

**OFFICE OF THE CITY CONTROLLER**



**CITY-WIDE AUDIT  
EMPLOYEE INCENTIVE PAYMENTS  
FOR THE PERIOD JANUARY 1, 2004 THROUGH JUNE 30, 2006**

**Annise D. Parker, City Controller**

**Steve Schoonover, City Auditor**



OFFICE OF THE CITY CONTROLLER  
CITY OF HOUSTON  
TEXAS

ANNISE D. PARKER

August 14, 2007

The Honorable Bill White, Mayor  
City of Houston, Texas

SUBJECT: City-Wide Audit – Employee Incentive Payments  
Report No. 2008-2

Dear Mayor White:

At the request of the Harris County District Attorney's Office, the City Controller's Office Audit Division has completed a City-Wide Audit of Employee Incentive Payments covering the period January 1, 2004 through June 30, 2006.

The audit's objective was to determine whether employee incentive payments complied with the terms and guidelines of the City and the laws of the State of Texas. The scope of the work included reviewing applicable policies and procedures; interviewing appropriate employees; examining supporting documentation; and applying any other appropriate audit procedures deemed necessary.

**The auditors found nothing similar to the actions previously identified by the District Attorney's Office as criminal in nature.**

The report, attached for your review, concludes that in most cases the Departments put forth their best efforts to prepare reasonable and appropriate payment methods. However, the auditors found that some of the methods were unorganized, difficult to comprehend, and at times contained inconsistent approvals. Various payment methods were identified that may not comply with the Texas State Constitution that prohibits extra compensation to employees after services have been rendered. Also, certain Departments may not have been in compliance with the City's Overtime Ordinance.

The findings and recommendations identified during the audit are included in the body of the report. Draft copies of the matters contained in the report were provided to Department officials. The Views of Responsible Officials as to actions being taken are appended to the report as Exhibit I.

We commend the Administration for their timely efforts to take action to implement the recommendations identified by the audit team. As their response indicates, adopting protocols in advance will serve to clarify and remove any uncertainty about issues raised in the report.

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We also appreciate the cooperation extended to our auditors by Department personnel during the course of the audit.

Respectfully submitted,

A handwritten signature in blue ink that reads "Annise D. Parker". The signature is written in a cursive style.

Annise D. Parker  
City Controller

xc: City Council Members  
Anthony Hall, Chief Administrative Officer  
Michael Moore, Chief of Staff, Mayor's Office  
Charles A. Rosenthal, Jr., Harris County District Attorney  
Department Directors

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## EXECUTIVE SUMMARY

### Background

In 2006 the Harris County District Attorney's Office (DA) charged four City of Houston (City) employees with theft by a public servant and tampering with a public record. In connection with this incident, the DA requested the City Controller initiate a city-wide audit of City employee incentive payments. We agreed to perform the audit and established the audit period to be January 1, 2004 through June 30, 2006.

### Objective and Scope

The objective of our audit was to determine whether employee incentive payments complied with the terms and guidelines of the City and the laws of the State of Texas as described more fully in Section A. The scope of our work included reviewing applicable policies, procedures and laws; interviewing appropriate City employees; examining supporting documentation; and applying any other appropriate audit procedures deemed necessary. The audit also examined payments made to municipal nonclassified employees (employees) that were categorized as either incentive or overtime payments during the period January 1, 2004 through June 30, 2006. The audit also analyzed any payments to employees that appeared unusual in nature.

The scope of our work did not constitute an evaluation of the overall internal control structure of City departments. Our examination was designed to evaluate and test compliance with all relevant guidelines and procedures related to employee incentive, overtime, and unusual payments.


### Conclusion

Though we believe that in most cases the departments put forth their best efforts to prepare reasonable and appropriate payment methods, we concluded that some of the methods were unorganized, difficult to comprehend, and at times departments obtained inconsistent approvals.

We noted various payment methods that may not comply with the Texas State Constitution that prohibits extra compensation to employees after services have been rendered. We also noted that certain departments may not have been in compliance with the City's Overtime Ordinance.

It is apparent that the City needs clear and consistent Administration guidance for these payment methods, strict adherence to policy, and a plan to appropriately compensate exempt employees in extraordinary circumstances. Until this occurs the City is at risk for legal consequences for violations of the Texas State Constitution and laws.

Other than the criminal charges currently being prosecuted by the DA, nothing of a similar nature came to our attention during the audit.

  
Linda McDonald  
Auditor-In-Charge

  
Steve Schoonover  
City Auditor

## **CITY-WIDE AUDIT EMPLOYEE INCENTIVE PAYMENTS**

### **INTRODUCTION**

During the audit period we identified 21 payment methods used by various City departments that met our audit criteria. Our criteria were to identify instances where City employees received additional compensation over and above their base salary, including overtime paid to exempt employees and payments that appeared unusual. Generally, these payments were one-time payments, some were on-going and a few were the result of temporary base salary adjustments. The 21 payment methods are broken down into categories as follows:

- Nine (43%) of the payment methods could be categorized as incentive plans (payments devised as a reward for employees who either meet certain pre-defined goals or measurements)
- Five (24%) of the payment methods were the result of the aftermath of Hurricanes Katrina and/or Rita
- Five (24%) of the payment methods were the result of the Mayor's 2005 Compensation Allocation Plan (two of these methods were well-defined incentive plans)
- Two (9%) of the payment methods had no verbal or written plan

City payroll records indicated that 14 departments provided the extra compensation on more than 17,000 separate pay events (many employees received more than one payment) totaling approximately \$4,500,000 (averages city-wide \$150,000 per month) from January 1, 2004 through June 30, 2006. These payments were classified in the payroll system as PRIN (Performance Incentive), PRIN2 (Production Incentive), and SPDBR (DNA Backlog Reduction Pay). Listed below are sections regarding the Relevant State and City Requirements, Audit Finding and Recommendations and Departmental Payment Methods – Summaries and Concerns.

### **I. RELEVANT STATE AND CITY REQUIREMENTS**

There are a number of regulations governing the administration of incentive and overtime payments to municipal nonclassified employees. The City of Houston must comply with the Texas State Constitution, the City's Code of Ordinances, relevant Administrative Procedures, and the Mayor's FY2005 Compensation Allocation Plan. These regulations are summarized below.

