

## Investigative Report

# Parks and Recreation Department Employees Secured a Special Privilege and Wasted City Resources

August 2020



We found evidence that the Parks and Recreation Department's Director, Kimberly McNeeley, and Assistant Director, Liana Kallivoka, gave an employee a special privilege and wasted City resources by approving one of their direct reports to improperly use over \$22,000 worth of sick leave. This arrangement also allowed the employee to continue receiving other City benefits. The total cost to the City of this arrangement was over \$55,000. Alternative arrangements with the employee could have saved the City at least \$39,000.

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## Background

The Parks and Recreation Department's (PARC) mission is to develop, improve, and promote Austin's parks and public facilities. As the Director of PARC, Kimberly McNeeley is responsible for overseeing the department and carrying out the "[City's] policies and regulations pertaining to parks and recreation." Liana Kallivoka, an Assistant Director in PARC, is responsible for managing "the service operations, budgets and personnel of multiple divisions" within the department.

Full-time City employees accrue vacation leave and sick leave each pay period. The City treats vacation leave and sick leave differently. According to the City's Personnel Policies, employees can use vacation leave "for any purpose determined by the employee," and policies stipulate that employees "shall be paid for all unused vacation leave" when they leave the City. In contrast, City policy only allows employees to use sick leave for medical reasons related to the employee or a member of their family, and employees hired after October 1, 1986, do not get paid for unused sick leave when they leave the City. In addition to leave, full-time City employees' compensation includes medical and dental coverage, life insurance, and a variety of other benefits.

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## Allegation

In June 2019, the Office of the City Auditor received an allegation that a former Parks and Recreation Department employee was inappropriately allowed to stay on the City payroll for several months in order to reach a retirement milestone that would benefit their future City pension.

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# Investigation Results Summary

We found evidence that the Parks and Recreation Department's Director, Kimberly McNeeley, and Assistant Director, Liana Kallivoka, gave an employee a special privilege and wasted City resources by approving one of their direct reports to improperly use over \$22,000 worth of sick leave. This arrangement also allowed the employee to continue receiving other City benefits. The total cost to the City of this arrangement was over \$55,000. Alternative arrangements with the employee could have saved the City at least \$39,000.

We did not find evidence to suggest that the employee in question was allowed to stay on the City payroll in order to meet a retirement milestone, as suggested in the initial allegation.

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## Findings

### Special Privilege and Waste of City Resources

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#### Investigation Criteria:

*A City employee may not use their official position to secure a special privilege or exemption for another person.*

*City Code §2-7-62(I)*

*See Investigation Criteria for Details*

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In November 2018, an employee who reported to Kallivoka found a new job out of state and notified PARD of their intent to leave City employment. Despite giving nearly 6 weeks' notice, PARD management wanted the employee to continue working for the City as a full-time employee after moving out of state to limit disruptions to the project that the employee managed. Kallivoka and McNeeley arranged for the employee to remotely work roughly 10 hours per week. Because the employee was expected to work 40 hours per week as a full-time employee, Kallivoka and McNeeley allowed the employee to use accrued leave, including sick leave, to make up the remaining 30 hours per week. However, City policy prohibits sick leave from being used for any non-medical reasons.

Kallivoka developed the plan to extend the employee's service with PARD's Human Resources (HR) Manager at the time and the employee. Kallivoka emailed the plan to McNeeley for her approval. McNeeley responded, "I can support this plan. I assume it has been fully vetted by our HR team." The HR Manager was copied on the email but does not appear to have responded.

Although PARD's HR team appears to have reviewed the arrangement, the team, including the HR Manager, ultimately reported to McNeeley, PARD's Director when the arrangement was approved. Biweekly emails between Kallivoka and PARD's HR team show that Kallivoka instructed PARD HR on how to record the employee's time, including sick leave, for each week in which the employee was working remotely. Additionally, we found an unrelated email in which Kallivoka exempted the same employee from a new Citywide policy requiring PARD employees to disclose their secondary employment. Although the employee had secondary employment at the time, working out of state for their new employer, Kallivoka emailed the employee to let them know they would not have to submit the acknowledgment form. Kallivoka copied the HR Manager to make them "aware of my direction."

Neither Kallivoka nor McNeeley consulted the Law Department or the citywide Human Resources Department (HRD) about their arrangement to

allow the employee to use sick leave outside of its specified purpose. We spoke with several City attorneys about the matter, and all of them said they would have advised against the arrangement. When we spoke with HRD management, they also confirmed that the employee's use of sick leave should not have been approved, and described the arrangement as a "misuse of City resources."

#### Investigation Criteria:

City Code defines waste as the "grossly inefficient or uneconomical use of a City asset or resource," or the "unnecessary incurring of costs to the City as a result of a grossly inefficient practice, system, or control."

*City Code §2-3-5(A)(3)*

*See Investigation Criteria for Details*

During these conversations, we learned that PARD could have pursued alternative arrangements, such as changing the employee's status to part-time or temporary employment, or allowing the employee to leave the City and then rehiring them as a contractor. When we spoke with the employee in question, they said they wanted to see their project be successful and would have been open to an alternative arrangement.

Kallivoka told us the employee was willing to continue working for the City of Austin as a temporary employee earning \$70 - \$75 per hour after their leave ran out in May 2019. However, the deal fell through, because Kallivoka was unwilling to pay that much per hour. We did not assess whether the employee's requested rate of pay would have been appropriate, but we did note that it would have cost the City less to have paid the employee \$75 per hour from the beginning than letting them inappropriately use their sick leave and remain a full-time City employee.

