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**Report of Investigation**

**FILE NO:** 20-0005-I

**DATE:** October 28, 2020

**SUBJECT:** Violation of Personnel Policies

**STATUS:** Final

**INVESTIGATOR:** JoVonne O'Connell

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## Executive Summary

The Office of Inspector General (OIG) for the City of Albuquerque (City), NM, conducted an investigation based on information received regarding concerns with a Department of Municipal Development (DMD) employee who is within the Transportation and Storm Drainage Division. Concerns were brought to the OIG that the DMD employee (E1) had been conducting personal business during work hours, including running a home health care business during work hours. According to the complaint, there were numerous calls to NM Department of Health during E1's work hours which "lasted hours". It was also reported in the complaint that E1 failed to report a business, which E1 owns and operates, as per City Personnel Rules and Regulations related to employment outside of City service. It was alleged that text messages between E1 and his supervisor (S1) will provide evidence of management's knowledge. Finally, it was alleged that GPS data will show E1 made trips to home improvement stores in City vehicles.

The investigation revealed that E1 is the owner/administrator/customer contact for Casa del Valle, a senior care and assisted living facility in Albuquerque, New Mexico. Business reports also showed E1 as the director and/or owner for Casa del Valle. The OIG found that E1's physical and mailing address are also the same as the address for Casa del Valle. The OIG also reviewed a recent copy of E1's resume in which the first thing listed under the "Professional Experience" section of the resume was Casa del Valle Assisted Living Home. The resume stated that E1 has been an Administrator for Casa del Valle from "1999 – Present".

During the course of the investigation the OIG reviewed phone logs from E1's City desk phone and E1's City emails. Review of these documents revealed that more than 50% of E1's phone calls were of a personal nature or were related to the Casa del Valle assisted living facility. Many of E1's emails were also of a personal nature or were related to the Casa del Valle assisted living facility. These findings support the allegations that E1 was conducting personal business during work hours and was conducting business related to the Casa del Valle assisted living facility during work hours.

E1 spent a lot of time conducting business related to Casa del Valle, but failed to complete an Outside Employment Form. This was in violation of Personnel Rules and Regulations 310. *EMPLOYMENT OUTSIDE THE CITY SERVICE.*

The City vehicles utilized by DMD are not equipped with GPS tracking. DMD employees do utilize either paper or electronic logs when taking a City vehicle out into the field. However, there was not enough information to substantiate the allegation that E1 was making trips to home improvement stores in City vehicles.

The scope of the investigation included reviewing policies and procedures related to employment outside of City service, as well as policies and procedures related to City telephone, email and internet usage. The OIG found that E1 was in violation of City Information Technology (IT) policies for employee email use and internet use. E1 was also in violation of City Personnel Rules and Regulations, specifically sections within Section 300. *CONDITIONS OF EMPLOYMENT* with regard to *Telephone Usage* and *Automated Systems*.

## Introduction

The mission of the Office of the Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) in order to safeguard and preserve the public trust. A complaint was received by the OIG that expressed concerns about an employee with the Department of Municipal Development (DMD).

According to the complaint, the DMD employee (E1) had been conducting personal business during work hours, including running a home health care business during work hours. According to the complaint, there are numerous calls to NM Department of Health during business hours which “lasted hours”. The City requires that when employees have any type of employment in addition to their City employment, that it be reported to the Human Resources Department (HR). It was also reported in the complaint that E1 failed to report a business, which E1 owns and operates, to HR. Finally, it is alleged that GPS data will show trips to home improvement stores in City vehicles. In addition, text messages between E1 and their supervisor (S1) will provide evidence of management's knowledge.

## Scope and Methodology

The OIG’s investigation focused on the complaint related to E1 conducting personal business on work time, as well as the allegations of misuse of City equipment and resources. The methodology consisted of:

- Review of pertinent documents to include phone logs and emails;
- Review of vehicle logs and GPS, if available;
- Review of relevant City Ordinances, SOP’s and COA’s policies and procedures; *and*
- Interviews of relevant staff members.

## Investigation

The results of an initial background search showed Caregivers of Albuquerque Assisted Living Homes, LLC as a possible employer of E1. The OIG conducted further research and a business report showed Casa del Valle as another name for this business. These business names were identified as Senior Care / Skilled Nursing Care facilities. The business report also showed E1 as the Director; Owner; President.

The OIG researched the Better Business Bureau (BBB) website and found Casa del Valle, which is listed as a nursing home, with a business start date of 12/1/1993. The BBB also lists E1 as the owner and as the customer contact for Casa del Valle.

The information the OIG found refers to this business as both Casa del Valle I and also Casa del Valle II. Casa del Valle I and Casa del Valle II show addresses located on the same street. A search on Google Maps show that these two addresses are immediately next to one another. A search in PeopleSoft, the City’s HR system, shows both E1’s physical and mailing address as the same address as Casa del Valle I.

## GPS and Vehicle Logs

The OIG communicated with the Assistant Fleet Manager for the Department of Finance & Administrative Services (DFAS) Fleet Division (Fleet) to inquire if the vehicles utilized by DMD's Storm Water Management office of the Engineering Division are equipped with GPS. Per the Assistant Fleet Manager, Fleet did not have any records of these vehicles having GPS, and informed the OIG that normally the department monitors the GPS, not Fleet.

The OIG was informed by a DMD Technical Program Manager that any GPS devices for vehicles utilized by DMD are deployed by DMD's IT/Information Systems "shop". The only exception was the active GPS that was being tested within DMD's Parking Division at that time. The Deputy Chief for DMD's Metro Security Division confirmed that DMD did not have any vehicles that are GPS equipped.

The OIG reviewed the City's Sharepoint system and the Vehicle Checkout Log utilized by the DMD Engineering Division. Sharepoint is the electronic system that employees use to check out a City vehicle. The log shows:

- Check-out date;
- Title -- which is the reason for checking out the vehicle/the general location;
- Vehicle that has been checked out;
- Check-out time;
- Estimated return time;
- Check-in time;
- Checked out by;
- Modified; *and*
- Modified by.

The Sharepoint Vehicle Checkout Log shows that E1 checked out a City vehicle twenty-two (22) times between August 19, 2019 and March 12, 2020.

