic Coordinator originally stated he believed there was a “job classification” but he had not read it; he later stated during the interview that there was a “job classification” provided by the HR department and that he had read it, and that “it says go out there and sell.” The Business and Economic Coordinator stated that he did not have a copy of this document.

Concerning his actions involving tree trimming, the Business and Economic Coordinator stated that a lawsuit was filed on the local housing authority after a tree that fell killed an individual, and afterward the Mayor instructed “the team,” referring to supervisors and other personnel, that if any tree-related concerns were received, they were to go out and check whether the situation was safe. He also stated that the City was instructed by the Environmental Protection Agency to clean up the area around the City Street Department where tree limbs were placed during City-wide clean up days. See Finding 2 regarding tree trimming expenses.

During the examination, City personnel repeatedly described a work environment where their job responsibilities had, and could in the future, change quickly due to directives made by the Mayor to work in different capacities throughout the City. The Mayor stated that his management philosophy is that everybody is dual trained and nobody has just one function. The Mayor noted that there are several departments within the City that are operating on a 24 hour day / 7 day a week schedule, indicating that the City is too small to function otherwise. The Mayor further stated, “I don’t know of anybody that is exclusively to any job that we have in the City,” and that while employees may have additional duties added to their work, they will return to their original job duties within a few days.

Establishing and maintaining position descriptions would not prevent an organization from cross-training personnel, but could assist in that process by establishing the duties and responsibilities for each of the City’s job classifications and assist in maintaining an efficient and effective business process that provides employees with an understanding of their job responsibilities. Job classifications also establish basic requirements for education and experience that formalize the criteria to ensure candidates for City jobs are properly equipped to perform the duties of a specific job.

Regarding job classification education and experience requirements, the Mayor stated that in the last four to five years he hired 15 people with Bachelor degrees; however, many positions at the City are dealing with dangerous situations, referring to emergency services and the City’s natural gas line, indicating that in those situations the City looks first at an individual’s experience. In general, when filling City positions, the Mayor stated “we try in 95% of the cases to look at their education or experience.”

As was indicated by the Mayor, hiring individuals into positions they are not qualified for can be detrimental. By hiring individuals who lack both the education and experience to perform certain duties, the City assumes additional risk that costly mistakes may occur. When filling a position, it is important to understand that costly mistakes not only relate to potential personal injury or bodily harm, but can also adversely impact financial matters and compliance with City policies or state and federal regulations. Further, selecting unqualified personnel for a position can negatively impact the morale of City personnel, especially when other employees are burdened with additional work because the individual hired cannot perform their duties.



## Findings and Recommendations

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During the examination, auditors were made aware that certain positions requiring a degree of technical expertise were not filled with individuals having experience performing this type of work. Specifically, auditors found the Mayor filled the HR Manager position and a Gas Department Economic/Business/Marketing position with individuals having no direct background in those related fields.

In the case of the HR Manager, there is a job classification description for that position; however, the current HR Manager initially stated to auditors in an interview on March 4, 2015, that she had not seen a description for her own position. She later stated she found the description and provided it to the auditors. During the interview, the HR Manager stated that she did not have a HR background but she was encouraged by the CFO and Mayor to obtain continued education in the HR field.

The City's position description for the HR Manager classification documents the requirements under "Skills/Qualification" for this position as:

- Bachelor's Degree in related field or equivalent work experience;
- Knowledge of employment law and regulations including but not limited to FMLA, FLSA, Title VI, ADA, ERISA, state wage regulations, Kentucky Retirement regulations;
- Knowledge of HR best practices and policies; and
- Knowledge of employee benefit plan administration and applications.

Not only did the HR Manager not have a HR background, a review of the HR Manager's personnel file showed no evidence that the HR Manager attended college or received a Bachelor's degree.

The HR Manager stated that she had served as the Mayor's Secretary for over six years before accepting the HR Manager position. She did not recall whether the HR Manager position was posted, but noted that the Mayor conducted interviews with several people for the position, including external candidates. The HR Manager stated that individuals were asking for too much money for the position and that was why the Mayor did not employ an external candidate for the HR Manager position. It should be noted that although the HR Manager reports to the CFO, the CFO was not included in the HR Manager selection process, and the Mayor was the only individual identified as selecting the successful candidate for this position. The City provided no evidence of position postings, and when asked whether his interview notes are provided to HR or otherwise maintained by the Mayor, the Mayor stated "probably not."

## Findings and Recommendations

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On January 12, 2015, the City hired an individual for a Gas Department Economic/Business/ Marketing position. According to the Mayor and various City personnel, this employee was hired with the intent of replacing the City's current Gas Department Manager who is responsible for the City's contracting with natural gas suppliers and providers, and whose formal position description is actually titled "Finance and Contracts Manager." The individual currently performing this job was described by the Mayor as "the most critical person" at the City. The Mayor stated that the Gas Department Manager was "essential" because the revenue generated from buying and selling that commodity is the source of most of the City's revenue. The current Gas Department Manager stated that he has a degree in Business and Administration and started working for an oil company doing accounting and distribution in 1975, then began working in gas control and marketing in 1981, and finally began learning the balancing aspect of the natural gas pipeline in 2013.

While the Gas Department Manager's function was stated to be an essential job, the City selected a former professional baseball player, originally from the area, to be trained to replace the Gas Department Manager who has had over 30 years of experience in the natural gas industry. When asked how the individual was identified as a candidate for the position, the Mayor stated that the individual had filled out an application for the City Parks Department but that after talking to the candidate about natural gas and the energy field the Mayor "felt his skills of all the people I tried to talk to around...would be more suited to that than it was parks."

The Mayor stated that the individual had a degree, was well experienced, and that his "dad runs" a local rural electric cooperative corporation, "so he knows the energy field." The Mayor recalled telling the individual he was not going to place him in the Parks Department as he felt he would be better suited as a replacement for the Gas Manager based on "his youth, his education and experience, because he had been worldwide, and he has a lot of rapport with east Kentucky people and our producers and things because of his background." While the individual's personnel file documents that he received a Bachelor's degree in health science, no documentation is contained with his file or on his application for employment regarding education or personal experience with natural gas or the energy field.

## Findings and Recommendations

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The Mayor acknowledged that the job to replace the Gas Department Manager was not posted or advertised in any local or industry publication, stating that the individual is in “training” and the situation involving the Gas Manager’s retirement was a fluid situation and that the Manager could decide not to retire as he has not yet submitted a formal notice. While the Gas Manager has not yet retired or given formal notice of his retirement date, the Mayor’s statements clearly demonstrate that this individual was hired with the intent of replacing the Gas Manager upon retirement. The position description for the Finance and Contracts Manager, referred to by the Mayor as the Gas Manager, does not clearly establish defined experience or education requirements but does define the job duties, which have been performed for several years by this veteran City employee. Although the Mayor indicated that City department heads are included in interviews of candidates, the Gas Manager serving as the Contracts and Finance Manager for the City Gas Department stated that he did not participate in the interview process to fill any of the Gas Department Economic/Business/Marketing positions, including the interview of this selected candidate.

**Recommendations** We recommend the City establish formal, written job classifications with clearly presented job descriptions for all City personnel. Each job classification should include the position title, the position series related to the formal Pay and Classification Plan adopted by the Council, the approved salary range, the general characteristics of the job, and the minimum education and experience requirements for the position, including any required certifications, licenses, and any substitutions for education or experience. The job classifications should also include any pre-employment or postemployment requirements, such as drug testing, medical examinations, or continuing education. Once formalized, the City should ensure that each employee receives a copy of their job classification and that the classification is maintained in a central location and accessible within the City’s records.

We further recommend the City establish a formal interview process for potential job candidates. Interviews for City positions should be conducted by a panel of City personnel, including those individuals the employee will directly report to as the first-line supervisor. This provides for those familiar with the daily department functions and the needed skill sets for the position to also evaluate candidates. We recommend the interview panel participate in establishing formal interview questions relevant to the position and assign points or weight to each question to assist the panel in evaluating each candidate. The questions established by the panel should be asked of all applicants with each panel member maintaining their own notes related to the candidates responses. Candidate assessments should contain only comments, which are relevant to the requirements of the position. Once interviews are completed, the panel should compile the individual assessments to make a formal written overall recommendation of the successful candidate for the Mayor’s appointment consideration. All interview questions, individual panel notes or grading sheets, along with the formal recommendation to the Mayor should be retained by the City’s HR Manager.

We also recommend consideration of candidates include their education, experience, and that the City formally document the selection of the successful candidate.

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**Finding 16: The City Building Inspector issued permits for approximately 22 months while having an expired license.**

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Although required to be licensed by state law, the City Building Inspector issued building permits for the City for almost two years with an expired license. Between July 2013 and April 2015, City records show the City issued a total of 47 permits, all of which were issued by the City Building Inspector with most of the permits issued while the Inspector had no active license.

Auditors requested access to all permits issued by the City from July 2013 to April 2015; however, the City was unable to provide access to permits issued during this period because the Building Inspector did not retain a copy of the permits he issued. Instead, the City provided a report listing the permits issued by the Building Inspector on behalf of the City during this period. The Building Inspector confirmed that he issued all building permits for the City since July 1, 2013, and that the report provided to auditors was not complete. See Finding 17 for further details relating to the City’s accounting for building permits.

According to KRS 198B.090(9):

All building inspectors, plans and specification inspectors, and plumbing inspectors shall be certified or enrolled and actively pursuing department certification by October 1, 1983, or within ninety (90) days after employment as an inspector, whichever comes later.

A “certified building inspector” is defined by KRS 198B.010(6) as:

a person who has been certified by the department as having successfully completed the test requirements provided by KRS 198.090 to practice as a city, county, or state building inspector within the Commonwealth.

According to state records maintained by the Kentucky Department of Housing, Buildings, and Construction, the City’s Building Inspector allowed his license to expire as of June 30, 2013, and it was not renewed until March 2015.

As is noted in Findings 15 and 21, the City was unaware of a job specification for the Building Inspector position detailing any necessary experience, education, or certification requirements associated with this position, and had not implemented a routine employee evaluation process. The lack of information and oversight may have contributed to the employee continuing to issue building permits without meeting the certification requirements for almost two years.

## Findings and Recommendations

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**Recommendations** We recommend City employees responsible for providing building or other permits consistently meet the requirements to maintain appropriate certifications to perform their job duties. We recommend City permits not be issued by employees who fail to maintain certification requirements specified in state statute or regulation. To strengthen accountability, we recommend a copy of the employee’s certification and documents for training or other requirements to maintain the certification be reviewed annually.

In addition, also refer to Findings 15, 17, and 21 for recommendations related to job specifications, annual employee evaluations, and building permits.

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**Finding 17: City building permits were not consistently issued or recorded and associated fees were not uniformly applied.**

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During the examination period, the City Building Inspector did not maintain a complete record of all building permits issued by the City. In addition, the Building Inspector, in some instances, used his discretion regarding whether to issue a permit, the amount of fees assessed for permits, and the collection of building permit fees. The lack of a formal process to issue and account for building permits and the associated fees failed to ensure a consistent and appropriate method was followed to issue building permits and collect fees. The failure to record all permits issued by the City, to consistently charge established fees, and to collect fees for each permit, prohibits the City from properly accounting for the number of permits issued and the amount of fees collected.

Auditors requested access to all permits issued by the city from July 2013 to April 2015. The Building Inspector did not retain a copy of permits issued, and instead, provided auditors a report of the building permits issued by the City for the period requested. The report identified 47 permits issued by the City’s Building Inspector during this period. The purpose of the report was to record each permit number issued, permit date, property owner’s name, project cost, and map address. The report appeared incomplete and inaccurate due to the low number of permits issued, gaps in the permit numbering sequence, zero project costs, and no address information for certain permits issued.

According to the Kentucky Department for Libraries and Archives’ (KDLA) Local Agency Records Retention Schedule for Local Governments Planning & Zoning/Building & Housing, Series L4982, Building Permits, “[t]his record series documents application by a property owner to build and/or alter a building on property.” This records retention schedule further states that building permits are to be retained for five years.

While the report documented 47 permits were issued from July 17, 2013 through April 1, 2015, the numbering sequence of all building permits documented in the Building Inspector's report began with 2013. According to the Building Inspector, the first four digits reflect the year in which the building permit is issued; however, he stated that the software program used to record the permits has a "glitch" and does not properly record the first four numbers of the permit. The last four digits of the permit identify the number of permits issued within that year. Based on this information, the last four digits of the first permit issued in calendar year 2014 should 0001. According to the report, however, the first documented permit issued in the calendar year on January 8, 2014 was numbered 20130103.

In addition to inaccurate permit numbering, the permit numbering sequence was not correct. According to the Building Inspector, the second column of the Inspector's report labeled "Permit Date" identifies the permit issue date. Permits should be issued in sequence with those issued earlier in the year assigned a lower permit number than those issued later in the year; however, that did not occur. For example, according to the Building Inspector's report, permit 20130061 was issued on July 10, 2013, seven days prior to permit 20130060, which was issued on July 17, 2013; and permit 20130101, which was issued June 20<sup>th</sup>, 2014 was issued seven months earlier than permit 20130100.

In addition, other information was omitted from the Building Inspector's report, including:

- five instances with no owner name;
- 21 instances with no project cost provided;
- 47 instances of no address recorded; and
- 17 instances documenting a property owner's name with a project cost of zero.

The City Building Inspector acknowledged that the report was incomplete and did not record all permits issued during the examination period. The Building Inspector stated that, although his report of Building permits is incomplete, reviews and inspections have been completed. The Building Inspector noted that he did not like doing paperwork and stated several times he was not provided an administrative assistant to aid him in completing the needed paperwork. Auditors attempted to determine a complete population of the building permits issued by the City for the specified period. The Building Inspector suggested that the full population may be determined by reviewing the record of all City building permit receipts deposited, which reportedly identified the permit numbers associated with the payment when deposited.

## Findings and Recommendations

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Permit fees are assessed by the City based on estimated construction cost. The City estimates construction costs based on \$45 per square foot for residential and \$65 per square foot for commercial. According to the Building Inspector, if he feels that the calculated cost to build the structure is not an accurate reflection of the builder's estimate to build, he will adjust the cost to build. That adjusted cost is the cost he uses to determine the fee of the permit based on the City fee schedule. According to the Building Inspector, he has discretion over whether to issue a permit and the amount to be charged, and because the City encourages growth and building within the City, he will adjust the permit fee to encourage growth, if he can.

