



October 19, 2022

Special Audit

Hiring Practices Involving Unclassified Employees

Citywide

Report No. 22-116



**CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT**

City of Albuquerque - Office of Internal Audit

Hiring Practices Involving Unclassified Employees

Special Audit

October 19, 2022

Audit #22-116

Executive Summary

At the request of Council Services, the Office of Internal Audit conducted a special audit of the City of Albuquerque's (City) hiring practices involving unclassified employees. The audit objectives were as follows:

- Determine whether sufficient controls are in place to ensure fair, uniform, and transparent selection of the best-qualified employee for positions.
- Determine whether unclassified employees meet the minimum education and experience requirements for their positions.
- Evaluate the trend in the City's use and compensation of unclassified positions.

The scope of the audit is fiscal year (FY) 2015 through FY22, with specific detailed testing over FY21 through FY22.

The City's use of unclassified positions increased 97 percent, from 314 to 620, in the period of FY15 to FY22. This increase has not kept pace with the modest 14 percent increase in the City's total funded full-time employee positions. While the City's annual budget details the total number of budgeted full-time positions, it does not indicate how many of those positions are classified and unclassified, which would provide for greater transparency and oversight.

During the period, 83 employees moved from classified to unclassified positions, receiving salary increases between 22 and 368 percent. Further, a number of senior management and deputy director employees received salary increases, though their job duties for these positions did not change, and the increases were not based on their job performance. The majority had no record justifying the increase, and none of the employees tested had a completed performance evaluation on file during the period.

Although not required, job descriptions were not created for 53 percent of unclassified positions tested, for which annual salaries totaled \$4.3 million. Additionally, only 21 percent of positions tested had an application and/or a resume on file related to the position, and only 13 percent had evidence demonstrating verification that the applicant met the minimum requirements. While 9 positions were publicly advertised, only 4 had record of being interviewed. Lastly, 67 percent had neither a Background Investigation Disclosure and Consent Form nor a Release of Liability & Felony Identification form on file. Without job descriptions, it is uncertain whether unclassified positions were created to validate paying some employees higher salaries though their job duties and responsibilities were similar in complexity to that of existing classified positions. This, combined with the inconsistencies in hiring practices, may perpetuate the perception that the City's hiring process for unclassified positions is unfair and susceptible to favoritism—both of which can impact the City's ability to hire and retain talent.

Requirements for unclassified appointments do not exist to ensure that candidates possess the appropriate background, experience, and qualifications, nor to ensure that candidates are free from conflicts of interest. Due to the lack of policies, departments may follow but are not required to follow the prescriptive rules required of classified positions. As a result, these processes are often inconsistently applied and can be expedited, as formal or competitive hiring is not required. Further, the Merit System and Personnel Policy Ordinance have not been modified since 2010, and the City's current classification and compensation structure has not been re-evaluated since its inception in 1999.

Recommendations

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City Administration should:

- Continue efforts to conduct a classification and compensation study.
- Evaluate whether provisions of the Merit Ordinance should be modified to be better reflective of the City's current hiring activities.
- Enhance collection and maintenance of classification detail for budgeted and filled positions.
- Require that requests for pay adjustments for employees in unclassified positions be supported by a written justification explaining the business need for the salary increase.
- Develop policies to ensure that salaries for the unclassified positions are not greater than that to which the employee would be entitled under the City's classified pay plan or benefits schedule; develop policies to prevent the creation of unclassified positions to validate paying employees higher salaries when their job duties and responsibilities were similar in complexity to that of existing classified positions.

City Administration concurs or partially concurs with all findings and recommendations made and its response is attached as an appendix.

The OIA will work with the department to follow up every six months on the status of the open recommendations made in this report.

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City of Albuquerque

Office of Internal Audit

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Accountability in Government Oversight Committee
P.O. Box 1293
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Audit: Hiring Practices Involving Unclassified Employees – Special Audit
 Audit No. 222-116

INTRODUCTION

Pursuant to a special request received from Council Services, the Office of Internal Audit (OIA) conducted a special audit of the City of Albuquerque’s (City) hiring practices involving unclassified employees. The audit objectives were as follows:

- Determine whether sufficient controls are in place to ensure fair, uniform, and transparent selection of the best-qualified employee for positions.
- Determine whether unclassified employees meet the minimum education and experience requirements for their positions.
- Evaluate the trend in the number, types, and compensation of classified and unclassified positions in the City.

The scope of the audit was the period July 1, 2015 to June 30, 2022, with specific detailed testing including fiscal year 2021 through fiscal year 2022. The special audit was performed at the request of Council Services and therefore was not included in the OIA’s annual audit work plan. Further information pertaining to the audit objectives, scope, and methodology can be found in **Appendix A**.

BACKGROUND

The City of Albuquerque (City) is one of the largest employers in the state of New Mexico, supporting a workforce of approximately 6,536 full-time¹ budgeted positions in fiscal year 2022. According to Article X of the City's Charter:

It is necessary for the optimum functioning of the Mayor-Council form of government that the city maintain a merit system governing the hiring, promotion, discharge and general regulations of employees. The Mayor and Council shall maintain by ordinance, and the Mayor administer, a merit system which shall include as a minimum, reasonable provisions establishing:

- (a) Classified and unclassified service;
- (b) Methods of service rating of classified employees;
- (c) Methods of initial employment, continuation thereof and promotion, recognizing efficiency and ability as the applicable standards;
- (d) Appropriate grievance and appeal procedures for classified employees; and
- (e) An active personnel board composed of individuals not employed by the city.