## Exhibit 1, Compensation Options

	What the Employee was Paid	Alternative Temp Arrangement at \$75 per Hour
Regular Worked Hours	\$8,000	\$12,000
Sick Leave	\$22,000	\$0
Vacation Leave	\$7,000	\$0
Paid Holidays	\$1,500	\$0
Unused Vacation Payout	\$0	\$4,000
Value of City Benefits	\$16,500	\$0
<b>Total Dollar Amount</b>	<b>\$55,000</b>	<b>\$16,000</b>
<b>Additional Cost to the City</b>	<b>\$39,000</b>	

Source: Office of the City Auditor's analysis of City payroll data. Values are rounded for simplicity.

During their last 20 weeks with the City, the employee earned approximately \$39,000, plus more than \$16,000 in benefits. Of this



amount, roughly \$8,000 was from productive work hours. Had the employee been hired on as a temporary employee from the beginning at their requested rate of \$75 per hour, their 162 hours of productive work would have been worth about \$12,000, far lower than the amount they actually received. While some of the \$39,000 would have been paid out regardless (for instance, City employees are paid for their unused accrued vacation leave), the employee would not have been paid for any sick leave, and would not have accrued additional leave or medical benefits during these 20 weeks. Ultimately, the employee was paid more than \$22,000 for inappropriately used sick leave, and accrued other leave and benefits worth more than \$25,000 during this time. The total cost of the arrangement was at least \$39,000 more than an alternative in which the employee was paid as a temporary employee, as seen in Exhibit 1.

When asked about the arrangement, Kallivoka said that it was not something they do every day, and McNeeley confirmed that the employee's use of sick leave was not typically the way sick leave was supposed to be used. However, both of them said there was precedent for using sick leave in this manner, and they cited three employees who had been permitted to use sick leave in a similar fashion. We reviewed the payroll data for the three employees but did not find that any had been permitted to misuse their sick leave.

By allowing a PARD employee to improperly use more than \$22,000 worth sick leave, and costing the City at least \$39,000 more than alternative arrangements, McNeeley and Kallivoka appear to have violated the following criteria:

- City Code §2-7-62(I): Standards of Conduct – Special Privilege or Exemption
- City Code §2-3-5(A)(3): Powers and Duties – Waste

# Appendix A - Subject Response - Kimberly McNeeley

*Office of the City Auditor's Investigative Report: Parks and Recreation Department Employees Secured a Special Privilege and Wasted City Resources Response- Kimberly McNeeley*

Below, please find Kimberly McNeeley's Response.

I, Kimberly McNeeley, believe the report findings exclude details related to the operational circumstances and project demands that substantiated the need for specialized skills, historical operational knowledge and expertise related to a complex multi-faceted partner project. The sole objective for retaining an employee was continuity of operations and preservation of stability. At the time of the employee's resignation, no other individual had the knowledge, skill or ability to achieve the objectives. The work was and is complex. It is the above reasons that necessitated the retention of the employee. I repudiate any intent to provide a special privilege as asserted in referencing *City Code 2-7-62(1) Standards of Conduct- Special Privilege or Exemption*:

*(1) A salaried City official or employee may not use the official's or the employee's official position to secure a special privilege or exemption for the official or the employee, to secure a special privilege or exemption for another person, to harm another person, or to secure confidential information for a purpose other than official responsibilities.*

The employee possessed unique knowledge of a complex partnership project that could not be immediately duplicated or transferred. The intent was categorically to benefit the City of Austin, conserve partnership stability, maintain continuity of operations and advance project objectives while suitable replacements could be recruited, hired and/or trained. While the retention implementation was imperfect, the intent rooted in public benefit.

The findings state my actions related to this circumstance "may have violated" *City Code 2-3-5(A)(3) Powers and Duties- Waste*:

*(3) WASTE means:*

*(a) the grossly inefficient or uneconomical use of a City asset or resource; or*

The Parks and Recreation Department had a legitimate business need for specialized knowledge, skills and abilities unique to a specific individual. It is for this reason my colleagues formulate a strategy to meet the objective. Upon drafting a preliminary proposal, the draft was forward to me. The Auditor's Report includes a quote from my December 20, 2018 email addressed to the PARD Human Resource Manager II and an Assistant Director stating, "*I support this plan. I assume it has been fully vetted by our HR Team*". It was communicated to me that my colleagues developed the strategy based upon a previously implemented approach. The statement "*I support this plan*", references a schedule outline and summary work plan absent of details related to implementation. At no point (as I transition from Acting Director or after my reassignment as Interim Chief Animal Services Officer) did I have knowledge of the exact implementation.

My typical work practices include:

- trust employees with specific professional expertise
- rely upon colleague policy analysis and implementation
- clarify and follow through when communications are incomplete

## Appendix A - Subject Response - Kimberly McNeeley

*Office of the City Auditor's Investigative Report: Parks and Recreation Department Employees Secured a Special Privilege and Wasted City Resources Response- Kimberly McNeeley*

The email explicitly stated I assumed the plan had been vetted by the HR Team. While I trusted in the HR Manager II's expertise, my typical work practices would have required evidence from the HR Team outlining the scrutiny and thorough vetting. Typical work practices would have included a trust and verify process with my colleague. The referenced email was an incomplete communication. The report findings note there was no response to my December 20<sup>th</sup> email. Conceivably, implementing my typical work processes may have resulted in a more prudent and cost effective method of achieving the objective. That objective being to retain the unique knowledge, skills and abilities needed to conserve partnership stability, maintain continuity of operations and advance project objectives. I regret not following my typical work practices.

