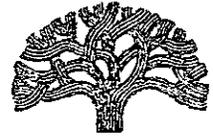# City of Oakland
Office of the City Auditor

Performance Audit of
Oakland's Hiring Practices

October 21, 2009

City Auditor
Courtney A. Ruby, CPA

CITY OF OAKLAND

October 21, 2009

OFFICE OF THE MAYOR
HONORABLE CITY COUNCIL
OAKLAND, CALIFORNIA

RE: A PERFORMANCE AUDIT OF OAKLAND'S HIRING PRACTICES

Dear Mayor Dellums, President Brunner and Members of the Council:

Attached is the Performance Audit of the City's Hiring Practices. The audit had the following objectives:

> ➤ Review all aspects of personnel practices related to hiring, transfers, and promotions centrally and at operating departments;

> ➤ Evaluate controls in place intended to ensure the fair, uniform, and transparent selection of the best employee for the position;

> ➤ Assess the efficiency, effectiveness, and compliance with rules, regulations, and agreements of the solicitation, evaluation and appointment processes; .

> ➤ Identify opportunities for business process improvement and determine best practices in these areas; and

> ➤ Evaluate the overall system providing such services and report the results to the City Council and the public.

At the onset of this audit, the City's elected and appointed leadership, citizens, and community groups were acutely aware of the ongoing perception throughout the City that a lack of leadership and accountability was allowing for unfair hiring activities and circumvention of Civil Service Rules. The audit concludes that, in fact, unfair hiring practices had occurred and appearances of favoritism were created.

This report provides a systemic understanding of how the City has arrived at this place. The audit also provides 85 detailed recommendations to change the City's hiring practices by establishing a human resource function that demands unwavering accountability, fairness, open access, systems controls, management oversight, and uniform enforcement of policies and procedures—many elements the City is currently lacking.

The citizens and the employees of Oakland deserve a fair, open and transparent government in which employees are recognized for their competency, not their personal connections. It is my hope that this report serves as a roadmap of how our past can lead us to a better, stronger future. Our citizens and employees deserve no less.

I would like to express my appreciation to the City Administration for their cooperation throughout this audit process. A response from the Administration is included in the audit report.

Respectfully submitted,

COURTNEY A. RUBY, CPA
City Auditor

City of Oakland
Office of the City Auditor

Performance Audit of Oakland's Hiring Practices

October 2009

SJOBERG✸EVASHENK
CONSULTING, INC

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Executive Summary

Sjoberg Evashenk Consulting has completed an audit of the City of Oakland's (City) hiring and related personnel processes under contract with the Office of the City Auditor. The objectives of the audit were to:

> ➢ Review all aspects of personnel practices related to hiring, transfers, and promotions centrally and at operating departments.

> ➢ Evaluate controls in place intended to ensure the fair, uniform, and transparent selection of the best employee for the position.

> ➢ Assess the efficiency, effectiveness, and compliance with rules, regulations, and agreements of the solicitation, evaluation and appointment processes.

> ➢ Identify opportunities for business process improvement and determine best practices in these areas.

> ➢ Evaluate the overall system providing such services and report the results to the City Council and the public.

Overall, we found a prevalent perception throughout the City that a lack of strong leadership and accountability has allowed the perpetuation of unfair hiring activities and inappropriate circumvention of Civil Service Rules. To determine if the City's personnel rules and requirements were appropriately followed, we utilized a multifaceted testing strategy of the City's various hiring and promotion practices and processes—results concluded that unfair hiring practices had occurred and appearances of favoritism were created.

Specifically, one segment of testing focused on appointments received through standard civil service processes and the test results established that most of the individuals tested were appropriately hired. However, it also identified instances where individuals were given permanent civil service positions based on personal connections even though they were not eligible to be hired due to the Charter rules prohibiting hiring close family members, did not meet minimum qualifications, or had not participated in competitive examinations.

Additional segments of our testing focused on the City's other types of hiring practices and the results revealed additional unfair or inappropriate hiring practices that unfairly skirt or disregard proper hiring processes and contribute to the perception that the City's hiring practices are unfair and do not provide fair consideration of candidates. Specifically, we found:

> ✓ Individuals who were promoted to higher classified positions through a "desk audit" process rather than competitive methods even though lists of qualified and examined individuals were available for consideration;

> ✓ Appointments which were permitted to exploit City Charter and Civil Service Rules through the authorization of positions in temporary classifications with job duties inconsistent with rules and policies;

> ✓ Individuals in temporary, part-time, and provisional positions who were allowed to linger well beyond allowable time limits; and,

✓ Application and selection steps related to being accepted into the City's police and fire academies that were not always consistently applied and documented.

Furthermore, the City's personnel management structure is based on a weak internal and system control environment, including significant separation of duties issues, making accountability, oversight, and monitoring of hiring and promotional decisions difficult and allowing inappropriate hiring practices to occur and go unaccounted.

There appears to have been an underlying disregard for the tenets of fair, open, and competitive hiring and promotion practices by Oakland officials and managers who overrode civil service requirements for chosen candidates through direct or indirect actions, took advantage of loopholes in the civil service process intended for other purposes, or exploited narrowly defined sections of the Charter related to hiring authority and responsibility. The improper hiring activities introduced above and discussed throughout this report reinforce the broad negative perception that favoritism and unfair hiring practices exist. Consequently, it is imperative that Oakland's leaders create a firm "zero tolerance" approach to any circumvention of the City's personnel rules and regulations.

While several City officials and managers have recently been terminated, the impact of past hiring decisions remains and much work needs to be done to instill integrity into Oakland's Civil Service System and human resources structure. City leaders must take expedient action to set and maintain a "tone at the top" wherein favoritism and circumvention will not be tolerated, ethical behavior is expected, and improper conduct will not be overlooked. Further, for the City to ensure fairness and transparency within its hiring processes, it must establish a human resources framework that demands unwavering accountability, fairness, open access, system controls, management oversight, and uniform enforcement of policies and procedures—many elements the City is currently lacking.

While there are significant personnel issues that the City must immediately address, certain positive attributes exist as well. Specifically, the City's Civil Service Rules related to hiring generally appear adequate and have reasonably flexible components that facilitate the City's ability to meet its hiring demands. For example, to receive the benefit of seniority credit when competing for promotional opportunities, applicants must have a 'fully effective' performance appraisal from the preceding 12 months. Additionally, the City's Office of Personnel Resource Management[1] (OPRM) has certain processes that are generally well applied, such as examination files that include adequate documentation (including testing information), eligibility lists, and personnel requisitions. There also appears to be a satisfactory working relationship between OPRM and most of the operational departments.

Based on the information gathered and analyzed relative to the audit objectives, we identified the following issues with the City's hiring processes:

➤ Existing City rules have not sufficiently addressed nepotism concerns and Anti-Nepotism Ordinance lacks clarity

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[1] As of July 1, 2009, OPRM was renamed the Department of Human Resource Management (DHRM).

> Lack of oversight, accountability, and segregation of duties allowed inappropriate hiring practices

> Desk audit process circumvents Civil Service Rules

> Police Officer Trainee hiring processes were generally fair and rigorous, while Firefighter Trainee processes require considerable improvement

> Management oversight and tracking of part-time and temporary hiring processes is insufficient and fuels widespread perceptions that hiring processes are based on personal connections

> City struggles to comply with Equal Access Ordinance and lacks processes to track progress

> Additional personnel processes and documentation have not been adequately maintained

Existing City Rules Have Not Sufficiently Addressed Nepotism Concerns and New Anti-Nepotism Ordinance Lacks Clarity

The City of Oakland has suffered from a common perception that its hiring processes allow for favoritism and do not provide fair consideration of candidates based on pertinent job-related qualifications. While the City's Charter includes an anti-nepotism provision, it does not provide adequate protection against favoritism in hiring practices as intended because it too narrowly defines those who are barred from hiring close relatives. Further, the City failed to prohibit the former City Administration Officer (CAO) from inappropriately hiring close relatives in lieu of well-qualified individuals—actions that defy the intent of a fair and competitive civil service system, are contrary to the City's Charter rules, and communicate to City management that favoritism is not only tolerated, but endorsed by the City's "ultimate appointing authority."

Aside from legal ramifications, nepotism as well as the appearance of any form of favoritism has significant negative impacts on employee morale, commitment, and job satisfaction. Not only did the actions of the former CAO violate the City Charter, undermine public trust in government, and communicate to City management that favoritism is tolerated, job opportunities were taken away from individuals who in good faith participated in competitive civil service processes. Worse yet, the inappropriate appointments are at the expense of the City's taxpayers when individuals are compensated more than they are entitled to receive based on qualifications. The City must now deal with the combination of tarnished credibility, significant morale issues, and widespread perceptions that the City's hiring processes are based on personal connections rather than qualifications and fair, competitive processes.

To begin addressing these issues, the City adopted a new Anti-Nepotism Municipal Ordinance in November 2008.[2] While the intention of the City to toughen its rules against favoritism is admirable, the new Ordinance lacks clarity and does not fully address

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[2] On March 12, 2009, the Court suspended enforcement of the new Ordinance pending the outcome of a future court hearing.

accountability related to certain violations. The City must determine a way to ensure all definitions under the new Ordinance are sufficiently clarified, all applicable relationships are disclosed, reporting structures are modified, if necessary, and all employees are held accountable to complying with all aspects of the Charter and new Ordinance.

Lack of Oversight, Accountability, and Segregation of Duties Allowed Inappropriate Hiring Practices

Although our testing[3] of the City's standard hiring processes during the last five years revealed most appointments were consistent with established Civil Service Rules, we identified five cases in which individuals were permanently appointed to classified civil service positions without either going through competitive processes or meeting the minimum qualifications of the classifications to which they were appointed.[4] Additionally, we found the lack of formal processes and oversight related to the City's hiring of exempt employees increases the risk that employees are appointed without possessing basic job-related qualifications, particularly for the City's high-level management positions. When the City employs individuals who have not been through the appropriate hiring process or do not meet basic qualifications, it risks having employees who are not competent to perform the functions of the job for which they were hired. Such actions violate the basic tenets of civil service protection and fairness, exacerbate negative perceptions related to hiring practices, and undermine the credibility of the City's government and its leaders.

Additionally, we found a weak internal and system control environment, including a significant lack of separation between personnel and payroll duties that is essential to holding hiring authorities accountable for following proper appointment processes and creates opportunities for inappropriate hiring activities to go unaccounted. Specifically, the City has not appropriately segregated OPRM and Payroll responsibilities, duties, and system access related to certain sensitive human resources activities within the Oracle Human Resources Management System (Oracle HRMS), such as approving hiring decisions, entering new employee information, linking employees to defined positions, paying employees, or removing terminated employees. As a result of the blurred responsibilities between OPRM and Payroll, the City's personnel system lacks checks and balances; thus, creating an environment where process integrity and accountability can be disregarded and inappropriate personnel activities can occur.

The City must improve accountability to ensure appropriate hiring practices are followed, including developing processes to ensure job opportunities are provided only to the most qualified individuals that have participated in the appropriate hiring processes. This requires establishing a strong control environment where personnel and payroll duties and access are fully segregated and monitoring and adequate oversight activities are implemented. Additionally, OPRM's role must be clearly defined and communicated to the City as having the delegated authority and accountability for all hiring decisions, including advancing or

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[3] This segment of testing included 184 cases involving two components: a judgmental sample of 140 individuals selected from the five years included in the scope of our audit; and 44 of individuals identified through interviews and the City Auditor's whistleblower hotline.
[4] The five exceptions noted here are in addition to other significant weaknesses we identified that also revealed unfair or inappropriate hiring practices and are discussed throughout the report in several chapters.

denying any requests that do not comply with City Ordinances, policies, procedures, and rules.

Desk Audit Process Circumvents Civil Service Rules

Although the City's Civil Service Rules allow for the promotion of classified employees who are found to be working out-of-class to a higher classification through a classification study or "desk audit," we found this mechanism was used to manipulate civil service processes. Specifically, our testing revealed that nearly 61 percent of the 130 desk audits that were conducted in the last five years resulted in recommendations that the duties of the position required a classification change. Of these, we selected 10 to analyze in-depth and all of the individuals were simply promoted to the higher classification without having to compete for the promotion—two of the 10 individuals were promoted even after failing previous civil service exams for the higher classification. Additionally, individuals on active eligible lists established at the time of the desk audit promotions were not considered or allowed to compete for the positions.

Such practices are not utilized in other major civil service systems, including Los Angeles which does not allow promotions into higher classifications under any circumstances unless the individual is on an active promotional eligibility list. Although OPRM management and staff assert that they cannot deny an employee a promotion if they find the employee has been working "out of classification," this view runs contrary to the spirit of merit based civil service systems that require competitive processes and appropriate eligibility to fill a position within a classification or achieve a promotion.

The City must improve current processes related to out-of-class assignments to ensure Civil Service Rules are not circumvented, such as eliminating the practice of allowing desk audits to promote individuals without competitive processes and ensuring that departments and agencies receive pre-approval by OPRM before employees are assigned out-of-class work.

Police Officer Trainee Hiring Processes were Generally Fair and Rigorous, While Firefighter Trainee Processes Require Considerable Improvement

Overall, we found that the hiring processes for entry-level sworn employees are similar for both Police and Fire, and each process includes structured components as well as other processes that are subjective. Oakland Police Department's (OPD) hiring and selection processes appear generally balanced and comply with standards set forth by the City's sworn hiring procedures and Peace Officer Standards and Training (POST). Although portions of OPD's selection processes are subjective, overall, we found OPD's hiring processes to be generally reasonable and consistent. However, our testing of 25 individuals admitted into OPD academies revealed notable exceptions relating to two individuals with background and fitness results that were inconsistent with the results of other police officer trainee selections tested during the same time period. Additionally, we found an inconsistent application of rules surrounding the ability of academy recruits to "recycle" (i.e. withdraw from one academy and enter a subsequent academy).

Conversely, we found the Oakland Fire Department's (OFD) hiring and selection processes to generally lack documentation and many academy records were mishandled, lost, and/or

damaged. While we are unable to conclude on the adequacy of OFD's historical hiring and selection processes due to the lack of reliable documentation, information related to the most recent hiring processes suggests that OPRM and OFD mismanaged the processes related to accepting applications for new firefighter trainee positions.

While we agree that the City should have some discretion in hiring decisions, it is important to retain adequate justification for excluding specific individuals at each stage of the process as well as demonstrate how decisions were reached that certain candidates were more qualified to enter the academy than others. Best hiring practices suggest that hiring decisions should be based on well developed criteria and an established trail of relevant documentation, such as ranking sheets and interview notes, should be retained so that subjective decisions can be justified. Without such documentary evidence, the City creates an environment where the legitimacy of its hiring decisions can be questioned and negative perceptions surrounding the City's hiring processes continue.

Management Oversight and Tracking of Part-Time and Temporary Hiring Processes is Insufficient and Fuels Widespread Perceptions that Hiring Decisions are Based on Personal Connections

Although part-time and temporary hiring processes are not governed by Civil Service Rules, we found a widespread perception that hiring related to part-time and temporary classifications often falls to individuals with connections rather than based on qualifications. While the most notable examples of nepotism relate to civil service appointments of relatives of the former CAO discussed previously, we consistently heard from current employees, Personnel Department staff, and City officials that one of the most prevalent sources of favoritism exists within the hiring processes for the City's regular (non-permanent) part-time and temporary positions.

In fact, we found the City lacks formal processes and oversight over part-time and temporary hiring—limiting the City's ability to ensure that those selected have the appropriate minimum qualifications, background, and experience for the position and do not have relationships that would make the selection inappropriate. We also found that the use of temporary classifications, such as Exempt Limited Duration Employees and Temporary Contract Services Employees, is often not consistent with Civil Service Rules and that allowable timeframes for service within these positions have been exceeded, sometimes by years. In addition to the lack of oversight related to regular part-time and temporary positions, a lack of oversight and tracking related to provisional appointments has also resulted in excessive timeframes that do not comply with City Charter Section 903 and led to an inappropriate permanent appointment to a classified position.

The City must develop hiring processes that ensure individuals are selected based on qualifications rather than personal connections and ensure that recruiting processes are immediately enacted to appropriately fill temporary positions only when the need and justification complies with the intent of Civil Service Rules. Additionally, OPRM should develop tracking and monitoring processes related to all temporary and provisional appointments to ensure these hires adhere to the intent of the Civil Service Rules in terms of justification and allowable timelines as well as ensure these appointments are reflected appropriately in the Oracle HRMS system.

City Struggles to Comply with Equal Access Ordinance and Lacks Processes to Track Progress

On May 8, 2001, the City of Oakland adopted an Equal Access to Services Ordinance (EAO) with the purpose of removing language barriers so that the City's limited-English speakers would have full access to Oakland's government services and information given that 23 percent of Oakland residents are limited-English speakers. However, the City has struggled to comply with Ordinance provisions, such as tracking and monitoring departmental compliance, as well as submitting annual compliance reports to the City Council. In fact, in 2008, only 11 percent of overall public contact positions (PCP) were filled with bilingual employees; thus, the City fails to provide the same level of service to the City's limited-English speakers as is provided to English speakers.

The lack of tracking and monitoring departmental compliance, failure to submit complete and concise annual compliance reports, lack of effective communication and coordination between EAO, OPRM, and departments limits the City's ability to significantly make progress toward having equal language representation for City services. If the City does not address these issues, it will not be able to hire a sufficient number of bilingual employees in PCPs and thus, remain non-compliant with the Ordinance.

Additional Personnel Processes and Documentation Have Not Been Adequately Maintained

The City's civil service classifications have not been properly updated or maintained and certain exempt classifications have not been appropriately vetted and approved as mandated by City Council and Civil Service Rules. When minimum qualifications for classifications are not maintained, ill-qualified candidates may be promoted within the hiring process. Additionally, OPRM recruits applicants and designs exams based on the requirements listed in class specifications; hence, with outdated class specifications in use, these activities are less effective and efficient and even if done properly may not meet operating departments' hiring needs.

Furthermore, the City lacks cohesive, standardized document maintenance and retention policies, does not centrally oversee and ensure that background checks have been performed, and that the results are acceptable and retained. While a few departments have adequate documentation processes in place, such as maintaining examination documentation, many departmental document retention processes are inconsistent and require improvement.

Without consistent policies and standardized processes in place, the City may find it difficult to conduct effective hiring evaluations, ensure compliance with local, state or federal laws, or evaluate the veracity of statements made on candidates' applications. A fundamental human resources component such as verification of candidate qualifications should have clear, traceable steps back to supporting documentation, be it electronic or hard copy. Minimally, the inconsistency in the City's documentation and document retention processes and policies may draw into question the City's ability to hire the best qualified workforce possible.

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Introduction

The City of Oakland operates one of the most active public service employment systems in California and supports a workforce of more than 5,500 employees within 18 client agencies, departments, and offices.

Figure 1. Oakland City Organization Chart

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                            Electorate

    City Attorney     Mayor      City Council     City Auditor

                       City
                    Administrator

         City Clerk          CEDA

      Contracting and     Finance and
        Purchasing        Management

          Fire              Police
        Department        Department

       Information      Library Services
        Technology

         Museum          Parks and
                         Recreation

       Public Works     Human Services
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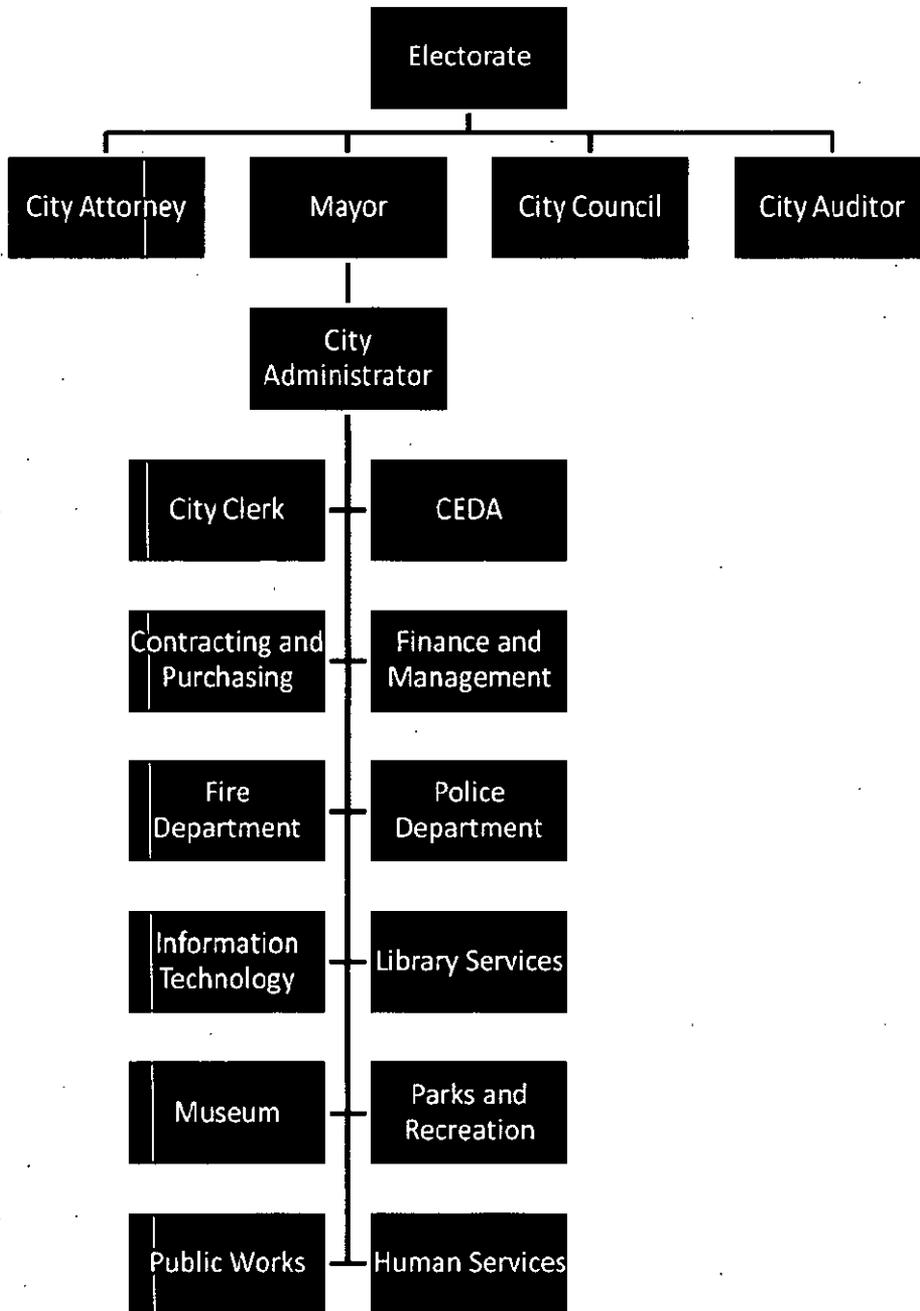
According to the Office of Personnel Resource Management (OPRM), annually over the last couple of years, OPRM has processed more than 8,000 employment applications, and added approximately 2,000 applicants to more than 100 eligible lists related to non-sworn positions. OPRM also manages the initial recruitment and examination processes of thousands of sworn police officer and firefighter candidates each year. Additionally, as part of assisting City hiring authorities with filling their vacancies, OPRM management states that staff must adhere to the many local, state, and federal laws and regulations and follow the basic principles of merit-based selection procedures, including those recommended by professionals in the field of Industrial Organization and Psychology as well as those mandated by the United States Equal Employment Opportunity Commission.

In general, the majority of the City positions are held by employees who are required to undergo a civil service hiring process whereby a competitive examination process is conducted in order to identify applicants whose eligibility and qualifications for a specific job classification is based on merit. The City also employs a number of employees that are exempt from Civil Service Rules, such as elected officials, temporary employees, and part-time staff. Exempt employees serve at the will of the appointing authority (i.e. CAO, City Attorney, and City Auditor) and can be terminated at any time without cause. Employees with a property interest in their job, i.e. civil service employees, cannot be deprived of their employment—discharged or suspended—without due process.

Table 1. List of Oakland Employees by Employment Category, as of March 2009[5]

Employment Status	Number of Employees in each Employment Status as of 3/2009
Regular Full-time (classified)[6]	1,992
Regular Full-time (exempt)	263
Sworn	1,290
Permanent Part-time[7]	106
Regular (non-permanent) Part-time	1,732
Temporary:	
Temporary Contract Services Employees[8]	153
Exempt Limited Duration Employees	35
Provisional	3
TOTAL	**5,574**

[5] Information provided by OPRM from the City's Oracle System.
[6] Includes 1 classified limited duration employee.
[7] Includes 1 exempt permanent part-time employee.
[8] Includes 47 California Public Employee Retirement System (PERS) Annuitants and 1 Prior PERS.

Civil Service Hiring Process

In order to receive a regular civil service appointment, employees must meet minimum qualifications for a position, successfully participate in a civil service examination for the position, receive a qualifying score on the examination to be placed on a certified "eligible list," be appointed by a City department/agency/office, and serve a probationary period. The following entities are integral to the City's hiring processes:

> ➤ OPRM—Recruits and examines applicants to obtain the best possible City employees. Its divisions focus on recruitment/selection, classification, examination, and certification as well as public safety hiring.

> ➤ City Departments (Departments)—Submits personnel requisitions to OPRM to fill vacancies, conducts interviews of eligible applicants from certified lists (classified positions only), and selects candidates for City positions.

> ➤ City Administrative Officer (CAO)—Ultimate hiring authority for all City appointments (except City Attorney and City Auditor) and administrator of the City's civil service and personnel system.

> ➤ Civil Service Board (CSB)—Establishes and enforces Civil Service Rules as well as hears discharge and suspension appeals, discrimination complaints, classification issues, and examination protests.

> ➤ Payroll Department (Payroll)—Administers the payroll processing for all City departments, except the Port Department, and handles the data input for all personnel and hiring related information through the City's Oracle HRMS system.

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Objectives, Scope, and Methodology

Sjoberg Evashenk Consulting was hired by the Oakland City Auditor (Auditor) to conduct a performance audit to evaluate the City of Oakland's (City) hiring process. The Oakland City Charter §403 states that the City Auditor "shall have the power and it shall be his or her duty to audit the books, accounts, money, and securities of all departments and agencies of the City and such other matters as the Council may request."

In light of the Auditor's mandate, we focused our efforts on gathering and analyzing information relative to the following audit questions and objectives:

- ➢ How does the City administer its personnel practices related to hiring, transfers, and promotions centrally and at operating departments?

- ➢ How does the City ensure the fair, uniform, and transparent selection of the best employee for the position?

- ➢ How efficient and effective is the City in complying with rules, regulations, and agreements of the solicitation, evaluation and appointment processes?

- ➢ What opportunities exist for business process improvement?

The period of our audit is focused on fiscal years 2003 through 2008. However, where appropriate, we also included information coming to light in subsequent timeframes to ensure that our evaluation reflected the current state of business operations related to Oakland's hiring practices. Additionally, hiring processes related to the City's Port Department were outside of the scope of this audit. Moreover, the results of our analyses conducted between December 2008 and January 2009 related to disclosure requirements and employee compliance with the City's Anti-nepotism Ordinance (discussed in Chapter I) was withheld from this audit report due to a Court imposed restraining order issued on March 12, 2009.

To answer audit questions and objectives and identify key issues that hamper the City's ability to support fair, open, and unbiased employment practices, we specifically reviewed and relied upon the following as part of our work during this audit:

- ➢ City Charter

- ➢ Rules of the Board of Civil Service Commissioners (Civil Service Rules)

- ➢ City Personnel Policies and Procedures

- ➢ City Memorandums of Understanding

- ➢ City Administrative and Municipal Code

- ➢ Administrative Instructions related to Personnel and Hiring

- ➢ Oracle Generated Reports Provided by the Office of Personnel Resource Management and the Payroll Department

In addition, we obtained relevant information from and performed numerous detailed interviews with Directors, staff, and key stakeholders and interested parties, including the following:

- ➢ Oakland Elected Officials
- ➢ Oakland Civil Service Commissioners
- ➢ Oakland Office of Personnel Resource Management
- ➢ Oakland Payroll Department
- ➢ Oakland Office of the City Administrator
- ➢ Oakland Public Library
- ➢ Oakland Office of Parks and Recreation
- ➢ Oakland Public Works Agency
- ➢ Oakland Department of Human Services
- ➢ Oakland Police Department
- ➢ Oakland Fire Department
- ➢ Oakland Department of Information Technology
- ➢ Oakland Finance and Management Agency
- ➢ Oakland Community Economic Development Agency
- ➢ Oakland Office of the City Clerk
- ➢ Service Employees International Union, Local 21, and the Firefighter Union

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Chapter I: Existing City Rules Have Not Sufficiently Addressed Nepotism Concerns and Anti-Nepotism Ordinance Lacks Clarity

The City of Oakland (City) has experienced a common perception that its hiring processes allow for favoritism and do not provide fair consideration of candidates based on pertinent job-related qualities. Further exacerbating this concern is the fact that, until recently, the City's governing rules and regulations had not established clear mandates to effectively prohibit City officials and management from expressing favoritism based upon relationships rather than making personnel decisions premised on objectivity and fairness. Although a new municipal Ordinance was adopted in November 2008 to broaden and strengthen the City's rules against nepotism, it lacks clarity and does not fully address accountability related to certain violations. Moreover, the process utilized by City leaders to implement the Ordinance and identify all applicable relationships was not sufficiently reliable.

On February 23, 2009, the Oakland Police Officer's Association (OPOA) filed suit in Alameda County against the City demanding the City "meet and confer" regarding the new Ordinance and also alleging that the new Ordinance violated privacy rights under the California State Constitution. On March 12, 2009 the Court suspended enforcement of the new Ordinance pending the outcome of a future court hearing. Until action is taken to nullify the new Ordinance, it remains part of the City's municipal code.

City Charter Does Not Provide Sufficient Protection Against Favoritism in Hiring Activities

Currently, there is a widespread and pervasive perception that the City's hiring processes and practices allow for favoritism, including nepotism and cronyism, and do not afford fair consideration of candidates based on pertinent job-related qualifications such as skills, abilities, experience, and knowledge. These perceptions extend not only to some civil service system hiring activities that require competitive examination and interview processes, but also many complaints pertain to "at-will" positions that are exempt from civil service, such as non-permanent part-time jobs as well as high-level management and executive positions. Further exacerbating this issue, until recently, City rules and regulations did not sufficiently prohibit City officials and management from exercising favoritism towards relatives and friends and allowing personnel appointments and decisions based upon relationships rather than on objective evaluations of qualifications and ability.

Before the new Anti-Nepotism Municipal Ordinance was adopted in November 2008, the Oakland City Charter included an anti-nepotism provision that did not adequately provide protection against all forms of favoritism in the City's hiring practices. As the focal point of the Charter's Anti-Nepotism provision was strictly on hiring relatives, the Charter also did not address and prohibit cronyism related to the hiring of close friends and business associates. Particularly, the Charter provision was too narrowly focused as it only specifically prohibited the following top elected and appointed officers from hiring relatives "within the third degree":

- Mayor
- City Council Members
- City Administrative Officer (CAO)

Specifically, Oakland City Charter Section 907 states the following:

> "The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship."

The Charter provision lacks clear direction and definition of those intended to be included and insufficiently defines those accountable and responsible for appointing individuals to City positions. We found disagreement amongst City leaders as to whether the former CAO's delegation of her authority to "...appoint, assign, reassign...all employees" to the former Director[9] of the Office of Personnel Resource Management (OPRM) would allow the former CAO's relatives to work for the City—since the former CAO delegated her appointing authority to OPRM. In July 2008, the City Attorney issued a legal opinion indicating that the former CAO's delegation of authority does not remove her responsibility to adhere to the Charter mandated restriction from hiring relatives of the CAO—the opinion was in conflict with hiring practices at the time:

> "...City Charter Section 907 prohibits the City Administrator from appointing any relative of his or hers within the third degree as an employee or officer to receive compensation from the City. The City Administrator is the ultimate appointing authority for the administrative service..."

Ultimately, the City failed to prohibit the former CAO[10] from hiring close relatives and failed to hold her accountable for violating City Charter Section 907 when she inappropriately hired and promoted several immediate family members into City positions, including, but not limited to:

- Student Trainees
- Police Officer Trainee
- Microcomputer Systems Specialist
- Public Service Representative
- Parking Control Technicians
- Parking Meter Repair Worker

Thus, despite a provision of the City Charter specifically preventing such actions, the City allowed unfair practices to occur. The former CAO—a person with high authority—appointed

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[9] OPRM leadership changed during the course of the audit—the current OPRM Director joined the City in February 2009 as a result of the former Director's departure from City employment and was not involved in much of the hiring activities during the period of the audit.

[10] CAO leadership recently changed—the current CAO was permanently appointed by the Mayor to the City's top non-elected position in January 2009 (appointed as acting CAO in June 2008) as a result of the former CAO's departure from City employment. As such, the current CAO was not the authority responsible for the proper administration of all City affairs during most of the five year period this audit covers.

or allowed appointments of relatives to positions in Oakland's government in direct violation of the City's Charter rather than appointing well-qualified individuals that competed fairly through the civil service process. Several of the former CAO's close family members were appointed to civil service positions that, under normal circumstances, require individuals to participate in the City's formal hiring processes. We found that some of these relatives either did not meet minimum qualifications or we could not find evidence of a resume or City application that demonstrated they were minimally qualified for the positions into which they were appointed. Compounding the issue was the lack of evidence that would demonstrate any of these family members had participated in competitive examination processes before being hired or promoted into their positions, as discussed in greater detail in Chapter II. These actions defy the very concept of a civil service system that is developed specifically to ensure fair and equal treatment regardless of political connections, thus, allowing for positions to be filled by the best qualified persons. Additionally, these inappropriate appointments come at the expense of the City's taxpayers when the City compensates closely connected individuals at salaries higher than they are entitled to receive based on qualifications.

