

**A SPECIAL INVESTIGATION REPORT
AUTHORIZED BY THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH**

Published:

April 8, 2024

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BACKGROUND

The City Commission, on Tuesday June 13, 2023, instructed the City Attorney's Office and the City's outside Labor and Employment Attorney to conduct an internal investigation of specific legal and administrative issues involving the generalized categories of (i) employee/workplace morale and human resources for City employees; (ii) procurement processes within the City; (iii) public records processes within the City; and (iv) code enforcement lien reductions processes within the City.

PROCESS

Following the instructions of the Commission, the City Attorney's office and outside labor and employment counsel established a process which included (i) requesting and reviewing certain City records, including the examination of over 250 contracts entered between 2021 and 2023; and (ii) interviewing 37 current employees, 4 former employees, which included the City Manager.

Most interviews were conducted by attorneys Ody Dickman and Colleen Flynn, and a few interviews included Assistant City Attorney Matthew McConnell. City Attorney Andrew Dickman did not attend any of the interviews. Three former and one current employees' interview were conducted via zoom. All other interviews were conducted in person at the St. Petersburg office of the law firm of Johnson Pope to avoid conducting interviews on City premises. The City Manager's interview was conducted in person over two days, with his attorney appearing via zoom. None of the interviews were recorded nor was a court reporter present.

The interviews focused on the four generalized areas cited above, but other issues were brought to the attention of the attorneys during the interviews and explored accordingly during the investigation and through records requests as needed.

The Mayor and each City Commissioner were updated periodically by the attorneys involved in the interviews as to the information received.

The City Commission requested that the attorneys provide the following summary information, observations, findings, and recommendations to help ensure compliance with the City's legal obligations, improve processes and operations, and to promote a healthy and collaborative work environment for the City employees.

GENERAL RECOMMENDATION #1:

BUILD A HUMAN RESOURCES DEPARTMENT STAFFED BY TRAINED INDUSTRY EXPERTS AND EMPHASIZE ITS IMPORTANCE IN THE ORGANIZATIONAL CHART BECAUSE OF THE SCOPE AND SENSITIVITY OF THE DEPARTMENT'S RESPONSIBILITIES, INCLUDING AN UPDATE AND ADHERENCE TO THE PERSONNEL RULES AND REGULATIONS.

The largest issue in the investigation focused on workplace morale within the City and Human Resources issues. Since the outset of the investigation, the City Manager resigned, and the former City Manager returned as the interim. The HR Administrator also resigned and has been replaced by an HR Director and HR Generalist.

Employees interviewed complained about the creation of new jobs/titles without posting the new position/title, hiring non-current City employees into non-posted vacant positions, and moving employees to other positions without the positions being posted. Not only did many employees express dissatisfaction because they would have wanted to apply for the job, but employees expressed confusion because of the perceived chaos of moving employees around the City to positions for which the employees perceived that they did not have the qualifications to fulfill.

Section 5 of the City's Personnel Rules and Regulations (PRR)¹ applies to the City's hiring procedures and Section 8 addresses Promotions/Demotions/Laterals:

5.01 VACANCIES

- A. When a position vacancy occurs, the department submits a request to fill the position to the HR Administrator to initiate recruitment of a replacement. Requests for personnel should be submitted as soon as official notice of impending openings is received or need for a position is known.
- B. With the input of the Department Director, the HR Administrator prepares recruiting notices to publicize vacancies/solicit candidate applications.
- C. All positions will be posted internally for City employees for a minimum of ten days. Positions may also be advertised/posted externally concurrent with internal posting. Postings are "open until filled" or can be made for a specific time with a closing date.
- D. All persons inquiring about employment shall be directed to the HR page of the City website to complete and submit the online application form. Applications will only be accepted for posted vacant positions.

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8.01 NOTICE OF JOB VACANCY (OR POSTING)

¹ All references to the PRR are from the PRR Effective May 12, 2020, and updated October 27, 2020.

Except at-will employees and when determined operationally necessary and efficient by the City Manager, all vacancies within the City will be posted for a minimum of ten (10) working days. Posted vacancies may also be advertised outside the City when deemed necessary by the City Manager. The posting will advise whether the job will be advertised or be initially restricted to employee applicants. The HR Office maintains the procedure used for posting positions.

8.02 APPLICATION

Employees who wish to be considered for the vacancy must complete a new online application found on the HR page of the City's website.

8.03 POOL OF QUALIFIED APPLICANTS

The Director of the Department in which the vacancy exists, in conjunction with HR, will determine which of the employees, if any, who bid the job and outside applicants, when applicable, meet the minimum qualifications for the job.

8.04 INTERVIEW

All employee applicants determined by the Director and HR Administrator to meet the minimum qualifications for the job will be interviewed. When applicable, the most qualified from among outside applicants, if any, whom the City determines is better qualified than employee applicants will also be interviewed.