- The Texas State Constitution Article III, Section 53 reads: "*The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.*"

Vernon's Texas Statutes, Vol. 3 interprets this statute: *"This section prohibits the legislature from authorizing any city or municipal corporation to grant extra compensation after service has been rendered, or a contract has been entered into or performed. Nor may the legislature pay or authorize payment of any claim against a city or municipality under a contract not authorized by law.*

*This section places similar restrictions on the legislature with respect to counties and municipal corporations as is placed by Section 44, Article III on the state as to state officers and contractors and state claims. It was included for the same purpose, i.e., to prevent the counties or municipalities from freely giving away the public moneys for services previously rendered or for which no valid legal authorization existed for which the public would receive no return."*

An email dated July 28, 2005 was distributed to most City Department Heads as well as the City Controller and the Mayor's Office from the City Legal Department's Division Chief of Labor Law on behalf of the City Attorney. The relevant portions of the email are as follows:

*"City Attorney, (name deleted) has asked that I send you this reminder and clarification that any Performance Pay program that you propose should not include bonuses. The State Constitution prohibits the payment for funds for work that has already been performed. A bonus is compensation for performance applied retrospectively. Consequently, many of you are familiar with several legal opinions which have issued in the past prohibiting the payment of additional compensation for past performance merely on the basis of performance.*

*The same prohibition does not apply to prospective performance. Theoretically, each of you last July implemented departmental goals, timelines and performance measures which were to be achieved during FY05. Some of these measures may have gone so far as to define associated returns for each measure or goal achieved. Assuming that your employees performed in accordance with these guidelines and measures and achieved the results you desired, they earned the Performance Pay increase you assigned to each measure. If you did not assign particular Performance Pay to your goals, and/or if they accomplished all or some of the desired results, your Performance Pay proposals should reflect your proposed compensation scheme's for each measure achieved. Whether you give employees who met the proscribed standards lump sums or percentage increases, it is not a bonus since they worked to achieve the measures and results. If you failed to implement performance measures or any other standards for differentiating performance results, you may be left with little to distinguish performance other than EPE scores. The more you rely on EPE scores alone, you begin to look more like you are retrospectively compensating employees for past performance. In essence, you get into the gray area that looks and smells like a bonus".*

Accordingly, for purposes of this report, we use the term bonus to mean any one-time payment to an employee after services have been rendered and whenever no appropriate pre-defined incentive plan was in place.

- The City Code of Ordinances (Code) governs the payment of overtime that is defined in Sec. 14-168 (a)(5) as *"time worked in excess of 40 hours in a work week."* Essentially,

- *Section 14-168 (g)* states that only full-time exempt employees employed by the City in a licensed medical professional capacity are to be compensated in cash in the form of special assignment pay for time worked in excess of 40 hours in one week. The Code states that no employee pay grade classification 24 and above is eligible for any type of compensation for overtime worked, including monetary and compensatory time off. The one exception to this is if the Mayor declares that an extraordinary and/or catastrophic condition exists, then the pay grade classification is raised to include 25 and 26.
- Administrative Procedure (AP) 2-22, Performance Pay Zone Program (PPZ) was effective June 9, 2004 and allows department heads the flexibility to reward an employee with a permanent and meaningful base pay adjustment for that employee's *"sustained performance that contributes to the execution of organization, department, division, branch or unit team or individual goals and objectives."* The PPZ Program was not intended to allow payments to employees on a one-time basis. The PPZ Program does not require a formal authorized predefined plan.
- The Mayor's FY2005 Compensation Allocation Plan refers to a program instituted by the Mayor that set aside money allowing individual departments the ability to grant additional compensation to eligible employees. A letter was sent to the qualifying departments in July 2004 informing them of their allocated amounts. The letter directed department management to provide a 1% across the board increase to those employees with an EPE rating of 3.0 and above. The method(s) for allocating the amount that remained after the 1% distribution had been left to the discretion of department management. The letter required that each department submit a plan to the Mayor through the Human Resources Department stating the basis for distributing the remaining funds.

We considered the relevant regulations and guidelines when reviewing the 21 individual incentive payment methods, including individual department guidelines.

## II. AUDIT FINDINGS AND RECOMMENDATIONS

The following are the results from our audit of the various departments:

### Finding No. 1

- **Some Incentive Payment Methods May Not Comply With the Texas Constitution Regarding Extra Compensation.** As mentioned in Section A, the Texas Constitution prohibits extra compensation to employees after services have been rendered. Of the 21 incentive payment methods reviewed, nine methods appear to have paid employees based on previous performance. We noted the following:
  - ❖ City Council Members did not have any written incentive plans for their respective offices; seven City Council Members paid additional compensation in the form of 28 one-time payments to 19 staff members totaling \$82,200. Further, four City Council members also initiated additional payments to ten staff members totaling \$21,222 by temporarily increasing base pay for one to five pay periods and then subsequently decreasing it. In general, these payments were made either at the end of

- ❖ the fiscal year (June) or the end of the calendar year. Since these payments were made after services had been rendered and in the absence of a documented plan, we believe these payments could be construed as bonuses.
- ❖ Aviation, Convention and Entertainment Facilities, Human Resources, and the Solid Waste Management Departments granted one-time payments to employees based on extra work performed in connection with Hurricanes Katrina and/or Rita. There is no apparent means provided to the City that would allow such rewards to be paid to City civilian employees. The payments totaled \$263,271 and involved 599 employees. Since these one-time payments were made after the services had been rendered, we believe these payments could be construed as bonuses.
- ❖ Convention and Entertainment Facilities, Health and Human Services and the Houston Police Department based a portion of their Mayor's 2005 Compensation Allocation Plan on previous Employee Performance Evaluations (EPE) scores. The payments totaled \$886,482 and involved 1,837 employees. Since these one-time payments were made after the services had been rendered, we believe these payments could be construed as bonuses.

### **Recommendation No. 1**

If the Administration chooses to continue incentive and reward payments to employees in the future, we recommend the Administration develop a single city-wide Administrative Procedure, and amend the Code of Ordinances where applicable, in order to ensure that extra compensation(s) are properly and clearly addressed and conform to regulatory/legal requirements. To effectively implement this new policy/procedure we also recommend the Administration ensure that proper training is provided to appropriate departmental personnel.

Based on research and the advice and support from the City's Human Resources Department, we recommend that effective incentive programs contain the following: an effective internal structure, a careful upfront design, sensible and equitable incentive awards, and proper administration.