During this time, I was preoccupied by my father's serious health issue, a death in the family and distracted by an impending professional transition. Specifically, just after the holidays my father suffered a fall that required hospital attention, I left Austin from January 2, 2019 through January 6, 2019 to attend the funeral of my grandmother and I began transitioning to the role of Interim Animal Services Officer the week of January 14, 2019. The Interim Chief Animal Service Officer assignment was effective through to September, 2019.

The resulting implementation of an imperfect retention plan occurred without my explicit consent. While I have offered an explanation for my lack of scrutiny, I regret assuming actions were taken without sufficient personal follow up. Conceivably, additional scrutiny may have resulted in a more prudent and cost effective method of achieving the objective. Despite the extenuating circumstances, I take responsibility for not insisting upon additional scrutiny. I take responsibility for not following my typical work practices.

Additionally, I am compelled to include supplementary contextual information.

The report incorrectly states *the Human Resources Manager* reported to the Department Director. Effective August 2018, the Parks and Recreation Department Human Resources Division, including the Human Resources Manager II, reported directly to the Department's Chief Administrative Officer. Prior to August 2018, the Human Resources Division reported to an Assistant Director position.

The position of Human Resources Manager II work responsibilities, as outlined by the job description, includes but is not limited to:

- Partner with Executive Management on HR programmatic analysis in achievement of objectives and in resolution of complex HR related issues
- Serve as a liaison and advisor within the Department and between other City Departments
- Provide guidance or interpretation of policies and regulations
- Monitor compliance with policies, regulations, laws and program objectives

The Parks and Recreation Department regularly relies upon this professional expertise when making Departmental HR decisions and is the basis for presuming the full scrutiny of the retention plan.

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## Appendix A - Subject Response - Kimberly McNeeley

*Office of the City Auditor's Investigative Report: Parks and Recreation Department Employees Secured a Special Privilege and Wasted City Resources Response- Kimberly McNeeley*

In the Audit Report, it is correctly noted that I confirmed the standard use of sick leave as is stated in City Policy. Because I incrementally ceased operational oversight of PARD in January 2019, I had no reason to believe or know the specific timesheet coding related to sick leave. The timesheet coding was brought to my attention during the Audit.

During the interview questioning, through thoughtful contemplation, I did mention my understanding of similar retention strategies for former employees. While the report suggests I affirmed the similar retention strategies allowed the use of sick time, I do not know the details of the arrangements nor do I have knowledge of the specific timesheet coding related to retention strategies. I have only a basic understanding of like arrangements.



# Appendix A - Subject Response - Liana Kallivoka

May 11, 2020

Thank you for the opportunity to address the investigation's findings. As a public servant of the City of Austin for seventeen years, I am committed to accountability, transparency, and responsibility. I believe that my full cooperation with the City Auditor's Office in this and in previous investigations or audits speaks for my record and character.

The central element of the Auditor's report is the employment continuation arrangement for a PARD Division Manager (DM) under my direct supervision, which was agreed upon between PARD and the DM, following the DM's decision to accept a position outside PARD and the City of Austin.

First, I wish to provide the relevant context that informed the employment continuation arrangement.

## **A. Context – Critical business needs – Substantial risk of financial losses for the City**

- On November 9, 2018, the DM informed me that, due to family reasons, he had sought employment out of state, and that he had accepted one such position. He also informed me that his last day at the office would be 12/20/2018.
- The DM is an unusually dedicated, well-organized, driven, exceptionally performing, and inspiring public servant. Because of his abilities and heightened sense of public service, over time he had assumed an uncommonly broad, diverse, and complex set of responsibilities.

Specifically, at the time of his planned departure, and among his many other responsibilities, *he was managing all PARD-related aspects of the \$300 million, high-profile, highly complex, and time-sensitive Waterloo Greenway restoration in downtown Austin*, which is supported through a public-private partnership between the City of Austin and the Waterloo Greenway Conservancy. The Waterloo Greenway restoration extends from Lady Bird Lake to 15<sup>th</sup> Street, spawning several large-scale capital improvement projects that were, at the time, under the DM's responsibility. The DM was also responsible for *the development and management of the spending plan for PARD's Capital Improvement Program (CIP)*, and for the establishment of *PARD's Asset Management Program*.

- The DM's range of responsibilities was so broad and complex, that, despite his abilities and dedication, it was becoming unsustainable for both him and PARD. I had already recognized the need to reduce the DM's range of responsibilities, and had taken the necessary steps. In May 2018, during the City Council's adoption of an amendment to the Waterloo Greenway financing plan, PARD demonstrated the need, and received approval for new positions in FY19, including a Project Manager (PM) position to take over part of the DM's responsibilities.

Unfortunately, the DM's decision to leave PARD came at a time (November 2018), when the hiring process for the new PM position had yet to be concluded, despite PARD's timely initiation of the hiring process in October 2018, i.e., several weeks before the DM's announcement of his decision to leave: the interviews for the PM position were conducted in December 2018, a top candidate was identified and offered the position in January 2019, and eventually joined PARD in late

## Appendix A - Subject Response - Liana Kallivoka

February 2019. *Thus, at the time of the DM's decision, it was clear that the PM would not be with PARD on time to ensure a smooth transition.*

In addition to my own job responsibilities as PARD Assistant Director, I too assumed, in January 2019, part of the DM's responsibilities, but, simply put, *at the time of the DM's decision there was no other employee in PARD who could readily and competently assume many of the DM's responsibilities*, and in particular those related to the multifaceted demands of the Waterloo Greenway projects.