In accordance with the City's Charter, the City's Merit System Ordinance establishes the framework for the administration of the City's personnel system.

Key Aspects of The City's Merit System

The Chief Administrative Officer:

- is responsible for the administration of the merit system
- is authorized to establish Rules and Regulations to implement the system.

The City's Personnel Rules and Regulations:

- were promulgated to interpret and implement the Merit System Ordinance
- establish the policies and practices which govern the hiring, promotion, and discharge of employees
- provide for the general conditions of City employment.

Source: Article 1: Merit System; Personnel Policy

¹ - A full-time employee is one who is hired to work at least forty (40) hours per week. Employees in this status may be classified, unclassified, temporary, or seasonal and are entitled to certain rights and benefits.

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The Director of Human Resources, under the general direction of the Chief Administrative Officer (CAO), is responsible for directing all administrative and technical activities of the Human Resources Department, including preparing, installing, and maintaining a classification plan based on the duties, authority, and responsibility of positions in the city service; another responsibility for the Director is to prepare and maintain a pay plan corresponding to the classification plan, with approval from the CAO. Individual department policies, rules, regulations, and procedures can be promulgated with the concurrence of the Human Resources Director and the approval of the CAO to ensure they are not in conflict with the substance of the Merit System Ordinance and the Personnel Rules and Regulations.

Classification of City Employees

All City employees are divided into unclassified service and classified service.² Unclassified employees are considered at-will and serve at the discretion of the CAO, meaning they may be terminated with or without cause. As a result, unclassified employees do not have what is referred to as “property rights” in their job. On the other hand, employees with a property interest in their job (i.e., classified employees) cannot be deprived of their employment—discharged or suspended—without due process. Government entities recognize that elected officials require some discretion when filling certain high-level and policy-making government positions, which unclassified appointments provide for. When it comes to such “unclassified” appointments, civil services laws generally exempt management from the obligation to provide the same merit selection guarantees and job security extended to classified employees.

Classified employees are entitled to protections given to safeguard their contractual property interest in continued employment in the public service. These rights help to protect employees from the political forces that surround government work and help to ensure operational continuity and the retention of institutional knowledge.

The City’s classified service is comprised of all employees except those who are specifically placed in the unclassified service. The City’s Merit System Ordinance outlines the following unclassified positions, which have no property interest in continued unclassified employment and may be dismissed for any or no reason:

- Chief Administrative Officer and Deputy Chief Administrative Officers
- Secretaries and assistants to the Mayor and Chief Administrative Officer
- City Attorney and Assistant City Attorneys
- The City’s Public Information Office
- City Clerk/Recorder

2 - Elected officials and members of boards, commissions, and authorities that are not employees of the City and are not covered by the classified or unclassified service.

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- Administrative heads of departments as established in the city's organizational structure,³ physicians, veterinarians
- Temporary and seasonal employees
- Part-time employees employed for less than 20 hours per week
- Administrative heads of agencies or special programs sponsored by the city and defined as unclassified by the Chief Administrative Officer
- Any position designated as unclassified by the Chief Administrative Officer.

Employment Process

Most classified positions are required to be advertised,⁴ whereby a competitive examination process is conducted in order to identify qualified applicants strictly based on their ability to do the job, meaning on the person's "merit." In order to receive a regular classified position, employees must meet minimum qualifications for the position and successfully complete a probationary period. Unclassified positions are exempt from such requirements.

All advertisements, including promotional opportunities, are required to list the level of education and experience required for the position under the section "Minimum Education & Experience Requirements" of the advertisement. Qualifications are the primary consideration in filling any position. Experience (prior employment history), education, training, skills, and other abilities are considered in determining the most qualified individual for a job.

The Human Resources Department has the authority to waive minimum requirements, as well as establish guidelines when a waiver is warranted. For instance, degree requirements may be waived, with certain exceptions, when education and/or experience possessed by an applicant can be substituted for the required degree because it has been determined to be equivalent. This is unlike unclassified positions, where waivers are not applicable because it is a preference and not a requirement that an applicant meets minimum requirements.

Process for Creating or Reclassifying Positions

A position review (also called a desk audit) is a critique of the duties, responsibilities, and qualifications of a position by the Human Resources Department. It is not a review or evaluation of the person holding the position. As a result of a desk audit, a position may be reclassified to a different classification and grade within the existing classification plan. Position reviews may be conducted by the Human Resources Department for any of the following circumstances with the approval of the CAO:

3 - While the Director of Council Services, City Auditor, Inspector General, and Executive Director of the Civilian Police Oversight Agency (CPOA) are all administrative head of departments, these unclassified positions do not serve at the discretion of the Chief Administrative Officer but rather at the will of their appointing authority (i.e. City Council, the Accountability in Government Oversight Committee, and the CPOA Board).

4 - Except probationary police, fire, and corrections officers, but applications from persons outside of city employment may be considered at the same time.

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- As part of a study of all positions in an organizational unit.
- As part of a study of all positions in a given occupation.
- Upon the request of a department director.
- At the discretion of the Human Resources Director, any position may be evaluated with the approval of the CAO.

A request to create a new position must be made by the department director through the submittal of a Position Control Form to the Human Resources Department, who evaluates the functions of the new position and determines the classification. All forms are required to be reviewed and approved by the Budget Office and the CAO.

