



CITY OF LINDSAY

Forensic Audit Report

November 12, 2024

Cindy Byrd, CPA
State Auditor & Inspector

CITY OF LINDSAY
GARVIN COUNTY, OKLAHOMA
FORENSIC AUDIT
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Why This Audit Was Performed

An audit of the City of Lindsay (City) was performed at the request of Greg Mashburn, the Garvin County District Attorney, in accordance with 74 O.S. § 212(H).

Executive Summary

Lindsay experienced substantial financial difficulties during the audit period, July 1, 2019, through June 30, 2022, primarily caused by the City Council's (Council) failure to provide adequate oversight along with poor financial decisions made by city management. Obvious warning signs such as excessive P-card expenditures, the improper use of restricted funds, and the incurring of late fees went unnoticed.

The effect of the lack of oversight was increased by ineffectual city leadership that failed to properly maintain records and oversee city functions. The inability to obtain timely audits potentially cost the City over \$1M in grant funds and the failure to maintain a properly functioning utility program also cost the City over \$1M.

While there were countless examples of a lack in oversight, mismanagement, and poor decision making, there was very little evidence of fraudulent behavior, less than \$2,000.

The City is currently working diligently to resolve the issues noted in this report and appears to have "turned the corner" financially. The total dollar amount in all City and LPWA accounts as of June 30, 2024, is \$5,780,981. Public audits are being performed again and the City has caught up and is fully eligible to apply for grant money. The last outstanding audit, for FY 2023, was completed on August 8, 2024.

Audits (Page 2)

The City's financial audits were not completed in the statutorily required timeframe. Two audits were filed more than a year late, primarily delayed due to the City's disorganized and incomplete financial records. The lack of timely audits hindered the Council's assessment of the City's financial status and prevented the City from applying for grant funds.

Utility Revenue (Page 2)

As of June 2024, the City estimated that it had underbilled commercial customers by approximately \$1.5 million. Of that amount the City expects to recover approximately \$676,000.

Additional failures to process rate hikes, collect late fees, and bill for current usage resulted in lost revenue of approximately \$152,460.

Two city employees and two council members received preferential treatment on their utility accounts by continuing to receive services despite not having made any payments for periods ranging from four to eight months.

Sales Tax (Page 4)

The City has a 4% sales tax rate, 2% is unrestricted, 1% is designated for emergency services (EMS), and 1% is designated for the Lindsay Public Works Authority (LPWA) restricted to the purchase of water and for making improvements to the utility system.

LPWA sales taxes in the amount of \$493,990.16 were improperly retained in the City's General Fund bank account in violation of law. There were no LPWA expenditures made out of the General Fund to cover the restricted sales tax requirement. As such, this amount should be returned to the LPWA account.

EMS sales taxes were not fully transferred to the EMS bank account between FY 2020 and FY 2022. There were also transfers totaling \$2,939,865.85 made from the EMS bank account back to the General Fund bank account during this timeframe.

There was no legal requirement to transfer EMS sales taxes to the EMS bank account as long as the amount of expenditures from the General Fund bank account for EMS purposes exceeded the 1% restricted sales tax remaining and/or transferred into that account. It was determined that the total EMS expenditures made from the General Fund, which included police, fire, and ambulance costs, exceeded the 1% sales tax received by more than \$2,000,0000 per year.

Expenditures (Page 6)

A review of expenditures identified a number of issues ranging from failure to comply with the City's charter, missing paperwork, improper paperwork, and procedural noncompliance. Credit card expenditures in excess of \$223,000 per year, many without purchase orders, occurred without any board knowledge, approval, or oversight.

Eight GRDA invoices were paid late, some due to insufficient funds being available to make the payment, resulting in late fees totaling \$16,319.04.

Due to missing records, the appropriateness of \$34,488.83 in P-card expenditures, or 29.5% of the total expenditures tested, could not be verified.

Rebecca Niernberger, city manager, made inappropriate fuel purchases totaling \$531.14 and questionable food purchases totaling \$1,789.85. She also charged \$727.00 in fuel for her personal vehicle to the Webb Oil account. There were no records to support \$10,651.87 or 41.7% of the P-card expenditures tested.

There were no records supporting \$20,156.49, or 55.7% of the P-card expenditures tested for the former city clerk Kathy Hammans.

Because of the lack of records for both Niernberger and Hammans, the municipal purpose of \$30,808.36 of expenditures could not be determined.

Payroll (Page 11)

A one-time Covid hazard payment was approved by the Council. This program, administered by former city manager Niernberger, resulted in overpayments to employees totaling \$26,065.34. In addition, the total payout of \$91,450 exceeded the \$85,000 Council authorized amount by \$6,450.

Regarding pay raises, six out of 43, or 14%, of the Personnel Action Reports were either missing, not properly filled out, or not properly approved. With the exception of one pay raise for an acting city manager, the Council did not specifically approve any of the pay raises.

Twenty-four of the pay raises reviewed, occurring between November 3 and November 8, 2021, and increasing pay from 24.2% to 64.8%, were approved solely by the city manager. These increases cost the City over \$281,994 per year not counting additional retirement contribution costs.

Four contracts involving former city managers were not properly approved by the Council. Additionally, in February 2021, Niernberger's salary was increased without a contract change and without Council approval.

There were no indications that any city employee received extra payroll payments.

