

City of Mount Vernon

Non-Payroll Disbursements

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OFFICE OF THE NEW YORK STATE COMPTROLLER
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Report Highlights

City of Mount Vernon

Audit Objective

Determine whether City of Mount Vernon (City) officials provided proper oversight of non-payroll disbursements and the former City Comptroller (former Comptroller) properly accounted for these disbursements.

Key Findings

The City Council, the former Comptroller and other City officials did not provide proper oversight of non-payroll disbursements.

The former Comptroller did not properly or transparently account for all non-payroll disbursements. Her failure to provide financial information or perform her duties resulted in the untimely payment of claims and litigation. As a result, the City's reputation with its vendors was damaged and the City paid for additional, potentially unnecessary, disbursements related to litigation.

The former Comptroller and certain department heads did not ensure:

- 88 claims totaling \$1.8 million were paid in a timely manner.
- 60 claims totaling \$460,594 for essential services and infrastructure were paid.

The former Comptroller and the City Council did not ensure:

- Adequate policies and procedures were developed or adopted to ensure claims were always properly authorized, for valid purposes and paid in a timely manner.
- Officials and employees had clear guidance on how the disbursement process should work.

The former Comptroller:

- Implemented a manual voucher system that restricted the ability of officials and employees to monitor operations and

prevented officials from accounting for committed funds. Also, her system prevented officials from determining whether vendors had been paid.

- Made 25 unauthorized electronic disbursements and three withdrawals totaling \$16.4 million, of which \$15.1 million circumvented the Mayor's required countersignature of checks.
- Used contingency appropriations to pay \$1.3 million in expenditures without the Council's knowledge and approval.
- Did not seek reimbursement for approximately \$7,579 out of \$30,754 in disbursements made to the former Comptroller's outside counsel in violation of a court's order.

The former Comptroller's lack of transparency also resulted in City officials operating under the expectation that appropriations were available when the former Comptroller had already expended them.

Key Recommendations

The Comptroller should:

- Refrain from making electronic disbursements to vendors unless their use is approved by the Council, and the City enters into banking agreements and adopts a system of internal controls for all electronic disbursements.

- Discontinue the incorrect practice of charging expenditures to the contingency account and instead account for expenditures in the correct appropriation accounts after Council and Board approval.

Background

The City, located in Westchester County, is the eighth largest city in New York State and is governed by its City Charter (Charter) and Administrative Code (Code), and State laws. An elected five-member City Council (Council) is the legislative body responsible for establishing the City's governing policies. The Board of Estimate and Contract (Board), composed of the Mayor, City Comptroller, and Council President, is responsible for reviewing and approving budgeted appropriations prior to submission to Council for adoption.

The Mayor serves as the City's chief executive officer and is responsible, along with other administrative staff, for the City's day-to-day administration. The elected Comptroller is the chief fiscal officer and is responsible for managing the City's fiscal affairs pursuant to law, the Charter and Code, including the disbursement of all funds.

Audit Period

January 1, 2018 – September 30, 2020. We extended our audit period back to January 1, 2017 to perform a trend analysis of electronic disbursements and forward through September 27, 2021 to review ongoing litigation and outstanding claims.

City officials agreed with our recommendations and indicated they will take corrective action.

Appendix C includes our comments on the issues raised in the City Mayor's response letter.

Quick Facts

Non-Payroll Disbursements January 2018 – September 2020

Checks	6,989	\$55.1 million
Electronic	256	\$169.6 million
Withdrawals ^a	13	\$11.1 million

Non-Payroll Claims Tested^b

Paid by Check	205	\$1.3 million
Electronic	41	\$11.5 million
Withdrawals	6	\$6.6 million

Payments to Former Comptroller's Outside Counsel	22	\$327,938
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a) Certified checks, bank levies and garnishments

b) Excludes testing of interfund transfers and contingency funds

Oversight of Non-Payroll Disbursements

How Should City Officials Oversee Non-Payroll Disbursements?

A city council and city officials are responsible for establishing internal controls to ensure services are effectively provided, and assets are adequately safeguarded. This responsibility includes establishing policies and procedures to help ensure disbursements are properly authorized, valid, properly accounted for and made in a timely manner.

Policies and procedures should also cover online banking activities and require managerial oversight that would enable officials to identify any reporting errors and unauthorized disbursements. An online banking policy should identify what online banking activities will be used and the employees responsible for initiating, approving, transmitting, recording, reviewing and reconciling electronic disbursements, if authorized by the governing board.

An effective disbursements process begins with appropriately designed controls over procurement. Internal controls over procurement should be designed to ensure that appropriations are available before incurring liabilities, and goods and/or services are rendered before payments are made for them.¹

City officials must evaluate the City's size and structure of operations when designing controls over procurement and disbursement processes. Some of these controls can be established in an electronic system. For example, the implementation of application controls can prevent the issuance of a purchase order if sufficient appropriations are not available.

Before a city official completes a purchase order, or a similar document is released to a supplier or contractor, the order should be approved by a city's chief fiscal officer ensuring the availability of appropriations to pay for the purchase. If sufficient appropriations are not available, a budget transfer should be requested by the department head and, if appropriate, recommended by the mayor for adoption by resolution. If required by a city's charter, all budget transfers must be authorized by a resolution adopted by the city's council and board.

An effective disbursements process should also ensure that disbursement duties are segregated to ensure one employee does not control all phases of a transaction without proper oversight. The official responsible for check preparation and signing should not have the sole authority to audit and approve claims for payment.

Segregating check preparation and check signing from the audit and approval of claims prevents an official from making improper purchases, approving them

A city council and city officials are responsible for establishing internal controls to ensure that services are effectively provided, and assets are adequately safeguarded.

¹ Additional controls that contribute to a well-designed procurement process can be found in our publication *The Practice of Internal Controls* available on our website at www.osc.state.ny.us/files/local-government/publications/pdf/internal_controls.pdf.

for payment, and then preparing the check to pay for such purchases without being detected. Adequate segregation of duties should also exist in the financial and online banking applications. If it is not practical to adequately segregate such duties because of limited staff resources, city officials must establish compensating controls such as bank reconciliations performed by an official or employee independent of the disbursements process.

Preparation of monthly bank reconciliations by an employee who does not have custody or access to city money and who does not record disbursements or journal entry transactions assists in the prevention and detection of record-keeping errors and fraud. A supervisor should review prepared reconciliations and authorize any entries to reconcile bank and general ledger balances.

Charter section 65 requires the Mayor to countersign all checks issued by the Comptroller, with exceptions for payments related to bonds and compensation of certain employees. In addition, this Charter section requires the Mayor to execute all deeds and contracts made by the City and affix the City's seal thereto. Further, Charter section 66 affords the Mayor broad authority to examine the books and papers of any City officer, employee or department, including the power to issue subpoenas for to produce such documentation.

... Council has not enacted ordinances regarding disbursements, online banking or wire transfer policies and procedures to supplement the Charter.

Officials Did Not Adopt Adequate Policies and Procedures

The Charter includes general policies regarding the disbursements process. Specifically, it assigns the Comptroller the responsibility for making all disbursements along with auditing claims. An accounts payable clerk (AP clerk) helps the Comptroller with claims auditing and processing. The Charter provides that no money shall be drawn from a City account except on check or draft signed by the Comptroller or Deputy Comptroller.

Additionally, the Charter requires that all checks issued by the Comptroller must be countersigned by the Mayor, on behalf of and in the name of the City, except checks issued to pay the principal of bonds, interest thereon, coupons thereof, and for compensation of Department of Public Works (DPW) employees.

Except for procurement guidelines and an ordinance governing payments made to independent legal counsel,² Council has not enacted ordinances regarding disbursements, online banking or wire transfer policies and procedures to supplement the Charter. In addition, the former Comptroller's office did not have formal procedures outlining the disbursements process.

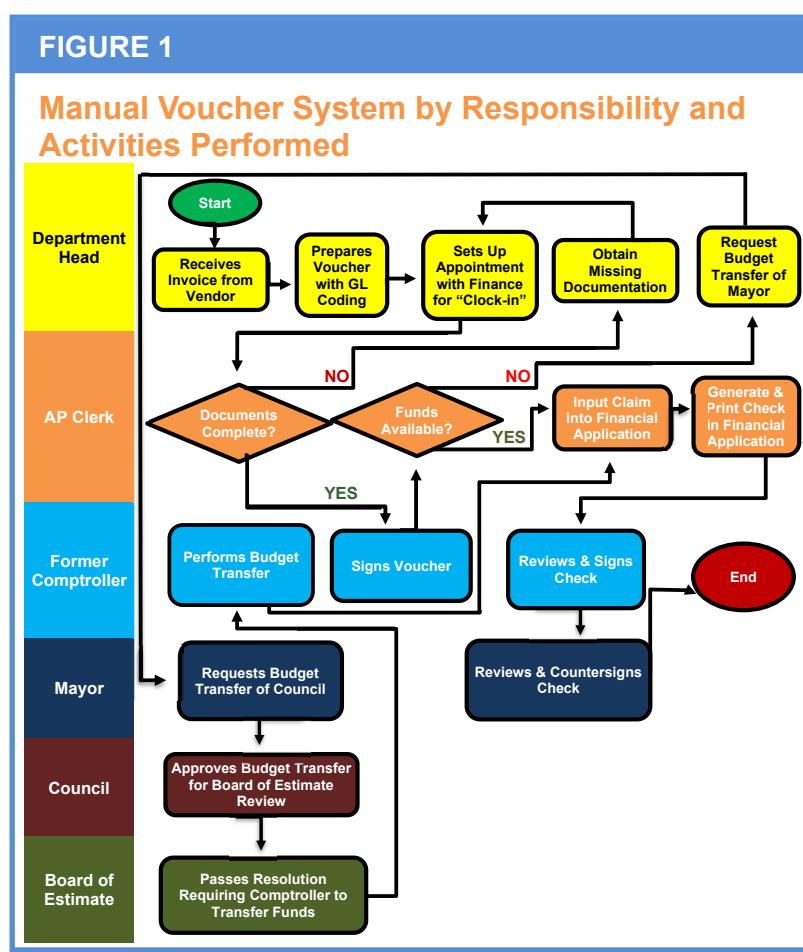
² In June 2020, Council enacted an ordinance (which became chapter 268 of the Code) adding additional requirements for the retention of outside counsel. Part of the ordinance added further disbursement-related requirements.

Such procedures should include processes that ensure appropriations are available before liabilities are incurred, and that goods and/or services are rendered before payment. Further, Council did not enact ordinances establishing policies outlining a system of internal controls for online banking activities. Such internal controls would include identifying the individuals authorized to conduct online banking and the safeguards that should be in place.

Council did not supplement the Charter regarding disbursements, and the former Comptroller failed to develop procedures or communicate the requirements for payment under the new process. Therefore, City department heads and employees did not have clear guidance on how the disbursement process should work. As a result, there was an increased risk of unauthorized and untimely disbursements or incurring liabilities that exceed available appropriations.

The Disbursements Process Was Not Properly Designed

We found that the former Comptroller unilaterally removed the City's electronic purchase order system (used to document authorization to order and incur an expenditure for specific goods or services) and implemented a manual voucher system in June 2018, which restricted the ability of officials and employees to monitor operations (Figure 1).



Notably, this change to the City's disbursement process was initiated by the former Comptroller emailing City department heads to inform them not to process any purchase orders because, according to the former Comptroller, her financial application capabilities had been "breached."