Moreover, because the Charter's Anti-Nepotism provision focuses too restrictively on only a few top elected and appointed officers, it does not prohibit the hundreds of City managers and supervisors—individuals responsible for the vast majority of hiring decisions—from engaging in nepotism and cronyism by selecting their close friends and relatives for City positions and seeking approval to hire from OPRM and the CAO without disclosing such relationships.

The absence of comprehensive rules prohibiting managers and supervisors from such acts combined with the fact that the former CAO violated the City's constitution by hiring her own relatives set a "tone at the top" communicating to City management that favoritism is not only tolerated, but endorsed by the City's "ultimate appointing authority." Not only did the actions of the former CAO violate the City Charter, undermine public trust in government, and communicate to City management that favoritism is tolerated, job opportunities were taken away from individuals who in good faith participated in competitive civil service processes. Combined, the City must now deal with tarnished credibility, significant morale issues, and widespread perceptions that the City's hiring processes are based on personal connections rather than qualifications and fair, competitive processes.

New Anti-Nepotism Ordinance Lacks Some Clarity and Accountability

To broaden the City's rules against nepotism by extending existing limited prohibitions, the City adopted a new Anti-Nepotism Municipal Ordinance on November 18, 2008 to include department heads and supervisors and expand the types of relationships that would be covered. Specifically, the new Ordinance requires all City officials, managers, and supervisors to disclose family, romantic, or cohabitant relationships they have with other City employees and prohibits City workers from being related to a direct supervisor. A subsequent amendment to the Ordinance further extends the prohibition by forbidding cronyism in personnel decisions, including the involvement in the hiring or promotion of a close friend or business partner.

To comply with the new Ordinance as it relates to the hiring of new employees as well as promotions of existing employees, OPRM has revised the City's employment application to

expand on the current question regarding employee relationships to include exact language from the new Ordinance as presented in the text box.

While we noted on past employment application forms that individuals routinely ignored the question asking if the applicant was related to any City official, according to the OPRM, all

City of Oakland's Current and Previous Employment Application	
Application Question Related to Employee Relationships:	
Previous Question	Current Question
Are you related by blood or marriage to any City Official?	Are you related by blood, romantic and/or cohabitant relationship to any City Officer, Manager, or Employee (which includes City Council, Mayor's Office, Administrator, Attorney, Auditor as well as employees of City agencies and departments)?

applicants are now required to respond to the inquiry. Before the form can be processed in the City's Oracle HRMS system, a specific field must be completed or the system's coding will reject applications missing responses to the employee relationship question. Also, where potential new hires and current employees applying for promotional opportunities acknowledge on the application that they have a relationship covered under the new Ordinance, OPRM states that applicants will be provided with a separate form to disclose pertinent information, such as the name and position of the Oakland City employee in which they have a covered relationship. To protect the privacy of the applicant, the form will be sealed in a confidential envelope and only opened by the Director of OPRM at the time of hire or promotion. At that time, the Director of OPRM and City Attorney's Office will work together to determine what impact the relationship has on the reporting structure, as required by the new Ordinance. According to the City Attorney's Office, under no circumstances will the City hire or promote any individual in a relationship that is covered under the new Ordinance into a position where a direct reporting conflict exists.

While the intention of the City to toughen its rules to prevent favoritism is commendable, the new Ordinance lacks clear definitions related to cronyism and also does not fully address accountability related to particular situations where Ordinance violations could intentionally be overlooked. For example, the new Ordinance prohibits "cronyism," which it defines as "...participating in any employment decision that may be viewed as a conflict of interest, such as one involving a close friend, a business partner, and/or professional, political, or commercial relationship, that would lead to preferential treatment or compromise the appearance of fairness." However, without additional guidance or specification, it is unclear as to what exactly constitutes these types of relationships. As such, it will be difficult to determine whether simply being acquaintances or coworkers would represent a conflict of interest in employment. According to the City Attorney, the cronyism definition under the new Ordinance is too broad, and thus, he believes it may be difficult to enforce violations and defend City actions if challenged, particularly if employees claim they "unintentionally" violated the new Ordinance. Overall, the new Ordinance demonstrates the City's new stance on nepotism and cronyism and forces the City to exercise due diligence in analyzing and justifying hiring decisions to avoid conflicts of interest. However, City leaders must evaluate, resolve, and clarify how the new Ordinance defines cronyism or risk situations arising that are detrimental to the City, such as where

favoritism continues to influence hiring decisions where highly qualified individuals applying for positions are inadvertently disqualified.

Furthermore, provisions of the new Ordinance only hold employees accountable for certain breaches of the new Ordinance, but fail to address other types of possible violations. For example, the new Ordinance describes penalties (leading up to and including termination) that can be meted out to an employee deliberately failing to disclose a covered relationship; however, the new Ordinance does not define or detail circumstances and related consequences to City managers or supervisors, while not personally involved in the relationship, have knowledge of and intentionally overlook or withhold information regarding a relationship of a subordinate or co-worker that is covered under the Ordinance and continues to exist without intervention. Both the City Attorney and the former Director of OPRM were unsure of the steps to be taken in such circumstances other than communicating the issue to the City Council since the Ordinance does not address such a situation.

Overall, the City must determine a way to ensure all definitions under the new Ordinance are sufficiently clarified and all employees are held accountable to complying with all aspects of the Charter and new Ordinance.

<u>Process Used to Distribute Anti-Nepotism Ordinance Compliance Forms not Sufficiently Reliable to Ensure all Applicable Relationships were Identified</u>

With the adoption of the new Anti-Nepotism Ordinance, the City recently attempted to identify all reportable relationships by requiring City officials, managers, and supervisors to disclose their covered relationships as defined by the new Ordinance. Although the City recognizes the need to identify and investigate the disclosed relationships to ascertain any inappropriate reporting relationships that are in conflict with the new Ordinance, it needs to develop sufficient on-going processes to maintain compliance with the Ordinance.

As part of adopting the new Anti-Nepotism Ordinance, the Director of OPRM is responsible for:

- Collecting information concerning family relationships, consensual romantic relationships, and cohabitation relationships and preserving such information for a minimum of five years.

- In consultation with the City Attorney, identifying and implementing alternate (reporting) arrangements should an official, manager, or employee provide supervision to, directly or indirectly, an individual with whom she or he has a family relationship, consensual relationship, or cohabitant relationship.

- Providing an annual report to the City Council describing the nature and number of prohibited relationships disclosed, and what actions were taken to make alternate arrangements.

In February 2009, to accomplish identifying relationships, the former Director of OPRM created and distributed an "Anti-Nepotism Ordinance Compliance Form" required to be completed by all City supervisors, managers, and officials. OPRM intends to require employees to provide an updated compliance form annually. The compliance form included areas listing and classifying

family, romantic consensual, and cohabitant relationships and requires employees to list any family members that they supervise.[11] While the compliance forms defined "family relationship," "supervisor," and "supervision" to ensure employees disclose all covered and reportable relationships, it did not include definitions of consensual romantic relationships or cohabitant.

Despite OPRM's efforts to create and distribute a disclosure form, the form was not provided directly to each City supervisor, manager, or official straight from OPRM. Instead, the former Director of OPRM sent the newly created disclosure form along with a copy of the new Anti-Nepotism Ordinance via the following email distribution lists that are set up by the Department of Information Technology (DIT):

- Agency Heads
- Managers and Supervisors
- Mayor
- City Council
- City Attorney
- City Auditor

The former Director of OPRM provided instructions with the disclosure forms indicating that each City department and agency head was responsible for submitting a list to OPRM of all employees with supervisory responsibilities that were required to complete the disclosure. All corresponding employees were then required to submit the disclosure directly to OPRM. The OPRM process to distribute the disclosure forms proves problematic in two ways. One is that by having the department or agency head responsible for deciding which employees must complete the disclosure form, the independence factor is compromised. Second, as OPRM has no knowledge of the pool of individuals required to submit forms, it cannot ascertain if all required employees were provided a form or, more importantly, completed a form. Rather, it relied on information provided by department or agency heads as to how many employees must comply. As a result, of the process to distribute the forms and the fact that a universe of employees required to complete a form was not developed independently by OPRM, we are unsure if all applicable employees were provided a form to complete or if all disclosure forms completed by employees were provided to OPRM for review, analysis, and investigation. To mitigate this problem, OPRM stated that they have plans to conduct an internal review where Oracle generated information related to all employees in supervisory or management classifications will be compared to the disclosure forms submitted and will investigate any discrepancies—however, generating such a report may require programming changes within Oracle.

Aside from the apparent legal ramifications, nepotism or favoritism, in fact or in appearance presents significant negative impacts on employee morale, commitment, and satisfaction as it perpetuates the perception that skill, job performance, and qualifications are not important

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[11] A lawsuit was filed in February 2009 alleging the Ordinance violates privacy rights under the California State Constitution by requiring employees to disclose romantic relationships and OPRM was directed to suspend enforcement until the matter is resolved in court.

factors for a position if one lacks the necessary personal connections. The City must determine a way to ensure all definitions and violation types under the new Ordinance are clarified, all supervisory and management employees complete disclosure forms, all applicable relationships are disclosed, reporting structures are modified if necessary, and employees are held accountable to comply with all aspects of the Charter and new Ordinance.

Recommendations:

To ensure that City rules sufficiently address nepotism concerns, the Mayor, City Council, CAO should:

1. Set a "tone at the top" that demonstrates and communicates accountability to all organizational policies and procedures and develop protocols that ensure hiring policies, procedures, rules and regulations are consistent, clear, followed, and enforced.

2. Develop and implement a comprehensive employee ethics program[12] and support current efforts underway to develop an employee ethics training program. A comprehensive employee ethics program should include code of ethics declarations that are regularly updated/reviewed and that all employees acknowledge and are held accountable to such policies. Additionally, employee ethics codes and policies must include sanctions for engaging in, tolerating, or condoning improper conduct and all employees must understand and receive regular training on the codes and policies.

3. In conjunction with the City Auditor's whistleblower program, ensure that all City officials, managers, and employees feel empowered to report any deviations from the City's organizational policies and procedures. Further, ensure all such reports of deviation are held in confidence and retaliation is not tolerated.

4. Evaluate and resolve unclear definitions within the new Anti-Nepotism Ordinance and develop Administrative Instructions to provide additional clarity and guidance.[12]

5. Make certain all employees are accountable and responsible for compliance with the new Ordinance, including City officials or supervisors who, while not personally involved in the relationship, have knowledge of and intentionally overlook or withhold information regarding an undisclosed relationship of a subordinate or co-worker.[13]

6. Develop procedures and processes, in addition to OPRM and the City Attorney's responsibility (per the Anti-Nepotism Ordinance) to review and analyze the appropriateness of relationships within a reporting structure, where department and agency management are responsible to continually ensure that the reporting hierarchy between employees and supervisors is well defined and appropriate and are responsible to proactively notify OPRM and the City Attorney's Office when a situation arises rather than waiting for the annual disclosure process.[12]

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[12] The City Auditor, City Attorney, and Public Ethics Commission are currently developing an employee ethics training program.

[13] Recommendation should only be followed in compliance with applicable court decisions and only after any court imposed restraining order is lifted.

OPRM should:

7. Strengthen controls to ensure that all hiring and appointment processes (including all types: exempt, classified, part-time, temporary, sworn, etc.) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules as well as consider applicable legal opinions of the City Attorney.[12]

8. Ensure that the Oracle HRMS system is appropriately programmed to reject applications not fully responding to the Anti-Nepotism relationship disclosure question.[12]

9. Develop a formal process to review candidates' "confidential disclosure envelopes" at the time of hire or promotion where the Director of OPRM and City Attorney's Office will work together to determine what impact a disclosed relationship may have on the reporting structure. Ensure individuals in relationships considered "covered" under the Ordinance are not hired or promoted into positions where a reporting conflict exists.[12]

10. Update hiring documents, such as New Employee Entry Records and Personnel Requisition Forms, to include and require attestations by the hiring authority (OPRM, CAO, City Attorney, City Auditor) and authorized representatives (department and/or agency) that the "request to hire" (including all types: exempt, classified, part-time, temporary, sworn, etc.) complies with the City Charter, new Anti-Nepotism Ordinance (including cronyism), City Civil Service rules, City Ethics policies (in conjunction with recommendation #2), and any other applicable City rule or policy.[12]

11. Reevaluate Anti-Nepotism Ordinance Compliance forms to ensure that all applicable relationships that must be disclosed pursuant to the Ordinance are fully defined.[12]

12. Follow through with plans to conduct an internal review of the most recent "disclosure form distribution process" where OPRM oversees the production of an Oracle report of the universe of all employees in supervisory or management classifications. OPRM should compare the Oracle report to the disclosure forms submitted to ensure that all applicable employees were provided a disclosure form to complete and that all disclosure forms that were completed were provided to OPRM. Investigate any discrepancies.[12] If programming changes are required to ensure Oracle accurately reflects all classifications that have positions with supervisory duties, OPRM should work with DIT to determine the most feasible way to generate the required information from Oracle.

13. On a go-forward basis, establish a permanent tracking system to ensure all appropriate employees receive, complete and submit annual disclosure forms. For example, consider utilizing the Oracle system to independently and automatically generate a list of employees that must complete an Anti-Nepotism Ordinance disclosure form rather than relying on agencies and departments to provide a list of individuals. Take steps to ensure that all employees that must complete a disclosure form comply with the requirement.[12]

14. Review all annual disclosure forms and analyze all disclosed relationships, including relationships where one is a supervisor within a chain of command as well as relationships not in a reporting chain of command, but may potentially have conflicts related to segregation of duties.[12]

15. Develop processes to ensure the required annual reports are submitted to the City Council as mandated by the new Anti-Nepotism Ordinance.[12]

Chapter II: Lack of Oversight, Accountability, and Segregation of Duties Allowed Inappropriate Hiring Practices

To gauge the general compliance with the City of Oakland's (City) hiring rules and regulations, we analyzed the City's classified civil service hiring processes and tested a subset of cases amongst the universe of standard new hires and promotions processed over the last five years. While our testing[14] of 184 classified appointments revealed that most complied with established Civil Service Rules, five of the 184 appointments tested involved inappropriate hiring activities where individuals were appointed to permanent classified positions without either going through competitive civil service examination processes or meeting the minimum qualifications of the classifications. Additionally, lack of formal processes and oversight related to hiring exempt employees increases the risk that employees are appointed without meeting basic job-related qualifications, particularly for the City's high-level management positions.

Further, our business process review of the City's hiring process workflow revealed insufficient accountability and oversight as well as significant opportunities to circumvent Civil Service and personnel rules. Specifically, the City has not implemented an appropriate and fundamental separation between personnel and payroll duties within the Oracle Human Resources Management System (Oracle HRMS), which is required to reduce the 'opportunity factor' that *invites inappropriate activities. As it currently stands, the processing of approved personnel* actions that are strictly human resources related into the system—such as entering hiring decisions, linking employees to defined positions, changing pay rates, updating personal employee information, and removing terminated employees—is handled by the Payroll department (Payroll)—the same unit that is also responsible for processing the City's payroll. However, the proper entity to enter these sensitive human resources related activities into the Oracle HRMS is the City's Office of Personnel Resource Management (OPRM). This lack of segregation creates opportunities where employees have the logical system access and ability to subvert established protocols and can, alone, establish new employees and pay them within Oracle HRMS without a second set of eyes to ensure the actions are appropriate. Proper internal controls, such as appropriate segregation of duties, are designed to minimize the risk that inappropriate transaction processing could occur.

When the City employs individuals that do not meet basic qualifications or have not fairly competed for appointments, the City not only risks having a workforce where individuals are not competent to perform the functions of the job in which they were hired but also reinforcing the perception that hiring decisions are based on relationships rather than the presumed fairness of a merit based system—all of which undermine the credibility of the City's government and its leaders. Further, allowing an environment of weak internal and system controls to go uncorrected increases the City's chances of inappropriate personnel activities occurring and fails

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[14] The 184 tests conducted and the associated results described in Chapter II only represent one segment of testing and do not include additional testing efforts related to desk audit processes (Chapter III), sworn hiring processes (Chapter IV), or temporary/part-time hiring processes (Chapter V)—all of which revealed additional unfair or inappropriate hiring practices.

to address a critical component of management's responsibility to safeguard the City's assets by ensuring an effective and strong internal control environment.

Although Most Standard Hiring and Promotion Appointments Tested Complied with Rules, Instances of Circumvention of Civil Service Rules were Found

To determine if hiring processes related to classified appointments received through standard civil service processes comply with City rules, we conducted in-depth tests of 184 classified appointments. While test results established that most of the appointments tested were in compliance with established rules, testing also revealed cases involving significant inappropriate hiring actions. Specifically, in five test cases out of 184, we either could not find evidence that would suggest the individuals involved were hired as a result of a proper civil service examination process or that minimum qualifications were sufficiently demonstrated as being met, including two cases involving relatives of the former City Administrative Officer (CAO).

In the City of Oakland, there are five major employment categories as follows:

1. Regular full-time (classified and exempt)

2. Permanent part-time (classified)

3. Sworn (classified)

4. Regular part-time (exempt)

5. Temporary full and part-time (exempt)

Of these five categories, positions within three categories typically require civil service processes and competitive examinations—regular full-time, permanent part-time and sworn hiring; however, a few positions in these categories relate to the City's high-level management positions and are exempt from Civil Service Rules. As of March 2009, the City had 3,388 classified employees in regular full-time, permanent part-time, and sworn positions, as detailed in Table 2.

Table 2. Number of Employees in Classified Employment Categories, as of March 2009[15]

Employment Status	Number of Employees as of March 2009
Regular (classified) Full-time	1,992
Permanent Part-time	106
Sworn	1,290
TOTAL	**3,388**

The majority of the City's workforce is included in these three employment categories and represents approximately 61 percent of the City's total workforce of 5,574.[16] According to the City's Civil Service Rules, applicants for classified positions "will be required to participate in a

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[15] Information provided by OPRM from the City's Oracle System.

[16] Remainder of the workforce includes Regular Full-time exempt, Regular Part-time, and Temporary employees.

competitive selection process, which shall be based on merit and fitness ascertained by practical competitive examination and by records of achievement." As such, most hiring decisions within the City of Oakland should be effectuated upon a deliberative process that selects candidates based on their qualifications and merit to perform specific duties, tasks, and assignments.

The CAO is the ultimate hiring authority for all City positions (excludes positions where the City Attorney and City Auditor have authority). While City rules allow the CAO to delegate the day-to-day hiring authority to the Director of OPRM, the ultimate responsibility related to hiring decisions and personnel practices remains with the CAO. The City's stated hiring procedures, developed by OPRM to ensure compliance with civil service requirements, involve the general steps shown in Figure 2. According to the City's Civil Service Rules, "no appointment to positions within the competitive civil service shall be made except in accordance with these Rules." One final step to the hiring process has been added recently due to the City's current hiring freeze—the CAO provides the final approval for all requests to hire after the Director of OPRM has reviewed and approved such requests.

Figure 2. City of Oakland Civil Service Appointment Process Flow[17]

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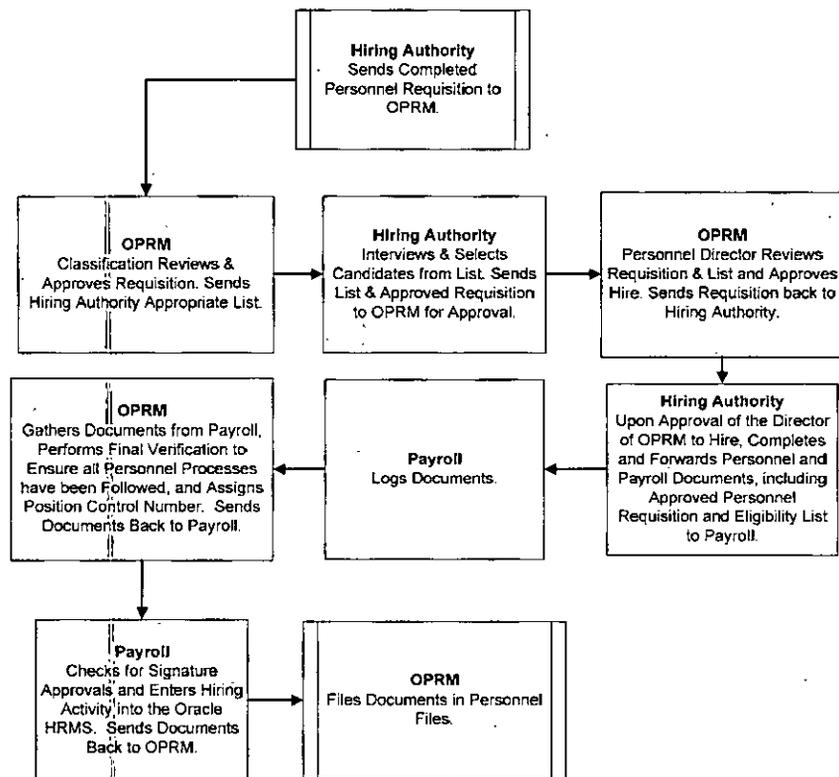
[17] Civil Service Rules allow a department to receive additional certified lists if all candidates on previous lists were considered, but deemed not suitable for the position.

To determine if the City's personnel rules and requirements were appropriately followed, we utilized a multifaceted testing strategy of the City's various hiring and promotion practices and processes. One segment of testing, discussed in this chapter, focused on determining whether classified appointments received through standard civil service processes complied with City hiring rules, and if deficiencies were noted, also focused on determining what control and monitoring functions needed to be improved. As such, we performed in-depth testing of 184 standard classified appointments processed over the last five years. Because a statistically valid sample of the entire City civil service workforce was not conducted and since this specific testing effort represents only a single segment of a multi-part testing endeavor, it would be inappropriate to use the results of these tests to estimate the number of employees throughout the City who might have been hired inappropriately. Nonetheless, the exceptions that this segment of testing revealed are demonstrative of significant weaknesses within the City's hiring processes.

In addition to the improperly hired employees identified by this segment of testing and described in this chapter, additional segments of our testing effort focused on the City's other types of hiring practices, such as: desk audit processes (Chapter III), sworn hiring processes (Chapter IV), and temporary/part-time/provisional hiring processes (Chapter V). Each of these test results also revealed additional unfair or inappropriate hiring practices that not only support our concern that hiring controls and monitoring need improvement but also contribute to the negative perception that the City's hiring practices are unfair and do not provide fair consideration of candidates.

Using reports of new hires (approximately 5,400) and promotions/transfers (approximately 4,600) that occurred during the last five years provided by OPRM at the beginning of the audit and applying a judgmental sampling technique, we selected a group of 140 appointments representing each of the City's major agencies and specifically increased the number of tests associated with City agencies perceived as having unfair hiring practices and known friends and family of past and current City officials and employees. In addition to these 140 appointments, we also specifically tested a group of 44 additional appointments identified through interviews with City officials and information provided through the City Auditor's established whistleblower hotline. To determine if the 184 appointments involving individuals that were hired into *classified* positions met minimum qualifications, had undergone a competitive examination process, were placed on a list of qualified candidates, and were hired from a certified eligible list,[18] our procedures included:

- Reviewing individual personnel files;
- Assessing entire examination and eligibility processes and files;
- Evaluating personnel requisitions and files;
- Analyzing personnel and hiring information within Oracle HRMS and SIGMA (OPRM's applicant tracking system); and,
- Interviewing numerous relevant City employees.

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[18] Civil Service Rules Section 1.01 defines "Eligible List" as any of the lists of names of persons who have been found qualified through suitable examination for employment in a specific class of position in the competitive civil service arranged in rank order.

We found that most of the individuals associated with the 184 classified appointments tested completed a competitive examination, were placed on and hired from a certified eligible list, and met the minimum qualifications of the job specification. However, in five of the 184 appointments tested (four via the specifically tested group and one via the judgmental sampling group), there was no evidence that would suggest these individuals met the minimum qualifications of the classification, participated in a proper civil service examination process, or were hired from a certified eligible list. Specifically, we found:

- The former CAO's son was hired as a part-time Student Trainee in 2004 and was appointed to a classified, full-time permanent position in the Department of Information Technology (DIT) in June 2006 without evidence of having met minimum qualifications or participating in a competitive examination processes. According to management within DIT, the decision to appoint this individual to the position of Microcomputer Specialist I was outside of their control and he remains in the position.

- The former CAO's nephew was appointed to the classified, permanent part-time (PPT) position of Parking Meter Collector in the Finance and Management Agency (FMA) in July 2001 and promoted to another classified, regular permanent position of Parking Meter Repair Worker in July 2003. For these two appointments, we could not find evidence of this employee meeting minimum qualifications or participating in a competitive examination processes. This individual remains in the Parking Meter Repair Worker position.

- A current City employee was promoted to a classified position within the Fleet Specialist classification in January 2006 without meeting minimum qualifications or participating in a competitive examination process. Specifically, the employee in question does not appear to have met the minimum qualifications of the Fleet Specialist classification as this individual's previous classification was Administrative Assistant II. Although according to OPRM, the employee's experience was gained through "out-of-class" work assignments, it does not seem reasonable that an employee classified as an Administrative Assistant II would be given duties and responsibilities that would provide the type of experience required of the Fleet Specialist classification given the duties and requirements of these two classifications are vastly and significantly different. Nonetheless, even though the stated minimum qualifications were not met, this employee was deemed minimally qualified to participate in the competitive examination processes of the Fleet Specialist classification.

  However, competitive civil service examination processes related to this Fleet Specialist position were not utilized. Specifically, due to the hiring department's decision and OPRM's approval to use a "restricted" method of recruitment that only allows City employees to compete, recruitment efforts netted a very small candidate pool of only three individuals. Because there were only three candidates, a competitive civil service examination process was not required prior to placing the three individuals on the eligible list—a past practice that was apparently standard when only a few candidates apply and are deemed qualified. According to OPRM, even though so few candidates were available, the recruitment was not extended to external (open) candidates because department officials believed that the existing three candidates comprised a sufficient pool in which to select an employee for the position. Additionally, OPRM stated that the

practice to allow candidates to be placed on an eligible list and appointed to a position without going through a competitive examination in the event there are few candidates has been eliminated.

To add perspective, a subsequent recruitment in 2007 for another Fleet Specialist was not restricted to City employees and was open to external candidates—this recruitment netted 14 candidates that met minimum qualifications and competed to be placed on the eligible list. Thus, the 2007 open recruitment method better ensured that the City hired the most qualified candidate because the 2007 process resulted in a far greater number of individuals to choose from and who underwent competitive testing processes compared to the 2006 restricted process that netted three candidates, did not include competitive testing, and resulted in the questionable promotion of an individual that did not meet the minimum qualifications of the classification.

- Since 2002, a former City employee was promoted several times, including to classified positions within the Revenue Analyst and Administrative Services Manager 1 (ASM 1) classifications. Evidence suggests that neither this employee's experience nor education background met the minimum qualifications for these classifications and, thus, should have resulted in a disqualification from participating in the corresponding civil service examination processes—an outcome shared by multitudes of applicants deemed as not having met the minimum qualifications of the classifications in which they have applied. Nonetheless, this individual was inappropriately allowed to sit for the Revenue Analyst and ASM I civil service examinations, placed on the corresponding eligible lists, and was ultimately permanently appointed to these classifications. While it is reasonable that a certain amount of work experience may replace educational requirements, because of the high degree of financial expertise and management experience these positions require, it does not seem reasonable that failing to meet both the minimum qualifications for education and experience should have been permitted.

  This former employee's minimum qualification deficiencies, revealed through this segment of our testing effort and introduced above, is also integral to the impropriety of his provisional[19] appointment to the ASM I classification. Also, the lack of processes to monitor provisional appointments allowed the improper change of the employee's status from provisional to full-time permanent. As such, an expanded discussion is developed within the provisional appointment process subsection of Chapter V.

- A former Senior Council Policy Analyst was hired without evidence of a competitive examination having taken place. According to OPRM, it appears that there may have been confusion as to whether or not this position was exempt from the civil service process and this individual was only employed with the City for a short time.

Further, we found inconsistencies related to the absence, presence, or degree of completion of various types of relevant supporting documentation (including applications, examinations, eligible lists, personnel requisitions, Personnel Action Record (PAR), and New Employee Entry Records (NEER)) available to review as well as the lack of a useful system audit trail

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[19] A provisional appointment is a temporary, short-term appointment not to exceed 120 days used during the recruitment process of a position covered by civil service that does not have an active, eligible pool of candidates.

surrounding the hiring and promotion of these five individuals. As such, we are unable to conclude with certainty how or why various decisions were made and activities approved. Ultimately, the appointments of these individuals were entered into the Oracle HRMS even though these individuals either did not take the required competitive examinations, did not meet the minimum qualifications of the classifications, did not fairly compete with other eligibles, had a family relationship with the former CAO that precluded them from being hired, or a combination of all of these.

The exceptions noted in this section were able to happen for several reasons, starting with the City's former top leadership not setting a "tone at the top," as described in Chapter I, to abide by either the City's rules and regulations, the spirit of a merit-based system, proper personnel processes, or simply good business practices. Coupled with weak internal and system controls—highlighted by a lack of segregated personnel and payroll duties—an environment existed that did not place importance on ensuring appropriate hiring practices were always followed. The breakdown in internal controls is discussed in detail later in this chapter.

<u>Lack of Oversight Related to Exempt Positions Resulted in Questionable Appointments into High-Level Management Positions</u>

Through our testing efforts related to standard classified civil service appointments described in the previous section, we also noted that the processes to hire individuals in "exempt" positions lacked reasonable oversight to ensure individuals hired into exempt positions are reasonably qualified. Specifically, exempt positions do not require a formal hiring process and are not regulated by the City's civil service system; as such, there are no written requirements guiding such appointments relative to ensuring candidates possess the appropriate background, experience, and qualifications. In particular, little guidance or requirements exist for filling the City's highest level management and executive positions. In fact, under current rules, it would be permissible for a department or agency to select a person for an exempt position without going through any process other than having an individual fill out a City application. OPRM indicated that some departments may request some type of abbreviated civil service selection procedure if the department has not already pre-selected a candidate for the position. Exempt positions, such as managers, lawyers and specialists, account for a small portion of the City's workforce and do not require civil service competitive processes. Specifically, Charter Section 902 states that exempt positions include the following:

- Elected officials and one secretary and administrative assistant each;

- City Administrator and one secretary as well as all professional and administrative assistants in the Office;

- Department heads and assistant, with one secretary each;

- Commercial representatives and freight and cargo handlers and checkers employed by the Port Department; and,

- Temporarily contracted individuals or organizations and regular part-time employees.

In addition to the positions listed on the previous page that are specifically exempted, the Charter also allows the City to exempt additional individuals upon the recommendation of the Council, as approved by the Civil Service Board.

The intent of the Charter is to provide a limited number of management positions that are exempt from the rule-bound civil service process to have added flexibility in hiring top management to best manage city government. Exempt hiring allows City officials to quickly put together a team of specific individuals for critical projects and, most importantly, allows individuals that do not perform to be terminated immediately as they are "at-will" employees. At-will employment typically refers to the right of employers to terminate employees for any reason, or for no reason at all. As a result, exempt employees do not have what is referred to as "property rights" in their job. Exempt employees serve at the will of the appointing authority and can be terminated at any time without cause. Employees with a property interest in their job (i.e. civil service employees) cannot be deprived of their employment—discharged or suspended—without due process. While having this type of flexibility is understandable and common among government institutions, there are risks associated with having no oversight over the hiring process and no criteria in which to hold hiring authorities accountable to ensure job opportunities are provided to the most qualified individuals.

As described in the previous section of this chapter, we reviewed 184 individuals in *classified* civil service positions to determine if they were hired through appropriate processes. While we did not specifically test exempt classifications, we did note through our other testing efforts that at least three of the 184 individuals tested previously were eventually appointed to exempt positions although they did not appear to have reasonably met the minimum qualifications for the higher level exempt positions or even met the minimum qualifications for their previous lower level civil service classified positions. The questionable *exempt* appointments include (the first two examples involve two individuals that were also inappropriately hired into classified positions as described earlier in the chapter):

- A current City employee went from an administrative position to heading the Public Works Agency's (PWA) Equipment Services Division (ESD) within a span of 10 months in 2006. Specifically, the employee in question was promoted from Administrative Assistant II to Fleet Specialist in January 2006 and then appointed as the "acting[20]" Equipment Services Manager (exempt position) in October 2006—skipping several intermediate classifications such as Equipment Services Supervisor and Equipment Services Superintendent. After a recruitment effort by PWA, this employee was eventually appointed to the Equipment Services Manager position permanently in 2007. Because this position heads PWA's ESD, it requires substantial experience related to equipment acquisitions and vehicle maintenance as well as experience managing subordinate supervisors—evidence suggests the appointed candidate did not possess the required experience. In fact, this employee appears to have subordinate employees with greater experience and qualifications.

  According to the applicant screening matrix completed by PWA officials during their recruitment and selection process for the Equipment Services Manager position, the appointed employee was deemed as not having met either of the minimum qualifications of the position, which included:

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[20] "Acting" typically refers to an employee who has been assigned to temporarily perform all of the ordinary day-to-day duties and responsibilities of a position of a higher classification for one (1) or more working days.

1) Education: Bachelor's degree in Mechanical Engineering, Public or Business Administration, or related field and,

2) Experience: Three years of supervisory or managerial experience in equipment services management.

The employee in question possessed a two year associate's degree in business (per application—we did not validate this information), no supervisory experience, and had been working in her first equipment-related position less than a year before being appointed as the acting Equipment Services Manager. Additionally, there were five other candidates that PWA deemed to have met all of the minimum qualifications and had experience ranging from seven to 25 years of fleet management experience.