8.05 NO SUFFICIENTLY QUALIFIED APPLICANTS

If, after completing the interview and evaluation, the Director determines that none of the applicants are sufficiently well qualified for the job, the City Manager may fill the position in any manner he wishes.

8.06 BASIS OF SELECTION

- A. When the posting is restricted to City employees, in determining whom to promote from among qualified employee applicants, if any, the Director shall consider:
 - 1. The skills, knowledge and abilities to perform the job.
 - 2. The employee's past work-related experience with the City and elsewhere.
 - 3. The employee's past performance record with the City.
- B. When factors 1, 2 and 3 are relatively equal in the opinion of the City, time of continuous service in the Department and with the City, in that order, will be given preference.
- C. When the posting is not restricted to City employees, the Director will consider factors 1, 2 and 3 for employees and factor 1, plus the outside applicant's

references and past work-related experience and performance with other employers. When, in the opinion of the Director, all factors are considered relatively equal among all qualified applicants, City employees will be given preference, and as among them, time of continuous service with the Department and the City, in that order, will be given preference.

It should be noted that Section 1.02B of the PRR as “Employees employed as the City Manager’s Executive Assistant, Department Directors, Assistant Department Directors, Department Operations Managers, City Engineer, and the HR Administrator are classified “at will.”

The issues raised during the interviews were substantiated in that some employees were hired without a job vacancy being posted and some employees were moved to newly created positions or vacant positions without the job being posted. Section 8 of the PRR provides for a thorough process for vetting employees and applicants for promotions. It seems that the exception in the policy “when determined operationally necessary and efficient by the City Manager” was used for many positions/promotions. Although the PRR rightfully allows for certain exceptions and latitude, the best practice is to post job vacancies and newly created positions at least internally for a reasonable amount of time (currently Section 5 of the PRR provides for a minimum of 10 days). The City’s hiring process should be analyzed and revised to provide that all positions must be posted (at least internally for a certain period of time) unless dire operational issues exist that necessitate hiring or filling a position without posting. The process should be balanced for fairness/equity and proper vetting and the operational efficiency of hiring qualified candidates promptly. It appeared that creating new titles for certain positions contributed to the lack of morale among many employees. Many employees complained of favoritism and felt that various employees were being given opportunities that others were not and that there were departments that were being treated more favorably than others.

In addition to the lack of job posting, dissatisfaction was expressed with other areas of the hiring/promotion process. Various issues were identified for job vacancies including, but not limited to, failure to timely post advertisements to attract candidates; lag time in scheduling/conducting interviews; failure by HR to vet resumes before sending them to the hiring department resulting in department culling through many resumes of completely unqualified candidates; and delays in screening of references.

Certain departments felt there was over involvement in candidate interview/selection by the prior administration for lower-level positions where the final decision should be made by the department director. Other situations were relayed where after a selection process had been set by HR and the department then mid-process the prior administration intervened to amend the agreed upon process or attempted to substitute and recommend a different candidate.

Additionally, there were situations relayed where there was inconsistency between departments as to promotions and pay increases for existing employees. Certain departments

were more easily able to secure approval from the prior administration for promotions and pay increases than other departments. Departments felt that inconsistent and capricious criteria were being used to promote and/or give pay increases to certain lower-level employees. This resulted not only in lower morale for the departments that had trouble securing promotions/raises for their employees but also in employees leaving the City for higher pay.

The best practice in any hiring process is to establish the criteria and job duties for the vacant position, preferably through a job description prepared prior to advertising the position. After establishing the job duties/criteria for the position, the process for vetting the candidates should be established. Typically, HR would vet the resumes/applications received and based on the initial criteria established, forward to the hiring department the resumes/applications that appear to meet the minimum criteria. The process of interviewing candidates should be established in advance to be sure that all candidates are treated the same. Certain positions may warrant several interviews. HR may want to do screening interviews before the department interviews the candidates. Most important is that a process is established to provide consistent treatment of each candidate. The City always has the option to re-post a position if it has not found a suitable candidate the first time but the City should follow the process set at the outset for that job search being mindful that different positions require different types of searches, advertisements, evaluation of applicable skills and interview processes.

Section 5 of the PRR generally addresses the interview process.

5.02 INTERVIEWS

- A. The HR Administrator will refer to the hiring Director qualified applicants for interview and assist in scheduling interviews, interviewing qualified candidates, and selecting the candidate who best matches the position requirements. In making this determination, the manager/supervisor shall consider each candidate's merit and ability, as evidenced by training, education, experience, certification, skills, etc., based on valid minimum standards/requirements outlined in the position description. Additionally, Veterans' Preference requirements shall apply in this process.
- B. Following completion of interviews, the hiring department completes the recommendation to hire form regarding candidate selection and returns the form and all applications to the HR Administrator for further action.

5.03 BASIS FOR SELECTION

- A. Employment with the City shall be based on skills, experience, training, education, ability, physical and mental ability to do the available work and other factors that are related to the performance of the job in question.