Nor were the 6 weeks of advance notice the DM had given sufficient for posting the position, conducting interviews, and bringing on a replacement. For instance, a recent hiring process for another PM position in our department lasted *seven* months from the time a former employee departed to the time that the replacement employee joined PARD. Furthermore, such a replacement would have joined PARD without the benefit of the DM's extensive knowledge.

The 6 weeks of advance notice the DM had given were not sufficient, either, for an existing PARD employee (or employees) to assume the range of his responsibilities. Nevertheless, in order to partially mitigate the impact to the department of the DM's departure, I asked one of the DM's direct reports, a Business Process Consultant (BPC), to take on part of the DM's responsibilities, and take advantage of the training and support prior to the DM's departure.

- Despite these actions, there remained considerable risks associated with the various Waterloo Greenway projects whose management the DM was vacating, which, in my opinion, could have resulted in substantial financial losses for the City. One of the most pressing risks stemmed from the need to restructure a Texas Parks and Wildlife Department (TPWD) Grant to PARD, amounting to \$850,000 – a task which could not have been led by anyone else in PARD other than the DM. The urgency became even more acute when the PARD Grants Coordinator employee (with some knowledge of the TPWD grant) announced that she too would be leaving PARD, effective 12/18/2018. Failure to restructure the grant would most likely have resulted in loss of a substantial portion of the grant.

*In summary, at the time of the DM's decision, there were critical business needs, harboring potentially substantial financial losses that, in my opinion, mandated that continuity of tasks and responsibilities be maintained.*

I describe next the actions I took to explore whether continuity could be preserved, and if so, to what extent. The paramount goal was to minimize business disruption, risks, and potential losses to the City: the City's and the Department's interests were the sole driving force.

### **B. Continuity plan**

- Following the DM's notification, I sought to explore whether an employment continuation arrangement was possible under City rules with the PARD HR Manager. At the time, the DM had not asked that he remain employed in any way, nor had I discussed my thoughts with him. I wanted to first explore possibilities with the HR Manager. I, thus, addressed the matter for the first time during my scheduled one-on-one meeting with the HR Manager on November 21, 2018,

## Appendix A - Subject Response - Liana Kallivoka

just days after I first learned of the DM's decision. I asked the HR Manager to assess potential options so that we arrive at a recommendation during our next meeting, scheduled for December 5, 2018.

- On December 5, 2018, the HR Manager discussed three options: (a) rehiring the DM on a part-time basis after the City's mandatory 30-day separation period; (b) rehiring the DM as a contractor; (c) continuing the employment of the DM as an FTE, while using his accrued vacation and sick time. The HR manager pointed out that the first option included a separation period, and the second option involved a lengthy process that could take at least a couple of months to conclude. The third option was the only one preserving continuity.
- I subsequently discussed the third option with the outgoing DM on December 6, 2018: he was in general agreement with the plan.
- On December 19, 2018, the HR Manager, the DM, and I met to discuss the details of the employment continuation arrangement.
- The next day, December 20, 2018, I summarized in an email to the PARD Acting Director, copying the HR Manager and the DM, the specifics of the agreement we had reached, seeking approval. In the email, I outlined the key points of the plan, including the proposed implementation details, and the DM's modified scope of responsibilities, timeline, and deliverables.
- A few hours later, the PARD Acting Director responded by email, copying all parties, indicating support for the plan, while also saying that "I assume it has been fully vetted by our own HR team." The HR Manager never expressed any concerns, in writing or otherwise.
- Following the approval of the continuation plan, I informed my team of the DM's modified responsibilities and scope of work: there was nothing to hide.

Contrary to the draft report's assertion that I developed the plan *with* the HR Manager, the specifics of the DM's continued employment plan were proposed by PARD's HR Manager, who is responsible for providing oversight and advice, and ensuring compliance with policies, regulations and laws, on all personnel and employment matters. The HR Manager was a seasoned HR professional, with more than 15 years of experience, and had been leading PARD's HR for 5 years. The proposed plan, which included the use of accrued sick time, was presented to me as a tool the City uses to meet critical business needs. When the HR Manager first discussed the plan, she also mentioned that it had been used before both within PARD, and within the City. At that point in time, I had already been working with the HR Manager for 2½ years, and I had developed respect for her professionalism and appreciation for her expertise and for the care with which she was approaching personnel matters. I had no reason whatsoever to question her statements or the plan. Moreover, I myself was independently aware of cases where the City, in negotiated employment separation agreements, was paying the departing employees their accrued sick time. Thus, her plan was consistent with what I also knew at the time that the City was doing (i.e., paying accrued sick time), even if infrequently. Given what I knew then, *nothing in the HR Manager's plan sounded odd or inappropriate.*

## Appendix A - Subject Response - Liana Kallivoka

I further understand that, in discussions subsequent to my interview with the investigators, the City Auditor's Office disclosed to my representative that, per the Law Department, similar arrangements have, in fact, been made to allow departing employees to use up or cash out their sick leave, specifically in the context of settling a legal claim by the employee. While the DM was not in that situation, this proves the point that similar arrangements, where sick leave was paid for non-medical reasons, have been made previously, and directly contradicts the draft report.