According to the Building Inspector, fees for permits are collected by the Inspector and submitted by him to the billing clerks in the City's utilities' office. In response to a request for a report of all building permit fee receipts collected by the City for the period July 1, 2013 through April 6, 2015, auditors received a report for two budget accounts, one for fees received and processed at the City utilities office and another reporting fees transferred from the Utility Billing/Collections Fund to the General Fund.

A review of these reports found permit fees collected at the utilities office were not consistently referenced to a permit number. Further, when permit numbers were associated with a receipt, the majority of the permit numbers did not agree with those recorded on the Building Inspector's permit report. In addition, the report of permit fees transferred from the City Utility Billing/Collections Fund to the General Fund did not reference specific permits but, on occasion, referred to the name of the payee. Given the condition of these City records, a full population could not be determined.

Given the lack of consistency and documentation for recording building permits, accessing fees, and the Building Inspector's discretion over whether to issue a permit, the City cannot ensure a sufficient and accurate accounting of all building permits issued or the related fees.

**Recommendations** We recommend the City implement a system to accurately and consistently document each building permit issued, including the permit number, property owner's name, address, estimated project cost, and the permit fee charged and collected. In addition, we recommend permits be consistently issued and fees charged be uniformly applied.

We recommend upon issuing a permit that the City retain a copy of the signed permit as an official record of the City for five years as required by the KDLA retention schedule for L4982.

## Findings and Recommendations

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We also recommend the City building permit fees be deposited directly into the City's General Fund rather than first being deposited into the City's Utility Billing/Collections Fund and subsequently transferred to the General Fund. Finally, we recommend the Accounting Department periodically reconcile the permits issued to the receipts collected to ensure documentation is maintained and to enable a proper accounting for permit fees.

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**Finding 18: Over \$8,900 in public funds were expended on parties/dinners and retirement gifts.**

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A sample of City credit card transactions for the period July 1, 2013 through December 2014, found over \$8,900 in City funds were expended on parties/dinners and retirement gifts. While a review of City policy found limited public funds are allowed to be used for parties/dinners and retirement gifts, the policy does not require sufficient documentation to be submitted to ensure compliance and to adequately support meal expenditures by requiring the business purpose of the meal and the number or names of individuals attending.

City Personnel Policy defines the circumstances in which City funds can be used for parties/dinners such as "Retirements, Christmas Dinners, Secretary's Day, etc." The policy states:

Retirement – When an employee retires from employment with the City of Somerset, the Department in which the employee worked may spend up to \$100.00 for a retirement gift. The Department is also allowed up to \$100.00 for catering, food, etc. to be used for a retirement party on the city's premises so long as the party is open to all departments of the city to attend. If a private party is held for only the department of the retiring employee, \$15.00 per person in the department will be allowed for catering, food, etc. for the party.

All other Parties/Dinners – A limit of \$15.00 shall apply per employee for a meal at a restaurant or for food catered for such an event. This includes dinners such as Christmas Dinner, Secretary's Day lunch, etc.

The City expended in credit card charges alone approximately \$6,750 for Christmas dinners and lunches from July 1, 2013 through December 2014. Of that \$6,750, nearly 70 percent, or \$4,640, was spent by City personnel, including the Mayor, during the 2014 Christmas season. Most of the documentation submitted to support these credit card transactions failed to clearly identify the number of individuals attending the meal or the names of those attending. Often, documentation of the Christmas meals simply noted a City building location or department to indicate who attended the meal. However, City personnel indicated that while a meal may be for a specific department, other City personnel may also be present at the meal.



On December 12, 2014, the City Water Park Manager expended \$156.83 for a Christmas lunch at a local restaurant with documentation identifying nine individuals were present. The City Water Park is a seasonal operation, open typically from Memorial Day through Labor Day and, according to the Water Park Manager, maintains a staffing level of three full-time personnel and two part-time personnel in the off-season. Given the City Water Park staffing levels in the off-season, it appears additional personnel were present during this meal. Due to the lack of sufficient information such as the number and names of attendees, it is impossible to determine whether City personnel abided by City policy which has established limits on such meals.

On December 1, 2014, the City Code Enforcement Officer expended \$442.58 for dinner at a local restaurant documenting the purpose of the meal as “Christmas Dinner for Planning & Zoning, Board of Adjustment, & Ethics Board.” Membership on these Boards totaled approximately 16 individuals. Although documentation does not identify the number or names of those attending this meal, including the City Code Enforcement Officer and the Building Inspector who work with the Planning and Zoning Board and Board of Adjustments, a total of 18 individuals were anticipated to attend the meal from this department. According to City personnel, the meal was also attended by the Mayor and Department heads.

In 2013, the former City Clerk incurred a \$477.25 credit card charge at the same local restaurant for a meal hosting the same three boards/commissions.

While it is clear the intention of the City policy is to control the spending associated with such a benefit, the opportunity for individuals to attend more than one meal, and for meals for the same purpose to be initiated by the same employees at different times, circumvent that control. Further, without sufficient documentation of the names of those attending the meal, City personnel responsible for financial oversight and enforcement of City policies are unable to ensure funds are used in compliance with City policy, or recorded to the appropriate fund, and that no individual is reaping additional benefit from the use of public funds. Further, it may be questionable whether it is appropriate for the City to purchase meals for the benefit of the City Ethics Committee members as the Committee Board Chair indicates that the Committee has only met on two occasions since he was originally appointed three to four years ago.

In addition to Christmas meals, auditors identified approximately \$1,316 expended for retirement meals from July 1, 2013 through December 31, 2014. Again, documentation to support the expenses did not contain sufficient detail to determine the number or names of attendees. In one instance, a PO was issued before the expense was incurred, documenting that the retirement meal was anticipated to cost \$375 for 25 individuals to attend. The expense, incurred on August 12, 2013, totaled \$543.28. The receipt to support this credit card charge indicates there were 45 individuals in attendance. While this appears to meet the threshold for an allowable expense established by City policy, it cannot be determined whether those attending the meal were City personnel.

## Findings and Recommendations

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While testing a sample of credit cards' transactions, auditors found City personnel periodically incurred expenses at local restaurants with little or no stated business purpose. Although City personnel state that local meals purchased through the use of a City credit card are for official City business, documentation submitted to support those expenses are not adequate to determine whether those funds are a legitimate expense of the City.

In addition, instances were identified when meals were purchased for individuals not employed by the City or performing a direct City function. Instances identified included:

- A \$71.48 meal expense on January 3, 2015, for a meeting with an engineering firm at a local restaurant. Documentation noted the receipt to support this expense was lost. No details were noted as to what was purchased or of the names or number of attendees.
- A \$35.90 meal expense on February 26, 2014, in London, KY, for a "Water Plant Meeting" with a certain agency. Documentation to support the expense contained no detail of what was purchased or the number of individuals attending the meal.
- A \$60.03 meal expense on July 22, 2013 described as a "Meeting w/State" at a local restaurant.
- A \$77.72 meal expense on December 5, 2013, at a local restaurant for six individuals, including four City personnel and two Kentucky state government regulatory inspectors.
- A \$65.32 meal expense on December 10, 2013, at a local restaurant for six individuals, including four City personnel and two Kentucky state government regulatory inspectors.
- A \$30.81 meal expense on May 14, 2014, in London, KY, for a meeting with a certain agency. Documentation to support the expense was insufficient as it did not provide detail of what was purchased or number of attendees.
- A \$24.21 meal expense on March 31, 2014, in London, KY, for a Water Plant meeting with a certain agency. Documentation to support the expense was insufficient as it did not detail what was purchased or number of attendees.

As previously noted, City policy also allows City funds to be used for the purpose of purchasing a retirement gift for departing City personnel. While most retirement gifts identified during a review of expenditures fell at or below the \$100 maximum, one gift purchased for a retiree in 2014 greatly exceeded the policy limitation. On July 25, 2014, the City Attorney purchased through her City issued credit card, a personalized computer tablet as a retirement gift for the former City Clerk for \$682.64.

## Findings and Recommendations

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Documentation shows the purchase of this retirement gift was approved by the City Attorney and the Mayor. Although the retirement gift for the former City Clerk exceeded the established maximum benefit by well over \$500, the City Attorney stated:

Department Heads have authorization under our employee manual to spend up to \$100 on a retirement gifts (sic) for someone retiring in their particular department without receiving approval by the Mayor. However, to the best of my knowledge, there is no restriction that I am aware of on the Mayor's ability to purchase retirement gifts for a member of the executive staff, or when approving a retirement gift for any employee of the City if it exceeds the \$100 limit set forth in the employee manual. As with most other administrative matters, it is in the mayor's discretion.

While the City Employee Handbook states that it does not apply to elected officials who would include the Mayor, expending funds in this manner does not provide for efficient use of City resources. The Mayor, as the executive authority of the City is in a unique position as no other elected City officials would have the capability of independently directing payment in this manner. Expenditures of public funds are to be made only if they are necessary, reasonable in amount, beneficial to the public, and not predominantly personal in nature. Although the policies may not apply to the City's Mayor, one of a mayor's purposes is to ensure proper and efficient administration of a city's public funds. Using mayoral discretion to exceed the maximum amount, as set by policy, that can be expended on an individual's retirement gift undermines the intent of the policy, may encourage other City employees to circumvent the policy, and may allow for the inefficient use of public funds.

**Recommendations** We recommend the City revise its credit card and travel policies to require employees and officials to submit sufficient supporting documentation of expenditures. Credit card charges should be supported by detailed receipts, and should document the official business purpose. Expenditures associated with meals should also document the names and number of attendees for which the meals were purchased. The policy should explicitly state that expenditures not supported by detailed, itemized receipts within a specified period will not be paid by the City.

We recommend the policy state the consequences of not providing adequate supporting documentation, including under what circumstances the City will disallow an expenditure that is inadequately documented. We recommend the policy specifically state that credit card transactions will be reviewed for appropriateness, reasonableness, public benefit provided, and necessity. Once the policy is revised, it should be distributed to all City employees and officials, and enforced uniformly and consistently.

## Findings and Recommendations

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We also recommend the City develop and implement a user agreement for individuals assigned a City credit card to sign, acknowledging their understanding of the City's expectations and that they have received, read, and understand the City's credit card usage policy. These forms, once completed and signed by individual card holders, should be maintained in the City's records or other central secure location.

We recommend the Mayor abide by established City policies, and not expend funds in a manner inconsistent with the intent of the policies. While the Mayor does have discretion, that discretion should be applied in a manner that allows for fair, consistent, and efficient use of City funds. We further recommend that the City reevaluate its policy of allowing the use of public funds for parties/dinners and retirement gifts. If individuals wish to have a party or provide a retiree with a gift, we recommend that, rather than using public funds, the City consider having individuals contribute personal funds for the party or gift.

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**Finding 19: City personnel were paid over \$8,500 in advances and expense reimbursements with incomplete travel information, or lack of supervisory approval, or both.**

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Examination of mileage expense reimbursements made to certain City personnel found three employees were paid over \$8,500 in expense reimbursements that had incomplete travel information, or no supervisory approval, or both. Without complete travel information, such as travel destinations listed, and the stated business purpose of the travel, City personnel responsible for approving travel vouchers cannot adequately determine whether a legitimate need existed for the travel, and City financial personnel cannot determine the appropriate department and fund to charge the expense.

Per City Employment policies,

A travel voucher form will be provided to an employee by the employee's department head, the supervisor, or the Budget Director's staff. The form provided must be used and filled out correctly. The employee may be asked to state the purpose of the subject travel on the form, and attach documentation of certain expenses. Depending on the employee's situation, the employee may be asked to submit the travel voucher once a month, or after a major trip. The employee, his/her supervisor, and his/her department head must sign and date the travel voucher where indicated.

Although City policy requires travel voucher forms to be completed and subsequently approved by a supervisor, the policy does not require employees to state the purpose of their travel. Further, the policy does not clearly define what it means for forms to be used and “filled out correctly.” Given that the travel voucher form provides an area for the purpose of the travel to be documented, it appears this would require employees to complete all of the form, including but not limited to: the date of travel departure and destination location, purpose of trip, employee signature, and department head approval. However, the City policy states only that an employee “may” be asked to state the purpose of the travel; it is not a requirement.

A review of monthly expenditure reports submitted to the City Council from April through December 2014, identified 11 City personnel reported to have received mileage reimbursements totaling over \$9,100. Of this \$9,100 paid to City personnel in mileage reimbursements, 49 percent was paid to the City Business and Economic Coordinator and 26 percent was paid to a City Planning Assistant. Review of the associated travel for these two individuals in FY 2014 and FY 2015 found most travel voucher forms contained no stated business purpose. In addition to not consistently documenting the business purposes of travel, records document the Business and Economic Coordinator submitted 49 travel voucher forms with no supervisory review, while a City Planning Assistant submitted three travel vouchers reporting over 4,979 miles in travel with no documented dates of travel departure or destination locations.

Between June and August 2014, a City Planning Assistant, who was described by City personnel as an event coordinator for the City, submitted three mileage reimbursement requests and received payment of \$2,410 from the City’s General Fund as mileage reimbursement for over 5,263 miles driven from October 2, 2013 through June 12, 2014. The travel vouchers submitted by the Planning Assistant were for travel under the Executive Department and were approved by one of three different individuals: the former City Clerk, the City Budget Director, or the City CFO. Although approved for payment, these three travel vouchers contained primarily dates of travel and odometer readings, but with no travel departure dates or destination locations recorded. The City Planning Assistant maintained a record of her mileage on a separate mileage journal attached to the City travel reimbursement form. The City Planning Assistant only documented the business purpose for travel on five dates on which she drove a total of 284 miles, or 5.40 percent, of her total mileage claimed through these three vouchers.

According to City personnel, the purpose of the Planning Assistant’s travel is supposed to be associated with community events hosted by the City, such as the local fishing tournament. The August 2014 payment was already being processed before the voucher was signed by the CFO documenting approval to pay the mileage expense. Two additional vouchers were submitted by the Planning Assistant in February 2014 and February 2015; however, these vouchers clearly documented that the purpose of the travel was to attend a tradeshow in Lexington, Kentucky, and both were approved by the Mayor.