Accordingly, a well-crafted written plan generally contains the following pertinent elements:

- a) Clearly stated purpose, goals and objectives
- b) Evidence of appropriate approval(s) prior to plan implementation
- c) A statement or listing of employees eligible for participation
- d) A statement of activities to be rewarded and the type and amount of financial reward associated with those activities
- e) Parties responsible for plan management and administration
- f) Specific plan beginning and ending dates
- g) Provisions for periodic plan review or audit and a final accounting of plan performance

- h) After plan approval, a communications plan to help ensure that the employees are aware of the plan and plan progress.

We also recommend the policy/procedure clearly define the approval process with signatures of acceptance from the Human Resources Department, the Legal Department and the Mayor's Office.

Overall, only four of 21 payment methods contained the basic elements we listed above, the remaining 17 payment methods varied widely, ranging from no plan at all to only minor missing elements. Therefore, in order to promote equity and fairness to all municipal employees, we recommend the Administration consider writing an easily understood and well-defined plan to be administered by trained personnel in order to ensure consistent application throughout the City.

## **Finding No. 2**

- **Certain Overtime Payments May Not Be In Compliance With The City's Overtime Ordinance.** Our audit indicated that:
  - ❖ The City Controller's Office received specific approval from the Legal Department to pay overtime to exempt employees for performing clerical tasks resulting from Hurricane Katrina in addition to their regular duties.
  - ❖ It appears the Human Resources Department may have paid overtime to exempt employees for performing additional work resulting from Hurricane Rita in addition to their regular duties.
  - ❖ It appears the Solid Waste Management Department paid overtime to exempt employees for performing additional work resulting from Hurricane Rita in addition to their regular duties.

## **Recommendation No. 2**

There is no specific formal plan that details payment options for employees during a crisis and/or emergency situation.

We recommend the Administration revise the Code of Ordinances to allow more flexibility during a crisis and/or emergency situation or enforce the current Code of Ordinance regarding overtime payments and compensatory time off.

With regards to payment options to employees during a crisis and/or emergency situation, we also recommend a second policy/procedure be written and the Code of Ordinances be revised that addresses employee issues before, during and after the disasters. The City will undoubtedly be challenged by some type of emergency in the future that will require the concerted efforts of many personnel, and a pre-defined written payment plan will provide guidance to departments to compensate employees in a consistent manner.

## **III. DEPARTMENTAL PAYMENT METHODS - SUMMARIES AND CONCERNS**

We examined transactions on a test basis. In some cases, specific concerns are addressed to the department and their corrective action is included as an Outcome.

## **AVIATION**

The Aviation Department had two one-time payment events during the audit period. The first event was the Strategic Compensation Plan that stemmed from the Mayor's 2005 Compensation Allocation Plan. The second event was a one-time special award made to employees for work related to Hurricanes Katrina and Rita.

### **(1) *The Strategic Compensation Plan***

The Strategic Compensation Plan (Plan) was prospective in nature and its concepts were aligned with the strategic themes and objectives developed for the department. According to the City's payroll records, 226 employees received PRIN payments totaling \$87,822. The payments ranged from \$74 to \$1,000 per employee. The Human Resources Department, Legal Department and the Mayor's Office approved the plan prior to disbursement. Overall, we conclude that Aviation's Strategic Compensation Plan is a well-defined incentive plan.

### **(2) *The Katrina/Rita Payment Plan***

The Katrina/Rita Payment Plan (Plan) consisted of a one-time payment of \$372 to 559 employees totaling \$207,948 for "*significant contributions above and beyond the normal expectation during and after Hurricanes Katrina and Rita disasters.*" Although Aviation Department management asserted that approval for the Plan was received from the City's Chief Administrative Officer via the Human Resources Director, management was unable to provide documentation verifying the approval during the audit. Since the one-time payments were made after the services had been rendered, we believe these payments could be construed as bonuses.

## **CITY CONTROLLER'S OFFICE**

The City Controller's Office did not have any incentive plans during the audit period. City payroll records, however, indicate that two exempt employees received Production Incentive (PRIN2) payments totaling \$20,547 for the audit period. One employee received \$4,543 and the second received \$16,004. Although the payments were coded as PRIN2, we subsequently determined that the payments were actually overtime paid in connection with Hurricane Katrina related work. The two exempt employees were performing records management clerical work outside of their job classification. The payments began in January 2005 and continued through November 2006; the amounts above include only those payments through June 30, 2006.

The City Controller's Office received specific Legal Department approval to pay overtime to the exempt employees. The Human Resources Department concurred with this assessment and the Finance and Administration Department's Payroll Division provided the PRIN2 code as the appropriate code to use for this situation. The payroll system does not allow overtime

payments to exempt employees, but by using the PRIN2 code, the payments could be achieved. The Legal Department has since reversed its assessment and stated that the employees should not have received overtime pay.

Based on our test sample, we determined that the supporting documentation was missing in five of nine (56%) instances. The five overtime forms provided were generally incomplete and were approved after the overtime was worked. As a result, we cannot determine if payments were properly paid or if the additional work was authorized by management on a timely basis.

**Outcome:**

The Controller's Office current practice is that Deputy Controllers must approve overtime before such overtime is worked. The Operations Division has taken extra steps to ensure that all overtime is approved before being worked including adding overtime procedural compliance to supervisory performance reviews. Regarding exempt overtime, the Controller's Office stopped such payments in November 2006 and no longer allows overtime payments to exempt employees, even when performing non-exempt duties.

**CITY COUNCIL**

City Council Members had no written incentive plans for their respective offices, however, some provided additional compensation to staff using two methods.

**Note:** Our audit excluded 52 one-time payments to four former Mayor Pro Tem employees totaling \$143,500. These payments are part of an ongoing investigation by the Harris County District Attorney's Office.

**(1) One-Time Payments**

Seven Council Members provided 28 one-time payments to 19 staff members totaling \$82,200. These payments ranged from \$1,000 to \$6,860 and averaged \$4,326 per staff member. Several Council Members stated that these payments were based primarily on budget availability. Since these one-time payments were made after the services had been rendered, we believe these payments could be construed as bonuses.

**(2) Increase Base Pay for One to Ten Pay Periods**

Five Council Members provided additional compensation by increasing staff's base pay for one to ten pay periods, and then subsequently decreasing it. The net effect resulted in additional compensation to employees. Payroll records reflect that 13 staff members from 5 Council Member Offices received such adjustments.