E1 had an assigned vehicle while in his previous position with the DMD Storm Water Division. This vehicle was assigned to him January 4, 2019. E1 was also to keep a log, which was titled "Drivers Daily/Weekly Journey Log & Check List". Once the log was completely filled, it was to be turned into E1's supervisor. The log had the following sections where the corresponding information was to be notated:

- Check-Out Date/Time
- Vehicle Condition
- Driver
- Vehicle Description
- Explanation of condition or issue
- Is Maintenance required? Yes/No? What kind?
- Check-In Date/Time

The log did not include a section to notate destination or beginning mileage and ending mileage.

E1 filled two logs during the time he was a Storm Water Inspector and had an assigned vehicle. The first log notated vehicle utilization between January 7, 2019 and April 22, 2019. All information was completely notated each date that E1 utilized the vehicle. The second log notated vehicle utilization between May 27, 2019 and July 29, 2019. All information was notated each date that E1 utilized the vehicle, with the exception of the Check-In Date/Time. E1 did not notate the Check-In Date/Time at all on this second log.

### **Phone Logs and Emails**

The OIG contacted the COA's Department of Technology and Innovation (DTI) and requested telephone logs and emails for E1.

#### **Phone Logs:**

The OIG received and reviewed telephone logs from E1's City desk phone. The timeline of the phone logs was from April 19, 2019 through January 28, 2020, and included a list of incoming calls received by E1's City desk phone, as well as a list of outgoing phone calls from E1's City desk phone.

The list of incoming phone calls included 331 entries between April 19, 2019 and January 28, 2020; Sixty-two percent (62%) of these incoming phone calls were from E1's spouse.

The list of outgoing phone calls included 767 entries between April 19, 2019 and January 28, 2020. Upon review of this list, the OIG found that at least fifty-seven percent (57%) of these outgoing phone calls were of a personal nature or appeared to be somehow related to E1's assisted living facility, Casa del Valle. The duration of these 57% of calls totaled approximately 26 hours, 57 minutes. Examples of what the OIG found when reviewing the outgoing phone calls are:

- 234 outgoing phone calls to E1's spouse at her place of employment
- 26 outgoing phone calls to E1's spouse to her personal cell phone
- 74 outgoing phone calls to Casa del Valle assisted living facility
- 12 outgoing phone calls which included 9 calls to New Mexico Board of Pharmacy; one call to Conduent - NM Medicaid Provider Relations; one call to PACE (Program of All-inclusive Care for the Elderly); one call to Infant Welfare Society

#### **Outgoing phone calls related to personal travel**

- 3 phone calls to Caesars Palace
  - One phone call for a duration of 3 seconds
  - Second phone call for a duration of 29 minutes, 2 seconds
  - Third phone call for a duration of 7 minutes, 35 seconds
- Phone call to Hilton's toll-free number
  - Duration of call 7 minutes, 3 seconds
- Phone call to Hilton Honors
  - Duration of call 49 minutes, 33 seconds
- Phone call to Expedia
  - Duration of call 15 minutes, 25 minutes

- 2 phone calls to “Unique Vacations” (aka Sandals Resorts)
  - One phone call for a duration of 49 minutes, 22 seconds
  - Second phone call for a duration of 43 minutes, 5 seconds

E1 spent approximately 3 hours and 21 minutes on phone calls related to personal travel.

Outgoing phone calls related to other personal business

- 2 phone calls to Weatherby, Inc. (a business related to firearms and ammunition)
  - One phone call for a duration of 6 minutes, 27 seconds
  - Second phone call for a duration of 1 minute, 43 seconds
- Phone call to Calibers
  - Duration of call 9 minutes, 23 seconds
- Phone call to Backyard Discovery (a business related to swing sets, playhouses and backyard leisure products)
  - Duration of call 19 minutes, 27 seconds
- Phone call to American Home credit card
  - Duration of call 7 minutes, 32 seconds
- Phone call to Shari’s Berries
  - Duration of call 18 minutes, 42 seconds
- Phone call to TracFone customer service
  - Duration of call 15 minutes, 22 seconds
- 3 phone calls to Orkin
  - One phone call for a duration of 7 minutes, 55 seconds
  - Second phone call for a duration of 6 minutes, 8 seconds
  - Third phone call for a duration of 7 minutes, 10 seconds
- 4 phone calls to CenturyLink
  - One phone call for a duration of 36 minutes, 48 seconds
  - Second phone call for a duration of 3 seconds
  - Third phone call for a duration of 6 minutes, 47 seconds
  - Fourth phone call for a duration of 22 minutes, 38 seconds
- Phone call to PNM
  - Duration of call 28 minutes, 48 seconds
- Phone call to New Mexico Gas Company
  - Duration of call 8 minutes, 8 seconds
- 2 phone calls to MetroFax
  - One phone call for duration of 14 minutes, 7 seconds
  - Second phone call for duration of 8 minutes, 38 seconds

Outgoing phone calls related to financial institutions and insurance which totaled 5 hours and 2 minutes.

- 8 phone calls to New Mexico Mutual
- 6 phone calls to Computershare Investor Center
- 4 phone calls to Sandia Laboratory Federal Credit Union
- 2 phone calls to Progressive Insurance

- 2 phone calls to “The Estate Unit” through Bank of America
- Phone call to Prudential (Retirement and Income Security)
- Phone call to Credit One Bank Collections
- Phone call to Preferred Credit
- Phone call to Esurance Auto Insurance
- Phone call to The Western Conference of Teamsters Pension Plan
- Phone call to Bank Direct Capital Finance automated payment system
- Phone call to LSI Corporation Shareholder Services at Computershare
- Phone call to Northern Trust Shareholder and Stock
- Phone call to Allstate Insurance

Outgoing phone calls related to local accounting and tax preparation firm and to local private attorney

- 35 phone calls to local accounting and tax preparation firm totaling 2 hours, 20 minutes
- 2 phone calls to local private attorney totaling 9 minutes, 12 seconds

It should be noted that the OIG did not go through and identify each and every one of the 767 outgoing phone calls on the list. The OIG reviewed a sample of 440 outgoing phone calls out of the 767. While the OIG did identify some of the calls as being related to E1’s job and to City business, it did not identify exactly how many of the 767 calls were related to DMD and City business. In addition, because the OIG did not go through and identify each and every one of the 767 outgoing phone calls, it is also possible that the percentage of personal phone calls made from E1’s desk phone was higher than 57%.