Donations (Page 15)

City donations were recorded on a spreadsheet that was incomplete and included only partially annotated expenditure information. According to the current city manager, numerous expenditures were made based on the donation purpose, but the expenditures were paid from the General Fund bank account and were not reimbursed by the Donation Fund bank account. This appears to be supported by the Donation Fund account balance which increased from \$145,458.21 at the end of July 2019 to \$276,306.04 at the end of June 2022.

The failure to accurately track donations resulted in the inability to credit \$92,000 in donations to designated departments. Additionally, LPWA utility payments totaling \$5,627.84 were erroneously deposited into the City's Donation bank account.

Open Records Act (Page 16)

During the audit period, 6% of Open Records requests were not completed and 19.4% of completed requests required two weeks or longer.

Currently, the City appears to have a well-functioning Open Records process in place and Open Records requests are being handled in a timely manner



November 12, 2024

TO THE HONORABLE GREG MASHBURN DISTRICT ATTORNEY, DISTRICT 21

Presented herein is the forensic audit report of the City of Lindsay. The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

This report is addressed to, and is for the information and use of, the District Attorney as provided by statute. This report is also a public document pursuant to the Oklahoma Open Records Act, in accordance with 51 O.S. §§ 24A.1, *et seq.*

Sincerely,

A handwritten signature in blue ink that reads "Cindy Byrd".

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

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**City Managers During Audit Period
July 1, 2019 – June 30, 2022**

Stephen Mills August 26, 2017 – July 21, 2020

Tom Inman July 22, 2020 – February 1, 2021

Rebecca Niernberger.....January 25, 2021 – June 30, 2022

Objective 1**Audits**

OBJECTIVE *Determine if public audits were completed in a timely manner, the reason for any late audits, and the effect of any late audits on the City’s financial status.*

Timely Completion of Public Audits

FINDING *City financial audits were not completed in the statutorily required timeframe.*

Public audits from FY 2019 through FY 2022 were evaluated. None of the audits were completed within the time constraints required by 11 O.S. § 17-105 which requires audits to be filed with the State Auditor and Inspector within six months after the close of each fiscal year. All audits were at least five months late and two of the audits, FY 2021, and FY 2022, were 19 and 16 months late, respectively.

Causality for Non-Timely Financial Audits

The two audits filed more than a year late, were primarily delayed due to the City’s disorganized and incomplete financial records, which hindered the auditor’s ability to conduct the audits.

The poor state of the City’s records appeared to be attributed to at least two factors: 1) the decision made in November 2020 to stop utilizing an outside CPA firm to aid with bank reconciliations and general ledger entries and 2) the City’s financial staff lacked the proper skill sets required to adequately maintain the financial records. When the CPA firm was asked to resume providing assistance in May 2022, they stated that “records have not been recorded or kept up for about 18 to 24 months dating back to November-December 2020.”

Effect of Non-Timely Financial Audits

The lack of timely audits hindered the Council’s assessment of the City’s financial status and prevented the City from applying for grant funds.

The lack of current audits and not maintaining up to date financial records prevented the Council from obtaining an accurate status of the City’s financial condition. According to the current city manager, if audits had been current, the City could have applied for grants worth up to 50% of the \$2.3M cost of new smart meters approved for purchase by the Council in December 2021. This is only one example of the potential revenue losses incurred by the City due to the inability to apply for grants that required current public audits.

Objective 2**Utility Revenue**

OBJECTIVE *Determine if utility bills accurately reflected usage, if utility bills were timely, and if late fees and the management of accounts were handled equitably and appropriately.*

Utility Billing Usage

FINDING *As of June 2024, the City estimated that it had underbilled commercial customers by approximately \$1.5 million. The City expects to recover approximately \$676,000.*

A combination of factors resulted in the underbilling of customers including:

- 1) Electric meters were installed but not entered into the billing system and therefore not read;
- 2) Some meters were installed incorrectly and as a result the customers were underbilled;
- 3) Internal settings in the billing software were set incorrectly resulting in underbilled accounts; and
- 4) Some customers had “demand”¹ meters and were not being charged for that specific type of service.

The time period during which customers were underbilled began as early as 2010, well prior to the beginning of the audit period, and ended in May 2024. The current plans of the City are to collect 18 months’ worth of underpayments; the collection process started in July 2024.

FINDING *Failure to implement a Council approved rate hike in a timely manner resulted in approximately \$88,460 in lost revenue.*

The Council implemented a 1¢ rate hike on residential and commercial electric rates effective January 1, 2019. According to the City and the public auditor, this rate hike was not implemented until June 2019, resulting in the loss of approximately \$88,460 in utility revenue.

FINDING *Failure to collect late fees, during at least an eight-month period, resulted in an estimated loss of \$64,000 in utility revenue.*

Late fees were not properly assessed for the eight months of utility billing reviewed. There were no indications that the cancellation of late fees was approved by the Council. Brad Smith, the former vice mayor, stated the Council never approved waiving late fees or account cut-off notices, or letting customers carry overdue balances. The current city manager estimates that late fees average around \$8,000 per month which would have resulted in an estimated loss of \$64,000 in revenue.

FINDING *The City failed to bill for all current utility usage, resulting in a backlog of billed utility revenue of up to \$170,000.*

Utility bills were sent once per month and covered a 30-day period. As a result, billing fell five days behind for each calendar year when 30-day billing cycles were used. During the audit period, billings were delayed by as much as six weeks. For example, bills sent out on October 30, 2020, were for usage between August 18 and September 17, 2020. With utility revenue averaging \$121,795 per month, the City would be approximately \$170,000 in arrears for utility billing based on a six-week billing lag time.