- Four Council Members initiated salary increases for ten staff members for one to five pay periods totaling \$21,222. These adjustments ranged from \$400 to \$8,000 per employee. One of the four Council Members asserted that these adjustments were not incentive or bonus payments, but raises that the budget could not sustain, and salaries were returned to their original amounts. However, no written documentation supporting

- this assertion was provided. Since such payments were made after the services had been rendered, we believe these payments could be construed as bonuses.
- One Council Member authorized three staff members to receive salary increases totaling \$18,966 for ten pay periods. The Council Member stated that these adjustments were meant to be annual salary increases and were not intended to be incentive or bonus payments. The Council Member also asserted that the level of increases granted were higher than intended and a “mistake” was made by the Division Manager in the Mayor Pro-Tem’s Office. The salaries were subsequently decreased, though not to the original levels.

**Note:** We also reviewed City departments to determine if they employed similar base pay adjustments to compensate employees after services have been rendered. No such adjustments were noted.

**Outcome:**

Many administrative functions previously handled by the Office of the Mayor Pro Tem have been transferred to the Finance and Administration Department (F&A). F&A should assist City Council in their compliance efforts.

**CONVENTION AND ENTERTAINMENT FACILITIES**

The Convention and Entertainment Facilities Department (CEF) had two one-time payment events during the audit period. The first event related to the 2005 Compensation Allocation Plan (2005 Plan), and the second event related to Hurricane Katrina efforts.

**(1) The 2005 Plan**

The 2005 Plan provided one-time payments which appeared to be based on previous EPE scores and was created in response to the Mayor’s 2005 Compensation Allocation Plan. This 2005 Plan provided one-time payments to 79 employees for a total of \$73,837 payments during the audit period. These payments ranged from \$500 to \$3,822 and averaged \$935. The Human Resources Department, Legal Department and the Mayor’s Office approved the 2005 Plan prior to disbursement.

The 2005 Plan is split into two parts, but both parts are based on “*the belief that, with incentives, future performance can be even stronger*”. The weakness of the 2005 Plan is that no specific future performance measurements are defined so that employees are able to determine what is expected of them in order to obtain any future incentive awards. Even though CEF management states in the 2005 Plan that the payments are “*an effort to motivate, encourage and incentivize the performance of individuals on the theory that past performance is a key indicator of future potential,*” we respectfully suggest that the 2005 Plan is inadequate since it does not contain clearly defined and specific measures/goals for the future. We conclude that the one-time payments appear to be based on previous EPE scores and were therefore made after the services had

been rendered. Consequently we believe these payments could be construed as bonuses.

**(2) *The Hurricane Katrina Payment***

The Hurricane Katrina Payment Plan (Plan) provided a one-time payment to 12 exempt employees totaling \$40,212 during the audit period. These 12 employees were all either management or executive level employees. These payments ranged from \$2,308 to \$4,939 per employee and averaged \$3,822 per employee. The amounts were the equivalent of each employee's biweekly salary.

CEF provided the auditors a copy of an October 26, 2005 memo that includes a handwritten notation by a third party, who was represented to be the Human Resources Department Acting Director, indicating approval of the payments by the Mayor and the City's Chief Administrative Officer. The Acting Director informed the auditors that she was not the final approval authority, only the expeditor at that point. Since the one-time payments were made after the services had been rendered, we believe these payments could be construed as bonuses

**HEALTH AND HUMAN SERVICES**

The Health and Human Services Department (HHS) had an original incentive payment plan dated July 2004 (the Original Plan) and a revised plan dated September 2004 (Revised Plan) during the audit period. The plans were created in response to the Mayor's 2005 Compensation Allocation Plan and include both base pay salary adjustments as well as one-time payments. According to payroll records, HHS awarded one-time incentive payments totaling \$625,560 to 1,130 employees during the audit period. These payments ranged from \$51 to \$900 and the average payment was \$554.

The Mayor's Office and the Human Resources Department approved the Original Plan prior to disbursement on August 13, 2004. However, HHS management was unable to provide signatory approvals for the Revised Plan. The only major difference between the Original Plan and the Revised Plan was the amounts paid to the employees. Even though the Human Resources Department and the Mayor's Office approved the Original Plan, the one-time payments appear to be based on previous EPE scores and were therefore made after the services had been rendered. Consequently, we believe these payments could be construed as bonuses.

**HOUSTON POLICE DEPARTMENT**

The Houston Police Department (HPD) had two incentive plans and its 2005 Compensation Allocation Plan (2005 Plan) during the audit period.

**(1) *The Fleet Maintenance Incentive Plan***

The Fleet Maintenance Incentive Plan (Fleet Plan) provided on-going incentive payments to 83 employees for a total of \$2,153,691 in Production Incentive (PRIN2) payments during the audit period. These payments ranged from a total of \$30 to \$108,128 per employee and averaged

\$25,948 per employee. The highest paid employee averaged \$174 per working day and the lowest employee \$4.60 per day. HPD Management could not provide written documentation that the Human Resources Department or the Mayor's Office approved this plan.

The Fleet Plan began in October 2002 as a pilot plan initiated under the direction of the Finance and Administration Department (F&A) and was limited to one HPD Fleet Division. The Fleet Plan was established to compensate employees on the basis of productivity and performance. The Department proposed that the mechanics be paid on the basis of maintenance tasks successfully completed. HPD believes the direct linking of accomplishments with compensation creates incentives for more productive employees. In an unexecuted July 12, 2002 interoffice correspondence from the F&A Director to the Mayor it was stated that "With increased mechanic productivity, overtime will be significantly reduced and fewer mechanics will be necessary."

F&A's Strategic Purchasing Division performed a final evaluation report in April 2003 that declared the pilot program a success and recommended it be expanded to other HPD Fleet Divisions. In October 2006, HPD retained the services of a consultant to conduct a review of the Fleet Plan, and a report was issued in March 2007 identifying thirteen recommendations. HPD management has implemented seven of the 13 recommendations and five are in the development phase to be implemented as soon as systems are in place or developmental work is completed.

**Outcome:**

The formal Fleet Maintenance Incentive Program plan was approved by the Police Chief on March 7, 2007 and HPD management asserted that it has been forwarded to the Mayor's Office (Chief Administrative Officer) for legal review and endorsement. If endorsed by the Chief Administrative Officer, HPD management indicates that the Human Resources Department will then formally institute the plan.