Under the former Comptroller's manual voucher system, requisitions and purchase orders were not used, so City officials were unable to account for the commitment of funds when goods and services were procured. These funds were not formally encumbered until claims were submitted to, and reviewed and approved by, the former Comptroller.

Furthermore, the manual voucher system had a significant impact on the timeliness of disbursements to vendors because the availability of appropriations was not verified until after the goods were received by or services rendered to the City. For example, if the former Comptroller received a claim where appropriations were not available, it would be returned to the department to request a budget transfer, even if the City had already accepted the goods or services for which it contracted.

Also, even after the former Comptroller approved claims and printed checks, when she sent checks to the Mayor's office for countersignature, the former Comptroller often attached a note indicating that the Mayor needed to sign all checks within the batch, or none of the checks would be sent to the vendors (Figure 2). Some check batches we reviewed included payments to vendors unilaterally retained by the former Comptroller, which were not approved by Council or the Board as required by the Charter and/or Code.

FIGURE 2

Excerpt From Former Comptroller's Check Remittance Letter to the Mayor

"All checks must be counter signed within three to five business days and all checks must be returned to the Office of the Comptroller for distribution to payees. No checks can be returned unsigned. No exceptions."

The former Comptroller's requirement was not reasonable, as valid payments would be held up in the event the Mayor had questions or concerns with any particular checks in the pending batch, because none of the valid payments would be made while the Mayor addressed questions or concerns with other checks. This practice would lead to vendors either being paid late or not being paid at all, even if both the Mayor and former Comptroller signed checks to make payments.

The Mayor told us that there were instances where she did not countersign checks because she was not provided backup documentation she requested to determine the appropriateness of the disbursement.³

The former Comptroller said she implemented a manual voucher system because her access to the City's financial application, which included a purchase order system, was breached. As a result of a lawsuit in January 2019, the former Mayor agreed to immediately notify the City's information technology (IT) vendor that the former Comptroller should be granted access to the financial application. However, the former Comptroller transitioned to a cloud-based financial application in November 2019, by unilaterally executing a contract with the IT vendor, that did not provide access to users except for finance department personnel.

Even if the former Comptroller's access to the financial application was "breached", her transition to a cloud-based financial application allowed her to restore an electronic purchase order system. However, the former Comptroller continued to use the manual voucher system throughout our audit period.

Due to the use of the manual voucher system, City officials were unable to determine whether vendors had been paid or the actual amount of total outstanding liabilities at any point in time. This system prevented department heads from knowing the remaining amount of appropriations in their department's accounts to support departmental operations and services in real time, which left them guessing as to whether they could pay legitimate expenditures based on their appropriations or whether they needed to request a budget transfer to cover such expenditures.

Because budget transfers require Council and Board approval, the lack of knowledge regarding the remaining amount of budgeted funds further delayed the timing of disbursements and created an additional burden on the employees responsible for preparing and reviewing claims packages.

Officials Did Not Establish Adequate Controls Over Non-Payroll Disbursements

City officials did not establish adequate controls over the disbursements process. Specifically, there were inadequate segregation of duties, excessive permissions to the online banking and financial applications, and a lack of bank reconciliations.

³ The Mayor possesses broad authority to examine City officers' records and ensure City officers faithfully perform their duties (Charter sections 63 and 66). We found the Mayor's requests for supporting documentation before countersigning checks were an appropriate exercise of her authority given the Mayor's obligation to countersign checks.

Segregation of Duties – The former Comptroller had the sole ability to audit claims and approve them for payment. Although the Charter established the Comptroller as claims auditor and the individual responsible for disbursements, the Charter requires the Mayor to countersign all checks issued by the Comptroller (with the exceptions previously discussed) as a compensating control. However, we found that the former Comptroller disregarded and circumvented this control.

Specifically, we found that the current Mayor was not an authorized signatory on any of the 40 City bank accounts maintained in 2020 and had read-only access to four of the 14 online bank accounts. As a result, the former Comptroller was able to circumvent the authorization process established by the Charter and issue payments without the Mayor’s knowledge, which increased the risk that the former Comptroller could make unauthorized purchases, approve them for payment, and issue a check or make an electronic disbursement to pay for such purchases without being detected.

Permissions to Financial and Online Banking Applications – We reviewed the user permissions for the City’s financial application and found that the AP clerk had the ability to add vendors, enter checks, process checks, change vendor information, change account codes, and override warnings that prevented appropriations from being over-expended. The permissions provided users the ability to process transactions without secondary approval.

We also reviewed user permissions to the City’s online banking application and found that three of the five users had excessive permissions. Specifically, the former Comptroller and a chief accountant had the ability to control all phases of online banking transactions. For example, the former Comptroller had the ability to initiate, approve and release one-time account transfers created from scratch on an as needed basis for nine accounts.

Excessive permissions to financial and online banking applications created an increased risk of intentional or unintentional changes that could occur without detection. The ability to control all phases of an online banking transaction also increases the risk of misappropriation of City money.

Bank Reconciliations – The former Comptroller did not ensure that bank reconciliations were prepared since December 2018. While the former Comptroller told us that bank reconciliations were not prepared because the employee responsible left City employment, the employee did not leave City employment until February 2020. The former Comptroller was unable to provide a reasonable explanation for not completing bank reconciliations.

We reviewed the banking activity for the entire audit period to identify any inappropriate disbursements and identified four such disbursements totaling \$2,881. We found:

... [T]he former Comptroller and a chief accountant had the ability to control all phases of online banking transactions.

-
- One disbursement totaling \$2,000 was made to a credit card company even though City officials said there were no City issued credit cards during our audit period.
 - Three disbursements totaling \$881 were made to a telephone service provider not used by the City.

The former Comptroller told us that she was not aware of the disbursements or why they were made from City accounts. After the audit team identified these disbursements and inquired with the former Comptroller, she filed a fraud claim with the City's bank for \$2,881 and the funds were returned to the City on January 5, 2021.

Because monthly bank reconciliations were not performed, the former Comptroller was not aware of the unauthorized disbursements. If the audit team did not detect these disbursements, City officials would have lost \$2,881 of taxpayer money. Further, there is an increased risk that other unauthorized payments could go undetected.

How Should Officials Ensure That Non-Payroll Disbursements Are Authorized, Paid Timely and for Valid Purposes?

City officials should ensure that all disbursements are authorized, supported by appropriate documentation, for legitimate purposes, properly accounted for, and paid in a timely manner. This can be accomplished by an effective disbursement and claims audit process that subjects every claim to an independent and thorough review to ensure it has adequate supporting documentation, represents actual and necessary expenditures, and complies with statutory and Charter requirements.

New York State General Municipal Law (GML), Section 5-a authorizes local governments to use electronic or wire transfers to disburse or transfer funds, provided that the governing board of the local government has entered into a written agreement with the bank or trust company in which such funds have been deposited.

Such agreements must prescribe the way the electronic or wire transfers may be made, identify those accounts from which such transfers may be made, identify which officer(s) are authorized to order the transfer of funds from those accounts, and implement certain security procedures. Once a local government has opted to use electronic or wire transfers via an agreement with a bank or trust company, the governing board must also adopt a system of internal controls for the documentation and reporting of all electronic or wire transfers.

Charter section 151 states that no written contract providing for the payment of \$500 or more, entered by the City or any of its officers, boards or departments, shall become effective or be acted under until it is endorsed by Corporation Counsel or his Assistant. Such an endorsement is to be in the form of a certificate confirming that the City officer, board or department had authority and power to make such contract, and that such contract is in proper form and properly executed. Also, Charter section 65 requires the Mayor to execute all deeds and contracts made by the City and affix the City's seal thereto.

Claims or vouchers for disbursements should include supporting invoices or receipts with enough detail to determine what was purchased and the price charged. Charter section 92 prohibits the payment of claims by the City unless a claim, certified by or on behalf of the claimant, has been approved by the City's purchasing agent or head of the City department or officer whose action gave rise to such claim, and has been presented to the Comptroller and audited and allowed.⁴

The Charter requires the Comptroller to consecutively number each claim and enter the number, date of presentation, name of claimant and brief description of each claim in a book, which should be conveniently placed for public inspection during all office hours. Charter section 91 prohibits any fund from being overdrawn and any warrant being drawn against one fund or appropriation to pay a claim chargeable to another.

Additionally, Charter section 92 states that no claim shall be audited or paid until at least five days have elapsed after its presentation to the Comptroller, and the Comptroller shall not be required to audit a claim until two weeks (14 days) have expired after the expiration of such period of five days. All disbursements should be made timely in accordance with vendor agreements.

The Former Comptroller Made Unauthorized Disbursements

The former Comptroller's office maintained 47 bank accounts with three different banks and had online banking capabilities for 14 accounts associated with one bank. We requested the banking agreement with the bank the former Comptroller's office conducted online banking with, but found that the document provided by the former Comptroller was a generic template not executed by City officials.

⁴ Charter section 92 specifically excludes certain claims from these requirements. These include claims for a fixed salary, the regular or stated compensation of officers or employees in any City department, work performed or materials furnished under contract with the City and the principal or interest on a bonded or funded debt or other loan.

The document provided by the former Comptroller was labeled “Sample” and included the various service terms the bank offered to clients if they were to enter into an actual banking agreement. The form did not identify bank account names and account numbers that transfers may be made from. Also, it did not identify the employees authorized to request transfers. Because the City did not enter into a written agreement with the bank, no City officials were authorized to make electronic disbursements.⁵

Although officials were not authorized to make electronic disbursements, the former Comptroller made 256 unauthorized electronic disbursements to 80 different vendors totaling \$169.6 million (including wire and automated clearing house payments). We also identified another 13 non-payroll withdrawals (certified checks, bank levies and garnishments) from City accounts totaling \$11.1 million. We reviewed the claims for 25 electronic disbursements and five withdrawals for 52 invoices totaling \$16.5 million to determine whether they were authorized and valid City expenditures. We found that all electronic disbursements and three withdrawals (93 percent) totaling \$16.4 million were not authorized. Although most of these disbursements were approved during the claims audit process, they were not authorized or appropriately made because the former Comptroller paid them electronically or did not obtain the Mayor’s countersignature as required by Charter. For example, the former Comptroller made:

- Five electronic payments totaling \$219,780 to attorneys. City officials were unable to provide a retainer agreement or other support for one of the five payments totaling \$43,192.
- An electronic disbursement of \$4,995 to an IT vendor for the installation of a firewall to migrate to a cloud-based financial application. This disbursement was made after the Mayor questioned and refused to sign the check for such service without being provided further documentation in January 2020. There was no evidence that the former Comptroller provided the Mayor any documentation. Instead, the former Comptroller made an electronic disbursement to the vendor on the same day the Mayor questioned the check.
- An electronic payment to an IT vendor for \$45,263 in March 2020. This was the initial payment for a three-year contract totaling \$281,109 to transition to a cloud-based platform for the City’s financial application. Further, there was no ordinance adopted by the Council appropriating funds for this contract and the contract was not approved by the Board, endorsed by Corporation Counsel or countersigned by the Mayor as required by the Charter.

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⁵ We asked various City officials whether they could provide documentation that the Council had approved electronic disbursements and did not receive any support for such a process.

According to the contract, only 13 concurrent users can access the financial application. If City officials transition back to an electronic purchase order system within the financial application, additional users will be necessary and additional costs will be incurred.