On July 1, 2019, the City had \$741,794 in unpaid utility billing accounts and by June 30, 2022, the amount was \$930,982, an increase of \$189,188 in three years. The progression of unbilled

¹ Demand meters give customers additional power guaranteed to be available “on demand.”

days contributed to the \$189,188 increase in unpaid utility bills; when customers cancelled service without payment, as much as two to three months of outstanding service could have been unbilled.

NOTE: *It should be noted that the utility billing related findings identified above have now been corrected.*

Preferential Treatment of Utility Customers

FINDING *Two city employees and two council members, received preferential treatment on their utility accounts by continuing to receive services despite not having made any payments for periods ranging from four to eight months.*

For the period of July 2019 through June 2022, utility bills for 53 accounts, 29 council members and key city employees, and 24 other customers, were compared to determine whether preferential treatment was given. The review included an evaluation of late payments, payment arrangements, and the length of time customers were allowed to receive continued service without making a payment.

Of those tested, three key employees, three council members, and four citizens had significant overdue utility billing accounts. After payment arrangements were made for these accounts, the citizens complied with 23 of 24, or 96%, of their arrangements and the key employees and council members only complied with 3 of 8, or 38%, of their payment arrangements.

Citizens never went more than two months without making a utility payment. However, four of the six key employees and council members had payment gaps of four or more months with the most extreme gap being eight months. The key employees and council members maximum amounts in arrears ranged from \$1,145.34 to \$3,469.95.

Both groups received equal treatment when it came to not being charged late fees.

Comparison of Utility Revenue to Utility Deposited

Internal controls surrounding the collection and deposit of utility revenues were strong. A statistical analysis of revenue collected and deposited did not identify any anomalies.

A sample of utility billing credit adjustments for the month of July 2021 were reviewed. Detailed documents were available in customer files for 11 of the 12 adjustments reviewed and a systems report verified the appropriateness of the twelfth adjustment.

Objective 3

Sales Tax

OBJECTIVE *Determine if sales taxes were received and properly allocated and expended.*

The citizens of Lindsay voted to approve a 4% sales tax rate, 2% was unrestricted, 1% was designated for EMS², and 1% was designated for the LPWA for purchasing water and making capital improvements to the utility system.

68 O.S. § 2701(G) stipulates:

*Any municipality that levies a dedicated tax pursuant to a vote of the people for the purpose of funding public safety or any other governmental purpose **shall not redirect all or a portion of the dedicated tax revenue to another purpose without a vote of the people authorizing such action.** [Emphasis added]*

Additionally, Okla. Const. Art. 10, § 19, specifies:

*...every ordinance and resolution passed by any...city..., levying a tax shall specify distinctly the purpose for which said tax is levied, and **no tax levied and collected for one purpose shall ever be devoted to another purpose.** [Emphasis added]*

For the period of July 1, 2019, through June 30, 2022, all sales tax distributions from the Oklahoma Tax Commission (OTC) to the City were directly deposited into the General Fund bank account without exception. The total sales tax revenue received was then reviewed to determine if it was allocated appropriately as per city ordinance.

EMS Sales Tax

The *EMS One Cent* bank account was set up to receive the EMS 1% sales tax from the General Fund bank account, with transfers made on a monthly basis. In FY 2020, the sales tax was transferred into the EMS bank account every month with no exceptions. In FY 2021, \$177,276 of the tax was not transferred to the EMS bank account and in FY 2022, \$542,589.82 was not transferred.

In addition to the sales taxes not being fully transferred to the EMS bank account, between FY 2020 and FY 2022 there were also transfers totaling \$2,939,865.85 made from the EMS bank account back to the General Fund bank account.

There was no legal requirement to transfer any of the EMS sales tax to the EMS bank account. As long as the amount of expenditures from the General Fund bank account for EMS purposes exceeded the 1% restricted sales tax remaining and/or transferred into that account, there was no violation of the restricted sales tax ordinance.

No Finding *In each of the three years reviewed, total EMS expenditures, which included police, fire, and ambulance costs, exceeded the 1% sales tax received by more than \$2,000,000 per year.*

LPWA Sales Tax

According to Ordinance 238, the 1% LPWA sales tax was restricted to making capital improvements and purchasing of water for the utility system of the City. It could also be used for the payment of principal and interest on any indebtedness incurred by the LPWA and the City.

² EMS, per Ordinance 452, includes but is not limited to, ambulance services, police protection and fire protection.

FINDING *A total of \$493,990.16 of LPWA restricted sales tax was improperly retained, in violation of law, in the City’s General Fund bank account. The City should transfer this amount to the LPWA account.*

In FY 2020, the 1% sales tax was transferred into the LPWA account every month. In FY 2021, the total amount of 1% sales tax not transferred totaled \$56,063.69. In FY 2022, the total amount of 1% sales tax not transferred was \$437,926.47. The total amount not properly transferred was \$493,990.16. Had the City not retained these funds in the General Fund bank account, the account would have had a negative balance. The City should transfer the \$493,990.16 to the LPWA when possible.

Date	Gen Fund End of Month Bank Balance	LPWA Restricted Taxes Retained	Balance of Gen Fund without LPWA Tax
Jan 2022	\$306,136.45	\$323,613.53	\$ (17,477.07)
Feb 2022	\$335,654.71	\$383,735.42	\$ (48,080.71)
Mar 2022	\$336,690.63	\$436,196.55	\$ (99,505.92)
Apr 2022	\$280,529.79	\$493,990.16	\$(213,460.37)
May 2022	\$439,503.46	\$559,014.44	\$(119,510.98)

Restricted Sales Tax Related Expenditures

EMS and LPWA restricted sales tax expenditures for FY 2020 – FY 2022 were reviewed to determine whether they were reasonable, appropriate, and used for their properly restricted purpose. The expenditures tested were found to be appropriate.