I do not fault the HR Manager for the proposed plan: I believe she was acting with the best interests of the City in mind, relying on her own experience and knowledge of City employment rules and practices, while trying to ensure that continuity can be maintained. I do accept responsibility for adopting the plan without raising concerns, but, at the time, it sounded familiar and certainly not uncommon or inappropriate.

The Auditor's Office draft report suggests that I should have contacted HRD or the Law Department to seek their opinion or approval. This is not the established procedure; it is not part of any policy, training or directive that I have ever received. Had I ever felt uncomfortable with the proposed plan, I would have followed PARD's established process for reaching out to HRD and/or the Law Department by: (a) asking the HR Manager to confirm with HRD; and/or (b) asking the Acting Director to support the request for legal advice to the Law Department. It is also worth noting that the HR Manager herself could have reached out to HRD if she had questions or concerns about the plan. While the draft Auditor's investigation report states that the HR Manager ultimately reported to the PARD Director (seemingly implying that the HR Manager was, or could have been, overruled), in my experience, the PARD leadership always listens to and respects the HR Manager's expert opinion, and did so in this case. In previous situations, the HR Manager informed me when something could not be done, and I had always followed her advice. Moreover, the working environment the Acting Director has secured for all of us is one where any concerns raised by anyone would have immediately resulted in a reassessment. However, as I already stated, there were no concerns or hesitation expressed by anyone in this situation.

The Auditor's report also states that "several City attorneys would have advised against the arrangement." It is unclear from the draft report whether, when seeking the City attorneys' opinion, the Auditor's Office presented them with the critical business needs I testified about and present in more detail in this response. Furthermore, as discussed elsewhere in this response, I believe that the City has indeed entered in similar agreements for critical business needs, where accrued sick time was paid to departing employees.

The Auditor's report makes references and comparisons to "alternative arrangements" that could have been pursued; the "alternative arrangement" the report is referring to is unclear. I also note that the HR Manager did not mention other alternative arrangements to me as possibilities, beyond the ones I already referred to.

### **C. Monetization of City losses and gains**

The Auditor's Office, in its analysis of the costs the City has incurred because of the DM's employment continuation agreement, has found that the City's losses amount to approximately \$39,000. I believe that the analysis is flawed and incomplete.

## Appendix A - Subject Response - Liana Kallivoka

First, the Auditor's Office analysis has focused exclusively on the employment cost, failing to account for the benefits the City derived from the continuous employment plan that was adopted, *which would not have been realized had there been even a one- or two-month-long interruption*. The purported City losses should be contrasted with the financial losses that would have resulted from the DM's interrupted employment, since no other plan had been proposed ensuring continuity. The benefits the City derived were not due solely to the DM's compensated work: they were due to his *uninterrupted* employment.

Second, the employment cost losses the Auditor's Office has calculated are based on unrealistic employment rates that are significantly different from market rates and/or rates that PARD is paying for similar services.

I elaborate on both matters.

### 1. Unrealized financial losses thanks to DM's continued employment

First, I extract from the DM's range of activities performed between January 2019 and May 2019 only a few of the tasks that would not have been assumed by a replacement employee, and could (monetizable risk) or would (high degree of certainty) have resulted in financial losses for the City. I stress that I provide only a subset for the purpose of highlighting the risks known to me at the time of the DM's departure.

#### **Waterloo Greenway Partnership (at the time known as the Waller Creek Conservancy)**

- Project management for Waterloo Park (this is only one of the capital improvement projects under the DM's responsibility associated with the Waterloo Greenway restoration): review of pay applications, review of invoices, construction coordination, and coordination with Texas Parks and Wildlife Department (TPWD) on grant expenditure requests and reporting requirements
- Waterloo Greenway reporting: 5-year CIP plan, spending plan, Tax Increment Finance (TIF) Budget
- Legal agreements and interdepartmental agreements: represented PARD in discussions with the Conservancy and City Legal, and verified PARD's funding responsibilities and funding sources within the TIF Plan
- Instituted policies and procedures for communication and coordination with the Conservancy during construction that led to timely processing of payments, efficient reporting on compliance issues, and effective decision-making

#### **2018 General Obligation Bond Program**

- Developed procurement strategy
- Submitted appropriation plan to Budget Office

Of the above, I provide details for 3 subtasks only:

#### **a. TPWD grant**

The Waterloo Park had received a matching grant of \$850,000 from TPWD. Due to project delays related to the construction at the Waller Creek Tunnel that were outside of PARD's control, execution of the grant agreement was delayed, and, by December 2018, PARD had already exhausted all possible

## Appendix A - Subject Response - Liana Kallivoka

grant extensions. Following the approval to start construction at the Waterloo Park in December of 2018, the DM was able to revisit the TPWD grant and after several weeks of direct negotiations, come to an agreement by February 2019, to amend the budget items. The DM subsequently established the plans and timelines for completion of the approved components within the terms and timeline of the grant. **If the DM's employment with the City had been terminated in December 2018, the budget would not have been amended to align with the construction sequencing and projected scope of work, and PARD would have lost, at a minimum, part of the grant, conservatively estimated at \$100,000, but most likely closer to \$600,000.**