From April through December 2014, monthly expenditure reports document that the Business and Economic Coordinator received 35 payments totaling approximately \$4,265 for mileage reimbursement from the City's Gas Fund. This amount excludes travel advances the Business and Economic Coordinator also received during that time period. While the monthly expenditure reports identified 10 other City personnel receiving mileage reimbursements during this period, the Business and Economic Coordinator was the only individual identified receiving multiple mileage reimbursements during each month of the period. The monthly expenditure reports indicate that the Business and Economic Coordinator submitted the highest number of requests and received the greatest amount of mileage reimbursement of all other City personnel between April and December 2014.

While reviewing the travel vouchers submitted by the Business and Economic Coordinator for mileage from April through December 2014, auditors found no supervisory approvals were applied. Further, even though the expense for the mileage reimbursements were all paid from the City's Gas Fund, the Business and Economic Coordinator listed "Mayor's" or "Mayor's Office," indicating that the travel expense he was seeking reimbursement for was directly related to the Executive Department rather than to the Gas Department where the employee is assigned. Additionally, while travel vouchers submitted for this period provide destination information, no purpose was listed for the trips taken by the Business and Economic Coordinator. Travel destinations documented by the Business and Economic Coordinator on vouchers during this period of time include the following cities: Albany, Berea, Burnside, Corbin, Danville, Frankfort, Lancaster, Lexington, Louisville, London, Manchester, Monticello, Nancy, Richmond, Russell Springs, Science Hill, Stanford, and Whitley City. Local destinations within the City included: City Parks, Crane Building, Fuel Center, Gatermade, Rocky Hollow, Sewer plant, SomerSport, and Water plant.

A complete review of all expense reimbursement forms submitted by the City Business and Economic Coordinator, beginning July 1, 2013 through January 5, 2015, found the employee submitted 50 travel expense vouchers for \$6,144 in expense reimbursements and travel advancements. Of the 50 travel expense vouchers submitted by the Business and Economic Coordinator, only one travel voucher submitted on July 18, 2013, totaling \$38.54, was signed by the City Gas Manager to document supervisory approval. Further, 44 travel vouchers submitted by the Business and Economic Coordinator, totaling over \$5,000 contained no stated business purpose for the travel.

## Findings and Recommendations

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Although the Business and Economic Coordinator position is established in the City Gas Department as one of the Economic/Business/Marketing positions, the Gas Manager and the City Natural Gas Engineer, who share responsibility for oversight of Gas Department personnel, both stated that they do not supervise or oversee the activities of the Economic/Business/Marketing positions. The Gas Manager was unable to recall the circumstances leading to his approval of a travel voucher for the Business and Economic Coordinator, but stated that he must have been asked to sign it at some point but could not recall the details. The Gas Manager stated that the Business and Economic Coordinator reported to the Mayor. See Finding 22 regarding the City's reporting structure.

In discussing mileage reimbursements with the Mayor, he stated that he assumes those are submitted consistent with the City travel policy and that they do not generally come to him unless an issue is brought to his attention. This includes reimbursements made to employees who the Mayor directly supervises. The Mayor noted that the City Council brought up a concern a few months ago regarding why a person was getting reimbursement rather than using a City vehicle. The Mayor stated that it was explained that, consistent with City policy, if employees use their own personal vehicles, regardless of the employee, they are entitled to be reimbursed for that mileage at whatever the mileage rate is at that time. After auditors discussed this matter with various City Council members, it was noted that the concern expressed by some Council members to the Mayor specifically related to the mileage claimed by the Business and Economic Coordinator, after Council members had reviewed the monthly expenditure reports provided to City Council and had identified that a significant amount of mileage reimbursement had been paid to this individual.

City policy states:

Mileage may not be paid if a city owned vehicle was available and feasible and the employee chose to travel in a private owned vehicle instead. If a city owned vehicle is not available or a feasible option, the employee will be reimbursed per mile at the current allowed mileage amount as set by the state.

While policy allows for individuals to be reimbursed for mileage traveled in a personal vehicle, it disallows reimbursement if a City owned vehicle was available and feasible for the employee's use.

The Business and Economic Coordinator stated that most of his travel was related to his position in Gas marketing, and that if he traveled for any other purpose, he would note that on the reimbursement request; however, while the Business and Economic Coordinator acknowledged working in several other departmental areas of the City outside of the Gas Department, little or no detail was recorded on travel vouchers to indicate whether the travel was related to Gas marketing, or for other purposes. When asked to describe the process for submitting travel reimbursement requests, the Business and Economic Coordinator stated that he submits the travel requests directly to the City Accounts Payable staff. When asked whether the reimbursement requests are reviewed by a supervisor, he noted that the Mayor has on occasion questioned him about some of his travel, but he could not address whether the forms were officially signed to indicate a supervisor's approval. The Business and Economic Coordinator stated that the Mayor recently asked him to try to use a City vehicle more often, noting that his travel raised questions with some City Council members.

It should be noted that while the Mayor stated he does not routinely review and approve travel vouchers for City personnel, including those reporting directly to him, he acknowledged he has reviewed and approved vouchers for the City Safety Coordinator. As follow-up to the Mayor's interview, auditors requested and reviewed mileage reimbursements made to the City Safety Coordinator in FY 2014 and FY 2015. From July 1, 2013 through May 14, 2015, the City Safety Coordinator submitted 30 travel vouchers, receiving \$2,383 in mileage reimbursement. Most of the vouchers submitted by the Safety Coordinator contained sufficient detail to determine where the employee was traveling and the purpose of his travel. Further, with the exception of conferences periodically attended by the Safety Coordinator, travel destinations appeared to be local. Of the 30 travel vouchers submitted by the City Safety Coordinator, 20 were approved by the Mayor, eight were approved by the City Budget Director, one was approved by the City CFO, and one was not signed indicating no approval was given. The single, unsigned travel voucher was processed on September 3, 2014, for approximately \$66, and with the exception of 11 miles reported as traveled on August 28 and 29, 2014, documents the purpose of the travel and provides departure date and destination location information. Auditors also found one five mile trip reported by the Safety Coordinator taken on January 31, 2014, for which a destination location was not documented, though approved for payment by the Mayor.

**Recommendations** We recommend the City abide by its policy and require all travel vouchers, including for both mileage reimbursements and advance travel payments, to provide all supporting documentation or information required by the travel voucher form, be signed and dated by the employee, and be approved by the employee's direct supervisor before processing a travel voucher payment. If travel vouchers are submitted to Accounts Payable without the proper supervisory signature indicating the expense was reviewed and approved as a legitimate expense of the City, Accounts Payable staff should return the unsigned travel vouchers directly to the employee's supervisor.



## Findings and Recommendations

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We recommend the City Council revise its Travel Voucher Policy to require employees to clearly state the business purpose of each trip for which an employee is seeking mileage reimbursement. This will provide for greater transparency, and may also assist the City in certain management decisions such as vehicle assignments, cost allocations, or the necessity for the travel.

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**Finding 20: The City does not consistently require timesheets or requests for leave to be signed and approved by an employee's supervisor.**

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A review of timesheets sampled from July 1, 2013 to April 21, 2015, found the City does not consistently require timesheets to be signed and approved by an employee's supervisor. While certain City personnel indicated the three-day period required to process payroll did not provide much time to approve timesheets, some supervisory approvals were identified on timesheets, indicating time was available to review and approve timesheets for payment.

City payroll is processed every two weeks, with pay periods ending on Tuesday and City employees paid on Friday of the same week, resulting in a three-day turnaround to process and distribute payroll. Employees paid on an hourly basis are required to use a time clock to daily record hours worked, while salaried employees are required to complete timesheets. Some variation in the format of timesheets was identified, including certain timesheets having a line for both the employee and supervisor to sign the timesheet, and others simply including a line for the employee's signature.

According to City personnel, most City employee payroll is submitted electronically. Although the City could not, with certainty, specify how long this process had been established, the Mayor thought the process had been in place for about a year. According to City records, submitting timesheets electronically consists of the employee emailing a timesheet file directly to City payroll personnel for processing. According to City personnel, they understood from the City Attorney that the email from the employee was as binding as a signed document. However, by having the employee submit their own timesheet to Payroll personnel directly with no opportunity for supervisory review and approval, the City is not ensuring that the proper supervisory review of timesheets is performed, and that employees are accurately reporting their time.

City Personnel policies state that “[a]ll salaried employees, including managers, supervisors and department heads, are required to use a time sheet which should be signed/approved by their manager or supervisor before turning in said sheet to Human Resources.” Though the policy states that timesheets “should be signed/approved” by a supervisor, the City appears to consistently allow some timesheets to be submitted without supervisory approval.

## Findings and Recommendations

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The Mayor noted that while all City department heads, the CFO, and the City Clerk report directly to him, as well as some others, he does not routinely review and approve the timesheets of those individuals. See Finding 22 pertaining to reporting structure. The Mayor stated that he only reviews a timesheet if there is a problem or exception identified. He further stated that he had been given timesheets for department heads when they worked overtime until a couple of years ago when City Pay and Classification Plans were revised, making most department heads eligible for overtime.

Further, City policy states leave is granted “after approval of the employee’s supervisor and/or the Mayor.” However, City personnel noted that there is no formal process by which employees request leave, stating that employees may submit emails to supervisors, or simply inform supervisors verbally. That information is not consistently forwarded or shared with City personnel performing the centralized payroll process.

The City processed payroll for over 623 employees in calendar year 2014, with taxable gross income over \$11 million. Most are hourly employees whose time is recorded using a time clock system. With a payroll of this size, however, and a short processing period, it appears there is insufficient time for the limited number of City staff to perform any level of detailed supervisory review on individual timesheets. Further, the City personnel performing this centralized payroll function would not have access to individual schedules and, as such, would not be in a position to adequately question each individual timesheet as would a supervisor. By not ensuring a supervisor has reviewed and approved this information, the City assumes the risk that inaccurate information is processed that may impact payroll and employee leave balances.

**Recommendations** We recommend that the City develop a policy and process to allow sufficient time to be given to City personnel to ensure timesheets are reviewed and approved by City supervisors before payroll is processed. We recommend the City require supervisors to demonstrate the review and approval of each timesheet by placing their signature and date of review on the timesheet. We also recommend the Payroll Department identify any timesheet submitted that is incomplete or not properly signed and dated, and return it to the employee’s supervisor for appropriate action.

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**Finding 21: City has not required a standardized formal process to evaluate City personnel.**

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The City has not required a standardized, formal process by which the work performance of City personnel is evaluated. While it was noted that a few City departments, such as the City police and City parks departments, provide formal evaluations to personnel, no required evaluation process has been established for all City departments. By not conducting formal performance evaluations of City employees on a regular basis, the City has failed to establish clear work performance expectations for its employees. Further, the lack of routine performance evaluations offers no formal means to document personnel job performance, and restricts management’s ability to impact employee efficiency, effectiveness, and accountability.

During interviews with various City personnel and officials, concerns were expressed regarding certain employees' qualifications and abilities to perform job duties. Further, statements were made regarding some employees not following established City procurement and HR policies. Typically, concerns regarding employee performance can be addressed through a formal performance evaluation process; however, it was determined that the City had no such policy requirement to ensure such a process exists for its employees.

The Mayor noted that evaluations often lead to whether an employee receives a pay increase, and that the subject of performance evaluations had been presented and discussed with the City Council several years ago; however, the Council decided, rather than to give pay increases to employees based on performance evaluations, to give all full-time City personnel the same amount of pay increase each year without evaluating their work performance. City records show the City Council has awarded a flat \$1,000 raise annually to all full-time City employees having at least one year of continuous service since at least 2011. The Mayor stated that when a proposal was made to Council for an evaluation process and to base any merit increases on the performance of the individual, the Council "threw a fit so to speak," explaining, "they determined that they were not going to allow the Department heads to hurt their friends or that they wouldn't be fair," and, "therefore, as past practice, the Council sets the amount that each employee gets per year and has nothing to do with performance or evaluation."

The purpose of a performance evaluation process is not solely to award annual pay increases, but also, if used properly, to serve as the basis for fair and equal treatment of all City personnel, and as an encouragement to perform at or above expectations. Evaluations may be used to determine an employee's eligibility for discretionary salary increases, promotions, or disciplinary actions. An effective performance evaluation system, if required and fairly implemented, would assist both management and staff by increasing lines of communication, establishing clear performance expectations, and providing greater accountability to the public, who the City serves.

**Recommendations** We recommend the City require the implementation of a fair and consistent annual performance-based evaluation system. This system should apply to all City personnel and should be the basis for all personnel actions. The performance evaluation process established should require all evaluations to be performed by direct line supervisors and completed in writing on a standard evaluation form. The performance evaluation should consist of applicable job duties, performance expectations, and clear evaluation criteria upon which employees will be evaluated. Evaluation criteria should be clear and measurable to reduce confusion and the risk of dispute. We recommend the evaluation process implemented by the City include a point system, or other measurable criteria, that will provide a clear evaluation of each performance category.

## Findings and Recommendations

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We further recommend the City consider including within the evaluation system a process for reviewing employee progress throughout the year, such as a mid-year progress review meeting. If an employee is not performing to required standards, the mid-year progress meeting would serve as an opportunity to communicate issues with the employee, and enable him or her to improve.

Finally, we recommend, after evaluations are performed and completed, including the signatures of the evaluator and employee, and maintain the evaluation documents in the employee's personnel file.

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**Finding 22: The City lacks a formal organizational structure, resulting in unclear lines of authority, responsibility, and supervision, creating confusion, distrust, and inefficiencies.**

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The City has not established a formal organizational structure with clear lines of authority, responsibility, and supervision. In some instances, City personnel appear to operate with little or no direct accountability. This lack of formal structure has created confusion, distrust, and concern among various City personnel, officials, and the public. Clear lines of authority and supervision are part of a basic foundation for operating an efficient and effective organization, and if established, would provide greater transparency and accountability to the public and City employees.

During the examination, auditors interviewed over 30 individuals, including current and former City personnel and officials. Through these interviews, auditors worked to gain a thorough understanding of City policies, procedures, and processes in order to better understand City operations and to address the many concerns expressed to this office. However, several conflicting statements were made to auditors in interviews with various City personnel and the Mayor, making it difficult for auditors to establish a clear understanding of individual roles and responsibilities, including supervisory responsibilities.

Between 2008 and 2014, the City added more than 59 full-time positions to its Pay and Classification Plans. A summary report of W-2 tax statements provided by the City documents the number of employee W-2 federal tax statements issued from 2011 through 2014. This report identifies that the number of City employees have consistently increased from 533 in 2011 to 623 in 2014. With such growth in personnel numbers, a formal organizational structure is critical to ensure proper oversight and efficient management of the City. Without structured responsibilities, the amount of control exercised by any one individual in an organization may reduce the effectiveness of management, decrease the quality of oversight, and allow for redundant, ineffective, and inefficient processes and workflow.