Objective 4 Expenditures

OBJECTIVE *Determine if expenditures were appropriate, properly approved, and if bidding requirements were followed.*

Citizens, city employees, and at least one council member expressed concerns over late Grand River Dam Authority (GRDA) payments, the purchase of unneeded and/or improper items, the failure to comply with bidding requirements, and expenditures involving possible conflicts of interest.

GRDA Payments

FINDING *Eight GRDA invoices were paid late, some due to insufficient funds being available to make the payment, resulting in late fees totaling \$16,319.04.*

Payments to GRDA were reviewed to determine the timeliness of payments and to verify that all payments were made with non-restricted funds. In three instances, while written in a timely manner, checks were not mailed out due to insufficient funds being available in the bank account. It was confirmed by accounts payable personnel that checks were intentionally held when the insufficiency of available funds became an issue.

Late payments occurred for bills due in June, September, October, and November 2021, as well as March, April, May, and June 2022, resulting in the payment of \$16,319.04 in late fees.

General Expenditures

Expenditures were evaluated to determine whether they were for an appropriate purpose, made in compliance with the city charter, properly bid, and properly approved.

FINDING **Numerous instances of administrative noncompliance were found including unapproved purchase order's, missing invoices, undated invoices, and unencumbered purchases.**

The evaluation of a sample of twenty-six expenditures provided the following results.

- One purchase greater than \$35,000 was not properly approved by the Council.
- Eight purchase orders greater than \$10,000 were not properly approved.
- Four purchases were missing invoices.
- Ten purchase orders were not properly encumbered.
- Four purchases had invoices that were not dated.

One purchase, questioned by citizens, was for industrial shelves and tools costing \$4,740, that were purchased from what was described as “a garage sale.” The purchase order was not approved, there was no invoice, and the check, purchase order, and purchase request, were all dated August 24, 2021. While there was nothing illegal about the purchase, per the current city manager, these shelves sat unused from the time they were purchased in August of 2021 until July 2023, which leads one to question the necessity of this purchase.

Questions were also raised about the bidding on the purchase of an ambulance. As per the council minutes of August 13, 2018, bids were obtained and approved with regard to the purchase of an ambulance for \$159,342.99. However, the supporting documentation of the bid process and award could not be provided.

FINDING **No evidence could be located that bidding requirements were complied with regarding the purchase of a ladder truck for \$729,000.**

According to City Ordinance 491, purchases in excess of \$35,000 shall be bid.

A ladder truck, purchased in 2018 for \$729,073, was approved by the Council but was purchased using a Texas BuyBoard contract. No evidence was located indicating that the company on the BuyBoard contract was a properly bid vendor for the State of Oklahoma. The ladder truck was financed for \$780,000 over a 7-year term.

P-Card Expenditures

P-Card³ expenditures were reviewed for both the City and the LPWA for the period of July 2018 through June 2022. During this four-year period there were 16 City P-Card users and 15 LPWA P-Card users. City P-Card expenditures averaged over \$128,000 per year and LPWA P-Card expenditures averaged over \$94,000 per year. The total P-card expenditures during this period equaled \$892,786.10. P-Card use was governed by City Ordinance 491, the Purchasing Cardholder Agreement, and Purchasing Cardholder Guide.

FINDING **Due to missing records, the appropriateness of \$34,488.83 in expenditures, or 29.5% of the total expenditures tested, could not be verified.**

Following a review and analysis of P-Card statements, testing of P-card expenditures were narrowed to expenditures made by six city employees. The findings, as a whole, indicated that the City and the LPWA did not maintain adequate records to support P-Card expenditures, with

³A P-card is a purchasing card, or a credit card used to make purchases for goods and services.

several months' records missing. One individual consistently failed to submit his P-Card Transaction Log with any accompanying receipts.

A review of \$117,067.99 in expenditures reflected that records were lacking for \$34,488.83, or 29.5% of these expenditures.

FINDING *Council members interviewed were not specifically aware of the P-Card expenditures and none were approved by the Council.*

Former City Manager

FINDING *Rebecca Niernberger, city manager, made inappropriate fuel purchases totaling \$531.14 and questionable food purchases totaling \$1,789.85.*

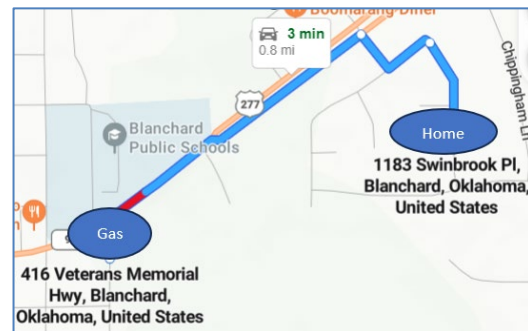
FINDING *There were no records supporting \$10,651.87 or 41.7% of the P-card expenditures tested for Niernberger. Because of the lack of records, the municipal purpose for these expenditures could not be determined.*

A disproportionate amount of the missing P-card records was attributed to two individuals, the former city manager Rebecca Niernberger, and the former city clerk Kathy Hammans.