Additionally, we identified garnishments from three City bank accounts totaling \$71,166 related to a contract with a truck rental vendor. However, we were unable to determine whether these were valid City expenditures because there was no supporting documentation other than two letters issued by the bank notifying the former Comptroller of the impending charges.

These withdrawals of City funds were a result of a garnishment set by a County Court in Ohio directing a bank used by the City to withhold funds for judgment in favor of the truck rental vendor. After further investigation, we found the former Mayor entered into a contract with this vendor without Council or Board approval.

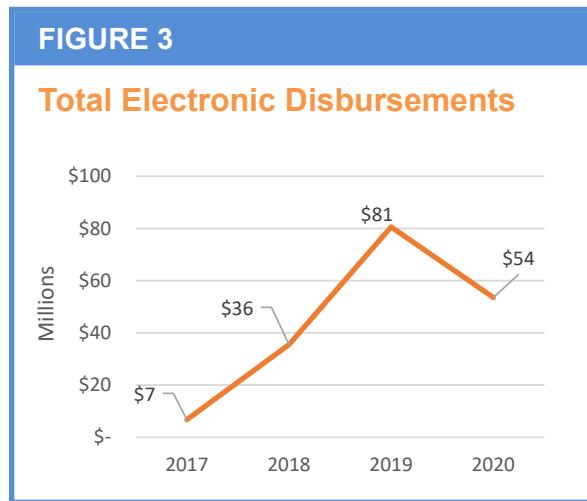
Overall, we found that disbursements commonly made by check were instead made by the former Comptroller through electronic disbursement or certified check. Additional examples include electronic disbursements of:

- \$11,699 for work performed to replace a bullet proof door within the former Comptroller's office.
- \$1,347 for service and repair of fitness equipment at the Youth Bureau.

According to the former Comptroller, vendors were typically paid by electronic disbursement if they requested it and provided wire instructions. The former Comptroller also told us she followed the electronic disbursement practice of the previous Comptroller who left office in December 2017.

However, we found that electronic disbursements increased significantly since the previous Comptroller's tenure, from \$6.8 million in 2017 to more than \$80 million in 2019 (Figure 3).

... [D]isbursements commonly made by check were instead made by the former Comptroller through electronic disbursement or certified check.



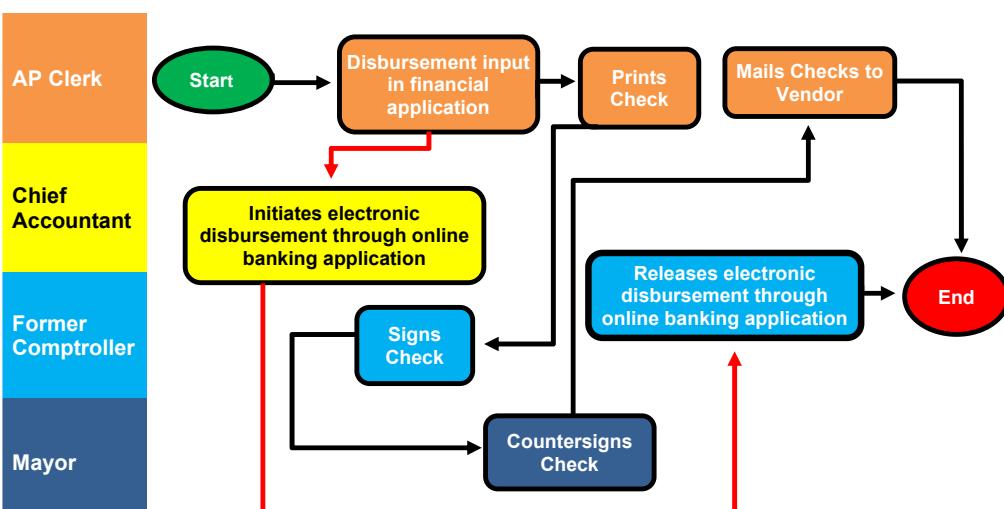
We also found that electronic disbursements to attorneys and other vendors (not including electronic payments to other governmental entities or utility companies) increased significantly during the former Comptroller's tenure. For example, electronic disbursements to attorneys increased from zero in 2017 to 22 totaling \$725,733 in 2020 as of September 30.

These disbursements would typically go through the accounts payable process and checks would be printed, allowing for oversight by the Mayor. While the Mayor had read-only access to the City's main operating account, she was not involved in the electronic disbursement process or issuance of certified checks.

Therefore, the Mayor had no way to authorize the electronic disbursement or certified check. By using electronic disbursements, the former Comptroller circumvented the Mayor's countersignature, which is required by the Charter and is an important compensating control to the Comptroller's authority (Figure 4).

FIGURE 4

Circumvention of Countersignature Through Electronic Disbursement^a



a) The red arrows indicate where the Mayor's countersignature was circumvented.

... [T]he former Comptroller circumvented the Mayor's countersignature. ...

It is uncommon for a city to pay vendors electronically because it creates additional risk for errors and fraud to occur. The increased use of online banking and other digital technologies have made the cash disbursement cycle even more susceptible to fraud by external and internal perpetrators. This increased risk resulted in unauthorized electronic disbursements from City bank accounts totaling \$2,881 that went undetected by City officials.⁶

6 Refer to Officials Did Not Establish Adequate Controls Over Non-Payroll Disbursements.

Furthermore, the former Comptroller was able to use electronic disbursements to circumvent the Mayor's approval of disbursements required by Charter. As a result, there were multiple disbursements that may have been invalid.

Officials Did Not Ensure That Vendors Were Paid in a Timely Manner

Disbursements to vendors were not made in a timely manner. We reviewed 125 claims totaling more than \$2.4 million and found that 88 claims totaling approximately \$1.8 million were paid late. We found that 35 of these claims totaling approximately \$1.4 million were paid late, based on vendor payment terms, and 53 claims totaling \$448,633 were paid more than 30 days after the invoice date. Some invoices were paid months or even years late. For example:

- A claim for a streetsweeper lease totaling \$86,959 was paid 232 days late. In June 2020, the vendor notified City officials that late charges totaling \$13,044 would be removed if payment was received. Due to the City's continued failure to pay the claim, the vendor informed City officials at the end of July 2020 that the equipment would be repossessed if payment was not received. The former Comptroller issued a check in early September 2020 to pay the claim in full excluding late charges.
- An invoice dated March 12, 2020 for the Police Department's fingerprint system totaling \$4,444 was not paid until August 10, 2020 (121 days late).
- In another instance, an invoice dated February 7, 2020 for the Police Department's 911, phone and radio recording system totaling \$7,032 was not paid until July 9, 2020 (123 days late).
- An invoice dated December 19, 2018 for testing and maintenance of the Fire Department's self-contained breathing apparatus cylinders totaling \$3,000 was not paid until April 11, 2019 (83 days late).
- An invoice dated March 27, 2020 for repairs to a malfunctioning aerial boom on the Fire Department's engine totaling \$9,098 was not paid until June 17, 2020 (82 days late).

We found that disbursements were sometimes delayed because the former Comptroller failed to work with department heads to schedule appointments to submit claims for processing. For example, the DPW Commissioner requested an appointment to submit claims to the former Comptroller at least four times over the course of 12 days before receiving an appointment date 19 days after the original request.

Also, we found certain instances where department heads did not submit claims packages to the former Comptroller in a timely manner. In addition, the former Comptroller contributed to late payments in other instances by holding onto claims for an extended period of time after receipt from the departments.

... 35 of these claims totaling approximately \$1.4 million were paid late, based on vendor payment terms. ...

We were unable to determine whether the 125 claims reviewed were audited timely by the former Comptroller because she did not enter the date when she signed the claims. However, we found instances where the former Comptroller received claims from departments but did not process them for payment for an extended period of time. For example, we identified at least seven claims totaling \$169,096 that were paid over 100 days after the former Comptroller received the claim, including one claim for \$327 that was paid 483 days after receipt from the department.

The former Comptroller's manual voucher process contributed to untimely payments, and claims packages that did not have documentation requested by the former Comptroller required a follow-up appointment for re-submission, adding to the number of elapsed days. In addition, under the manual voucher process, the necessity for a budget transfer would not be identified until after a follow-up appointment was held, the claims package was resubmitted and processed by the former Comptroller.

The untimely payment of claims resulted in damage to the City's reputation with its vendors. Various vendors refused to do further business with the City until unpaid claims were addressed, held goods until payment for outstanding invoices were received, sent unpaid invoices to collections, filed lawsuits against the City or implemented stricter payment terms such as cash-on-delivery.

These vendors included those who provided the City with fuel for emergency and public works vehicles, fire department supplies, a tower ladder for a firetruck, other fire equipment, information system services, advertisement services, food for senior citizen programs and labor counsel.

Late payment of claims can result in the disruption of essential services such as firefighting, police or public works. If vendors are unwilling to negotiate on late payments pursuant to the terms of their contracts, the City could also be subject to penalties and/or late fees.

The untimely payment of claims resulted in damage to the City's reputation with its vendors.

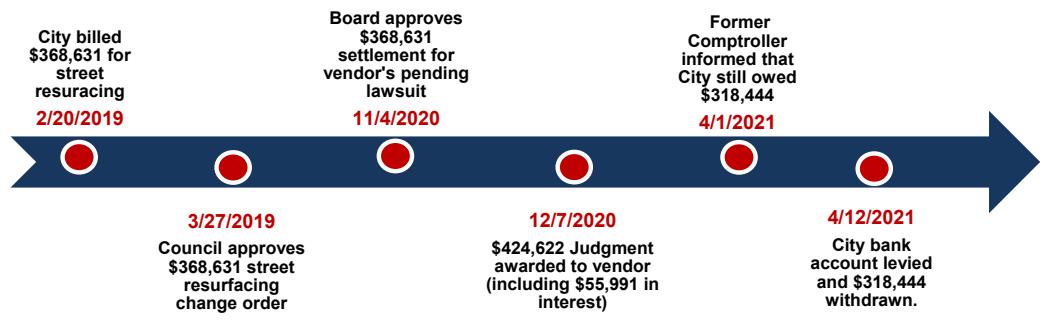
Claims for Essential Services and Infrastructure Were Unpaid

Before our audit and throughout our audit fieldwork, we received numerous complaints from City officials and vendors regarding unpaid claims. We followed up on complaints related to 93 unpaid claims totaling \$499,646 and found that 60 claims (65 percent) totaling \$460,594 were still unpaid as of the end of our audit period.

Because some of these unpaid claims directly impacted essential City services and infrastructure, we extended our audit period to determine whether these claims were paid. We verified that 59 of the 60 unpaid claims totaling \$91,963 from our sample were eventually paid. However, we were unable to determine whether one claim (and subsequent judgment) totaling \$424,622 for street resurfacing services was paid in full (Figure 5).

FIGURE 5

Timeline of Street Resurfacing Judgment Against the City



Due to the unpaid claim, the street resurfacing services vendor filed a lawsuit against the City seeking payment. In November 2020, the Board approved a settlement of the lawsuit for \$368,631. However, the case was not settled, and in December 2020, a judgment was entered by the Court against the City, in favor of the vendor, totaling \$424,622, which included \$55,991 in interest.