HPD management also indicates they expect to have an annual review prepared by an outside fleet auditor as well as an individual assigned by F&A to assist in the program review.

We commend HPD management for their actions and concur that an annual audit should be performed by a qualified outside firm, along with a periodic review to be conducted by F&A.

**(2) *The Crime Lab Incentive Payment Plan***

The Crime Lab Incentive Plan (Plan) provided incentive payments to 32 exempt employees for a total of \$235,440 in DNA Backlog Reduction Pay (SPDBR) during the audit period. These payments ranged from a total of \$120 to \$29,040 per employee and averaged \$7,358 per employee.

Overall, we conclude that the Plan is a well-defined incentive plan. The former Human Resources Director approved the Plan and HPD management represents that the Human Resources Department reviewed the Plan for comportment with City policies and procedures as well as State and Federal Labor laws.

Initially, the City's Legal Department indicated to the auditors that payments made under this Plan constituted overtime payments to exempt City employees since they were based on hours worked in excess of a 40 hour work week. Upon further review, the Legal Department now believes that these payments were not overtime payments, but are in fact payments made prospectively based on the written incentive payment plan.

Both the Human Resources Department and the Mayor's Office approved the most recent 2007 Criminalist Plan that currently includes the following language:

*"The executive staff of the Houston Police Department has the sole authority to interpret this plan and to amend this plan from time to time. Any questions of eligibility, coverage, benefits or other matters concerning this plan shall be resolved exclusively by the HPD executive staff. Furthermore, the Houston Police Department will notify the Human Resources Department of any changes or the continuation/discontinuation of this pay program."*

An additional concern regarding this Plan is the length of time it has been in existence. This plan has been paid for more than three years based on the objective "To eliminate or greatly reduce the existing backlog of DNA testing in the Houston Police Department and to keep the backlog from accumulating."

We recommend that HPD leadership evaluate the remaining backlog to determine either a projected termination date for the Plan or whether greater efficiency could be achieved with additional staff.

**Outcome:**

HPD agrees with the Controller's recommendation of seeking a termination date to the program. However, until additional staffing is hired and trained, the Crime Lab Director advocates continuation of the program to ensure that evidence is provided timely to not impede the judicial process.

Also, HPD plans to amend language in the most recent 2007 Criminalist plan to include the Human Resources Department approval as follows:

*"The executive staff of the Houston Police Department has the sole authority to interpret this plan and to amend this plan from time to time. Any questions of eligibility, coverage, benefits or other matters concerning this plan shall be resolved exclusively by the HPD executive staff. Furthermore, the Houston Police Department will seek approval from the Human Resources Department of any changes or the continuation/discontinuation of this pay program."*

For a time, the DNA lab discontinued testing internally and processed evidence for submission to outsourced DNA labs. The DNA section resumed DNA testing in June 2006 after all DNA staff was replaced and trained including the management team. HPD will also be seeking assistance from F&A in auditing the Crime Lab incentive program.

**(3) The 2005 Plan**

The 2005 Plan was created in response to the Mayor's 2005 Compensation Allocation Plan and included both base pay salary adjustments as well as one-time payments based on past EPE scores. The 2005 Plan provided one-time payments to 622 nonclassified employees totaling \$186,005 in PRIN (Performance Incentive) payments during the audit period. These payments ranged from \$100 to \$375 and averaged \$299.

Even though the Human Resources Department and the Mayor's Office approved the 2005 payment Plan prior to disbursement, the one-time payments appear to be based on previous EPE scores and were therefore made after the services had been rendered. Consequently, we believe these payments could be construed as bonuses.

Also, the HPD Budget and Finance Division stated to the auditors that the 2005 Plan was reviewed and approved by City Legal Department prior to implementation. The auditors were provided a September 3, 2004 memo from the former Human Resources Director to the City Attorney transmitting the 2005 Plan for review. Emails from the Legal Department indicate the 2005 Plan was approved. In an email dated September 15, 2004 the Legal Department advised HPD to revise the plan language to include a phrase to state "*the purpose of which is to provide an incentive for increased productivity in the future for those with demonstrated performance based on EPE scores of ...*." An HPD circular dated November 10, 2004 reflects such language.

We respectfully suggest that the 2005 Plan is inadequate since it does not contain clearly defined and specific measures/goals for the future.

**HOUSTON PUBLIC LIBRARY**

The Houston Public Library system (HPL) had one payment plan (the Plan) in effect during the audit period, and certain details of the plan were revised for payments made in 2005 and 2006. The Plan was created in response to the Mayor's 2005 Compensation Allocation Plan. According to payroll records, HPL awarded four separate one-time incentive payments totaling \$419,627 to its employees during the audit period. Even though this amount exceeded HPL's allotted amount, the former HPL Deputy Director explained that the additional compensation was funded by successful cost savings.

The approved Original Plan consisted of four components resulting in four payout methods: Performance Based Payout, Customer Driven Payout, Market Driven Payout and Organizational Effectiveness Payout. The Customer Driven Payout method was the only component reviewed by the auditors since those were the only one-time payments made during the audit period. This method focused on the attainment of specific organizational goals and objectives meeting internal and external customer needs, and includes eleven performance measurements. If HPL employees were able to attain at least seven of these predetermined performance measurements, they became eligible for a one-time payment. The Plan's payments were spread over a period of three years (2004, 2005 and 2006).

The Customer Driven Payouts for the three years are reflected in the table below.

**CUSTOMER DRIVEN PAYOUTS - PAYMENT TABLE**

Date of Payout	Measures Met	Full Time Gross	Part Time Gross	Total Gross	Number of Payments	Average per Employee
10/2004	7 of 11	\$74.24	N/A	\$37,417	504	\$74.24
06/2005	8 of 11	\$519.68	\$363.77	\$255,787	506	\$505.51
08/2005	Supplement for 06/2005	\$74.24	\$51.97	\$32,977	455	\$72.48
08/2006	Revised 2004 Plan	Various	Various	\$93,446	485	\$192.67
Total Gross Payout				\$419,627	1,950	

The Human Resources Department and the Mayor's Office approved the Original 2004 Plan that was to cover three years. Overall, we conclude that the Customer Driven Incentive plan is a well-defined incentive plan.

**HUMAN RESOURCES**

In connection with Hurricane Rita, the Human Resources Department (HR) provided extra compensation to nine exempt employees who worked during the emergency. These employees were compensated at a rate of \$100 per day regardless of position or hours worked (in some cases 24 hours per day). Individual payments ranged from \$100 to \$500 for a total of \$2,100.