Niernberger possessed an LPWA P-card between May 2021 and May 2022. During this period, she made purchases totaling \$37,326.05. Of these transactions, 125 five expenditures totaling \$25,519.90 were evaluated. Of her tested expenditure total, \$10,651.00, or 41.7% of the transactions had no supporting documentation.

All fuel purchases made by Niernberger were considered “not appropriate” and any food purchases made without a purpose for the meal annotated on the receipt were considered “questionable.” Niernberger made \$531.14 in fuel related purchases and spent \$1,789.85 for food without any documented official purpose. Neither personnel policy, nor the P-Card Cardholder Agreement and associated guide specifically addressed the legitimacy of purchasing food in the local area.

Niernberger received a \$500 per month car allowance and was allowed to claim mileage via a mileage reimbursement⁴ if she traveled in excess of 75 miles on city business. No authorization existed for charging fuel on her P-card. She stated that the fuel purchases were for other city vehicles that she was riding in during trips to purchase items for the City. This statement appeared inaccurate, considering a number of these fuel purchases were made in Blanchard, within one mile of her personal residence, or in the town of Dibble directly on her route between home and work.



Niernberger stated that the food purchases should have been reimbursed from the donation account. No evidence could be found that the purchases were reimbursed from donations.

⁴ At 50% of the Internal Revenue Service maximum rate.

FINDING ***The former city manager improperly charged \$727.00 in fuel at Webb Oil by filling her personal vehicle.***

Webb Oil provided fuel to city vehicles. Pumps are accessed through the use of a key. Each vehicle typically has a key associated with it; keys are not assigned to an individual. Invoices were discovered where Key 1233 purchases were made and billed to “Gen Gov” totaling \$727.00. No vehicles were assigned to the City’s general government account.

The questionable purchases occurred every month between September 2021 and May 2022,⁵ all during the time Niernberger was city manager. Several city employees stated they witnessed her fueling up her personal vehicle. Niernberger stated that she was provided a key by former city clerk Kathy Hammans, which Hammans denied. When it was pointed out that she received a car allowance for travel she stated that she never really thought about it and thought it was for her driving her car back and forth to work.⁶

Former City Clerk

FINDING ***There were no records supporting \$20,156.49, or 55.7% of the P-card expenditures tested for the former city clerk. Because of the lack of records, the municipal purpose for these expenditures could not be determined.***

Former city clerk Kathy Hammans utilized both a City and a LPWA P-card. Between July 2018 and April 2022, Hammans made a total of \$106,044.39 in P-card expenditures. Of this amount, 133 expenditures totaling \$36,177.05 were evaluated. There were no records for \$20,156.49, or 55.7% of the expenditures tested.

The purchase of a watch at Zales jewelry on Hamman’s P-card was questioned by a concerned citizen. Upon review of the timeline of the watch purchase and the subsequent engraving of the watch, the transaction was determined to be for an appropriately purchased retirement gift.

Street & Alley Fund

Deposits into the Street & Alley Fund bank account consisted of gas excise taxes from the OTC and commercial motor vehicle tax payments from the county. The gas excise taxes are restricted in use and the motor vehicle taxes are unrestricted. The motor vehicle taxes did not need to be deposited into the Street & Alley Fund but were also deposited there because OTC payments alone were insufficient to meet the expenditures budgeted for the fund.

FINDING ***An analysis of the deposits in, and transfers out, of the Street and Alley Fund bank account reflected that \$2,517.26 in restricted funds were improperly transferred to the City’s general fund to make the June 3, 2022, payroll. These funds should be returned to the Street and Alley Fund bank account.***

⁵ Excluding April 2022

⁶ Niernberger did not reside in the City even though her contract required it. She lived in Blanchard, 23 miles away.

Infrastructure Fee

On June 10, 2019, the Council approved Resolution 2019-09 adding a monthly \$8.00 infrastructure fee to all utility accounts. Between June 2019 and September 2020, utility infrastructure fees, totaling approximately \$180,000, were not deposited in a separate bank account nor tracked separately in accounting records.

On September 14, 2020, the Council approved Ordinance 546, authorized the opening of a bank account for infrastructure fees, and clarified that the utility infrastructure fee was dedicated to “infrastructure improvements within the municipal boundaries of the City of Lindsay.”

FINDING *In June 2022, a \$200,000 transfer was improperly made from the LPWA Infrastructure bank account to the LPWA bank account to make payroll. The \$200,000 should be returned to the Infrastructure account.*

The “Infrastructure” bank account was opened on October 30, 2020, and deposits began on November 12, 2020. A total of \$222,601.24 was deposited between November 2020, and June 30, 2022.

On May 26, 2022, \$200,000 was improperly transferred to the LPWA bank account to make the June 3, 2022, payroll.

200000.00 I/B TRANSFER TO 10412 6/3/22PAYROLL

Nepotism/Conflict of Interest

NO FINDING *Transactions between the City and two individuals related to a former mayor did not violate statute or the City Charter.*

Concerned citizens questioned transactions that occurred between two vendors and the City. The vendors in question were related to a former mayor.

Statute⁷ addresses prohibited conduct and conflicts of interest purchases as transactions between a municipal officer or employee or their business and the municipality. Statute⁸ also states:

No elected or appointed official . . . shall appoint . . . any person related by affinity or consanguinity within the third degree to any governing body member or to himself. . .to any office or position of profit in the municipal government.

The two vendors in question were not city employees so any financial interactions between them and the City would not be covered under the noted statutes.