On April 1, 2021, the City's bank informed the former Comptroller that an execution notice for \$318,444 was filed and a City account would be subject to execution and levy by the Court to pay for the judgment awarded to the street resurfacing vendor. According to the execution notice, the City still owed the vendor \$299,440 of the \$424,622 judgment.

On April 12, 2021, a City bank account that is not used for operating expenditures was levied, resulting in the withdrawal of \$318,444, which included the \$299,440 outstanding judgment amount, plus \$19,004 in additional fees (\$4,068 interest, \$99 statutory fees and \$14,837 poundage). In addition, the bank imposed an additional \$150 fee on the account for administering the legal process. The execution notice indicated that the outstanding balance was \$318,444 including additional fees. We were unable to determine whether the other \$125,182 portion of the judgment, including interest, had been previously paid. The former Comptroller was unaware of any payments being made on this judgment.

The former Comptroller told us the Law Department did not submit a claim or provide a copy of this judgment to her. Also, she said the Law Department was supposed to advise the Comptroller's office of such litigation and settlements against the City, but often did not, resulting in her being unaware of such actions until she is notified by the bank of an execution.

Although the Law Department did not submit a claim to the former Comptroller, we found that Corporation Counsel informed the former Comptroller of the judgment in early December 2020 and recommended that she pay it immediately before the vendor took additional steps to secure their judgment. The former

Comptroller acknowledged Corporation Counsel's communication, but rather than working with officials to resolve the judgment or requesting additional documentation for payment, she said funds had not been set aside for the project underlying the vendor's lawsuit.

In addition, we found that the former Comptroller was informed of the settlement and change order on numerous other occasions. Although the former Comptroller was absent, she was a member of the Board at the time of the initial change order approval in April 2019. Additionally, the former Comptroller was present at the November 2020 Board meeting and voted against the settlement that was approved with a two to one vote.

Also, the former Comptroller was named as a party in the lawsuit and her office was served with the summons and complaint when the case commenced. Despite raising objections to the settlement after the fact, the former Comptroller failed to present any arguments against the vendor's claims during the lawsuit.

As a result, it is still unclear whether the \$424,622 judgment awarded to the vendor has been paid in full by the City.⁷ At a minimum, the City has incurred an additional \$75,145 in fees due to its failure to pay the initial claim and subsequent judgment. These fees could have been avoided.

While the remaining 59 outstanding claims were paid in full, they were paid on average 205 days late. Examples of the outstanding claims that were paid after the end of our audit period include:

- 31 claims totaling \$34,571 for telephone and internet service providers were paid on average 264 days late.
- 20 claims totaling \$19,539 for a fuel vendor were paid on average 71 days late. Some were paid as many as 102 days late.
- Two claims totaling \$9,580 for a sewer emergency were paid over 800 days late.
- Five claims totaling \$3,774 for a tire vendor, who provided tires and services for public works and public safety vehicles, were paid on average 126 days late. Some were paid as many as 250 days late.

Overall, the City's ineffective disbursements process contributed to the late payments and failure to pay bills. City officials also demonstrated an unwillingness to work together to resolve many of these unpaid claims, which further contributed to the delay in payment. As a result, the City incurred additional expenditures

While the remaining 59 outstanding claims were paid in full, they were paid on average 205 days late.

⁷ After our audit fieldwork, a Council member provided canceled check images from the vendor's attorney showing that the vendor was paid in full by two separate checks. The final check was not distributed until May 17, 2021. Therefore, it is likely that the City incurred additional interest on the unpaid amount.

totaling at least \$75,145 at the taxpayers' expense that could have been avoided. There may also be additional outstanding claims that City officials are not aware of, which could have a significant negative impact on the City's financial condition.

What Do We Recommend?

The Council should:

1. Work with City officials to develop and adopt policies for disbursements and online banking that create a system of internal controls for the documentation and reporting of all disbursements including identifying the individuals responsible for conducting online banking.

The Comptroller should:

2. Develop a detailed cash disbursement process consistent with policies enacted by the Council and provide these procedures to the Council, Mayor and department heads.
3. On a monthly basis, provide department heads with information pertaining to their department's appropriation codes, which should at least include, the original budgeted amount, adjusted budgeted amount, the amount expended and the available balance remaining.
4. Ensure the Mayor is an authorized signatory and can view all account details on the City's bank accounts. For accounts that do not have online access, provide monthly bank statements to the Mayor.
5. Segregate the accounts payable process duties so that one employee does not control all phases of a transaction.
6. Ensure user permissions on the online banking application are set to prevent one employee from processing transactions without a required secondary approval.
7. Designate the responsibility of performing monthly bank reconciliations to someone other than the employees that perform the accounts payable process or online banking.
8. Refrain from unilaterally entering into contracts and making subsequent payments to vendors in violation of the Charter.
9. Refrain from making electronic disbursements to vendors (e.g., attorneys) unless and until the use of electronic disbursements is authorized by the Council, an agreement is executed with the bank(s), and the City adopts a system of internal controls for the documentation and reporting of all electronic disbursements.

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10. Obtain the Mayor's authorization before issuing certified checks.
 11. Work with department heads to identify available appropriations and modify the claim accordingly or return the claim to the department to request a formal budget transfer to fund the expenditure.
 12. Work with department heads to develop procedures to ensure claims are submitted timely and convey those procedures to department heads.
 13. Audit claims in accordance with Charter section 92 and document the date that claims are audited.
 14. Promptly process claims that are approved to avoid penalties and late charges and pay only those claims that are supported with enough detail to ensure the claims are valid expenditures.
 15. Work with City officials to identify the City's outstanding liabilities and develop a plan to pay off such outstanding liabilities. Review, administer and coordinate all risk management by identifying exposures, loss prevention, risk evaluation and make recommendations to the Mayor and Council regarding risk control and risk financing to develop a plan to pay off the City's outstanding liabilities.
 16. Assist in claims investigation and preparation of matter for court cases and settlements in conjunction with the Law Department to help mitigate the City's liabilities.

Corporation Counsel should:

17. Review all written contracts providing for the payment of \$500 or more to ensure the City official executing the contract had authority and power to do so, and that they are in proper form and properly executed on behalf of the City.
18. Provide the Comptroller with copies of judgments to help ensure prompt payment and garnishment orders against City bank accounts.
19. Work with City officials to estimate the City's financial exposure to pending litigation and potential judgments and settlements.

Department Heads should:

20. Ensure claims are submitted timely and with enough detail to ensure prompt payment.

The Comptroller's Responsibilities

How Should the Comptroller Ensure That Non-Payroll Disbursements Are Properly Accounted for?

The Comptroller should account for expenditures using the current financial resources measurement focus and the modified accrual basis of accounting. This can be accomplished by recognizing expenditures when the fund liability is incurred, with certain exceptions. Expenditures are generally recognized when they are expected to draw upon current spendable resources.

A contingency appropriation line item may be included in the budget by the Council to provide funding for unexpected events. Expenditures may not be charged directly to the contingency appropriation. Instead, the Council and Board must first modify the budget by transferring from the contingency appropriation to the appropriation account needing funding. Transferring appropriations from the contingency account does not increase the original budget, it simply reallocates funding between appropriation accounts.

The Former Comptroller Did Not Properly Account for Non-Payroll Disbursements

Contingency Appropriation – We reviewed the accounting activity recorded in the City's contingency appropriation and found that the former Comptroller incorrectly charged expenditures to the account. The former Comptroller charged expenditures directly to the contingency appropriation in the general fund instead of waiting for or requesting that appropriations be transferred from the contingency and recognizing expenditures in the correct accounts. Under no circumstances should expenditures be charged to the contingency account.

Specifically, we identified 239 expenditures totaling \$1.3 million that were incorrectly recorded in the contingency account from 2018 through 2020. These expenditures were related to disbursements for judgments and settlements, outside contractual services paid for attorneys, insurance claims, and unemployment insurance. For example, we found a claim totaling \$334,531 for an attorney that was paid on November 11, 2019 and charged to the 2018 contingency appropriation.

Further, we found instances when expenditures were charged to the contingency account even though appropriations were available or partially available in the expenditure account that should have been charged. For example, the former Comptroller paid:

- \$44,750 for insurance claims in February 2020 and charged the expenditure to the contingency account even though there was \$100,000 available from appropriations in the correct account.
- Multiple invoices for an attorney totaling \$216,991 in February 2020 and charged them to the contingency account when there was \$175,000

available in the correct account. Instead, if the expenditure was appropriate, \$41,991 should have been transferred from contingency to the correct account after Council and Board approval and the expenditure charged to the correct account.

The former Comptroller said she was unaware that appropriations in the contingency account line were to be transferred to an appropriation line item that was short of funding. She explained that she used the contingency appropriation to pay for emergencies. We did not find any emergency (or unexpected event) type payments charged to the account. Instead, payments charged to this account by the former Comptroller related to attorney fees (including for her outside counsel), settlements, insurance claims and unemployment insurance.

The former Comptroller recorded expenditures against the contingency appropriation without the Mayor or Council's knowledge. Because expenditures were incorrectly charged to the contingency account, the true amount of expenditures related to the correct accounts were understated and the City's actual costs of operations were not transparent. It also resulted in the contingency appropriations being depleted, rendering them unavailable in the event they were needed to replenish other accounts or in the event of a true emergency.

Accounting Errors – We identified 22 claims packages containing over 47 invoices totaling \$125,947 that were not properly accounted for under the modified accrual basis of accounting. We found that expenditures were charged to a different year than the year in which liabilities were incurred. For example, invoices for:

- The lease for the City's streetsweepers dated November 2019 totaling \$86,960 was attributed to the City's 2020 year.
- City alarm services dated July 2015 totaling \$559 were attributed to the City's 2019 year.
- Elevator maintenance services dated July 2017 totaling \$500 were attributed to the City's 2020 year.

The former Comptroller said she was unaware that appropriations in the contingency account line were to be transferred to an appropriation line item that was short of funding.

We reviewed email communications between City officials and found that there was a lack of cooperation from the former Comptroller in scheduling appointments with department heads to submit claims to her office for timely processing and payment, which contributed to expenditures being charged to the incorrect year. Also, the AP clerk told us that the former Comptroller charged expenditures to a different year because there were no appropriations available in the year that the liability was actually incurred.

These factors resulted in an inefficient manual voucher system that created an environment where claims packages from prior years would not be processed for payment before the next year's budgeted appropriations were established. Applying prior year claims to the next year's budgeted appropriations can create

potential budget shortfalls throughout City departments. In addition, department heads may not be able plan and allocate resources to cover claims in a given budget year if the former Comptroller attributes prior year's expenditures to the current year. Charging expenditures to the incorrect year negatively impacts the transparency of the City's financial operations.

How Should Outside Counsel Be Retained and Paid Under the Charter and Code?

No expenditure should be made, or any liability incurred, unless an amount has been appropriated in the budget for the particular purpose and is available. Charter section 148 provides that Corporation Counsel must attend to all law business of the City and serves as the legal advisor for all City officers and Departments – including the Comptroller and the Department of Finance.

Additionally, Corporation Counsel is required to appear for and protect the rights and interests of the City in all actions, suits and proceedings brought by or against the City, or any of its officers or departments. The Charter states that City officers and departments are prohibited from employing other counsel except as otherwise expressly provided in the Charter or Code. Those exceptions include the Council's and Corporation Counsel's employment of special counsel, which are authorized pursuant to Charter sections 36-a⁸ and 153, respectively.