Although there was no formal written plan, HR Management stated the payments were discussed and verbally approved prior to implementation by the former Human Resources Department Director.

The supporting documentation provided by the Department to the auditors indicated that these payments were made for work performed in excess of a 40 hour work week. Since the employees were classified as exempt, based on our understanding of the City's Code of Ordinances, the employees may have been ineligible for overtime payments. Additionally, without written documentation of a predefined plan and because the payments were made after the services had been rendered, we believe these one-time payments could be construed as bonuses.

**INFORMATION TECHNOLOGY (SAP INCENTIVE PLAN)**

The Information Technology Department did not have a general incentive plan. The SAP Implementation Team Incentive Award Plan (Plan), however, was developed "to recognize exceptional team performance of municipal employees working on the SAP Implementation

*Team and reward contributions and achievements of the project team's goals, objectives and milestones".* The Plan included a Deliverables-Incentive Award Schedule with proposed one-time incentive payments and base pay increases related to the achievement of specific milestones. Eight one-time payments were made to eight team members in the amount of \$1,500 (totaling \$12,000). An email dated July 20, 2005 stated that the one-time payments were approved by the Mayor's Office and the former Human Resources Department Director. We were provided a copy of the draft Plan, however, we were not provided a final approved version of the Plan during the audit. The SAP Project is ongoing and the draft Plan appears to be well defined and continues to provide incentive awards.

### **MAYOR'S OFFICE (3-1-1)**

The Houston Service Center (3-1-1), funded through the Finance and Administration Department, currently employs an incentive plan called Activity Based Compensation (ABC) as a means of improving call taker productivity. The ABC incentive plan was approved both by the Human Resources Department and the Mayor's Office. According to payroll records, 3-1-1 awarded incentive payments totaling \$47,263 to 75 employees during the audit period. These one-time payments ranged from \$0.20 to \$1,027.60 and the average payment amount was \$124. Overall, we conclude that the ABC Incentive plan is a well-defined incentive plan.

### **MUNICIPAL COURTS ADMINISTRATION**

The Municipal Courts Administration Department (MCA) had two active incentive plans during the audit period.

#### ***(1) The Parking Management Signage/Meters Incentive Program***

The Parking Management Signage/Meters Incentive Program (Plan) was designed to provide financial incentives for Parking Enforcement Officers and Parking Enforcement Leaders in order to correct signage and meter-related problems that adversely impact the public throughout Downtown, Midtown, and The Medical Center. According to payroll records, 18 employees received a total of \$2,610 during FY2006. These payments ranged from \$10 to \$100 and the average payment amount was \$22. There was no indication that the Human Resources Department, the Legal Department or the Mayor's Office approved the Plan.

Our sample testing indicated that 91 out of 120 (67%) incentive payments associated with this Plan contained minor discrepancies. These errors resulted in overpayments and underpayments ranging from an underpayment of \$40 to an overpayment of \$140 and resulted in an overall net overpayment of \$240.

#### **Outcome:**

MCA management stated that they would provide quality assurance training to their staff to help minimize the chance of future errors; however, no retroactive corrective actions are planned.

## **(2) *The Traffic/Non-Traffic Configuration Incentive Program***

The Traffic/Non-Traffic Configuration Incentive Program (Plan) was designed to encourage and award teams working on the Traffic/Non-Traffic scenarios of the Integrated Case Management System (ICMS). According to payroll records, 15 employees received a total of \$8,029 during FY 2006. These payments ranged from \$321 to \$832 and the average payment amount was \$535. This Plan was approved by the Human Resources Department based on the Legal Department's opinion (via email dated July 6, 2005).

The Plan called for seven incentive payments, but only five payments were made to the employees.

### **Outcome:**

Management explained that the ICMS was originally targeted to go-live in September 2005. When the ICMS implementation continued to experience delays, management did not consider it appropriate to pay the remaining incentives.

## **PARKS AND RECREATION**

The Parks and Recreation Department had one payment plan (Plan) in effect during the audit period. The Plan was limited to fleet personnel and was designed to encourage speedy vehicle repairs and better vehicle availability. According to Payroll records, the Department awarded incentive payments totaling \$8,376 to 16 employees during the audit period. These payments ranged from \$57 to \$1,296 and the average payment was \$524. There was no indication that the Human Resources Department, the Legal Department or the Mayor's Office approved the Plan.

### **Outcome:**

Department Management stated the plan was started prematurely and was not formally approved. As such, management soon cancelled the Plan.

## **PUBLIC WORKS & ENGINEERING**

The Fleet Maintenance Branch of the Right of Way & Fleet Maintenance Division of Public Works & Engineering (PW&E) launched the Flat Rate Pilot Incentive Program (the Plan) in January 2006 as an incentive for increasing fleet maintenance productivity. During the period January 7, 2006 to June 30, 2006, nine employees received multiple incentive payments totaling \$67,730. These payments ranged from a total of \$128 to \$24,021 per employee and averaged \$7,525 per employee.

The Human Resources and Finance & Administration Departments approved the "PW&E Flat Rate Pilot Incentive Program" plan on November 9, 2005 as a pilot program subject to review by the Finance & Administration Department. The Plan, however, was not specifically approved by the Mayor's Office prior to implementation.

We did not test payment compliance to the Plan as PW&E's Internal Audit staff completed a review dated January 9, 2007, covering the months of May, June & July 2006. The Plan has undergone revisions as a result of the PW&E review and final approval is pending.

## **SOLID WASTE MANAGEMENT**

The Solid Waste Management Department had two incentive plans during the audit period.

### **(1) *The FY2006 Plan***

The FY2006 Plan was approved by the Mayor's Office and was designed to reward employee performance in five areas: productivity, safety, attendance, discipline, and general performance. According to payroll records, 142 employees received payments totaling \$165,716 during FY2006. These payments ranged from \$409 to \$2,036 and the average payment amount was \$947.

### **(2) *The Hurricane Rita Response***

The Hurricane Rita Response Plan (Plan) (February 13, 2006) was designed to reward supervisory personnel during the aftermath of Hurricane Rita. The Department reported that the payments were made based on verbal instruction from the Mayor's Office and that the employees were not compensated on the basis of work over 40 hours. The department asserted employees worked many hours more than 40, however, the payments were not overtime, but performance pay. According to payroll records, 19 employees received incentive payments under this Plan totaling \$13,011. These payments ranged from \$351 to \$1,053 and the average payment amount was \$685.