Nonetheless, PWA officials allowed the employee in question to advance to the interview phase of their hiring process because the individual was deemed as having the knowledge, skills, and ability to perform the job based on information contained in a supplemental questionnaire. While supplemental questionnaires, graded by an external expert, are intended to be completed by the applicants and submitted along with other application documentation, there is no guarantee as to the source or accuracy of the information provided in the supplemental questionnaires as candidates do not complete the questionnaires in a controlled environment. Interestingly, the appointed employee with little experience was rated higher on the supplemental questionnaire and on the interview with PWA officials than the five other candidates with qualifications that appear far superior.

- As mentioned in the previous section of this chapter, a former City employee was improperly promoted to the classified positions of Revenue Analyst and ASM I without meeting minimum qualifications of these positions. Nonetheless, a year after being inappropriately appointed to a classified position within the ASM I classification (refer to details in Chapter V and specifically page 80) and while still lacking the minimum qualifications of his existing classification, he was appointed to an even higher level position within the ASM II exempt classification (recommended through a "desk audit[21]") where he oversaw OPD's entire financial division even though he only possessed a high school diploma and little managerial or complex financial experience.

- In 2006, a former City employee (retired relative of former CAO) was recommended for promotion (also recommended through a "desk audit") to a classified position within the ASM I classification even though this employee failed three separate civil service examinations related to the positions of ASM I (failed twice) and Management Assistant (failed once). Related to her appointment to an exempt position, the employee did not promote into the recommended ASM I classification, but was inexplicably promoted even higher as she was placed into an exempt position within the ASM II classification.

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[21] A desk audit is a process to analyze a position in which an employee is assigned and feels their duties are not consistent with the responsibilities of the classification, as described in greater detail in Chapter IV of this report.

Overall, Oakland's exempt hiring processes lack sufficient oversight to ensure individuals in "exempt" positions have sufficient and reasonable qualifications. By contrast, the hiring process for exempt employees at certain State of California agencies appear to follow a more rigorous process whereas all applicants, regardless of the position type, are required to submit a standard state application form to either the hiring department or its human resources division. Since the standard application form is more commonly used as an administrative form to establish an applicant's file, most state departments require additional proof of qualification to justify the application for the exempt position. For instance, to be considered for a Caltrans Deputy Director exempt position, candidates have to submit a statement of qualification along with the standard state application form to Caltrans' human resources division. While, like the City of Oakland, the ultimate hiring selection resides with the hiring division, the Caltrans process to screen and select candidates appears to be a joint effort between human resources and hiring . division.

Similarly, high-level exempt positions with the State Compensation Insurance Fund (SCIF) are publicly advertised on the department's as well as the State Personnel Board's websites. The applications are received by the human resources division and reviewed by an "Executive Screening Committee" (e.g. for the Chief Investment Officer position) who has the discretion to advance or deny candidates. In another example, the Office of the Attorney General requires candidates for the Press Deputy position to submit a full resume and evidence to support their qualifications such as writing samples in order to be advanced in the hiring process.

The hiring needs and processes at the local level may differ from the hiring at larger state organizations due to limited outlets and resources for promoting exempt positions. Yet, we noted that, for example, in the City and County of San Francisco, the hiring of new employees is coordinated under the umbrella of the San Francisco Department of Human Resources who have launched a comprehensive employment opportunities website that allows candidates to search for current openings by department, job category or recruitment type as well as submit their applications online. Our review of San Francisco's job announcements revealed that in general, applicants for exempt positions are required to submit a job application online where they are then directed to the human resources department for review of application completeness and minimum qualification compliance before the hiring department continues with the job specific evaluations. Yet, the job bulletins also indicated that applicants "meeting the minimum qualifications are not guaranteed advancement in the process" which presumes some involvement by the hiring department at the time applications are received by human resources.

By involving human resources or personnel departments during the hiring process, the hiring division can focus on the key qualification points rather than being held-up by standard application form requirements and thus, make better use of departmental resources during the often times costly and time-consuming hiring process. Lastly, public perceptions of equal and fair employment practices are further promoted by having human resources or personnel share the application review with the hiring department as the authority to hire does not reside with only one division or department.

Personnel's Processes and Procedures are Often not Followed as Prescribed and Workflows Require Data Sent to Payroll Before OPRM has Finalized their Review and Approval

According to OPRM, departments do not always follow the established hiring workflow processes; however, the processes are convoluted, redundant, and contrary to good internal controls. Specifically, the established process currently requires the following consecutive steps (illustrated in Figure 2 on page 25):

- Hiring authority submits Personnel Requisition form to OPRM requesting a certified eligible list or recruitment (if there is no active eligible list) to fill a vacancy;

- OPRM reviews and approves personnel requisition form and forwards hiring authority appropriate certified eligible list (or begins recruitment process that will ultimately result in a certified eligible list) that consists of tested candidates eligible to be interviewed and considered to fill hiring authority's vacancy;

- Hiring authority interviews and selects candidate(s) from the certified eligible list and submits the certified eligible list with the selected candidate highlighted along with the previously approved personnel requisition to OPRM;

- OPRM provides hiring authority with "approval to hire" as well as approval to send position offer letter to candidate;

- Hiring authority sends Payroll personnel related documentation, including approved personnel requisition, certified eligible lists with selected candidate, completed personnel entry records (PAR or NEER);

- Payroll logs personnel and payroll documents;

- OPRM gathers the hiring documentation from Payroll for final verification that the appropriate personnel processes (i.e. testing when appropriate and requisition approvals) have been followed, assigns a position control number to the payroll documents;

- OPRM forwards the approved documentation back to Payroll;

- Payroll checks for approval signatures, position control number, and enters hiring and payroll activity into Oracle HRMS; and,

- Payroll forwards documentation back to OPRM for filing in personnel files.

According to Payroll management, under the former CAO's leadership three years ago, Payroll responsibilities were restructured to be the centralized location of hiring and payroll documents to address issues of inefficiency caused by a centralized lack of oversight where documents were previously misdirected, misplaced, and/or duplicated. Also according to Payroll management, the redesign of the workflow into the one that currently exists has allowed for tighter control and tracking of documents and has increased accuracy, timeliness, and efficiency.

Unfortunately, the revamped process where Payroll is the primary controller of personnel documentation has created a system where departments do not always follow the established hiring workflow processes, hiring processes are redundant, and the internal control environment is diminished and contrary to best practices. For example, according to OPRM, departments often attempt to expedite the hiring process by sending all required personnel files directly to

Payroll expecting entry into the Oracle HRMS without having gone through the appropriate and sequential approval steps. Specifically, OPRM management indicated that there have been occasions where departments have submitted all personnel and payroll documents directly to Payroll at one time, skipping several key control steps, including the first critical step that requires the department to receive an official "approval to hire" from the Director of OPRM before sending offer letters and especially before allowing employees to start working.
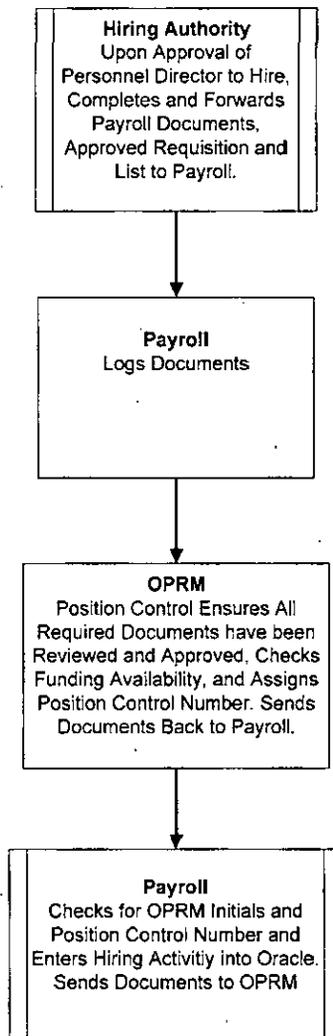
According to OPRM management, the City's human resources function lacks the ability to enforce the established workflow processes as they do not control the critical part of the process—entering hiring activities and personnel actions into the Oracle HRMS. As a result, hiring process controls are weakened as OPRM is relegated to a secondary after-thought role instead of a distinct control point accountable for ensuring all personnel activities comply with City rules. What is more, management in Payroll asserts that there have also been numerous occasions where employees have started working before Payroll received any hiring and payroll documents from departmental hiring authorities and Payroll staff was mandated to back-date paperwork. While typically the hiring processes involved in these types of circumstances are eventually approved in the end, not following the proper process leaves OPRM and Payroll scrambling to retrieve the necessary hiring documents, analyze the hiring process utilized, and obtain signature approvals.

According to OPRM, one likely reason departments do not always follow the prescribed procedure is because there is a perception that the hiring process takes too long and they want to get the hiring documents to the Payroll Division as quickly as possible for entry into Oracle HRMS. However, the stated process still requires OPRM to collect and review the documentation before the personnel information is input into the Oracle HRMS by Payroll. Thus, time may not be saved by waiting until the end of the process to gather all required approvals and could create frustration if the individuals needed for "rushed" approval are not available. Further, if an employee is allowed to begin working before all hiring and payroll paperwork has been approved and it turns out that the appointment is rejected, OPRM is left to deal with terminating an employee that should not have been working in the first place.

However, even if following appropriate procedures can potentially delay the hiring process, proper protocols protect the City from potential legal difficulties, such as a department hiring an individual that must later be terminated because OPRM encounters a problem with the appointment (e.g. criminal background issues, hiring process not in compliance with civil service rules, etc.).

Moreover, even when departments do follow the established workflow, the processes are convoluted, redundant, and contrary to good internal controls as current workflow processes require that personnel and payroll related documents to go back and forth between the two departments as illustrated in Figure 3 on the following page.

Figure 3. Current Workflow Process to Input New Hire into Oracle

```
┌──────────────────────────┐
│    Hiring Authority      │
│    Upon Approval of      │
│  Personnel Director to Hire, │
│   Completes and Forwards │
│    Payroll Documents,    │
│  Approved Requisition and│
│     List to Payroll.     │
└──────────────────────────┘
              │
              ▼
┌──────────────────────────┐
│        Payroll           │
│     Logs Documents       │
│                          │
│                          │
└──────────────────────────┘
              │
              ▼
┌──────────────────────────┐
│          OPRM            │
│  Position Control Ensures All │
│  Required Documents have been │
│  Reviewed and Approved, Checks │
│  Funding Availability, and Assigns │
│  Position Control Number. Sends │
│  Documents Back to Payroll. │
└──────────────────────────┘
              │
              ▼
┌──────────────────────────┐
│        Payroll           │
│  Checks for OPRM Initials and │
│   Position Control Number and │
│ Enters Hiring Activitiy into Oracle. │
│   Sends Documents to OPRM │
└──────────────────────────┘
```

Not only is sending personnel and payroll documents back and forth between OPRM and Payroll unnecessary and redundant, such practices increase the risk that critical hiring documents are lost, may compromise privacy, and ultimately may increase the time it takes to process the paperwork.

Overall, under the City's current hiring workflow processes, OPRM cannot fully exercise its responsibility as a control agency over ensuring the City's civil service hiring rules are followed due to the current configuration with Payroll as the primary destination of hiring documentation as well as the exclusive controller of system access to enter and modify personnel and payroll information in the Oracle HRMS. Additionally, good business practices require that personnel related documentation be sent first to OPRM for final review/approval and necessary input into

the human resources management system. Additionally, Payroll should only receive payroll-related documentation and then only after OPRM has signed off on the payroll documents. Payroll should never receive any personnel related documentation.

To improve personnel practices and eliminate situations from occurring where Departments do not follow appropriate hiring processes and OPRM and Payroll are left scrambling to approve personnel and payroll documentation after an employee has begun working, the City should revamp the hiring workflow process to ensure:

- Department hiring authorities send personnel related documents only to OPRM for review and approval;

- OPRM approves hire (if appropriate), validates all appropriate personnel processes have been followed, enters personnel information/changes/pay rates into Oracle HRMS, and sends offer letters to candidates with date to start working; and,

- Payroll receives only payroll related documents from OPRM after final approvals and verifications have been made and personnel information and changes have been entered into Oracle HRMS by OPRM.

Transferring the responsibility of controlling hiring and personnel documentation back to the City's human resources function will require that OPRM be held accountable for establishing and maintaining an efficient processing system that protects sensitive documentation from being lost, mishandled, or compromised and that ensures Payroll receives payroll related documentation in a timely manner.

The City Lacks Adequate Internal Controls and Separation of Duties between Sensitive Personnel and Payroll Duties

While the City's Director of OPRM has been delegated the responsibility to ensure hiring practices are appropriate and conform to Civil Service Rules, OPRM is unable to control how individuals are entered into and removed from the City's Oracle Human Resources Management System (HRMS). Specifically, under current processes and procedures, OPRM does not have the ability to input new hire activity, link employees to positions, remove terminated employees, or input any personnel related changes (promotions, pay increases, etc.) into the Oracle HRMS. Rather, all of these human resources related responsibilities, as well as administering the City's payroll, rests entirely with Payroll. Our own cursory review of the Oracle HRMS's user profiles revealed that several users within Payroll

> **Segregation of Duties:**
> Practice of dividing the steps in a system function among different individuals, so as to keep a single individual from subverting the process.

have "super" access to all functions within the Oracle HRMS module, which includes personnel actions that should be strictly limited to staff within the City's human resources function and specifically restricted from Payroll staff. What is more, no employees in OPRM—including the Director of OPRM—have "super" access within Oracle HRMS.

Combining the responsibilities to process human resources and payroll activities singly within the payroll function goes against the basic concept of segregation of duties where no one

employee or group of employees is in a position to both perpetrate and conceal errors or irregularities. For example, because key employees in Payroll have unrestricted access in the Oracle HRMS module, changes related to the hiring of new employees or promotion of current employees could be input into Oracle HRMS by Payroll without raising any "red flags," bypassing Personnel's role to ensure all hiring has been conducted appropriately. Because Payroll has the only logical system access and ability to establish new individuals and input personnel changes (such as terminations, pay rate changes) into the Oracle HRMS and administer the City's payroll, a significant conflict in duties exists that creates opportunities for inappropriate actions, including but not limited to:

- Fictitious or real individuals receive a paycheck but do not work for the City ("Ghost employees");

- Individuals are inappropriately appointed to positions and added to the City's payroll;

- Inappropriate changes are made to employee pay rates; and,

- Former employees are not removed from the system and kept on payroll.

Proper segregation of duties requires the human resources function to input any personnel information related to employees and the payroll function to pay employees based on criteria entered into the system by personnel as well as produce various year-end earnings reports. To properly hold each accountable for the activities they are responsible for carrying out, Payroll must not have access to or ability to change or initiate personnel data and OPRM must not—and currently does not—have access to payroll data. Allowing an environment of weak internal and system controls to go uncorrected not only increases the chances of inappropriate personnel activities occurring, but also decreases the City's ability to establish a framework of strong and meaningful accountability and oversight to govern its hiring practices. Ultimately, the cornerstone of building a strong internal control environment is setting and maintaining a "tone at the top" that circumvention of proper processes will not be tolerated—a message that also must be reinforced through establishing rigorous and appropriate polices and controls.

Controls Intended to Mitigate Lack of Segregation of Duties Are Inadequate

According to OPRM and Payroll, there are a couple of controls intended to prevent inappropriate activity and to mitigate the existing lack of separation between personnel and payroll activities into Oracle HRMS, such as restricting position control numbers, reconciling filled positions, and requiring approval signatures on payroll documents. However, each of these processes that attempt to provide some control have considerable weaknesses and do not adequately strengthen the existing weak internal control environment or mitigate the significant lack of segregation of duty issues.

While according to Payroll management a control exists that purportedly mitigates the fact that Payroll has such wide access to the human resources information system that the department singly inputs and terminates employees in Oracle HRMS and adds and removes them to and from the City's payroll, we believe it is inadequate and does not improve the control environment. This "control" involves Payroll looking for the appropriate signature approvals (i.e. OPRM, CAO, Hiring Department, etc.) on personnel documentation before entering any new hiring activities, personnel updates and changes, or payroll action into the Oracle HRMS.

However, this is a weak control as there are no logical system restrictions that would prohibit individuals from being put into the Oracle HRMS and paid by the City without the necessary signatures present.

In fact, as noted earlier in this chapter, five individuals were inappropriately appointed to classified positions without either meeting minimum qualifications or going through civil service competitive examinations but the hiring activities were still entered into the Oracle HRMS and the individuals were added to the City's payroll, even in cases where some signature approvals on payroll documents were present—thus, further illustrating that only looking for signature approvals is insufficient and does not mitigate the risk of inappropriate hiring activities occurring. Those responsible for inputting personnel activity into the Oracle HRMS have a duty to go beyond simply looking for signature approvals to ensure the activity is appropriate, complies with the City's rules and regulations, and all hiring processes have been followed—a duty most appropriate for the City's human resources function, OPRM.

Another control to purportedly mitigate the significant segregation of duties issue between personnel and payroll activities involves OPRM's position control unit assigning a "control number" to positions based on authorized and unauthorized budgeted positions and providing the control number to Payroll only after OPRM has finalized the approval of the hiring activity. This process, illustrated in Figure 3, is intended to restrict how an individual is linked to a specific position so that an individual cannot be assigned to a position in Oracle HRMS without OPRM's position control unit providing Payroll the control number; thus, an individual could not be entered into Oracle HRMS without OPRM's knowledge.

However, all position control numbers for authorized positions are assigned during the City's budget process and are widely published so that all hiring authorities within the City know every position control number for their specific department's authorized positions. Unauthorized positions, positions added after the budget process, are also widely available to department staff via a monthly position control report that is sent out for reconciliation purposes. Further, Payroll has the responsibility to perform the data input to enter position control numbers into Oracle HRMS. Because the position control numbers are widely known and Payroll enters the numbers into Oracle HRMS, OPRM does not have the ability to restrict, or "control," how individuals are linked to positions, which creates opportunities for OPRM's role to ensure hiring practices are appropriate and conform to Civil Service Rules to be bypassed without their knowledge.

Lastly, another control that OPRM suggests mitigates the segregation of duties issues involves OPRM's monthly reconciliation of filled positions to authorized positions; however, the process currently employed is insufficient and does not lessen the control weakness issues. Specifically, OPRM combines information from the following three reports to create a single report of filled positions for each agency and department:

- Current list of authorized positions with one employee linked,

- Current list of authorized positions with multiple employees linked (generally related to job-sharing), and,

- Current unauthorized positions (this report is prepared by Payroll and provided to OPRM and OPRM does not have the access or ability to generate the report).

OPRM combines the information from the three reports and, on a monthly basis, sends each City agency and department their current list of authorized and unauthorized filled positions. Agencies and departments are expected to compare the positions identified on the three reports provided by OPRM to the number of positions that the agency or department currently has and report any discrepancies. However, OPRM's position control unit, itself, does not compare the current month's filled position information to the previous month's filled position reports to identify any changes and ensure that OPRM is aware of all changes that took place during the month. As such, this control fails to identify any irregularities, such as hiring or promotion activities input into Oracle HRMS that may have occurred without their knowledge—the control fails to perform the very function for which it was developed. Rather, OPRM only reviews the information as a "point-in-time" and simply relies on the departments to notify OPRM of any positions reflected on the reports that the department does not know about. What is not considered in the analysis is the possibility that an agency or department may be well aware that a position filled during the month did not go through OPRM's personnel processes and the agency or department would have no interest informing OPRM of the irregularity. Thus, in such a case, the control is ineffective as the reconciliation effort would not bring such a discrepancy to light.

Although OPRM and Payroll have established processes that attempt to mitigate the risk associated with designating Payroll as the sole data entry point for personnel information and payroll data, these efforts from an internal control standpoint are insufficient to prevent or detect inappropriate activity from occurring. Since employees could be entered in Oracle HRMS without OPRM's knowledge, position control reports are only reviewed as a "point-in-time," and Payroll's reliance on authorized staff initials on hiring documentation, there are too many opportunities for undetected hiring activities to transpire even when these controls are used in concert with one another. As such, the City should consider implementing a series of intervening controls within its process and, most importantly, segregate conflicting personnel and payroll duties so that potential weaknesses cannot be exploited.

Best Practices Support the Critical Need to Separate Human Resources, Payroll, and Finance Functions in Oracle

When the City implemented Oracle in 1999, consultants working on the implementation project set up a number of user "responsibilities" to accommodate the specialized needs of certain employees to perform critical functions. According to the Department of Information Technology's (DIT) Division Manager overseeing Oracle's management, there were few controls built into those customized "responsibilities" at that time with regard to delineating and limiting user access to correspond with specific job duties. In other words, granting a "responsibility" to a user allowed that user to perform all of the functions assigned to that "responsibility." However, these "responsibilities" were designed at a fairly high level with the intent of granting more flexibility so that users could perform their jobs without prohibitive system controls getting in the way. Unfortunately, these broadly defined "responsibilities" were not scaled back after Oracle became fully functional and, therefore, continue to be in use today.

What is more, we were told that system access is so flexible that individuals outside of DIT have the ability to turn off the Oracle HRMS audit functionality—thus, allowing the system to be

manipulated without any tracking or logging of activity and the deterrent against system abuse is easily compromised.

According to the DIT Division Manager, Oracle includes the capability to delineate user roles along established business criteria and in compliance with industry standards, but recent efforts to lock down various functionalities in Oracle have been met with resistance from management, especially within FMA. As such, when departments send requests to DIT to set up new users in Oracle, they are unable to question whether certain employees should have the level of access that the department is requesting, even though DIT is responsible for administering these critical information systems, which would include the data reflected in those systems. For example, if a department sends DIT a request form for a new employee listing the "responsibilities" that employee will need to perform their duties, DIT has no way of questioning whether the departmental management considered the implications of granting certain roles and responsibilities to that employee, which may extend beyond their job duties and allow inappropriate updates to be executed.

Best practices employed at large public entities include separate human resources, payroll, and finance units that, while working collaboratively, have the hiring, payroll, and finance aspects clearly separated and defined between units/departments and responsible individuals. The following represent just a few among countless examples:

- Federal Joint Financial Management Improvement Program (JFMIP[22]) on federal financial management systems requirements clearly mandates that human resources activities include, among many responsibilities, accessing, administering, and processing personnel actions (appointments, transfers, promotions, separations, terminations, assigning pay rates, etc.) while payroll activities include time and attendance, leave, and pay processing.

- City of New York Office of the Comptroller's payroll procedures, Directive 13, require payroll and personnel duties to be segregated because "...personnel offices authorize the transactions that add employees to the payroll, change pay, and effect other key transactions, the personnel office must not have access to the timekeeping, payroll, or paycheck distribution functions." It goes on to state that one of personnel's most important functions is adding new staff to the system as this step is a critical control point in the process.

  o Deloitte & Touche's 2002 management letter observations and recommendations related to New York's Financial Management System security found that the application environment should be strengthened and stated the "updating of [employee information and personnel changes] data should not be performed by the Payroll Department, but rather should be performed by the Human Resources or Personnel Department to ensure appropriate segregation of duties and to ensure the confidentiality of the information. The Payroll Department should only have access to transactional payroll data..."

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[22] This program is now known as the Federal Financial Systems Integration Office within the Federal Department of General Services Administration.

- City of Los Angeles' human resources employees assigned at departments throughout the city enter new employee data into the payroll system while the centralized payroll unit's function is restricted to only processing payroll.

- California Polytechnic State University's operational policies and procedures require that payroll and personnel duties are segregated where "payroll staff does not have access to new employee set up or changes."

Without appropriate segregation of duties and rigorous business protocols and procedures, management's ability to oversee and manage human resources and payroll is greatly diminished. Moreover, a breakdown between any of these factors may lead to abuse of sensitive personnel data, inaccurate job classification changes, and other inappropriate actions (e.g. payroll fraud) going undetected. As such, the City must establish a strong internal control environment with proper segregation of duties and hold those accountable for their areas of responsibility and control. Specifically, OPRM should be assigned the sole ability and responsibility to enter personnel information and changes in Oracle HRMS and Payroll should only have access to payroll data.

The Payroll division agrees, in principle, with our assessment that certain duties should be segregated to avoid potential control weaknesses and ensure personnel functions and payroll functions do not overlap with one another. In particular, the Treasury Manager stated that she looks forward to the implementation of an online "iRecruitment" module within Oracle, which will alleviate the need for payroll staff to input new employees into Oracle HRMS on behalf of OPRM since that data will already reside in the system by the time a new employee has been approved for hiring. Nevertheless, even with the future implementation of a fully automated recruitment and application management system, the City should take proactive steps to delineate Oracle HRMS user access so that system access aligns with core business functions. Specifically, human resources related functions, responsibility, and access should be limited to OPRM personnel; Payroll related functions, responsibility, and access should remain limited to Payroll staff; and Payroll access to human resources activities should be removed immediately.

Departments Have not Always Provided Adequate Justifications for Bypassing Higher-Ranking Candidates on Eligible Lists

In the City's competitive civil service hiring process, if a candidate achieves a minimum score of 70 percent or greater on a civil service examination that candidate will be ranked and placed on an active list of eligible candidates to hire for a specific classification. Whereas the initial screening and examination processes conducted by OPRM evaluate if candidates are minimally qualified to perform the duties of the classification, the purpose of the department level evaluation (i.e. departmental interview) is to assess if the candidate is suitable to perform the job duties in terms of the specific needs of the department and with the current department staff. Because the department level evaluation may involve more subjectivity than the evaluations conducted by OPRM, the departmental internal decision making processes should be well structured and documented to mitigate any perception of hiring bias. However, our review revealed that departments typically provide OPRM with little to no justification or documented evidence pertaining to reasons why candidates interviewed were rejected—even when departments request to bypass higher ranking candidates for lower ones. Additionally, it has

long·been the position of OPRM that departments should maintain that type of information and their responsibility stops once a certified list of eligibles has been provided to a department.

Once OPRM approves a department's personnel requisition to fill a vacancy and the department receives the approved personnel requisition from OPRM, they also receive a list of certified eligibles that they may begin interviewing. According to Civil Service Rules Section 5.02, after a hiring authority interviews all available and willing certified eligibles and the department or agency does not select any candidates for appointment, additional ranks may be requested and provided. However, the rules do not specify that the department or agency provide clear justification in not selecting eligibles from the certified list already provided before receiving additional ranks. Common practice is for the hiring authorities to simply mark a "C" next to each name on the certified eligible list indicating that the individual had been interviewed, considered, but not selected. Only recently has OPRM required clear "job-related" justifications to receive additional names rather than simply relying on a "C." Without

Eligibility List:

List of names of persons who have qualified through a competitive examination for consideration for appointment to vacancies in a specific civil service classification.

Certified Eligibility List:

List of available candidates from the first four ranks ("rule of four") of a current eligible list of persons that have been found qualified through civil service examination.

having to provide clear and convincing justification, a hiring manager can simply continue down a list of certified eligibles until they reach a "preferred" candidate based on personal connections rather than suitability for the position.

In fact, other civil service entities do not allow hiring authorities this type of flexibility in order to avoid the appearance of favoritism. For example, the City of Los Angeles will only certify additional ranks past the first three ranks provided ("rule of three") if candidates on the certified list already provided have found other employment or outright refuse the position. Otherwise, the hiring manager must select individuals from the original certified list. While we are not suggesting the City of Oakland adopt those rigid "rule of three" policies to certifying lists of eligibles, the City must ensure that clear and convincing justification exists prior to providing additional ranks to hiring managers from which to consider individuals for employment. Additionally, while hiring departments should have the ability to make candidate selection decisions through interview processes, the City should provide clarification that OPRM has the duty, responsibility, and authority to ensure and require that hiring departments have sufficiently justified their decision to not select existing applicants before receiving additional names for consideration.

In conclusion, the examples of inappropriate hiring activities and vulnerabilities in the City's hiring processes highlighted throughout this chapter (and later chapters) are not simply rare exceptions to a process that typically operates according to established procedures, but rather represent different ways that the City's current framework for appointing employees can be circumvented should staff choose to ignore proper procedures. Since management is ultimately responsible for the design and implementation of an internal control framework to reasonably assure that resources are used consistent with the overall mission of a government organization, actions should be taken to strengthen these weaknesses in the City's hiring process. Allowing an

environment of weak internal and system controls to go uncorrected not only increases the City's chances of inappropriate personnel activities occurring, but also decreases the City's ability to establish a framework of strong and meaningful accountability and oversight to govern its hiring practices.

To improve its personnel practices and control environment, the City's top leaders must begin by setting a "tone at the top" that demands accountability and communicates to all employees that circumvention of proper hiring processes will not be tolerated. The City must improve the internal control environment, including properly segregating conflicting duties, and hold each accountable for the activities they are responsible for carrying out. Payroll must not have access to or ability to change or initiate personnel data and OPRM must not—and currently does not— have access to payroll data. Further, hiring workflow processes should be revamped to transfer the responsibility of managing and controlling hiring and personnel documentation back to the City's human resources function.

If the City does not take appropriate action to improve oversight, processes, and organizational structure, not only will the perceptions continue that the City's hiring practices are unfair and favor those that have connections with key officials, but also inappropriate hiring practices will continue as well.

Recommendations:

To improve oversight, accountability, and the control environment to ensure appropriate hiring practices are followed as well as improve perceptions related to the City's hiring practices in general, the Mayor, City Council, and CAO should:

16. Examine past practices to determine if past hiring decisions continue to be in the best interest of the City.

17. Clearly define City Department's role as having the responsibility to select the best qualified and available candidates for open positions and OPRM's role as having the delegated authority and responsibility over all hiring decisions in the City. Empower the Director of OPRM to advance or deny any request to hire (including all types: exempt, classified, part-time, temporary, sworn, etc.) that does not comply with City Ordinances, policies, procedures, rules, and codes of ethics. A mechanism to appeal the Director of OPRM's decision should also be put in place to ensure fairness and balance.

18. Hold OPRM accountable for all hiring and promotional activities and hold managers accountable for not following the City's and OPRM's hiring processes.

19. Develop formal, centralized oversight processes related to exempt hiring to ensure job opportunities are provided to the most qualified individuals and hiring decisions are justified. As OPRM develops minimum qualifications for all classifications, including exempt classifications, minimum qualifications should be considered in the analysis to hire individuals in exempt positions. An applicant's past performance on civil service examinations should also be considered and caution should be exercised before hiring applicants that have performed poorly on past examinations, particularly examinations of lower-level positions.

20. Direct departments and agencies to wait for the official and final "approval to hire" (including all types: exempt, classified, part-time, temporary, sworn, etc.) from the Director of OPRM before a candidate can be offered a position. Redirect the responsibility of generating and sending offer letters to candidates from departments and agencies to the Director of OPRM to protect the City from liability of having offer letters sent to candidates prematurely.

21. Transfer the responsibility of managing and controlling hiring and personnel documentation back to the City's human resources function. This will require that OPRM be held accountable for establishing and maintaining an efficient processing system that protects sensitive documentation from being lost, mishandled, or compromised and that ensures Payroll receives payroll related documentation in a timely manner.

22. Eliminate Payroll's responsibility for entering personnel information into the Oracle HRMS database and conform to industry best practices wherein there is a clear separation between human resources (OPRM) duties and those of Payroll. Specifically, OPRM should be assigned the sole ability, access, and responsibility to enter, update, and change personnel and human resources related data in Oracle HRMS, including but not limited to position control information, hiring, promotions, terminations, pay changes, etc. Payroll should only have access to payroll data.

23. Require managers to notify the Director of OPRM before assigning duties of a higher classification to employees where the additional duties become regular and a key component of the employee's job duties so that OPRM can provide a more global assessment and perspective related to the needs of the City and ensure the employee meets the minimum requirements to be qualified to perform the additional tasks.

24. Implement an independent and regular review process (i.e. monthly) to analyze recent hiring activity (include all types: exempt, classified, part-time, temporary, sworn, etc.) by tracing through the entire hiring process, from the initial personnel requisition to the employee being entered into the system. Ensure that all appropriate processes were followed and investigate any deviations from the process. Work with DIT to incorporate reports from Oracle's audit function into the audit processes.

25. Require departments and agencies to provide OPRM sufficient justification for bypassing initial ranks before providing additional ranks from the certified eligible list and detail the type of justification that will be considered adequate. OPRM should have the authority and responsibility to deny providing additional names if the justification provided is not sufficient or adequate.

26. Assign the Department of Information Technology (DIT) the final authorization to assign access to the City's systems, with input from affected departments.

OPRM should:

27. Conduct a thorough analysis of all OPRM and Payroll functions, including reviewing organization charts, mapping reporting and approval structures, identifying duties and responsibilities to identify all conflicting duties that must be separated based on industry best practices.

28. Develop process workflows that reflect OPRM's new responsibility and control over hiring, promotion, termination, changes in salary processes, including entry of personnel related information into Oracle HRMS. The new workflow must instruct all departments and agencies to provide all hiring documentation to OPRM directly. Payroll must only receive payroll related documents and should only receive the documents from OPRM (not directly from departments or agencies) to ensure OPRM has reviewed and approved all hiring related processes.

29. Require that all individuals in OPRM that prepare, review, and approve hiring documentation must provide legible signatures, printed names, and dates acknowledging specifically that the hiring or promotional activity they were involved with went through all appropriate processes, including civil service processes (when applicable). Reject any illegible documentation.

30. Devise a check list or tracking document that lists all required documents and processes that must be completed before the Director of OPRM can provide an official and final "approval to hire" and that all individuals involved in the process legibly sign and date acknowledging the process was completed. Keep the check list or tracking document and all supporting documentation in the employee personnel file so that all hiring processes are documented, transparent, complete, and defensible so that the process can be easily independently audited and validated. The types of supporting documentation include, but are not limited to, personnel requisitions, new employee entry records, personnel action record, resumes, applications (with proof of OPRM approval), job specifications, examination date and scores, eligible lists, departmental selection/interview documents, and offer letters.

