



MIKE HARMON
AUDITOR OF PUBLIC ACCOUNTS

January 20, 2022

Mike Denham, Mayor
226 Boone Street
Bromley, KY 41016
Via Email: mdenham@cityofbromley.com

RE: Summary of Examination Results

Dear Mayor Denham:

The Auditor of Public Accounts (APA) has completed a limited-scope examination of the City of Bromley (City). This examination was initiated after our office received specific concerns regarding financial activity of the City. The purpose of this examination was not to provide an opinion on the City's financial statements, but to review specific matters brought to our attention and make recommendations to ensure the City's financial and management activities are accurate, transparent, and follow applicable criteria.

To address the concerns expressed, the APA reviewed certain information related to the City, such as the City Code of Ethics, City Council meeting minutes, and credit card statements. We also analyzed financial documentation, such as payroll records and bank statements, tested a sample of expenditures, conducted interviews, and performed other procedures deemed necessary. Unless otherwise indicated, the examination period of this engagement was July 1, 2019 through February 28, 2021.

Findings

Four findings emerged from the examination and are presented in this letter, along with corresponding recommendations. The APA requests a written response from the City on the implementation status of the recommendations within 60 days of the receipt of this letter.

Finding 1: The City may have misspent an indeterminable amount of Municipal Road Aid funds.

Between July 2019 and March 2021, the City paid a private lawn and landscape contractor approximately \$42,763 for select seasonal services. Payments to the contractor were not based on the actual services performed, but rather the contractor was paid through monthly installments of

\$2,036.33 for snow removal, salting, mowing, edging, weed eating, flower installation, and weed control. In this 21-month period, over half of the total cost paid to the contractor, or approximately \$22,400, was paid from Municipal Road Aid (MRA) funds. However, MRA funds are restricted for use and only certain services to be provided by the contractor appear eligible to be paid from MRA funds. While City officials indicated payment was set up in this manner to assist with budgeting, not all services included in the calculation of the monthly payment were actually being provided by the vendor each month. For example, 73% of the total monthly bill, or \$1,486.33, was for snow removal services.

The City used MRA funds to pay the full monthly bill due from the contractor eleven times during the exam period (November 2019 through April 2020 and November 2020 through March 2021). MRA funds are one of several revenue-sharing programs funded by state motor fuel taxes as provided by KRS 177.320 through KRS 177.366. Funds for Municipal Road Aid are to be used only for the construction, reconstruction, and maintenance of city streets. Officials at the Kentucky Transportation Cabinet confirmed that snow removal, salting, grass cutting, trimming, and cleanup are acceptable uses of these funds “as long as the work is done on city streets or in right of way along city streets.”

Because the invoices for the months paid with Municipal Road Aid funds all lacked sufficient detail as to what and where the services were being provided, a detailed analysis of both the bid advertisement and the final contract was required. According to both documents, grass cutting, trimming, and cleanup, would occur at the “city park, 4 sign areas, memorial, and 509 Main Street,” none of which clearly meet the criteria for eligibility as they appear to each cover more area than simply the right of way of city streets. Additionally the contract states that weed control is to be provided “in play ground area, cracks in concrete surfaces, and curb line gutters.” While a portion of that work may be in the right of way of city streets, work in the City playground does not appear to meet eligibility criteria for using MRA funds. Snow removal and salting city streets is an acceptable expense to be paid with Municipal Road Aid funds; however, due to the lack of detail on the invoices, it is unknown if this service was actually provided in the months in which the funding was utilized and specifically where it occurred.

We recommend the City of Bromley:

- Work with staff from the Kentucky Transportation Cabinet’s Department of Rural and Municipal Aid to determine the eligibility of past and future expenditures in regards to Municipal Road Aid funding.

Finding 2: City payroll practices resulted in violations of KRS 83A.070, KRS 337.320, and Section 3 of the Kentucky Constitution.

Several questionable City payroll practices were identified during the examination period. These practices included the City regularly issuing paychecks to employees and elected officials prior to the end of the stated pay period. This action is in conflict with Section 3 of the Kentucky Constitution as public funds are to be used only to compensate individuals for services rendered, not for services anticipated to be completed. The City also compensated an employee separately for cleanup work performed for the City said to be beyond his regular duties, although the duties for his regular position had not been formally documented. Additionally, the hours worked each day and each week were not being recorded for this employee (or any other City employee), a violation of KRS 337.320. Without record of the specific hours worked or a job description, there is no evidence to document that the work was performed outside of his regular work hours or that the duties go beyond those assigned to his regular position. Finally, the City has not established through ordinance the compensation rates for all employees within a personnel and pay classification plan, as required by KRS 83A.070.