The City Charter also prohibits the city manager from appointing any person related to any member of the city council by affinity or consanguinity within the third degree to any “office or position or employment.” Neither of the two vendors, one of whom already had a contract with the City prior to his relative becoming mayor, were *employees* of the City. Therefore, these relationships were also not in violation of the Charter.

⁷ 11 O.S. § 8-113

⁸ 11 O.S. § 8-106

Objective 5**Payroll**

OBJECTIVE ***Determine if payroll payments were accurate, if vacation time was tracked and assessed appropriately, and if one-time Covid hazard payments and pay raises were appropriate and properly approved.***

City Charter

Payroll records were reviewed in relation to the following City Charter requirements to determine whether defined policies and procedures complied with the Charter and whether anyone received unauthorized payroll payments.

- The members of the Council and the mayor shall receive no compensation for their service.
- The salaries and wages of all employees of the City not otherwise provided for by the Charter shall be fixed and regulated by the city manager, subject to the approval of the Council.
- No officers of the City, or city employees, shall receive additional compensation or service rendered by the City other than their salaries.
- The Council shall by a majority vote, appoint a city manager, who shall be chosen solely upon a basis of his executive and administrative qualifications, and who shall receive a salary to be fixed by the Council.
- Every officer who shall approve, allow, or pay any demand on the treasury not authorized by law, or by this Charter, shall be liable to said city individually and on his official bond for the amount of the demand so illegally approved, allowed, or paid.

Council Member Pay

Per the City Charter, council members and the mayor “shall receive no compensation for their services.” No evidence was found that any payments were received by council members during their time on the Council.

Payroll & Vacation

The City pays its employees every two weeks. Some employees are salaried, and some employees are hourly. Hourly employees receive overtime pay at 150% of their regular hourly rate. Vacation accumulation and usage is tracked in the payroll system.

Payroll records were reviewed for 15 key city employees to ascertain whether they were paid appropriately. ***There were no indications that any city employee received extra payroll payments.*** All non-payroll payments made to these employees were also reviewed. There were 45 non-payroll payments made. Of these payments:

- Four payments totaling \$156.12 could not be evaluated due to lack of documentation.
- One \$219.09 payment for travel included an improper reimbursement for \$32.70.

One-Time Payroll Payments

In a special meeting held January 18, 2022, the Council voted to approve COVID hazard pay to all city employees and codified this decision in Resolution 2022-02. The Resolution authorized the following:

- 1) Payments were to be \$1,300 per person.
- 2) Payments were to be prorated for the time the employee was employed at the City between January 2021 and December 2021.
- 3) Total costs were not to exceed \$85,000.

FINDING *A one-time Covid hazard pay was approved by the Council. This program, administered by former city manager Niernberger, resulted in overpayments to employees totaling \$26,065.34. In addition, the total payout of \$91,450 exceeded the \$85,000 Council authorized amount by \$6,450.*

All 59 employees awarded the one-time Covid pay received \$1,550 instead of the approved payment amount of \$1,300 per person. None of the 15 employees whose payments should have been prorated were prorated. These improper payments resulted in a total overpayment of \$26,065.34.

The total paid out as part of the one-time program was \$91,450, which exceeded the \$85,000 costs approved by the Council by \$6,450.

WHEREAS, The City of Lindsay will appropriate \$1,300.00 COVID Hazard Pay (on a prorated basis) for each City of Lindsay – Lindsay Public Works employee employed full time during January 2021 to December 2021, all of which are considered essential employees;

WHEREAS, The City of Lindsay will issue ARPA COVID Hazard Pay to each essential full-time eligible employee still in the employment of the City of Lindsay-Lindsay Public Works Authority;

WHEREAS, this resolution shall take effect immediately upon adoption.

NOW THEREFORE, The City of Lindsay by approval of this resolution hereby approves the appropriation of American Rescue Plan Act COVID Hazard Pay in an amount not to exceed \$85,000 and authorizes the City Manager to execute all documents necessary to issue the Hazard Pay.

Niernberger, as city manager, received authorization to execute the COVID Hazard Pay program and failed to ensure that Resolution 2022-02 was properly implemented. According to city charter,⁹ any officer approving unauthorized payments “**shall be liable to said city individually**” for the amount of the approved transaction.

Sec. 8. - **Unauthorized** payments.

Every officer who shall approve, allow or pay any demand on the treasury not authorized by law, or by this Charter, shall be liable to said city individually and on his official bond for the amount of the demand so illegally approved, allowed or paid.

⁹ Article XV. General Provisions – Sec. 8. Unauthorized Payments

Pay Raises

Pay raises provided during the audit period were identified and analyzed as to compliance with the City Charter which states that all raises shall “be fixed and regulated by the city manager, subject to the approval of the city council.”

Pay raises listed in the City and LPWA “Rate Change Log Reports” were scheduled out and the percentage increase was identified for each raise. The Personnel Action Reports (PAR), used to document and approve pay raises prior to council approval, were also obtained and reviewed. Forty-three pay raises were evaluated for appropriateness and proper approval as per the Charter.

FINDING *Six out of 43, or 14%, of the Personnel Action Reports were either missing, not properly filled out, or not properly approved. With the exception of one pay raise for an acting city manager, the Council did not specifically approve any of these pay raises.*

FINDING *Twenty-four of the pay raises, ranging from 24.2% to 64.8%, were approved solely by the city manager between November 3 and November 8, 2021. These increases cost the City over \$281,994 per year not counting additional retirement contribution costs.*

Niernberger stated that she provided these raises at the direction of Mayor Eric Dodson because they were losing Emergency Medical Technician and Fire Department personnel and needed to give them raises to retain them. According to Niernberger, Dodson stated that she had the authority to do this. Dodson denied making this statement and stated he had no idea regarding the size of the raises but did state that he told Niernberger that she could give raises as long as they were within the budget.