31. Ensure that before an individual is hired or promoted (including all types: exempt, classified, part-time, temporary, sworn, etc.) that each hiring activity receives an official and final "approval to hire" from the Director of OPRM acknowledging in writing that the hiring or promotional activity has gone through all appropriate processes, including civil service processes (when applicable).

32. Ensure that minimum requirements are developed and maintained for all classifications, including exempt and part-time classifications, to guide selection and hiring processes. The work of OPRM analysts making determinations if individuals meet minimum qualifications must be reviewed by supervisors, particularly cases where it is not clear if the minimum qualifications were met. Hold analysts and supervisors responsible for allowing individuals who have not reasonably met the minimum qualifications of a classification to inappropriately proceed in the City's hiring processes past the point of application review.

33. Analyze each classification and determine which hiring processes are required per Civil Service Rules or other City policies in order to eliminate confusion as to whether or not a classification requires competitive civil service processes.

34. Require hiring processes are sufficient to ensure that all applicants meet minimum requirements of the classification in which they are applying before being approved to proceed to the examination phase of the civil service process.

35. Develop comprehensive and complete position control reconciliations that are in "total" rather than "point-in-time" to ensure that all positions are accounted for and that OPRM is aware of every appointment.

36. Develop standards for all hiring processes and provide corresponding training to City departments to communicate accountability and expectations as well as to ensure departments have an adequate level of understanding related to the City's hiring processes.

DIT should:

37. Eliminate OPRM and Payroll "Super Users" in Oracle HRMS, limit access within Oracle HRMS to as few employees as possible, and provide access to employees solely based on job function and business need.

38. Review procedures for assigning user access to the Oracle HRMS. Consider forming a task force of employees from each City department to discuss how to align Oracle user access with specific business activities rather than continuing to utilize outmoded "responsibilities" that often allow certain users to perform duties beyond their job description.

39. Ensure Oracle audit feature is functioning and records all activity including user name, date, and action and make certain that only DIT is able to make adjustments to the audit functionality. Identify audit reports that the City can use as part of a regular, independent audit process of hiring activity.

40. Train OPRM how to administer human resources functions within Oracle HRMS and how to process/generate personnel, hiring, and position control reports.

Chapter III: Desk Audit Process Circumvents Civil Service Rules

Although Civil Service Rules allow for existing classified employees to be promoted to a higher classification through a "classification study" or "desk audit," we found that this mechanism can be used to simply manipulate the civil service process beyond the intent of a merit based system and only continues the perception that the City's hiring practices are unfair. In addition, existing position evaluation processes lack critical analytical components and recommendations to fill reclassified positions do not demonstrate due consideration of all qualified and eligible candidates.

Deficiencies Exist in OPRM's Analysis of Desk Audits

Like other cities with merit-based civil service systems, the City of Oakland (City) utilizes a desk audit process to evaluate and determine if the duties currently performed by an employee are consistent with the corresponding job classification and to provide a recommendation for remediation. According to City's Civil Service Rules, any classified employee that believes they are working out of class may request a desk audit, but must have been in their position for a minimum of 1 year before they request the audit. Desk audits can also be initiated by Department heads as well as the Director of the Office of Personnel Resource Management (OPRM), who may conduct classification studies of any position in the competitive civil service arena.

Typically, desk audits entail the following 5 basic steps:

1. Classification Study Initiation/Request;

2. Study Assigned to Human Resources Analyst;

3. Complete Position Description Questionnaire;

4. Conduct Investigative Interviews; and,

5. Final Study Recommendation.

While circumstances arise, such as evolving technologies, that may dictate a need to increase or amend job duties and require a desk audit to determine if a change of classification is required, the reclassification (or reallocation) of positions should occur infrequently and only be considered in terms of City needs. However, our review of the desk audit process found that OPRM's evaluation process lacks a broader department-level job duty analysis to determine the needs of the City and focuses too narrowly on the specific duties assigned to an individual. Additionally, the process also falls short in analyzing management's decision-making processes and justification for the assigning out-of-class job duties to the employee. For example, desk audits neither fully explain why the incumbent is performing duties considered "out-of-class" nor employ some skepticism to assess whether the duties should have been assigned in the first place or other employees not identified in the desk audit would be more appropriately suited to fulfill those duties. Because the typical outcome choices from a desk audit appear to be restricted to classification change, no classification change, examination recommended, or salary adjustment, the process seems to be missing a viable option to redistribute the out-of-class duties to other qualified employees or amongst several employees to avoid the need to reclassify the position.

Moreover, based on our review of approximately 130 desk audits[23] that have been completed in the last five years, we found that nearly 61 percent (79 audits) of the audits recommended a classification change. According to OPRM management, in the past, classifications were too often reclassified as a direct result of the failure to properly maintain the City's classification plan and ensure the duties reflected in the job specifications were accurately reflected. Refer to Chapter VII for additional discussion related to the inadequate maintenance of the City's classification plan and OPRM's recent efforts to begin addressing this issue.

<u>Desk Audit Process Unfairly Limits Promotional Opportunities for Some City Employees</u>

OPRM's desk audit process attempts to address concerns with positions requiring duties outside of the position's classification by conducting position evaluations via the desk audit process and determining if reclassifying or reallocating positions is warranted. Once a determination is made to reclassify a position, in order to comply with the intent and spirit of a merit-based system, a newly reclassified position should be competitively filled with the most qualified candidate. However, we concluded that OPRM's processes do not ensure the most qualified candidate is appointed to the newly reclassified position and the desk audit mechanism appears to be routinely used to simply circumvent civil service processes and gain promotions without the benefit of competitive processes.

Specifically, we found a common outcome of the desk audit mechanism is that employees can be promoted into higher classified, full-time permanent positions (sometimes multiple promotions) without going through any competitive civil service process. In fact, our review of the approximately 130 desk audits revealed that in the 79 audits that determined a classification change was necessary, the audit also recommended promoting the incumbent employees into higher classifications. Of the 79 desk audits that recommended classification changes, we analyzed the following ten audits in detail (as shown on Table 3 on the following page).

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[23] Excludes general classification specification reviews and salary surveys.

Table 3. Recommended Classification Changes of Ten Selected Desk Audits

Existing Classification	Months in Position	Recommended Classification
Clean Community Supervisor	3	Program Analyst III
Executive Assistant to the Assistant City Manager	36	City Manager Analyst
Program Manager I	33	Manager, Claims and Risk
Accountant I	84	Accountant II
Payroll Control Specialist	18	Human Resources Operations Supervisor
Public Service Representative	12	Administrative Analyst II
Microcomputer Systems Specialist I	14	Microcomputer Systems Specialist II
Training and Public Service Administrator	48	Administrative Services Manager I
Exempt Limited Duration Employee	39	Project Manager I
Exempt Limited Duration Employee	7	Administrative Analyst II

Our review of these desk audits found that all ten incumbents were simply moved into a higher classification (as shown in Table 3) and OPRM did not require a competitive process, review the incumbent's performance evaluations, consider the outcome of the incumbent's previous applicable civil service exams, or even compare the incumbent's qualifications against those of the new classification. Although OPRM states that these elements are not factored into position allocation evaluations, these elements are certainly strong indicators of whether the employee could competently perform all job duties in the higher classification.

For example, while eight of these ten individuals involved in the desk audits we reviewed had not taken competitive examinations related to the higher classifications in which they were appointed, two of the ten individuals had taken examinations related to the higher classifications they were promoted into via a desk audit recommendation, but failed. However, this information was not considered by OPRM when filling the newly reclassified position. Specifically:

- One individual requested multiple desk audits that resulted into several promotions to higher classifications even though she failed multiple examinations for higher classifications, including examinations related to the Human Resources Operations Supervisor and Accountant II classifications. The most recent promotion to Human Resources Operations Supervisor occurred during the timeframe of the hiring audit while three other promotions occurred previously.

- Another individual (retired relative of former City Administrative Officer) was recommended for promotion to Administrative Services Manager I (ASM) position even though, since 1999, this employee failed three separate civil service examinations related to the positions of ASM I (failed twice) and a lower level Management Assistant (failed once). Moreover, the employee did not promote into the recommended ASM I classification, but was inexplicably promoted even higher when she was placed into an unclassified (exempt) ASM II position within FMA.

Furthermore, although OPRM management and staff assert that they cannot deny an employee a promotion once it is concluded that the employee has been working out of their classification, we believe the analyses conducted have been insufficient and have failed to consider all critical pieces of information. For example, while a person may have been assigned to conduct the work "out-of-class," it should not be automatically concluded that the incumbent is qualified or the most qualified as there may be better-qualified individuals available to place into the higher classification position. In fact, of the 10 desk audits we analyzed in detail, five involved classifications that had active eligible lists in place at the time of the desk audit promotions with qualified candidates that had undergone and passed competitive examination processes. Yet, none of these individuals were considered or given the opportunity to compete for the reclassified positions. While Civil Service Rules do not explicitly state that an active eligible list of qualified candidates must be considered when personnel fills newly reclassified positions, the spirit of a merit-based, civil service system requires fair and open competition for positions and promotions.

While personnel rules and the recently revised Civil Service Rules Sections 3.04 and 3.05 allow incumbents to be upgraded into a higher classification as a result of a reclassified position via the desk audit process without examination or being on an eligible list, this practice creates opportunities for unfair and non-competitive appointments and promotions. In fact, this practice is not utilized in other major civil service systems, including Los Angeles. For instance, while the City of Los Angeles also conducts these types of audits, Los Angeles does not allow individuals to be promoted into higher classifications unless they have passed a competitive examination and the employee is reachable on a currently established eligibility list related to the particular higher classification. If the employee is not reachable on an eligibility list for the higher classification, the duties are reassigned to an existing employee in the higher classification or the employee working out-of-class is reassigned to another area that requires only the skills of their current classification with the resulting vacancy filled by a candidate from an appropriate eligible list.

Furthermore, additional issues were noted during our review of the ten desk audits:

- Two recommended that non-classified employees in temporary Exempt Limited Duration positions be appointed to classified positions without undergoing a competitive civil service process—recommendations in violation of the City's Civil Service Rules.

- Two were conducted when the employee was in the position under one year even though Civil Service Rules state that no study shall be performed if the incumbent has served less than one year in their current position.

Overall, we believe OPRM's current desk audit processes run contrary to the intent of merit based civil service that requires competition for a promotion. Promotions via desk audits should rarely, if ever, occur as the proper process for promotions include fair and competitive civil service examinations. The City should promote employees to a higher classification through a desk audit only as a last resort—and then only via an appropriate eligible list after exhausting all available options to remedy the out-of-class situation such as reassigning duties to other qualified employees. Additionally, the desk audit processes and position analyses do not fully consider the business need for reclassification, the cost benefit of the appointment versus the restructuring of the duties among appropriate classified staff, or the availability of others for the position. OPRM has acknowledged that deficiencies exist within the desk audit process and are beginning to implement management and oversight changes to improve documentation and analysis of the desk audit process.

Going forward, the City's efforts should focus on improving the analytical processes related to desk audits, such as understanding the business need for the duties of the higher classification. As recommended in Chapter II, the City should also consider requiring managers to notify the Director of OPRM before assigning duties of a higher classification to employees where the additional duties become regular and a key component of the employee's job duties so that OPRM can provide a more global assessment and perspective related to the needs of the City and ensure the employee meets the minimum requirements to be qualified to perform the additional tasks.

Recommendations:

To improve the desk audit process to ensure the intent of Civil Service Rules are not circumvented and to improve perceptions related to the City's hiring practices in general, OPRM should:

41. Eliminate the current practice of allowing desk audits to promote individuals without competitive processes. (May require modification to the Civil Service Rules.)

42. Ensure a policy and process is developed to ensure departments and agencies notify the Director of OPRM before employees are assigned "out-of-class" work where the additional duties become regular and a key component of the employee's job duties. If proper notification is not provided, OPRM should work with the CAO to hold departments and agencies accountable for not following proper procedures.

43. Before assigning employees duties that are out-of-class, departments and OPRM should consider alternatives, such as:

    a. Reassign the duties amongst several employees (so the majority of one employee's work is not made up of the out-of-class assignments).

    b. Reassign the duties to an existing employee of a higher classification.

    c. Reassign the employee working out-of-class to another area that requires only the skills of their current classification. To fill the resulting vacancy, reclassify the position and:

        i. Hire or promote a permanent candidate from an active and appropriate eligible list of the classification that the duties relate.

        ii. If an eligible list does not exist for the appropriate classification, open a recruitment process to permanently fill the position with an employee appropriately tested and deemed qualified through the civil service process. During the recruitment process, a provisional appointment would be appropriate to handle the duties, if necessary.

44. When a desk audit request is submitted, OPRM must ensure that the position analysis and position appointment processes carefully consider sufficient and relevant information, provide a broad assessment of the additional duties as they relate to the City's overall needs and ensure the most qualified candidates are appointed. The position reclassification analyses should consider elements such as why the employee was assigned out-of-class work, the out-of-class duties performed, the business need of the out-of-class duties, and why other employees not identified in the desk audit were not assigned the duties. Additionally, when considering the incumbent, qualifications, experience, and past examination and job performance of the employee should be considered as part of an overall competitive hiring process.

Chapter IV: Police Officer Trainee Hiring Processes were Generally Fair and Rigorous, While Firefighter Trainee Processes Require Considerable Improvement

Overall, we found that the hiring process for entry-level sworn employees are similar for both the Police and Fire Departments and each process has components that are structured as well as other components that are subjective. Oakland Police Department's[24] (OPD) hiring and selection processes appear generally balanced and comply with standards set forth by the Civil Service Rules and Peace Officer Standards and Training (POST[25]). However, while the hiring processes generally appear reasonable, our testing revealed a few notable exceptions to OPD's generally consistent selection processes.

Separately, we found the Oakland Fire Department's[26] (OFD) hiring and selection processes to be generally undocumented or unmaintained as well as many academy records were mishandled, lost, and damaged. While we are unable to conclude on the adequacy of OFD's historical hiring and selection processes due to the lack of reliable documentation, information related to the most recent hiring processes suggest that the Office of Personnel Resource Management (OPRM) and OFD mismanaged the processes related to accepting applications for new firefighter trainee positions.

Notable Exceptions Detract from Generally Rigorous Hiring Processes and Practices among Sworn Staff within the Oakland Police Department

In most large municipalities, hiring entry-level police officers consists of several complex and discrete components designed to assess suitability to perform the duties of a police officer. In Oakland, while some of these components are structured and comply with industry standards, other components are subjective. In general, the OPD has clear and balanced procedures for hiring sworn staff that complies with standards set forth by the Civil Service Rules and the California Commission on POST. Throughout our review of OPD's hiring process, we found, in most cases, that clear and objective criteria were applied to candidates as they progressed through the recruitment, selection, and academy process. However, while the hiring processes generally appear reasonable and consistent, there were notable exceptions to the selection process that were inconsistent with the majority of other police officer trainee selections as well as inconsistent application of OPD's rules surrounding academy recruits ability to "recycle" from one academy to a subsequent academy.

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[24] OPD leadership changed during the course of the audit—the current acting Police Chief was appointed in February 2009 as a result of the former Police Chief's decision to retire.
[25] The California Commission on Peace Officer Standards and Training (POST) was established by the State Legislature in 1959 to set minimum selection and training standards for California law enforcement.
[26] The current interim Fire Chief started working for the City again in November 2008 as a result of the previous Fire Chief's decision to retire and did not have much involvement in OFD activities during the period of the audit.

OPRM has Implemented Standardized Procedures for Evaluating Minimum Qualifications

When Oakland voters passed the Violence Prevention and Public Safety Act of 2004, or Measure Y, there was an expectation that the City would hire additional sworn police officers to help establish community partnerships to improve safety and reduce crime. As such, OPD's budget for sworn staff was increased to 803 full-time equivalent (FTE) positions. To meet this challenge, OPD established new procedures to expedite the recruitment of police officer trainees. In general, OPD—with assistance from OPRM—began casting a wide net to increase the number of qualified applicants the City would be able to consider during the screening process. In particular, OPD hired an outside marketing agency and built a custom website to aid in the recruitment efforts as well as reduce the administrative burden for City staff. As a result of these efforts, OPD successfully increased the size of its sworn police force beyond the goal of 803 peace officers by the end of 2008.

Overall, we noted no issues related to OPRM's involvement in the recruitment and examination process for entry-level sworn police officers. Like most non-sworn examinations conducted by OPRM, the City has established clear guidelines from which staff can follow relative to posting job bulletins, reviewing applications for minimum qualification, and administering basic examinations in order to assess a candidate's knowledge, skills, and abilities. Since the ultimate goal of these activities is to establish a list of eligible candidates, OPRM works closely with OPD to design recruitment activities that will attract a broad range of candidates that represent the diverse needs of the community.

Aside from recruitment efforts, the process to hire entry-level police officer trainees initially involves OPRM's application review and examination efforts. OPD requires individuals to meet minimum qualifications and participate in the competitive examination process administered by OPRM before candidates are passed along to OPD for further screening and selection. To qualify to be a police officer trainee, candidates must:

- Possess a high school or General Education Development (G.E.D.) diploma;

- Be 20 and one-half years of age at the time of the written examination;

- Possess a valid California driver's license by date of hire;

- Have no felony convictions or other convictions which would prevent carrying a gun; and,

- Be a U.S. citizen or in the citizenship application process.

Specifically, OPRM administers the following examination components to police officer trainees that have been deemed minimally qualified based on an application review:

- Written examination (POST developed and graded test);

- Oral Boards consisting of non-City employee interview panels asking standardized questions and applying responses to a set of pre-defined rating criteria; and,

- Physical Ability Test, overseen, but not graded, by sworn officers.

While the written examination and oral board portion of the examination process follows POST guidelines, the physical ability test portion is not required by POST—rather, OPD has incorporated it into the process to ensure that candidates ultimately selected for the academy have some level of physical fitness.

Overall, our review of OPRM's administration of the initial stage of the entry-level police officer hiring process could be considered a best practice because the establishment of a candidate list is largely governed by criteria developed outside the police department. Moreover, OPRM and OPD have a strong working relationship focused on mutual goals, which has facilitated successful recruitment efforts in the last year.

In order to understand the consistency of the initial stage of the hiring process, we reviewed the application review and examination processes related to entry-level police officer trainees over the last five years that result in OPRM placing candidates with qualifying scores on police officer candidate lists. For the most part, we found that the processes are consistent, particularly since they are guided by POST, and have largely remained the same with one notable change related to the physical ability test. According to OPD, OPRM hired an external consulting group around 2005 to review OPD's physical ability test standards and compare those standards to large metropolitan police departments nationwide. According to OPRM, this review was prompted as a result of the perception that women and minorities having difficulty meeting the minimum requirements to be considered for entry into the academy. OPD's standards required the following:

- Scaling a 6-foot solid wall

- Scaling a 6-foot chain fence

- Completing an endurance run

- Completing a 150-pound dummy drag

The consulting group found that OPD's physical ability test standards were inconsistent with other major police departments and recommended changing OPD's standards to remove the requirement to scale a solid 6-foot wall.

OPD Candidate Screening and Selection Process is Generally Consistently Applied; However, Notable Exceptions Were Found

Although OPRM evaluates candidates based on objective criteria, OPD uses a combination of subjective and objective criteria to assess whether candidates are suitable for entry into the police academy and for police work in general. The outcome of OPRM's examination process efforts is an eligibility list provided to OPD, which marks the beginning of OPD's active involvement in the screening and selection process that includes the following general steps:

- A Personal History Questionnaire[27] is administered to each candidate on the OPRM provided candidate list and the results are compiled and summarized by an external law enforcement consulting group. At the same time, OPD background and recruitment

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[27] The Personal History Questionnaire is utilized by OPD to gather detailed information from an applicant, such as educational background, criminal history, medical history, financial/credit issues, and past drug use.

officers also conduct a high-level review of the information to identify any immediate disqualifiers, such as current drug use or any domestic violence.

- The questionnaire summary is forwarded to an external psychologist who reviews the information and also briefly interviews the candidate. The psychologist then communicates to OPD a rating that is assigned to each candidate on a scale of A through D.

- Background investigations, including a polygraph test, are conducted on the "A" and "B" candidates first and the assigned background investigator makes a recommendation to hire or not. As the process continues and initial candidates are disqualified, in due course "C" candidates are included for consideration—the majority of candidates score a "C" and few score a "D."

- Next, the Character Review process is a panel discussion that is subjective in nature, not unlike many police and fire departments. The process involves a complete panel review of the applicant's information, including the Personal History Questionnaire and background data. Panel members include the Assistant Chief, the Sergeant over Recruitment and Background, the contract psychologist, and, occasionally, a member of OPD's civilian administration management. However, OPD's analytical review processes during this phase are largely undocumented, which leaves selection decisions difficult to justify.

- Candidates that pass the Character Review and OPD's background investigations are offered a conditional job offer that is contingent on a detailed medical clearance and psychological clearance.

In order to analyze how police officer trainees were hired and selected to participate in OPD's training academies, we selected five of the 12 police officer training academies operated since 2005.[28] From each of the five academies, we selected 5 police officer trainees (25 trainees in total) to review pertinent hiring documents, including the Personal History Questionnaires, polygraph results, and background investigation reports. Refer to Table 4 on page 59 for a listing of the 12 academies and the corresponding number of total trainees and graduates. Overall, we found that most police officer trainees went through a consistent review and selection process, with two notable exceptions:

- One recruit admitted to the 165th academy was related to the president of the Oakland Police Officer's Association—Oakland's police union. When compared to his contemporaries that we tested and were also admitted to the 165th academy, there appears to be special consideration given to him related to his medical evaluation, polygraph, and criminal record that appeared to conflict with the standards applied to other recruits that we tested.

 Specifically, this particular candidate had two misdemeanor convictions that were identified during the background investigation. While past criminal history alone will generally not disqualify a candidate from entry into the police academy, the number and

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[28] Between January 2003 and February 2005, OPD was under a hiring freeze and did not operate any police academies during that time.

level of arrests was inconsistent with other candidates we tested that were granted entry, which generally consisted of only one minor infraction. Moreover, this candidate took the polygraph examination two separate times; both tests were deemed inconclusive because of irregular breathing patterns. Finally, our analysis also revealed that the City's medical examiner raised concerns about this particular candidate's fitness for duty and did not provide the typical and definitive "fit for duty" release or "not fit for duty" report—normally, not receiving a definitive "fit for duty" release would be a medical disqualification. Nevertheless, OPD elected to move forward and recommend this candidate for entry into the 165th Academy.

- The background investigation of another recruit admitted to the 154th academy revealed several items that raise questions as to the justification in the selection of this recruit, such as previous Internal Affairs investigations and negative recommendations from former OPD co-workers and POST instructors at a community college. Regarding the investigations, the report produced by the background investigator revealed that this candidate was a former sworn officer in the OPD, but investigated by Internal Affairs and reprimanded for several complaints made by the public. Eventually, this individual left OPD. Moreover, the background investigator noted both positive and negative assessments from the references contacted. The background investigator concluded that nothing specifically would exclude the candidate from consideration, but recommended that he attend the full basic academy and not be allowed to transfer laterally into the department. While the candidate was ranked as a 'C' with regard to his Personal History Questionnaire, the decision to allow this particular candidate into the academy is out of the ordinary by comparison to the other candidates we tested that were granted entry to the 154th Academy.

The acceptance of these two police officer trainees into the OPD's police academy despite their questionable background and character reviews suggests that other, undocumented criteria were applied when evaluating whether these individuals were suitable for the police academy. Although OPD officials assert that favoritism was not part of the decision to admit these two individuals into OPD academies, at a minimum, the *appearance* of favoritism was created, which must always be avoided or risk weakening employee morale and diminishing the public's faith in the integrity of the system. Of note, even though both police officer trainees mentioned above were hired and admitted into OPD's police academy, neither candidate graduated as each failed for academic reasons or were terminated for disciplinary reasons.

To assess whether the OPD applies consistent and objective criteria to disqualify applicants from admittance into the police academy, we also reviewed the available documentation for 28 individuals who were on an OPRM police officer trainee candidate list, but were *not* selected for the academy. We judgmentally selected our sample from 15 of the 58 candidate lists generated by OPRM between April 2002 and December 2008 to correspond to the same time period as our previous testing.

Overall, we found there appears to be generally consistent criteria applied when disqualifying applicants from entering the police academy, such as serious items revealed through the Personal History Questionnaire or not meeting minimum qualifications for employment. While documentation for three out of the 28 individuals we tested could not be located, we were able to

review Personal History Questionnaire results for the remaining 25 individuals in our sample. In each case, we noted incidents that would disqualify individuals from police service despite their performance on the initial exams administered by OPRM. For example, several of the applicants revealed past domestic or spousal abuse and/or prior criminal convictions—which according to OPD officials is grounds for immediate disqualification. Other issues included prior substance abuse, non-completion of high school, and leaving the scene of an accident. Beyond the Personal History Questionnaire, there was little other evidence available indicating specifically why candidates were disqualified from entering the academy. In particular, only two out of 28 applicants moved forward in the process to take a polygraph test and none had progressed far enough in the process to have undergone the background and character review. Thus, it appears that the evaluation of the Personal History Questionnaire was the primary mechanism in which many of the candidates were denied entry to the police academy.

While Police Academy Standards Appear Consistently Applied to those that Graduate, Some Police Officer Trainees Were Afforded Additional Opportunities Whereas Others Were Not

Generally, the OPD has established rigorous screening and examination procedures to evaluate entry-level police officer candidates. However, additional protocols should be implemented to discourage unfair and inconsistent hiring practices. Our testing of OPD's candidate screening and selection process revealed that certain candidates appeared to receive special consideration in the hiring process even though their background evaluations should have disqualified them from consideration. We also noted that OPD inconsistently applies its own internal standard related to recycling recruits into subsequent academies, thereby affording certain recruits additional opportunities to complete the academy despite recommendations from training staff. As such, OPD should continue looking for ways to improve its hiring process while ensuring the process is fair and open to scrutiny.

OPD Academy Standards are Consistently Applied

The Oakland Police Academy is an in-house operation, whereby OPD staff is responsible for operating the 26-week academy. The design and structure of the academy, however, is certified by POST. As such, OPD must adhere to certain standards mandated by POST in order to maintain its certification, such as ensuring successful passage of all 43 learning domains within the POST basic academy program that includes academic examinations as well as manipulative physical tests of firearms training, arrest methods, and defensive tactics.

According to OPD's Police Officer Trainee Policy and Procedure Manual, trainees are allowed to retake a single examination or test once and are allowed to retake up to five separate examinations or tests for the duration of the academy—more than five results in recommendation for removal from the academy. OPD has also inserted additional requirements into their academy, such as periodic physical training assessments, designed to measure progress and ability to perform demanding physical tasks that may be required while on duty. A recruit may not be terminated from the academy for failure to pass these additional requirements, but additional attention would be warranted.

To assess whether police officer trainees were held to consistent standards while attending the police academy, we reviewed academy materials and training files for the same 25 trainees we previously tested in the screening process. Overall, we noted that, due to the rigid curriculum

mandated by POST, standards for performance in the police academy are consistently applied to all recruits. All recruits appeared to have been treated equally with regard to passing certain aspects of the training program as each recruit that graduated passed the written or manipulative examination for all standards and requirements. For example, we reviewed examination results for select manipulative "learning domains" and found the standard was consistently applied and those that were not successful during remediation were released from their respective academies.

Additionally, the average academy graduation rate for the last 12 academies is 66 percent, and ranges from 55 percent (162nd) to 77 percent (161st), as shown on Table 4.

Table 4. OPD Academy Graduation Rates

Academy Date	Academy #	# of Trainees	# of Graduates	Graduation Rate
02/28/05 – 09/02/05	154	19	11	57.90%
07/11/05 – 01/13/06	155	40	23	57.50%
11/28/05 – 06/02/06	156	33	21	63.64%
02/06/06 – 08/11/06	157	27	19	70.37%
06/05/06 – 11/17/06	158	48	29	60.42%
09/11/06 – 02/09/07	159	52	32	61.54%
12/11/06 – 05/25/07	160	37	26	70.27%
02/26/07 – 08/17/07	161	31	24	77.42%
07/09/07 – 01/04/08	162	47	26	55.32%
10/15/07 – 04/11/08	163	39	28	71.80%
01/28/08 – 07/25/08	164	43	31	72.10%
05/19/08 – 11/14/08	165	51	38	74.51%
Totals		**467**	**308**	**66%**

Although the graduation rates have slightly increased over the years, the fairly consistent graduation rates suggest that OPD did not reduce or simplify the standards for any particular academy or push recruits through as pressure to hire more police officers increased during 2008 as a result of the implementation of Measure Y.

Some Police Officer Trainees Afforded Additional Opportunities, Whereas Others Were Not

While OPD consistently holds all recruits to the same performance standards and criteria, we noted inconsistencies related to OPD's policy of allowing recruits to "recycle" back through the process into subsequent academies. Typically, recruits are allowed to recycle once due to injuries sustained during the academy, but are not allowed to recycle due to overall academic or performance failures (this does not include failing a single examination). In general, OPD has established a set of criteria for retaining and placing a police officer trainee into a subsequent academy based on several performance indicators, such as if they had maintained an overall academic performance of 90 percent or better and had no history of significant disciplinary action. OPD also has an obligation to accommodate police officer trainees that are injured during the academy by offering them an opportunity to recover from their injuries and re-enter a subsequent academy. While these criteria often guide training officers in their recommendations to recycle certain recruits, there appears to be an inconsistent pattern of application with regard to certain police officer trainees.

Specifically, out of the 25 police officer trainees we previously tested, eight were either recycled from previous academies or recommended to recycle after failing or resigning out of the academy. After reviewing documentation in each police officer trainee's training file related to their termination or resignation from the academy, two exceptions were noted with regard to adhering to OPD's recycle standards and allowing trainees to recycle into multiple academies despite recommendations from training officers not to recycle them. In fact, the daughter of the former CAO was allowed to recycle multiple times and has attended three different academies (and has been offered placement into her fourth academy – 166th) even though staff within the training division did not recommend her as a suitable candidate for recycle for various reasons, including deficiencies involving academics, manipulative tactics, and physical training exercises. However, since the decision to offer a position in a subsequent academy ultimately rests with the Chief of Police, the training academy staff recommendations can be overruled. Only one of the two trainees that were allowed to recycle against the recommendation of the training academy staff successfully graduated from the academy.

OPD asserted that the City Attorney's Office required OPD to allow the former CAO's daughter to recycle in order to provide the appropriate medical accommodation. However, the City Attorney's Office indicated that their office has only provided guidance to OPD that this individual should be allowed to recycle into the 166th academy (not yet scheduled) as a result of her request for a reasonable accommodation for a disability and was not involved in any decisions related to any of her previous academy recycles.

These actions undermine the validity of OPD's standard related to recycling trainees and extend the perception that certain trainees are afforded special treatment whereas others are not. Although we found that, in general, OPD's academy is rigorous and requires significant effort and dedication, certain isolated exceptions can tarnish an otherwise solid reputation for training excellence. As such, the City should ensure that deliberations related to hiring and recycling are fully documented and consistent with the intent of rules and regulations established by various City officials, including the City Council, City Administrator, Mayor, and Chief of Police.

Lack of Consistency and Adequate Documentation Underscore Weaknesses Related to Sworn Hiring Practices within the Oakland Fire Department

Like the OPD, the recruitment and hiring process for the OFD consists of multiple steps designed to measure qualifications against pre-defined criteria as well as subjective assessments in order to determine suitability for firefighting. However, our analysis of the fire department's hiring process over the last five years revealed a number of inconsistent practices that are not in line with fair, unbiased, or objective civil service hiring standards. For example, we were unable to trace decision-making patterns through the entire hiring process due to a lack of documentation retained by the fire department related to justifications for accepting certain applicants into the fire academy over others. Moreover, the lack of transparency related to OFD's hiring process perpetuates the perception within the City that unfair hiring practices are occurring and that rules and regulations related to hiring practices are not consistently followed. In particular, the recruiting events that took place in December 2007 highlight the need to evaluate hiring processes and ensure consistent and fair standards are applied to all candidates seeking employment with the City of Oakland.

Recent Recruiting and Screening Actions have Bolstered Perceptions of Unfair Hiring Practices

Although the process to recruit and screen applicants for entry-level firefighter positions is similar to the process used by the OPD, the frequency and scope of OFD's recruiting is vastly different than OPD. Because there is less employee turnover in the fire department compared to the police department, OFD generally has fewer vacancies to fill. As such, OFD conducts recruiting for its entry-level firefighter position far less frequently than OPD, which eliminates the need for OFD to maintain staff specifically dedicated to recruiting and hiring.

Prior to the most recent academy class, OFD required individuals to have graduated from high school and possess an emergency medical technician (EMT) license in order to meet minimum qualifications and participate in the competitive examination process administered by OPRM. Similar to OPD, the OFD's hiring processes initially involve OPRM's recruitment and testing efforts where OPRM administers the entry-level firefighter trainee written examination, oral boards, and physical ability test. However, unlike OPD, an external entity, such as POST, is not involved in guiding the testing efforts.

In order to understand how hiring practices have evolved within OFD, we reviewed the consistency of the application review and examination processes related to entry-level firefighter trainees over the last five years that result in OPRM placing individuals with qualifying scores on candidate lists—since 2003, there have been four examination processes and five academy classes (one list was used for two separate academies). Apart from the firefighter trainee selection process related to the most recent academy, we found that the processes to place individuals on the candidate lists appear generally consistent, with some changes in the order of the initial processes over the last few years as follows:

- 2003—Written examination and physical ability test administered; oral board evaluation on candidates that passed written and physical ability test components; and candidate list established.

- 2005—Written examination and oral boards administered; candidate list established; and physical ability test administered. Failure of physical ability test resulted in removal from eligibility list.

- 2006 and forward—Written examination, oral board, and physical ability test administered prior to establishing a candidate list (consistent with OPD).

