
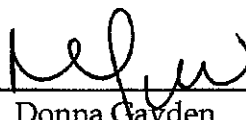


**The City Council of the City of Long Beach's Corrective Action
Plan to New York State Comptroller's Audit:
City of Long Beach--Payments for Unused Leave Accruals
2019M-68**

Dated: June 4, 2020

By: 
Hon. John Bendo
President, City Council
City of Long Beach, NY

By: 
Donna Gayden
City Manager
City of Long Beach, NY

City of Long Beach

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-via electronic submission-

June 4, 2020

Office of the New York State Comptroller
Division of Local Government & School Accountability
PSU - CAP Submission
110 State Street, 12th Floor
Albany, NY 12236

Re: City of Long Beach
Payments for Unused Leave Accruals
2019M-68

Pursuant to the guidelines set forth by the Office of the New York State Comptroller (the "State Comptroller"), the City of Long Beach (the "City") has prepared a Corrective Action Plan in response to Report of Examination 2019M-68 titled "*Payments for Unused Leave Accruals*" released on December 11, 2019 ("Audit Report 2019M-68" and the "Audit Report"). As noted in the City Council's (the "Council") preliminary response to the draft of Audit Report 2019M-68, the City has implemented measures to strengthen financial controls prior to and since the issuance of the Audit Report.

For each recommendation included in the Audit Report, the following is the City's corrective action(s) taken or proposed.

1. **Audit Recommendation**

The State Comptroller recommended that the Council should "[a]mend the City Code, by local law or ordinance, to reflect how the City intends to pay exempt employees for unused leave accruals, both during employment (i.e., drawdowns) and upon separation from City service."

Implementation Plan of Action(s)

As mentioned in the City Council's preliminary response to the draft of Audit Report 2019M-68, the Council retained Ingerman Smith, LLP ("Ingerman Smith") to assist the Council in carrying out its duty of due diligence in properly addressing all improper payments issued by the City. Beginning in January of 2020, the City has worked diligently with Ingerman Smith to review and analyze the current language of the City Charter and Code, and appropriately draft amendments to improve the City's checks and balances.

As an initial step toward adhering to the Audit Report's recommendations, drafted amendments and relevant legal research have focused on the intent of removing and/or limiting the appointive power of the City Manager. The City Manager is an appointed official who, under the current language of the City Charter, holds extensive powers, including appointing and removing other officers and employees. As currently drafted, under the Charter, the Council appoints the City Manager, who is then responsible for appointing other city officials. It has been determined that past City employees who held the title of City Manager were involved in the improper overpayments referenced in the Audit Report. In response to this, the City is diligently working on implementing proposed amendments to the City Charter and Code that encompass shifting the power structure of the City by giving the five elected council members the authority to appoint and remove officers.

Amendments to the City Charter and Code are pending adoption. In addition to the above amendments, the City Council will seek to amend the City Code to clearly reflect how the City intends to pay exempt employees for unused leave accruals, both during employment (i.e., drawdowns) and upon separation from City service, with the explicit requirement of Council approval.

Implementation Date

Ongoing, started on January 15, 2020.

Person Responsible for Implementation

The City Council, with the assistance of Ingerman Smith, will be responsible for implementation of this recommendation.

2. **Audit Recommendation**

The State Comptroller recommended that the Council should “[a]pprove any proposed changes or exceptions (i.e., retirement incentives) to separation payment terms contained in CBAs, the City Code and/or Council-approved employment contracts, as appropriate.”

Implementation Plan of Action(s)

As mentioned above, amendments to the City Charter and Code are in the drafting stages to ensure proper disbursement of City officials’ powers, as well as to ensure that all future separation payments are properly and accurately issued to City personnel. The City and Ingerman Smith have diligently focused on addressing the improper balance of powers between the City Manager and Council through these amendments. The City intends to develop a policy to address the Council’s future responsibility of approving any proposed changes or exceptions to separation payment terms contained in CBAs, the City Code and/or Council-approved employment contracts.

To date, the Charter and Code, along with the necessary amendments, are still being drafted, researched, and reviewed. The City and Ingerman Smith are diligently working to address the concerns raised in the Audit Report through a review and analysis all necessary revisions to the Charter and Code.

Implementation Date

Ongoing, started February 2020.

Person Responsible for Implementation

The City Council, with the assistance of City officials and Ingerman Smith, will be responsible for implementation of this recommendation.

3. **Audit Recommendation**

The State Comptroller recommended that the Council should “[r]eview the separation and drawdown payments identified in [Audit Report 2019M-68] and seek recovery of such payments that are inconsistent with the City Code or any other applicable laws.”

Implementation Plan of Action(s)

The City and Ingerman Smith have been conducting an exhaustive review of all documentation, including Audit Report 2019M-68, regarding any and all separation and drawdown payments to Long Beach City employees. With the assistance of Ingerman Smith, the City is pursuing legal remedies to recover improper payments issued to City employees. If necessary, the City will consider the retention of a forensic auditor to analyze inconsistent separation payments issued.

On February 27, 2020, the Council voted unanimously to appoint Donna Gayden as the City's City Manager. Donna Gayden will assist the City and Ingerman Smith in recovering improperly issued payments. In March 2020, attorneys from Ingerman Smith began reviewing City personnel files, emails, and other relevant documentation to gain information with respect to all overpayments.