**b. Waterloo Park review, approval and processing of invoices and pay applications:**

The invoice/pay application review process requires detailed knowledge of project scope, status, contractual obligations, and allocated budget. Immediate review of invoices is required to meet City policy and avoid being delinquent on payments. During January and February of 2019, 10 invoices were submitted exceeding \$300,000. From March 2019 to May 2019, an additional 10 invoices and pay applications were submitted, reviewed and approved for payment, totaling more than \$3.5 million. Lack of intimate knowledge of details and appropriate oversight, may have led to approvals of disallowed or inapplicable charges, and may have resulted in financial losses for PARD. **Although it is difficult to quantify potential losses, even small percentage corrections (1% to 3%) that routinely arise could have resulted in losses to the tune of thousands of dollars. There was no other PARD employee at the time possessing the detailed knowledge required to exercise appropriate oversight.**

**c. Waterloo Park Construction Coordination:**

Construction at Waterloo Park was scheduled to start in January 2019. At the commencement of construction, there is a heightened need for coordination with other departments, utilities, and, in this case, with the Waller Creek Tunnel construction team. Waterloo Park is a challenging site, and failure to provide solutions, reach resolutions, or timely deliver requested information could easily result in project delays. Timely delivery of the project could have been compromised from the onset. For the purpose of monetizing the losses due to project delays, the Waterloo contract has specified liquidated damages for non-completion at the rate of \$5,000 per day (minimum). **The DM's continued employment ensured multi-departmental coordination, and, in the end, prevented any and all delays and the associated financial damages.**

*The potential financial losses associated with 3 subtasks of only a limited subset of the DM's responsibilities could have amounted to hundreds of thousands of dollars.*

**2. Compensation rate**

The Auditor's Office compared the losses to the City by assuming that the DM would have accepted an offer of employment as a contractor for the City at the rate of \$75/hr. There is no basis to support the \$75/hr rate. The hourly rates that PARD has negotiated with PM consultants/contractors range from about \$150/hr to more than \$225/hr, for, typically, lesser scope of responsibilities than what the DM had at the time. Furthermore, the hourly rates the City's own Public Works Department charges PARD for PMs is about \$150/hr.



## Appendix A - Subject Response - Liana Kallivoka

In late April / early May of 2019, the DM and I discussed the possibility of his continuing to provide occasional support as a contractor, on an-as-needed basis. He proposed that he be paid at the rate of \$75/hr. By the end of May, the critical business needs that, in December 2018, had necessitated the DM's continued employment with PARD had been fulfilled, and the two PARD employees who had assumed the DM's range of responsibilities were already sufficiently trained, and fully on board. Thus, the DM's continued engagement was unnecessary, and we mutually decided not to pursue a contractual agreement. This decision by no means suggests that the January 2019 value of his services was \$75/hr (or less), as the Auditor's Office seems to suggest in the draft report, when the range of work products and responsibilities was vastly different and far more demanding than the occasional question he would be answering past May 2019 at his proposed \$75/hr rate.

To the table the Auditor provided, I add two columns, tabulating the costs associated with a scenario where the DM was hired as a contractor (range \$150/hr-\$225/hr), after a two-month interruption, which would have resulted in either partial or total (most likely) loss of the TPWD grant (range \$100,000 for partial loss to \$600,000 for substantial loss), in invoice errors (range 1%-3% for the \$300,000 processed during the two-month period), and potential construction delays (range 2 to 5 days). *The columns are aligned with the three subtasks I provided details for and by no means are the only sources of potential financial losses PARD would have incurred had the DM left the City in December 2018.*

	What the Employee was paid	Contractor at \$150/hr, no continuity for two months	Contractor at \$225/hr, no continuity for two months
Regular Worked Hours (~160 hrs)	\$8,000	\$24,000	\$36,000
Sick Leave	\$22,000	\$0	\$0
Vacation Leave	\$7,000	\$0	\$0
Paid Holidays	\$1,500	\$0	\$0
Unused Vacation Payout	\$0	\$4,000	\$4,000
Value of City Benefits	\$16,500	\$0	\$0
TPWD Grant loss (\$100,000-\$600,000)		\$100,000	\$600,000
Invoicing errors (1%-3%)		\$3,000	\$9,000
Construction delays cost (2 to 5 days)		\$10,000	\$25,000
Total Dollar Amount	\$55,000	\$141,000	\$674,000
Additional Cost (Gain) to the City		(\$86,000)	(\$619,000)

As shown in the table, the City did not incur a loss from the DM's continued employment (i.e., did not waste resources), but, instead, realized gains, primarily in the form of avoiding significant losses (ranging from \$86,000 to \$619,000). *In December 2018, I did not seek to explore the DM's employment continuity in a vacuum or in order to offer a "special privilege to the employee:" I did it by assessing the very real risk of substantial financial losses for PARD and the City.*

Additionally, the report assumes that the accrued sick leave has a monetizable value only when it is directly paid to an employee. This is inaccurate: although employees cannot "cash out" their sick leave upon departure (with some exceptions, as noted earlier), they could trade their sick leave toward retirement benefits. Thus, the sick-leave-retirement-benefit-equivalent should have been taken into account when the Auditor's Office was attempting to calculate the City's "losses," since the City would

## Appendix A - Subject Response - Liana Kallivoka

have paid that sick-leave equivalent to the employee during retirement. In short, unpaid sick leave does not have zero value, as assumed in the draft report's analysis.

While it is also true that the pursued employment continuation arrangement resulted in costs to the City associated with the employee's benefits, it is important to understand that such benefits had nothing to do with the reasons for this arrangement. The DM had full-time employment elsewhere and, I presume, access to benefits through that employment.