FINDINGS

1. THE CITY'S EXPANDED USE OF UNCLASSIFIED POSITIONS OFTEN PRIORITIZES EFFICIENCY OVER ECONOMY AND EQUITY.

The City's use of unclassified positions has nearly doubled from fiscal year 2015, increasing 97 percent, from 314 positions to 620 in fiscal year 2022. Together, the Albuquerque Police Department (APD), Department of Technology and Innovation (DTI), and the Albuquerque Community Safety Department (ACS) accounted for 331 (53 percent) of all occupied unclassified positions in fiscal year 2022. Specifically, the APD accounted for 209 unclassified positions (34 percent), the DTI accounted for 79 (13 percent), and ACS accounted for 43 (7 percent). ACS was established in fiscal year 2021, in part to relieve pressure on police and fire services, allowing officers to focus on addressing violent crime calls. In fiscal year 2022, the APD added numerous unclassified positions as part of its continued compliance with the Department of Justice settlement. These positions included but were not limited to positions in internal affairs, police reform, the Real Time Crime Center, and data analysis. The increase seen in DTI was primarily due to the transfer of employees in classified positions to unclassified positions. As of fiscal year 2022, DTI has 45 full-time classified positions and 79 full-time unclassified positions.

While the APD, DTI, and ACS comprised the majority of the City's unclassified positions in fiscal year 2022, the use of unclassified positions has increased in many other City departments, as detailed in the chart below.

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Number of Unclassified Positions Filled Each Fiscal Year by Department									
Department	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	% of Total in FY22
Police	84	86	136	131	155	163	141	209	34%
Technology and Innovation		29	26	67	73	80	79	79	13%
Community Safety	N/A	N/A	N/A	N/A	N/A	N/A	9	43	7%
Legal	26	24	25	24	28	38	40	42	7%
Animal Welfare	31	35	34	31	31	32	29	37	6%
Council Services	22	24	23	25	25	24	26	33	5%
Family Community Services	3	3	3	7	10	15	13	20	3%
Economic Development	5	5	5	6	6	9	11	16	3%
Parks and Recreation	11	10	7	8	8	10	12	16	3%
Finance Admin Svc	81	52	44	4	5	8	15	15	2%
CAO's Office	15	14	14	14	12	13	15	15	2%
Municipal Development	2	1	1	4	4	14	14	13	2%
Arts and Culture	4	6	5	5	6	10	10	12	2%
Fire	4	7	6	7	7	9	8	11	2%
Other Departments*	26	32	31	48	47	49	54	59	10%
Total	314	328	360	381	417	474	476	620	100%

Source: Table created by the auditor base on employee data in PeopleSoft.

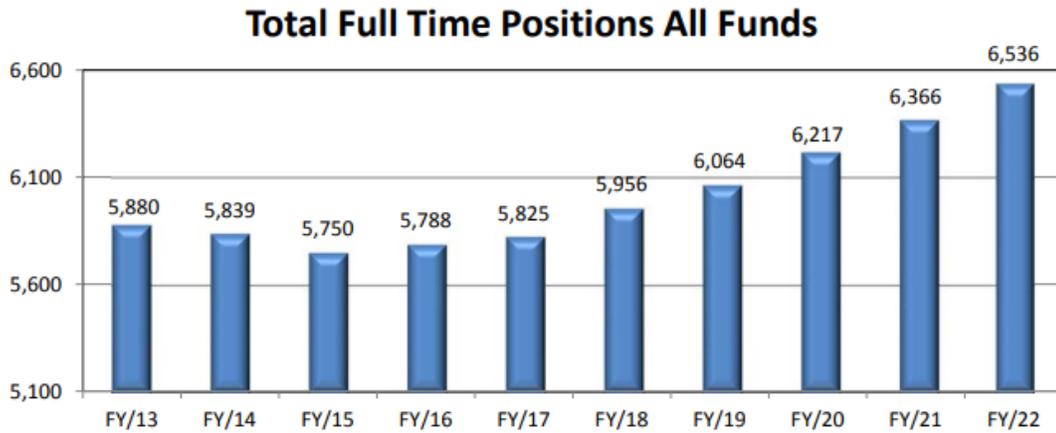
* Legal is coded in the system-generated report as Department ID 34 and includes various departments such as the Office of Equity and Inclusion, Civil Rights, Communications, Public Affairs and Constituent Services, and Economic Development.

** Other Departments include departments with less than one percent of total unclassified positions in fiscal year 2022.

New programs and offices are often created to address emerging issues and challenges faced by municipalities, which may lead to the creation of additional unclassified positions to lead and manage these efforts. The creation of the CPOA in 2014 and ACS in 2021 are both examples of this trend. However, increases in the number of unclassified positions have not kept pace with the modest increase in total budgeted full-time employee positions, which increased 14 percent from fiscal year 2015 to fiscal year 2022. The City's annual approved budget details the total number of budgeted full-time positions, but it does not indicate how many of those positions are classified and unclassified. The graph below was included in the City's approved budget for fiscal year 2022.