While KRS 83A.130 specifies that, in a Mayor-Council plan of city government such as the City's, "[t]he executive authority of the city shall be vested in and exercised by the mayor," and "[h]e shall supervise all departments of city government and the conduct of all city officers and employees," this does not preclude the City from establishing its own internal reporting structure in which it will operate to manage its growing number of personnel. The Mayor stated to auditors, in an interview on May 6, 2015, that he has delegated some responsibility to each City department head so that City employees in various departments report first to the department head.

The Mayor told auditors that those City employees who report directly to him include: the CFO, City Clerk, City Safety Officer, and all City department heads. Based on this statement, the count of personnel reporting directly to the Mayor would be approximately 17 individuals; however, this number does not include the City Attorney or the Mayor's secretary. In addition, statements made by some City personnel interviewed, and discrepancies identified by auditors in various interviewee statements, indicate the Mayor has a much greater number of individuals reporting to him on a regular basis.

Auditors discussed in detail with the Mayor certain administrative functions to gain a better understanding of who oversees various employees and who they would report to, specifically addressing the Gas Marketing and Business and Information Technology (IT) positions, which were each added to the City pay and classification schedule within the last three years. According to the Mayor, the new Gas Department Marketing and Business positions report to the heads of the Gas Department, which are the City Natural Gas Engineer and the City Gas Department Manager. The Gas Business and Development Coordinator, who serves in one of the Gas Department's Marketing and Business positions, stated he reported to both the Natural Gas Engineer and the Gas Department Manager; however, the Natural Gas Engineer and the Gas Department Manager separately stated to auditors that they do not supervise or oversee the City Marketing and Business positions.

When asked about Information Technology (IT) functions, the Mayor stated that the IT Manager does not report directly to him but rather reported either to the City Clerk, the Budget Director, or the CFO. However, in interviews with the City Clerk, the Budget Director, and the CFO, none of the individuals indicated direct oversight or supervision of the IT Manager or the IT function. The IT Manager thought his direct supervisor would be the Budget Director, as the Budget Director signs most of his POs.

In regards to the other IT position, the Energy Center Project Manager, the Mayor acknowledged more involvement in supervision of that position, but prefaced that by stating his supervision of that position was on a limited basis, as the City was taking a "team approach" with the Energy Center. The Mayor did not clearly indicate who would have direct supervision over the Energy Center Project Manager position on a regular basis.

## Findings and Recommendations

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Contradictions and confusion continued to be expressed throughout the various interviews performed during this examination. For example, the City Budget Director stated he believed he reports directly to the Mayor, even though the City hired a CFO in 2013 who considers the Budget Director as directly reporting to her office. As another example, the City Fuel Center Manager, who oversees the City's Fuel Center, initially stated that she believed the Gas Business and Development Coordinator was her supervisor, with the Mayor being her second-line supervisor. After discussing the matter further with the Fuel Center Manager, she subsequently stated that the Gas Business and Development Coordinator may be more of a liaison between the Fuel Center and the Mayor. While interviewing the Gas Business and Development Coordinator, he clearly stated that he had no City personnel reporting to him.

In most organizations, supervision and areas of responsibility can be determined not only by reviewing formal organizational charts, but also by reviewing other records such as employee timesheets, payroll records, travel reimbursement requests, employee evaluations, or other documents in personnel files. Based on the records provided to this office, the City has no formal written organizational chart, timesheets of most salaried personnel do not require supervisory approvals for processing payroll, annual performance evaluations are not conducted, and personnel files were not complete. Typically, personnel files identified the department in which an employee worked, and personnel actions only required the Mayor's signature or initials indicating approval for personnel actions taken.

A clearly defined organizational structure would establish the appropriate baseline process by which personnel should operate on a routine basis, establish defined roles, and direct individuals both inside and outside the organization to the appropriate parties to address employment issues. Without establishing such a basic foundation, it is difficult to determine when performance expectations are not met, and increases the City's risk for questionable activities to occur and not be identified or addressed in a timely manner.

**Recommendations** We recommend the Mayor and City Council work together to establish and adopt a formal, written, organizational chart under which the City will operate. The reporting established through this formal organizational structure should ensure a systematic and consistent approach for each City function to be appropriately supervised. The lines of authority established through this formal structure should be reasonable, and not burdensome to employees or management, to allow for effective and quality oversight. This formal organizational chart should be reviewed periodically, with revisions made as necessary to reflect any changes implemented in the actual lines of authority and supervision followed by the City. Further, once the formal organizational structure is adopted by the City Council, we recommend the City make the organizational chart available to employees.

## Findings and Recommendations

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See recommendations related to annual evaluations, timesheets, and other HR related matters in Findings 15, 20, and 21.

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**Finding 23: The City has not required and maintained financial interest statements as required by City Ordinance 94-14.**

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The City has not required and maintained employee financial interest statements as required by City Ordinance 94-14. Although the ordinance requires employees authorized to expend over \$500 to complete a financial interest statement, City records provided to this office indicate that most employees with such authorization have not been required by the City to complete a financial interest statement. Further, recent attempts to update the financial interest statement have led to incomplete disclosures, as questions required by the ordinance to be on the statement were omitted from the statements recently completed by officials and employees.

Auditor's requested completed financial interest statements for City employees and others from 2013 through October 2014. Initially, the City provided only the Mayor's financial interest statement. A follow-up request for employee and official financial interest statements was made on January 7, 2015. The City was then able to provide an additional 42 financial interest statements for City personnel, City Council members, and various City commission and Board members. Of the 42 additional financial interest statements submitted, 20 were completed after auditors initially requested the documentation, even though most of those submitting statements had served the City for several years.

According to Ordinance 94-14, those required to file an annual statement of financial interests include:

- (A) Elected city officials.
- (B) Candidates for elected city office.
- (C) Members of the city planning and zoning commission and board of adjustment.
- (D) Members of the Board of Ethics created by this ordinance.
- (E) Nonelected officers and employees of the city or any city agency who are authorized to make purchases of materials or services, or award contracts, leases or agreements involving the expenditure of more than five hundred dollars (\$500.00).

City financial interest statements are to be filed no later than 4:30 p.m. on March 1 of each year. New officers or employees are to file their “initial statement no later than thirty (30) days after the date of appointment.” Candidates for office are to file their statements “no later than thirty (30) days after the date on which the person becomes a candidate for elected city office.” Though the Ordinance states that these are annual statements, required to be filed “no later than 4:30 p.m. on March 1 of each year,” the City Attorney stated that “[i]t appears that at some point in 2007 the mayor determined that unless there were changes from one year to the next, new forms did not have to be filled out every year. Therefore, old forms were kept on file and of record until, or unless, amendments were needed.”

A review of the documents provided through the City Attorney found that a few of those required by City Ordinance 94-14 completed a financial interest statement. City financial interest statements are maintained by the City Clerk, as the custodian of City records. The City Attorney stated that the Mayor prepared a memorandum early in his tenure notifying individuals to complete a financial interest statement and file it with the City Clerk by March 1, 2007. This memorandum, dated January 8, 2007, was addressed to the following individuals: Council members, Department supervisors, Assistant Department supervisors, Planning and Zoning Board members, Board of Adjustment members, and Ethics Board members. Although the Mayor’s memorandum was not distributed to all City personnel subject to the requirements of City Ordinance 94-14, the original requirements of this Ordinance adopted in 1994 were still in effect, requiring all City employees with purchasing authority over \$500 to complete a financial interest statement.

A review of City personnel having small purchase authority identified 62 employees having purchasing authority over \$500. Of the additional 42 financial interest statements reviewed, 15 were for City personnel. Of the 15 employee financial interest statements, 11 were dated in January 2015, and 10 did not include all the questions required by the City Ethics Policy to be answered. A review of the 42 additional financial interest statements provided by the City identified forms completed by three current City Council members, two current members of the City Board of Ethics, a member of the Board of Adjustment, and two members of the City Planning and Zoning Commission, which appeared to have been recently completed, and did not include all questions required by the City Ethics Policy.



## Findings and Recommendations

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According to Section 17 of the City Ethics Policy established through Ordinance 94-14, “[t]he statement of financial interests shall include” certain information “for the preceding calendar year.” Recent revisions to the City’s financial interest statement form made by the City Attorney’s secretary in January 2015, reportedly to remove blank spaces from the form, omitted two required pieces of information. Information omitted from the statement included the spouse’s occupation and “[t]he name and address of any business located within the state in which the filer or any member of the filer’s immediate family had at any time during the preceding calendar year an interest of ten thousand (\$10,000) at fair market value of five percent (5%) ownership interest or more.” Although the City Attorney advised auditors that she would send an amendment to all individuals whose forms failed to contain this information, and would supply the addendums to auditors, no additional information was received.

**Recommendations** We recommend the City ensure compliance with City Ordinance 94-14 by first requiring all employees with purchasing authority over \$500 to complete a financial interest statement. We also recommend the City complete the financial interest statements each year as required by the City Ethics Policy. We further recommend the City Clerk, at the beginning of each year, send a reminder to all required individuals to complete and submit to the City Clerk’s office a new financial interest statement by March 31 of that year. Finally, we recommend the statements be retained as prescribed by the Ordinance.

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**Finding 24: The Mayor has not appointed members to the City Ethics Board as required by the City Ethics Policy.**

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The Mayor has not appointed, for approval by the City Council, the necessary number of Ethics Board members as required by City Ordinance and the City Code of Ethics. Also, two Ethics Board members hold positions on other City-affiliated Boards and Commissions, which is in violation of the City Ordinance and Code of Ethics.

City Ordinance 94-14 was passed by the City Council on November 28, 1994, to meet the requirements of KRS 65.003. This Ordinance establishes the City Code of Ethics by which City personnel and officials are to operate, and it creates a Board of Ethics. Section 20(B) of Ordinance 94-14 states:

The Board of Ethics shall consist of five (5) members who shall be appointed by the executive authority of the city, subject to the approval of the legislative body. The initial members of the Board of Ethics shall be appointed within sixty (60) days of the effective date of this ordinance. No member of the Board of Ethics shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city of (*sic*) any city agency.

## Findings and Recommendations

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According to information provided by the City, the City Board of Ethics currently consists of four members, even though policy requires five members to be appointed by the Mayor, subject to the approval of the City Council. In addition, City records document that two of the four current Board of Ethics members also serve on other City-affiliated Boards or Commissions. The Board of Ethics Chair serves on the City Tourism Commission, while another member serves on the Board of the Downtown Somerset Development Corporation, which is a component unit of the City.

The City Board of Ethics Chair was first appointed to the City Board of Ethics by the Mayor and approved by the City Council in August 2010, and immediately began serving as the Chair upon his initial appointment. The Board of Ethics Chair acknowledged that he is also serving on City Tourism Commission, stating that the Mayor appointed him to the Tourism Commission when it was formed in 2013. According to Ordinance 13-06, which establishes the City Tourism Commission, appointments to the Tourism Commission are made by the Mayor pursuant to KRS 91A.360. The Board of Ethics Chair stated that he questioned the Mayor when he was appointed to the Tourism Commission because he was also serving on the City Board of Ethics and thought it was a conflict according to the City Ordinance. The Board Chair stated that the Mayor indicated to him that there was no issue with the Chair serving on an additional board.

### ***Recommendations***

We recommend that the City adhere to the requirements set forth by Ordinance 94-14 and the Code of Ethics regarding the appointments of members to the Board of Ethics. We recommend the Mayor make appoints to the Board of Ethics, subject to the approval of the City Council, so that the Board of Ethics is comprised of five members. Further, we recommend the two Board of Ethics members that also serve on other City boards or commissions resign from one of the appointments to comply with the requirements previously reported.

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### **Finding 25: The City did not document and consistently apply procedures governing access to its accounting software.**

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Discussions with City personnel revealed they did not implement adequate logical security controls governing user access to the City's accounting software. Therefore, it was not possible for auditors to ensure that all users were authorized and granted appropriate access to the accounting software.

While no written procedures are currently in place for Information Technology (IT) staff to follow when granting, changing, and terminating user access, an informal process was used to grant system access. In order to gain access to the accounting software, a user must be defined on the City's network. IT staff receive either emails or verbal requests to grant new or change system access. This communication is not logged or maintained in a central location for review or as documentation to support actions taken.

## Findings and Recommendations

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Our review of user accounts revealed the majority were established with 'Full' access to individual system modules, which allowed the user to process transactions and to create, update, or delete information within the accounting system. According to City staff, if 'Full' access to the system was requested, the IT staff simply copied the rights of another user and applied these rights to the new user account. If the access was to be limited for any reason, then IT staff submitted a request to the software vendor's support staff who would establish a new user account.

City officials did not implement a process to review requests to ensure system access is appropriate. Further, no documentation of any recent additions, changes, or removals of access was maintained by the City to support access granted to users. At the time of testing, auditors determined 64 users had access to the accounting system that was not supported or appropriately authorized by management. Testing revealed 22 active accounts, or 34.4 percent, were no longer needed and should be disabled.

In addition, six active group user accounts were established with elevated access to the accounting system; two of these group accounts are used by the vendor and City IT staff for administration of the system. Strong access controls prohibit the use of group user accounts since the identity of the person performing system activity cannot be readily determined.

Testing also revealed that three user accounts were given access to the System Wide Parameters option, which allows the user to perform system wide maintenance. One of the three accounts belonged to an individual that is no longer employed by the City; therefore, it should be disabled. The remaining two accounts were identified as group accounts, as discussed above, and are able to be used by the vendor or City IT staff.

The failure to adequately document, implement, and communicate security policies and procedures could lead to a lack of understanding by management and users. This lack of understanding could potentially result in a failure to comply with security policies, failure to perform assigned security responsibilities, or inappropriate and inefficient use of system functions or resources. Additionally, it increases the risk of unauthorized or inaccurate data modification, destruction of assets, interruption of services, or inappropriate or illegal activities. Allowing users the ability to access information without proper documented authorization may subject the processing of data to errors and/or omissions and may compromise the integrity of data processed through the system.

**Recommendations** We recommend the City develop a written policy to ensure staff obtains appropriate access to the accounting software. This policy should:

## Findings and Recommendations

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- explain the process for staff to request access to the software;
- limit privileges, or rights, within the system to actions essential to that user's work;
- establish the process to request access to be modified or removed; and
- specify the supporting documentation to be maintained to support the access being granted to staff.