Unfortunately, the process to select firefighter trainees for the most recent academy that started in early December 2007 resulted in missteps and disorganization. Specifically, OPRM and OFD began accepting applications for a limited number of 24 entry-level firefighter trainee positions—these positions historically generate thousands of applicants without much recruitment effort required by the City.

Table 5. Firefighter Trainee Exam Statistics

| Exam Year	Exam Number	No. of Applicants
2003	FF02	1,612
2005	PS132-05	1,248
2006	06-PS132-047	1,048
2008[29]	07-PS132	1,804

The event that triggered substantially more applicants (as shown on Table 5 above) than the City was prepared to handle was the fact that the City reduced its minimum qualifications to enter the academy by removing the prerequisite of having an EMT certification prior to applying—a standard for minimum qualifications at most major fire departments. Thus, the most recent selection process required candidates to simply possess a high school diploma to be deemed minimally qualified to participate in the firefighter trainee competitive examination processes. Yet, we question why the City would reduce the minimum qualifications on a highly sought after firefighter trainee position that has historically resulted in thousands of qualified applicants. Rather, the City could have increased the minimum qualifications to reduce the applicant pool to more manageable levels and possibly result in an even more talented and qualified applicant pool. According to City officials, the reason the EMT requirement was eliminated was because the City wanted to increase the number of Oakland residents represented in OFD. City officials apparently considered requiring an EMT certification from the outset a barrier for many Oakland residents and felt the added expense to provide EMT certification during the firefighter trainee academy was justified if the City could increase the number of Oakland firefighters that are City residents. However, we found no underlying support to the viewpoint that Oakland residents do not have access to EMT training programs.

We compared past academy geographic statistics to the candidates ultimately selected for the current class to determine if the City was able to increase the proportion of Oakland residents represented in the most recent academy and found that OFD's efforts to improve the proportion

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[29] The 2008 exam is associated with the most recent academy which began its selection process in early December 2007.

of Oakland residents in the fire academy were successful (see Figure 4 below). Specifically, whereas the number of non-residents exceeded the number of Oakland residents in the previous two academies, the make-up of the current academy class was roughly equal when the academy began.

Figure 4. Comparison of Recent Academy Selection Rates: Oakland Resident FFTs vs. Non-Resident FFTs[30]
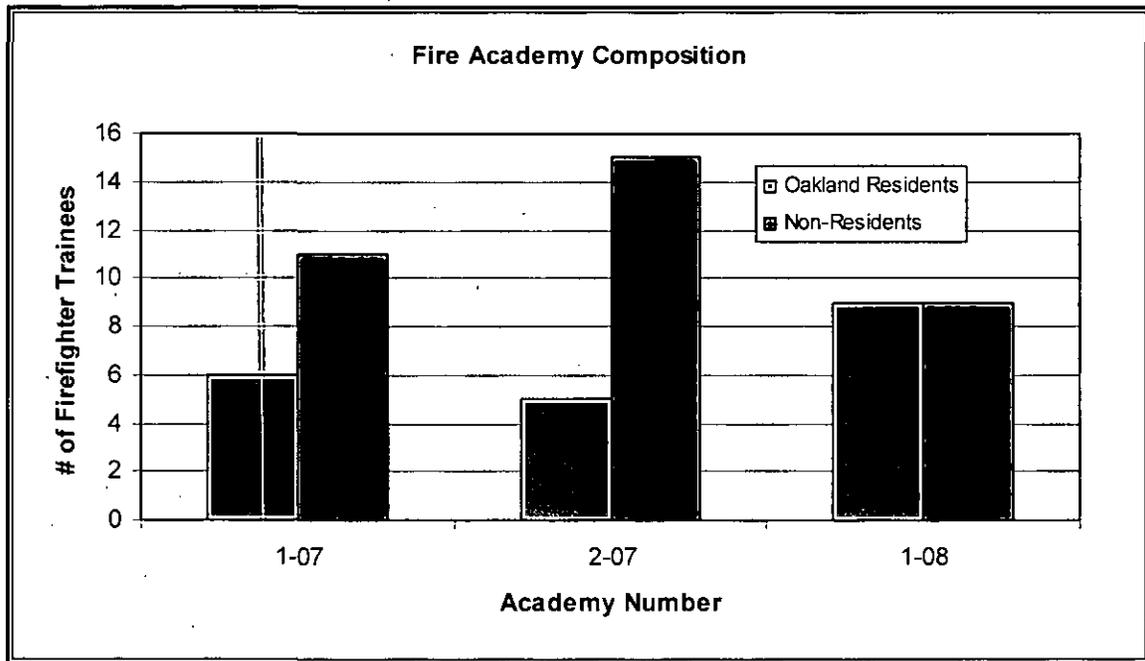
While the City was successful in improving the representation of City residents in the most recent academy, the City was significantly unprepared for the onslaught of applicants vying for the coveted firefighter trainee positions since the reduction in minimum qualifications allowed more individuals to be eligible to participate in the hiring process. As a result, we found the process for accepting job applications was not only mismanaged by OPRM and OFD officials, but handled in an unprofessional and unfair manner that left many Oakland residents frustrated and angered by the entire process.

The onslaught began when the City distributed paper applications to thousands of interested applicants, but stated that only the first 1,000 applications would be accepted on December 1, 2007 during a pre-defined time period. Originally, OPRM planned to establish specific windows of time to accept applications with OPRM staff on-site to accept applications and hand out tickets to applicants that were deemed to have met the minimum qualifications. The tickets were also to serve as a scheduling device for OPRM because they provide an appointment for the applicants to take the written examination. However, this was first time in recent memory where OPRM and OFD decided to cap the number applications that were going to be accepted.

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[30] We were unable to compare the composition of academy *graduation* rates of academies before and after reductions to the minimum requirements because the 1-08 (current class) did not graduate; thus, we compared the composition of the *selection* rates into the academies.

According to the Principal Human Resources Analyst, OPRM structured the process this way because the City invites all qualified applicants to the written examination on the day that they turn in their applications and wanted to limit the number of examinations that were administered. As a result, given the limited window of opportunity for submitting an application and limited number of slots available, applicants began assembling days ahead of the deadline.

On the day applications were being accepted, near-riots were created due to the random and disorderly process OPRM and OFD undertook to accept applications. Whereas applications should have been accepted on a first-come, first-serve basis, OPRM and OFD officials decided to pick applicants from the various lines that had formed. Allegations soon surfaced that OPRM and OFD officials were not simply picking applicants randomly, but rather targeting specific groups or people with connections to the fire department. Despite these allegations, however, there is no way to verify whether certain applicants were more likely to get their applications accepted. Nevertheless, the perception of an unfair application selection process inevitably taints the City's actions.

Subsequently, the City reconsidered its process and accepted all applications from individuals who provided a signed application and DMV driving record. In total, the City accepted 1,804 applications for the current fire fighter academy and 18 trainees were eventually hired into the academy that began in November 2008 after going through OFD's screening and selection processes (described in the next section). This academy was expected to graduate at the end of May 2009; however, City officials notified the trainees on May 20, 2009 that they will not be hired or allowed to graduate. City management cited the City's budget crisis as the reason the trainees would not graduate even though the academy was nearly complete and the City already incurred the additional expense of providing the trainees EMT certification training, which required the length of the academy to be extended.

As a result of the mismanaged application intake process, the Alameda County Civil Grand Jury investigated complaints concerning the application selection process for firefighter trainee positions in the OFD that took place that day in December 2007. In particular, the grand jury questioned the City's rationale for eliminating the EMT certification during the latest round of hiring, which would add to the length and cost of the academy itself. Its recommendations focused on ways to improve future recruiting efforts, such as requiring OPRM to manage the process and not allow fire department officials to participate in the distribution or acceptance of applications. While we concur with these recommendations as a method for mitigating a potential control deficiency, there are also other ways to ensure that recruitment activities are conducted fairly and above reproach. For instance, the City has plans to transition to an automated web-based job application solution, "iRecruitment," which will reduce the necessity of organizing staff to accept large numbers of paper applications.

Although OFD's hiring processes have been modified in recent years, improvements should be considered to mitigate widespread perception of unfair hiring practices and procedures should be instituted so that consistent practices are observed. The events that transpired in December 2007 highlight the need for OFD to standardize its hiring process for entry-level firefighters so that adequate preparations can be made to accept large numbers of applications. Furthermore, OFD

should consider aligning its minimum qualifications for entry-level firefighters with those used by other large municipal fire departments.

OFD Screening and Selection Process Lacks Documentation to Support Decisions and Needs Improvement

Despite the missteps associated with the December 2007 firefighter recruitment, OPRM's process for evaluating minimum qualifications and administering civil service examinations is fairly consistent for police and fire departments. After OPRM screens the applications and conducts the initial testing process (first a pass/fail written and physical ability tests then a scored oral board examination), the resulting list of candidates with qualifying scores from the oral board examination is forwarded to OFD officials to begin their selection processes based on criteria established by the department. Specifically, OFD's hiring process consists of the following discrete components:

- Chief's Oral Interview conducted by OFD once the list of eligible candidates is provided by OPRM. This phase of the process consists of candidates sitting before a panel of two interviewers—usually a Battalion Chief and Deputy Chief. The panelists ask a series of four identical questions designed to assess the candidate's interest in, knowledge of, and commitment to the City of Oakland. To continue to the next phase of the selection process, candidates must pass with a score of either 100 or 75 on the four question interview.

- Personal Trait Assessment & Background Investigation is conducted on the candidates receiving passing scores on the Chief's Oral Interview and that are selected to move forward after the Chief's Interview. The Personal Trait Assessment is administered by the City's contract psychologist and consists of a brief interview and completion of a standardized form, similar to the Personal History Questionnaire used by the Police Department. The background investigation is conducted by an external law enforcement consultant who contacts job references and checks the candidate's background for significant criminal history.

- Conditional Job Offer is extended to candidates who pass all preceding stages of the recruitment process and is contingent on a detailed medical clearance.

- Candidates who are offered a conditional job offer are required to pass a medical evaluation, which includes drug screening, before final consideration for the fire academy.

Once the background, personal trait assessment, and medical evaluations are complete, the Fire Chief will work with the contracted psychologist and background investigator and assess which candidates are best suited for the firefighter academy—a largely subjective process that is not unlike other police and fire departments. Although OFD officials and staff described the general process, they were unable to demonstrate how decisions were reached as this process is not documented—when a subjective process is not documented, the analytical processes and decisions reached are difficult to justify. Ultimately, the decision on who to accept into the academy rests with the Fire Chief.

Overall, we found that the OFD lacks adequate procedures to document and justify its selection process to hire firefighter trainees and accept candidates into the fire academy. We selected to review 16 recruits who were admitted into the last three academies to evaluate the consistency of OFD's selection process and analyze how each recruit performed at each stage of the process prior to entry into the academy. Unfortunately, the only documentation that was available for our review was the medical clearance and background investigation reports for each recruit. While these records indicate a consistent pattern of being medically fit and no significant background issues, we were unable to review the deliberative process undertaken or establish what rationale was used to accept these candidates into the academy over others. In particular, we noted that OFD does not retain any documentation related to the personal trait assessment of eligible recruits, nor does it have records of the scores received during the Chief's Interview, with the exception of the current academy where information was kept only for those *not* selected. As such, we could not sufficiently conclude whether OFD was conducting its selection process in a fair, balanced, and forthright manner, which diminishes the spirit of a transparent hiring process.

Not only is Justification and Documentation for Candidate Selections Deficient, but Rationale to Disqualify Candidates from Hiring Processes is Unclear and Decisions Appear Inconsistent

Overall, we found that the OFD lacks adequate documentation and justification related to its decision processes to disqualify firefighter trainees from the selection and hiring process. As described earlier, once a candidate list is provided to OFD, the Chief's Interview is the next phase of the selection process and candidates must pass with a score of 75 or better to proceed to the background and psychological assessment phase of OFD's hiring process.

To assess whether the Oakland Fire Department applies consistent and objective criteria to the applicants that are disqualified during the selection process, we selected to review the available documentation for 20 individuals who passed the written and physical ability pass/fail tests and oral board examination, were placed on OPRM lists of candidates between January 2003 and April 2008, but ultimately, were *not* selected to enter an OFD fire fighter academy. Unfortunately, OFD was only able to produce documentation for five out of the 20 recruits we selected for testing—and the five candidates pertain to the most recent candidate list (4/21/08).

Based on this limited data, we found the selection process is lacking adequate documentation of OFD's decision making processes. Specifically, while 41 candidates were recommended to progress to the background and psychological assessment stage after passing the Chief's Interview stage with scores of 75 and 100, there was no clear indication as to why 235 individuals that also passed the Chief's Interview with scores of 75 and 100 were disqualified and not asked to continue to the background phase. Since both pools of candidates—those disqualified and those that continued to the background phase—had a mix of individuals with scores of 100 and 75 on the Chief's Interview, it appears that additional criteria beyond the Chief's Interview score was incorporated into the decision of which candidates would move forward to the background phase of the selection process. However, it remains unclear what criteria other than the Chief's Interview score was applied.

For example, one of the candidates we selected to test from the 4/21/08 OPRM provided candidate list reflected the highest overall numerical score of 98.25 out of more than 550

candidates on the list. This score indicates that this particular candidate passed both the pass/fail written and physical abilities tests and demonstrated outstanding performance on the oral board examination portion of OPRM's initial recruitment process as demonstrated by receiving the highest numerical score on the list. Our analysis of OFD's documentation further revealed that this particular candidate also passed the Chief's Interview portion of OFD's internal departmental selection process with a perfect score of 100 percent. But despite this candidate's solid performance through the Chief's Interview, the candidate was not selected to move forward in the process.

By contrast, the son-in-law of the former CAO was part of the bottom 20 percent of candidates on the same 4/21/08 list provided by OPRM (or approximately 450th out of the 550 candidates) with a score of 74.07. This individual also scored 75 percent in the Chief's Interview. Nonetheless, he was included on the list of candidates recommended to move on in the process whereas the top scoring candidate on OPRM's list who scored 100 percent on the Chief's interview was disqualified from further participation in the process. We were unable to find supporting evidence that justified the selection decisions related to these two individuals—or any candidates for that matter.

Since neither fire department staff nor documentary evidence retained by the department could sufficiently justify the deliberative processes used to select candidates to enter the academy, we were unable to determine how any decisions were reached or conclude as to whether OFD's hiring practices are aligned with the intent of a merit-based system. Although OFD officials assert that favoritism was not part of its decision-making process related to which candidates were invited to move forward in the selection process, the *appearance* of favoritism was created and the lack of supporting documentation exacerbates the negative perception.

While we agree that the Fire Chief should have some discretion over who gets into the Fire Academy, there needs to be adequate justification for excluding specific individuals at each stage of the process as well as proof that certain candidates were more qualified to enter the academy than others. Best hiring practices, however, suggest that hiring decisions should be based on established criteria and an audit trail of relevant documentation, such as ranking sheets and interview notes, should be retained so that subjective decisions can be justified. The Interim Fire Chief, who assumed the position in October 2008, asserted that justifications for hiring decisions and disqualifications will be documented and retained on a go-forward basis.

Fire Academy Standards Seem Consistently Applied to Ensure Firefighters Have the Necessary Skills to Perform Their Duties

With our review revealing inconsistencies and questionable decision-making, we were interested in assessing whether firefighter trainees were held to consistent standards once they entered the academy. Since records for academy classes run by OFD prior to 2007 were mishandled, lost, or damaged, we reviewed academy materials and training files for 16 firefighter trainees from the last three academies. Overall, based on the documents reviewed, OFD's fire academy appears to consistently use standardized curriculum from a number of different organizations, such as the California State Fire Marshall, the U.S. Occupational Safety and Health Administration, and the National Fire Protection Association. As such, OFD must develop its training academy around these various sets of standards so that each requirement is satisfied and firefighter trainees are

given proper instruction. According to the Captain of the Training Division, OFD teaches to the highest standard in that if one accrediting organization requires 10 hours of training for a certain standard while another organization requires 20 hours of training for the same or similar . standard, OFD will teach to the standard that requires more hours to ensure compliance with either set of standards.

The academy itself is structured into various classroom and manipulative components. We reviewed training files of 16 recruits looking for evidence of passage or failure of key academy standards to assess whether these components were being consistently enforced and documented. Out of the 16 training files reviewed, all contained sufficient evidence demonstrating that training "evolutions" were thoroughly administered. In other words, it appears that OFD's training academy holds trainees to consistent standards as well as has developed remediation programs to assist trainees gain proficiency in key training components, such as operating a self-contained breathing apparatus or handling a 24-foot ladder.

Although we noted some good practices in OFD's operation of its training academy, we noted several areas for improvement regarding OFD's screening and selection process for entry-level firefighter recruits. Specifically, OFD's internal process for documenting and providing justification for its decisions on who is allowed to enter the fire academy is insufficient. Without this justification, the legitimacy of hiring decisions is questionable, especially since some candidates who appeared more qualified for entry into the academy based on their performance were not selected while others were. The events in December 2007 also tarnish the City's image as well as the civil service hiring process since these actions conflict with hiring best practices. Finally, OFD should consider preparing a set of clearly articulated policies and procedures to guide the hiring process for future hiring activities so that staff and administrators within the department have standards by which pertinent hiring documentation is retained.

Recommendations:

To ensure that the City's sworn hiring practices and processes are conducted in a manner consistent with established rules and regulations and to improve perceptions related to the City's hiring practices in general, the OPRM, OPD, and OFD should:

45. Ensure that all hiring and appointment processes (including sworn) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules as well as consider applicable legal opinions of the City Attorney.

46. Develop policies and procedures and standard criteria for reviewing background information for sworn employees as part of OPD's and OFD's screening and selection process. Specifically, OPD and OFD should have explicit guidelines for evaluating Personal History Questionnaires (PHQ), Personal Trait Assessments, background evaluations and histories, medical clearances, and psychological evaluations so that subjective tendencies can be minimized, perceptions of favoritism can be mitigated, and hiring decisions are justified.

47. Ensure that all selection decisions related to either the OPD or OFD training academies are consistent with the developed criteria and hold OPD, OFD, and OPRM officials and management responsible and accountable if any hiring decisions deviate from the criteria without adequate justification.

48. Develop protocols that require that all sworn (OFD and OPD) selection processes be adequately documented, including but not limited to, the rationale for certain key decisions, such as winnowing the list of candidates invited to proceed through the various phases of the hiring processes. Assign responsibility of ensuring that OFD centrally maintains such documentation in a manner that is secure and where documentation is not lost or misplaced. Instruct OPD to continue their current documentation retention processes.

OPRM should:

49. Fully manage and document the firefighter trainee recruiting process and increase their participation in the selection process into the academy as recommended by the Alameda Grand Jury report. However, the ultimate selection decisions and authority must remain with OFD officials.

OFD should:

50. Eliminate the practice of participating in the distribution or acceptance of applications. This will help to ensure that independent and consistent criteria are applied to all candidates and that adequate documentation practices are implemented.

51. Work with OPRM to review and reconsider the policy decision to lower the minimum entry qualification for an entry-level firefighter requiring individuals to only a high school diploma. Also, within the analysis, consider the cost-benefit of removing the EMT certification prerequisite for the most recent academy class.

52. OFD should continue efforts to transition to an automated web-based job application program, "iRecruitment," which will reduce the necessity of organizing staff to accept large numbers of paper applications.

OPD should:

53. Amend internal OPD policies and procedures related to recycling police officer trainees into subsequent police academies so that OPD is required to document clear justification for allowing trainees to re-enter the police academy. Additionally, these revised standards should be consistently applied so that potential conflicts of interest, whether perceived or in fact, can be handled transparently and above reproach. This can also be extended to OFD.

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Chapter V: Management Oversight and Tracking of Part-Time and Temporary Hiring Processes is Insufficient and Fuels Widespread Perceptions that Hiring Decisions are Based on Personal Connections

Because of a lack of centralized oversight and adequate tracking as well as the fact that part-time and temporary hiring processes are not governed by Civil Service Rules in the same manner as classified positions, the widespread perception that hiring for positions related to regular (non-permanent) part-time and temporary classifications are largely given to individuals based on personal connections rather than qualifications is perpetuated. While the most notable examples of nepotism relate to civil service appointments of relatives of the former City Administrative Officer (CAO) discussed previously, we consistently heard from current employees, Office of Personnel Resource Management (OPRM) staff, and City of Oakland (City) officials that one of the most prevalent uses of favoritism exists within the hiring processes of the City's regular (non-permanent) part-time and temporary job opportunities.

As shown in Table 6, as of March 2009, the City had 1,923 employees in regular (non-permanent) part-time or temporary classifications that do not require civil service competitive examination processes.

Table 6. List of Oakland Employees Part-time and Temporary Employment Categories, as of March 2009[31]

Employment Category	Number of Employees as of March 2009
Regular (non-permanent) Part-time	1,732
Temporary:	
Temporary Contract Services Employees [32]	153
Exempt Limited Duration Employees	35
Provisional	3
Total	**1,923**

In spite of regular (non-permanent) part-time and temporary employees representing approximately 35 percent of the City's workforce of 5,574[33] there is a lack of centralized oversight surrounding the part-time and temporary hiring processes. As a result, when combined with the historical lack of policies prohibiting nepotism and favoritism, it has been relatively easy to hire friends or family members into part-time positions—particularly since regular part-

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[31] Information provided by OPRM from the City's Oracle System.

[32] Includes 47 California Public Employee Retirement System (PERS) Annuitants and 1 prior PERS.

[33] Remainder of the workforce includes regular full-time (classified and exempt), permanent part-time, and sworn employees.

time positions are exempt from competitive civil service processes.[34] Additionally, while part-time classifications are not guided by Civil Service Rules, the use of temporary classifications is defined in Civil Service Rules but we found the usage has not always been consistent with Rules and the lack of oversight creates situations where temporary appointments can be used to simply avoid civil service processes.

Little Oversight Exists Over Regular Part-time Hiring Processes

Although part-time positions account for a significant percentage of the City's overall employment opportunities and do not require competitive civil service processes, there is little oversight related to the hiring of employees into these classifications. Typically, City managers and supervisors have discretion to ensure those selected for regular part-time positions possess the appropriate background and experience for the position and do not have relationships that would make the selection inappropriate, such as hiring close family members and friends.

Currently, the City has more than 80 regular part-time classifications, including positions in classifications such as:

- Administrative Assistant I;
- Cultural Arts Specialist;
- Library Aide;
- Museum Guard; and,
- Student Trainee.

While retired annuitants may also fill regular part-time positions, in practice they are more likely to fill temporary positions as these individuals are seasoned professionals that can easily step in and fill temporary vacancies that usually require significant experience and institutional knowledge.

When filling vacancies within regular part-time classifications, departments generally have full discretion over hiring decisions and no competitive processes are necessary. There are no rules or procedures that guide this type of hiring; departments simply submit hiring paperwork to OPRM to receive approval that funding is available to fill a part-time vacancy. The only exception relates to the recently implemented oversight OPRM provides to the Office of Parks and Recreation (OPR) as a result of complaints leveled at OPR management of unfair part-time hiring practices. To resolve the complaints, in 2005 the former CAO required OPRM to begin overseeing OPR's part-time hiring processes, including reviewing applications, determining qualifications, and creating eligible lists. However, because of the relative ease of being placed on an OPR part-time eligible list due to the minimal qualifications of the classifications and the fact that OPR retains the ability to choose candidates from the list, it is unclear how successful the new process has been to incorporate fairness and transparency to OPR's part-time hiring practices.

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[34] Permanent part-time positions require competitive civil service processes while regular part-time positions do not.

To enhance oversight of all departments' part-time hiring practices, the City should develop consistent procedures that require hiring authorities to conduct a deliberative process to ensure candidates meet the minimum qualifications of the classification for which they are applying. The City should also consider centralizing certain portions of the hiring process under OPRM so that consistent processes could be applied as well as mitigating the perception that hiring decisions within certain departments are driven by connections rather than qualifications. For example, the City could expand the hiring processes that OPRM conducts on behalf of OPR by creating prescreened "candidate pools" related to citywide part-time classifications—such as Student Trainee, Administrative Assistant, and Management Intern—that departments could draw upon. This would allow OPRM to provide oversight of the City's most popular citywide part-time classifications without having to centralize the hiring of all employees within part-time classifications.

Oversight and Tracking of Temporary Hiring Processes Must be Improved

In addition to the lack of oversight over the hiring of regular part-time employees, there are also temporary classifications such as Exempt Limited Duration Employee (ELDE) and Temporary Contract Services Employees (TCSE) that lack the necessary oversight, monitoring, and tracking. The City currently utilizes these employee classifications to assist the City in meeting immediate and temporary hiring needs, such as short-term projects that require special skills or duties that do not fall within a current classification. However, we found that the use of these temporary classifications has not always been consistent with Civil Service Rules and the lack of oversight creates situations where these types of appointments can be used to avoid civil service processes altogether. Although the City has attempted to reign in the use of ELDE and TCSE appointments, insufficient monitoring and oversight practices have undermined these efforts.

Use of Temporary Appointments Is Often Inconsistent with Civil Service Rules

Although OPRM's classification unit reviews and approves departmental requests and justification for ELDE and TCSE appointments to ensure usage is consistent with Civil Service Rules, to gain a better understanding of the process, we reviewed reports that listed individuals newly appointed, transferred, as well as terminated from ELDE and TCSE positions over the last five years. In total, according to the information provided, there were over 240 ELDEs and more than 500 TCSEs. Overall, we found a significant portion of temporary classifications were not consistent with the intent of City rules and administrative instructions and allowed employees to go beyond the maximum time limits allowed. Specifically, the newly revised Civil Service Rules (adopted April 2008) and existing Administrative Instruction 562 define the use of these classifications as follows:

- ELDE—Classification related to positions with limited funding cycles of one year or less, special projects that are longer than 6 months but still short-term, or where duties and responsibilities have not been fully defined. While ELDE appointments receive full benefits and do not require civil service examinations, the appointments may not exceed one year.

- TCSE—Classification related to positions assigned to a division or projects on a regular basis up to a maximum of 960 hours or assigned on an occasional or short-term basis (less than 30 days). These assignments should require specialized skills, such as performance arts, project management, or transcription services. In any case, TCSE

appointments do not require civil service examinations, may not be used for ongoing or repetitive use, and do not receive any benefits.

Based on our review, we found that some of the ELDE and TCSE appointments were consistent with appropriate use definitions, such as those working on special and limited funding projects including grants, or short-term projects with specialized skills. However, OPRM management informed us that they believed there have been situations where Departments create justifications on the paperwork to fit within the required definitions to gain approval, although in practice those hired are performing different duties. Yet, no specific cases were identified to us.

Additionally, many appointments during the last five years simply did not fit within the definitions set forth in rules; rather, the individuals may have been performing the work of vacant classified positions instead of true temporary work. As such, these individuals should have been hired through another more appropriate appointment method, such as regular or provisional appointments. However, OPRM approved ELDE and TCSE appointments that did not meet Civil Service Rules as the appointments were not based on usage defined by the Rules as described on the previous page. Rather, the appointments were based on the following justifications:

- Critical and immediate staffing needs;
- Covering for sick, injured or retiring employees;
- Eligible list did not exist; or
- Usage fit the definition of another temporary classification, but the department wanted to provide the benefits that come with an ELDE appointment.

Although OPRM reviews the TCSE and ELDE request documentation provided by departments, there has been a lack of oversight and monitoring of these temporary appointments as well as an ability of departments to obtain approval directly from top city leadership prior to OPRM review. Coupled with the fact that these temporary appointments are not required to undergo civil service processes (examinations and eligibility lists), TCSE and ELDE appointments are attractive to hiring authorities and subject to misuse.

For example, beyond OPRM's review of request paperwork, there are no monitoring controls to prevent departments from providing inaccurate descriptions of job duties temporary employees will perform or to prevent departments from facilitating a de facto promotion since qualifications are ultimately approved by the appointing authority and there is no follow up to ensure the temporary assignment appropriately terminated. Despite the City Charter and Civil Service Rules that delegate the responsibility to hire employees to the Director of OPRM, OPRM management and staff asserts that they have not been "empowered" to exercise personnel's rightful authority to reject a Department's request if the temporary appointment request does not comply with City rules and felt their approval was simply a "formality." According to OPRM, there were times when the documentation related to temporary appointments already had the CAO's signature suggesting it was already approved before OPRM was able to make a determination if the request was consistent with the intent of these temporary classifications and Civil Service Rules—and, in essence, undermining the authority and control of OPRM.

Additionally, until recently, there have been no proactive measures by OPRM to review ELDE or TCSE positions to analyze why the temporary position was needed in the first place or to develop a position or hiring strategy to prevent the need for the temporary position reoccurring in the future. Because of recent layoffs and the need to review each temporary position in light of whether the work should be transferred to a classified employee, it became apparent to OPRM that some ELDE and TCSE employees have been appointed to—or are currently working in—temporary positions that have duties and responsibilities that could have been filled with classified employees.

Temporary and Part-time Appointments Exceed Allowable Limits on Duration and Hours

In addition to the fact that the use of many temporary appointments have not complied with the intent of Civil Service Rules and Administrative Instructions, many of the temporary appointments also exceeded the allowable—or simply reasonable—time limits. Specifically, we found that nearly half of the approximate 240 ELDE appointments (124) in the last five years exceeded the one-year maximum allowed by Civil Services Rules. While TCSE positions are specifically limited by hours (960) rather than days, many of these appointments do not appear temporary in nature even though rules state that these positions cannot be used for "*ongoing and repetitive use* [emphasis added]." Of all ELDE and TCSE positions, the average length exceeded one year and the longest timeframes ranged from more than five to more than ten years as illustrated in Table 7 below.

Table 7. Analysis of ELDE and TCSE Appointment Duration[35]

Temporary Classification	Approximate Appointments since 2003	Average Timeframe	Longest Timeframe
ELDE	240	529 days (1.5 years)	1,957 days (5.4 years)
TCSE	500	395 days (1.1 years)	3,896 days (10.7 years)

While in some cases the timeframes were exceeded because OPRM had not yet created the new classification, mostly it was unclear as to why temporary appointments were allowed to extend beyond the maximum allowable time limit. They also recognized that many employees in temporary positions were allowed to linger beyond the maximum allowed time frames because of the lack of centralized oversight and tracking, as our analysis confirmed. In fact, once an individual has been placed into an ELDE or TCSE position, OPRM no longer has any involvement in the appointment as the hiring department has the sole responsibility to ensure that the appointment ends as required. What is more, OPRM neither has the system access in the Oracle HRMS to run reports that would assist them in tracking individuals in temporary assignments nor has the system access or ability to terminate temporary appointments in Oracle

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[35] It is important to note that because of the format of the information provided and that our review covered only the last five years, some of these individuals may have been in ELDE or TCSE positions even longer than indicated above.

to ensure these individuals are promptly deactivated once the allowable time limits are up; rather, these fundamental human resources activities are currently carried out exclusively by Payroll. Denying OPRM system access to terminate employees in Oracle HRMS and giving Payroll both the responsibility to terminate and pay the same individuals again demonstrates the significant segregation of duties issues between the City's personnel and payroll functions and the risk of inappropriate activity, such as paying a terminated employee, is increased.

In addition to the City exceeding allowable duration limits related to temporary positions as described in the previous section, some regular part-time and temporary employees also exceeded annual hour limits. Specifically, regular part-time employees are limited to 1,000 hours annually and certain temporary employees, such as TCSEs, are limited to 960 hours annually. We tested 25 individuals in part-time and temporary positions between 2003 and 2008 and found that three of these individuals exceeded the annual hour limit (refer to Table 8 below), including the former CAO's son who exceeded the limit two years in a row while working as a Student Trainee. When part-time and temporary employees exceed the allowable hours, the employee becomes eligible to participate in the City's retirement benefit program and the City is responsible for the cost of the additional benefit. Specifically, the hours for these three employees were as follows:

Table 8. Annual Hours for Three Individuals in Part-time or Temporary Positions

Position	Fiscal Year	Hours Reported
Parking Control Technician – Part-time	2007-2008	1,007
Temporary Contract Services Employee	2007-2008	1,370
Student Trainee	2004-2005	1,124
	2005-2006	1,544

Overall, although part-time and temporary hiring processes are not governed by Civil Service Rules in the same manner as classified positions, the City must develop hiring processes that ensure individuals are selected based on qualifications and ensure that recruiting processes are immediately enacted to appropriately fill the temporary positions permanently. Additionally, OPRM must develop tracking and monitoring processes to ensure temporary hires adhere to the intent of the Civil Service Rules in terms of justification and allowable timelines (duration) as well as ensure these appointments are reflected appropriately in Oracle HRMS. OPRM must be given the appropriate access and control over personnel data in the Oracle HRMS, including the ability to run necessary tracking and monitoring reports and to promptly terminate temporary employees in the system and must have the authority to reject all requests that fail to meet Civil Service Rules. Once the necessary access and control is granted, OPRM must ensure that all temporary assignments comply with Civil Service Rules, in terms of allowable usage and time limits.

OPRM has acknowledged and has begun addressing the issues described throughout this section. For example, according to OPRM, they are finalizing a formal process to revamp the ELDE and TCSE appointment process, which includes:

- Reviewing and assessing the status of all the City's current temporary appointments and analyzing the type of work actually being performed;

- Monitoring and tracking the length of time employees are assigned to temporary positions;

- Eliminating any temporary appointment performing work that would be more appropriately performed by civil service employees;

- Terminating any temporary appointments where allowable time limits have been exceeded;

- Developing/revising request forms to provide adequate documentation and justification of the placements; and,

- Providing citywide training to all departments to communicate the improved temporary appointment processes.

OPRM management also indicated they are striving to ensure new requests comply with Civil Service Rules, but stated there are challenges because it is unclear if they have the authority to reject a Department's request and which, if any, City officials can override OPRM's decisions.