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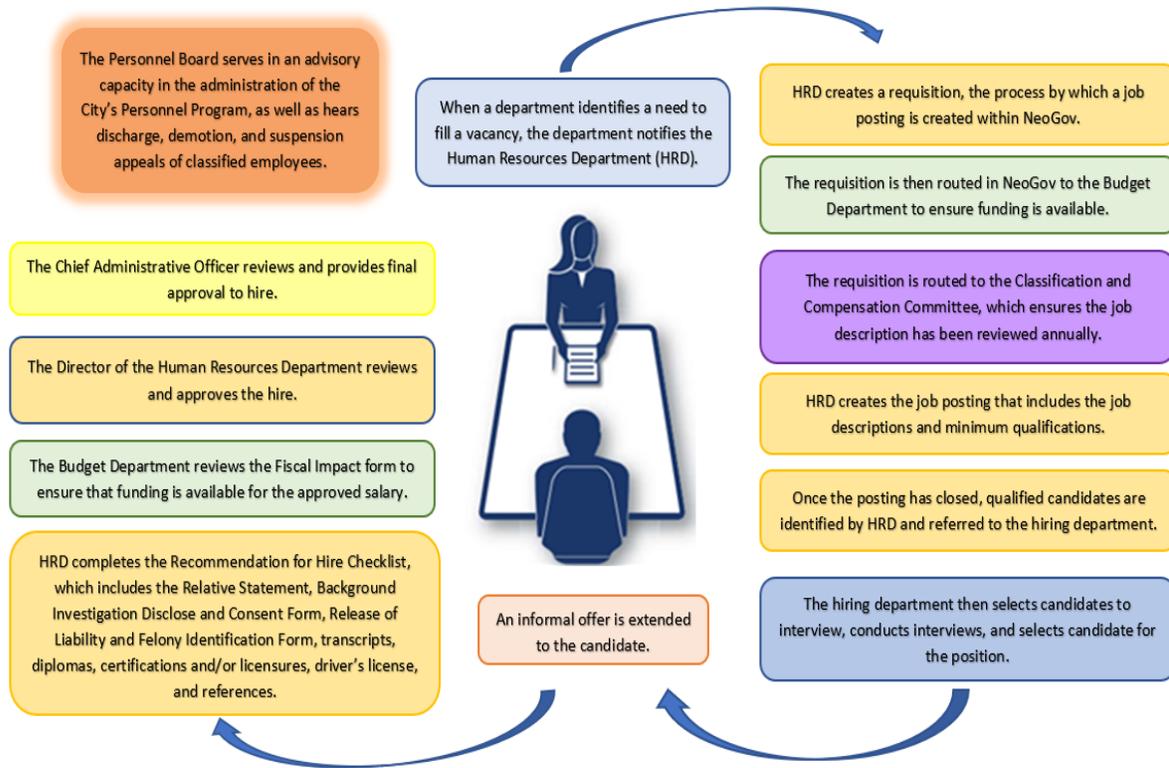


Source: The City of Albuquerque's Fiscal Year 2022 Approved Budget.

According to the Government Accountability Office, "The public has an interest in knowing the political appointees serving and this information would facilitate congressional oversight and hold leaders accountable." Making such information available would promote transparency and would also facilitate legislative oversight of the executive branch during the budget approval process. While §3-1-3 of the Merit System requires that the Human Resources Director "establish and maintain a roster of all persons in the city service and records in which there shall be set forth for each employee his class, title, pay, pay status, and other relevant data," it does not require information be established and maintained for all budgeted positions.

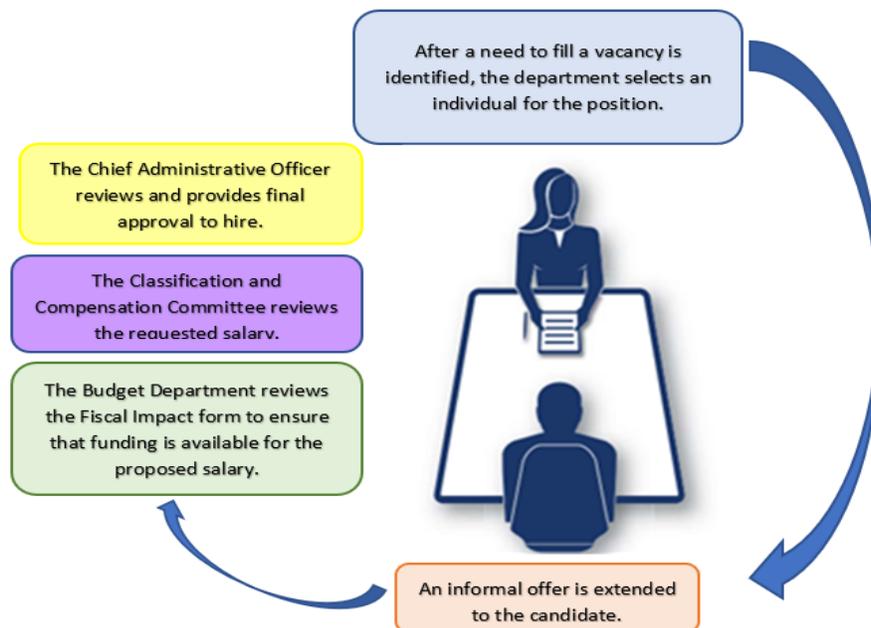
Hiring departments looking to fill unclassified positions may follow but are not required to follow the prescriptive rules required of classified positions. As a result, the hiring process for unclassified positions can be expedited because formal or competitive hiring is not required and the process is not regulated by the City's Merit System. Subsequently, there are no requirements guiding such appointments to ensure candidates possess the appropriate background, experience, and qualifications. This is particularly the case for the City's highest-level management and executive positions that are not subject to confirmation by Council. In fact, under current rules, it would be permissible for a department to select a person for an unclassified position without going through any process other than ensuring there is sufficient funding for the position. The flowcharts below compare the City's hiring process for the majority of unclassified and classified positions.

The City’s Hiring Process Required for Most Classified Positions



Source: Created by the auditor based on City policies and walkthroughs with Human Resource staff.