Emails:

The OIG received and reviewed emails from E1’s City email address. The timeline of the emails reviewed was January 3, 2019 through April 20, 2020.

The OIG found many emails during this timeline that were related to Casa del Valle. Emails included communication related to financial info and bank statements for Casa del Valle and related to insurance for Casa del Valle. There were emails that related to patients of the facility and invoices for some patients. Policies and procedures related to Casa del Valle; a “Nursing Home/Custodial Care Facility Inspection Report” from the New Mexico Board of Pharmacy.

Included in these emails was an email dated November 13, 2019 that included an attachment titled “Resume – Assisted Living Administrator”. This attachment was of E1’s resume, and the first thing listed under the “Professional Experience” section of the resume was Casa del Valle Assisted Living Home, which was identified as “Assisted Living Services for Senior Citizens”. E1’s resume listed that he has been an Administrator for Casa del Valle from “1999 – Present”. E1’s resume also listed the following:

***Management of a licensed residential Assisted Living facilities that provides twenty-four hour care for ten (10) senior citizens of varied physical and mental handicaps.***

*Duties include:*

- *Supervision of the daily care of up to ten (10) residents to include: meals, assistance with medications, personal hygiene, perineal care, bathing, transferring and dressing.*
- *Management of facility maintenance.*
- *Management, supervision and training of three (3) staff members to include Safe Food Handling, patient transfers, toileting, ambulation and social activities.*
- *Licensed Facility Administrator/Operator.*
- *Coordination of Case Management, medical and mental health care plans for each individual client.*
- *Daily management of facilities according to State of NM Licensing And Certification, DOH, Board of Pharmacy, Fire Department and Environmental Health policies and procedures.*
- *Management of Environmental Health Policies and Procedures, including safe food handling, food storage, meal preparation and kitchen cleanliness.*

Further down E1's resume, listed under the "Professional Experience" section was Caregivers of Albuquerque/Twin Oaks Assisted Living Development Group, which was identified as "Assisted Living Services for Senior Citizens". E1's resume listed that he was an Administrator for Caregivers of Albuquerque/Twin Oaks Assisted Living Development Group from "1993/4 – 2014". E1's resume also listed the following:

***Developed and managed the operation of seven residential Assisted Living facilities that provide twenty-four hour care for ninety-seven (97) senior citizens of varied physical and mental handicaps.***

*Duties include:*

- *Design and Development of seven (7) assisted living facilities according to City Planning, Zoning and Building Department Code and Ordinances, as well as Dept. of Health Regulations.*
- *Management of \$2.5 million annual operating budget.*
- *Management, supervision and training of forty-five (45) staff members.*
- *Licensed Facility Administrator/Operator*
- *Developed and Management of Environmental Health Policies and Procedures, including safe food handling, food storage, meal preparation and kitchen cleanliness.*
- *Daily Management of facilities according to State of NM Licensing And Certification, DOH, Board of Pharmacy, Fire Department and Environmental Health policies and procedures.*
- *Management of Environmental Health Policies and Procedures, including safe food handling, food storage, meal preparation and kitchen cleanliness*

Under the "Education and Training" section of E1's resume, E1 lists "Assisted Living Administrator Certification Program", which occurred in 2010. A Certificate of Completion related to this program was found within E1's emails. In an email dated April 1, 2019, E1 sent a copy of this certification from his City email address to his personal Gmail email address.

The OIG found emails that were related to personal travel. Examples of what the OIG found when reviewing these emails were:

- An email dated April 8, 2019 at 3:58:02 PM shows E1 sent a screen snip of a flight reservation confirmation for both E1 and his wife for a trip to Jamaica they took in May of 2019. E1 sent the screen snip to his City email address from his City email address, which gives the impression that E1 also booked this flight reservation while on the City network/internet
- An email dated April 16, 2019 at 2:46:00 PM shows E1 sent a screen snip of Trip and Price Details for a Southwest Airlines flight from Albuquerque, NM to Honolulu, HI for October 30, 2019. E1 sent the screen snip to his City email address from his City email address, which gives the impression that E1 took this screen snip from his City computer while on the City network/internet
- An email dated July 31, 2019 at 12:24:00 PM shows E1 sent a file attachment titled “San Diego Flights – Oct.jpg”. This attachment was of information for a Delta Airlines flight from Albuquerque, NM to San Diego, CA for two people on October 11. E1 sent the file attachment to his personal Gmail email address from his City email address, and gives the impression that E1 looked at this information from his City computer while on the City network/internet
- An email dated January 23, 2020 at 2:07:56 PM shows E1 sent an email with the Subject line “Cheap Air Line - Example around your bday” with a file attachment titled “image 001png”. This image attachment was from the website [www.cheapoair.com](http://www.cheapoair.com) and was of information for flights from Albuquerque, NM to Vienna, Austria for April 2020. E1 sent the email and file attachment to his daughter’s personal Gmail email address from his City email address, and gives the impression that E1 looked at this information from his City computer while on the City network/internet

The OIG found additional emails that were of a personal nature and related to personal business. Examples of what the OIG found included emails with confirmation of concert ticket purchases; emails where E1 sent YouTube links to his personal T-Mobile address of songs that he liked; emails from Kay Jewelers related to receipts, repair of personal jewelry and inspection of personal jewelry; emails between E1 and insurance companies related to personal insurance; an email that was a screen snip of order details for an Amazon purchase of dog food; emails with realtors and information related to home listings on Zillow; an email with an attached Ancestry Composition Report from 23andMe that E1 sent to his daughter; emails related to personal banking; personal photos.

It should be noted that this is a sample of what the OIG found in relation to E1’s emails that were of a personal nature. There are additional emails that the OIG found which are not listed above. The timestamps of these emails were from various times throughout the day and were either to or from E1’s City email address. The OIG noted that E1 would forward many of the personal emails from his City email address to his personal Gmail email address or to his personal T-Mobile address. Some of the emails also gave the impression that E1 also conducted this personal business from his City computer while using the City’s network/internet.