Lack of Oversight and Tracking of Provisional Appointments has Resulted in Timeframes Exceeding Allowable Limits and Inappropriate Appointment to Classified Position

Similar to temporary classifications, the City's lack of oversight and due diligence over provisional appointments (extremely short-term appointment not to exceed 120 days) has also resulted in excessive timeframes that do not comply with City Charter Section 903 as well as an inappropriate appointment to a permanent classified position. City Charter Section 903 defines a provisional appointment as:

> "Provisional Appointments. When there is no appropriate eligible list, provisional appointments to positions in the competitive civil service may be made pending the creation of such lists, but such provisional employment may not extend beyond the creation of the list nor in any event may such employment be renewed or extended beyond 120 days."

During the last five years, there have been 43 provisional appointments. Of these, 67 percent of the appointments extended beyond Charter limits (maximum allowed 120 days)—the average appointment was 217 days with a range of 31 days to 871 days.

According to OPRM, the appointments extended past allowable timeframes because, similar to temporary appointments discussed earlier, there was no tracking mechanism to monitor when candidates have exceeded the allowable time limits. Once an individual is placed into a provisional appointment, OPRM no longer maintains any involvement in the appointment—giving the hiring department sole responsibility to ensure that the appointment ends as required and appropriate. Additionally, a process to verify a recruitment process had taken place to

establish an eligibility list from which a permanent candidate could be appointed in place of the provisional candidate did not exist. The effectual delegation of this authority, without any continued oversight, undermines the responsibility of OPRM and the integrity of the Civil Service System allowing potential perceptions of biased treatment and nepotism as well as the potential for misuse and abuse.

OPRM has acknowledged the lack of adequate tracking and oversight and stated that they have begun to develop plans to implement monitoring processes and has already incorporated the following advisory in the provisional memo that is provided to departments when appointments are approved:

> "Please note that in keeping with Civil Service Rule 5.06 (a) Provisional Appointments, provisional appointees will be removed from their provisional assignments at 120 days, whether or not a list has been established. The end date for this appointment is 120 calendar days from appointment date. You will receive a notice from this office when 30 days are remaining."

While Testing Revealed Provisional Appointments Generally Comply with Civil Service Rules, OPRM's Lack of Oversight of Provisional Appointments Led to an Inappropriate Appointment of a Provisional Candidate to Permanent Employment Status

A Principal Human Resources (HR) Analyst is responsible for forwarding provisional appointment requests to the Civil Service Board after the Principal HR Analyst ensures that the candidate recommended meets the minimum qualifications of the classification (for classified positions only) and that a current eligible list does not exist.

To validate the City's stated process and determine whether OPRM complies with City Charter mandates, we requested a listing of all provisional appointments during the last five years and were provided a listing of 43 provisional appointments. Of these, we reviewed 16 appointments to determine if the appointment was appropriately approved by the civil service board and if evidence of competitive hiring process was present in the cases of subsequent permanent appointments. In each of the 16 appointments reviewed, we found that each was appropriately approved by the civil service board and all permanent appointments reflected evidence of competitive processes.

However, we have some reservations as to the completeness of this list provided to us since through our separate testing efforts, we noted that a former employee who was provisionally appointed to the classified position of Administrative Services Manager I (ASM I) in 2004 was not reflected on the generated listing of provisionally appointed individuals. Because this one individual was missing from the listing, we followed up and conducted additional research to understand the cause of the omission. According to OPRM, the former employee in question was inappropriately changed in the Oracle HRMS from provisional to regular, full-time with permanent status in the ASM I classification, which may explain why he was missing from the listing.

Unfortunately, neither OPD nor OPRM was able to explain how or why the status of this former employee was inappropriately changed in the Oracle HRMS from a provisional appointee to the

ASM I classification to a regular full-time employee with permanent status in the same classification. Furthermore, documentation supporting the approval of the change or evidence of the former employee being hired from an appropriate eligible list, as required by Civil Service Rules, could not be located. While OPRM was unable to provide an explanation for the inappropriate change to permanent status, OPRM acknowledged that its lack of oversight or tracking of provisional appointments contributed to the fact that an employee was able to be inappropriately appointed to a permanent civil service classification without having to compete with other qualified candidates.

While OPRM did not adequately fulfill its responsibilities, no management within the Oakland Police Department (OPD) nor the former employee himself followed up with OPRM to continue the recruitment process to appropriately fill the position on a permanent basis or to inquire into the permanent appointment. Had a tracking system been in place to follow up on provisional appointments to ensure a recruitment process is underway to fill the position permanently or to ensure the appointment concludes within the allowable timeframe, this mistake would have been discovered. Instead, the situation only came to light as a result of our inquiry and the employee, in effect, was placed into a permanent classified position without having to compete with other ASM I candidates—a direct violation of Civil Service Rules section 5.06 (a). Additionally, other qualified candidates that were placed on the ASM I eligible list were denied the opportunity to interview and compete for the position.

Separately, as briefly introduced in Chapter II, in addition to this former employee's inappropriate change to permanent status, it is also unclear why this same individual was granted the provisional appointment to the ASM I position in the first place or why he was allowed to sit for the ASM I examination as he did not reasonably meet the minimum education and experience qualifications for the classification. Specifically, the minimum requirements—or a combination of experience and education that would likely provide the required knowledge and abilities—of the ASM I classification and the individual's qualifications according to his resume and employment application are detailed in Table 9 on the following page.

Table 9. Comparison of ASM I Minimum Qualifications to Provisional Appointee's Qualifications

		ASM I Classification Minimum Qualifications	Provisional Appointee's Qualifications
Experience		Five years of experience performing progressively responsible and complex administrative and managerial duties including one year of supervisory experience.	Slightly more than 2 years of complex financial analysis experience while he was a Revenue Analyst.[36] However, he did not have regular managerial duties apart from filling in for the Revenue Manager on occasion and had not supervised employees in 12 years.
Education		Bachelor's degree from an accredited college or university in public or business administration, accounting, or related field and a Master's degree desirable.	High School Diploma

As demonstrated on Table 9, this former employee did not meet the minimum qualifications related to either experience or education of the ASM I position. Further, because he lacked the minimum qualifications in both categories—experience and education—, qualifications in one category could not make up for a deficiency in the other to reasonably arrive at a qualification "combination that would provide the required knowledge and abilities." Nonetheless, he was initially provisionally appointed to the ASM I classification—skipping the intermediate Revenue Manager classification altogether. According to OPRM, the employee in question was likely approved to be provisionally appointed to the ASM I position with the intention that the requesting department (OPD) would hire a permanent candidate off an appropriate eligible list once a list was established.

Subsequent to his provisional appointment, the former employee was allowed to sit for the ASM I examination and was placed on a corresponding eligible list even though, again, he did not meet the minimum qualifications of the classification and should not have been allowed to participate in the examination process. Regardless whether or not he inappropriately participated in the examination process, there is no evidence that supports the candidate was even hired off an eligible list related to his permanent appointment to ASM I but rather it is unclear how he his status changed from provisional to permanent. Additionally, he was subsequently promoted through a "desk audit" to an even higher level ASM II (exempt) position 3 years later overseeing OPD's entire financial division. (Refer to Chapter III for deficiencies related to the City's desk audit processes.)

While it is clear to us that the former employee was inappropriately appointed to the ASM I classification, we conducted additional analysis to gauge how this candidate compared to other

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[36] Another appointment to a classification where it is also questionable whether this employee met the minimum qualifications.

candidates that were not considered for the position. First, we compared the employee in question to three candidates that were deemed to have not met the minimum qualifications for the classification and were not allowed to participate in the examination process. We found that two candidates were rejected for qualifications that were similar, or perhaps better than the employee in question. Specifically:

- One candidate did not have the required bachelors degree, yet, he did have a 2-year associates degree—a higher ranking than the appointed employee's high school diploma.

- Another candidate did not have the required supervision experience, although the candidate had a master's degree in public administration from the University of Southern California and several years of financial and budgetary experience—again, much stronger qualifications than the appointee.

Additionally, we compared the employee in question to 27 other candidates that were also deemed minimally qualified and participated in the examination process. We found that the employee in question had education and experience qualifications that were substantially subpar when compared to the other candidates. Each of the other candidates held a minimum Bachelor's degree while several held Master's degrees—all had significant financial management related experience.

According to OPRM, the situation appears atypical and because it has been several years since the employee in question was provisionally appointed to the ASM I position and they are unsure how he was ultimately deemed as having met the minimum qualifications of the classification. They stated that during the time of the provisional appointment, OPRM had undergone significant staffing changes that may have contributed to the confusion or limited experience analyzing minimum qualification requirements. Furthermore, decisions that the OPRM analysts made related to determining whether candidates had met minimum qualifications were largely subjective and not reviewed by management, even in cases where it was questionable whether the requirements had been met.

Overall, the City must develop hiring processes that ensure individuals are selected based on qualifications rather than personal connections and ensure that recruiting processes are immediately enacted to appropriately fill temporary and provisional positions only when the need and justification complies with the intent of Civil Service Rules. Additionally, OPRM should develop tracking and monitoring processes related to all temporary and provisional appointments to ensure these hires adhere to the intent of the Civil Service Rules in terms of justification and allowable timelines as well as ensure these appointments are reflected appropriately in the Oracle HRMS system.

Recommendations:

To improve the oversight and tracking of part-time, temporary, and provisional hiring processes as well as improve perceptions related to the City's hiring practices in general, OPRM should:

54. Ensure that all hiring and appointment processes (including part-time and temporary) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules and reject hiring requests that do not conform to these rules and regulations. Also, consider applicable legal opinions of the City Attorney.

55. Devise a plan to incorporate additional centralized oversight of part-time hiring to ensure job opportunities are provided to the most qualified individuals, hiring decisions are justified, and departments and agencies have conducted deliberative, fair processes to select candidates.

56. Develop standards for part-time, temporary, and provisional hiring processes and provide corresponding training to City departments to communicate accountability and expectations as well as to ensure departments have an adequate level of understanding related to part-time, temporary, and provisional hiring processes.

57. Consider expanding the current processes OPRM conducts on behalf of OPR by creating prescreened "candidate pools" related to citywide part-time classifications, such as Student Trainee, Administrative Assistant, and Management Intern, which departments and agencies could draw upon.

58. Carefully scrutinize requests to use temporary classifications, such as ELDE and TCSE, to ensure that the justification complies with Civil Service Rules and that the work would not be more appropriately assigned to a classified employee through a civil service hiring process.

59. Make certain that departments and agencies provide correct information related to the type of work that will be performed before approving any requests to use temporary classifications, such as ELDE and TCSE. Incorporate periodic post-process "audits" and active monitoring to verify that temporary employees are performing duties as agreed upon.

60: Carefully determine if individuals requested to be appointed provisionally meet minimum qualifications and hold analysts and supervisors responsible for allowing individuals that have not reasonably met the minimum qualifications of a classification to inappropriately proceed in the City's hiring processes past the point of application review.

61. Create a process to follow-through on temporary appointments (TCSE, ELDE, and Provisional) to ensure the appropriate processes are underway, such as recruitment and classification changes.

62. Ensure that all temporary appointments (TCSE, ELDE, and Provisional) that have been approved by OPRM are tracked and monitored all the way from initial appointment to termination of appointment. As part of a "close out" process when an individual's temporary appointment is terminated, include a description related to the reason the appointment terminated, such as no further work needed, permanent appointment finalized, etc. Where applicable, verify the permanent appointment went through all proper processes. This should ensure that temporary employees are not inadvertently placed into permanent, classified positions without the knowledge of OPRM and without going through the proper processes.

63. Work with the Department of Information Technology to develop reports that will provide regular and on-demand information as to the length of time and number of hours employees in temporary (ELDE, TCSE, Provisional, etc.) and part-time appointments have worked. OPRM should generate and use the reports to regularly monitor the appointments to ensure that the length of time and number of hours worked complies with the allowable limits defined in Civil Service Rules and communicate information to affected departments and agencies.

64. Work with the Department of Information Technology to obtain the necessary access so that OPRM promptly terminates employees in Oracle HRMS once they have reached the allowable time limits.

65. Develop a corresponding formal process that describes the termination process in Oracle HRMS.

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Chapter VI: The City Struggles to Comply with Equal Access Ordinance and Lacks Processes to Track Progress

On May 8, 2001, the City of Oakland (City) adopted an Equal Access to Services Ordinance (Ordinance) with the purpose of removing language barriers so that limited English speakers would have full access to Oakland's government services and information, given that 23 percent[37] of Oakland residents are limited English speakers. However, the City has struggled to comply with Ordinance provisions, such as tracking and monitoring departmental compliance as well as submitting annual compliance reports to the City Council. In fact, information provided related to compliance was inconsistent until the issue became a "hot button" in late 2008 when the City was sued over its failure to implement the Ordinance.

Percentage of Bilingual Employees in Public Contact Positions Remains Significantly Low

Although the intent of the Ordinance is to remove language barriers for residents who speak limited English, more than 125 other languages are spoken in the City. As a result, the Ordinance targets languages that involve more than 10,000 residents—currently, Chinese and Spanish meet this threshold according to the 2006 American Community Survey. To provide language access for these residents, the Ordinance mandates (1) hiring of sufficient bilingual personnel in public contact positions (PCP) throughout its agencies, and (2) providing written outreach materials in other languages including brochures, program materials, applications, complaint forms, and notices of rights.

As originally planned, agencies and departments that provide the most crucial services, such as Police and Fire, would sufficiently fill PCPs with bilingual staff by the end of 2002, with the remaining agencies and departments following suit in 2003. However, shortly after the adoption of the Ordinance, the City determined that its goal for bilingual personnel was too ambitious, and revised what positions are considered PCPs to involve fewer employees. Even with lowering its goals, the number of bilingual staff in the designated PCPs has remained significantly low.

According to the Ordinance, staffing levels of bilingual employees is only considered sufficient if the department is able to provide the same level of service to limited-English speakers as they provide to English speakers. While some departments are providing these services better than other departments, since the Ordinance was adopted eight years ago, the City, overall, has not been able to provide this same level of service to its residents who speak limited English. While the percentage of the City's PCPs filled with bilingual employees has slightly increased between 2007 and 2008 from 9 to 11 percent of PCPs filled with bilingual employees, overall, this statistic is still low when put in the context that 23 percent of Oakland residents are limited English speakers.

Furthermore, of the approximate 131 PCPs newly filled during Fiscal Year 2007-2008, only 13 percent of the positions were filled with bilingual employees—a percentage that will not significantly improve the City's overall percentage (11 percent) of PCPs filled with bilingual employees to levels similar to those of Oakland's limited-English speaker residents. If the City

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[37] 2006 American Community Survey.

expects to comply with the Ordinance to provide the same level of service to limited-English speakers by increasing the numbers of bilingual staff in PCPs, then it will need to do a better job considering bilingual capabilities in its future hires in PCPs.

Moreover, individuals in the PCP positions self-report that they are bilingual and not all of these individuals have been tested to validate their bilingual abilities. In fact, the only employees that are tested are those that actually receive bilingual pay, who may or may not be filling a PCP. Additionally, the numbers of tested bilingual employees in either PCP or non-PCP classifications are far fewer than the number of employees that self-identify as bilingual and fill PCPs.[38] As such, the City should ensure that employees that self-report bilingual abilities are tested to make certain staffing levels are appropriate and efforts to comply with the Ordinance in providing bilingual services to limited-English speakers are accurately measured.

It appears that there are several reasons that have made the implementation of the Ordinance difficult. For example, the Ordinance prohibits the termination or replacement of staff to comply with this policy and employees that were in PCPs prior to the passage of the Ordinance were not transferred out of those positions even if they were not bilingual. Consequently, the City started at a disadvantage in meeting the intent of providing bilingual speakers in PCPs. Additionally, the current and past hiring freezes have contributed to the difficulty of filling PCPs with bilingual employees.

Equal Access Office Has Failed to Sufficiently Monitor and Enforce the Ordinance

To ensure compliance with the Ordinance, the CAO's Equal Access Office (EAO) is responsible for monitoring the City's recruitment and hiring efforts of bilingual individuals as well as assessing staffing levels of personnel in PCPs. For example, EAO is responsible for monitoring recruitment efforts of PCPs, such as ensuring wide-publication of job openings in non-English language media. However, EAO has been unable to effectively monitor recruitment efforts because of the lack of communication and coordination between EAO, OPRM, and departments. Specifically, departments are required to notify OPRM that the position being recruited is a PCP requiring specialized recruitment and advertisement efforts as well as selective certification. However, EAO states that departments may not communicate to OPRM the need for a bilingual employee in that position, which hampers OPRM's efforts to recruit and selectively certify bilingual employees as necessary to fill PCPs.

Additionally, EAO states that when PCPs become available, the EAO is not informed of the opening when a vacancy exists even though most departments have designated an employee to act as the Language Access Coordinator (responsibilities that are in addition to the employee's regular job duties). The Language Access Coordinator is responsible for identifying and coordinating the PCPs in the department that require bilingual employees. Instead, to identify the EAO must review job postings each Monday, in an attempt to identify any positions that may be a PCP, and then follow-up with the departments to ensure they are working with OPRM to conduct appropriate recruiting activities to allow for compliance with the Ordinance. Further,

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[38] Due to the conflicting information contained in various Equal Access status reports, we were unable to determine the exact number of identified bilingual PCPs that receive bilingual pay and have been tested; however, all indicate the percentage is less than 50 percent.

the EAO is unable to independently track PCP vacancies because the City's position control module lacks information related to the number and types of PCPs.

Although the EAO is proactive in seeking vacancy information, it has not provided a response to OPRM's October 2008 request for clarification on roles and responsibilities related to implementing the Ordinance. Better communication between the City agencies, EAO, and OPRM would help ensure PCPs are filled with bilingual employees as necessary which will in turn lend to improved compliance with the Ordinance and better services to the limited English speakers in the City. The lack of communication, coordination, and information between the EAO, OPRM, and departments has contributed to the City's inability to significantly make progress toward having equal language representation for City services.

EAO and Departments Have Failed to Regularly Submit Compliance Plans to the City Council

In addition to the lack of communication and coordination related to recruitment and hiring efforts, the EAO and departments have failed to regularly submit compliance plans to the City Council, which are intended to inform the City's leaders as to the progress toward providing City residents with equal language access. Specifically, departments are required by the Ordinance to submit compliance plans or Language Access Plans to the EAO who then is required to submit an annual compliance report (status report) to the CAO and City Council compiling citywide compliance information. The compliance report is required to describe the number of PCPs, implementation efforts, and results of each City agency. However, we found that compliance plans have been minimally conducted by the departments and EAO since the Ordinance was implemented. Specifically, the EAO has provided only three compliance plans during the last seven years—all of which were incomplete.

In addition to the plans being incomplete, they lacked concise information. For instance, as required by the Ordinance, the December 2008 compliance plan provided information related to the number of PCPs in each department and the number of bilingual employees in PCPs including the spoken language. However, rather than summarizing this information to include total figures such as total number of PCPs and total number of bilingual PCPs, positions are individually listed and no summary data is provided. As a result, the City Council is not able to easily utilize the information in the report without further analysis.

Though Past Efforts to Ensure Compliance have Failed, Recent Legal Issues Have Prompted Renewed Efforts

Realizing the difficulty of implementing the Ordinance, the City created an Equal Access Task Force in 2006 to work on recommendations for implementing unrealized aspects of the Ordinance, such as insufficient number of bilingual employees and incomplete departmental compliance plans. The Task Force, consisting of City staff and community based organizations, was cut shortly after it was formed. Though we were unable to identify when it ended, the Task Force had no longer been meeting when the current Director of the EAO started in June 2007. According to interviews with staff, because of the controversial nature of the Ordinance, the Task Force was unable to settle disagreements in order to accomplish the necessary tasks. At the end of 2008, a lawsuit filed that focused on the City's failure to comply with the Ordinance and pointed out that the City has provided only three compliance plans during the last seven years—all of which were incomplete as previously mentioned. However, because of the

lawsuit, the EAO, agencies, and departments came together in November 2008 to work on identifying all PCPs and preparing a status report. Specifically, all City agencies completed a compliance report for Fiscal Year 2007-2008 and submitted it to the EAO. In addition, the EAO Director and a representative from the CAO met with the Director, key staff, and Language Access Coordinator from each agency to discuss compliance, to review budgeted positions in the agency to determine PCP and bilingual status, and to make updates to the list of translated materials and multilingual phone lines. As a result of these efforts, the City submitted its first complete status report to the City Council on December 6, 2008 detailing every PCP in the City and its related function. This was the first time the PCPs had been re-evaluated since the Ordinance was implemented in 2001.

Certain Aspects of the Ordinance Present Challenges in Ensuring Compliance

While it is the City's duty to implement and comply with the Ordinance, there are certain aspects that present challenges. For example, the City must strike a balance between providing sufficient bilingual resources and violating equal opportunity legislation, such as the California Fair Employment and Housing Act (Proposition 209), by providing preferential treatment of bilingual employees and applicants. However, the City Attorney issued a legal opinion that as long as the requirements are job related and consistent with a business necessity, the City is not in violation of these anti-discrimination laws while complying with the equal access Ordinance. However, the opinion further indicates that communication with members of an underserved language group must be an essential function of the PCP; some City officials that we spoke with believe that the positions identified as public contact are over-inclusive and contain positions where the public contact is not a primary job responsibility.

Additionally, complying with the Ordinance is particularly difficult for the City in relation to sworn positions due to the system of job rotations; thus, staffing a mix of bilingual speakers at a police or fire station is a significant challenge and the complexity of scheduling can result in few, if any, bilingual speakers in areas of the City where most of the population are non-English speakers. A further challenge is balancing the need to hire the most qualified entry-level public safety candidates with hiring a sufficient number of candidates that are bilingual, particularly given the rigorous background processes that sworn applicants undergo, which result in few viable candidates that pass all components of the hiring process.

Despite the City's past and recent efforts to better implement the Ordinance, the lack of tracking and monitoring departmental compliance, failure to submit complete and concise annual compliance reports, lack of effective communication and coordination between EAO, OPRM, and departments limits the City's ability to significantly make progress toward having equal language representation for City services. If the City does not address these issues, it will likely still be unable to hire a sufficient number of bilingual employees in PCPs and thus, remain non-compliant with the Ordinance. Although compliance with the Ordinance will remain a significant challenge for the City, to make strides towards reaching its goal, the City should improve oversight over the administration of the Ordinance, ensure appropriate compliance reports are submitted annually, and encourage proper communication between the key players.

Recommendations:

For the City to improve its compliance with the Equal Access Ordinance, the EAO should:

66. Collaborate with City departments and agencies to regularly evaluate (at least annually) those positions identified as public contact positions to ensure that the designations are appropriate, communication with the public is an essential duty of the position, and bilingual proficiency is required.

67. Ensure that employees that self-report bilingual abilities are tested to make certain staffing levels are appropriate and efforts to comply with the Ordinance in providing bilingual services to limited-English speakers are accurately measured.

68. Continue with targeted recruitment efforts and also consider, in the future, encouraging current staff to become bilingual through offering benefits such as tuition reimbursement for language classes in addition to the bilingual pay already offered.

69. Work with City departments and agencies as well as OPRM to improve communication and collaboration efforts to ensure appropriate oversight exists. Specifically:

    a. Departments must notify OPRM of PCP vacancies requiring bilingual recruitment and selective certification.

    b. Departments and OPRM must contact the EAO when vacancies arise within public contact positions so that the EAO can provide assistance with filling the vacancies.

70. To facilitate information sharing that will make monitoring compliance with the Equal Access Ordinance more efficient, work with the Finance and Management Agency and the Department of Information Technology to determine if the new position control module within Oracle can be modified to identify which classifications are public contact positions as well as what languages are spoken by current employees. Additionally, consider capturing applicant language information within the applicant tracking system— SIGMA.

71. Continue efforts to clarify each entity's roles and responsibilities related to the ordinance and ensure they are communicated to OPRM and departments. Consider drafting an Administrative Instruction or other guidance with specific instructions to help agencies and departments implement the ordinance.

72. Make it a priority to monitor and track departmental implementation plans as well as ensure timely, accurate reporting to the City Council of its progress and activities.

73. In conjunction with Departments, ensure each Department complies with the requirement to provide annual compliance plans to the EAO as required.

74. Ensure that consolidated and complete compliance plans are submitted to the City Council annually. Additionally, the compliance plans should contain concise and summarized information, such as total number of PCPs and total number of bilingual PCPs, so the City Council is able to easily utilize the information in the report without further analysis.

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Chapter VII: Additional Personnel Processes and Documentation Have not Been Adequately Maintained

The City of Oakland's (City) civil service classifications have not been properly updated or maintained and certain exempt classifications have not been appropriately vetted or approved through the mandated City Council and Civil Service Board approval process. When minimum qualifications for classifications are not maintained, ill-qualified candidates may be promoted in the hiring process. The Office of Personnel Resource Management (OPRM) recruits applicants and designs exams based on the requirements listed in class specifications; hence, with outdated class specifications in use, OPRM is less effective and efficient in meeting operating departments' hiring needs.

Additionally, the City lacks cohesive, standardized document maintenance and retention policies as well as does not have centralized processes to oversee and ensure that background checks have been performed and that the results are acceptable and retained. Without consistent policies and standardized practices in place, the City may find it difficult to conduct effective hiring evaluations, ensure compliance with local, state, or federal laws, or to evaluate the veracity of statements made on candidates' applications.

Classification Plan has not been Adequately Maintained and Some Exempt Classifications have not been Vetted through Appropriate Approval Processes

The City's civil service classifications, including minimum qualifications, have not been properly maintained and certain exempt classifications have not been appropriately vetted and approved through the City Council and Civil Service Commission Board. In recent years, there have been a number of disputes between the City and Local 21 (Professional and Technical Engineers Unions), who represents "UM1" employees, because the City has long considered some UM1 employees to be exempt from the civil service Rules—although it is not clear if the associated classifications were ever formally exempted by either the City Council or the Civil Service Board as required by Oakland City Charter Section 902(f). In total, there are 58 classifications within UM1 and these employees generally occupy upper management and executive support positions, such as division managers, executive assistants to agency directors, and project managers II/III.

Much of the confusion surrounds the fact the City treats, in practice, Project Managers (PM) I, II, and III[39] as exempt. Unlike the PM I and III classifications, the PM II classification was never formally exempted and continues to be reflected on the City's salary Ordinance as classified. This creates an unusual situation where (technically) classified employees (PM II) supervise exempt employees (PM I). On three different occasions, OPRM has gone before the City Council and Civil Service Board to acquire consent to formally exempt some of the UM1 classifications—including PM II—but, on all three occasions, the matter was either rejected or unable to reach the agenda for either of those bodies. Further, according to the memorandum of understanding between the City of Oakland and Local 21 section 16.3, the City agreed not to seek Civil Service Board exemption from Civil Service any Unit UM1 represented employee—which specifically includes PM II employees. As such, there continues to be no formal authority

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[39] PMs I are represented by Local 21 employee unit UM2 and PMs II and III are represented by employee unit UM1.

behind the historical exempt treatment of some of the UM1 classifications. During the City's layoff process in 2008, this issue created problems as to whether or not PM IIs should have "bumping" rights since these employees are technically classified civil servants as a result of past classification procedural errors even though the PM II employees have been treated, in practice, as exempt employees. Moreover, employees in UM1 classifications that are treated as exempt, but have not been formally exempted, may not have gone through a competitive civil service process required for all non-exempted, classified civil service positions.

In addition to the concern that classifications have not undergone appropriate vetting and approval processes, the City has not maintained its classification specifications related to minimum qualifications, job duties, or examination processes. In fact, since 2003, the City has made changes to only twelve classifications. In comparison, the City of Los Angeles modified 80 job specifications out of the approximate 185 examination processes administered in 2008 alone. This is a similar lengthy process to Oakland in that in order to revise minimum qualifications or examination processes they must work with departmental subject matter experts and labor unions as well as receive approval from the Civil Service Commission. Furthermore, the City of Los Angeles has made it a priority to reflect up-to-date requirements with dual goals—to ensure a sufficient candidate pool to fill vacancies, while attracting top quality candidates. When minimum qualifications for classifications are not maintained, ill-qualified candidates with outdated skills may be promoted in the hiring process. OPRM recruits applicants and designs exams based on the requirements listed in class specifications; hence, with outdated class specifications in use, OPRM is less effective and efficient in meeting operating departments' hiring needs.

As a result of these issues, OPRM has formed a team to begin researching and analyzing each of the City's classifications to identify required updates, modifications, or formal approvals. The plan is to first review all exempt classifications and determine whether they are either charter exempt or board-exempt classifications, which will involve reviewing historical documents and other records to determine if any formal process was executed to exempt certain classifications. If no justification is found for a classification that is considered exempt, OPRM is taking steps to formally exempt those classifications in accordance with the City Charter. In addition to reviewing exempt classifications, OPRM plans to begin reviewing the City's most frequently used classifications to determine what modifications are needed and, due to limited resources, will utilize a staged approach to eventually review all of the City's classifications. OPRM also plans to implement a process to regularly update classifications and job specifications to reflect the most current job requirements and minimum qualifications.

Citywide Documentation Maintenance and Retention Processes Must be Improved

Throughout our review of the City's hiring practices, we found inconsistencies related to the level of documentation that departments keep related to their departmental internal selection processes (e.g. interview questions/answers) as well as inconsistencies related to the types of documentation OPRM retains in employee personnel files—some have evidence of degrees, or licenses while other files do not. Moreover, we also found inadequate practices over the verification and validation of employees who are required to undergo background checks as part of their employment screening process.

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Some City Departments Fail to Retain Documentation Related to Civilian Criminal Background Checks

Because each department has been responsible for conducting required background checks and ensuring potential employees have successfully passed, there has been no centralized oversight to ensure background checks are being performed or that results are acceptable and retained. Additionally, there is inconsistency in the documentation retention policies of departments that conduct civilian background checks, including Office of Parks and Recreation (OPR) and the Department of Human Services (DHS). As a result, we found that the City maintains little evidence to support the fact that employees in positions requiring clear background checks have been appropriately screened.

Historically, the City has only required and performed background checks on all sworn positions and specific civilian positions, such as those related to working with children and seniors. Further, each department has been solely responsible for conducting the background checks and ensuring potential employees have successfully passed prior to starting work for the City. While the City's OPR and DHS employ the vast majority of the City's civilian employees that require "Live scan" fingerprint analysis, there is no centralized oversight to ensure the departments are performing the background checks and the results are acceptable and retained.

As such, we selected 50 new hires since 2003 to determine if background checks were conducted when required and if required, the background checks were documented appropriately—24 from OPR and 26 from DHS. Apart from a notebook journal with a memo entry of "OK" if the person passed the fingerprint check, OPR could not provide evidence that its employees passed background checks. In fact, in January 2009, OPRM began its own audit of OPR's background check retention process as a result of a complaint leveled against a 10-year OPR employee. When OPRM found that background checks are not retained, they instructed OPR to perform immediate background checks on approximately ten employees where the department could not prove, through billing receipts, that the employees had at least been fingerprinted. These employees were placed on paid administrative leave until the results were provided to OPRM. Thus far, results have revealed that the original employee in question had a felony background issue, but was still working in OPR—that employee has since been terminated. As of February 2009, OPRM stated it plans to extend its audit and fingerprint every current OPR employee.

Similarly, our testing of background clearances at DHS revealed that not all employees that have contact with vulnerable populations (e.g. children and seniors) have supporting documentation verifying successful background clearance. For instance, our testing of DHS employees found that 13 of 26 employees were not in positions that required the employee to submit to a background check. Out of the remaining 13 employees in our sample, personnel files for seven could not be found while the other six appeared to contain evidence of background clearances. In other words, over half of the records we attempted to validate were not available, which further supports our concern related to inconsistent and insufficient documentation practices. More importantly, without documentary proof that background checks were performed on these employees, we cannot be assured that those employees should be allowed to work with the community's seniors or young children.

OPRM has recently received City funding to begin conducting credit, criminal, fingerprint, and reference checks on all future City of Oakland employees. This process will be handled centrally through Finance and Management Agency's (FMA) risk management unit for all non-sworn employees. OPRM has drafted an Administrative Instruction, which is awaiting CAO approval, to require OPRM to be responsible for centrally maintaining the results of background investigations. Nevertheless, our results clearly indicate that the City needs to address how and when background checks are conducted and what processes should be implemented to ensure that the City can verify that employees have clear backgrounds, especially those who have direct contact with vulnerable populations.

Additionally, the City of Oakland has recently initiated policy changes regarding background checks of City employees. Specifically, the City of Oakland developed a new Administrative Instruction to clarify the rules surrounding fingerprinting requirements. Once approved and implemented, the new policy should "...ensure compliance with State law that requires every public recreation program employer to require each employee having direct contact with a minor to submit on or before the first day of his/her employment one set of fingerprints to the Department of Justice..." Specifically, the Administrative Instruction proposal describes the specific employee groups that must submit to fingerprinting, the procedure for scheduling fingerprint submission, and the City policy on hiring decisions regarding inconsistent or unacceptable fingerprint clearance results. Though the instructions focus solely on City employees who have direct contact with minors, when coupled with the Risk Management Division's implementation of an overarching background check process, the City may be poised to rectify the current deficiencies in the background check process and related document retention.

Processes to Maintain Documentation Related to Hiring Processes Needs Improvement

While the City has some adequate documentation of personnel activity, such as maintaining examination documentation, other documentation needs improvement. Specifically, we found inconsistencies related to the level of documentation that departments keep regarding their departmental internal selection processes and the type of documentation maintained in employee personnel files. During our visits and interviews with each City agency as well as several in-depth reviews of individual departmental documentation practices related to selection processes, we found that most departments do not retain any hiring information. Only a few have sufficient retention, such as the Public Works Agency (PWA) and the Library that keep detailed information related to their selection processes, including applications, resumes, and interview questions and answers. Our findings were corroborated when in September 2008, the City's Equal Employment Opportunity Committee issued a report on the City's knowledge of and compliance with equal employment opportunity and human resources related laws, rules, regulations, policies, practices, and procedures. They found that many of the City's departments do not keep adequate files and documentation related to the department's internal selection and hiring processes—results consistent with our observations.