- B. As part of the pre-employment procedure former supervisors, employers and references provided by candidates shall be checked as a precaution against obtaining undesirable employees. Reference checks will be documented and made part of the applicant's file. Criminal background, driver license(s), if applicable, and social media accounts shall be checked also.
- C. The City reserves the right to reject any applicant for any reason or no reason subject only to applicable law.

The PRR has a reasonable and appropriate policy, but it seems that in the past consistency in process was lacking and there was unnecessary involvement by the prior administration in hiring certain positions. It seems that allowing the department directors to have more control over hiring/firing within their specific departments would increase the City's morale and avoid the complaints related to favoritism.

As for the promotions and out of cycle pay increases, criteria needs to be established as to when a person has qualified to be promoted (such as obtaining a certification) and/or when there are situations that warrant out of cycle pay increases for either groups of employees or individual employees. Generally, public employers may not give bonus compensation pursuant to Sec. 215.425, Fla. Stat., for work already performed so the City cannot give bonuses to make up pay differentials².

The City should establish criteria for promotions upon certain milestones and incorporate that into its PRR. Certain positions may be union covered positions and the City will want to ensure that during negotiations effective criteria are included in the CBA (collective bargaining agreement) or reference to the PRR is made. With respect to out of cycle pay increases or adjustments, criteria should be established for out of cycle pay increases either due to market adjustments, worker shortages or otherwise to avoid perception that certain individuals/positions receive pay increases where others do not.

At the time of this report, the City has engaged a consultant to perform a salary/position study. The consultant will be evaluating the positions within the City, the pay range for each position and providing recommendations based on surveys from comparable governments/entities in the surrounding geographic area. Once the results are received by HR and Finance staff, a determination can be made whether employees are being paid appropriately by comparison and whether certain changes need to be made to pay scales.

Section 5.07 of the PRR addresses pay rates for new employees and generally makes all wages at the discretion of the City Manager except for wages set forth in collective bargaining agreements.

² F.S. 215.425(3) permits a City to have a bonus plan that complies with statutory requirements but all City employees must be considered for the bonus.

5.07 PAY RATES FOR NEW EMPLOYEES

In an effort to successfully recruit the most qualified candidates for employment, the City of St. Pete Beach may recognize past years of comparable service in determining starting pay. Compensation for at-will employees shall be determined by the City Manager at his discretion. Wages are set forth in collective bargaining agreements except for MAPS employees. The pay grades for MAPS classifications are reviewed and subject to modification by the City Manager.

The PRR provides for the definition of at-will employees as set forth above and MAPS stands for “Managerial, Administrative, Professional, Supervisory” employees. There is no policy in the PRR regarding out of cycle or ad hoc pay changes for existing employees. Generally, compensation is adjusted for public employees on the basis of performance evaluations in conjunction with the budget allotment for salaries within established ranges.

During the interviews, it became clear that over the tenure of the prior administration many organizational and departmental changes had been made throughout the City. Notably many core public works functions were removed from the Public Works Department and moved to Parks and Recreation and Beaches. A Beach Manager position was also created during this time, reporting to the COO, which further shifted certain Parks and Recreation responsibilities and created issues with the sharing of certain pieces of equipment. All these changes led to a lack of communication, duplication of efforts and confusion as to job duties, especially when projects involved multiple departments.

It appears that the reorganization of traditional core public works functions to other departments has led to some of the morale issues raised. Analyzing the functions that should truly remain with public works versus those properly with other departments should be done to be certain that the skillsets of the employees are optimized and that resources are optimized. With multiple departments handling similar functions there was competition for resources and a lack of communication between the departments.

Other issues observed were reorganization and elimination of certain lower-level positions, and creation of higher-level positions for employees who previously filled the lower-level positions. Perception (putting aside the lack of posting) by the employees interviewed was that the creation of the higher-level positions left vacant lower-level positions and certain promoted employees appeared to not have the skill set or experience to fill the higher-level positions but received promotions due to favoritism by the prior administration. Certain employees interviewed had the perception that if you were favored you could get a promotion without having the appropriate skill set.

Going forward, the next City Manager should analyze the overall organization of the City's departments to ensure that the organizational structure optimizes the equipment and personnel in the City to best serve the taxpayers with the resources available and this organizational chart should be established in the annual City budget during meetings with the City Commission to ensure that the organizational structure is accepted and funded. That being said, changes can and do occur during the course of a fiscal year, therefore some flexibility should be afforded to the City Manager to make organizational changes with input from the City Commission as needed. A current organization chart should be maintained throughout the year with listed positions, names and titles, providing clarity regarding roles and responsibilities. This current organizational chart should always list the date of its preparation and be made available to City staff, officials, and the public. It can be confusing if multiple versions of the organizational chart are circulating with no way to determine which is the most current. An office should be designated to maintain the official organizational chart.