The City’s Hiring Process Required for Most Unclassified Positions



Source: Created by the auditor based on City policies and walkthroughs with Human Resource staff.

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Hiring through the competitive service process generally requires applicants to pass a competitive examination and requires that the most qualified applicants be identified by (1) notifying the public that job applications for a position will be accepted, (2) screening applications against minimum qualification standards, (3) applying selection priorities such as veterans' preference, and (4) assessing applicants' relative competencies—knowledge, skills, and abilities—against job-related criteria and conducting interviews. As demonstrated by the tables above, the hiring process for unclassified positions is streamlined, potentially resulting in or contributing to its expanded use.

Most classified positions have established salaries or salary ranges for specific job classifications, and many of these salary ranges include incremental salary steps within the salary ranges. For example, the City has a job classification called Accounting Manager E18 with a salary range between \$69,388.80 and \$83,865.60 and a seven-step salary schedule that, when annualized, spans the \$14,476.80 difference between the step five and step one salary amounts.

Unclassified positions are not required to have pay ranges or incremental salary steps. For example, while the City's Transit Deputy Director has a salary range between \$100,006.40 and \$135,012.80, the City's General Services Director does not, and the position's salary is dependent on the candidate's qualifications. As such, the City's salary-setting process in these circumstances can involve, among other things, negotiations with the candidate or the approval of a specific rate by the Classification and Compensation (Class and Comp) Committee.

A number of senior management and deputy director employees received large salary increases, though their job duties for these positions did not change and the increases were not based on their job performance. In total, salaries for these employees increased by \$1.06 million over an 8-year period for 37 employees. For classified series employees, most pay increases are subject to a 5 percent cap. However, the average pay increase for these employees ranged from 9 percent to 76 percent. Further, in the sample of 74 unclassified employees that were either new hires or promoted, 61 (83 percent) had no record of a salary justification, and 15 of the 74 unclassified employees that were specifically promoted and received pay increases, none had a completed performance evaluation on file.

The frequency and amount of salary adjustments for unclassified positions are at the discretion of the appointing officer. Unlike unclassified positions, pay adjustment requests for classified positions are required to be supported by a written justification to explain the business need for the salary increase, as well as the Fiscal Impact of the Position Upgrade/Modification form detailing the current and next fiscal year reductions identified to offset the increase.

During the audit period, 83 individuals moved from classified to unclassified positions, receiving salary increases between 22 and 368 percent. While many of these job changes were into a Director, Deputy Director, or Commander position, others were for non-leadership positions. For instance, an employee that held the classified position of Systems Engineer I with an hourly rate of \$38.48

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was promoted to the unclassified position of Lead System Engineer at an hourly rate of \$52.88 (37 percent increase). The job description for the Systems Engineer I specifies that the position may serve in a lead capacity. Without job descriptions, there is a risk of job duplication, overlap, and repetition. In this particular example, because a job description for the Lead System Engineer position was never created, it is unclear whether a distinction between the positions' "lead" responsibilities exists.

Further, without job descriptions, it is uncertain whether unclassified positions were created to validate paying some employees higher salaries though their job duties and responsibilities were similar in complexity to that of existing classified positions. The lack of job descriptions for unclassified positions is further discussed in Finding 2. Administrative Instruction Number 7-49 states that:

The administrator of the Merit System Ordinance shall not enter into any Agreement with an unclassified city employee such that the salary or benefits of that employee upon entering the classified service are greater than that to which the employee would be entitled under the then-current City of Albuquerque classified pay plan or benefits schedule.

According to the Society for Human Resource Management, salary compression can occur when one department is relatively liberal with salary increases and promotions while other departments within the organization that offer the same types of jobs are not, creating small differences in pay between employees regardless of their skills or experience. Further, according to the Society for Human Resource Management, when salary compression is prolonged over several years, demoralizing effects can lead to widespread dissatisfaction, which in turn can impact the City's ability to hire and retain employees.

City Charter permits the CAO to designate any position as unclassified. The Merit System Ordinance further acknowledges the CAO's ability to appoint or promote positions in the classified or unclassified service and that such power may be exercised by the administrative head of a city department, agency, or special program for the positions within the particular department, agency or special program. However, neither the City Charter or the Merit System Ordinance stipulate in what instances the CAO may designate a position as unclassified.

Similar to the City's CAO, the U.S. Office of Personnel Management (OPM) has the authority to make excepted service⁵ appointments. However, the OPM only has authority to do so when it is neither feasible nor practical to use the competitive examination process. Further, the excepted service includes five categories of positions and allows agencies to hire positions outside of the

5 - For the purpose of United States Code Title 5 §2103, the "excepted service" consists of those civil service positions which are not in the competitive service or the Senior Executive Service. As used in other Acts of Congress, "unclassified civil service" or "unclassified service" means the "excepted service."

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usual competitive process for various purposes, including the following: (1) when it is not practicable to use competitive service qualification standards or to rate applicants using traditional competitive examining procedures, (2) when recruiting students attending certain educational institutions (or others who have recently completed certain educational programs), or (3) to fill certain positions of a confidential or policy determining nature.