We further recommend that the City no longer allow the copying of access rights from existing employees due to the potential for providing unknown, unnecessary access.

This policy should also explain the vendor's involvement with establishing user access within the accounting software and the process to request the vendor to establish a new account. Further, the IT department should consider developing and completing a form to identify the permissions and roles requested for a user to access the accounting system. This form, or other comparable communication, should be submitted and approved by the individual's supervisor. As necessary, the form should be provided to the vendor.

In addition, we recommend the City review all user accounts currently established with access to the accounting software to ensure user accounts are only granted privileges, or rights, within the system which are essential to that user's work; all other privileges should be restricted. As this review is performed, all pertinent user contact information should also be updated.

Further, we recommend all group accounts be disabled. The associated functionality, if still needed, should be transitioned to individual user accounts to allow for closer monitoring of the actions taken by users of these accounts. If required for business purposes and the transition to individual user accounts is not feasible, then justification for having the group account should be documented and approved by management. Management should also monitor use of any retained group accounts to ensure they are being used as intended.

Also, we recommend a primary and backup employee be formally designated as being responsible for providing employees with appropriate system access. We recommend these employees receive training to ensure they have a clear understanding of how to effectively and efficiently perform this function.

City management should perform, at a minimum, an annual review of the active user accounts within the accounting software to ensure users are still employed by the City and require access to support their job duties. Actions taken to change access levels should be thoroughly documented. All documentation supporting this annual review should be maintained for audit purposes.

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## Findings and Recommendations

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**Finding 26: The Expenses Report produced from the City's accounting system did not provide sufficient information to support Budget to Actual reporting.**

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During the review of the City's budgeting procedures, we determined the Expenses Report used to support the Budget to Actual reporting to the City Council did not consistently produce Budget Balance amounts as expected. Specifically, there were instances noted where the Budget Balance did not reflect the difference between the Amended Budget and the Year To Date (YTD) Expenses. The City's accounting system produced this report and there was no identified manipulation of the report after its creation.

Discussions with the accounting system vendor revealed that the system has four accounting methods that can be used. The City chose to use the accrual accounting method, which specifically encumbered funds when POs are processed through the system. Based on this accounting method, the Budget Balance on the report will be affected by both processed expenditures and outstanding encumbrances. Therefore, according to the accounting system vendor, the Expenses Report being used by the City is actually providing the Available Budget Balance after expenditures and encumbrances, not the current Budget Balance solely based on processed expenditures.

Generally, using this type of accounting method, the Available Budget Balance will be lower than the current Budget Balance. When reviewing the report, it would appear that more funds had been expended to date than what had actually occurred. As an example, on the Expenses Report for the year ending June 30, 2014, the total Budget Balance, which includes both YTD Expenses and YTD Encumbrances, for all accounts was shown as \$9,755,451.02. A recalculation of the current Budget Balance amount, considering only the YTD Expenses, for this period reflected a total of \$12,528,245.47. Therefore, as of the fiscal year ending June 30, 2014, there were \$2,772,794.45 outstanding encumbrances.

Further, during the review of the Expenses Report there were 13 instances identified where the YTD Encumbrances within an individual account were apparently reflecting a negative amount. One instance occurred in each of the fiscal years 2012 and 2013 and the remaining 11 instances occurred in FY 2015. The vendor was able to determine that, in these cases, an invoice was paid prior to the associated PO being recorded in the system. The processing of a payment invoice triggered the system to liquidate an encumbrance, even though the original encumbrance had not been recorded. This situation caused the YTD Encumbrances to be understated until the PO was recorded in the system, thereby creating the original encumbrance to offset the liquidation. Once the PO has been recorded in the system, the YTD Encumbrances value will reflect the correct amount.

To ensure users are adequately aware of the information being provided within reports, all applicable data fields should be included within the report. Data field titles that relate to calculated amounts should be sufficiently descriptive to ensure relevance is understood.

## Findings and Recommendations

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**Recommendations** We recommend the City of Somerset work with the vendor to include additional fields of information in the report and rename some of the report headings in order to more accurately represent the purpose of the report. Specifically, we recommend that the report be expanded to include the following fields of information:

- Original Budget;
- Amended Budget;
- Month To Date (MTD) Expenses;
- YTD Expenses;
- MTD Encumbrances;
- YTD Encumbrances;
- Available Budget Balance; and
- Percentage of Budget Available.

Additionally, we recommend the title of the report be changed to 'Expense/Encumbrance Report.'

Once this change has been completed, the new report should be provided to the City Council along with an explanation as to how the accounting system processes expenses and encumbrances, how the budget balance is affected, and how this report should be used to make decisions for future expenditures.

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**Finding 27: The City did not consistently log transactional activity within the accounting system.**

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Discussions with City staff indicated that the accounting system had the functionality to log transactional activity within the individual accounting system modules. However, it was determined the City has not implemented this feature in all modules, nor are the logs being created consistently for the modules where the feature was activated.

Included in the requests for information made to the City, auditors requested the audit logs available for the FY 2015. A series of log files was provided. The auditor found the logs related only to the Accounts Payable (AP), Payroll, and Utility Billing (UB) modules and did not cover the entire FY 2015 to date. Specifically,

- For the AP logs, the files for May 13, 2014 through September 5, 2014 were provided.
- For the Payroll logs, the files for May 13, 2014 through July 8, 2014 were provided.
- For the UB logs, the files for May 13, 2014 through July 8, 2014 and for September 5, 2014 through January 23, 2015 were provided.

## Findings and Recommendations

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Through discussions with the City staff, we found the logs are created by the CFO. At the time of our testing in March 2015, it was confirmed that the last logs were created on January 23, 2015. No explanation was given for the periods when no logs were created.

Without consistent and effective monitoring of event and security logs, the risk of inappropriate transactions being processed by the system increases. A logging and monitoring function within an application and consistent review of the results enables early detection of unusual or abnormal activities.

**Recommendations** We recommend the City work with the accounting system vendor to determine the feasibility of activating the audit logging functionality within the remaining system modules. Once this determination is made, the audit feature should be activated in all applicable modules and logs should be created. Logs should be maintained in a secured location and made available as needed for monitoring and audit purposes.

We further recommend that City management review these logs on a regular basis. Particular attention should be paid to actions taken by those staff with the highest levels of access and authority within the modules. Access to the logs should be restricted to appropriate personnel with the responsibility of reviewing this information. Identified concerns should be thoroughly reviewed and documented to ensure the actions were appropriate. This review should be documented and retained for audit purposes.

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**Finding 28: The City did not develop or implement formal, written IT policies and procedures.**

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The City did not develop or implement formal, written IT policies and procedures that specified individual responsibilities established for management and staff.

The City has documented information regarding personal safety and office physical security within its Employee Handbook. In addition, an Identity Theft Prevention Program has been documented. However, these documents do not include information regarding specific responsibilities of staff related to the use and protection of the City's IT resources and data. Furthermore, IT staff confirmed that employees are not required to read or sign an acceptable use policy pertaining to the use of their network, internet, and email.

Without written policies and procedures, users or management may not clearly understand their responsibilities, actions they can and cannot take, or changes in administrative or business processes. The lack of sufficient user direction or understanding could lead to agency systems, data, or resources having an increased risk for inappropriate changes, unauthorized information disclosures, or avoidable security vulnerabilities.

## Findings and Recommendations

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**Recommendations** We recommend the City develop and implement written IT policies and procedures. These policies may include, but are not limited to:

- physical security;
- logical security procedures for network accounts;
- creation of network user groups;
- network configuration;
- logical security procedures for applications;
- data classification and protection;
- incident handling and response;
- system maintenance;
- data backups;
- hardware and software supported by the city;
- the dial-up network;
- cellular phone usage;
- acceptable use of internet, network resources, and email; and
- system change procedures.

These policies and procedures should be detailed, complete, and approved by management. These documents should be kept current and communicated to staff, in order to ensure all key staff is aware of their responsibilities.

Further, we recommend the City develop and implement a security program that explains all employees' responsibilities related to network security. This program should include periodic training and communications sent to staff concerning specific topics, such as acceptable use of resource, physical security, password strength, etc. On a periodic basis, staff should be required to review the acceptable use policy and sign a form confirming that they have read and understand their responsibilities in relation to usage of the internet, network resources, and email.

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**Finding 29: The City has not established criteria to identify the items to present to the City Council, reducing transparency and causing confusion among City Council members.**

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The City has not established criteria to determine the types of information to be presented to the City Council, leading to inconsistent reporting and confusion among City Council members. Although City Council members interviewed understood their legislative role at the City, confusion was expressed by some of those members regarding their responsibility related to contract bidding and expenditures over \$20,000.

KRS 83A.130 establishes the powers and duties of a mayor and council under a mayor-council plan of city government. Regarding the responsibilities of the Mayor, KRS 83A.130(3) states, in part:



The executive authority of the city shall be vested in and exercised by the mayor. The mayor shall enforce the mayor-council plan, city ordinances and orders and all applicable statutes... The mayor shall report to the council and to the public on the condition and needs of city government as he finds appropriate or as required by ordinance, but not less than annually. He shall make any recommendations for actions by council he finds in the public interest.

As the legislative body of the City, KRS 83A.130(11) restricts the City Council from performing “any executive functions except those functions assigned to it by statute.” KRS 83A.130(12) then states, in part:

The council shall by ordinance establish all appointive offices and the duties and responsibilities of those offices and codes, rules and regulations for the public health, safety and welfare. The council shall by ordinance provide for sufficient revenue to operate city government and shall appropriate the funds of the city in a budget which shall provide for the orderly management of city resources.

While all City Council members interviewed understood their responsibility involving the City budget process, certain City Council members stated they believed City policy required bid amounts, or expenditures in general, over \$20,000 to be presented to the City Council.

No City policy was found requiring expenditures or bids for services exceeding \$20,000 to be presented to the City Council; however, the City maintained a website for the City Council that stated, “[t]he twelve members of Council adopt the annual budget and approve City expenditures over \$25,000.” According to City Personnel, the City website is maintained, and information on the website can be revised, by various City personnel including certain City department directors, a clerk, and the IT Manager. City documentation indicates the statement regarding the City Council’s review of expenditures over \$25,000 has been present on the City-maintained website since July 1, 2011. After auditors addressed this issue with the City Attorney on April 21, 2015, the statement was removed three days later by the City Clerk, on April 24, 2015.

In another matter, the City advertised for both blacktop and concrete services for FY 2015 in the same invitation to bid, having the same bid opening date and time. The City Council meeting minutes document that only the blacktop bid was presented to the City Council for approval. For FY 2015 blacktop services, the City only received one bid, which was subsequently awarded to that business. For FY 2015, the City received three bids for concrete. According to City personnel, all three businesses that submitted bids were awarded work; however, these bids were not presented to City Council. In contrast, City Council meeting minutes from 2013 document the City presented both the blacktop and concrete bids for FY 2014 to City Council for approval. It is questionable why a single bid for blacktop was presented to the City Council, while three bids for concrete were not presented to the City Council. Further, it is unclear why bids for concrete were provided to the City Council in 2013, but not in 2014.

On April 21, 2015, the City Attorney responded to a question regarding whether concrete bids are presented to the City Council, stating that “[t]he City has always operated with the legal understanding that in a mayor-council form of government, it is not *required* to have the city council award a bid so long as the money is already appropriated in the proper fund to cover the cost.” The City Attorney further stated, “many times we do choose to take bids before the council if the mayor wants their opinion in determining which bid to choose, or if the bid is for multi-years, or if the money will have to be appropriated by the council at some point to pay for the items and/or work being bid because the money has not already been appropriated into a particular fund.” While state statutes do not require city council involvement in expenditures or bid amounts over a certain dollar threshold, each city government may establish its own policies and procedures as to the information presented to its city council.

In discussing the matter with the Mayor, he noted that once the budget is approved by the City Council, he has the authority by law to implement the budget. The Mayor stated that he has “100% discretion” by law as to what is presented to the City Council; however, he noted there were some specific funding sources that require the City Council’s approval, such as projects receiving federal grants or funds that are received with restrictions. According to the Mayor, the City has “bid out over 100 items the last two and half years” and of those bid, he estimated the City Council has reviewed and approved about 50 or 60 items. The Mayor noted that although he is not required to do so, he will bring certain bids to the City Council, such as environmental projects, to have a record in the minutes of these matters. The Mayor also mentioned that he will often bring single bid items to the City Council and bids for blacktop, as it is interested in blacktop. Regarding the statement that was identified on the City-maintained website, the Mayor stated that he was not aware of the City ever having such a policy and stated that the “webpage is not city policy,” noting that the statement was removed from the website.

## Findings and Recommendations

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**Recommendations** We recommend that the City establish clear and defined criteria for items to be presented to the City Council to assist in providing continuity and transparency. We further recommend the established criteria be distributed to the City Council and made available to the public.



**CITY OF SOMERSET RESPONSE**



Eddie R. Girdler  
Mayor  
Nicholas K. Bradley  
City Clerk  
Carrie Wiese  
City Attorney

## City of Somerset

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August 21, 2015

Re: Responses to the Examination of the City of Somerset

Dear Mr. Edelen,

Please find below Responses of the City of Somerset to the APA's Examination recently conducted. To the best of my knowledge, the below responses are accurate, and are based in part, or full, on information provided to me by staff members and/or other officers/officials of the City of Somerset who were involved in the examination process. Please note that although there are some items to which we object and/or disagree with your staff's assessment, opinions, and/or recommendation(s), we are thankful for the opportunity to have worked with the APA's office in helping to ensure our City operates at the highest level of efficiency and transparency now and in the future.