### **D. Comments on miscellaneous items in the report**

#### HR timekeeping and reporting structure

The draft report states that I "instructed PARD HR on how to record the employee's time," thus implying that I had "instruction" authority over HR personnel, creating possibly the impression that I was instructing them to do something improper. First, the Auditor's assumption that I have "instruction" authority over the HR personnel is incorrect. The HR personnel reports to the HR Manager, who, in turn, reports to the Chief Administrative Officer, who reports to the PARD Director: I am not in the line of command of the HR Manager or the HR personnel to have "instruction" authority. Second, the specific timekeeping reporting steps had been prescribed by the HR Manager, whose guidelines I was following.

I do have the responsibility to approve the timesheets of my direct reports, and this is precisely what I was doing with the DM's timesheets, which I was then forwarding to the HR timekeepers for further processing, per the HR Manager's guidelines.

I note that during the DM's extended employment (January to May, 2019), there were several HR employees (timekeepers) who were processing biweekly timesheets, who were aware of the DM's continued employment, and never raised any concerns (none that ever reached me). Had anyone, in HR or elsewhere, ever raised a concern, I would have immediately reacted to address it.

#### Secondary employment

The Auditor's report refers to the secondary employment disclosure, apparently implying that there was an intent to hide the DM's secondary employment and not follow the City's policies and procedures. I note that disclosure requirements regarding secondary employment became effective on March 1, 2019 (when the DM was *already* in a "secondary employment" situation for 2 months), and the requirements had retroactive effect. At that time, City departments were instructed to develop their own policy and implementation procedures and, eventually, on October 1, 2019, PARD issued the Secondary Employment Acknowledgement Policy, i.e., 4 months *after* the end of the DM's employment with the City.

The March 2019 disclosure policy identified the following requirements:

1. Secondary Employment must not interfere with an Employee's responsibilities to the City of Austin employment.
2. Secondary Employment must not present a real or perceived Conflict of Interest with the Employee's position with the City of Austin.

In the DM's situation, neither of these requirements was violated, as the DM's other employment, based on the work plan we had put in place, did not interfere nor present a real or perceived conflict of interest with his work for PARD.

## Appendix A - Subject Response - Liana Kallivoka

Thus, when the DM asked about submitting the secondary employment form, I responded in an email that I did not *think* it was necessary, and I copied the HR Manager for her feedback. The HR Manager did not respond in writing, but, in a subsequent in-person meeting, she told me that the policy's intent is for HR and the employee's supervisor to be aware of potential conflicts of interest and any potential adverse effects on employment, and there was no need for the DM to submit the form. Moreover, in the DM's case, the HR Manager, I, as the DM's supervisor, the Acting Director, and the Department Director / Interim Assistant City Manager, all knew about the DM's out-of-state employment and none of us saw a real or perceived conflict of interest. Since, at the time, PARD's policy implementation processes were still under development, no further action was taken.

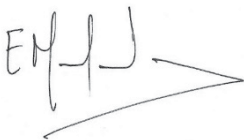
### Summary

The overarching goal in retaining the services of the outgoing DM was to ensure continuity for critical tasks, to share and transfer institutional knowledge, to facilitate a smooth transition, to allow for training and support of employees scheduled to assume some of the DM's responsibilities, all during a time that the department was also going through significant transition. Of primary concern was the immediate need to mitigate the risk of, and, in some cases, avert, serious financial losses for the City, and to avoid damaging vital PARD partnerships. There was never an intent to give "an employee a special privilege."

I accept responsibility for not questioning or personally researching HR's proposed continued employment plan for the outgoing DM. I accept responsibility for supporting and recommending the implementation of the plan. My recommendation was based on the information and understanding I had at the time. I understand now that we should not have allowed the use of accrued sick time, and that we should have explored other possible alternatives in our effort to ensure continuity. As I stated at the outset, I firmly believe in transparency, accountability and responsibility when managing the taxpayer money with which Austinites have entrusted us, and this is precisely what guided my recommendations.

The DM's uninterrupted employment did not waste City resources: on the contrary, it secured multifaceted benefits for PARD, and averted significant financial losses the City would have otherwise suffered.

Respectfully,

A handwritten signature in black ink, appearing to read 'EM-J', followed by a long horizontal line that tapers to a point on the right.

Liana Kallivoka, PhD, PE, LEED Fellow  
PARC Assistant Director

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## Appendix B - Office of City Auditor's Response to the Subject Response - Kimberly McNeeley

We have reviewed McNeeley's response and noted that she stated that she was not aware of the exact implementation of the use of sick leave in the plan to retain the employee remotely. However, in her December 20th email where McNeeley wrote, "I can support this plan," she was responding to an email from Kallivoka with the plan's details regarding its use of sick leave. Specifically, the email McNeeley received stated, in part, "Starting 01/02/19, [the employee] will work 10 hours a week and utilize [their] leave balance for the remaining 30 hours to total 40 hours a week... The leave will be a combination of VCU [vacation leave], SCK [sick leave] and PHL [personal holiday leave]..." Based on this email exchange, the plan McNeeley was supporting explicitly included using sick leave in a manner that violated City policy. We believe our findings stand.

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## Appendix B - Office of City Auditor's Response to the Subject Response - Liana Kallivoka

We have reviewed Kallivoka's response. There are no provisions in City Code that allow a department executive to violate City code based on their opinion of business needs. We believe our findings stand.