The perception expressed in the interviews is that under the prior administration certain departments and individuals received favorable treatment. Examples ranged from certain departments getting resources and equipment quickly versus other departments being denied requests for equipment needed to serve the residents to departments getting approval for additional employees or additional compensation for employees. Additionally, there was a perception that "City Hall" employees and "Field" employees were separate and distinct. While it is difficult to quickly change culture and attitude, with the implementation of fair and consistent policies applied to all departments this perception will change, and the "Field" employees and "City Hall" employees will all be able to heal the perceived division. Commitment is needed by top managers and department directors to create an inclusive culture rather than an "us" versus "them" mentality. Leading by example should be a core value as the City moves forward into a new era. Clear and consistent communication is recommended.

The Human Resources Department plays a vital role in any organization but even more so in a municipality. A municipality's workforce is extremely diverse from IT professionals, finance professionals, fire fighters, public works employees, code enforcement, planners, childcare providers, librarians, etc. Some employees are paid hourly, some are paid salary, and first responders have certain pay laws that apply to them exclusively. City employees must feel that the HR Department is a safe, trusted resource for expressing their concerns and getting guidance on how to handle intra or inter departmental situations.

St. Pete Beach also has two unions. Thus, the HR professionals must be well versed in public sector laws, union contracts, wage and hour issues, and all other areas of employment law such as FMLA, ADA and they also are responsible for job posting, hiring, discipline, performance management, and sometimes serve as sounding boards or mentors for employees voicing concerns. HR must be well versed in public sector laws pertaining to Veteran's preference in hiring and the different background screenings for certain positions. HR is a large job in a

municipality with a diverse workforce and plays a vital part in keeping up workforce morale. HR is responsible for maintaining sensitive and confidential information.

At the outset of the investigation, the City's then HR office consisted of one "Human Resources Administrator" who had not been an HR Administrator prior to assuming this position, and part-time assistance from an intern with no HR experience. With the size and diversity of the City's workforce it became evident that the City was understaffed in HR. HR entails a great deal of administrative paperwork from job postings, applications, job descriptions, personnel files, benefits forms, worker's comp claims, performance reviews, risk management, etc.

The interviews revealed that the prior HR Administrator had been requesting additional assistance/staffing but was not provided with the help requested. As of the issuance of this report, the City has hired an HR Director (note that with the hiring the title was elevated from Administrator to Director) with extensive public sector HR experience and an experienced HR Generalist. While the increase in staffing and public sector HR experience in the HR department is an excellent start to improve HR within the City, the new HR Director and Generalist will need to set up HR processes, division of duties, and engage employees and managers on the importance of HR as well as methods for improving employee morale. Moreover, with the diversity of positions within the City, the abundance of administrative work associated with HR as well as the complexities of public sector employment, another HR Generalist may be needed.

SPECIFIC RECOMMENDATIONS:

- 1. Review and revision of the PRR for laws recently updated (for example, Pregnant Workers Fairness Act).**
- 2. Review and revision of the PRR to implement best HR practices and to meet the City's evolving needs (even though the PRR was revised in 2020 some of the policies are outdated in a changing workforce).**
- 3. Formalize internal processes for HR for hiring, promotions, performance reviews, wage changes, etc.; and prepare accurate position descriptions and posting open positions.**
- 4. Review and implementation as appropriate of wage compensation study.**
- 5. Conduct performance evaluations to ensure that employees have the right skill set for the job position and are performing well in the position.**
- 6. Formalization of criteria for promotion and revisions of CBAs as necessary.**
- 7. Establish training for managers for conducting performance reviews, handling disciplinary issues and following best practices.**
- 8. Establishing open lines of communication between departments and appropriately matching resources between departments so no perception of favoritism occurs.**
- 9. Review staffing level in HR to determine if current staffing is adequate or if another HR Generalist is warranted; allow the HR Department enough autonomy to ensure that City staff is comfortable using the Department as a resource; and authorize the HR Director to communicate with legal counsel as needed.**

10. Review of overall organization of City departments to maximize use of City resources avoiding duplication of efforts and failures of communication.
11. Improve communications between departments that currently have overlapping responsibilities- such as Public Works and Parks, Recreation and Beaches.
12. Maintain a detailed organizational chart.
13. Fund, post and fill the Assistant City Manager position, to ensure that the City always has a formal #2 when the City Manager is out of town or otherwise unavailable.

Note that many of the morale recommendations are broad generalities. Once the new HR team is established and can determine the status of the HR processes in place the new HR Director will have recommendations as well from having “boots on the ground”. Talking with employees to establish trust with HR as well as determining management training needs to ensure that managerial employees have the tools to properly supervise employees will be vital to not only improving morale but ensuring consistency between departments. Lack of consistency between departments in perceived treatment of employees, handling pay and promotion and other favoritism issues will be resolved with consistent application of fair and detailed policies and internal HR processes.