Sincerely, Carrie Wiese

  
City Attorney

### RESPONSES:

#### Finding 1:

First, the City does not feel it is appropriate for a Finding to be made based on non-objective criteria. The Examination clearly states that there exists no objective standards and/or criteria against which the City and its staff were measured. As for the attempt by the Auditor to advocate for legislation in the City's examination report, the City feels an examination is not the proper platform to advocate for General Assembly action or to advocate for judicial changes. The Courts have made it abundantly clear that the whistleblower act does not apply to municipal employees in the Commonwealth over the last few decades. Good, bad, or indifferent, the City should not be penalized for this failure of the Courts or the General Assembly to apply the Act to municipalities. It should also be noted that nearly all employees that were interviewed by the examiners reported that they were intimidated, audio recorded, and some were asked certain questions that they felt were improper and not related to the operation of the City, but instead were an attempt to gain personal information regarding the employee and his/her relationship with other staff members. Many statements or quotes found throughout the examination report are exaggerated, inaccurate, used out of context, and done in a manner that mischaracterizes the staff's willingness to work with the examiners. Despite the fact that some of the Public Auditor's staff interrogated the City's employees for months, the City remained cooperative and transparent, even when this examination disrupted normal business activity and productivity. The staff became so inundated with unreasonable requests, multiple phone calls, and false accusations that employees finally began asking the City for relief from the harassment, going as far as requesting that all communications, oral and written,

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be made through the City Attorney or their own legal counsel so employees could simply get back to their normal job duties and responsibilities.

Finding 2:

The City agrees that it should make a better attempt to reasonably anticipate at the beginning of a fiscal year the like items/services of which an aggregate amount could exceed \$20,000 during that fiscal year *per the standards set forth in the Model Procurement Code* in order for bids to be sought for said items/services. The examination report suggests that the City expended over \$280,000 for what initially appeared to be tree trimming, brush removal, and excavation work without competitively bidding for these services. However, the City provided documentation that the majority of these expenses were related to two specific matters, the first being a contract which the City entered into in 2008 for professional clearing services/brush removal along the City's multi-county high pressure natural gas pipeline. This documentation included a copy of the original bid advertisement regarding the clearing of the entire 144+ mile high pressure natural gas pipeline, the submittals received, and the awarded contract. Documents provided to the examiners also included an amendment to the professional services contract which was made in the winter of 2014 due to the discovery of 5 extra miles which had not been included in the underlying contract. Due to KY Public Safety Commission (PSC) regulations, as well as Federal Energy Regulatory Commission (FERC) safety regulations, both of which we are required to follow in regards to our natural gas pipeline, the extra mileage had to be added to the total mileage cleared each 2 year period. The costs and work required to clear the line both in our home County, as well as across the other Counties through which our line runs, is very expensive and very intensive and therefore is done over a two year period by a skilled independent contractor that has experience performing this work along our pipeline. The contract in question had been awarded to the professional service provider after bids were sought pursuant to the General Procurement procedures set forth in KRS which the City followed at the time the bid was awarded. The City chose to enter into a multi-year contract with the professional service provider due to the critical safety and degree of technical experience needed to properly care for the areas surrounding, and covering, the City's high pressure natural gas pipeline. Said contract was awarded per the original bid and therefore the City did not seek new bids each year

The second matter involved work performed at the City's Rocky Hollow Recreational Facility and Park, specifically the excavation of property and the construction of an amphitheater. The City agrees that the costs began to exceed the original anticipated costs of the project. The City's independent auditor made a finding in regards to this particular project in the Independent Audit Report for FY 2014. The report also included the City's official response to said finding and the entirety of the audit report was presented to the City Council and to the public during the annual audit presentation in March 2015. Although the auditor claims that this "examination" is not a duplicate of the City's independent financial audit, this finding is in fact a duplication and has already been addressed in the City's audit for FY 2014.

Finding 3:

Kentucky law clearly states that the Public Service Commission (PSC) has no jurisdiction over municipal utility rates. Rates are instead determined by local governments, by and through the City Council and/or the Executive Authority, such as the Mayor in a mayor-council form of government. This allows for the City's citizens to benefit to the highest extent possible as evidenced by the City's ability to stabilize utility rates for almost a decade. As stated in the City's response to "Finding 1", the City does not feel it is appropriate for a Finding to be made based on non-objective criteria. The Examination clearly states that there exists no objective standards and/or criteria against which the City and its staff were measured. As for the attempt by the Auditor to advocate for legislation in the City's examination report, the City feels an examination is again not the proper platform to advocate for General Assembly action or to advocate



for judicial changes. That having been said, the City does set rates for natural gas customers, with the exception of 3-4 major industrial users for which the City does negotiate special rates. The City Council approved the most recent gas rate structure during the budget sessions, with the rate structure allowing for negotiations of special rates for major industrial users. It is of the utmost importance for the Mayor and staff of the natural gas and other utility departments to continue to be able to negotiate special rates with major industrial users in order to keep economic growth and jobs in the City of Somerset, and Pulaski County, and to ensure that the City can offer natural gas and other utilities to industrial customers at a rate that encourages locating in the Somerset area. The City strongly objects to the delegation of control of any of its utilities, including, but not limited to natural gas, to be controlled by a third party such as a utility commission as the examination suggests.

#### Finding 4:

The examination provides no indication of how the figure quoted in the report was calculated and City staff is not able to determine if said number is correct or not as there are no indications of what standards or accounting were used. The report further does not indicate whether the monetary number cited in the report includes more than one fiscal year, and seems to suggest that the time period for which the monetary figure was obtained appears to be over nearly a 3 year period which is misleading and is not indicative of the City's actual adjustments it performs during a fiscal year. The City maintains that a fiscal year is the proper time period under which all city activity should be measured and/or calculated when performing reviews of financial activity, as well as when performing independent financial audits by Certified Public Accountants. The finding does not note or indicate if the monetary amount of what is referred to as adjustments is a number which includes amounts/losses due to water leaks and water main breaks, incorrect meter readings which are later corrected in the system, and amounts deemed uncollectible due to customer insolvency and/or bankruptcy discharges. Therefore the City stands by the financial audits performed each year independently by Certified Public Accountants using the applicable Governmental Standards of Accounting. Audits are available on the City's website at [www.cityofsomerset.com](http://www.cityofsomerset.com), or by contacting the City Clerk's Office.

It should be noted that because of the lack of data provided by the examiners to the City, and the lack of an explanation as to where the numbers were obtained or how they were calculated from an accounting standpoint, this monetary amount is perhaps the most troubling number that appears in the report. Our CFO, a certified accountant, does not have any idea how this figure of \$2.7 million in adjustments was calculated, nor what data the examiners considered adjustments which as stated above could have included everything from uncollectable debt, to bankruptcies, misread, miscalibrated, and incorrect meter readings based on faulty readings, all which may have been later adjusted to reflect the correct readings, adjustments made for sanitation charges involving buildings that are later discovered to be vacant, and major water line breaks that would have been adjusted for customers affected. Other adjustments are typically made for other things such as returned check fees, changing an account from one tenant's name into another, or from one property owner into another property owner's name, and corrections based on billing based on estimates made when a meter is unreadable. There is no explanation to show how the figure was calculated by the examiners, or what accounting method was used to determine that number, etc. Based on its own review, the City believes this number is incorrect, but again, the City has no way to dispute or respond to the figure because it is not clear how it was calculated in the first place. The finding seems to suggest that all of the adjustment amounts stated in the report was a total of just simple write-offs where customer bills were adjusted by utility clerks. The above notwithstanding, the City agrees that it needs a better notation procedure in the computer billing system so that the reasoning behind any adjustments is clear. The City is working diligently with our software company to give us the ability to make such notations in the system that the utility clerks use in billing and collections.

Finding 5:

The report seems to suggest that the City does not follow proper purchase procedures, and does not have procedures in place. However, that is incorrect. Although there may be some inconsistencies in the few vendor payments that were actually pulled and reviewed by the examiners, the City has a proper procurement policy in place, and strives to follow that policy anytime a purchase is required. If there are any inconsistencies, the City will make every attempt to ensure that internal policies are followed.

Finding 6:

The finding regarding this matter is incorrect. The employee *was* disciplined and was ordered to make restitution in full to the City. The City agrees that better documentation should have been made to ensure that the restitution was paid in full. However, this matter was addressed in the Independent Auditor's report during the City's independent financial audits, and was presented to the City Council during the subject fiscal year in which the incident occurred. Additional measures were taken to ensure that future incidents did not occur and staff was informed of policy changes which reflected the changes made.

Finding 7:

The City measures fuel inventory per industry standards. The method which the auditor suggests is not customary in the gasoline sales industry. There are no standards or procedures used in the industry for "independently verifying" fuel inventory. The City should not be held to unreasonable standards not used by other members of the industry, however, the City will consider reasonable methods to measure inventory in order to ensure inventory calculations are as accurate as possible.

In regards to "public diesel sales", there is no prohibition against the City selling diesel fuel to the public. We elected not to sell diesel to the public at the time the gasoline station was opened to the public and determined at that time that it was wise to see how the regular unleaded sales affected gas prices in our community before taking a step toward selling diesel to the public. Proper signage was in place to indicate that diesel was not intended to be sold to non-fleet card holders. When we were alerted to the fact that two sales had occurred by persons not holding a fleet card, we immediately contacted the software company who worked closely with the City to ensure those particular pumps would not activate without a proper fleet card being used. We understand that there were software issues at the beginning which apparently allowed a member of the public to purchase from a pump we did not intend to be open to the public, but there was no harm to the public or to the City by the occurrence of these sales. It should be made clear that the Department of Revenue has worked with the City closely since day one to ensure that all proper taxes were paid as required under state law, as well as federal law. In regards to the two diesel sales that appear to have accidentally occurred to the public in August of 2014, the City believes all taxes were paid just as on unleaded pump sales because the unauthorized sales involved credit cards. Our pump software automatically accounts for applicable taxes to be collected from the customer at the point of sale when a non-fleet card is used in the machine, including on the subject diesel fuel pumps. However, we will be happy to ensure that any other taxes that may be owed are accounted for are paid per instructions from the appropriate authorities, including the IRS and the KY Department of Revenue.

Finding 8:

The Water Park is *not* a proprietary fund of the City. Although it was considered a proprietary fund for the first several years it was open, in 2013 our independent auditor recommended that the City reclassify

the park as a non-proprietary fund and that it be treated as a general governmental activity. Based on his opinion, the water park became part of the Parks and Recreation Department. The independent auditor further opined that based on his decades of experience working with local governments, it was highly unlikely that any water park, including our water park, would ever result in a surplus. In the FY 2014 audit report presentation, the independent auditor commented on the new classification and the reasoning behind the water park becoming a non-proprietary fund. The presentation took place on March 9, 2015, and is available on our website for viewing. The reported water park loss of over \$1 million for the last two fiscal years does not take into account depreciation, or the commercial sanitation revenue transfer that is made each year. When the water park was opened in 2006, the commercial sanitation was approved by the council to be transferred each year to cover the costs of operation for the park. Once the transfer is made, and the depreciation is considered, the water park shows only a small loss, if any. The City has implemented a process under which free passes are given, and agrees that better documentation should be made to ensure this process is followed.

Finding 9:

This matter was addressed in full and proper documentation was provided to the examiners. Although it was an unusual situation, we provided a deed and title opinion addressing a shared garage that the City owned jointly with an individual whose property was adjacent to the City's property. The deeds and/or the title opinion in regards to the property(s) show that the houses involved had originally been owned by brothers who built and shared a garage, and their properties were split directly down the middle of the garage structure. The deed clearly described the property/parcel line running directly through the middle of the garage. The City's side of the garage was in very bad condition when the City took over the Somerset Cemetery which was given to the City by the former cemetery board several years ago. It was determined at some point by our staff that the garage was not salvageable and that it needed to be demolished. We could not demolish only half of a garage and therefore the entire structure was torn down. In order to compensate the adjacent property owner for the taking of his half of the garage, the City purchased him a large metal storage shed at the local home improvement store for approximately \$1700 and placed it on the backside of his property. It should be noted that the gentleman was disabled and lived alone. Therefore we replaced his concrete strip driveway, which was also removed during demolition, and compensated him for the taking of his driveway by pouring a new walkway which provided the proper handicap accessibility leading back to his relocated shed, thus allowing him to continue to access the shed just as he had the former garage. The Purchase Order for the storage building was provided to the examiners regarding the purchase of the shed, along with the other items referred to above. The purchase was approved by the Council on the monthly expenditures presented to them at council meetings.

Finding 10:

All full-time staff is listed on the Pay and Classification Plan, and the Plan has been updated through the years to ensure that all full-time positions are accounted for by the Council during the budget cycle each year as required by law. Prior to the current administration taking office, the City had no Pay and Classification Plan. Law requires all full-time positions to be listed on the plan, but does not require any further information to be listed. That notwithstanding, the City has traditionally listed salary minimums and maximums, as well as notations regarding whether a particular employee is exempt or non-exempt. By reading the data contained in the finding's body is read, it is clear that the examiners found two persons were paid less than the suggested minimum salary listed on the pay and classification plan, an employee that was allowed to accumulate overtime because she was performing work outside of her regular job responsibilities and duties, and that two employees that have the same job title are paid different amounts per hour. There are no laws requiring that a minimum salary be included on a Pay and Classification Plan. no prohibition against paying an employee overtime hours worked when those duties

are outside of that employee's regular duties and responsibilities, and there is no requirement that everyone employed in a particular position be paid the exact same amount per hour. All of these matters are completely within the Mayor's discretion. Therefore, this finding is based on no objective criteria or actual legal requirements. The suggestion that the Mayor has hired employees that are not qualified for certain positions, or that certain employees are paid different rates/salaries based on non-objective factors is unwarranted.

Finding 11:

There is no such thing as "off-book" hours as the examiners suggest. The City does however allow employees to request comp time rather than overtime pay, as is permitted under KRS for municipalities in Kentucky. The examination specifically reviewed pay periods ending April 25, 2014 through October 24, 2014, and noted that there were several hours recorded on the Water Park Manager's timesheet as "extra hours" earned. Such notation on a timesheet is commonly recognized by City staff to be Comp Time, which is permitted under applicable KRS. The examiners claim that during an interview with the water park manager, it was reported to APA auditors that the Mayor had suggested to the Water Park Manager that he record on his timesheet only a portion of his overtime as paid overtime, with the remaining overtime hours worked to be used for additional leave, specifically as comp time which is permitted for non-exempt municipal employees upon the employee's request. However, it should be noted that the City Council requested that the Mayor address this specific manager's overtime and felt it needed to be significantly reduced due to the large amount of overtime being paid to this particular employee each year. The City maintains that any time marked on a time sheet as "extra hours earned" is considered comp time for payroll purposes, and such markings made by an employee on a timesheet are considered to be written documentation made at the employee's request. The City will ensure that a better notation system of requests for Comp Time is required on time sheets so that it is clear to both the employee, as well as the City, what time/hours worked the employee is requesting Comp Time to be earned rather than the payment of overtime. If the employee feels it is necessary, he/she may contact the Department of Labor to seek relief by following the administrative complaint process. Further, it is not necessary for the City to contact the Department of Revenue and/or the IRS because no taxes are owed until or unless wages are paid.