## **IT Policies**

### **Employee E-Mail Use**

#### **POLICY PROVISIONS:**

5. City e-mail services are provided to employees for the purposes of study, research, service and other activities, which must be in the conduct of official business or in support of the City's mission, with the exception of occasional *de minimis* personal use.

7. City e-mail users shall use only City information technology resources (i.e., City e-mail services) to send and receive e-mail messages in the conduct of official City business. City e-mail users shall not automatically forward e-mail messages received at City e-mail addresses to any personal or non-City e-mail account(s) or address(es).

8. City information technology facilities shall not be used to access personal, non-City e-mail accounts (e.g., AOL, Hotmail, MSN), addresses or mailboxes. City e-mail users shall not automatically forward e-mail messages from personal or non-City e-mail accounts to any City e-mail account or address.

### **Employee Internet Use Policy**

#### **Policy Provisions:**

- City Internet access is provided to employees for the purpose of study, research, service and other activities, which, with the exception of occasional *de minimis* personal use, must be for purpose of conducting official business or in support of the City's mission.
- Employees have no right of ownership or expectation of personal privacy as to their City Internet usage. It is possible to monitor Internet usage, and the City reserves the right to inspect any and all network traffic and files stored on City resources. The City reserves the right, without notice, to limit or restrict any employee's Internet usage.
- City Internet access shall not be used to conduct personal business, play computer games, gamble, ***run a business***, conduct political campaigns, for personal gain, or to take part in any prohibited or illegal activity.

### **Computer Login**

Each time a City employee logs into their City computer, the following terms and conditions come up:

*This computer equipment is the property of the City of Albuquerque. It is to be used only for official business of the City by authorized individuals in accordance with all applicable ordinances, regulations, policies, Administrative Instructions, and state and federal law. All user actions and files are subject to monitoring.*

*According to the City standards, all user-generated electronic files and documents, as City records, shall be stored on City network-attached file servers*

*configured for routine backup and recovery operations (e.g., on the X:\drive). Files and documents shall not be stored on local personal computer disks (e.g. on the C:\drive) or local removable media (e.g. CDs/DVDs, USB thumb drives).*

*No expectation of privacy is either expressed or implied. Improper use of this equipment may subject the user to disciplinary and/or legal action.*

*For current City usage policies visit: <http://mesa.cabq.gov/policy.nsf>*

*This machine may reboot on a published schedule to apply critical updates.*

*Use of this system constitutes acceptance of these terms.*

The user (City employee) must click “OK” acknowledging that they accept these terms and conditions in order to completely log on to the system. This must be done each and every time a City employee logs on to the system.

### **Employee File**

The OIG visited Central Human Resources (HR) and reviewed E1’s employee file. There were no Outside Employment forms located in E1’s file.

### **310. EMPLOYMENT OUTSIDE THE CITY SERVICE**

*All employees must obtain the written permission of the department director and concurrence of the Human Resources Director allowing them to engage in outside employment. No employee who is receiving Workers' Compensation total disability payments, hardship leave or donated leave shall engage in outside employment. Employees who are unable to return to their current position or waiting to be reassigned by the Human Resources Department may engage in outside employment with the concurrence of the Human Resources Department.*

#### **310.1 Authorization Required for Outside Employment**

*The department director and the Human Resources Director will assure the following provisions are met:*

*A. The duties or services of the proposed outside employment will not create a conflict of interest for the employee or assigned subordinates while serving in an official capacity with the City; and*

*B. There is no conflict between the employee's official duties with the City and the proposed outside employment; and*

*C. The proposed outside employment will not defame, embarrass or discredit the City; and*

*D. The employee has a satisfactory work record and there is a reasonable assumption that it will continue if approved; and*

*E. The employee's sick leave usage, excluding FMLA absences, does not reflect abuse; and*

*F. The Human Resources Director may authorize other provisions as necessary.*

### 310.2 Approval of Outside Employment

*Outside employment may be authorized for a period up to one (1) year and must be approved on a year-to-year basis. Requests must be submitted prior to engaging in outside employment and renewed in January of each year. Employees approved for outside employment may not work more than a total of sixty (60) hours per week for City service and outside employment combined. City employees performing work for the City outside their normal duties may not be considered an independent contractor and all such work shall be paid through the normal payroll process.*

## **Interviews**

### **Interview with S1**

The OIG contacted E1's former supervisor (S1), who had been E1's supervisor for approximately a year and a half.

S1 confirmed that E1 had a City vehicle assigned to him on January 4, 2019. S1 stated that E1 did not have to log his destination whenever he went out into the field, to include the date, the time, where he was going, as well as the time he returned. The OIG pointed out there was a couple of Drivers Daily/Weekly Journey Logs and Check Lists which E1 did complete and sent to S1. However, the OIG pointed out that on the second log, E1 did notate the dates and times he returned or checked the vehicle back in. S1 stated that he recommended that employees utilize the log and checklist, but he did not require it, because of the time in the field and having to take the time to fill out that log. S1 added that he told employees that the log is good tracking for themselves, so that if anything comes into question -- for example, if the car was dinged or a window was broken -- by having that documentation, there would be a record of when the employee last checked the vehicle.

The OIG asked S1 if the inspectors and employees within the Storm Water Division would have a need to go to home improvement stores, such as Lowes or Home Depot. S1 could not think of an instance or situation where one of his employees would need to visit these types of stores.

The OIG asked S1 if he was aware that E1 owns and operates a home healthcare business. S1 stated that he knew E1's mother owns one, but he did not know if E1 helps her with it or not. S1 indicated that he learned about this just in "side conversation" after E1 had been working for DMD a while. S1 stated that E1 never turned in an Outside Employment Form. However, S1 added that he did not know if E1 was actually working and earning an income from the home healthcare business or if he was just helping his mother.

S1 stated that as far as he is aware, E1 never used City vehicles to conduct any business related to the home healthcare business, and did not do this on City time. S1 stated that anytime E1 had a doctor appointment or something of that nature, he would put in a request to take his personal leave, and would use his personal vehicle. However, at the same time S1 acknowledged that he only knew what was reported to him.