Ultimately, upon completion of the abovementioned work, the City plans to pursue legal action in an effort to recover payments that were inconsistent with the City Code or other applicable law. Extensive legal research has been, and continues to be conducted with respect to avenues of legal remedies.

Implementation Date

Ongoing, started November 2019. Upon completion of the necessary and extensive documentation review and research, the abovementioned pursuit of litigation will ensue as soon as practicable.

Person Responsible for Implementation

The City Council, with the assistance of the City Manager and Ingerman Smith, is responsible for implementation of this recommendation.

4. Audit Recommendation

The State Comptroller recommended that the Council should "[r]eview the calculations and supporting documentation for officer and employee separation payments and drawdowns before making payment."

Implementation Plan of Action(s)

The Council has reviewed the procedure currently utilized for processing officer and employee separation payments and drawdowns. The Council plans to provide more oversight into this process. Specifically, the Council plans on developing a process whereby the City Manager provides all separation payment calculations and supporting documentation for the Council’s review and approval prior to payments being made. Donna Gayden is aware of the State Comptroller’s recommendation and will work jointly with the Council to ensure that all calculations and supporting documentation for officer and employee separation payments and drawdowns are reviewed prior to the issuing of payments, and to verify the accuracy of payments. Additionally, all personnel involved in calculating and/or approving separation payments will be given guidance regarding the procedures for payment and will be updated regarding the various provisions governing employee eligibility for separation payments.

Implementation Date

Ongoing. To date, the Council has made significant efforts to provide oversight regarding separation and drawdown payments. With Donna Gayden’s recent appointment on February 27, 2020, the Council now intends to further work in collaboration with Ms. Gayden to implement this plan of action.

Person Responsible for Implementation

The City Council and the City Manager are responsible for the implementation of this recommendation.

5. **Audit Recommendation:**

The State Comptroller recommended that the Council should “[d]evelop and implement a corrective action plan to effectively address the concerns and recommendations identified in [Audit Report 2019M-68], and any previous, reports.”

Implementation Plan of Action(s):

The City is working diligently with Ingerman Smith to effectively address the concerns and recommendations identified in Audit Report 2019M-68 and any previous reports. While initial steps have already been taken, the City anticipates undertaking additional significant changes, as outlined in this report, to address these issues. As mentioned, the City is in the process of amending the Charter and Code, developing and updating procedures for separation payments, as well

as providing the necessary oversight to guarantee that the provisions of the City Charter, Code and various CBAs are properly adhered to. Additionally, the City and Ingerman Smith are considering all legal remedies to recover any monies erroneously paid.

Implementation Date:

Ongoing, started in November 2019. The City has already started the process of developing and implementing a corrective action plan.

Person Responsible for Implementation:

The City Council, with the assistance of Ingerman Smith, is responsible for the implementation of this recommendation.

6. **Audit Recommendation:**

The State Comptroller recommended that City officials should “[c]onsider consulting with the United States Department of Labor to help ensure that the City’s police compensatory time practices are in compliance with the FLSA.”

Implementation Plan of Action(s):

Donna Gayden, as City Manager, and the Council, will coordinate together to implement consultation with the United States Department of Labor to help ensure that the City’s police compensatory time practices are in compliance with the FLSA. After such consultation, the City plans on developing a policy to address the specific parameters for accrual and usage of compensatory time.

Implementation Date:

Ongoing. With Donna Gayden recently appointed as City Manager on February 27, 2020, she and the Council will implement this recommendation as soon as practicable within her agenda to improve the operations of the City as a whole.

Person Responsible for Implementation:

The City Manager and City Council are responsible for implementation of this recommendation.

7. **Audit Recommendation:**

The State Comptroller recommended that City officials should “[e]nsure that employee separation payments and drawdowns comply with the terms of negotiated CBAs, the City Code and/or Council-approved employment contracts.”

Implementation Plan of Action(s):

The implementation plan of action to this recommendation is the same as set forth in the abovementioned fourth audit recommendation. Specifically, the Council has reviewed the procedure currently utilized for processing officer and employee separation payments and drawdowns. The Council plans to provide more oversight into this process. Specifically, the Council plans on developing a process whereby the City Manager provides all separation payment calculations and supporting documentation for the Council’s review and approval prior to payments being made. Donna Gayden will work jointly with the Council to ensure that all calculations and supporting documentation for officer and employee separation payments and drawdowns are reviewed prior to payments being made and to verify the accuracy of any payment made. Additionally, all personnel involved in calculating and/or approving separation payments will be given guidance regarding the procedure for payment and will be updated regarding the various provisions governing employee eligibility for separation payments.

Implementation Date:

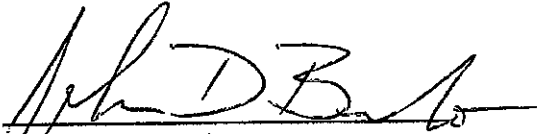
Ongoing. The City has already started the process of developing and implementing a corrective action plan.

Person Responsible for Implementation:

The City Manager, City officials and City Council are responsible for the implementation of this recommendation.

The City has and will continue to implement the procedures set forth in this Corrective Action Plan in order to achieve its goal of improving the City's financial condition in response to improper payments that have occurred, and the financial management of the City.

Sincerely,

A handwritten signature in black ink, appearing to read "John Bendo", written over a horizontal line.

Hon. John Bendo
President, City Council
City of Long Beach, NY

A handwritten signature in black ink, appearing to read "Donna Gayden", written over a horizontal line.

Donna Gayden
City Manager
City of Long Beach, NY