Finding 12:

Although not required by law to do so, the City will attempt to better advertise/post open positions that are not planned to be filled via a promotion or transfer of an existing employee. The City will attempt to give current employees better opportunities to be considered for potential positions if it is in the best interest of the City. The City maintains however that it is not required by law to post for openings internally, and under the Employee Manual adopted by the City Council, promotions and transfers are to be handled at the discretion of the Mayor. The positions which the examiners address in this finding were either transfers/promotions, or were positions filled after public advertisement was made. Further, singling out certain employees to discuss in this section of the report accomplishes nothing other than to cause embarrassment to those individual employees.

Finding 13:

The Downtown Development Corporation was created over 20 years ago by the City through City Council action and has operated in the same manner as it does today. The City provides most of its funding, and also loans the corporation two employees (the executive director and his secretary). Although it was not clear in the past where these two employees reported to, or who had ultimate responsibility, the City and the Corporation determined a few years ago that the two employees would be

considered City employees for all intents and purposes, including but not limited to payroll, budget, salaries, benefits, and retirement. The Corporation has an advisory board that works directly with the executive director to determine the best manner in which to expend its funds to increase the redevelopment of the downtown area. The Corporation is audited as part of the City each year in the independent audit report.

Finding 14:

The City employees, specifically employee supervisors and department heads, file what the City refers to as "exception reports" when an employee's time card does not accurately reflect the actual hours worked by that employee. Examples of times exception reports are used include, but are not limited to: employees that fail to clock in or out on the time clock to which they are assigned, and employees that fail to punch the time clock due to illness and/or absence from work. In this particular circumstance, the exception report pertaining to this employee was submitted by a supervisor, but the Mayor's signature was not sought prior to payment. No documentation appears in the employee's file showing that the Mayor approved payment for this employee, though it is likely that the City intended to use donated sick leave to cover this particular employee's absence due to a major health incident he suffered. Such is common practice in the City, and often employees will donate sick leave hours to another employee in instances when the donating employee has a certain number of sick hours available as required in the City's Employee Manual, and the employee seeking sick time donation is out of work due to a serious illness and/or injuries beyond his control, and/or due to other medical incidents which would require that employee to be out of work for an extended amount of time. Since it was brought to the City's attention that this particular employee did not appear to receive any donated sick hours in payroll records to cover his time off from work while he was recovering from a major health incident, several employees have come forward to donate sick hours so that the 80 hours of pay noted in the auditor's report would be covered. The City agrees that it should make a better effort to obtain and note donated sick hours in payroll records, and should require that all exception reports requesting an employee to be paid for hours apparently not worked to contain the Mayor's signature prior to payment by payroll staff.

Finding 15:

There exists no requirement under the law that the City maintain job "descriptions" or "education and experience requirements" as the examiner suggests. Although this is common practice in City's that have adopted the Civil Service Code contained in KRS, the City of Somerset, like a majority of municipalities across the Commonwealth, has not adopted said code. The City prides itself on hiring experienced, educated, and well-rounded individuals to assume roles of responsibility in all of the City's departments. Any position requiring specific licensures and/or certifications are filled with qualified individuals and the City's does its best to ensure that those persons maintain the requirements needed to fulfill their job duties, however a certain amount of personal responsibility is required and we must put faith in our employees that they maintain the proper certifications to perform their main job duties as assigned. The City will agree that it should do a better job of documenting license requirements, and ensure that employee files are updated with renewed or new license renewals when applicable. However, we are a very small City, and sometimes we all perform duties outside of our normal job responsibilities...this is what makes our City staff strong, multi-disciplinary, and very flexible. We are able to adapt to changing times and the needs of our community. We are not large enough to restrict an individual employee to only one set of responsibilities and believe that would not make our City stronger or more effective, but instead would cause our operations to be greatly limited. In other words, we all pitch in to get the job done and to do what is best for our citizens - that comes first and will continue to come first. The failure to do this very thing is what prohibits government agencies from performing the most effective work for the citizens. We will not limit our staff to a minimal amount of responsibilities and/or duties because a state

agency believes that is the better way to operate. The City believes that the examiners' attempt to single out certain employees to support their claims in this section of the report accomplishes nothing and is unnecessary to the finding.

Finding 16:

Although the City disputes some of the information contained in this particular finding, the City agrees with some of the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency. That notwithstanding, it should be noted that the failure of the building inspector to renew his license was not intentional. The building inspector informed the examiners that the failure to renew his license was due to a clerical error involving the apparent failure to pay an annual renewal fee. He continues to maintain that he completed all requirements to keep his license current, but that due to the fact that the license issuing agency did not have an up-to-date address, the inspector did not receive any notices that the agency had not received his payment of the renewal fee. This resulted in the inspector's license not being renewed. Again, the inspector did not receive the notices that his license had not been renewed due to non-payment. As soon as he realized his license had not been renewed due to the non-payment, payment was made and the renewal of the license was issued by the Department of Housing, Building, and Construction. The City agrees that it appears that the City failed to ensure that documentation was maintained properly in the employee's file to ensure his license was active.

Finding 17:

Although the City disputes some of the information contained in this particular finding, the City agree with some of the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency. That notwithstanding, the building inspector maintains that any fees he calculated were adjusted as is allowed, and in congruence with, the Department of Housing, Building, and Construction's standard operating procedures and/or regulations. The building inspector is allowed discretion under applicable law and/or regulations regarding building permit application fee amounts in order to address fairness and practicality on a case by case basis. The City will ensure that all regulations continue to be followed as necessary when determining fee amounts regarding building permits.

Finding 18:

The examiners claim that "over \$8,900" in public funds were expended on parties/dinners, when in actuality the expenditures appear to include over 2 seasons of employee and City Officials' holiday dinners, and a single retirement gift presented by the City and City Council to a City Official that served the City for over 30 years. The examiners claim that a sample of City credit card transactions for the period July 1, 2013 through December 2014, showed this supposed amount of over \$8,900. Although the City would not dispute that some City funds were expended on items such as employee and City Officials' Christmas dinners, and a retirement gift for a member of staff that retired after 30 years of service with the City, a review of City policy will show that a very limited amount of public funds are allowed to be used for dinners and retirement gifts. The policy *does* require a sufficient amount of documentation to be submitted to ensure compliance and to adequately support meal expenditures by requiring the business purpose of the meal if applicable, and the number or names of individuals attending. The City is unable to respond specifically to the amount claimed because no indication was provided as to how this \$8,900 monetary figure was calculated, over what period of time the amount was supposedly spent, and what types of expenditures were included in this total (i.e. did this total include business lunches, travel expenses, etc.) The City will continue to ensure its credit card and travel policies

are being followed, and that employees and officials submit the required supporting documentation of any expenditures. The City policies already state the consequences of not providing adequate supporting documentation, including under what circumstances the City will disallow an expenditure that is inadequately documented. This information, as well as the City's travel policy, is contained in the City's employee manual.

It should be noted that this finding is yet another example of the examiners using a number that covers more than one fiscal year, and as stated above, this particular finding uses a year and half period. This is significant because the parties/dinners the report refers to were Christmas Dinners for council members, employees, and other City Officials. The year and half time period used included *two* years of Christmas holiday time periods, however the finding does not point that out. In reality the majority of the amount expended per year for the entire staff's Christmas Dinners accounts for less than half of the amount set forth in the finding. The way the Finding is worded makes it appear that the City spent a much higher amount on what the examiners refer to as "parties" each year, when reality that simply is not true. We are very limited on what we spend on our employees, officials, and City Council members for dinners, often having catered food brought to City Hall to reduce costs, and choosing low cost options to hold the employee and/or elected member and officials holiday dinners.

Finding 19:

The examiners claim that City personnel were paid "over \$8,500" in "advances and expense reimbursements" with incomplete travel information, or lack of supervisory approval, or both. However, the examiners admit that only mileage expense reimbursements made to three City employees were examined. Once again, there is no way for the City to respond to this supposed amount because there is no indication as to how this "\$8,500 in expense reimbursements" was calculated, what period of time it covered, and whether the expenses were for travel, and/or for mileage reimbursement, both of which are covered under two completely different policies in the City's Employee Manual. The City agrees that it should abide by its policy and require all travel vouchers, including for both mileage reimbursements and advance travel payments, to provide the required documentation and/or information set forth in the IRS guidelines, and in the City's Travel Policy.

Finding 20:

The City requires that all employees submit a time sheet, or punch a time clock. Any exceptions to the time clock, and/or the time sheet if applicable, are to be signed off by a supervisor and/or a department head in order for that exception to be processed by payroll (see response to Finding 14 for further information on exception reports). Although the examiners claim that a review of timesheets sampled from July 1, 2013 to April 21, 2015, found the City does not consistently require timesheets to be signed and approved by an employee's supervisor, the City does not believe that to be the case. The City allows for timesheets to be electronically submitted by all employees not on the time clock, with the signature of the employee appearing as an "electronic signature" in the bottom left hand corner. There is an express disclaimer on the bottom of electronically submitted timesheets that allow for the electronic signature to serve as the employee express signature for all intents and purposes. This is a common practice in government, including in state agencies, and is an acceptable practice per IRS regulations. It allows for timesheets to be submitted quickly and efficiently, and for processing to occur in a short amount of time and direct deposits to be made by the City for all payroll. The City agrees that it should make a better effort to obtain supervisory signatures on payroll records that require such under the City's policies, and that all exception reports should contain an approval by a supervisor and/or department head prior to payment by payroll staff.

Finding 21:

Municipal governments are not required to have a formal evaluation process unless the City has adopted the Civil Service Code. Again, as stated previously, the City of Somerset has not adopted the Civil Service Code and therefore no formal evaluation process is required. It should be noted that the City does policies in place in the Employee Manual regarding evaluations, and requests and/or considerations for transfers and/or promotions. The City will continue to follow its own policies. As stated earlier, we are a very small City serving a very large customer base which sometimes means our employees must perform duties outside of their normal job responsibilities...this is what makes our City staff strong, multi-disciplinary, and very flexible. We are capable of adapting to changing times and the needs of our community. We do not believe that adopted only pieces of the Civil Service Code, such as a formal evaluation process, would make our City stronger or more effective, but instead would cause our operations to be greatly limited. We are already operating at our maximum workloads, we do not need more red tape bureaucracy in order to make our employees more productive. In other words, we all pitch in to get the job done and to do what is best for our citizens - that comes first and will continue to come first. The failure to do this very thing is why there is so much red tape, yet so little accomplished, in the state system, and is why local governments are often prohibited from performing the most effective work for their citizens. We will not limit our management staff's, or the Mayor's, ability to evaluate an employee's performance of their assigned responsibilities and/or duties because a state agency believes a "formal process" is the better way to operate. If the City Council chooses at some point in the future to adopt the Civil Service Code, we will abide by the regulations set forth in said code, including the formal evaluation process.

Finding 22:

The City is not required to have a formal organizational chart, and the City disagrees that the lack of such a structure causes "confusion, distrust, and concern". The examiners subjective opinions are inflammatory and are not needed in order to convey their review and recommendations on whether or not the City needs an organizational chart. All members of the City staff report to their direct supervisor, unless they are in a position that reports directly to the Mayor. Several departments, including but not limited to, the Water/Sewer Department, Natural Gas Department, Fire/EMS/Police Departments, and the Executive Department have a clear chain of command that is followed by all members of that department. To suggest otherwise is incorrect and an insult to the very well organized departments that operate on a 24/7 basis to provide quality services to the public. The described "contradictions and confusion" allegedly expressed during employee interviews with the examiners were mainly caused by interrogation tactics of the examiners themselves, which caused disruption to our staff's operations on a daily basis for several months. The City does not object to the idea of having a better organizational structure, however as previously stated, in a small City such as Somerset, employees are often tasked with performing duties outside their normal scope of responsibilities. We do not have the luxury of limiting employees to a very narrow list of job performance duties on a chart, as every employee is capable and willing to step up to the plate and perform whatever tasks need to be performed to accomplish the City's objectives in providing the best services to our citizens.

Finding 23:

The City disputes the examiners statement that the City "has not required and maintained financial interest statements" as required. Further, the City Attorney, nor any other staff, did not intentionally remove portions of the disclosure statement form as is suggested in the report prior to sending out to persons believed to be required to have a current and/or updated disclosure form on file with the City's offices. To make such a suggestion is not only inflammatory, but is defamation of character of the City



Attorney, her staff, and the City as a whole, who all worked tirelessly to obtain records and documents over several months at the examiners demand. The City Attorney's secretary accidentally removed a question when she was trying to remove extra spaces from a very old form that had been scanned in to be used for purposes of getting the items filled as needed and to the examiners as quickly as possible. As soon as this mistake was discovered, new forms were sent out to the handful of persons who received the incorrect version to ensure that a corrected and complete form was on file as required. The completed forms were made available to the examiners, and the statement stating otherwise is false. The City maintains that all required Financial Disclosure forms are completed and on file at the City as required by applicable law.

Finding 24:

The finding in regards to the Ethics Board is false. The City's Ethics Ordinance requires 5 members to be appointed, and thereafter approved by the Council, to serve on the Ethics Board. There are currently 5 active members, with the most recent vacancy being filled in August 2014. Only one member of the Ethics Board serves on another City affiliated board, and that other board on which he serves is the Tourist and Travel Commission. We are not aware of any conflicts of interest, but will be happy to address any conflicts that are presented with that person serving on both boards if need be. It should be noted that our Ethics Ordinance states that no *elected or appointed officer* of the City may serve on the Ethics Board. Persons that are considered "officers" of a municipality are very specific and are set forth in KRS and established case law (for example, non-elected officers such as the City Attorney are created by the City Council through ordinances and are considered "officers" of the City, but members of the Planning and Zoning Board are not considered "officers" of a municipality). We are not aware of any indication that members of the Tourist and Travel Commission created by the City of Somerset in 2014 are considered "officers" of the City under KRS or any other applicable case law. However, if we are incorrect, we will be happy to replace the individual that serves on the Ethics Board with another member of our community. It should also be noted that the Ethics Board only meets when an Ethics Complaint is made, and no such complaints have been made in several years.

Finding 25:

Although the City disputes some of the information contained in this particular finding, the City does agree with the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency.