The FY 2022 Estimate of Needs cover letter, submitted and signed by Niernberger, stated that pay increase “Calculations were done on 3% merit pay increase (sic), as appropriate, for all city employees.” This statement represents that pay raises were considered in the budget but only at a 3% level. The cover letter also stated that “this is not to be interpreted that all city employees will receive a 3% pay increase.”

It was discovered that Niernberger had contacted the city attorney regarding pay raises two weeks prior to approving the November 2021 raises and received an e-mail with a highlighted section of the city charter attached¹⁰ showing it was a requirement to receive Council approval for pay raises.

From: Amanda Mullins <Amanda@amullinslaw.com>

Sent: Tuesday, October 19, 2021 11:53 AM

To: Rebecca@ci.lindsay.ok.us

Subject: Wage Increase

Sec. 8. - Salaries and wages.

The salaries and wages of all employees of the city not otherwise provided for by this Charter shall be fixed and regulated by the city manager, subject to the approval of the city council, on the basis of the responsibilities and qualifications required of them. Premiums on all surety company bonds of the city employees and officers shall be paid by the city. No officers of the city, or city employees, shall receive additional compensation or service rendered by the city other than their salaries.

¹⁰ Article IV. Corporate Power: How Vested, Executed - Sec. 8. Salaries and Wages

According to the previously mentioned section of the City Charter,¹¹ any officer approving unauthorized payments “**shall be liable to said city individually**” for the amount of the illegally approved transaction.

Sec. 8. - **Unauthorized** payments.

Every officer who shall approve, allow or pay any demand on the treasury not authorized by law, or by this Charter, shall be liable to said city individually and on his official bond for the amount of the demand so illegally approved, allowed or paid.

Council Approval of City Manager Salaries

City manager contracts were reviewed to determine whether they were appropriate and properly approved by the Council.

FINDING *Four contracts involving former city managers were not properly approved by the Council. Additionally, in February 2021, Niernberger’s salary was increased without a contract change and without Council approval.*

- 1) Stephen Mills signed a new contract on July 13, 2020. The council minutes for July 13, 2020, mentioned the contract in discussion but did not indicate a vote approving the contract. No evidence was located indicating this contract was ever approved by the Council.
- 2) Tom Inman signed a contract on September 16, 2020, the contract was mentioned in the September 14, 2020, council meeting but was tabled as to any action or vote. No evidence was located indicating this contract was ever approved by the Council.
- 3) Rebecca Niernberger signed multiple versions of her contract in a short span of time with various levels of Council approval. Her initial contract was approved on January 11, 2021.

On January 21, 2021, a contract change was made concerning her start date. This contract change was not approved by the Council.

On February 8, 2021, a contract change was made concerning vacation time and was approved by the Council.

On June 10, 2021, a contract change adding insurance benefits was discussed by the Council and a motion to approve was made. However, there was no recorded vote. Handwritten notes from the meeting also provided no indication that there was a vote. The contract was signed on the same date by then Mayor Eric Dodson.

On February 23, 2021, Niernberger’s salary was raised from \$3,230.77 per pay period to \$3,489.23 per pay period, \$84,000 to \$90,720 per year, without an official contract change and without council approval. Even though Niernberger’s contract was subsequently amended again on June 10, 2021, her contract salary remained at \$84,000 and did not reflect the February 23, 2021, pay increase she received.

¹¹ Article XV. General Provisions – Sec. 8. Unauthorized Payments

01-0445	NIERNBERGER, REBECCA							
	2/08/2021	1	ARC	0.000	40.385	NEWHIRE RATE PER COUNCIL 84000.00 ANNUALLY		
	2/08/2021	1	ARC	0.000	40.385	NEWHIRE RATE PER COUNCIL 84000.00 ANNUALLY		
	2/08/2021	1	ARC	0.000	3,230.770	NEWHIRE RATE PER COUNCIL 84000.00 ANNUALLY		
	2/08/2021	1	ARC	0.000	3,230.770	NEWHIRE RATE PER COUNCIL 84000.00 ANNUALLY		
	2/19/2021	1	ARC	40.385	43.615	SALARY RAISED TO COVER 10% OMRP COUNCIL AGMT		
	2/19/2021	1	ARC	3,230.770	3,489.230	SALARY RAISED TO COVER 10% OMRP COUNCIL AGMT		

Vacation Pay

Use and sale of vacation time was evaluated for key employees.

All vacation appeared to be tracked appropriately, charged appropriately, and accumulations were capped at 240 hours as required.¹² The sale of vacation time appeared to only have occurred upon termination or retirement.

One employee allegedly went on vacation to Alaska without being charged vacation time. It was determined that the employee was on leave under FMLA,¹³ hence regular leave was not charged.

Objective 6 Donations

OBJECTIVE Determine if donations were properly accounted for.

Citizens expressed concern over whether donations were tracked and expended appropriately.

The City maintains two donation accounts. One for donations made to the City and one for LPWA donations. The City’s Donation Fund bank account had a balance of \$276,306.04 as of June 30, 2022, and the LPWA Donation Fund bank account had a balance of \$393.17.