The only other exception provided by the Charter or Code comes from Code section 50-44, which entitles City employees to a defense in certain civil actions and proceedings. Generally, employees are entitled to be represented by the Corporation Counsel. However, if the Corporation Counsel or a court determines that the Corporation Counsel's representation is inappropriate or that a conflict of interest exists, the employee is entitled to be represented by private counsel of their choice.

Even then, additional procedural requirements must be met in order for the employee's outside counsel to be entitled to payment by the City. The Code further expressly provides that any disputes regarding an employee's retained counsel, including the amount of expenses and the reasonableness of attorneys' fees, must be resolved by the court.

The Former Comptroller's Disbursements to Outside Counsel Lacked Oversight and Transparency

Throughout the audit period, we found that 675 disbursements totaling \$5.4 million were made to 45 different outside attorneys. Specifically, we found that 35

⁸ Charter section 50 also authorizes the Council to retain special counsel in certain instances when exercising its investigatory power.

disbursements totaling \$327,938 were made to the former Comptroller's outside counsel throughout our audit period. Further, we found that the outside counsel billed the City an additional \$32,734 in services that had not yet been paid for as of September 30, 2020. Overall, the City incurred \$360,672 in fees related to legal services provided by this attorney from January 1, 2018 through September 30, 2020.

We received numerous complaints from City officials regarding the former Comptroller's use of outside counsel, including questions regarding the permissibility of their retention and where the funds were coming from to pay her outside counsel, given that the City's budget did not include appropriations for such expenses by the Finance Department. On February 19, 2021, the City commenced a lawsuit against the former Comptroller, the law firm she retained, the primary attorney who has represented her and one of counsel attorney to the law firm.

On September 27, 2021, the Court held that the City's statutory scheme (specifically, Code section 50-44) was disregarded by the former Comptroller when retaining outside counsel. Further, the Court held that "[t]o empower all public officials to retain independent counsel, whenever it is deemed desirable, effectively unilaterally empowers them to create municipal debt to the detriment of the public."

This litigation remains ongoing, with the main outstanding question being whether the former Comptroller has any implied right to retain counsel. As a result, our examination focused on the disbursements the former Comptroller made to her outside counsel, which did not adhere to the Charter's and/or Code's requirements, instead of analyzing whether the former Comptroller's retention of outside counsel was legally appropriate.⁹

Use of Non-Finance Department Appropriations – We reviewed the City's accounting records for 2018 through 2020 to determine whether the former Comptroller used a portion of non-Finance Department appropriations to cover expenditures for her outside counsel.¹⁰ We found the former Comptroller attributed such expenditures to Law Department and general City appropriations that were intended for other purposes. Specifically, to cover \$327,938 in expenditures for outside counsel, the former Comptroller unilaterally used appropriations intended for the Law Department's outside services, litigation and labor counsel, City-wide unexpected events and judgments and settlements (Figure 6).

⁹ Refer to Appendix A for additional background information pertaining to the former Comptroller's retention of outside counsel and Appendix D for our methodology when reviewing the former Comptroller's disbursements to outside counsel in light of the pending litigation.

¹⁰ Ibid.

Figure 6: Non-Finance Department Appropriations Expended on Former Comptroller's Outside Counsel

Budgeted Appropriation	2018 Budget	Percent Expended	2019 Budget	Percent Expended	2020 Budget	Percent Expended
Law Department						
Contracted Outside Services	\$175,000	3.9%	\$175,000	0%	\$175,000	24.8%
Law Department						
- Litigation Expenses and Record Fees	\$85,000	91.8%	\$85,000	62.7%	\$85,000	0%
Law Department - Labor Counsel	\$100,000	0%	\$100,000	67.7%	\$100,000	0%
Contingent Fund	\$1,006,064	0%	\$1,000,000	6.0%	\$1,000,000	0%
Judgment and Settlements	\$650,000	0%	\$750,000	2.5%	\$750,000	0%

We found that the former Comptroller used:

- 92 percent of the Law Department's appropriation for litigation services to cover \$78,070 in expenditures for her outside counsel in 2018.
- 68 percent of the Law Department's appropriation for labor counsel to cover \$67,738 in expenditures for her outside counsel in 2019.
- 63 percent of the Law Department's appropriation for litigation services to cover \$53,321 in expenditures for her outside counsel in 2019.
- 25 percent of the City's appropriation for outside services to cover \$43,318 in expenditures for her outside counsel in 2020.

...[T]he former Comptroller used a significant amount of Law Department appropriations on her own outside counsel without the Law Department's knowledge. ...

Because the former Comptroller used a significant amount of Law Department appropriations on her own outside counsel without the Law Department's knowledge, Law Department officials believed there were sufficient funds to pay the Department's lawfully retained outside counsel. This was compounded by the former Comptroller's manual process, which further obscured the amounts available for the Law Department.

The former Comptroller asserted that the real problem with the City's use of outside counsel was that the City had historically budgeted only \$175,000 for Law Department special counsel expenditures, with an additional \$100,000 for its labor counsel expenditures. The former Comptroller contended that she would be violating the Charter if Corporation Counsel submitted vouchers totaling more than these appropriations, and she made disbursements to that vendor

accordingly. However, the former Comptroller did not disclose, to either to the Law Department or the taxpayers, that disbursements to her own outside counsel accounted for significant portions of Law Department expenditures.

As acknowledged by the former Comptroller, when she retained and paid outside counsel, she served the dual role of being the only City official who approved and made such expenditures. As a result, there were no other City officials who served as a compensating control to her use of the City's money and charges to these appropriations. This is made even more problematic given that the former Comptroller refused to disclose the disbursements she made to outside counsel.

While the former Comptroller had knowledge of available appropriations at any given time and was able to use that information to pay her own counsel, other City departments incurred expenditures but were unable to use funds to pay vendors based on the former Comptroller's failure to disclose financial information.

Due to the lack of transparency, City officials operated with the expectation that appropriations were available (i.e., litigation expenses and judgment and settlements) for certain expenditures when they were already expended by former Comptroller.

Unilateral Increase of Hourly Rates – We reviewed the agreements with the former Comptroller's outside counsel and found that the former Comptroller unilaterally entered into an agreement that increased rates by \$100 per hour without Board approval.

After our audit fieldwork, the former Comptroller provided us with an engagement letter sent by her outside counsel, dated June 11, 2018. The letter was executed by the former Comptroller but we found no evidence that it was authorized by Council or certified by Corporation Counsel, or that the Board had approved the rates in accordance with the Charter.

In September 2019, the former Comptroller's outside counsel was retained by the City to perform certain legal work.¹¹ The Board provided that the law firm would be compensated at the rates of "\$250.00 an hour four [sic] 'out-of-Court', \$300.00 an hour for 'in-Court' for state Court and \$50.00 per hour higher for Federal Court matters."¹² These rates were consistent with the 2018 engagement letter.

However, the former Comptroller executed another engagement letter on July 1, 2020 with her outside counsel, which increased the hourly rate categories by \$100 each. Like the 2018 letter, the 2020 engagement letter was not approved or

11 Refer to Appendix A for further background on the retention of this outside counsel.

12 Although there was some ambiguity as to whether the additional \$50 per hour applied to both in-Court and out-of-Court work on federal matters, subsequent invoices and disbursements showed that the higher rate was charged and paid for both categories of work (\$300 for out-of-Court federal work, \$350 for in-court federal work).

certified by the Council, Board or Corporation Counsel. Although the increased rates were not approved, the former Comptroller paid legal invoices with City funds that contained the higher fees.

Lack of Payment Transparency – The former Comptroller’s retention of outside counsel was not transparent. Specifically, we found that there was ambiguity in the former Comptroller’s legal representation, which contributed to a lack of transparency in the way the former Comptroller paid attorneys with City funds. For example, in the pending litigation between the City and the former Comptroller’s outside counsel, an attorney employed by the former Comptroller’s outside law firm affirmed under oath that he had “not been paid for any legal services, by the City of Mount Vernon or by Defendant [former Comptroller], in her official capacity as Comptroller of the City of Mount Vernon,” nor had he ever “billed the City of Mount Vernon or [former Comptroller] in her capacity as Comptroller of the City of Mount Vernon.” Notably, the July 1, 2020 engagement letter named the same of counsel attorney and indicated that the attorney would bill the same hourly rates as the former Comptroller’s primary outside counsel.

In addition, we reviewed invoices for legal services provided from September 2020 through December 2020 and found that this attorney’s name appeared on various invoices billed by the City’s outside counsel. Specifically, the legal work of this attorney resulted in at least \$12,075 in legal work billed to the City. While this attorney’s actual payment may stem from a separate arrangement with the former Comptroller’s outside law firm, that does not alter the fact that the City’s taxpayers likely paid for work billed under his name. As a result, we found that the nature and structure of the former Comptroller’s disbursements to outside counsel remained obscure to City officials and taxpayers.

Unauthorized Electronic Disbursements – We found that \$223,545 of the \$327,938 (68 percent) disbursed to the former Comptroller’s outside counsel were made through unauthorized electronic disbursements. As previously discussed, the Council has not authorized the use of electronic payments, nor has any banking agreement been entered into or internal control system been developed, all of which are required under GML section 5-a before the use of electronic payments are authorized.

In addition, these disbursements lacked transparency because the former Comptroller made the electronic payments without any other City officials’ knowledge and checks were not issued or countersigned by the Mayor as required by the Charter. For example, on January 21, 2020 the former Comptroller made an electronic disbursement totaling approximately \$7,352 to her outside counsel, which was attributed to the City’s 2019 contingency appropriation without approval by the Board or Council, and without a budget transfer being made as required.

Although the increased rates were not approved, the former Comptroller paid legal invoices with City funds that contained the higher fees.

This electronic disbursement was made after the Mayor questioned and refused to sign the check for such service without further documentation on January 17, 2020. There was no evidence presented to us showing that the former Comptroller provided the Mayor any documentation. Instead, the former Comptroller made an electronic disbursement to the vendor four days after the Mayor questioned the check.

City officials were unaware of the extent of these disbursements due to the lack of transparency and oversight related to the former Comptroller's disbursements to the outside counsel. This lack of transparency restricted City officials' ability to ensure that all disbursements were in the best interest of taxpayers.

The Former Comptroller Incurred Outside Counsel Fees That “Blatantly Disregarded … the City’s Statutory Scheme”

Even if the Court were to determine that the former Comptroller has an implied right to retain outside counsel for the good faith prosecution and/or defense of legal actions, we found that the former Comptroller unilaterally made disbursements to her outside counsel for legal work unrelated to litigation. We found that the former Comptroller paid her outside counsel approximately \$6,820 for services related to general City law work, which “blatantly disregarded … the City’s statutory scheme”¹³ with respect to retaining outside counsel.

Specifically, we found that the former Comptroller paid her outside counsel approximately \$1,320 in City funds during 2020 for work related to OSC’s previous audit of the City. Examples of these expenditures include paying \$350 for “Reviewed audit report from State Comptroller, began comments”, approximately \$250 for “Drafted letter to State Comptroller from [former Comptroller]”, and approximately \$125 for “reviewed State Comptroller’s 2014 examination and legal research on Section 35 GML,” per the outside counsel invoices.