S1 did not know if the City vehicles his employees utilize are equipped with GPS. He stated when they got newer vehicles, he assumed that they likely had GPS.

The OIG asked S1 if he was aware that E1 spent a lot of time on personal calls on the City phone. S1 stated that as far as he knew, his employees were conducting business for industrial businesses and explained that the Storm Water Division reaches out to industrial businesses throughout the City, and they are constantly talking to the owners of these businesses. Any type of conversations that may have taken place, S1 stated that he did not pay attention to, because those are the employees' conversations. He stated that he did not know of any telephone calls that E1 was on that may have been of a personal nature. S1 stated that he does give the okay for his employees to take a couple of personal calls if need be, because they have families and in case something happens, but not to the extent that it is going to impede their work.

The OIG informed S1 that after reviewing phone logs of E1's City desk phone from the past year, these records show that E1 did make many personal phone calls from his City desk phone. The OIG also informed S1 that many of the calls also appeared to be somehow related to healthcare and E1's home healthcare business. S1 stated that he was not aware that E1 was making these type of phone calls, and from his City desk phone. He stated that if a lot of this was going on, then City work was not being completed and he would have addressed this with E1 had he been aware.

S1 was also informed that the OIG reviewed emails from the past year from E1's City email address and found that there were many personal emails that E1 was sending and receiving. Many of these emails were also somehow related to healthcare and E1's home healthcare business. The OIG asked S1 if this is acceptable. S1 commented that it would depend on what is considered "a lot". He explained that perhaps if there was one here and there coming through, though then he would not have addressed it or seen it as the employee handling a lot of personal business. However, S1 also stated that from what he could recall, S1 believes that City policy is to not send and receive personal emails on the City email system. S1 again stated that he would have addressed this issue with E1 had it been brought to his attention during the time he was E1's supervisor.

The OIG asked S1 if his employees are aware of the City Policies and Personnel Rules and Regulations related to the use of City equipment, as well as email, internet and phone usage. S1 stated that in New Employee Orientation he believes they go through City Rules and Regulations. S1 admitted that when he hires new employees he does not talk to them about phone usage or email usage, as he has the understanding that it is implied that employees know not to abuse City phones and email with personal usage.

The OIG asked S1 if his employees are aware of the City policy related to outside employment. S1 commented that he would think so, and believed this was something that is covered in New Employee Orientation.

## **Interview with S2**

The OIG contacted E1's current supervisor (S2), who has been E1's supervisor for approximately the past ten months.

S2 confirmed that the Engineers and Engineering Assistants within the division do go out into the field. She explained that they only have a few City vehicles for their division and they use a SharePoint system to check out vehicles and to log where they are going with that vehicle. S2 further explained the process as follows:

- Employees login to what is called the Vehicle Check-Out Log;
- The employee will then identify the vehicle they are requesting to use;
- The employee will notate where they are going and the reason;
- The employee has to notate the date and time and an estimate of how long they will be gone; and
- When the employee returns, they check the vehicle back in to the SharePoint system and will notate the return time. This also shows if the employee was over or under the time they estimated being gone

The OIG asked if the Engineers and Engineering Assistants within the division would have reason to go to home improvement stores, such as Lowes or Home Depot. S2 stated that it would depend on the location of the project, as sometimes it is difficult to find parking. She provided an example of a project she had at 12<sup>th</sup> Street and Menaul where she would sometimes have to park at the Lowes located in that area, and then she and other employees would meet on site. However, S2 stated that being E1's supervisor and knowing his duties and what work he has, she could not see any need for E1 to be out at a home improvement store, unless he was utilizing the parking lot to park near a project. S2 also felt that if there was a work-related reason that E1 would have needed to go to a home improvement store, then he would have asked, since something like this would be out of the ordinary. S2 stated she is not aware of E1 ever using any of the City vehicles to conduct personal business, or any business related to the home healthcare/nursing home business. S2 stated she is not aware of E1 ever using any of the City vehicles to go to home improvement stores for personal business. With regard to E1's previous position as a storm water inspector, S2 felt visits to home improvement stores would be out of the ordinary for employees in those positions as well.

The OIG asked if S2 was aware that E1 owned and operated a home healthcare business. S2 stated that E1 recently mentioned that his mother passed away and he was taking care of some things for her. S2 stated that she knew this is the type of business his mother had, but S2 did not have any information other than knowing E1 had taken on the business. S2 did not know for how long, but stated that E1 had not mentioned the home healthcare business to her personally until about two weeks ago or so. She indicated that E1 had said something along the lines of "Well, now that I'm taking care of stuff with the nursing home ...". This was the first time that S2 could recall that E1 had brought up the nursing home/home healthcare business with her.

S2 shared that she had heard rumors that when E1 was a Storm Drainage Inspector and reported to a different supervisor, his co-workers and fellow storm inspectors were concerned that E1 was taking care of personal business, including business related to the home healthcare business. However, S2 stated that E1's previous supervisor had expressed that he felt there was an employee who was just trying to "throw E1 under the bus" and get him in trouble by saying that E1 takes care of too much personal business.

The OIG asked S2 if E1 should have completed an Outside Employment Form for something like this. S2 stated that she knows the department requires that, and she remembers seeing a memo in

the past related to outside employment. She remembers that this memo came from the Directors and that it said something along the lines of: A reminder, if you have second employment, then you have to fill out a form. However, S2 stated that she can't remember anything like this being sent out recently, and knows for certain that something like this has not been sent out since E1 has been her employee.

S2 was informed that the OIG reviewed phone logs for E1's City desk phone from approximately the past year, and these records show that E1 did make many personal phone calls from his City desk phone. The OIG pointed out that many of the calls also appeared to be somehow related to healthcare and E1's home healthcare business, including phone calls to the nursing home E1 operates. There were also many phone calls that were to insurance companies, accounting companies, banking institutions, stock and shareholder institutions and credit card companies. The OIG shared that many of the phone calls were related to personal business such as travel and vacation related phone calls, including phone calls to Caesar's Palace, Hilton and Hilton Honors. The phone logs also showed phone calls to Calibers and other companies that specialized in firearms. And there were many phone calls placed to E1's spouse from his City desk phone. The OIG asked S2 if this was acceptable, to which S2 stated "absolutely not".