City Donations

During the audit period \$167,268.69 was deposited or transferred into the City’s Donation Fund bank account. There were no logs or records maintained on cash donations, so the cash that was deposited could not be allocated to a particular department. Donation checks totaling more than \$53,000 were made out to the General Fund without any indication as to which specific department was to receive the funds. The following donations were identified:

- Fire Department -- \$1,000.00
- EMS -- \$28,365.33
- Police – 10,155.00
- Library -- \$1,500.00
- Parks -- \$12,500.00
- Golf Course -- \$2,511.35
- Freedom Fest -- \$4,500.00
- Fall Festival -- \$11,000.00
- Christmas in the Park -- \$400.00
- Animal Welfare -- \$1,225.00

¹² Per the Employee Handbook.

¹³ Family and Medical Leave Act

FINDING *The City had no working mechanism in place to accurately track donations received resulting in the inability to credit donations to the applicable department. At least \$92,000 in donations could not be linked to any particular event or department and were not properly tracked in the City’s records.*

City donations were maintained on a spreadsheet that was incomplete and included only partially annotated expenditure information. There were also entries in the spreadsheet that were added “to make (sic) balance match.” Reflecting that the accountability and tracking of donations was not properly managed.

10/22/2020	Walmart	Grant/Donation	10-400-405	500.00	1,964.00	
12/10/2020	Marathon	donation		1,500.00	40,678.98	BALANCE AFTER SPLIT WITH OTHER DEPT
	Jana Whitt	donation	10-400-405	500.00		
		to make balance match		37,714.98	=	
03/03/2023	Jana Whitt	donation	10-400-405	500.00		38,214.98
12/11/2020	Marathon	donation		1,000.00	18,044.96	
12/10/2020	TO MAKE BALANCE MATCH			12,057.64	30,602.60	This is after splitting with police and fire
01/04/2021	OK AMB ASSOCIATION	CARES FUNDS		25,901.20	56,503.80	

According to the current city manager, numerous expenditures were made based on the donation purpose, but the expenditures were paid from the General Fund bank account and were not reimbursed by the Donation Fund bank account. This appears to be supported by the Donation Fund account balance which increased from \$145,458.21 at the end of July 2019 to \$276,306.04 at the end of June 2022.

FINDING *LPWA payments totaling \$5,627.84 were erroneously deposited into the City’s Donation Fund bank account and need to be transferred to the LPWA bank account.*

Checks noted as LPWA utility payments totaling \$5,627.84 were deposited into the City’s Donation Fund account. This amount needs to be returned to the LPWA account. It is also possible that some of the \$28,169.10 in cash deposited into the Donation Fund should have been deposited elsewhere but there is no way to make that determination.

LPWA Donations

The LPWA donation fund received very few donations and had only one expenditure and one inter-bank transfer. Between July 2019 and August 2021, the balance of the fund remained at approximately \$14,000. In October 2020, \$179 was transferred to the LPWA General Fund and on September 15, 2021, a 2021 Can-Am 1000 Defender four-wheeler was purchased reducing the account balance to \$400. The account balance remained below \$400 for the remainder of the audit period. ***It appears that LPWA donations were tracked and spent appropriately.***

Objective 7

Open Records Act

OBJECTIVE *Determine if Open Records requests were processed in a timely manner.*

On several occasions, citizens mentioned that the City failed to adequately comply with Open Records requests. As a result, a review of prior and current Open Records policies and compliance was conducted.

FINDING During the audit period, 6% of Open Records requests were not completed and 19.4% of completed requests required two weeks or longer.

All requests are tracked in an Open Records request ledger, a spreadsheet, that includes the name of the requesting party, the request, the department responsible for providing the information, the received and completion dates, as well as a comment section describing when and how the information was provided to the requestor.

There were 470 Open Records requests during the audit period. Thirty-one had no completion date in the spreadsheet, three requested non-existent records, and 28, or 6%, were not completed. The remaining 439 requests were completed in an average of eight days. The longest request required 103 days and 85 of the requests, or 19.4%, required two weeks or longer to complete.

Currently, the City appears to have a well-functioning Open Records process in place and Open Records requests are being handled in a timely manner.

A brief analysis of requests submitted in the first half of FY 2024 was conducted. Between July 3, 2023, and December 27, 2023, the City received 83 Open Records requests, and all were completed. The average number of days required to complete a request was 3.3 days. One request required 71 days to complete. Excluding this request, the average number of days to complete all other requests was 2.5 days. Only three of the 83 requests, 3.6%, required two weeks or longer to complete.

Final Thoughts

The City has made great strides since the end of the audit period, June 30, 2022. The total dollar amount in all City and LPWA accounts as of June 30, 2024, is \$5,780,981. Public audits are being performed again and the City has caught up and is fully eligible to apply for grant money. The last outstanding audit, for FY 2023, was completed on August 8, 2024.

The Open Records response process appears to be operating smoothly and efficiently. Expenditures have been brought under control and P-Card expenditures, now under council review, have decreased from over \$223,000 per year to less than an average of \$50,000 per year for FY 2022 and FY 2023. Unbudgeted pay raises have been partially reversed and current pay raises are within budget. Utility billing errors have been identified and corrected and the process of collecting a portion of the amount owed has begun.

DISCLAIMER

In this report, there are terms used and legal references made which are relevant to the issues reported. However, the legal authority to determine the guilt of any person for any act is the exclusive jurisdiction of law enforcement, prosecutorial, and/or judicial authorities as designated by law.

O·K·L·A·H·O·M·A
S·A·I
STATE AUDITOR & INSPECTOR



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