Employees paid prior to the end of the pay period

Throughout the examination period, the City routinely paid city officials and employees for work performed prior to the end of the pay period. For example, checks issued on May 15, 2020 were for work performed during the period May 1 through May 31, 2020, 16 days of which were yet to occur at the time the employees and officials were being paid. The City Clerk explained that the City Council meets during the first week of the month, so City Council members have completed their work by mid-month. Additionally, the City Clerk stated that the remaining City employees and the Mayor work part-time and are salaried; therefore, no changes would be needed for overtime worked or leave taken because it could not be earned.

However, Section 3 of the Kentucky Constitution states, “[n]o grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services.” The issuance of paychecks mid-month in anticipation of work performed at a later date violates this provision, as it would be using public funds to pay for services not yet performed.

Secondary assignment paid without complete documentation

A public works employee received 12 additional pay checks, totaling approximately \$755, for clean-up work performed on blighted property for the City during the examination period. The City considered the employee’s work on such properties to be beyond the employee’s regular duties, although a written description of their regular duties does not appear in the City’s ordinances or elsewhere, nor is compensation for the position noted in the City’s personnel and pay classification plan or adopted by ordinance. In addition, the specific hours attributed to the clean-up work and to the employee’s regular position are not documented in enough detail to

confirm that the hours do not overlap with one another, resulting in payments for duplicate hours of work.

KRS 83A.070 requires the adoption by ordinance of a “personnel and pay classification plan” that establishes the compensation of city employees and nonelected city officers. Despite minutes from the January 4, 2017, City Council meeting noting that a new Public Works employee had been hired and that his “job description...will be updated along with salaries,” no formal action has been taken in the nearly five years since to update the City’s personnel and pay classification plan to include this position.

The City Clerk advised in September 2021 that the City intended to combine the job duties for water meter reader, park and playground, and road maintenance into a public works job description. However, without a documented understanding of the duties to be performed by this public works employee, it remains unclear as to whether or not the blighted property clean-up work falls outside of the employee’s expected duties.

The City acknowledged that the employee’s work was not well documented, as timesheets, where specific hours worked each day could have been noted, are not required of any employees and the expected hours of the day to be worked were irregular, as the employee set his own hours based on the assigned workload. For the employee’s work on blighted properties, the employee submitted a Purchase Order Request stating the total number of hours worked on each property, but the Purchase Order Requests did not specify the hours of the day worked. This lack of documentation means there is no way to determine if the employee’s submitted hours are associated with the clean-up of blighted property or regular maintenance work for the City. In addition, it is a violation of KRS 337.320, which requires every employer to keep a record of “[t]he hours worked each day and each week by each employee.” The City Clerk explained that the employee “is a valued employee who the city trust to be honest and forthright.” Though trust is an important part of an employer/employee relationship, the City has an obligation to taxpayers to be fiscally responsible and ensure public funds are expended appropriately.

Personnel and pay classification plan is outdated

As previously discussed, KRS 83A.070 requires the adoption by ordinance of a “personnel and pay classification plan.” In addition to the exclusion of the public works employee from the personnel listed in the plan, Section 31.02 of the City’s Code of Ordinances states that compensation ordinances will be “kept on file and available for public inspection in the office of the city’s Clerk.” However, the City Clerk was unable to provide evidence that compensation had been established by ordinance for the public works employee or the custodian.

We recommend the City of Bromley:

- Discontinue the issuance of paychecks mid-month for work not yet performed to avoid violation of Section 3 of the Kentucky Constitution.
- Update by ordinance the personnel and pay classification plan to include all positions currently or potentially held by city employees and nonelected city officers, setting the pay scale for each position.
- Require City employees to complete a timesheet for both their regular duties and any additional work performed.

Finding 3: The City has no written expenditure policies leading to inconsistent financial practices.

The City lacks written expenditure policies establishing clear guidance of expectations for how employees and elected officials are to initiate, approve, document, and review expenditures and credit card transactions. As a result, City officials and employees follow undocumented practices that have contributed to inconsistent financial oversight. Inconsistencies included a lack of segregation of duties in the review of expenditures, adequate supporting documentation not being consistently maintained for all expenditures, and a questionable expense. While most sampled expenditures examined appeared appropriate and reasonable in amount, such weaknesses in internal control increase the risk that fraud, waste, and abuse could occur and not be detected by the City.