In her response, Kallivoka stated that the HR manager alone proposed the original outlines of the arrangement. Regardless of the initial suggestion, email records between Kallivoka, the HR Manager, and the employee establish that Kallivoka was personally involved in discussing the arrangements and approving them in their final form. Throughout these discussions, it was clear sick leave would be used inappropriately as part of the arrangement.

The hourly rates for PARD consultants that Kallivoka cited in her response and table are 2 to 3 times larger than those that accurately reflect the situation involving the waste at hand. In particular, Kallivoka suggested that our rate of \$75 per hour was below the market rate for a contractor. However, when speaking with the employee in question, the employee said they would have been willing to work for the City for \$50 per hour as a temporary employee without additional benefits from the beginning. This is supported by a May 2019 email from Kallivoka to PARD's HR Manager in which she said that her and the employee "agreed on \$50 for his temp pay rate" through December 2019. However, as noted in our report, Kallivoka told us the deal fell through when the employee later asked to be paid \$75 per hour instead. We used the higher hourly rate of \$75 in our calculations. The other numbers in Kallivoka's calculations are all part of the normal responsibility of PARD management. Handling normal management responsibilities is not an excuse to violate City Code.

In her response, Kallivoka correctly pointed out that accrued sick leave could be applied to an employee's retirement package. However, sick leave is worth less when traded in at retirement than when used. By allowing the employee to use their sick leave, the employee got the same benefit in terms of months towards retirement as they would have by trading in their unused hours, but at an increased cost to the City, because the employee was paid their normal hourly rate and earned additional benefits on these hours. As such, our finding that PARD's agreement with the employee wasted at least \$39,000, including more than \$22,000 in sick leave, remains unchanged.

Kallivoka's response misrepresented our conversation with her personal attorney. We are not aware of any situation in which the Law Department has allowed a City employee to misuse their sick leave, and we communicated that to her attorney. The situations handled by the Law Department and the situation in this report are not similar. As discussed in our report, the City attorneys we spoke with uniformly said they would have advised against PARD's arrangement with the employee had they been asked.

Finally, regarding the secondary employment disclosure, email records show that PARD sent all employees an email on March 8, 2019, informing them of the Secondary Employment Acknowledgment requirement. The email included a memorandum titled "Implementation of Secondary Employment Acknowledgement Procedure" which specifically stated that all PARD employees are "required" to submit a form if "the work performed for a secondary employer is the same or similar to the work they perform for the Parks and Recreation Department," or if "the industry of the secondary employer is akin to the work they perform for the Parks and Recreation Department." Despite this being a requirement and the employee doing the same type of work he did for Austin for another municipality's parks department, Kallivoka sent an email that same day, March 8, telling the employee not to submit the form and letting him know she was informing PARD HR so that they would "be aware of my direction" to exempt the employee from this requirement.

## Appendix C - Management Response



### City of Austin

**Christopher Shorter, Assistant City Manager**

P.O. Box 1088, Austin, TX 78767

(512) 974-2410

[ChristopherShorter@austintexas.gov](mailto:ChristopherShorter@austintexas.gov)

#### MEMORANDUM

TO: Corrie Stokes, Austin City Auditor

FROM: Christopher J. Shorter, Assistant City Manager

DATE: July 30, 2020

SUBJECT: Draft Investigation Report regarding the Austin Parks and Recreation Department

The City Manager's Office (CMO) is in receipt of the draft investigation report regarding allegations the Parks and Recreation Department's Director, Kimberly McNeeley, and Assistant Director, Liana Kallivoka, gave an employee a special privilege and wasted City resources by inappropriately approving sick leave. Our office will work with Corporate Human Resources to review the report and findings to determine the appropriate next steps in this matter.

Rest assured, our response will include a comprehensive review of City policies and procedures related to the use of sick leave and other city benefits. CMO Management will communicate expectations regarding adherence with these policies/procedures to all CMO employees. At the same time, we will assess the need for strengthening controls to ensure full departmental compliance.

Should you have any questions or need additional information, please feel free to contact me.

Thanks!

cc: Spencer Cronk, City Manager  
Nuria Rivera-Vandermyde, Deputy City Manager  
Joya Hayes, Human Resources Director

*The City of Austin is committed to compliance with the Americans with Disabilities Act.  
Reasonable modifications and equal access to communications will be provided upon request.*



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## Investigation Criteria

### City Code §2-7-62(I) – STANDARDS OF CONDUCT

A salaried City official or employee may not use the official's or the employee's official position to secure a special privilege or exemption for the official or the employee, to secure a special privilege or exemption for another person, to harm another person, or to secure confidential information for a purpose other than official responsibilities.

### City Code §2-3-5(A)(3) – POWERS AND DUTIES

WASTE means:

(a) the grossly inefficient or uneconomical use of a City asset or resource;  
or

(b) the unnecessary incurring of costs to the City as a result of a grossly inefficient practice, system, or control.

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## Methodology

We took the following steps during this investigation:

- reviewed applicable City Code and policy;
- conducted background research;
- analyzed timesheet data from the employee in questions from the City of Austin and from their secondary employment;
- interviewed current and former City staff including personnel in PARD, the Law Department, and the Human Resources Department; and
- interviewed the subjects.

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## CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subjects and the City Manager's Office on the results of this investigation. Please find attached these responses in Appendices A and C.

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The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

**City Auditor**

Corrie Stokes

**Deputy City Auditor**

Jason Hadavi

**Chief of Investigations**

Brian Molloy

**Office of the City Auditor**

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