S2 was informed that the OIG also reviewed emails from the past year from E1's City email address and found that there were many personal emails that E1 was sending and receiving. Many of these emails were also somehow related to healthcare and E1's home healthcare business. There were also many emails that were to insurance companies, accounting companies, banking related emails, stock and shareholder related emails, as well as emails that were of personal photos or songs from YouTube. The OIG also informed S2 that E1 would forward a lot of these emails from his City email to his personal email address or cell phone number, rather than having the emails sent there to begin with. Again, the OIG asked S2 if this was acceptable. Again, S2 stated "absolutely not". She stated that she did not agree with E1 doing this, and did not find it acceptable by any means.

The OIG asked S2 if her employees are aware of the City Policies and Personnel Rules and Regulations related to the use of City equipment, as well as email, internet and phone usage. The OIG asked if they periodically go over these policies and rules, even if it is verbally. S2 admitted that she does not go over these with her employees. She explained that at least in her opinion, these policies and rules are understood. However, she acknowledged that maybe this means that they do have to have those type of conversations amongst her staff. She commented that with her staff being mostly engineers, she felt that they were all pretty accountable and responsible, as well as hard working and always trying to get their work done. As a result, she and her staff have not had to have these conversations very often. However, S2 shared that it has been a challenge at times to keep E1 focused. She further stated that although she was not aware that all of this was happening, she commented that the information the OIG found actually does not come as too much of a surprise to her, based off of the level of effort she has been getting from E1.

## **Interview with E1**

The OIG met with E1 to discuss the concerns that were brought to the attention of the OIG.

E1 was asked if he has a home healthcare business, to which he stated “no”. The OIG then followed up by asking E1 whether or not he has an assisted living facility or is associated with an assisted living facility in any way. E1 stated that his mother ran an assisted living facility since 1968. However, his mother passed away in January of 2019. E1 explained that he is the only child and he had moved into that home to help take care of his mother; though unfortunately, she never made it out of the hospital before passing. E1 confirmed that he lives at this facility, located at 2111 Raven Ln SW, Albuquerque, NM 87105, and stated that the name of the facility is Casa del Valle. He explained that there is a house up front and the assisted living facility is in the rear. According to E1, the assisted living facility is its own entity. He does not own this business “per se” nor does he receive any funds from it. He confirmed that the facility is fully staffed and stated that the first year after his mother’s passing was spent trying to get everything organized.

The OIG pointed out to E1 that per the Better Business Bureau (BBB) he is listed as owner and customer contact for Casa del Valle, and another business report shows E1 as the director/owner/president for Casa del Valle. E1 stated “This is true” and is because he was the only living heir. For State licensing requirements, somebody had to take it over, keep it running, and keep the clients there. According to E1, they were in the process of trying to sell the facility or do something with it, but then COVID hit. E1 stated as it currently stands, Casa del Valle is its own LLC, and E1 does not receive any funds for that facility. The OIG asked E1 if he contacts the facility or checks in with those who are working at the facility. E1 stated that his wife and daughter do, as they both live there as well.

The OIG asked if E1 disclosed to his supervisors -- both past and current -- that he has ties to the assisted living facility. E1 stated that yes, they were aware, though they were not made aware until his mother’s passing. The OIG asked if E1 completed an Outside Employment Form, to which E1 claimed he was not aware he needed to complete one, since he is not employed by Casa del Valle. According to E1, he did ask his former supervisor (S1) if he needed to complete an Outside Employment Form. He was told that if he was not working at Casa del Valle or employed there, then E1 did not need to complete an Outside Employment Form.

The OIG asked if E1 has utilized a City vehicle, either in his current and former positions with DMD. E1 stated that with his current position, he very rarely utilizes a City vehicle, but with his previous position, he was often out in the field. He did get an assigned vehicle in early 2019. He stated that they did have a log where they would have to notate on weekly basis if gasoline had been put in the vehicle, if the vehicle had any dings or any other issues. The OIG asked if E1 was referring to the Drivers Daily/Weekly Journey Logs and Check Lists, and proceeded to show E1 two of these logs that he had filled out and submitted to his supervisor. The OIG pointed out that each column of the first log was completed in its entirety, to include the “Check-In Date/Time” column. However, the second log was not completed in its entirety. The OIG pointed out that E1 did not notate anything in the “Check-In Date/Time” column on this second log. The OIG asked if E1 could explain why this was the case, to which E1 stated he could not. The OIG asked if E1’s supervisor ever questioned why there was nothing notated for this column. E1 stated “no”.

The OIG asked if E1 ever went to home improvement stores, such as Lowes and Home Depot, in a City vehicle. E1 stated not that he could recall. The OIG asked E1 if the positions he has held with DMD would call for him to ever visit these types of stores. E1 stated the only reason to run

into any type of store, other than getting something to eat, is if you needed to use the bathroom because you were not near a City facility. The OIG asked E1 if he ever visited home improvement stores for personal reasons or for business related to Casa del Valle, while in a City vehicle and/or while on City time. E1 stated no, not that he could recall at all.

The OIG asked E1 if he conducts business related to Casa del Valle during the work day. E1 stated “No”. The OIG asked E1 if he conducts any personal business during the work day. E1 stated that he gets two 15-minute breaks and a half hour lunch, and that he usually eats lunch at his desk. He indicated that because he is usually at his desk, during lunch or breaks he might “talk to an insurance agent maybe, or something like that.”

The OIG asked E1 if he is aware of the City’s policies with regard to email, to which he stated “not clearly that I can say.” The OIG asked if E1 is aware of the City’s policies with regard to phone usage. E1 paused before stating “Yes, I believe so.” The OIG asked if E1 is aware of the City’s policies with regard to internet usage, to which E1 stated “Yes, I think so.”

The OIG informed E1 that allegations and concerns were brought forth that E1 was spending a lot of time conducting personal business and business related to Casa del Valle during work time. The OIG asked E1 if this information was accurate, to which E1 stated he did not believe this to be accurate. E1 stated that while he has been with DMD he has had his own personal phone. He added that he carried two phones while he was a Storm Water Inspector: his City-issued cell phone and his personal cell phone. E1 commented that just like anybody else, during the day a person gets a call from their spouse or “someone like that”, they pick up the phone to talk to them and see what is going on, and then they get back to work. E1 explained that especially as an inspector with storm water he was hardly in the office, and was out at “dams and ponds all over town. Literally outside all of the time.”