In addition to departmental practices, we found that some of OPRM's centralized documentation retention practices related to personnel files could be improved, particularly concerning the documentation of employee qualifications. In reviewing OPRM's personnel files, we discovered inconsistent documentation of minimum qualifications such as undergraduate or graduate

degrees, licenses, or certifications—some files contained this type of support, while others did not. Supporting evidence of a candidate's qualifications is vital for the City's goal of hiring the best candidates and keeping the hiring process unfettered by claims of bias. Evidence of a candidate's qualifications is particularly important for exempt or unclassified positions since no competitive civil service exam process is required. We also found OPRM could better centralize its retention related to other aspects of their personnel processes, such as classification studies and desk audits. Specifically, during the course of our audit, we requested detailed information regarding desk audits performed during the past five years. While OPRM was able to provide the requested information, it was quite an undertaking because the completed audits were kept at individual analyst desks rather than in a centralized location once completed.

Without consistent policies and standardized processes in place, the City may find it difficult to conduct effective hiring evaluations, ensure compliance with local, state or federal laws, or to evaluate the veracity of statements made on candidates' applications. A fundamental human resources component such as verification of candidate qualifications should have clear, traceable steps back to supporting documentation, be it electronic or hard copy. Since there is little more than verbal confirmation available for background checks verification, the City is unable to ensure that all employees in positions that require background checks have been properly vetted. Without changes, the inconsistency in the City's documentation and retention processes and policies may raise questions regarding the City's capacity to hire the best qualified workforce possible.

Recommendations:

To improve the maintenance of the City's classification plan and the documentation of hiring processes, the Mayor, City Council, and CAO should:

75. Support OPRM's efforts to ensure all exempt classifications underwent the appropriate formal exemption process and for those classifications identified as not having been formally exempted, take the appropriate steps to properly rectify the situation in accordance with the City Charter.

OPRM should:

76. Continue plans to review all exempt classifications to determine whether the classification underwent the appropriate formal exemption process. For those exempt classifications that have not been formally approved, take the appropriate steps to formally exempt those classifications in accordance with the City Charter.

77. Continue plans to begin reviewing, updating, and modifying the City's most frequently used classifications (job specifications, minimum qualifications, etc.) and develop a plan that ensures all classifications are periodically refreshed.

78. Implement a process to regularly update classifications and job specifications on an on-going basis to reflect the most current job requirements and minimum qualifications, which will help ensure a sufficient sized candidate pool to fill vacancies while attracting top quality candidates.

79. Implement central oversight over the background checks process to ensure background checks are consistently performed, verified, and maintained as well as to ensure employees have clear backgrounds, especially those that have direct contact with vulnerable populations.

80. Develop and employ sound record retention policies requiring departments and OPRM to maintain consistent documentation related to all hiring and selection processes.

81. Require all departments to maintain departmental internal selection documentation such as applications, resumes, and interview questions and answers to justify their selection of candidates.

82. OPRM should provide training to departments related to good record retention processes and OPRM should conduct periodic audits of departmental files to ensure compliance with such record retention policies.

83. Ensure OPRM files contain documentation that validates employees possess the applicable minimum qualifications such as college degrees, licenses, or certifications for all appointment types, including classified, temporary, exempt, sworn, etc.

84. Consider developing a file checklist of required documentation for both OPRM files and departmental files to help OPRM and departments comply with record retention policies.

85. Consider centralizing OPRM's documentation and filing processes, such as, but not limited to, completed classification studies and desk audits, rather than having information decentralized at the desks of various analysts.

Appendix A – City Administration's Response to the Audit Report

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CITY OF OAKLAND

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Dan Lindheim
City Administrator

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August 31, 2009

Ms. Courtney Ruby
City Auditor
City of Oakland, California
Frank Ogawa Plaza, 4th Floor
Oakland, California 94612

RE: Response to Performance Audit of Oakland's Hiring Practices

Dear Courtney,

Attached please find the City's response to the Hiring Practices audit.

Sincerely,

Dan Lindheim
City Administrator

cc: Mayor
       City Council Members

CITY OF OAKLAND

CITY OF OAKLAND

Response to

The Performance Audit of Oakland's Hiring Practices

August 2009

Audit Response

This is a response to the audit conducted by the City Auditor regarding City of Oakland hiring practices covering the past five year period. While some audit recommendations may assist the City in updating and modifying its hiring practices, the City is not in agreement with many of the comments, conclusions and recommendations in the report.

The report suffers from paying excessive attention to, and drawing too many of its recommendations from, a limited number of well known, but isolated cases, which the report generalizes to the entire system. In other cases, while we concur with the recommendations, the recommendations do not directly flow from the report's findings.

We would have hoped in order to be helpful to bring about the necessary reform, to have had a more robust analysis that would not have produced sensationalized findings reflecting actions of the prior administration.

The report attempts to address a "widespread and pervasive perception" of the City's [allegedly broken] hiring processes and practices. The alleged "common perception that its hiring processes allow for favoritism and do not provide fair consideration of candidates based upon pertinent job-related qualities" is based upon problems with a miniscule fraction of the total number of employees hired during the period of the audit. Moreover, many of the alleged improprieties pertain to "at will" positions that are exempt from civil service. 1

Whatever our disagreements with the report, the City remains committed to the principles of fairness and equality that are contained in the City's merit based personnel system. The current administration had begun to address issues contained in the Audit prior to its release. Over the past few months, administration and staff have been working on revising a number of Administrative Instructions (AIs) pertaining to personnel and payroll processes, in order to clarify the respective roles of Personnel, Payroll and departments, set higher accountability standards for department directors, and strengthen internal controls. These revised AIs are planned for official release to departments in September-October 2009.

Finally, as mentioned above, the release of the Audit comes at a time where the City budget has been reduced in excess of $100,000,000 over the past year. The Department of Human Resources Management (the "Department" formerly known as the Office of Personnel Management Resources) budget, which is primarily funded out of the General Fund, has been reduced by approximately 25%. The City and Department will make a concerted effort to implement those recommendations that will strengthen and promote confidence in the hiring process. Many recommendations require discussion with the appropriate unions. This will be an evolutionary process that will require the cooperation and involvement of a number of stakeholders.

General comments to each of the report's chapters follows. A detailed response to each of the report's 95 recommendations is attached.

Chapter I: Existing City Rules Have not sufficiently Addressed Nepotism Concerns and New Anti-Nepotism Ordinance Lacks Clarity

The City Council adopted an Ordinance in November 2008 to address concerns regarding nepotism and favoritism. The Audit indicates the Charter does not provide sufficient protection against favoritism in hiring activities, and the anti-nepotism ordinance lacks some clarity and accountability. The Audit goes on to state that the processes and procedures to implement the Ordinance were inadequate.

In February 2009 the Oakland Police Officers Association filed a lawsuit which has prevented the City from moving forward to implement the Ordinance. The City has developed a tentative implementation plan for the ordinance, which will be documented in an Administrative Instruction. The AI will be finalized – and all City departments will be thoroughly trained on its principles – upon the resolution of lawsuit.

We agree with the need for strong leadership that demonstrates a commitment to accountability and ensuring fairness in city hiring practices and policies. Regardless of whether the Ordinance is subsequently upheld or not, the City will make employees aware of the City Whistleblower program, develop a code of conduct for City employees, and provide training on ethics to managers and supervisors. We have already taken important steps in this direction by revising the City employment application and by strengthening the background and reference check procedures.

Chapter II: Lack of Oversight, Accountability, and Separation of Duties Allowed Inappropriate Hiring Practices

This section of the report highlights instances of where alleged circumvention of Civil Service Rules may have occurred, the lack of oversight of exempt or "At Will" positions may have lead to questionable appointments into high level management positions, instances where prescribed personnel processes were not followed, and the lack of proper controls and segregation of duties between personnel and payroll.

From July 1, 2003 through June 30, 2009, which is the period covered in the Audit, the City made 5,844 appointments. The audit used a sample of 184 records of which less than a few percent were identified as having been appointed based upon questionable practices. While the findings may be accurate as to specific examples, the Audit report attempts to generalize the findings to the entire system.[2] Furthermore, the exempt or "at will" positions typically do not require the same kind of processes and procedures when making appointments to civil service or "classified" positions. The City has been working on policies and procedures to require that all appointments be initially reviewed by the Department of Human Resources Management, and has been working with the unions to clarify the status of certain classifications that are part of the recognized bargaining units throughout the City.

The City disagrees with the report that there is a lack of proper controls and segregation of duties. Nevertheless, the updated City policy will clarify the responsibility and accountability of the Department of Human Resources Management (HRM) for oversight and implementation of personnel processes, and the role of the Payroll Division at the end of the process (at the time of payroll-related data entry and payroll processing). 3

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Chapter III: Desk Audit Process Circumvents the Civil Service Rules

The Audit disagrees with the manner that desk audits are conducted in the City of Oakland. Oakland does not have any Rules that consider what should happen if there is an active eligible list for the classification to which an employee's position is assigned as a result of a desk audit and the employee has been performing the duties of the new classification for a year or more. The overall conclusion made by the heading of this chapter, is out of context given that Oakland does not require employees to be on eligible lists for a reclassification of their existing position to occur.

Additionally, the reclassification process occurs independent of employees' testing and exam histories. Furthermore, there are federal and state guidelines that require an examination be job related. To disallow an employee to be reclassified and subsequently promoted also deprives the employee of his or her "property rights". 4

The City recognizes the need to update its classification plan, and over the past few months has been working on a thorough review and update of the Citywide classification plan. (The process has been delayed by the lack of staff due to several rounds of position cuts and layoffs in the Department of Human Resource Management.) Additionally, the recent negotiations with two of the largest unions will allow for additional clean up of the classification plan.

Chapter IV: Police Officer Trainee Hiring Processes were Generally Fair and Rigorous, While Firefighter Trainee Process Requires Considerable Improvement

The Chapter describes exceptions to the hiring processes and practices for sworn personnel in the Police and Fire Departments. As discussed below, the recommendations contained in the Audit appear to be accurate with some exceptions. Further, with the appointment of a new Chief of Police, any further comment needs to be evaluated as part of the new administration.

The current Police and Fire Department Management are in general agreement with the Audit with a clarification and correction. First, POST does not monitor the Police Department hiring practices. Rather, the Police Department follows POST guidelines to the extent possible and where applicable. 5 Second, while Fire Department Management acknowledges errors in the handling of the 2007 Firefighter Trainee recruitment process, they strongly disagree that the perception stated in the Audit exists for all past examinations administered by the Fire Department. 6

Chapter V: Management Oversight and Tracking of Part-Time and Temporary Hiring Processes is Insufficient and Fuels Widespread Perceptions that Hiring Decisions are Based on Personal Connections

This Chapter is critical of the lack of oversight and tracking of temporary, provisional, and regular part time employees, and the use of temporary appointments which in some cases, exceeded the acceptable duration. By definition, most of the actions that occurred are exempt from the normal civil service processes. The notable exception is provisional appointments. The development and implementation of

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the Administrative Instruction mentioned throughout our response to the recommendations will address the need for better oversight and coordination. The recent budget reductions allowed the City to implement processes and practices that resolved a number of outstanding issues.

Throughout Chapters 1, 2, 3, 4, and 7 there are references, criticisms, and evaluations of processes involving the same three to five individuals. While we are not denying the accuracy of the findings, we want to point out that there is some degree of repetitiveness and redundancy. We also want to acknowledge that while these 3-5 cases were reflective of instances where the prescribed policy, practice or procedure was over-ridden by a higher authority, we have developed new processes (provisional appointment tracking for instance) that strengthen existing checks and balances.7 Finally we want to point out that some of the inconsistencies in application of existing protocols, etc. were due to the multiple changes in the structure and personnel related to supervision, management and direction of the Recruitment and Classification Division as well as OPRM management, during the last five years.

We disagree with the conclusion that our interpretation of whether certain individuals met the minimum qualifications is not accurate. Acceptance of experience in lieu of education is an acceptable practice. 8 The City does need to update the criteria that are the basis for reviewing qualifications, but there was not blatant disregard of minimum qualifications in the instance cited.

Chapter VI: The City Struggles to Comply with Equal Access Ordinance and Lacks Processes to Track Progress

The Audit states that the Equal Access Office (EAO) has failed to sufficiently monitor and enforce the Ordinance, and that the Departments have failed to regularly submit compliance plans to the City Council. While acknowledging that certain aspects of the Ordinance present challenges in ensuring compliance, the Audit fails to recognize the following:

The Audit correctly states the City was sued over its non-compliance but ignores the recent settlement efforts being made by the City. Furthermore, the Equal Access Office and Office of Personnel Resources Management successfully collaborated with the Office of Parks and Recreation in hiring for the summer, and with the Police Department in recent efforts to staff the Dispatcher classification. Additionally, The Equal Access Office submitted an annual report that was reviewed by the Council and the Finance and Management Committee in June 2009.

The City Administrator has instructed City Departments to work with the Equal Access Office and Department of Human Resources Management to ensure compliance with the Ordinance. The development of an Administrative Instruction is under way to implement the Equal Access Plan. In addition, relevant personnel forms dealing with recruitment and hiring will specifically identify Public Contact Positions for selective certification and/or specialized recruitment.

With regard to the process for updating the Plan, a portion of the Audit is misleading.9 The Department Heads and Language Access Coordinators are responsible for communicating with the EAO through their annual position control meeting to identify vacant bilingual Primary Public Contact position openings. Upon such findings, the Department Head coordinates with key staff and the Language Access Coordinator in communicating this information to the EAO through the annual position control

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meeting. The Language Access Coordinator will then provide information to the EAO on the language access plan, update the position control report, and provide this status to the EAO to ensure posted information is available in other languages.

Chapter VII: Additional Personnel Processes and Documentation Have Not Been Adequately Maintained

This chapter discusses the need for better documentation and maintenance of adequate records relating to hiring, including background checks. The Audit correctly notes that OPRM conducted a review of department retention processes, which brought about the necessary corrections.

The Audit also discussed the lack of adequate documentation of the actions taken to exempt positions from civil service. This is true, but the Audit report did not note that the City attempted to take a large group of classes to the Civil Service Board and City Council and recommend exemption. The resolution, however, was never passed by the Finance Committee and never made it to the full City Council. [10]

The City's attempt to exempt certain higher level classes has been met with union opposition until recently. There is a process agreed to in the most recent negotiations that will allow the City to resolve most if not all outstanding issues. The resolution will still require approval by City Council.

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Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
Chapter 1: Existing City Rules Have Not Sufficiently Addressed Nepotism Concerns and Anti-Nepotism Ordinance Lacks Clarity					
	1. Set a "tone at the top" that demonstrates and communicates accountability to all organizational policies and procedures and develop protocols that ensure hiring policies, procedures, rules and regulations are consistent, clear and followed, and enforced.	Mayor/City Council/CAO	The administration continues to set the tone of accountability and responsibility at the top. This is consistently communicated to department heads in formal and informal meetings. In addition, many of the City's administrative instructions related to personnel and payroll matters are being revised, and will include specific responsibilities for the department directors. Lastly, a code of conduct is currently being developed, which will include references to ethical principles, and training for managers and supervisors.	Jan-2010	
	2. Develop and implement a comprehensive employee ethics program and support current efforts underway to develop an employee ethics training program. A comprehensive employee ethics program should include code of ethics declarations that are regularly updated/reviewed and that all employees acknowledge and are held accountable to such policies. Additionally, employee ethics codes and policies must include sanctions for engaging in, tolerating, or condoning improper conduct and all employees must understand and receive regular training on the codes and policies.	Mayor/City Council/CAO	A code of conduct is currently being developed, which will include references to ethical principles, and training for managers and supervisors. The statements will be signed annually in conjunction with the performance appraisal process. Ethics training will also be incorporated into the City's training curiculum.	Apr-2010	
	3. In conjunction with the City Auditor's whistleblower program, ensure that all City officials, managers, and employees feel empowered to report any deviations from the City's organizational policies and procedures. Further, ensure all such reports of deviation are held in confidence and retaliation is not tolerated.	Mayor/City Council/CAO	Management will work with the City Auditor's Office to ensure that verifiable reports of abuse brought by whistleblowers are addressed through appropriate internal control and/or management changes. Management will also provide ways to employees and residents to report issues directly to the CAO.	Jan-2010	
	4. Evaluate and resolve unclear definitions within the new Anti-Nepotism Ordinance and develop Administrative Instructions to provide additional clarity and guidance.	Mayor/City Council/CAO	An administrative instruction will be developed once the lawsuit is resolved that will address the issue that have been raised.	Pending the outcome of the lawsuit.	
	5. Make certain all employees are accountable and responsible for compliance with the new Ordinance, including City officials or supervisors who, while not personally involved in the relationship, have knowledge of and intentionally overlook or withhold information regarding an undisclosed relationship of a subordinate or co-worker.	Mayor/City Council/CAO	The new administrative instruction will address the issue of accountability and withholding information.	Pending the outcome of the lawsuit.	
	6. Develop procedures and processes, in addition to OPRM and the City Attorney's responsibility (per the Anti-nepotism Ordinance) to review and analyze the appropriateness of relationships within a reporting structure, where department and agency management are responsible to continually ensure that the reporting hierarchy between employees and supervisors is well defined and appropriate and are responsible to proactively notify OPRM and the City Attorney's Office when a situation arises rather than waiting for the annual disclosure process.	Mayor/City Council/CAO	The Department of Human Resources Management, the City Attorney's Office, and the City Administration worked together to implement the ordinance and resolve situations they made aware of during the implementation prior to the lawsuit. Pending resolution of the lawsuit, the Administrative Instruction will provide guidlelines to address this issue.	Pending the outcome of the lawsuit.	
	7. Strengthen controls to ensure that all hiring and appointment processes (including all types: exempt, classified, part-time, temporary, sworn, etc.) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules as well as consider applicable legal opinions of the City Attorney.	OPRM	Staff is in the process of finalizing revisions to an existing administrative Instruction that will clarify the Department of Human Resources Management's role with regard to review and approval of hiring decisions, and provide clear definition of the Payroll Unit's role in the related data entry and processing and implement the proper internal controls. Relevant personnel and payroll staff will be trained in the new procedures and policies.	Oct.-2009	
	8. Ensure that the Oracle HRMS system is appropriately programmed to reject applications not fully responding to the Anti-Nepotism relationship disclosure question.	OPRM	Pending the outcome of the lawsuit, the Department will contact the Department of Information Technology, and determine the feasibility of implementing this recommendation.	Oct-2009	

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Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	9. Develop a formal process to review candidates' "confidential disclosure envelopes" at the time of hire or promotion where the Director of OPRM and City Attorney's Office will work together to determine what impact a disclosed relationship may have on reporting structure. Ensure individuals in relationships considered "covered" under the Ordinance are not hired or promoted into positions where a reporting conflict exists.	OPRM	See comments to recommendations 4, 5, and 6. Implementation of this recommendation requires resolution of the lawsuit.	Pending the outcome of the lawsuit.	
	10. Update hiring documents, such as New Employee Entry Records and Personnel Requisitions Forms, to include and require attestations by the hiring authority (OPRM, CAO, City Attorney, City Auditor) and authorized representatives (department and/or agency) that the "request to hire" (including all types; exempt, classified, part-time, temporary, sworn, etc) complies with the City Charter, new Anti-Nepotism Ordinance (including cronyism), City Civil Services rules, City Ethics policies (in conjunction with recommendation #2), and any other applicable City rule or policy.	OPRM	See response to Recommendation # 7. Modification of all the forms that are referenced in this recommendation are under way as part of the Administrative Instruction on Personnel Actions (AI 562), with the exception of the Anti Nepotism Ordinance, pending the outcome of the lawsuit.	Oct.-2009	
	11. Reevaluate Anti-Nepotism Ordinance Compliance forms to ensure that all applicable relationships that must be disclosed pursuant to the Ordinance are fully defined.	OPRM	This reevaluation will occur. Please see responses to recommendations 4, 5, 6, 9, 10.	Pending the outcome of the lawsuit.	
	12. Follow through with plans to conduct an internal review of the most recent "disclosure form distribution process" where OPRM oversees the production of an Oracle report of the universe of all employees in supervisory or management classifications. OPRM should compare the Oracle report to the disclosure forms submitted to ensure that all applicable employees were provided a disclosure form to complete and that all disclosure forms that were completed were provided to OPRM. Investigate any discrepancies. If programming changes are required to ensure Oracle accurately reflects all classifications that have positions with supervisory duties, OPRM should work with DIT to determine the most feasible way to generate the required information from Oracle.	OPRM	The review should include any employee who is responsible for completing a performance appraisal on another employee, regardless of whether they are in "supervisory or management" classifications. The Department is in agreement with the general approach subject to the outcome of the lawsuit.	Pending the outcome of the lawsuit.	
	13. On a go-forward basis, establish a permanent tracking system to ensure all appropriate employees receive, complete and submit annual disclosure forms. For example, consider utilizing the Oracle system to independently and automatically generate a list of employees that must complete an Anti-Nepotism Ordinance disclosure form rather than relying on agencies and departments to provide a list of individuals. Take steps to ensure that all employees that must complete a disclosure form comply with the requirement.	OPRM	See comments to recommendation #12 above. The Department is in agreement pending the outcome of the lawsuit, and will contact the Department of Information Technology to determine the feasibility of implementing this recommendation.	Pending the outcome of the lawsuit.	
	14. Review all annual disclosure forms and analyze all disclosed relationships, including relationships where one is a supervisor within a chain of command as well as relationships not in a reporting chain of command, but may potentially have conflicts related to segregation of duties.	OPRM	The Department is in agreement pending the outcome of the lawsuit. See comments on recommendations 6 and 12.	Pending the outcome of the lawsuit.	
	15. Develop processes to ensure the required annual reports are submitted to the City Council as mandated by the new Anti-Nepotism Ordinance.	OPRM	The Department is in agreement pending the outcome of the lawsuit.	Pending the outcome of the lawsuit.	
Chapter II: Lack of Oversight, Accountability, and Separation of Duties Allowed Inappropriate Hiring Practices	**Recommendation**				
	16. Examine past practices to determine if past hiring decisions continue to be in the best interest of the City.	Mayor/City Council/CAO	Past practices will be evaluated against the standards established in the Administrative Instruction on Personnel Actions (AI 562), which is being updated to strengthen relevant internal controls.	Apr-2010	

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Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	17. Clearly define City Department's role as having the responsibility to select the best qualified and available candidates for open positions and OPRM's role as having the delegated authority and responsibility over all hiring decisions in the City. Empower the Director of OPRM to advance or deny any request to hire (including all types: exempt, classified, part-time, temporary, sworn, etc.) that does not comply with City Ordinances, policies, procedures, rules and codes of ethics. A mechanism to appeal the Director of OPRM's decision should also be put in place to ensure fairness and balance.	Mayor/City Council/CAO	See responses above. Changes to AI 562 are under way to strengthen the review, approval and processing of personnel actions. The appeal process will be added to the Administrative Instruction, and the appeal will be to the City Administrator.	Apr-2010	
	18. Hold OPRM accountable for all hiring and promotional activities and hold managers accountable for not following the City's and OPRM's hiring processes.	Mayor/City Council/CAO	Department Directors performance agreements will incorporate this responsibility and accountability. The revised AI 562 (referenced above) assigned duties, responsibilities and accountability regarding hiring and promotion (as well as other personnel actions) to the Director of Human Resources Management.	Jan-2010	
	19. Develop formal, centralized oversight processes related to exempt hiring to ensure job opportunities are provided to the most qualified individuals and hiring decisions are justified. As OPRM develops minimum qualifications for all classifications, including exempt classifications, minimum qualifications should be considered in the analysis to hire individuals in exempt positions. An applicant's past performance on civil service examinations should also be considered and caution should be exercised before hiring applicants that have performed poorly on past examinations, particularly examinations of lower-level positions.	Mayor/City Council/CAO	The revised AI 562 will clarify the process and responsibilities related to exempt hiring. We do not agree that past performance on an examination should be considered. To do so without demonstrating this requirement is job related may violate state and federal law.	11 Oct.-2009	
	20. Direct departments and agencies to wait for the official and final "approval to hire" (including all types: exempt, classified, part-time, temporary, sworn, etc.) from the Director of OPRM before a candidate can be offered a position. Redirect the responsibility of generating and sending offer letters to candidates from departments and agencies to the Director of OPRM to protect the City from liability of having offer letters sent to candidates prematurely.	CAO	The soon to be released Administrative Instruction 562 will include the requirement that all requests to hire shall be reviewed and approved by the Director of Human Resources Management.	Jan-2010	
	21. Transfer the responsibility of managing and controlling hiring and personnel documentation back to the City's human resources function. This will require that OPRM be held accountable for establishing and maintaining an efficient processing system that protects sensitive documentation from being lost, mishandled, or compromised and that ensures Payroll receives payroll related documentation in a timely manner.	CAO	The Administrative Instruction will address an aspect of this issue. The administration concurs with this recommendation and it is in the process of being implemented. The inter-relationship of Payroll and OPRM workflow procedures as it pertains to receiving of documents is currently fully segregated. Three years ago, Payroll division was restructured to address this systemic problem that was a product of inefficiencies due to lack of centralization of documents, misdirected, misplaced, and duplication of documents. This leads to overpayment, underpayment, and people starting work without properly being entered into Oracle system. The establishment of the centralized location where Payroll Representatives to deposit and receive document has provided accuracy and efficiency. This process has allowed for a tighter control and tracking of documents. Personnel and Payroll are currently working on AI 562 which will address some of the work flow concerns.	12 Jan-2010	

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	22. Eliminate Payroll's responsibility for entering personnel information into the Oracle HRMS database and conform to industry best practices wherein there is a clear separation between human resources (OPRM) duties and those of Payroll. Specifically, OPRM should be assigned the sole ability, access, and responsibility to enter, update, and change personnel and human resources related data in Oracle HRMS, including but not limited to position control information, hiring, promotions, terminations, pay changes, etc. Payroll should only have access to payroll data.	CAO	Management does not agree with this recommendation: There are no industry standards on how payroll and personnel duties are performed. a There are no two jurisdictions that are exactly alike. The key issue is having clear segregation of duties within the units. We contend that Payroll and Personnel units are fully segregated. This is a fact that is supported by the Auditor's own conclusion :b⁻ during the Payroll Audit. The Auditor's new recommendation of tasking OPRM with data entry into the HRMS system as well as performing the entire recruitment process, testing and hiring process will reduce the segregation of duties. c	13 Jul-2010	
	23. Require managers to notify the Director of OPRM before assigning duties of a higher classification to employees where the additional duties become regular and a key component of the employee's job duties so that OPRM can provide a more global assessment and perspective related to the needs of the City and ensure the employees meets the minimum requirements to be qualified to perform the additional tasks.	CAO	We believe that departments should be required to notify the Director if the temporary assignment of out of class duties extends beyond 30 days. This will be addressed in the revised AI 562.	Jan-2010	
	24. Implement an independent and regular review process (i.e. monthly) to analyze recent hiring activity (include all types: exempt, classified, part-time, temporary, sworn, etc) by tracing through the entire hiring process, from the initial personnel requisition to the employee being entered into the system. Ensure that all appropriate processes were followed and investigate any deviations from the process. Work with ITA to incorporate reports from Oracle's audit function into the audit processes.	OPRM/DIT	Implementation of the recommendation on a monthly basis may be too time consuming. Investigations into deviations from the hiring process need to be done immediately when they are identified. A quarterly audit may be conducted based upon the availability of staff.	14 Apr-2010	
	25. Require departments and agencies to provide OPRM sufficient justification for bypassing initial ranks before providing additional ranks from certified eligible list and detail the type of justification that will be considered adequate. OPRM should have the authority and responsibility to deny providing additional names if the justification provided is not sufficient or adequate.	OPRM	Civil Service Rules provide for reasonable notice of employment opportunities to all employees. The process consists of an open widow period, an application review process, and competitive examination. Section 4.09 of the Rules requires the City to comply with the Rules The Rules do not provide for the addition of names to the eligible list outside the standard recruitment and exam process. Consistent with current Rules, the City should not provide for an alternate process to add names to an eligible list unless the rules are properly amended and a meet and confer opportunity is offered to the unions.	15 Jan-2010	
	26. Assign the Department of Information Technology (DIT) the final authorization to assign access to the City's systems, with input from affected departments.	CAO	Management does not agree with this recommedation: As stated, Payroll section has fiduciary responsibility to safe guard payroll data because when audited, we are accountable for the accuracy and validity of the data. Additionally, users cannot and should not be granted access without proper functional training which is provided by Payroll and DIT does not have the functional knowledge or expertise to determine the level of system access required by departmental users.	16,	
	27. Conduct a thorough analysis of all OPRM and Payroll functions, including reviewing organization charts, mapping reporting and approval structures, identifying duties and responsibilities to identify all conflicting duties that must be separated based on industry best practices.	OPRM	Process flowcharts mapping Human Resources' and Payroll's respective responsibilities have already been created, and are attached to this response. [WENDELL, PLEASE ATTACH FLOWCHARTS.]	Apr-2010	

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	28. Develop process workflows that reflect OPRM's new responsibility and control over hiring, promotion, termination, changes in salary process, including entry of personnel related information into Oracle HRMS. The new workflow must instruct all departments and agencies to provide all hiring documentation to OPRM directly. Payroll must only receive payroll related documents and should only receive the documents from OPRM (not direct from departments or agencies) to ensure OPRM has reviewed and approved all hiring related processes.	OPRM	A flow chart of the new Administrative Instruction is attached and made a part of this response.	17. Apr-2010	
	29. Require that all individuals in OPRM that prepare, review, and approve hiring documentation must provided legible signatures and dates acknowledging specifically that the hiring or promotional activity they were involved with went through all appropriate processes, including civil service processes (when applicable). Reject any illegible documentation.	OPRM	This recommendation will be addressed in the revised Administrative Instruction 562.	18. Jan-2010	
	30. Devise a check list or tracking document that list all required documents and processes that must be competed before the Director of OPRM can provide an official and final 'approval to hire' and that all individuals involved in the process legibly sign and date acknowledging the process was completed. Keep the check list or tracking document and all supporting documentation in the employee personnel file so that all hiring processes are documented, transparent, complete and defensible so that the process can be easily independently audited and validated. The types of supporting documentation include, but are not limited to, personnel requisitions, new employee entry records, personnel action requests, resumes, applications (with proof of OPRM approval), job specifications, examination date and scores, eligible lists, departmental selection/interview documents, and offer letters.	OPRM	This recommendation will be addressed in the revised Administrative Instruction 562.	Jan-2010	
	31. Ensure that before an individual is hired or promoted (including all types: exempt, classified, part-time, temporary, sworn, etc.) that each hiring activity receives an official and final 'approval to hire' from the Director of OPRM acknowledging in writing that the hiring or promotional activity has gone through all appropriate processes, including civil service processes (when applicable).	OPRM	This recommendation will be addressed in the revised Administrative Instruction 562.	Jan-2010	
	32. Ensure that minimum requirements are developed and maintained for all classifications, including exempt and part-time classifications, to guide selection and hiring processes. The work OPRM analysts making determinations if individuals meet minimum qualifications must be reviewed by supervisors, particularly cases where it is not clear if the minimum qualifications were met. Hold analysts and supervisors responsible for allowing individuals who have not reasonably met the minimum qualifications of a classification to inappropriately proceed in the City's hiring processes past the point of application review.	OPRM	Review for minimal qualifications is already built into the personnel approval process, and will be re-enforced in the revised AI 562. Additionally, Department of Human Resources Management is in the process of updating minimum qualifications for all classifications Citywide.	Jul-2010	
	33. Analyze each classification and determined which hiring processes are required per Civil Service Rules or other City policies in order to eliminate confusion as to whether or not a classification requires competitive civil service processes.	OPRM	This effort will be part of a general review of the policies and procedures for updating and maintaining the classification and compensation plan, and will be addressed further in the responses under that section.	Apr-2010	
	34. Require hiring processes are sufficient to ensure that all applicants meet minimum requirements of the classification in which they are applying before being approved to proceed to the examination phase of the civil service process.	OPRM	Staff will be updated regarding the results of the audit and procedures for reviewing applications will be reviewed. Updates will include substitution patterns for the various classifications.	Jan-2010	
	35. Develop comprehensive and complete position control reconciliations that are in "total", rather than "point-in-time" to ensure that all positions are accounted for and that OPRM is aware of every appointment.	OPRM	The Position Control system is "total", "live" and not "point in time"; it is being constantly updated with personnel changes as they become known to the Department of Human Resources Management. What made updates delayed in the past is departments not fully understanding or not following the required approval process. The revised AI 562 will address this.	19. Jul-2010	

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	36. Develop standards for all hiring processes and provide corresponding training to City departments to communicate accountability and expectations as well as to ensure departments have an adequate level of understanding related to the City's hiring processes.	OPRM	The revised AI 562 will be a comprehensive document that establishes standards for all personnel actions. The Department of Human Resources will work with the operating Departments to ensure that training is provided to the appropriate staff, and standards are communicated and implemented by which Department staff may be held accountable.	Apr-2010	
	37. Eliminate OPRM and Payroll "Super Users" in Oracle HRMS, limit access within Oracle HRMS to as few employees as possible, and provide access to employees solely based on job function and business need.	DIT	Management does not agree with the recommendation; Super User access is already limited to a few individuals who require access to perform critical system analysis, enhancements, maintenance and trouble shooting. The payroll system analyst is responsible for functional systems enhancement in the HRMS module.	20 Apr-2010	=
	38. Review procedures for assigning user access to the Oracle HRMS. Consider forming a task force of employees from each City department to discuss how to align Oracle user access with specific business activities rather than continuing to utilize outmoded "responsibilities" that often allow certain users to perform duties beyond their job description.	DIT	Management does not agree with the recommendation: Responsibilities are the Oracle method of assigning users access to the application, each responsibility can be customized to allow users access only to menu's necessary to complete their job duties.	16 Apr-2010	
	39. Ensure Oracle audit feature is functioning and records all activity including user name, date, and action and make certain that only ITA is able to make adjustments to the audit functionality. Identify audit reports that the City can use as part of a regular, independent audit process of hiring activity.	DIT	Implementation of this recommendation will be a joint undertaking by the IT Department, City Administrator, Finance/Payroll, and OPRM.	Apr-2010	
	40. Train OPRM how to administer human resources functions within Oracle HRMS and how to process/generate personnel, hiring, and position control reports.	DIT	OPRM is committed to training of staff for new roles and responsibilities based upon the policy decisions made by the City Administrator.	Apr-2010	
Chapter III: The Current Desk Audit Process May Circumvent the Civil Service Process and Unfairly Limit Promotional Opportunities for Some City Employees	**Recommendation**				
	41. Eliminate the current practice of allowing desk audits to promote individuals without competitive processes. (May require modification to the Civil Service Rules.)	OPRM	The Department is willing to review the current practice, and develop new Civil Service Rules. The Rules will be subject to the meet and confer requirements and require approval by the Civil Service Board. The role that due process has in the civil service system must be acknowledged and addressed.	4	
	42. Ensure a policy and process is developed to ensure departments and agencies notify the Director of OPRM before employees are assigned "out-of-class" work where the additional duties become regular and a key component of the employee's job duties. If proper notification is not provided, OPRM should work with the CAO to hold departments and agencies accountable for not following proper procedures.	OPRM	The Department will work with the City Administrator and operating departments to monitor "out of class" work assignments. Also see comments to recommendation 23.	4 Jan-2010	

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status

	43. Before assigning employees duties that are out-of-class, departments and OPRM should consider alternatives, such as:
	a. Reassign the duties amongst several employees (so the majority of one employee's work is not made up of the out-of-class assignments)
	b. Reassign the duties to an existing employee of a higher classification
	c. Reassign the employee working out-of-class to another area that requires only the skills of their current classification. To fill the resulting vacancy, reclassify the position and:
	    i. Hire or promote a permanent candidate from an active and appropriate eligible list of the classification that the duties relate.
	    ii. If an eligible list does not exist for the appropriate classification, open a recruitment process to permanently fill the position with an employee appropriately tested and deemed qualified through the civil service process. During the recruitment process, a provisional appointment would be appropriate to handle the duties, if necessary.
		OPRM	See above response.	Jan-2010	

	44. When a desk audit request is submitted, OPRM must ensure that the position analysis and fulfillment processes carefully consider sufficient and relevant information, provide a broad assessment of the additional duties as they related to the City's overall needs and ensure the most qualified candidates are appointed. The position reclassification analyses should consider elements such as why the employee was assigned out-of-class work, the out-of-class duties performed, the business need of the out-of-class duties, and why other employees not identified in the desk audit were not assigned the duties. Additionally, when considering the incumbent, qualifications, experience, and past examination and job performance of the employee should be considered as part of an overall competitive hiring process.	OPRM	Please see our comments to Recommendations 41 and 42. We acknowledge that a general review and update of the classification and compensation plan is needed. Some work is being performed as a result of recent union agreements.		