GENERAL RECOMMENDATION #2:

ESTABLISH AND FULLY FUND AN OFFICE/UNIT SPECIFICALLY FOR PROCUREMENT AND ADMINISTERING CONTRACTS CONSISTENT WITH CITY CODE AND STATE STATUTES.

The investigation included examination of 250 City contracts between 2021-23, the corresponding EFT (electronic funds transfer) Statements, invoices, and purchase orders. City Commission packets and minutes were reviewed to determine which contracts had received Commission approval. Relevant sections of the Code were also reviewed. The purpose of this related to the issues that were raised concerning whether the City’s procurement code was being followed, including competitive procurement processes, contract approvals, and issues related to the City Manager’s authority in making awards and renewing contracts as well as items exempt from the purchasing code.

Chapter 2, Article III in the City’s Code of Ordinances is expressly dedicated to “Finance.” A subsection of this Article is Division Four entitled “Purchases and Contracts.” The purposes and intent of this “procurement ordinance” is “...to maximize the value received for public funds through procurement; to provide safeguards for maintaining a procurement system of quality and integrity, such as cone of silence; and to provide for fair and equitable treatment of all persons involved in public procurement. It is the goal of the city to develop a comprehensive procurement system that will provide greater cost effectiveness and public accountability in the procurement process.” Sec. 2-281.

Section 2-285 designates the spending limits granted to the City Manager without City Commission approval, and which purchases or contracts require City Commission approval.

Approval authority is based on the value of the award. Requirements for goods or services shall not be broken down into lesser amounts to avoid approval authority.

1. The city manager shall be authorized to award the following without submittal to the city commission:
 - a. Contracts for goods and services, including professional services, up to \$25,000.00 procured in accordance with this article.
 - b. Change orders where the city commission has authorized the city manager to expend additional budgeted funds, for the goods or services, at the time of the initial award; where the cumulative amount does not exceed the city manager's approval authority; and the total cumulative value of the contract including the amendment(s) and change orders does not exceed \$25,000.00.
 - c. Emergency procurements procured in accordance with the provisions of this article. All such purchases exceeding \$15,000.00 shall be reported to the city commission within 30 business days of such action.
 - d. Exercise contract options to renew where such authority has been delegated at the time of initial award approval by the city commission if required.
 - e. Reject all submittals or waive any minor irregularities contained in the submittals or in the solicitation process.
2. The following items require authorization by the city commission:
 - a. All contracts exceeding the city manager's authority.
 - b. Change orders in excess of the city manager's authority.
3. The city commission may reject the city manager's recommendation of award and reject all bids or proposals.

The investigation interviews and examination of spending/procurement documents revealed that several contracts that exceeded \$25,000 had not been approved by the City Commission. Some of these were situations where initially the contract began below the threshold for Commission approval but then with additions/amendments the contract exceeded the \$25,000 approval. There were other instances identified where retroactive approval for contract amendments that exceeded the City Manager's authority were submitted to the Commission. There were also contract renewals that exceeded the City Manager's authority that were identified that had not been approved by the City Commission.

The City Attorney's office has opined that City Commission approval is required for any contract that totals or exceeds \$25,000.00 and this amount may not be split over the course of several years as the value is cumulative for the life of the contract. For example, if the City enters into a contract for \$10,000.00 for services per year and the contract is effective for a term of three years, then the contract would require approval by the City Commission as the total value of

the contract is \$30,000.00, exceeding the City Manager's \$25,000.00 limit. Any addendums made to the contract that require additional funds to be paid by the City will also trigger City Commission approval if the cost of the contract will meet or exceed \$25,000.00 by virtue of the amendment or change order. Contracts must be submitted in a timely manner and not after-the-fact to the City Commission for approval of renewal terms if the overall contract amount exceeds the City Manager's authority.

Another area of concern in the purchases and contracts procedures is the use of the exemptions listed in the procurement ordinance at Section 2-283, especially #2.

The following shall be exempt from the procurement ordinance:

1. Federal or State of Florida funded or governed procurements where their rules and regulations supersede this article (e.g., Consultants' Competitive Negotiation Act).
2. Contracts for those professional services specified in the city Charter, as well as hiring of independent contractors under the Charter.
3. Procurements for utility services.
4. Real estate property.
5. Persons retained as expert consultants.
6. City-sponsored events at venues not owned by the city, inclusive of rental of the facility, and all other associated goods and services.
7. Entertainment services for city-sponsored events.
8. Purchase of groceries for declared emergencies.
9. Donation of goods and services from 501(C)(3) not-for-profit organizations.
10. Service on any of the city committees.
11. Artistic services.

(Emphasis supplied).