Finding 26:

Although the City disputes some of the information contained in this particular finding, the City does agree with the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency.

Finding 27:

Although the City disputes some of the information contained in this particular finding, the City does agree with the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency.

Finding 28:

Although the City disputes some of the information contained in this particular finding, the City does agree with the Examiners' recommendations on this matter and will strive to implement the correct measures to ensure the City is protected to the fullest extent and operating at its maximum efficiency.

Finding 29:

The City disputes this finding in totality. The City Council has full access to all financials of the City, and approves all expenditures made each month at one of the two regularly scheduled council meetings. They routinely ask questions regarding particular expenditures and invoices. The City also has an audit Committee that was appointed by the mayor a few years ago, made up of council members, that is tasked with meeting and reviewing credit card expenditures, audit reports, and any other financial data that they feel is important to review. The City of Somerset operates under the Mayor-Council form for government as set forth in the Kentucky Revised Statutes (KRS), and has done so since its incorporation in the late 1800's. The law is clearly established not only in the applicable KRS, but in applicable case law of the Commonwealth. If council members are confused about their role, they should consult the City Attorney, the Kentucky League of Cities, or the applicable KRS. The City makes every effort to encourage the Council members to attend trainings and conferences which help to define and explain their role in local government. We will continue to operate with transparency, and according to the law.

**AUDITOR'S REPLY TO THE CITY OF SOMERSET RESPONSE**



The findings presented in this examination report are accurate and are consistently supported by a substantial amount of evidence obtained during the examination. In several instances, the City's response to this report questions the propriety and accuracy of certain findings and recommendations, makes statements contradictory to information and documentation provided to auditors during the examination, and misrepresents auditors' actions and the facts.

It should also be noted that the City has not provided any documentation to demonstrate the information in the report is anything other than fair and accurate. Although a specific auditor's reply will not be provided to address every statement made in the City's response, the most egregious statements are addressed to ensure an accurate understanding of the issues are presented. Specific auditors' replies to certain City responses are provided below.

### **Finding 1**

**Auditor's Reply:** This finding resulted from documented statements made by employees expressing concern and fear over personnel actions they believed may be taken against them if assistance was provided to auditors. Previous APA examinations have resulted in similar findings, and the finding is relevant in this examination as the operating environment of the City impacts both the integrity of information provided to the APA during the examination and the City's ability to operate in an accountable and transparent manner.

Further, auditors made inquiries to obtain sufficient information to address concerns brought to their attention. Individuals were made aware that they were not required to have their interview taped. Recording interviews is a routine process to assist in ensuring information is accurate and complete. The City Attorney and the City's outside legal counsel were present during many interviews and never objected to the manner in which the interviews were conducted. Auditors were professional and respectful during the examination process and to suggest otherwise is an unwarranted attempt to deflect attention from the report findings onto the auditors and the examination process.

### **Finding 2**

**Auditor's Reply:** Auditors were not provided the original bid advertisement for the entire 144+ mile high pressure natural gas pipeline or the submittals received. As stated in the first paragraph of Finding 2 of the report, "[w]hile the City was able to provide auditors a contract with the vendor from 2008, the City could not find a critical piece of the contract, referred to in the contract as "exhibit A," which according to the contract, fully describes the plans and specifications of the services to be performed and method and amount by which the City will pay the contractor." Further, although requested, auditors were not provided with bid documentation from 2008 to evidence that a competitive bid process was followed, nor Exhibit A of the contract. The City Attorney did provide to auditors bid documents on April 22, 2015, related to other work performed for mowing for stations, vents, rectifiers, and small field taps on pipeline outside of Pulaski County. The bids for this service were provided for calendar years 2011 through 2015 but were not associated with work to clear underbrush, tree removal and tree trimming as presented in Finding 2. Though the amphitheater issue was reported in the City's 2014 annual audit, the examination report presented additional detailed aspects of this issue and made recommendations that were not reported in the annual audit's finding. The additional detail presented in the examination is beneficial to the City as it provides transparency regarding this issue.

**Finding 3**

**Auditor's Reply:** The finding reports that the Mayor is responsible for negotiating and determining rates for large industrial natural gas customers, approximately six, during the examination period. It should be emphasized that the finding resulted from the City's lack of documented negotiated amounts in written contracts/agreements, and does not preclude the City from entertaining such negotiations. Auditors agree natural gas rates should assist industrial natural gas customers in keeping economic growth and jobs in the City of Somerset and Pulaski County; however, to assist in ensuring this occurs, auditors recommend the Kentucky General Assembly consider legislation to provide oversight and safeguards in the operation of city natural gas systems.

**Finding 4**

**Auditor's Reply:** The City was informed of the specific reports used by auditors to calculate the amount of adjustments reported in the finding. The reports were generated and provided to auditors by the City. Although examinations, unlike audits, cover an established period of time that may/may not coincide with an accounting fiscal year, the dollar amounts by fiscal year are reported in the finding. It should be reiterated that this finding focuses on the development and implementation of a formal written policy to address criteria, approval, and documentation of utility account fee adjustments.

**Finding 5**

**Auditor's Reply:** As stated in the report, the City did not consistently follow procurement policies and procedures. As described throughout the finding, a review of vendor payments during the examination period found procurement policies and procedures were not consistently followed. Purchase Orders (PO) were frequently issued after the dates of vendor invoices indicating the PO process is often ignored by City employees.

**Finding 6**

**Auditor's Reply:** The Auditor disagrees with the City's assertion that the finding is incorrect. Substantial evidence exists to support the statements made in this finding. As stated in Finding 6, the Mayor indicated that disciplinary action taken would be documented in the personnel file. Auditors reviewed the Budget Director's personnel file and found no written reprimand or other written documentation pertaining to the improper financial transactions perpetrated by the Budget Director. Further, no salary adjustments or agreed upon deductions were made in an attempt by the City to recoup these misused funds. While the City appears to have initially requested repayment of the funds expended for apparent personal use and revoked the Budget Director's use of City issued credit cards, the issue was not documented in the employee's personnel file, no repayment plan was established and monitored, the employee has not repaid the City over \$2,400, and the City neglected to ensure the public funds were fully repaid.

### **Finding 7**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. In regards to inventory issues, the failure to maintain inventory records subjects the City to increased liabilities, such as the inability to provide sufficient evidence for tax purposes. The final readings of a vendor are not sufficient for this purpose, especially if those readings are not monitored or verified. Given errors noted in the inventory measurements, the justification for this control is apparent. The City had not independently verified the amount of fuel actually delivered by the vendor, which resulted in the inability to properly reconcile fuel inventory.

Auditors did not state or suggest that the City is prohibited from selling diesel fuel to the public. The finding reports the City's statement that it does not sell diesel fuel to the public. The City inaccurately states that only two diesel sales occurred, and as reported in Finding 7, the examination reports four such instances in a five day period.

### **Finding 8**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The City's financial statement audits through 2014 present the Water Park as a Proprietary Fund. Additionally, the audits also cite the operating losses for the Water Park. The use of non-operating revenue to support the Water Park functions is not disputed, but the funds transferred to offset these losses is not pertinent to the issues regarding the operation losses or the inadequate accounting for free water passes distributed from 2011 through 2014.

### **Finding 9**

**Auditor's Reply:** The City's response only reiterates statements made by the City that are already reported in the finding, and does not address the need to document negotiations resulting in the use of City funds and personnel, or that an analysis evaluating the potential cost of a project will be performed for future occurrences. Documentation of negotiated agreements provides for transparency and protects the City against potential future liability.

### **Finding 10**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. KRS 83A.070 indicates the legislative body of each city shall fix the compensation of employees "in accordance with a personnel and pay classification plan which shall be adopted by ordinance." Although not specifically required by statute, the pay and classification plan adopted by the City Council through ordinance did include salary minimums. To comply with the City ordinance, the pay rates for individuals hired by the City should comply with the rate established in the City's Pay and Classification Plan. Further, as stated in the finding, it was found that three full-time positions filled were initially undercompensated in comparison to the Council's adopted Pay and Classification Plan. One of the three positions was filled by a female who was compensated at a rate significantly less than the two males hired into this position. The finding also identifies two individuals hired as full-time personnel serving as City Safety Officers, although only a single full-time Safety Officer position existed on the City Pay and Classification Plan approved by the Council.

### **Finding 11**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The City's response ignores significant information presented in the finding that reports the City did not properly record all of the employee's hours worked. Further, the City does not have adequate records to compile a complete and accurate accounting of the comp-time balance owed or available to the employee, essentially keeping hours worked "off-book." Although the Council expressed concern over the amount of overtime worked by the employee, failing to officially record the number of overtime hours worked is not an appropriate resolution to the issue. Further, based on the employee's statements, it does not appear the employee requested this arrangement, as required by state law. Finally, the City's suggestion for the employee to resolve this issue is overly burdensome given it appears the City created the situation.

### **Finding 12**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The City's response states it is not required by law to post vacancies; however, City Ordinance 08-15, as cited in the finding, states that "[w]hen a job vacancy occurs in the City, an internal announcement of the position will be posted in order to give notice to all current employees." Specific examples demonstrating the City's noncompliance with this Ordinance was reported; however, individual employees were not specifically identified.

### **Finding 13**

**Auditor's Reply:** The City's response provides information already presented in the finding and does not address the lack of a formal agreement between the City and the Downtown Somerset Development Corporation. As stated in the finding, the Mayor acknowledged the need for a formal agreement and that the relationship between the City and the Corporation should be formally defined. Such an agreement should reduce the confusion and discord between the City and Corporation that has existed for a number of years and reduce the potential of conflict of interests for City employees that serve the Corporation.

### **Finding 14**

**Auditor's Reply:** As stated in the finding, the exception report documents the employee received "40 hours per week per Mayor" for a total of 80 hours. Further, during the examination, no indication was provided to auditors that City employees intended to donate sick leave hours for the employee's leave.

### **Finding 15**

**Auditor's Reply:** As stated in the finding, job classification descriptions are a fundamental resource for employees and their employers to establish the job duties of the individuals in the organization, clearly communicate responsibilities and authority, and identify the experience, education, and characteristics needed by an individual to effectively perform the job. Without clearly defining each classification's basic role, responsibilities, and employment qualifications, or maintaining the records centrally for ease of access or reference, the City cannot ensure positions are filled with qualified personnel, equal and fair treatment of employees, or efficient and effective use of personnel. During the examination, auditors identified certain position job descriptions that City personnel were not aware of or able to locate. The City personnel's inability to locate and their lack of awareness of these position descriptions emphasize the need for a centralized formal personnel process to ensure consistency with current and previous personnel actions taken. Providing position descriptions should not limit the City's ability to manage its personnel but should enhance the City's understanding of its personnel needs and specific job classification requirements.



**Finding 16**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The City Building Inspector did not provide auditors with any reason why Building Inspector's license was expired for almost two years. Further, in addition to other finding recommendations, auditors recommend the certification and documents for training or other requirements to maintain the certification be reviewed annually.

**Finding 18**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The documentation and time period reviewed were provided to the City, as well as specific examples provided in the finding. Further, as previously noted, examinations are not financial audits and therefore the period under examination is often not a specific fiscal year that would correspond to an annual financial audit.

**Finding 19**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. The City requested information regarding the specific reimbursement requests resulting in the amount reported in the finding. Additional employee reimbursement requests were examined that did not result as an item reported in the finding.

**Finding 20**

**Auditor's Reply:** The examination period covers over a two and one-half year period. Auditors do not take exception with using an automated timesheet process; however, as reported in the finding, the automated process had only been implemented by the City for approximately one year. Further, the Mayor noted that while all City department heads, the CFO, and the City Clerk report directly to him, as well as some others, he does not routinely review and approve the timesheets of those individuals. In addition, City personnel noted that there is no formal process by which employees request leave, stating that employees may submit emails to supervisors, or simply inform supervisors verbally. That information is not consistently forwarded or shared with City personnel performing the centralized payroll process.

**Finding 21**

**Auditor's Reply:** The finding does not state that it is a requirement of cities to implement evaluation processes. This is a best practice recommendation intended to improve internal controls to assist the City in better identifying and documenting performance matters, such as an employee's ability to perform the position for which they were hired. The purpose of a performance evaluation process is not solely to award annual pay increases, but also, if used properly, to serve as the basis for fair and equal treatment of all City personnel, and as an encouragement to perform at or above expectations. An effective performance evaluation system, if required and fairly implemented, would assist both management and staff by increasing lines of communication, establishing clear performance expectations, and providing greater accountability to the public.

**Finding 22**

**Auditor's Reply:** The finding does not relate to the procedure of developing an organizational chart, but instead is a finding related to an organizational reporting structure to assist the City in better communicating to employees to whom they report and clarify their roles. Even with multiple duties, such clarification can be a benefit to employees and the City. The City's assertion that employees' contradiction and confusion resulted from auditors asking employees who they reported to or who their direct supervisor was is unfounded and appears to be an unwarranted attempt to deflect attention from the report finding.

**Finding 23**

**Auditor's Reply:** The finding does not suggest that any changes to the financial interest statement form were intentional and the information reported in the finding is accurate. It merely states that the changes were "reportedly to remove blank spaces," which is to say that it was the explanation the City reported to the auditors. The City did not provide additional completed financial interest statements nor any evidence to suggest otherwise.

**Finding 24**

**Auditor's Reply:** The source of information identifying only four members serving on the City Ethics Board was correspondence from the City Attorney dated May 19, 2015. Further, Section 20(B) of Ordinance 94-14 states, "[n]o member of the Board of Ethics shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city of (sic) any city agency." Two members of the Board of Ethics also served on other City-affiliated Boards or Commissions. In addition, Section 1 of the City's Ethics Ordinance states that "Officer means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following: (1) The Mayor. (2) A legislative body member. (3) The city clerk. (4) The city administrator. (5) Any person who occupies a nonelected office created under KRS 83A.080. (6) A member of the governing body of any city agency who has been appointed to the government body of the agency by the city. Substantial evidence exists to support the statements made in the finding.

**Finding 29**

**Auditor's Reply:** Substantial evidence exists to support the statements made in this finding. Auditors requested City Council and any City Council committee meeting minutes. The City did not identify that City Council committees existed nor provided any committee meeting minutes. In addition to the information contained in this and other findings involving the consistent disclosure of information provided to the City Council, information obtained from the August 10, 2015 City Council meeting indicates that Council committees have been inactive for some time. During this meeting, Council members also expressed the desire for more information and greater involvement.