City ordinance authorizes the Human Resources Director to prepare and recommend to the CAO changes to the Merit System as necessary, appropriate, or desirable after investigating their operation and the effects of the policies made. Additionally, the Charter gives the CAO the ability to recommend changes to the Merit System for consideration by the City Council. However, Chapter 3, Article 1 of the City's Ordinance, which details the City's Merit System and Personnel Policy, has not been modified since 2010 and may no longer reflect changes in the City's hiring activities. To this point, the City's Personnel Policy does not provide for rules or procedures that guide the hiring of unclassified positions. Further, since the inception of the City's existing classification and compensation system in 1999, an external review or study of the system has never been conducted. The City has recognized the need for a classification and compensation study and has issued a request for proposals to procure such consulting services. However, in the absence of updates to both the merit and classification and compensation systems, the City has implemented special payment programs in an attempt to recruit and retain employees. These programs include a citywide retention incentive bonus and a hard-to-recruit hiring bonus.

According to the 2019 report issued by the U.S. Government Accountability Office, titled *Government-wide Political Appointee Data and Some Ethics Oversight Procedures at the Interior and SBA Could be Improved*, agencies should continually assess and improve human capital planning and investment; agencies should also assess the impact on accomplishing their mission. Standards for Internal Control also require agencies to document key processes and procedures to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel. These standards also require agencies to maintain a means to communicate that knowledge as needed to external parties, such as external auditors.

RECOMMENDATIONS:

The Chief Administrative Officer should:

1. Continue its efforts to conduct a classification and compensation study by an external consultant.
2. Evaluate whether provisions of the Merit System Ordinance and the Personnel Rules and Regulations, including the provision regarding the Chief Administrative Officer's ability to designate any position as unclassified, should be modified to be better reflective of the City's current hiring activities.

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3. Enhance the collection and maintenance of classification detail for budgeted and filled positions.
 4. Revise the Personnel Policy to prohibit the creation of unclassified positions to validate paying employees higher salaries when their job duties and responsibilities were similar in complexity to that of existing classified positions.
 5. Require that requests for pay adjustments for employees in unclassified positions be supported by a written justification explaining the business need for the salary increase, as well as the Fiscal Impact of the Position Upgrade/Modification form detailing the fiscal years' reductions identified to offset the salary increase.
 6. Develop policies to ensure that salaries for the unclassified positions are not greater than that to which the employee would be entitled under the City's classified pay plan or benefits schedule.
2. THE HIRING PROCESS FOR UNCLASSIFIED POSITIONS LACKS REASONABLE OVERSIGHT TO ENSURE EMPLOYEES ARE GENERALLY QUALIFIED FOR THE POSITION.

The audit found that, although not required, job descriptions were not created for the majority of unclassified positions tested. In a sample of 74 employees in unclassified positions, job descriptions for 40 positions (53 percent) were never created. Annual salaries for these 40 positions total \$4.3 million. Additionally, only 16 employees (21 percent) had applications and/or a resume on file related to their recruitment for the position, and only 10 (13 percent) had evidence to demonstrate verification that the applicant met the position's minimum requirements. While nine positions were publicly advertised, there was only record that four had been interviewed. Also, 50 employees (67 percent) did not have either a Background Investigation Disclosure and Consent Form or a Release of Liability & Felony Identification form on file. As evidenced by our testing, the lack of policies and procedures surrounding hiring practices of unclassified positions not only invites inconsistency in application, but may perpetuate the perception that the City's hiring practices are unfair.

According to the Merit Ordinance, every effort shall be made to fill vacant positions in the City with the best qualified candidate. However, when the CAO designates a position as unclassified, they may choose to set parameters regarding qualifications and/or compensation as a condition of their approval of the position. Without an application and/or resume and clear job descriptions that detail the position's minimum requirements, it is unclear whether the individual hired was in fact qualified for the position. Evidence of a candidate's qualifications is particularly important for unclassified positions since no competitive recruitment process is required. The City is unable to evaluate the performance of many employees in unclassified positions or set performance goals for which employees should strive to achieve, because a job description detailing the position's essential duties and requirements was never created. Additionally, without completion of the

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Relative Statement forms by unclassified employees, the City is limited in its ability to discern whether unclassified appointments are performing their duties free of conflict.

Standards for internal control state that management can help ensure operational success by having the right personnel for the job on board and maintaining continuity of needed skills and abilities. The lack of internal controls, such as formal processes and oversight related to the City's hiring of unclassified positions, increases the risk that employees may not possess the basic job-related qualifications. When the City employs individuals who have not been through the appropriate hiring process or do not meet basic qualifications, it risks having employees who may not be competent to perform the functions of the job for which they were hired. Such actions violate the basic tenets of a merit system and can exacerbate negative perceptions that the City's hiring processes and practices allow for favoritism, including nepotism and cronyism, and do not afford fair consideration of candidates based on qualifications. This risk is further emphasized, as the audit found that, out of a sample of 75 employees in unclassified positions, 55 (73 percent) did not disclose whether they had relatives that worked for the City. Additionally, the audit identified three employees that reported having relatives that worked for the City on their application; however, an associated Relative Statement was not on file. Personnel Rules & Regulations Section 311.2 states that "City employees may not directly supervise, control or influence the work or employment status of a relative or the affairs of the organizational unit in which the relative⁶ is employed." According to management of the Human Resources Department, it is possible that paper versions of these forms were completed and retained in the employees' physical personnel file.

The audit also found that, out of a sample of 15 advertised unclassified positions, there were six instances where the only candidate interviewed received the position. See the table below regarding the six positions.