OSC’s audit reports and related legal opinions are advisory in nature.¹⁴ OSC’s audits do not constitute civil actions or proceedings in which City employees would be entitled to a City-paid defense under Code Section 50-44. There is no adversarial action or binding legal determination that would need to be defended against. Therefore, even if the court were to rule in the former Comptroller’s favor in the pending litigation regarding her retention of outside counsel, such a determination would likely not extend to matters involving OSC audits. As a result, the former Comptroller’s unilateral payment of outside counsel for legal work related to OSC’s audits “blatantly disregarded … the City’s statutory scheme.”

¹³ During the course of the pending litigation, the Court has already held “that the City’s statutory scheme was indeed blatantly disregarded by [the] Comptroller” with respect to her retention of outside counsel.

¹⁴ Refer to New York State Comptroller’s Opinions 1998-13, 1981-258, and 1977-322, as examples.

We also found that the former Comptroller routinely paid outside counsel for general City law work. Neither the Charter nor the Code authorize the Comptroller, or any other City officer or employee, to use outside counsel as their own independent attorney for day-to-day City operations. Despite this, we found that the former Comptroller paid approximately \$5,500 in 2020 for matters that appear to be general City law business typically handled by Corporation Counsel.

For example, the former Comptroller paid her outside counsel with City funds to review faxes regarding the City's Police Department and real estate matters; discuss the budget, audit of funds and overtime issues; send letters to a bank regarding a restraining order and to an IT vendor regarding the City's financial application; handle freedom of information law matters; and conduct research regarding an oath of office and procedures for the sale of surplus real property.

Because none of this legal work appears related to a civil action or proceeding involving the former Comptroller, and instead involves basic matters of City law business, it is unclear why the former Comptroller used City funds on outside counsel. Moreover, we found no documentation showing that the former Comptroller made any efforts to have Corporation Counsel address these general City law issues before expending taxpayer money to have her independently retained counsel do so. As a result, the former Comptroller incurred at least \$6,820 in fees that were in "blatant disregard [of] the City's statutory scheme" at taxpayers' expense.

[T]he former Comptroller paid approximately \$5,500 in 2020 for matters that appear to be City general law business typically handled by Corporation Council.

Some Disbursements to Outside Counsel Were Likely Unnecessary

During our audit, City officials expressed concern that their inability to obtain documentation on the former Comptroller's disbursements to outside counsel could result in the City incurring unnecessary legal expenditures. We reviewed court documents, claims packages, and other supporting documentation and found that the former Comptroller engaged in a pattern of inaction on settlements, and her failure to provide financial information or perform her duties resulted in litigation, which was at least avoidable, if not unnecessary altogether.

In addition, we found that once litigation began between the former Comptroller and various parties, including City officials and employees, the former Comptroller routinely expended City funds on motions that the Court summarily dismissed or appeals that she never pursued. Therefore, even if the Court determines the former Comptroller has an implied authority to retain outside counsel for litigation when Corporation Counsel is conflicted or fails to act,¹⁵ we found that the former Comptroller opted for litigation at the taxpayers' expense, without attempting to mitigate costs by first discussing these matters with fellow City officials.

... [T]he former Comptroller routinely expended City funds on motions that the Court summarily dismissed or appeals that she never pursued.

¹⁵ Refer to Appendix A for further details pertaining to pending litigation.

We reviewed disbursements made and fees incurred by the former Comptroller pertaining to litigation and found that fees incurred totaling \$88,697 were likely unnecessary.

We identified one case where the former Comptroller cost the City \$5,560 on outside counsel fees, only to resolve the matter on the same terms that had been previously recommended by the Corporation Counsel. Moreover, while the former Comptroller contended that the Corporation Counsel's inaction effectively forced her to have outside counsel appear in the case, we found that the former Comptroller failed to respond to the Corporation Counsel's requests for cooperation. Ultimately, the case was settled for the employee's full backpay, plus \$4,029 in accrued interest, and \$24,363 in additional attorney's fees paid to the employee's legal counsel.

The former Comptroller also initially refused to pay the plaintiff following the settlement, stating that she required a proper voucher with supporting documentation and a budget line code with sufficient funds. However, the City's Charter section 92 expressly excludes payments for a fixed salary, or for the regular or stated compensation of City employees, from the requirement that claims be submitted to the former Comptroller and audited and allowed.

In two other cases, the former Comptroller cost the City \$54,745 in outside counsel legal fees that the former Comptroller's outside counsel charged the City in 2020 to unsuccessfully defend actions brought against the former Comptroller. Although the outcome of a case is not necessarily determinative of a party's right to its prosecution or defense, we found the facts and rulings in these matters to be particularly indicative of the former Comptroller's practices.

In one of these two cases, the City was forced to bring a lawsuit against the former Comptroller due to her refusal to reimburse federal grant money. In the other, the former Comptroller refused to adhere to City ordinances requiring her to produce various records and information, which would have increased transparency of the City's financial practices to taxpayers.

In both cases, the Court order and judgment held that the former Comptroller's inaction reflected an "impermissible exercise of power and authority she did not possess, which constitutes a failure on her part to perform a ministerial act which is incumbent upon her as a matter of law." In all, the City was compelled to bring legal action to seek a judicial directive for the former Comptroller to perform her duties, and the taxpayers bore the expense of the former Comptroller's defense in this litigation.

... [T]he
City was
compelled to
bring legal
action to seek
a judicial
directive for
the former
Comptroller
to perform
her duties. ...

Also, we found that the City incurred approximately \$7,510 in additional potentially unnecessary legal fees pertaining to motions and appeals filed by the former Comptroller.¹⁶ In May 2019, the Court dismissed a lawsuit brought by the former Comptroller against the former Corporation Counsel, the former Mayor and a City vendor. On June 12, 2019, the former Comptroller filed a motion to renew her claims and/or reargue the Court’s decision. On August 19, 2019, the Court denied the former Comptroller’s motion in its entirety.

In doing so, the Court provided that a motion to reargue is not designed to serve as a vehicle, which may enable an unsuccessful party to relitigate an issue, which was previously decided, nor to present arguments, which differ from those asserted in support of the original motion. The Court then ruled that the former Comptroller failed to raise even a generalized claim that would satisfy her legal burden on a motion to reargue, and that the only new fact offered to support a motion to renew clearly had no bearing upon the soundness and propriety of the challenged decision. Despite the Court flatly rejecting the former Comptroller’s submission, we found that the former Comptroller paid approximately \$3,620 in City funds for the work of three attorneys on this motion.

In another case, we found that the City incurred approximately \$3,890 in legal expenditures between January and June 2020 related to the former Comptroller’s failed attempts to intervene in a case through her outside counsel. In that case, the City and the Mount Vernon Board of Water Supply brought a lawsuit against the former Mayor, former Corporation Counsel and various law firms seeking to recoup allegedly improperly directed funds and economic damages.

The former Comptroller, through her outside counsel, filed a motion to intervene seeking to have the former Comptroller added as a plaintiff in the lawsuit. The Court denied the motion due to the former Comptroller’s counsel failing to properly serve the City’s current Corporation Counsel and its retained outside counsel. The former Comptroller then filed a second motion to intervene, which was again denied, with the Court ruling that intervention could not be permitted based upon the former Comptroller’s speculation that the City’s retained counsel would not properly prosecute the case. Despite the former Comptroller being denied entry into this case twice, she paid her outside counsel with City funds for both motions.

The Former Comptroller Did Not Ensure the City Was Fully Reimbursed for Disbursements the Court Ruled Unlawful

The former Comptroller paid her outside counsel with City funds to defend an administrative action brought by the Board of Ethics of the City of Mount Vernon

¹⁶ Refer to Appendix D for details related to our sampling methodology.

(Board of Ethics) and to subsequently prosecute a lawsuit against the Board of Ethics. During the lawsuit, the Court held that the City was not obligated to pay the former Comptroller's legal fees from the City's funds. At the end of the lawsuit, the Court summarily denied another motion by the former Comptroller which again sought to have the City pay her legal fees related to the Board of Ethics matters.

We reviewed the claims and subsequent disbursements to the former Comptroller's outside counsel from January 2020 through September 2020¹⁷ to determine whether they included any services related to the Board of Ethics administrative action and lawsuit. We found that before the Court's first ruling, the former Comptroller made disbursements to outside counsel totaling approximately \$30,754 in City funds for Board of Ethics-related work. Following the Court's first ruling, the former Comptroller's outside counsel reimbursed the City \$23,175. Despite the Court's order, we found that the former Comptroller did not ensure that approximately \$7,579 in City funds paid to the former Comptroller's outside counsel for Board of Ethics-related legal work was reimbursed.

The documentation the former Comptroller submitted to us during fieldwork for the reimbursement of money paid by the City did not include an itemized list of which billing entries were being repaid. Instead, the former Comptroller's documents merely listed subtotals from four separate invoices which comprised the total amount reimbursed. Confirming the exact amount of legal fees attributable to the Board of Ethics work was made additionally challenging due to the variety of cases and general legal work performed by the former Comptroller's counsel, combined with counsel's practice of lumping multiple separate legal endeavors into single billing entries.

After our audit fieldwork, the former Comptroller provided us with an itemized list showing which billing entries were repaid. While the entries reconciled to the amount repaid, we found numerous instances where billing entries or portions of billing entries related to the Board of Ethics work were excluded from the reimbursed amount. For example, the former Comptroller paid her outside counsel the following amounts from City funds, without ensuring they were reimbursed:

- 1.2 hours totaling \$300 for exchanging emails with a Board of Ethics member, conducting legal research, drafting and sending a letter to that member, and speaking with the former Comptroller.
- 1.1 hours totaling \$275 for work on affirmative defenses included in the former Comptroller's answer to the Board of Ethics' charges and related legal research.

¹⁷ Following the Court's first ruling, for invoices submitted by the former Comptroller's outside counsel from October 2020 forward, any billable entries pertaining to the Board of Ethics were billed as "no charge."

-
- 2 hours totaling \$500 for working on the former Comptroller's Complaint and Memorandum of Law, including a specific legal argument made therein, filed with the Court for the Board of Ethics case. However, outside counsel only reimbursed the City for one hour totaling \$250.
 - 3.2 hours totaling \$800 for speaking with the former Comptroller, revising the Board of Ethics Complaint, and conducting legal research that was used in the Board of Ethics case. However, we found that the City was only reimbursed for .4 hours, or \$100.

The former Comptroller's outside counsel reimbursed the City for some legal services that the Court deemed impermissible. However, approximately \$7,579 in taxpayer funds were not reimbursed by the former Comptroller's outside counsel. Because outside counsel often commingled various legal work and cases into single billing entries and reimbursed the City at less hours than the billing entry indicated, it is likely that additional taxpayer funds were not reimbursed by the former Comptroller's outside counsel.

Additionally, we found that the former Comptroller paid legal fees in the Board of Ethics case for work that was substantially similar, if not duplicative. The June 5, 2020 and July 1, 2020 invoices submitted by the former Comptroller's outside counsel each contained billing entries for June 2 through 4, 2020 pertaining to the Board of Ethics case. Although it appears that these billing entries were included in the reimbursement, both invoices were originally paid in full by the former Comptroller.

...[A]pproximately
\$7,579 in
taxpayer funds
were not
reimbursed
by the former
Comptroller's
outside counsel.

While the former Comptroller largely attributed her refusal to pay numerous invoices submitted by law firms retained by the City to her audit requirements, she did not apply the same standards when paying her own outside counsel. Had the former Comptroller similarly scrutinized her outside counsel's invoices, she should have questioned ambiguities in lumpsum billing entries, the similarity in certain billing entries made on the same date in different invoices, and ultimately identified the discrepancy between the amount paid and reimbursed for her attorneys' Board of Ethics work.