The OIG then informed E1 that allegations and concerns were brought forth that E1 was not only spending a lot of time conducting personal business and business related to Casa del Valle, but was using City equipment and resources (City phone, email and internet) to do so. E1 stated that he did not believe this to be accurate. He reiterated that he has his own personal phone and also has his own personal email account. He stated that everything nowadays is on one’s personal phone, and that is “all you need”. E1 commented that since March he is working through his own personal computer in his own home running City business. He also pointed out that he was promoted in August of 2019, and there were not any issues that were brought up at that time.

E1 was then informed that the OIG reviewed phone logs from his City desk phone and found that there were many outgoing phone calls that were of a personal nature and were not related to E1’s job or to other City business. The OIG also found that there were many outgoing phone calls placed to Casa del Valle from E1’s City desk phone, as well as phone calls that seemed to be in relation somehow to healthcare or home healthcare. E1 stated that he is usually sitting at his desk and is not out in the field like he was when he was an inspector. He explained that it is “frowned upon” for one’s personal phone to be ringing, so he usually has it on silent. E1 stated if his wife or somebody needs to get ahold of him, then they will usually call him on his City desk phone. He added that these included calls that would come in from Casa del Valle.

The OIG clarified that the phone calls being referenced were outgoing phone calls, and therefore it is assumed that E1 was the one placing the phone calls. E1 then commented that a lot of times he will get a text that says “Hey, call me.” The OIG asked E1 why he would not then use his personal phone to call out. E1 was then informed that the phone logs the OIG reviewed covered approximately a nine-month time span, and during that period of time, there were 767 outgoing phone calls, over half of which were personal phone calls and were not related to E1’s job or to any other City business. The OIG pointed out that many of E1’s outgoing phone calls were to his spouse -- both to her work phone number and to her cell phone. There were many phone calls placed to Casa del Valle. There were many phone calls placed to banking institutions; phone calls related to stocks and shares; phone calls to insurance companies; regular phone calls to an accounting firm, as well as to a personal attorney. E1 was informed that additional outgoing phone calls found were to Caesar’s Palace; Hilton and Hilton Honors; Unique Vacations, which is associated with Sandals Resorts; American Home Credit Card; Weatherby, Inc., which specializes in firearms and ammunition; Calibers; Backyard Discovery, which specializes in swing sets, playhouses and backyard leisure products. E1 asked couldn’t these types of phone calls be done during one’s lunch and breaks. The OIG acknowledged yes, they could. However, the OIG pointed out that a number of these calls had a call duration that was longer than a half hour. The OIG provided examples of E1’s calls to “Unique Vacations” in which one of the phone calls lasted 49 minutes, 22 seconds and the other one lasted 43 minutes, 15 seconds. If E1’s breaks are only 15 minutes and his lunch is only a half hour, then phone calls such as these are going past the time allotted for breaks and lunch. The OIG provided another example informing E1 that just with the personal phone calls to his spouse, alone, this was over 7 hours of time spent on personal calls on the City phone.

E1 stated that many times one will be at their desk working, and if a person is on a call, but on hold, then it is easier to put the phone on speaker while you are at your desk working. The OIG pointed out that E1 could do the very same thing on his personal cell phone. The OIG further pointed out that anymore most people have some sort of Bluetooth earpiece or headset that they can utilize while on a call, which allows a person to be handsfree if they are trying to simultaneously work.

The OIG again asked E1 if he thinks it is appropriate to be spending so much time on personal phone calls while using the City phone and while on City time. According to E1, at the time he did not think it was a large amount of time. He did not think he was abusing time if he was sitting there writing reports and talking and answering phones. E1 also claimed that most of the 767 calls that the OIG found were of E1 setting up inspections for “all kinds of businesses”, and therefore he was “always on the phone”.

The OIG asked E1 that in his position as an Engineering Assistant could he honestly say that he could sit and work on a report while simultaneously being on the phone for forty-nine minutes. E1 responded “If they keep you on hold, yes.” The OIG then asked E1 if he could handle vacation plans while simultaneously working on a report. E1 responded if he is “On hold while they are trying to set something up.” E1 then commented that he has never been reprimanded and he has been promoted and believes that he is a good employee. The OIG informed E1 that he was still going against City policies.

E1 was informed that the OIG also reviewed emails from his City email address and found that there were many emails that were of a personal nature as well and not related to E1's job or to other City business. There were also many emails that were in some way related to Casa del Valle. The time period reviewed was from the beginning of January 2019 to approximately mid-April 2020. The OIG informed E1 that there were emails that related to making reservations for personal travel; communications to and from insurance agencies and financial institutions; back and forth communications with businesses in relation to Casa del Valle; emails that showed E1 had just purchased concert tickets and took a screen snip of the confirmation information; email showing confirmation of an online purchase for dog food. The OIG asked E1 if he thought this was appropriate. E1's explanation was that he had these "hooked up through an Amazon account" on his personal phone. The OIG reiterated that these examples show that the emails were from E1's City email address. The OIG then pointed out to E1 that he would forward many of these emails from his City email address to his personal email address and/or personal cell phone. The OIG provided another example where E1 would email YouTube links of songs from his City email to his personal email. The OIG pointed out to E1 that he could have had these emails and communications sent directly to his personal email address rather than his City email address.

E1 stated that all he could say was he knew that when his mom passed away, it was a time period where "all I could do was do the best that I could while I was showing up to work. And it took months to sort things out because she left no will." E1 indicated this was the only time he could think of when one has "ongoing things or ongoing back and forth." E1 would send himself things so he would not forget. The OIG asked E1 if he would log out or take a break whenever he had to be on the phone with insurance companies, or when he was trying to deal with business related to his mom. The OIG also asked if E1 would inform his supervisor that he had to be on phone calls related to personal business and if he ever told his supervisor that he would stay late or try and make up that time somehow. E1 stated that if he could handle the phone call, then he would handle the phone call, and if he had to leave work then he would request time off. He added that there were quite a few times he had to request time off for those issues.