Position Title	Number of Qualified Applicants	Number of Qualified Applicants Interviewed
APD Curriculum Development Manager	15	1
Deputy Director of Community Safety Field Operations	21	1
Deputy Director of Economic Development	15	1
Deputy Director Transit	17	1
VIP Data Analyst	18	1
VIP Special Project Manager	28	1

The audit found an instance where an unclassified position was advertised with a blank job description, and two positions were reclassified from their original advertisement and offered to

6 - The term "relative" includes spouse, child, stepchild, mother, father, grandparents, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and daughter in-law. The term also includes a domestic partner and the mother, father, brother, sister, child, stepchild, grandparents or grandchild of the domestic partner.

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employees that did not apply to the original advertisement. See table below regarding these two positions.

Original Position Name	Reclassified Position Name
APD Recruiting Manager	Internal Affairs Intake Manager
Deputy Director of Family & Community Services	Dep Dir Hmls Sol Clnc Advisor

Directors, Deputies, and Commanders are senior management appointments charged with running various departments and agencies. Because these positions are ultimately responsible for and a reflection of the performance of the entities they serve, specific job descriptions and formalized performance evaluations may not be necessary.

Requirements for unclassified appointments of non-senior management positions do not exist to ensure candidates possess the appropriate background, experience, and qualifications, nor to ensure that candidates are free from conflicts of interest. A robust internal control system is critical to prevent conflicts of interest of employees. Without effective internal controls, the City cannot reasonably assure that it is mitigating the risk, or the appearance, of public servants' making biased decisions when carrying out the responsibilities entrusted to them. According to the 2013 report titled *Preserving the Integrity of the Federal Merit System: Understanding and Addressing Perceptions of Favoritism*, issued by the U.S. Merit Systems Protection Board, "Employees who believe that their organization engages in favoritism are much less likely to recommend their agency as a place to work. This skepticism regarding fairness could undermine agency recruitment and retention initiatives." To this point, the City's fiscal year 2023 approved budget includes a \$4.3 million reserve specifically for retention incentive payouts to City employees.

RECOMMENDATIONS:

The Chief Administrative Officer should:

7. Require that job descriptions, detailing the position's minimum requirements, be created for future requests for unclassified non-senior management positions.
8. Develop policies that specify when and where applications and/or resumes should be kept on file for employees hired in unclassified positions.
9. Develop policies that specify the frequency at which employees in unclassified positions are required to complete the Relative Statement disclosure form and where completed forms should be retained.
10. Investigate whether a conflict of interest exists regarding the three employees who indicated on their application that they had relatives that worked for the City; require that they complete the Relative Statement disclosure form and that the completed form is retained as part of the

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employee's personnel records.

11. Investigate whether Background Investigation Disclosure and Consent Forms and Release of Liability & Felony Identification Forms were completed and retained for the fifty employees without either. Employees found to have no record of completing the forms should be required to do so and the completed forms should be retained as part of the employee's personnel records.

CONCLUSION

By implementing the recommendations detailed in this report, City Administration can improve its ability to more effectively administer, manage, and oversee the hiring practices of unclassified positions. The Administration's response to the recommendations made is included in APPENDIX B of the report. We greatly appreciate the assistance of the personnel that participated in this audit.

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APPENDIX A

OBJECTIVES

The audit objective was to:

- Determine whether sufficient controls are in place to ensure fair, uniform, and transparent selection of the best-qualified employee for positions.
- Determine whether unclassified employees meet the minimum education and experience requirements for their positions.
- Evaluate the trend in the number, types, and compensation of classified and unclassified positions in the City.

SCOPE AND LIMITATIONS

The scope of the special audit is the City's hiring practices for unclassified positions during the period July 1, 2015 to June 30, 2022, and specific detailed testing for the period of fiscal year 2021 through fiscal year 2022. The audit was performed at the special request of Council Services and was not included in the OIA's annual audit work plan.

This report and its conclusions are based on information obtained from NeoGov and PeopleSoft systems and users; it does not represent an examination of all human resource records, systems, and users. The audit report is based on our examination of functions and activities through the completion of fieldwork on September 27, 2022 and does not reflect events after that date. City management is responsible for establishing and maintaining effective internal control and complying with laws and regulations.

In performance audits, a deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct (1) impairments of effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) noncompliance with applicable laws, regulations, standards, guidelines, and/or best practices. A deficiency in design exists when (a) a control necessary to meet the control objective is missing or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective is not met. In the performance audit requirements, the term significant is comparable to the term material as used in the context of financial statement engagements. A deficiency in operation exists when a properly designed control does not operate as designed, or when the person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

Our consideration of internal control was for the limited purpose described in our audit objectives and was not designed to identify all deficiencies in internal control. Therefore, unidentified deficiencies may exist. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

As part of the performance audit, we tested the City's compliance with applicable laws, and regulations. Noncompliance with these requirements could directly and significantly affect the objectives of our audit. However, opining on compliance with all provisions was not an objective of our performance audit and, accordingly, we do not express an opinion.

We conducted this performance audit in accordance with generally accepted government auditing standards for performance audits, as prescribed in *Government Auditing Standards*, issued by the Controller General of the United States. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

METHODOLOGY

Methodologies used to accomplish the audit objectives include but are not limited to the following:

- Interviewed management regarding staff, procedures, and processes;
- Reviewed and analyzed applicable City policies, procedures, and regulations;
- From a population 3,473 unclassified employees, excluded those with job titles listed in the City's Merit System Ordinance Section 306.2 - Unclassified Employees, and focused on high-risk data points as determined by the audit, Council Services request, and the FY2023 Annual Audit Plan survey to arrive at a final population of 273. Selected a judgmental sample of 39 unclassified employees⁷ and determined, as follows, whether:
 - A job description was created for the employee's unclassified position;
 - The unclassified job requisition was advertised;
 - A completed application and/or resume was on file related to the positions;
 - Employees met the minimum requirements for the position held;
 - An interview occurred for the position;
 - It was verified by management that they employee met the minimum requirements position;
 - The Hiring Justification Memo, Salary/Wage Justification, Background Investigation Disclosure and Consent Form, & Release of Liability and Felony Identification Form were on file;
 - A Relative Statement was on file, if applicable;
 - Documentation in NeoGov and Human Resources files was consistent.
- Determined for a subsample of 15 employees from the judgmental sample detailed above whether a performance evaluation was performed.