	45. Ensure that all hiring and appointment processes (including sworn) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules as well a consider applicable legal opinions of the City Attorney.	OPRM/OPD/OFD	The Department regularly involves the City Attorney's Office in legal and some policy/technical issues. The Department will continue to consult with the City Attorney's Office.		
	46. Develop policies and procedures for standard criteria for reviewing background information for sworn employees as part of OPD's and OFD's screening and selection process. Specifically, OPD and OFD should have explicit guidelines for evaluating Personal History Questionnaires (PHQ), Personal Trait Assessments, background evaluations and histories, medical clearances, and psychological evaluations so that subjective tendencies can be minimized, perceptions of favoritism can be mitigated, and hiring decisions are justified.	OPRM/OPD/OFD	The current administration of the Police Department is in agreement with this recommendation. However, with the appointment of a new chief, additional time will be required to develop an understanding of the Police Department, and consider this recommedation.	21 Apr-2010	
	47. Ensure that all selection decisions related to either the OPD or OFD training academies are consistent with the developed criteria and hold OPD, OFD, and OPRM officials and management responsible and accountable if any hiring decisions deviate from the criteria without adequate justification.	OPRM/OPD/OFD	The current administration of the Police Department is in agreement with this recommendation. However, with the appointment of a new chief, additional time will be required to develop an understanding of the Police Department, and consider this recommedat	21 Apr-2010	
	48. Develop protocols that require that all sworn (OFD and OPD) selection processes to be adequately documented, including but not limited to, the rationale for certain key decisions, such as winnowing the list of candidates invited to proceed through the various phases of the hiring processes. Assign responsibility of ensuring that OFD centrally maintains such documentation in a manner that is secure and where documentation is not lost or misplaced. Instruct OPD to continue their current documentation retention processes.	OPRM/OPD/OFD	The current administration of the Police Department is in agreement with this recommendation. However, with the appointment of a new chief, additional time will be required to develop an understanding of the Police Department, and consider this recommedat	21, Apr-2010	
	49. Fully manage and document the fire fighter trainee recruiting process and should increase their participation in the selection process into the academy as recommended by the Alameda Grand Jury report. However, the ultimate selection decisions and authority must remain with OFD officials.	OPRM	We will review the Grand Jury report and consult with the Fire Department Administration to implement the recommendations.	Apr-2010	

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Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	50. Eliminate the practice of participating in the distribution or acceptance of applications. This will help to ensure that independent and consistent criteria are applied to all candidates and that adequate documentation practices are implemented.	OFD	The Fire Department will no longer provide staff to participate in the distribution or acceptance of applications.	Apr-2010	
	51. Work with OPRM to review and reconsider the policy decision to lower the minimum entry qualification for an entry-level firefighter requiring individuals to only a high school diploma. Also, within the analysis, consider the cost benefit of removing the EMT certification prerequisite for the most recent academy class.	OFD	The Fire Department will work closely with OPRM to review and consider the policy decision to lower entry qualifications for entry-level firefighter positions. We will consider the cost-benefit of removing the EMT certification, as well as explore options that are less likely to produce results that give the perception of unfair hiring practices, such as the Paramedic and EMT Cadet Programs and other community outreach that encourage residentsi to consider a career in the fire service.	Apr-2010	
	52. OFD should continue efforts to transition to an automated web-based job application program, "iRecruitment," which will reduce the necessity of organization staff to accept large numbers of paper applications.	OFD	The Department supports efforts to achieve further automation and is working with Payroll and DIT to develop a plan of action.	Apr-2010	
	53. Amend internal OPD policies and procedures related to recycling police officer trainees into subsequent police academies so that OPD is required to document clear justification for allowing trainees to re-enter the police academy. Additionally, these revised standards should be consistently applied so that potential conflicts of interest, whether perceived or in fact, can be handled transparently and above reproach. This can also be extended to OFD.	OPD	The current administration of the Police Department is in agreement with this recommendation. However, with the appointment of a new chief, additional time will be required to develop an understanding of the Police Department, and consider this recommendat	Apr-2010	
Chapter V: Management Oversight and Tracking Related to Part-Time and Temporary Hiring Processes is Lacking and Fuels Wide Spread Perceptions that Hiring Processes are Based on Personal Connections	Recommendation				
	54. Ensure that all hiring and appointment processes (including part-time and temporary) comply with all provisions of the City's Charter, the new Anti-Nepotism Ordinance, and the City's Civil Service rules and reject hiring requests that do not conform to these rules and regulations. Also, consider applicable legal opinions of the City Attorney.	OPRM	Notwithstanding the status of the lawsuit regarding the Anti-Nepotism Ordinance, all hiring is being addressed including part time and temporary hiring.	Jan-2010	
	55. Devise a plan to incorporate additional centralized oversight of part-time hiring to ensure job opportunities are provided to the most qualified individuals, hiring decisions are justified, and departments and agencies have conducted deliberative, fair processes to select candidates.	OPRM	The plan will incorporate the soon to be modified AI 562 regarding hiring that is discussed above.	Jan-2010	
	56. Develop standards for part-time, temporary, and provisional hiring processes and provide corresponding training to City departments to communicate accountability and expectations as well as to ensure departments have an adequate level of understanding related to part-time, temporary, and provisional hiring processes.	OPRM	See comments regarding recommendation 36 above.	Apr-2010	
	57. Consider expanding the current processes OPRM conducts on behalf of OPR by creating prescreened "candidate pools" related to citywide part-time classifications, such as Student Trainee, Administrative Assistant, and Management Intern, which departments and agencies could draw upon.	OPRM	The Department is not adequately staffed to handle this many classifications. The classifications may be considered on a case by case basis subject to available staffing.	Apr-2010	
	58. Carefully scrutinize requests to use temporary classifications, such as ELDE and TCSE, to ensure that the justification complies with Civil Service Rules and that the work would not be more appropriately assigned to a classified employee through a civil service hiring process.	OPRM	The Department has worked with the City Attorneys Office recently to address a number of these issues. In the future, the Department will receive reports monthly from payroll, and will notify the operating departments at least 30 days in advance of the expiration of an appointment.	Jan-2010	
	59. Make certain that departments and agencies provide correct information related to the type of work that will performed before approving any requests to use temporary classifications, such as ELDE and TCSE. Incorporate periodic post-process "audits" and active monitoring to verify that temporary employees are performing duties as agreed upon.	OPRM	The Department is currently working with Departments on hiring processes. The implementation of the revised AI 562 and training of Departments are all planned to occur by the first of the year.	22 Jan-2010	

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	60. Carefully determine if individuals requested to be appointed provisionally meet minimum qualifications and hold analysts and supervisors responsible for allowing individuals that have not reasonably met the minimum qualifications of a classification to inappropriately proceed in the City's hiring processes past the point of application review.	OPRM	See comments regarding Recommendations 34 and 36 above.	Jan-2010	
	61. Create a process to follow-through on temporary appointments (TCSE, ELDE, and Provisional) to ensure the appropriate processes are underway, such as recruitment and classification changes.	OPRM	See comments to Recommendation 59 above.	Jan-2010	
	62. Ensure that all temporary appointments (TCSE, ELDE, and Provisional) that have been approved by OPRM are tracked and monitored all the way from initial appointment to termination of appointment. As part of a "close out" process when an individual's temporary appointment is terminated, include a description related to the reason the appointment terminated, such as no further work needed, permanent appointment finalized, etc. Where applicable, verify the permanent appointment went through all proper processes. This should ensure that temporary employees are not inadvertently placed into permanent, classified positions without the knowledge of OPRM and without going through the proper processes.	OPRM	The Department will develop the appropriate processes and procedures to comply with the recommendation. In addition, such processes will be discussed in detail in the revised AI 562. The recommended process and procedures are cumbersome and may not be cost effective. Ensuring compliance on the front end of the process and careful monitoring should accomplish the recommendation given the limited staffing in the Department.	Jan-2010	
	63. Work with Department of Information Technology to develop reports that will provide regular and on-demand information as to the length of time and number of hours employees in temporary (ELDE, TCSE, Provisional, etc) and part-time appointments have worked. OPRM should generate and use the reports to regularly monitor the appointments to ensure that the length of time and number of hours worked complies with the allowable limits defined in Civil Service Rules and communicate information to affected departments and agencies.	OPRM	We are in agreement with this recommendation.	Jan 2010	
	64. Work with the Department of Information Technology to obtain the necessary access so that OPRM promptly terminates employees in Oracle HRMS once they have reached the allowable time limits.	OPRM	Human Resources Management and payroll will coordinate to implement properly.	23 Jan-2010	
	65. Develop a corresponding formal process that describes the termination process in Oracle HRMS.	DIT	The Department will work the IT to determine the feasibility of developing and implementing a formal process.		
Chapter VI: The City Struggles to Comply with Equal Access Ordinance and Lacks Processes to Track Progress	**Recommendation**				
	66. Collaborate with City departments and agencies to regularly evaluate (at least annually) those positions identified as public contract positions to ensure that the designations are appropriate, communication with the public is an essential duty of the position, and bilingual proficiency is required.	EAO	It is in current practice since November 2008.	Annually	On-going
	67. Ensure that employees that self-report bilingual abilities are tested to make certain staffing levels are appropriate and efforts to comply with the Ordinance in providing bilingual services to limited-English speakers are accurately measured.	EAO	EAO has relyied on Departments to provided report on this matter. EAO will work with OPRM to conduct language ability test.	As needed	On-going
	68. Continue with targeted recruitment efforts and also consider, in the future, encouraging current staff to become bilingual through offering benefits such as tuition reimbursement for language classes in addition to the bilingual pay already offered.	EAO	EAO will continue promoting language classes and training opportunities via the City's intranet.	Continuous	On-going
	69. Work with City departments and agencies as well as OPRM to improve communication and collaboration efforts to ensure appropriate oversight exists. Specifically: a. Departments must notify OPRM of PCP vacancies requiring bilingual recruitment and selective certification. b. Departments and OPRM must contact the EAO when vacancies arise within public contact positions so that the EAO can provide assistance with filling the vacancies.	EAO	It is in current practice. EAO will continue to improve communication with Departments and OPRM to identify PCP bilingual vacancies and subsequent recruitment/selective certification efforts.	24 Continuous	On-going

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	70. To facilitate information sharing that will make monitoring compliance with the Equal Access Ordinance more efficient, work with the Finance and Management Agency and the Department of Information Technology to determined if the new position control module within Oracle can be modified to identify which classifications are public contract positions as well as what languages are spoken by current employees. Additionally, consider capturing applicant language information within the applicant racking system – SIGMA.	EAO	EAO have been working with OPRM on this matter. EAO will continue to work with the Finance and Management Agency, the Department of Information Technology, and OPRM to review the current application and determined if the new position control module within Oracle can be modificed to identify which positions are public contact positions as well as what language are spoken by current employees.	Jan-2010	
	71. Continue efforts to clarify each entity's roles and responsibilities related to the ordinance and ensure they are communicated to OPRM and departments. Consider drafting an Administrative Instruction or other guidance with specific instructions to help agencies and departments implement the ordinance.	EAO	The City Attorney's Office is currently reviewing the drafting of the AI. EAO will work with the City Administrator's and the City Attorney's Offices to finalize and implement the AI.	Jun-2010	
	72. Make it a priority to monitor and track departmental implementation plans as well as ensure timely, accurate reporting to the City Council of its progress and activities.	EAO	It is in current practice.	24 Annually	On-going
	73. In conjunction with Departments, ensure each Department complies with the requirement to provide annual compliance plans to the EAO as required.	EAO	It is in current practice.	24 Annually	On-going
	74. Ensure that consolidated and complete compliance plans are submitted to the City Council annually. Additionally, the compliance plans should contain concise and summarized information, such as total number of PCPs and total number of bilingual PCPs, so the City Council is able to easily utilize the information in the report without further analysis.	EAO	It is in current practice.	24 Annually	On-going
Chapter VIII: Additional Personnel Processes and Documentation Have Not Been Adequately Maintained	Recommendation				
	75. Support OPRM's efforts to ensure all exempt classifications underwent the appropriate formal exemption process and for those classifications identified as not having been formally exempted, take the appropriate steps to properly rectify the situation in accordance with the City Charter.	Mayor/City Council/CAO	The City is currently working with the appropriate unions to comply with applicable provisions of MOU's, Civil Service Rules, and the City Charter.	Jan-2010	
	76. Continue plans to review all exempt classifications to determine whether the classification underwent the appropriate formal exemption process. For those exempt classifications that have not been formally approved, take the appropriate steps to formally exempt those classifications in accordance with the City Charter.	OPRM	Review of exempt classifications is currently underway, in part as a result of recent negotiations, and the desire of the City to update and better maintain the classification plan.	Jan-2010	
	77. Continue plans to begin reviewing, updating, and modifying the City's most frequently used classifications (job specifications, minimum qualifications, etc) and develop a plan that ensures all classifications are periodically refreshed.	OPRM	See comments regarding recommendations 33 and 41.	Jul-2010	
	78. Implement process to regularly update classifications and job specifications on an on-going basis to reflect the most current job requirements and minimum qualifications, which will help ensure a sufficient sized candidate pool to fill vacancies while attracting top quality candidates.	OPRM	See comments regarding recommendations 33 and 41.	Jul-2010	
	79. Implement central oversight over the background checks process to ensure background checks are consistently performed, verified, and maintained as well as to ensure employees have clear backgrounds, especially those that have direct contact with vulnerable populations.	OPRM	The Department had begun a review of operating departments policies and procedures in this area. Updating or issuing an AI on this subject will be evaluated to ensure compliance with applicable legal requirements and good business practice.	Apr-2010	
	80. Develop and employ sound record retention policies requiring departments and OPRM to maintain consistent documentation related to all hiring and selection processes.	OPRM	Currently, the City Clerk's Office provides the standards and procedures for departments. The Department will work with the operating departments to maintain the appropriate records.	25 Apr-2010	
	81. Require all departments to maintain departmental internal selection documentation such as applications, resumes, and interview questions and answers to justify their selection of candidates.	OPRM	See above comments.	25 Apr-2010	
	82. OPRM should provide training to departments related to good record retention processes and OPRM should conduct periodic audits of departmental files to ensure compliance with such record retention policies.	OPRM	See above comments.	25 Apr-2010	
	83. Ensure OPRM files contain that validates employees possess the applicable minimum qualifications such as college degrees, licenses, or certifications for all appointment types, including classified, temporary, exempt, sown, etc.	OPRM	The Department will be the clearinghouse for all official employee files.	25 Apr-2010	

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Performance Audit of Oakland's Hiring Practices

Chapters	Recommendation	Responsible Department	Response from Management	Timeline to Implement	Status
	84. Consider developing a file checklist of required documentation for both OPRM files and departmental files to help OPRM and departments comply with record retention policies.	OPRM	Compliance with this recommendation is reasonable and will be incorporated into training of operating department staff.	Apr-2010	
	85. Consider centralizing OPRM's documentation and filing processes, such as, but not limited to, completed classification studies and desk audits, rather than having information decentralized at the desk of various analysts.	OPRM	This recommendation will be implemented as part of the reorganization and streamlining of the Department.	Apr-2010	

Appendix B – Auditor's Response to the City Administration's Response to the Audit Recommendations

We provided a draft audit report to the City Administration for review and comment. The City Administration provided a response to the City Auditor that included two documents: 1) A letter dated August 31, 2009 from the City Administrator and 2) a matrix of responses to each the Audit's 85 recommendations.

Our responses that follow are intended to provide clarification in only those areas of the Administration's response where there is continued disagreement or further clarification is warranted. We have provided a response to two specific areas below and then a point by point numbered response that can be cross referenced directly to the Administration's response documents. In the Administration's response documents we have electronically inserted highlighted numbers that correspond with our response numbers.

Further, there are several areas within the City's matrix of responses where City Administration does not indicate disagreement with the audit finding, but is vague in its description of intended efforts to address the recommendation. However, as part of the audit follow-up process the City Auditor will evaluate those efforts at a later date. Additionally, the matrix includes several references to a revised Administrative Instruction (AI) 562 that we have not reviewed and therefore we cannot comment on its sufficiency in relation to the audit findings and recommendations. The review of the revised AI 562 will be a part of the City Auditor's audit follow-up process as well.

Moreover, there are two areas highlighted in the Administration's response that require specific clarification while the remainder of our response addresses certain sections of the City's two response documents. The areas needing specific clarification are: 1) judgmental sampling and 2) segregation of duties between payroll and personnel functions.

Judgmental Sampling

The Administration's response incorrectly suggests that the audit attributes the widespread and pervasive perception that the City's hiring practices are unfair because the problems address only five employees. In reality, the cause of the negative perceptions related to the City's hiring practices is not limited to only the results of the one segment of testing (discussed in Chapter II of the audit report) that focused on appointments received through standard civil service processes. Rather, this testing is but one element of the audit's multi-part testing endeavor. Each segment of our testing utilized the judgmental sampling technique; one of the most commonly used sampling techniques in performance auditing. Within this testing methodology, performance auditors identify areas posing the greatest risk of exposure and select items for further review. Auditors consider the results of the judgmental sample when evaluating the quality of the population reviewed and comment on the identified root causes of those findings.

Nonetheless, the five cases this single segment of testing found where individuals were permanently appointed to positions without either going through competitive processes or

meeting the minimum qualifications of the classifications to which they were appointed are demonstrative of significant weaknesses within the City's hiring processes.

In addition, the audit clearly describes how the City's other hiring practices and processes also contributed to the widespread perceptions of unfair hiring practices. Specifically, the additional testing identified instances where:

- Individuals were promoted to higher classified positions through a "desk audit" process rather than competitive methods;

- Appointments were permitted in temporary classifications where job duties were inconsistent with rules and policies;

- Individuals in temporary, part-time, and provisional positions were allowed to linger well beyond allowable time limits; and,

- Application and selection steps related to the City's police and fire academies were not always consistently applied and documented.

Combined, the results of the multi-part testing endeavor (described in detail in chapters II, III, IV, and V) demonstrate that unfair hiring practices had occurred and appearances of favoritism were created.

Segregation of Duties Between Payroll and Personnel Functions

The Administration's response in the area of segregation of duties between the payroll and personnel functions causes the City Auditor grave concern. The Administration contends that Payroll and Personnel are fully segregated. However, as the report states, the City *has not* implemented an appropriate and fundamental separation between personnel and payroll duties within the Oracle Human Resource Management System (HRMS), which is required to reduce the 'opportunity factor' that invites inappropriate activities. Allowing weak internal and systems controls to go uncorrected increases the City's chances of inappropriate personnel activities to *occur. By failing to ensure strong and effective internal controls, management is not addressing a* critical component of its responsibility to safeguard the City's assets.

The report goes into great detail in Chapter II (particularly pages 36-41) that Office of Personnel and Management (OPRM) should be assigned the sole ability and responsibility to enter personnel information and changes in Oracle HRMS and Payroll should only have access to payroll data. Payroll must not have access to or the ability to change or initiate personnel data and OPRM must not—and currently does not—have access to payroll data. Combining the responsibilities to process human resources and payroll activities singularly within the payroll function goes against the basic concept of segregation of duties where no one employee or group of employees is in a position to both perpetrate and conceal errors or irregularities. It is imperative that Payroll's access to human resources activities be removed immediately.

Additionally, controls are further weakened by the Administration's reluctance to allow the City's Department of Information Technology (DIT) the authority to exercise control over system access and provide oversight and monitoring of the City's human resource system (Oracle

HRMS). Payroll currently authorizes access to the HRMS system and is responsible for report generation and system oversight.

In summary, where there should be three clear distinct departments/units with independent but complimentary responsibilities working together – OPRM, Payroll, and DIT– the City of Oakland has assigned conflicting personnel, payroll and system administration responsibilities to one department – Payroll. While the Administration contends that OPRM and Payroll have established processes that attempt to mitigate the risk associated with Payroll being assigned conflicting responsibilities from an internal control standpoint, the established processes are insufficient to prevent or detect inappropriate activity from occurring as discussed on pages 37-39 in the report.

Finally, the Administration's structural solution illustrated in the process flow chart that accompanied the Administration's response provides no mitigating control or substantive change to the flawed, risky, and insufficient practices as we have discussed above. The City must place the public's best interest first and make the requisite changes to the existing structure, policies, and procedures to ensure strong internal controls, including the elimination of system access to both functions (payroll and personnel) by users, managers, or administrators and to place DIT in its proper control position.

Auditor's additional responses to the Administration's August 31, 2009 letter:

1. As described in our specific comments above, the Administration incorrectly suggests that the audit attributes the widespread and pervasive perception that the City's hiring practices are unfair to only the results of a single segment of the audit's multi-part testing endeavor. Rather, the combined results of the multi-part testing endeavor (described in detail in chapters II, III, IV, and V) demonstrate that unfair hiring practices had occurred and appearances of favoritism were created throughout the hiring process.

2. See our earlier response under Judgmental Sampling.

3. As discussed above, the Administration disagrees that the City's payroll and personnel practices need to be strengthened and separated. Moreover, any proposed changes to City policies that do not include appropriately segregating payroll and personnel responsibilities, as best practices dictate, will not address the issues we highlight in the report. As the audit report outlines in detail existing processes and practices put the City at risk and could allow for inappropriate practices to go undetected.

4. As the report describes in detail on page 47, we acknowledge that desk audits have a place in civil service systems in addressing a need to increase or amend job duties. However, the way the City applies the desk audit process lacks a broader department-level job duty analysis to determine the needs of the City, and the process is used to circumvent appropriate civil service promotional processes. Specifically, once a desk audit is completed and the requirements of the position are known, the incumbent is simply promoted into the new position without opening up the new position to competition, regardless if the incumbent failed past examinations and was deemed unsuitable for the higher position. As performance on examinations are part of an employee's overall

knowledge, skill, and ability portfolio, this information should be considered with all other aspects of an employee's overall work portfolio. Utilizing all of the information the City has at its disposal on employees' job-related knowledge, skills, and abilities when identifying the best suited individuals for promotional opportunities would not violate any State or Federal rules. Further, as stated in the report, successful candidates' already on eligibility lists and awaiting appointment to such a position are virtually ignored.

Overall, this practice as currently employed, creates an environment where favoritism could occur wherein individuals with connections could easily receive promotions without meeting minimum qualifications or having to compete through civil service examinations and/or interviews.

5. The text of the audit report has been changed to state that OPD's written examination and oral board portion of the examination process *follows* POST guidelines.

6. Any "perceptions" the Administration alleges are based upon the facts. Namely, as described starting on page 65 of the audit report, Oakland Fire Department's (OFD) screening and selection processes lack documentation to support hiring decisions or demonstrate compliance with appropriate and fair hiring practices. As such, as stated on page 66 of the audit report, "we could not sufficiently conclude whether OFD was conducting its selection process in a fair, balanced, and forthright manner, which diminishes the spirit of a transparent hiring process."

7. The reason some individuals are mentioned in several chapters is because these individuals gained benefits from the unique problems identified in several chapters.

8. We do not dispute that a combination of education and experience requirements could provide the required knowledge and abilities. In fact, there are provisions in the City's processes that allow for some interpretation of what constitutes an appropriate combination of acceptable levels of education and experience. Based on the City's own criteria of required minimum education and experience (or combination), the individual lacked the minimum qualifications in both categories—experience and education, as illustrated in Table 9 on page 80 of the report. As such, qualifications in one category could not reasonably make up for a deficiency in the other to arrive at a minimum qualification "combination that would provide the required knowledge and abilities."

9. The text of the initial draft of the audit report was changed on July 22, 2009 to the final version of the report and the final description of the City's process on page 86 related to updating the Equal Access Compliance Plan is consistent with the Administration's response; thus, there is no further disagreement.

10. The Administration incorrectly states that the report does not note that the City attempted to take a large group of classes to the City Service Board. The report states, on page 91, "On three different occasions, OPRM has gone before the City Council and Civil Service Board to acquire consent to formally exempt some of the UM1 classifications—including PM II—but, on all three occasions, the matter was either rejected or unable to reach the agenda for either of those bodies."

Auditor's additional responses to the Administration's Matrix response document:

11. As performance on examinations are part of an employee's overall knowledge, skill, and ability portfolio, this information should be considered with all other aspects of an employee's overall work portfolio. The report neither implies nor suggests that any hiring decision should be based solely on an employee's past performance examinations. Rather, performance on job-related past examinations should be one consideration amongst many when analyzing the whole picture of an employee's suitability for a position and should be part of the City's responsibility to ensure its due diligence in hiring decisions. Utilizing all of the information the City has at its disposal on employees' job-related knowledge, skills, and abilities when identifying the best suited individuals for promotional opportunities would not violate any State or Federal rules.

12. The Administration states that the current payroll and personnel workflow procedures are currently fully-segregated. We disagree and continue to feel strongly that existing processes and practices are not appropriately segregated and place the City at risk as described in detail in Chapter II of the report (pages 36-41). As described in great detail beginning on page 36 of the audit report, combining the responsibilities to process human resources and payroll activities exclusively within the payroll function goes against the basic concept of segregation of duties where no one employee or group of employees should be placed in a position to both perpetrate and conceal errors or irregularities. Unless the City segregates these activities, the City continues to be at risk for inappropriate practices that may go undetected.

13. (a) We continue to strongly disagree with management's position that no industry best practice standards exist related to proper segregation of payroll and personnel duties. Best practices employed at large public entities include separate human resources, payroll, and finance units that, while working collaboratively, have the hiring, payroll, and finance aspects clearly separated and defined between units/departments and responsible individuals. Additionally, the audit report provides, on page 40, several specific examples (among countless examples available) related to Federal, State, and City governmental agencies that acknowledge and adhere to best practices that require separating payroll and personnel duties and responsibilities.

(b) The 2007 Payroll Audit did not assess the segregation of duties between the City's payroll and personnel functions; rather the 2007 audit only concluded on the City's segregation of duties over standard payroll functions including timecard entry and payroll run processing.

(c) Not only is it appropriate and in compliance with best practices that the City's human resource function be responsible for all personnel-related data entry as well as administering examinations, the payroll function should not have the ability to access, input, modify, or delete personnel related data in the system and should only have access to pay employees based on criteria entered into the system by personnel. Giving the payroll department system access and ability to establish new employees and input personnel changes (such as terminations and pay rate changes) into the Oracle HRMS concurrently with administering the City's payroll creates a significant conflict in duties

that provides opportunities for inappropriate actions. Refer to page 37 for a few examples of the types of inappropriate activity that can occur when payroll and personnel activities are not appropriately segregated.

14. A regular, consistent, and independent review process is critical to improve the City's control environment and ensure appropriate hiring processes are being followed. The independent review process should include tracing a sample of the City's hiring activities through the entire hiring process, from the initial personnel requisition to the employee being entered into the system. The City should ensure that sufficient staff is made available on a regular basis to carry out this critical review process.

15. The Administration appears to misunderstand our recommendation. The audit report does not suggest that an alternative process be created to add names to an eligible list without appropriate civil service process. Rather, this recommendation simply states that departments should provide OPRM with sufficient justification for bypassing the highest ranks on an eligible list before requesting OPRM provide additional, lower ranks of the current eligible list to the department for consideration.

16. As discussed in the beginning of our response, we continue to strongly disagree with management that a user department (i.e. payroll) should have authorization to assign access in the Oracle system. It is a flawed, risky, and insufficient practice to allow the same users that administer highly sensitive processes related to personnel and payroll activities to also change access and permissions in the system. Instead the City's Department of Information Technology is the appropriate entity to assign access to all of the City's systems.

17. The Administration's proposed changes to City policies illustrated in the process flow chart that accompanied the Administration's response did not include appropriately segregating payroll and personnel responsibilities, as best practices dictate, and therefore will not address the issues we highlight in the report. In fact, the City's updated process flow chart indicates that Payroll's role and responsibilities have not changed as they will still be responsible for entering all hiring activities and personnel information as well as paying and terminating employees within the Oracle system. Again, such processes and practices put the City at risk and allow for inappropriate practices to go undetected.

18. As described earlier, we have not reviewed the revised Administrative Instruction (AI) 562 and cannot comment on its sufficiency related to addressing our recommendations. Nonetheless, the City should ensure that the new AI requires all individuals in OPRM that prepare, review, and approve hiring documentation provide legible signatures, printed names, and dates acknowledging specifically that the hiring or promotional activity they were involved with went through all appropriate processes, including civil service processes (when applicable). Any illegible documentation should be rejected.

19. As described on page 38 of the report, the current process exercised by OPRM does not constitute a reconciliation of positions as it does not compare the current month's filled position information to the previous month's filled position reports to identify any changes and ensure that OPRM is aware of all changes that took place during the month.

As such, this control fails to identify any irregularities, such as hiring or promotion activities input into Oracle HRMS that may have occurred without their knowledge—the control fails to perform the very function for which it was developed. As such, we strongly disagree that the current process is sufficient as it does not mitigate the significant lack of segregation of duty issues and therefore it does not result in strengthening the existing weak internal control environment.

20. Similar to our response #16, we continue to strongly disagree with management that employees in the Payroll Department should have "Super User" access in Oracle. It is a flawed, risky, and insufficient practice to allow the same users that administer highly sensitive processes related to personnel and payroll activities to also enhance and modify the system.

21. While we are pleased that the Oakland Police Department agrees with the recommendation, we note an absence of any response to the recommendation by the Oakland Fire Department.

22. It is encouraging that the Administration is committed to working with and training the departments to improve hiring processes, including temporary appointments. The City Auditor will also look for the Administration to incorporate periodic post-process "audits" and active monitoring to verify that temporary employees are performing duties as agreed upon.

23. The Payroll Department is the wrong party to coordinate the implementation of this recommendation because they should not be involved in any way with terminations in the Oracle system. As described on page 37 of the report, payroll should not be involved with inputting any personnel changes (such as terminations, pay rate changes) into the Oracle HRMS and be responsible for administering the City's payroll as well. This creates a significant conflict in duties that provides opportunities for inappropriate actions. Refer to page 37 for a few examples of the types of inappropriate activity that can occur when payroll and personnel activities are not appropriately segregated.

24. We are pleased the Administration believes these activities are currently in place; however, during our audit we did not find this to be the case.

25. Regardless of the City Clerk's role, it is clearly OPRM's responsibility to maintain and control the essential records supporting its responsibilities for maintaining and retaining documentation related to all hiring and selection processes. As such OPRM should take appropriate action to ensure consistent documentation is retained for all hiring and selection processes.