The supporting documentation provided by the Department to the auditors indicated that these payments were made for work performed in excess of a 40 hour work week. Since the employees were classified as exempt, based on our understanding of the City's Code of Ordinances, the employees may have been ineligible for overtime payments. Additionally, without written documentation of a predefined plan and because the payments were made after the services had been rendered, we believe these one-time payments could be construed as bonuses.

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**CITY OF HOUSTON**

Legal Department

**Interoffice**

Correspondence

To: Annise Parker, Controller

From: Anthony W. Hall, Jr.  
Chief Administrative Officer *AWH*  
Arturo G. Michel, City Attorney

Date: August 13, 2007

Subject: **MANAGEMENT RESPONSE TO CITY-WIDE AUDIT REPORT OF EMPLOYEE INCENTIVE PAYMENTS**

## **Management Response to City-Wide Audit Report of Employee Incentive Payments**

This is the response of the City's Administration to the City-Wide Audit Report of Employee Incentive Payments for the Period January 1, 2004 through June 30, 2006, provided by the City Controller on August 10, 2007, (the "Report"). We appreciate the cooperation of the Controller. To adequately address the Report and its recommendations, it is important to address the City's goals, policies, and administration.

### **I. RECOMMENDATIONS**

We agree with Recommendations 1 and 2 in the Report. Adopting protocols in advance will serve to clarify and remove any uncertainty about the issues raised in the Report. We will promptly initiate the development of Administrative Procedures or Executive Orders.

### **II. POSSIBLE IMPROPER/ILLEGAL ACTIONS**

No improper or illegal activities or payments were identified in the Report and none occurred. In some instances employees failed to maintain proper records or adequately document approvals. No one is alleged to have committed fraud. The public received value for the payments reported.

We have identified four issues and state the law that applies to these issues.

- **Additional Compensation to Exempt Employees** – Exempt employees legally may be paid additional compensation for work that exceeds expectations if approved in advance;
- **Compensation Based on EPE Scores** – Compensation based upon quality of past performance is reasonable, appropriate and not prohibited;
- **One-time or Finite Number of Payments Based Upon Available Funding** – Conditioning performance incentive payments upon the availability of resources at the end of the year is not illegal or improper; and

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- **One-time Hurricanes Katrina and Rita Related Payments** – One time payments in connection with Hurricanes Katrina and Rita efforts were not illegal/improper because they were approved in advance.

The four issues are addressed below in the order set out above.

## **A. Additional Compensation to Exempt Employees**

Overtime pay is hour-for-hour (or greater) compensation for the number of hours worked in excess of 40 hours in a workweek. The overtime ordinance is not the exclusive authority for payments for time worked in excess of 40 hours in a workweek. Section 14-168(e) of the Code of Ordinances provides that “[a]n employee who is exempt and, as a result, not eligible for ***overtime pay as prescribed in this section***, may notwithstanding any other provisions of this section to the contrary be eligible for compensatory time on a straight time (hour-for-hour) basis... subject to the following criteria....” One of the criteria limits the provision to those in pay grade 24 or below. Subsection (f) addresses the Mayor’s authority to extend compensatory time under Section 14-168 to exempt employees through pay grade 26 in the event of extraordinary and/or catastrophic conditions. Subsection (g) allows for cash compensation under Section 14-168 to licensed medical professionals in city health clinics.

Additional payments to exempt employees identified in the Report are not “overtime pay as prescribed in [Section 14-168].” It appears that the basis for believing the overtime ordinance may have been violated was the fact that employees in question worked over 40 hours in a workweek (see Human Resources, Solid Waste, and initial audit assessment of HPD-Crime Lab Incentive Pay Plan). The payments, however, were not hour-for-hour. The Human Resources and Solid Waste payments were made as part of the pre-approved Hurricane Katrina/Rita Performance Pay Program addressed in II.D below and recognized exceptional work under difficult circumstances (e.g.: as much as 16, 18 and 24 hours per day for multiple days under difficult physical conditions). As acknowledged, the HPD payments were part of a pre-approved incentive pay plan and not “overtime payments” in violation of Section 14-168.

While the overtime payments to two exempt employees in the Controller’s Office appear to have been hour-for-hour, and consequently may have been inconsistent with Section 14-168, they were authorized in advance and were part of the Hurricane Katrina/Rita Performance Pay Program discussed in II.D below. Consequently, we do not believe that they constitute unauthorized extra compensation either.

While Section 14-168 authorizes compensatory time for employees not typically entitled to overtime pay under the federal Fair Labor Standards Act, it could not and does not diminish existing authority for the Mayor to approve additional payments to exempt employees who go above and beyond their expected responsibilities when authorized in advance.

## **B. Compensation Based on EPE Scores**

The Report identifies three departments that based one-time payments upon prior EPE scores and concludes as a result that the payments could be construed as a grant of extra compensation after services had been rendered (C&EF, Health and HPD – 2005 Plan). The language of the constitutional provision and all existing legal authority support a determination that these payments were legal. We recognize that members of the City’s Legal Department staff may have provided informal, unclear or conflicting guidance on this issue and contributed to confusion about this matter. The lawyers gave conservative advice, setting more limits than the law requires. This approach reflected a policy to

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eliminate any possibility of mistakes but did not provide a simple or accurate statement of the law. Other formal documents prepared by the Legal Department clearly show the applicable laws as applied to City employees, e.g., Administrative Procedure 2-22, Sec. 6.2.1, "Adjustments may be based on ... Performance factors including ... EPEs, ...."

Attorney General Opinion ("AGO") No. GA-0492 finds that "a county may provide bonuses based on performance if the county approved a bonus plan before the employee recipients performed the work for which the bonuses are given." Numerous Attorney General opinions find that a city or county may not provide additional compensation to employees for work already performed, and that an increase in compensation may not be made retroactively, but may be made prospectively. The purpose of Article III, Section 53, of the Texas Constitution has been identified as preventing the public from making gratuitous payments or payments for which the public will receive no return. Art. III, Sec. 53 Interpretive Commentary (Vernon's 1997). AGO GA-0368 finds that "section 53 only prohibits the granting of 'extra compensation' to an employee. Compensation is 'extra' if it is "in addition to that allowed by law or contract." AGO JM-1253 found that "bonuses for achievement are compensation for services rendered" in the context of a production bonus based on specific results achieved. AGO JC-0376 concludes that "[i]n short, additional payments made for work already done would violate Article III, Section 53. On the other hand, a prospective increase in compensation or benefits does not." The officials involved have represented that the payments were forward-looking and intended as one time salary increases to incentivize further continued strong performances from employees who had performed well in the past, rather than conclude that the one time payments were retrospective salary supplements for work performed in the prior period. While we agree with the Controller's recommendation that an AP or EO should be adopted to address one time payments as part of an established program, we disagree that the payments in question are, as a matter of law, "a grant of extra compensation for services that have been rendered" and not "allowed by law." Improved future performance is a "return" for the public.