What Do We Recommend?

The Council should:

21. Approve each use of the contingency appropriation, as appropriate, by formal resolution to specify the account(s) that should be funded by budget transfers from the contingency account.

The Board should:

22. Approve each use of the contingency appropriation authorized by the Council, as appropriate, by formal resolution to specify the account(s) that should be funded by budget transfers from the contingency account.

The Comptroller should:

23. Discontinue the incorrect practice of charging expenditures directly to the contingency account and instead seek Council and Board approval for the transfer of such funds, and then account for these funds in correct appropriation accounts as approved.
24. Ensure expenditures are accounted for under the modified accrual basis of accounting (i.e., in the year in which the liability was incurred).
25. Provide Council and City officials with an accounting of all disbursements made to the former Comptroller's outside counsel.
26. Perform a comprehensive claims audit, including those submitted by the former Comptroller's outside counsel, to ensure that the services are accurately and appropriately billed.
27. Work with Corporation Counsel and City officials to resolve disputes before engaging in unnecessary litigation.
28. Review all invoices from the former Comptroller's outside counsel related to the Board of Ethics work to ensure the City is reimbursed in full.

Corporation Counsel should:

29. Review the payments and reimbursement related to the Board of Ethics work by the former Comptroller's outside counsel and determine the appropriateness of whether recovery should be sought.

Appendix A: The Retention of Outside Counsel and Pending Lawsuit

In 2019, the former Comptroller's outside counsel was properly retained by the City, under Charter section 153, to represent the City in certain litigation through the former Corporation Counsel with the former Mayor's consent. However, in 2018 and 2020, the former Comptroller unilaterally executed retainer agreements with her outside counsel. Subject to those retainer agreements, the former Comptroller made extensive disbursements of City funds to her outside counsel during our audit period, despite the objections of the Mayor and the Corporation Counsel.

On September 9, 2019, the law firm submitted a letter of engagement to the City's Board advising that they had undertaken to represent the City in one federal case and one or more cases involving a specific vendor. The letter of engagement also indicated that all parties agreed that in addition to the partners of the law firm, two specific of counsel attorneys to the firm may be used.

On September 11, 2019, the Corporation Counsel at the time requested that the Board enact a resolution retaining the law firm as special counsel for general litigation matters for the City. On September 12, 2019, the Board adopted the resolution and established the law firm's compensation. Although we did not find any documentation indicating that the former Mayor provided written consent for the law firm's employment, given that he voted to approve the resolution in his role as a member of the Board, it appears that the requirements of Charter section 153 were met for the law firm's retention.

In contrast, in early January 2020, shortly after the City's current Corporation Counsel took office, he met with the primary attorney of the former Comptroller's outside law firm. After the meeting, it was agreed that the primary attorney/his law firm would no longer work on the two cases he was handling for the City as special counsel. According to the current Corporation Counsel, they agreed more broadly that the attorney would not continue working on matters for the City. Despite this understanding, the former Comptroller continued using this law firm and continued paying their invoices with City funds.

On July 1, 2020, the former Comptroller, without any other approvals required under the City Charter, executed an engagement letter with her outside counsel, unilaterally agreeing to their representation in all disputes with the Mayor and/or City Council or matters in which the Corporation Counsel may have a conflict or an appearance of impropriety in representing her.¹⁸

On February 19, 2021, the City commenced a lawsuit against the former Comptroller, the law firm she retained, the primary attorney who has represented

¹⁸ The 2020 engagement letter indicated that it was intended to revise a 2018 engagement letter. After our audit fieldwork, the former Comptroller provided the 2018 engagement letter, which took the same form as the 2020 engagement letter, other than increasing hourly rates for legal fees.

her, and one of counsel attorney to the law firm. The City seeks to recoup allegedly unlawful payments made to the former Comptroller's outside counsel for their representation of her in various legal actions, along with a declaratory judgment on such retention, an injunction prohibiting future payments, and an accounting of the payments the former Comptroller made to her outside counsel. The case remains pending before the Westchester County Supreme Court (Court) at the time of this audit report.

The pending case largely involves the former Comptroller's use of outside counsel for the prosecution or defense of litigation.¹⁹ In response, the crux of the former Comptroller's argument is that she has implied authority to retain independent counsel of her choice, at the City's expense, when the City's attorney does not or cannot represent her. The former Comptroller's counsel cites to various cases where courts determined that a municipal officer had an implied right to counsel in the prosecution or defense of litigation.

Because the issue of implied authority to retain counsel for the prosecution or defense of an action is pending before the Court, we did not make general determinations about the propriety of the former Comptroller's retention of outside counsel for legal work pertaining to litigation. Instead, we examined the specific disbursements made by the former Comptroller and considered their appropriateness under the process established by the Charter and Code, and in the context of the litigation for which it was billed.

In the current lawsuit, the former Comptroller suggests she may be entitled to unilaterally retain outside counsel for non-litigation matters. The basis for the former Comptroller's belief is the Court's previous denial of the former Corporation Counsel's motion to prohibit the former Comptroller's use of outside counsel as a "staff attorney." However, the prior decision clearly indicates that the Court never ruled on the merits of that issue. The former Comptroller also argues that the former Corporation Counsel's failure to appeal that decision or file a new action indicates his acquiescence to the Court's denial. Notably, the former Corporation Counsel was arrested two days before that decision was entered and filed.²⁰

Therefore, we examined non-litigation related disbursements more broadly than those directly tied to a lawsuit. In addition, because the former Comptroller raises a separate legal argument that payments for legal services before 2020 may have been authorized by the former Mayor and Corporation Counsel, we focused on non-litigation disbursements made after the current Mayor and Corporation Counsel took office in January of 2020.

¹⁹ The City's Complaint alleges that the former Comptroller's outside counsel has appeared in more than a dozen actions and special proceedings and identifies six particular lawsuits in which it believes the former Comptroller paid her outside counsel with City funds and without authorization.

²⁰ Although the Court's decision was dated May 6, 2019, it was not received in the NYS Courts electronic filing system until May 30, 2019 and was not entered and filed with the County Clerk until May 31, 2019.

Further, our audit identified documentation and information that was not made public, either within the pending litigation or to City officials and taxpayers. This includes the steps taken by the former Comptroller when retaining outside counsel, her oversight of their legal work and auditing of their expenditures and reimbursements. Although the City requested that the Court order an accounting of the former Comptroller's payments to her outside counsel during the pending litigation, OSC's constitutional and statutory authority to examine the financial affairs of local governments remains unaffected regardless of whether the Court grants such relief.

To the extent our audit findings overlap with the Court's ruling on any particular legal work performed by the former Comptroller's outside counsel, such findings are not judicial in nature, but rather stem from OSC's statutory obligation of examining and reporting on the method and accuracy of accounts of municipal officers.

Appendix B: Responses From City Officials



CITY OF MOUNT VERNON, N.Y.

Mayor Office

SHAWYN PATTERSON-HOWARD, MPA
Mayor

City Hall, One Roosevelt Square
Mount Vernon, NY, 10550
(914) 665-2362 – Fax: (914) 665-6173

DARREN M. MORTON, ED.D., CPRP
Chief of Staff

December 30, 2021

City of Mount Vernon's Response to NYS Comptroller Audit

I took office as the Mayor of the City of Mount Vernon on January 1, 2020 and within my first week contacted the State Comptroller to request audits for the City of Mount Vernon. While most of the findings described in the Non-Payroll Disbursements – Report of Examination 2021M-163 (hereinafter “Audit Report”) existed prior to her arrival, I believe the report accurately confirms the dire concerns and challenging issues we’ve endured since the beginning of this administration. The audit report is proof and documentation of gross negligence of the Mount Vernon Comptroller. I believe this audit report showcases a lack of transparency, lack of segregation of duties, manipulation of policies and the need for further criminal investigation by the New York State Attorney General and Westchester County District Attorney. In letters attached to this response, the city has identified several criminal statutes it believes the City Comptroller has violated at minimum. Additionally, and confirmed by this report on page 16, her actions as City Comptroller, has put the fiscal solvency, public safety and credibility of the city at great risk.

See
Note 1
Page 40

It is the belief of this administration that the Key Findings and Recommendations made by the State Comptroller should be noted and implemented by the incoming Mt. Vernon City Council and City Comptroller in collaboration with our office to ensure proper oversight of non-payroll disbursements. Paramount to the success of new policies and procedures will be the creation of a new charter & code revision committee to modernize the Mount Vernon City Charter.

See
Note 2
Page 40

As the report confirms the City Comptroller moved to a paper voucher system in June 2018, which restricted the ability of officials and employees to monitor finances and operations. Furthermore, in November 2019 the City Comptroller installed an illegal firewall and cut off access to the city’s financial management system, unbeknownst to the Acting Mayor or City Council at that time. In December 2019, the Mayor-elect met with the City Comptroller and signed bank signature cards, but the Mayor I was never given access to the forty-seven (47) bank accounts of the city, as indicated in your report. This action made it nearly impossible for me as the Mayor, my administration and City Council to track, manage and operate fiscally.

See
Note 3
Page 40

Evidenced in the audit report is the City Comptroller’s conscious and intentional behavior to circumvent policies to gain total control of the city’s finances. As highlighted by your office, the City Comptroller made 256 unauthorized electronic disbursements totaling \$169.8 million (including unauthorized transactions to her own attorney) and 13 withdrawals (certified checks, bank levies, and garnishments) totaling \$11.1 million. There is also the stark difference between the previous City Comptroller’s use of wire transfers (from \$6.8 million in 2017 to \$80 million in 2019, all unauthorized) which raises serious concerns about how much money has truly been moved around in the miasma of her office.

See
Note 4
Page 40

As the Chief Fiscal Officer (CFO), the City Comptroller failed to apply basic accounting practices to the management of the city’s finances. Segregation of duties, excessive permissions to online banking and

“The Jewel of Westchester”



CITY OF MOUNT VERNON, N.Y.
Mayor Office

SHAWYN PATTERSON-HOWARD, MPA
Mayor

City Hall, One Roosevelt Square
Mount Vernon, NY, 10550
(914) 665-2362 – Fax: (914) 665-6173

DARREN M. MORTON, ED.D., CPRP
Chief of Staff

financial applications, lack of bank reconciliations (None since 2018), failure to close books since 2017 and sole access to the 47 bank accounts and city's financial management system gave the City Comptroller unfettered access and free reign over the city's finances. This level of control and lack of monthly and annual detailed financial reports for the past 4 years have resulted in loss of vendor trust, lack of services to residents, unnecessary lawsuits, repossession of city property, and overall mistrust of city government within the community. The confluence of these actions could've led to major catastrophe, including the loss of life or irreparable harm to the city.

See
Note 5
Page 40

While the City Comptroller has made repeated assertions that our administration has overspent, the audit report demonstrates that City Comptroller's practices of paying prior year expenditures going back to 2015 out of 2019 and 2020 budgeted expenses. Unauthorized use of contingency funds, law department funds for her personal attorney (\$360,672 through September 2020; see Figure 6 – Audit Report), her unauthorized spending (e.g. \$11,995 for a bulletproof door) and using the current budget to pay past debts made it infinitely difficult to understand what we were working with these past two years. This coupled with the City Comptroller's self-reported failure to collect \$81 million in property taxes over the past four years put a stranglehold on the city's ability to operate and deliver services.