The interviews and examination of procurement documents revealed that exemption #2 listed above was being used to contract with persons and businesses categorized by the prior administration as "independent contractors" and was being used in a manner inconsistent with the spending limits set in Section 2-285. Certain "independent contractors" were "hired" by the City (as well as given offices at City Hall) without going through the procurement process due to the prior administration's interpretation of the exemption. However, the contracts for these "independent contractors" in many instances exceeded the City Manger's \$25,000 approval limit and were not approved by the City Commission. The procurement code may, as currently written, exempt certain enumerated things from the procurement ordinance, but the outcome should not result in a blanket exemption from Commission approval for amounts larger than \$25,000 but rather an exemption just from the procurement processes. A resulting

contract, even if exempt from procurement process, would still need Commission approval if it exceeded the \$25,000 City Manager approval limit.

It should be noted that the City Charter does not provide any definition of “professional services under the Charter” or “independent contractors under the Charter”. The City Charter is silent on these topics. The City Attorney has opined that the exemption at Section 2-283(2) does not also exempt the spending limit established in the procurement ordinance. They are two separate issues. There is no verbiage in the Charter that supports a different conclusion. Independent contractors can be a valuable part of the City’s operations, but this exemption should not be over utilized. If this function is so important that it frequently exceeds the City Manager’s spending limit, then perhaps the function should be built into the City’s official organizational chart as an employee and the position funded through the annual budget process.

It became apparent during interviews that the procurement methodology set forth in the Code of Ordinances was not always understood, may have been misapplied and created confusion in the procurement process.

At the time of the investigation, the City administration had decentralized purchasing responsibilities resulting in each department handling purchasing and contracts for their own departments. Since the adoption of the procurement code in 2020, two procurement managers separated from the City, causing a void in centralized processes to ensure compliance with the procurement code. Since the investigation, the City has a new procurement manager with many years of procurement experience who has been working on standardizing processes, and clarifying internal processes with respect to purchasing and working to centralize the purchasing rather than having departments responsible for their own solicitations and purchases. Section 2-284 describes the “Procurement Manager Position.”

Sec. 2-284. - Authority and duties of the procurement manager.

The city manager shall have the authority to appoint a procurement manager who shall have authority for the implementation of procurement policies, procedures and the day-to-day management of procurement activities in accordance with the provisions of Florida Statutes applicable to local government entities, which shall include, but not be limited to:

1. Procure or facilitate the procurement of all goods and services.
 - a. Determine the best procurement methodology.
 - b. Issue solicitations.
 - c. Determine if solicitation responses are responsive and assist in the determination of responsibility.
 - d. Manage the evaluation, selection and award process.
 - e. Recommend the award of solicitations, except for solicitation where proposals are reviewed by an evaluation committee and

the recommendation of award is provided by the evaluation committee.

- f. Recommend the renewal of contracts by the city manager.
 - g. Assist in the development of specifications/scope of work and ensure, to the extent practical, that they are competitive.
2. Development/implementation/administration of procurement policies and procedures, and operations manuals.
 3. Manage contract compliance including, but not limited to, contract performance, required insurance coverage, payment of subcontractors, resolution of disputes, claims, and protests.
 4. Manage the evaluation vendor/contractor performance process.
 5. Perform other duties as may be assigned or directed by the city manager or designee.

The city manager and mayor retain sole authority to execute contracts, agreements, purchase orders, and change orders as referenced in section 3.03 and 4.04 of the city's Charter.

Section 2-286 of the Procurement Code describes the "Procurement Methodology."

- a) Purchases to be authorized by the city manager.
 1. Purchases not exceeding \$2,500.00 shall require payment approval by a department director.
 2. Purchases in excess of \$2,500.00, up to \$25,000.00, shall require three RPQs and a purchase order authorized by the city manager.
- b) Competitively sealed procurements. Procurements in excess of \$25,000.00 shall require competitive solicitation, except as otherwise provided in this division.
 1. Solicitation documents will be published on the city's website. Other resources may also be utilized, including online bidding platforms, cooperative resource-sharing pools and newspaper advertisements.
 2. ITBs shall be awarded to the lowest responsive and responsible bidder as determined by the city manager.
 3. Competitive negotiations will be awarded to the proposer providing the most advantageous proposal to the city, as determined by the city manager.
 4. RFPs and RFQs shall be awarded to provide for the city's best interest, as determined by the city manager.
 5. Submittals will be received by the city clerk. The city clerk will open the submittals at the stated time in the presence of the procurement manager. The name of the bidder or proposer shall be read aloud and recorded in writing.

- c) Architectural and engineering services. All such services shall be procured in accordance F.S. § 287.055, as amended, (the "CCNA").
- d) [Authorization.] The city manager may request written authorization from the city commission to waive the requirements of this division based on specific circumstances where it is not practical to comply with the requirements of this division.