### **C. One-time or Finite Number of Payments Based Upon Available Funding**

The Report identifies certain one-time payments and short-term salary increases in the City Council offices as possibly violating the constitutional prohibition against granting extra compensation after services have been rendered. This conclusion is based on the auditor's finding that they discovered no written plan adopted in advance to support the payments, and the payments were "based primarily on budget availability." However, the Attorney General has stated (AGO JC -0383, AGO GA-0492) that a bonus plan is not deficient because it is conditioned upon the availability of funds. The payments are similar in nature to those that have been authorized in many Council offices over a number of years and regularly approved and implemented. The stated intent of those authorizing these payments is that the payments were the result of articulated, though not written, plans, based on this long-standing practice or otherwise were contemplated before the services were performed. The same analysis set out for II.B above applies as well to this category of payments. Implementing the recommendations will make the legality of this practice readily apparent. Due to Council's autonomy, it has not always had the benefit of the resources the Administration has to develop written procedures.

### **D. One-time Hurricanes Katrina and Rita Related Payments**

Numerous departments were identified as paying extra compensation in connection with the response to Hurricanes Katrina and Rita. (See Aviation, C&EF, Human Resources and Solid Waste Management). As indicated above, the Administration agrees with the Controller's Recommendation No. 2 that specific authorization should be drafted in the future in advance of a catastrophic event to address possible compensation. The Report does not contain information regarding these

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emergencies that would lead to a classification of the payments as extra compensation after services have been rendered in violation of Art. III, Section 53 of the Texas Constitution. On September 29, 2005, Mayor White issued an Executive Order providing in part "...I hereby order all City Departments to provide assistance as may be determined necessary as the situation develops further..." He previously made statements to City departments authorizing payment for extraordinary emergency work concerning the hurricanes that affected the Houston region. In these exigent circumstances, departments called upon all of their resources to perform services not typically expected of them. As described in II.A above, employees worked 16, 18, and 24 hours at a time over multiple days under difficult physical conditions. The Mayor authorized performance incentive payments as needed to provide the critical goods and services required. Advance written documentation of authorization to make payment for these heroic services is not legally required, but the Administration will implement procedures to ensure authorization is documented as you recommended. The affected departments represent that they acted in good faith believing that the payments were approved in advance. The Mayor supports their understanding.

### **III. CITY OF HOUSTON COMPENSATION PRACTICES – GOALS, POLICY AND ADMINISTRATION**

#### **A. Goals of Public Employee Compensation**

The City of Houston seeks to compensate employees in a manner designed to recruit and retain qualified and productive employees. The City promotes both traditional and innovative employment practices designed to enhance productivity and encourage exceptional performance.

Now, and in decades to come, public employers must retain features of civil service designed to promote professionalism and avoid patronage, while replacing those aspects that are bureaucratic and fail to permit career managers from rewarding performance through salary adjustments and one-time or periodic incentives in a manner more comparable to efficient, private, customer-oriented organizations.

#### **B. Compensation Policy**

The City's compensation policies should be designed to achieve the above goals, as well as the goal of fairness to employees and best value of the taxpayers' dollars.

Compensation policies are reflected in a variety of written directives, oral instructions, and institutionalized practices. Those include oral and written directives from the Mayor, exercising Charter powers; written and oral directives from Department Directors, who are given, in practice and law, responsibility for management of City Departments; Executive Orders; policies in various forms implemented by the Chief Administrative Officer, Department of Human Resources and various HR functions within various Departments.

In addition, there are substantive and procedural aspects of compensation policies governed by the civil service systems applicable to civilian and non-civilian employees.

There are laws which the City should and does faithfully implement concerning non-discrimination, and federal laws on wages and hours, family leave, etc.

The City shall reasonably interpret and strictly apply laws to prevent abuses such as paying public employees for private employment, theft of time by fabricating attendance or working hours;

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fraudulent expense reimbursements; or misrepresenting the authorization for occasional or permanent pay adjustments.

However, the City of Houston strongly and emphatically supports well-conceived and intended compensation which takes into account prior job performance. The City rejects any suggestion that (1) limits use of annual performance evaluations ("EPEs") in determining future compensation; (2) limits unnecessarily the use of one time or occasional or task-based payments in lieu of permanent, much more expensive salary adjustment; (3) limits the ability to respond prudently and flexibly to extraordinary or emergency situations; or (4) assumes or implies that there is widespread dishonesty or self-enrichment by City employees.

### **C. Administration of Compensation Policies**

Misconduct by one or more employees in the Mayor Pro Tem's office, and review of procedures occasioned by that incident, revealed some chronic and long-standing weaknesses in the procedures required for administration of progressive, efficient compensation policies. In large part these weaknesses resulted from prior real or perceived policies that (1) relied exclusively on "across-the-board" pay adjustments; (2) discouraged pay distinctions based on performance within a job classification; and (3) discouraged pay based on productivity by task. A "one-size-fits-all" system of compensation represents bad management, but easy administration.

The City of Houston has made strides in improving these procedures, but much work remains to be done. The same can be said of such basic HR functions as automatic and paperless payroll systems, where the City has made enormous strides under the leadership of the Controller, Chief Administrative Officer, Directors of HR, IT, and F&A, along with countless City employees.

Other portions of this Management Response to the Controller's Report provide more detail concerning specific issues raised. However, the Administration challenges any suggestions that large numbers of employees engaged in unlawful conduct.

Implementing the recommendations will undoubtedly improve the existing compensation program where: (1) employees are paid based on performance, with annual evaluations that have consequences, (2) there is no unjust enrichment of employees, and (3) taxpayer dollars are saved by rewarding great performance by means other than solely using permanent salary adjustments.

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