Segregation of Duties Issues

During the examination period, it was a practice of the City to require supporting documentation in the form of purchase orders and receipts for all purchases; however, documentation was not always reviewed by someone other than the purchaser prior to payment being issued by the City's accounting firm. It was the City's practice that the City Clerk review supporting documentation for all purchases made by City personnel, including those she made, prior to payment. While supporting documentation for credit card purchases made by the City Clerk had at one time been reviewed by the Treasurer, no one took over this responsibility once the Treasurer position was vacated at the end of December 2020. Without requiring proper segregation of duties, the City is at greater risk for fraud, waste, and abuse of taxpayer funds.

Documentation Issues

Although the City stated that they follow the Kentucky Department of Library and Archives' recommendations regarding record retention policies, a review of 50 expenditures noted two instances in which the necessary supporting documentation was not initially provided because it had not been maintained by the City. In both instances, the City provided vendor statement of accounts showing a balance owed, \$2,091 and \$740 respectfully, but the City did not retain the

original invoices identifying what was purchased and when. The City had to request copies of original invoices from the two vendors to support the purchases and to be added to their records. Once additional information was provided, both purchases were determined to be reasonable, necessary, and of public benefit.

Questionable Spending

One purchase reviewed in the sample of 50 City expenditures was for the purchase of APS Swing/Slide mats. The mats cost \$400, but the total cost of the purchase was \$690 as it included \$290 for shipping. The City Clerk advised that the City Park chairperson had made the purchase upon recommendation of the APS Swing installer but it was unclear whether the shipping cost was factored into the procurement decision. The City Clerk stated that she has since advised the Park Chairperson that the City should purchase from local vendors. While this verbal communication of the City's purchasing preference to shop local is helpful to the purchaser for future purchases, had the City established written guidance to this effect prior to the purchase being made, greater consideration may have been given to the total purchase cost, including shipping. Establishing procurement guidance in the form of written policies and procedures serves only to reduce the City's risk of wasteful, unnecessary, or excessive spending and provides greater accountability to taxpayers.

We recommend the City of Bromley:

- Develop written policies and procedures governing its financial operations. When developing policies and procedures, the City should ensure adequate internal controls are established. Once developed, the City should ensure City personnel and elected officials impacted by the policies and procedures are notified of the established guidance. Furthermore, we recommend policies and procedures established are reviewed periodically to address any concerns over high-risk areas.
- Evaluate its operating processes to develop and implement sufficient internal controls to provide better oversight and accountability. Internal controls should provide appropriate segregation of duties for financial-related job functions. If segregation of duties is not possible due to staff size or budget limitations, then compensating controls should be established.
- Ensure the documentation retained to support expenditures be detailed/itemized, state the purpose, amount spent, date paid, method of approval, and be maintained for the proper amount of time.

Finding 4: The City did not have a written agreement in place for the rental of City property for nineteen months.

Starting in January 2020, the City rented space, in the building formerly used by the Bromley Volunteer Fire Department, to the owner of the Ludlow Bromley Yacht Club (LBYC) at the rate of \$700 per month. The Mayor and the owner of LBYC entered into a verbal agreement, rather

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than a written one. Verbal contracts are discouraged because they present an increased risk for the contracting government due to potential disputes and lack of transparency to the public.

Additionally, verbal contracts for a year or more are not enforceable in court under Kentucky's statute of frauds, KRS 371.010. Kentucky courts, as well, have interpreted language requiring mayoral execution of contracts and other written obligations to require all contracts entered into by a city government to be in a written form, as stated in *City of Greenup v. Public Service Com'n*, 182 S.W.3d 535 (Ky. Ct. App. 2005).

After inquiries by the APA, the City replaced their verbal agreement for the rental of the City property with a written contract signed August 4, 2021.

We recommend the City of Bromley:

- Refrain from entering into verbal agreements so that the agreed-upon terms are documented, verifiable, and transparent to provide greater safeguard of City assets.

Thank you for your attention to these matters and the City's cooperation with this limited-scope special examination. If you have any questions regarding this letter, please contact me or Tiffany Welch, Executive Director, at 502-564-5841.

Thanks and God Bless,



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