As set forth above, there have been three procurement managers since the implementation of the purchasing code. Procurement has been decentralized and handled by departments. The procurement ordinance is intended to centralize purchasing and provide guidelines and quality assurance. The procurement manager holds the expressed responsibilities and other duties as assigned by the City Manager. However, despite the requirements of the purchasing ordinance, purchasing was largely decentralized and without formal processes in place. The new purchasing manager has begun to create centralized processes, create templates, review expense accounts, set guidelines for use of Purchasing Cards by City employees, and contract management to ensure that purchase orders are centralized and tracked for compliance with terms, dates and ensuring that amounts requiring approval are taken to the commission. The City has implemented new software (Central Square) that staff believe will help track many of these purchase orders and contract terms to prevent certain issues identified during our inquiry.

For example, one area for process improvement is the City's purchase orders. The standard form of the current purchase orders do not have a "running" balance remaining after the purchase order is paid. By including a running balance of the remaining funds, it will ensure that staff knows when a contract requires City Commission approval for those contracts that were executed under the \$25,000 threshold. For example, if a contract was executed for services in the amount of \$24,000.00 with a three-year term and in Year 1, services totaled \$18,000.00, in Year 2 \$5,500.00, then City staff would know that there is \$500.00 remaining in a contract that was for \$24,000.00, if there was a running balance amount listed on the purchase order. Therefore, if additional services were needed and the parties entered into an Addendum, then it would be apparent that the Addendum was needed for the additional \$1500.00 in services as only \$500.00 remained out of the \$24,000.00 total cost per the original contract and that City Commission approval is required as with the addendum, the contract exceeds \$25,000.

SPECIFIC RECOMMENDATIONS:

1. **The current version of the procurement code was effective July 28, 2020. The procurement code needs to be reviewed in full. Certain provisions need to be amended, at a minimum, for clarification due to the differing interpretations between the prior administration and the City Attorney, such as the City Manager's spending approval limit, processes for procurement, limiting exemptions to the procurement code and the authority of the Purchasing Manager.**

2. **Creating additional templates for procurement, and implementation of tracking and monitoring purchase orders and contracts in a centralized way by the purchasing manager or even hiring an additional contracts manager to assume some of the “other duties” currently being handled by the purchasing manager can strengthen and centralize the procurement process, making sure all contracts are in place and current, taken to Commission when needed and making certain that purchase orders are being approved appropriately and centrally rather than by the department who may not know the intricacies of the contract or milestones required for payment, before finance issues payment.**
3. **Legal should be contacted for all contract disputes, and if a contract has expired or expiration is imminent before the parties can negotiate a resolution.**

GENERAL RECOMMENDATION #3:

ESTABLISH FORMAL PUBLIC RECORD PROCESSES THAT COMPORT WITH FLORIDA LAW AND MAKE COMPLIANCE WITH IT PART OF THE CITY’S CULTURE.

At the outset of the investigation issues were raised about fulfillment of public records requests by the City. Our inquiry did not reveal any serious systematic problems with fulfillment of public records requests. This should not be interpreted to minimize the importance of compliance with Florida’s public records laws. The City has implemented the current system known as “JustFOIA” and the City Commission has adopted a Public Records Resolution.

JustFOIA is an on-line system where a public records request can be submitted online and the requestor can also track the status of a pending request. Fulfilled public records requests are archived and accessible to the public on-line. Of course, a requestor can make a request in writing or verbally as well in accordance with Florida law. The Clerk’s office receives a request and in certain instances can satisfy the request from documents that are accessible to them. In other instances, the Clerk’s office reaches out to the department responsible for maintaining the records to advise of the request and instructs them to gather responsive documents and provide those to the Clerk’s office. The IT department is also involved in searching for e-mails if applicable to a public records request. IT runs searches in accordance with key words, names or by email account as may be appropriate. Once the Clerk’s office receives the documents from IT or the department maintaining the records it fulfills the request through JustFOIA. If there is an issue of whether information is exempt from F.S. 119, the Clerk will reach out to the City Attorney for guidance as appropriate.

For example, one of the issues identified was a request where documents appeared to be incomplete because documents provided in response to a separate but similar public records request provided additional documents. Our inquiry focused on how this might have happened. This could occur because a staff person in a department interpreted a request

differently from the manner which another staff person interpreted a different request. It could also happen when multiple people have responsive documents or when IT runs a search and uses different key words or if a name is spelled multiple ways in e-mails. Nevertheless, Florida has a strict public records law and the City must dedicate time to stay current with it and ensure it has allocated resources and processes to comply with the law.