See
Note 6
Page 40

While this administration has made efforts to work around the dizzying, circular and ever-changing policies and behaviors of the City Comptroller, this office disagrees with the notion that City officials demonstrated an unwillingness to work together to resolve unpaid claims (page 18). In fact, this audit report specifies the voluminous documents forwarded to the State Comptroller detailing how the City Comptroller refused, lied or obstructed the daily operations of the city, essential services, public safety and infrastructure needs. This is all confirmed by your report in which is detailed on page 16. To be clear, the Mayor, administration and city council worked together and implemented the recommendations outlined by the State Comptroller's office in the September 2020 report, however, the enforcement powers of the city are limited by state law.

See
Note 7
Page 40

In closing, this administration will work closely with the incoming City Council and City Comptroller to implement the recommendations, and the policies and procedures outlined by this report, engage forensic auditors, revamp the charter and codes, fully implement an Inspector General office, complete prior years audits and seek to recoup financial damages caused by this City Comptroller. The residents of Mount Vernon deserve better and we are confident that implementation of these practices will restore not only our bond rating, but trust within the community and beyond.

See
Note 8
Page 41

In Service,

Shawyn Patterson-Howard, MPA
City of Mount Vernon

"The Jewel of Westchester"



CITY COUNCIL

CITY OF MOUNT VERNON
ONE ROOSEVELT SQUARE
MOUNT VERNON, NY 10550

(914) 665-2352 · FAX (914) 668-6044

CITY COUNCIL MEMBERS

Derrick Thompson, President
Danielle Browne
Lisa A. Copeland
Cathlin Gleason
Edward Poteat

William H. Holmes
CITY CLERK

Tanesia M. Walters
DEPUTY CITY CLERK

January 21, 2022

Mount Vernon City Council's response to NYS Comptroller Audit

Good afternoon. Thank you for completing an audit in the city of Mount Vernon that was so desperately needed. The body of this Council has identified your findings as a learning curve for our future endeavors. We will work together to ensure the proper policies and protocols are in place so our city never experiences this horrific financial burden again. As the legislative body, we will do our absolute best to make sure our funds are spent wisely and appropriately. Making excuses is not an option for us. It is time we face these problems head on and FIX all areas that were broken. Again, we thank you for your hard work and we appreciate your transparency. We look forward to righting any wrongs and helping our city finally heal.

For the sake of our city,

Derrick Thompson

Derrick Thompson (City Council President)

Appendix C: OSC Comments on the City Mayor's Response

Note 1

OSC's Division of Local Government and School Accountability conducts periodic audits of local governments throughout the State based on numerous factors, such as a request by local government officials, delinquent annual financial filings, fiscal stress, taxpayer complaints, or any combination thereof. The non-payroll disbursements audit area was identified during a risk assessment of various City operations.

Note 2

There were no letters included with the response.

Note 3

As stated in the report, the Mayor had read-only access to four of the 14 online bank accounts. This provided the Mayor access to view and monitor banking activity for those accounts.

Note 4

While the former Comptroller issued certified checks, some of the 13 withdrawals included bank levies and garnishments, which were made by the bank in accordance with court orders, rather than by the former Comptroller herself.

Note 5

As stated in the report, the Mayor had online read-only access to four bank accounts, and three other Finance Department employees had online access to various bank accounts. Additionally, Finance Department employees had access to the City's financial application to perform daily job duties.

Note 6

As stated in the report, Figure 6 represented the distribution of \$327,938 in expenditures for the former Comptroller's outside counsel as a percentage of budgeted appropriations. The former Comptroller's outside counsel billed the City an additional \$32,734 in services that had not yet been paid for as of September 30, 2020.

Note 7

Our audit focused on non-payroll disbursements. We did not review cash receipts or tax collections over the last four years as part of our audit.

Note 8

City officials include the Comptroller, Mayor, Council members, and the heads of the City's various departments. As shown in the report, there were instances where both the former Comptroller and other City officials, specifically certain department heads, demonstrated an unwillingness to work together to resolve unpaid claims. For example, the Law Department did not submit a claim for the judgment awarded to the street resurfacing services vendor as requested by the former Comptroller.

As stated in the report, we found that some disbursements were delayed because the former Comptroller failed to work with department heads and held onto claims for an extended period of time after receipt from departments. We also found instances where department heads did not submit claims packages to the former Comptroller in a timely manner. Overall, these late payments can result in the disruption of essential services.

Appendix D: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed City officials and various departmental employees to gain an understanding of the City's policies and procedures related to the cash disbursement process.
- We observed the claims audit and disbursement process to gain an understanding of the internal controls related to the process.
- We reviewed the Charter and Administrative Code to identify any disbursement requirements.
- We reviewed banking agreements, reviewed authorized signature cards and user permissions for the online banking application. We requested all bank reconciliations performed for the audit period.
- We reviewed Council and Board minutes and resolutions to identify budget transfer activity.
- We reviewed user permissions for the financial application to determine if user access was adequately segregated.
- We reviewed all activity in City bank accounts and identified a population of 256 non-payroll electronic disbursements (wires and automated clearing house transactions) to 80 different vendors totaling \$169.7 million. We also identified 13 non-payroll withdrawals (certified checks, bank levies and garnishments) from City accounts totaling \$11.1 million for the audit period. We also reviewed the bank statements for the entire audit period to identify any unusual activity and inquired as to the nature of the expenditure.
- We used our professional judgment to select a sample of 30 (25 wire payments and five withdrawals) electronic disbursements totaling \$16.5 million. These disbursements were selected because they posed a higher risk and represented a significant dollar amount, such as unrecognized or unclear vendor names and vendor names associated with complaints from City officials and taxpayers. We felt this sample was sufficient as it represented 11 percent of the population of \$169.6 million in such disbursements. We tested the selected disbursements and supporting documentation to determine if they were authorized, valid and supported.
- We performed a trend analysis of electronic disbursements from January 1, 2017 through September 30, 2020 to determine if the former Comptroller's use of electronic disbursements was consistent with the previous Comptroller.
- We reviewed an account inquiry report from the financial application to determine total expenditures posted to the contingency account code during

the audit period, whether they were properly accounted for and whether budget transfers were made.

- We reviewed the cash disbursements journal to identify the population of disbursements recorded in the financial application during the audit period, which consisted of 6,989 disbursements totaling more than \$55.1 million. We used our professional judgment to select a sample of 125 disbursements based on dollar amount and level of risk (i.e., unusual vendor name, disbursements to City officials or employees, and disbursements flagged by our data analysis).
- We tested the selected disbursements to determine whether they were valid, supported, properly accounted for and made timely. To determine completeness, we traced each disbursement to supporting records including purchase orders, requisitions, invoices and vouchers. We reviewed our sample to determine whether the related claims were approved by the department head, signed by vendor and appropriate purposes.
- We reviewed the date invoices were clocked into the former Comptroller's office, the number of days between invoice date and clock in date, the number of days between clock in date and check date, and whether the check was printed before the voucher was signed to determine payment timeliness for our sample.
- We reviewed the account coding and year from the vouchers to determine whether the disbursement was properly accounted for. We also reviewed the cancelled checks for our sample to determine whether checks were signed by both the Mayor and former Comptroller, were made in accordance with Charter, were adequately supported and in the correct amount. If we were unable to determine these attributes from departmental records, we inquired further with City officials.
- We reviewed complaints received regarding outstanding claims and untimely payments to vendors. We traced each complaint identified to supporting documentation, including, but not limited to, email communications between City officials and/or vendors, Court documents, invoices, Board/Council resolutions, claims packages, the City's financial application and cancelled checks, wire confirmations or bank levies to determine whether the claims were paid before or after the end of our audit period. If a bill was paid, we determined whether it was paid late and whether late fees were assessed. If a bill was still not paid, we determined when the payment was due (as of end of audit period) and any additional financial burden (late fees, interest, etc.) would be incurred by the City. Using our professional judgment, we determined the type of City service or asset that could have been impacted due to the late payment or an unpaid bill.

-
- We examined Court documents for orders, judgments, execution notice and garnishment terms for lawsuits filed against the City.
 - We reviewed the claims for services provided by the former Comptroller's outside counsel from January 2020 through September 2020 to determine if they were made in accordance with the Charter and Code and in the best interest of taxpayers. Because the former Comptroller's payments for legal services before 2020 may have been informally authorized by the former Mayor and Corporation Counsel, we focused on disbursements made after the current Mayor and Corporation Counsel took office in January 2020. We also reviewed claims for services provided from May 2019 through August 2019 to analyze a motion that was referenced in the pending litigation.
 - We reviewed the claims for services provided by the former Comptroller's outside counsel that were related to any litigation referenced in the pending lawsuit to determine whether they were necessary or avoidable.
 - We reviewed the City's accounting records for 2018 through 2020 to determine what appropriations were used to cover expenditures for the former Comptroller's outside counsel and whether such use was transparent.
 - We reviewed retainer agreements, court documents, and invoices pertaining to the former Comptroller's outside counsel to determine if the retention of this counsel and subsequent claims and disbursements were made in accordance with Charter and Code, and were transparent.
 - We reviewed the disbursement activity to the former Comptroller's outside counsel to determine the method of payment (check or electronic disbursement).
 - We reviewed the claims and subsequent disbursements to the former Comptroller's outside counsel from January 2020 through September 2020 to determine if they included any services related to the Board of Ethics administrative action and lawsuit. We conservatively estimated whether the applicable claims were reimbursed by the outside counsel. We also reviewed these claims packages to identify multiple billings for similar services on the same date.
 - We reviewed and analyzed court documents and other supporting documentation in consultation with OSC's Division of Legal Services to identify any potentially unnecessary legal fees incurred by the City.
 - We researched banking institutions in and around the City and prepared bank confirmations requesting all known bank accounts within each respective bank. We documented unknown bank accounts from bank responses and investigated further to determine the nature of the account.
 - We reviewed financial disclosure forms completed by City officials and on file with the City Clerk. We also requested key City officials to complete conflict

of interest forms. We compared business interest disclosed on the forms to the cash disbursements journal to identify any disbursements to vendors with relationships to City officials within the audit period. We investigated any disbursements identified to determine if they were appropriate.

- We traced all transfers between City bank accounts and banking institutions for the period January 1, 2018 to September 30, 2020 and identified 435 transfers for \$867,031,892. For any transfers that did not have a corresponding City account, we verified that they were appropriate.
- We conducted a Benford's Law analysis on disbursement amounts to identify any potentially fraudulent transactions.
- We used data analysis software to analyze cash disbursements data and identify any anomalies or unusual transactions. Specifically, we looked for: shared addresses between employees/officials and vendors, duplicate addresses, duplicate vendor identification numbers, duplicate/similar vendor names, duplicate taxpayer identification numbers, vendors outside of the country, check dates on weekends and holidays, round dollar amounts, check gaps, highest reimbursed employees, credit card payments, shared names between employees and vendors, and duplicate invoices.
- We traced check gaps to the voided checks maintained in the former Comptroller's office to ensure they were in fact voided and properly defaced. If the voided check could not be located, we inquired with the AP clerk to determine the reasoning for the check gap.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make the CAP available for public review in the City Clerk's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas
www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems
www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management
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Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans
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Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders
www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller
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