The OIG also showed E1 an email from August 27, 2019 which was sent from E1's City email to his cell phone/T-Mobile address. The email had a photo attachment titled "Cutie Nice Boobs" and was of a female in a cleavage-baring top. E1 stated that the photo was of his wife. The OIG asked E1 if something like this, with this particular title, was appropriate to send over City email. E1 stated that his wife sent the picture to him from her phone. The OIG suggested that in the future E1 may want to have family and friends send pictures directly to his personal email address.

The OIG asked E1 if he notices a message that comes up on his City computer prior to him logging in, and informed him that this message is basically the terms and conditions he is agreeing to in order to log onto and use the City computer and the City's network and email. The OIG showed E1 a copy of what this verbiage says and he acknowledged that he recognized this as coming up on the computer before he logs on.

The OIG asked E1 if he was aware that City emails and City phone logs are all subject to the Inspection of Public Records Act (IPRA). E1 admitted that he is aware of this. The OIG asked E1 if he would be comfortable with the public having his personal pictures or travel plans, etc. E1 stated he guess he would not be comfortable with that. E1 did not fully understand why he should

not log onto his personal email account on the City computer if he was on break or on lunch or if it was after work hours. E1 did not fully understand that he is still on the City's network/internet when he does this.

## CONCLUSION

During the course of the investigation it was found that E1 is managing an assisted living facility by the name of Casa del Valle. Though E1 stated that Casa del Valle was his late mother's business until she passed in January 2019, the OIG found that E1 spent a lot of time conducting business related to this assisted living facility during his City work hours. Business reports also showed E1 as the director; owner; president; customer contact for Casa del Valle. In addition, a recent copy of E1's personal resume shows that he listed himself as being an Administrator for Casa del Valle from "1999 – Present". He also listed himself as being an Administrator for Caregivers of Albuquerque/Twin Oaks Assisted Living Development Group from "1993/4 – 2014", and in 2010 E1 received his Certificate of Completion for the "Assisted Living Administrator Certification Program".

In reviewing phone logs from E1's City desk phone, the OIG found that more than 50% of E1's phone calls were of a personal nature or were related to the Casa del Valle assisted living facility. In reviewing emails from E1's City email address, the OIG found that many of E1's emails were of a personal nature or were related to the Casa del Valle assisted living facility. These findings support the allegations that E1 was conducting personal business during work hours and was conducting business related to the Casa del Valle assisted living facility during work hours. E1's personal phone calls and personal emails exceeded the exception of occasional *de minimis* personal use.

Though E1 stated that Casa del Valle is its own LLC, and claimed that he does not receive any funds for this assisted living facility, E1 still spent a lot of time conducting business related to Casa del Valle, and therefore should have completed an Outside Employment Form.

There was not enough information to substantiate the allegation that E1 was making trips to home improvement stores in City vehicles.

The OIG believes E1's supervisors had some awareness that E1 was doing things other than his City work during the work day. The same concerns brought to the attention of the OIG were brought to the attention of S1 while S1 was E1's supervisor. However, these concerns were not addressed or looked into. Rather, S1 attributed the concerns as coming from another employee who was unhappy and was trying to throw E1 under the bus. When the OIG spoke with S2, she indicated that she had heard rumors regarding these same concerns about E1. In addition, S2 shared that she was not getting the same level of productivity from E1 as she was from her other employees. However, S2 stated that she has been trying to do a better job of keeping track of E1 and staying on top of him and what he is doing throughout the work day.

The OIG found that E1 was in violation of IT policies for employee email use and internet use. E1 was also in violation of City Personnel Rules & Regulations, specifically sections within Section 300. CONDITIONS OF EMPLOYMENT:

301.14 Telephone Usage

*City telephones are for official business use only and will be used in a professional manner. Abusive, threatening or obscene phone calls are strictly prohibited. Use of City telephones for personal calls during office hours is discouraged. A supervisor may permit the employee to make occasional calls if they do not interfere with the work duties and responsibilities of the employee, departmental operations, performance or services to the public. Personal use of City telephones for toll or long distance calls is strictly prohibited unless the call is charged to the employee's personal credit card or home telephone. Employees are responsible for ensuring that toll or long distance calls made for legitimate business purposes are appropriately and accurately documented.*

301.15 Automated Systems

*All automated systems, including electronic mail; Internet usage, software and hardware are for official City business. All users will conduct themselves in a legal, professional and ethical manner. All automated systems are valuable and must be protected from misappropriation, abuse, misuse, theft, fraud, loss and unauthorized use or disposal. Misappropriation of computer time, hardware or software includes, but is not limited to, using a computer to create or run unauthorized jobs, operating a computer in an unauthorized mode or intentionally causing any kind of operational malfunction or failure.*

E1 was also in violation of City Ordinance Chapter 3, Article 3: Conflict of Interest

## § 3-3-3 EMPLOYEE CONDUCT; STANDARDS.

*“Employees must in all instances maintain their conduct at the highest standards. No employee shall continue in his or her City employment with pay when he or she engages in activities which are found to more than likely lead to the diminishing of the integrity, efficiency, or discipline of the City service.”*

In conclusion, the OIG recommends:

1. Supervisors periodically review policies related to outside employment with their employees. There should also be a form that employees sign off on acknowledging that they are aware of the policies related to outside employment. The signed forms should be placed in employees' files in Central HR.
2. Supervisors periodically review policies related to City phone, email and internet usage with their employees. There should also be a form that employees sign off on acknowledging that they are aware of the policies related to City phone, email and internet usage. The signed forms should be placed in employees' files.
3. If not already a requirement, supervisors should make it mandatory that a log is kept when employees utilize a City vehicle. This log should include:
  - Vehicle being utilized;
  - Date and Check-Out time;

- Name of employee utilizing the vehicle;
- Destination;
- Beginning mileage and ending mileage; *and*
- Date and Check-In time.

Supervisors should periodically review the logs to ensure employees are notating all required information on the log.

4. DMD should consider equipping the vehicles utilized by the Storm Drainage and Transportation Division with GPS.
5. The Director of DMD should meet with HR and City Legal Employment Division to determine if discipline is appropriate for the Supervisors of E1 given the length of time and the amount of E1's inappropriate conduct.