SPECIFIC RECOMMENDATIONS:

1. As fulfilling public records requests is a vital part of transparency for the public, it is important that requests are fulfilled as completely as possible while maintaining legal exemptions. While the Clerks' office is well-versed in F.S. 199 and has processes in place to fulfill the records requests and is easily able to fulfill requests for documents under its control, fulfilling the requests oftentimes fall to departments who maintain their own records as well as IT for running searches. Document management systems are vital for being able to fulfill public records requests in a timely and complete manner.
2. Employee training is also vital to fulfilling the requests. Ensuring that departments are using centralized document management systems within the electronic records management system of the City is vital to this process as many times employees depart employment but their records are later requested in public records requests. Standardized document management procedures in departments will ensure that the department can fulfill requests when instructed by the City Clerk and ensure that the City is meeting its statutory obligations.
3. IT should be sure that it is running robust keyword searches with multiple options of spelling and anything else within the technology available. A review of the frequency of requests and whether City resources are adequate to comply with them should be conducted.
4. Open communication and cooperation between the City Clerk's office, the department maintaining the records for the request and IT is vital.
5. The department level employees should be trained to understand the importance of the City's timely and completely fulfilling public records requests and that fulfillment is not just the responsibility of the City Clerk but on the department maintaining the records. This must be a topic discussed at the highest level of the organizational chart with a commitment by those department directors to understand the seriousness of Florida's Public Records laws and the need to respond to requests from the Records Custodian for the City (the City Clerk).

GENERAL RECOMMENDATION #4:

ENSURE THE INTEGRITY OF THE LIEN REDUCTION PROCESS IS CONSISTENT WITH CITY CODE.

During the investigation, it was brought to the attention of the interviewers that lien reductions were not all approved by the Special Magistrate. Code enforcement through the Special

Magistrate process is covered by Article IX of the City's Ordinances. After a property has been adjudicated as not compliant with City Code and a lien is recorded on the property vis-a-vis the Special Magistrate, the City Code allows for a property owner to request to reduce the lien amount under Section 22-283. This is the exclusive method for a lien reduction.

Sec. 22-283. - Procedure to request that a fine or lien imposed pursuant to section 22-279 be reduced; conditions and criteria therefor.

- a) The owner of real property against which a fine or lien has been imposed pursuant to [section 22-279](#) of this article may apply to the special magistrate, through the city manager or his designee, for a satisfaction of such fine or lien with less than full payment thereof. No such application shall be considered by the special magistrate until the applicant has first shown that:
 1. All ad valorem property taxes, special assessments, county and city utility charges and other government and city-imposed liens against the subject real property have been paid;
 2. The applicant is not personally indebted to the city for any reason; and
 3. All city code violations have been corrected under necessary permits issued therefor.
- b) In considering an application to reduce a fine or lien imposed pursuant to [section 22-279](#) of this article, no satisfaction thereof shall be approved by the special magistrate with less than full payment thereof, unless the special magistrate shall make a specific finding that no violation of any city ordinance exists on the subject real property.
- c) The balance of any fine or lien imposed pursuant to [section 22-279](#) of this article that is reduced by the special magistrate shall be paid on terms as approved by the special magistrate.
- d) If the property for which the application for a fine reduction is being considered is owned by a government or quasi-government entity, the special magistrate may reduce such fine even if the violation has not been corrected.

During the investigation, certain liens were identified where a lien had been imposed in accordance with the applicable Code and thereafter a proposal by the applicant to reduce the fine was made but was processed not in accordance with applicable Code. Staff and/or the prior administration approved the amount of the proposed lien reduction – outside of the Special Magistrate process - and then the applicant immediately paid when advised that Staff and/or the prior administration approved it. Upon payment, the City issued a lien release without legal review and deemed the matter closed. Keep in mind that code enforcement orders, liens, and releases are legal documents recorded in the public record with the clerk of the court and affect private property rights, not only the violating property.

What should have occurred is that once the applicant completed and filed the lien reduction application at the City, the application should have been evaluated by City staff for completeness and satisfaction with the three criteria in the Code. Then the application should be transferred to the Special Magistrate, who has sole jurisdiction over this process. A public hearing would be set and during the public hearing, the City would provide its recommendation and the Special Magistrate would make a legal determination that a lien reduction is appropriate under the Code. Once that determination is made, the Special Magistrate issues an order granting or denying a reduction to the lien. Thereafter, the applicant pays the reduced fine and a lien release, approved by the City Attorney, is provided to the applicant and the matter closed. The release is recorded in the public records by the city clerk through the clerk of court.

Unfortunately, it was identified that the Special Magistrate had not approved certain lien reductions that were paid. The City Attorney worked with staff to remedy this issue and those lien reductions were retroactively approved by the Special Magistrate. At this time the City Attorney's office believes that the City is in compliance with the Code for lien reductions. The City Attorney has instructed staff that all lien reductions must go through the Special Magistrate hearing process and the Special Magistrate must approve all lien reductions. The applicant will not obtain a lien release until the Special Magistrate issues the order approving the lien reduction and the approved amount is paid in full. During the investigation, this issue was corrected, and all lien reductions are now going through the process required by code. The Code-driven Special Magistrate process affords all parties due process, even though it may require extra steps.

CONCLUSION

This report reflects the findings of countless hours of interviews and records analysis. The recommendations are intended to help address findings and help improve the City's overall operations and culture. None of this work would have been possible without the cooperation and time of those interviewed and those who provided the investigative team with the necessary documentation.