⁷ - One employee had two Human Resources actions that were selected for evaluation; therefore, this employee is only counted as one sample.

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- From the population of 273 as detailed above, removed the 39 samples⁸ judgmentally selected to arrive at the remaining population of 233. Selected a random sample of 35 unclassified employees and performed the following:
 - Investigated whether a job description was created for the employee's unclassified position;
 - Checked if the employee's unclassified job requisition was advertised;
 - Ensured there was a completed application and resume on file for employees in unclassified positions;
 - Determined if employees in unclassified positions met the minimum requirements for the position held;
 - Confirmed an interview occurred for employees in unclassified positions;
 - Ascertained if minimum requirements were verified for employees in unclassified positions;
 - Verified the Hiring Justification Memo, Salary/Wage Justification, Background Investigation Disclosure and Consent Form, & Release of Liability and Felony Identification Form are on file;
 - Confirmed a Relative Statement is on record for employees in unclassified positions, if applicable.
- From a population of 1,184 unclassified requisitions, excluded those with job titles listed in the City's Merit System Ordinance Section 306.2 - Unclassified Employees and only focused on filled requisitions to arrive at a final population of 93. Performed a stratified sample across 13 departments for a total sample of 15 filled unclassified positions. From these 15 evaluated 435 applications and performed the following:
 - Determined how many applicants applied for the requisition;
 - Determined whether the applicant met the minimum requirements;
 - Determined whether the applicant was accurately referred or rejected;
 - Determined if the applicant was interviewed.
- From a population of 3,369 human resource actions related to filled unclassified positions for the period of July 1, 2015 to June 30, 2022, performed the following:
 - Examined the trend of unclassified positions;
 - Identified employees that transferred from classified to unclassified positions;
 - Evaluated the salary increases for those employees in unclassified positions.
- Summarized all findings and provided the auditee with recommendations that will help to strengthen internal control, cost savings, and operating efficiency and effectiveness.

8 - One employee had two Human Resources actions that were selected for evaluation; therefore, this employee is only counted as one sample.

Recommendations and Responses

APPENDIX B

For each recommendation, the responsible agency should indicate in the column labeled *Department Response* whether it concurs, does not concur, or partially concurs and provide a brief explanation. If it concurs with the recommendation, it should indicate the expected implementation date and implementation plan. If the responsible department does not concur or partially concurs, it should provide an explanation and an alternate plan of action to address the identified issue.

Recommendation	Responsible Department	Department Response	OIA Use Only Status Determination*
City Administration should: 1. Continue its efforts to conduct a classification and compensation study by an external consultant.	Chief Administrative Officer/Human Resources Department	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur The COVID-19 pandemic changed the work environment for Human Resources profession tremendously, requiring employers to modify hiring practices in order to be flexible and competitive. The Department of Human Resources currently has an active RFP out for bid. We expect the selection of an external consultant (funded in the current budget) to occur by the beginning of 2023. The review of the study is expected to be complete within 1 year of the contract date. Once the study is completed, the City will request an appropriation to fund and implement the recommendations of the study. <u>ESTIMATED COMPLETION DATES</u> Completion date of Class & Comp study -December 2023	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
2. Evaluate whether provisions of the Merit System Ordinance and the Personnel Rules and Regulations, including the provision regarding the Chief Administrative Officer's ability to designate any position as unclassified, should be modified to be better reflective of the City's current hiring activities.	Chief Administrative Officer/Human Resources Department	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur The evaluation of provisions of the MSO and Personnel Rules and Regulations will occur during the Classification & Compensation study. If a determination is made to modify the MSO, the City will work in partnership with the City Council. <u>ESTIMATED COMPLETION DATES</u> Completion date of Class & Comp study -December 2023	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
3. Enhance the collection and maintenance of classification detail for budgeted and filled positions.	Chief Administrative Officer/Human Resources Department	<input type="checkbox"/> Concur <input checked="" type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur The HRD does collect, maintain, and make classification detail available for budgeted and filled positions. The current HR leadership team inherited an antiquated classification system; mostly paper-based. For the last year, the team has invested time and resources to evolve both the system and the processes, including optimizing the HRIS (Human Resources Information Systems) to appropriately capture position detail. In addition, the HRD has purchased a new tool, CompAnalyst, to help better align titles, job duties and responsibilities to external benchmarks. It will also allow us to balance internal pay equity and external competitiveness for all positions within the City. Also, the Class & Comp study will assist with developing better practices on classifying all positions city-wide.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
		<p><u>ESTIMATED COMPLETION DATES</u></p> <p>The use of CompAnalyst will begin immediately; Completion date of Class & Comp study - December 2023</p>	
<p>4. Revise the Personnel Policy to prohibit the creation of unclassified positions to validate paying employees higher salaries when their job duties and responsibilities were similar in complexity to that of existing classified positions.</p>	<p>Chief Administrative Officer/ Human Resources Department</p>	<p><input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur</p> <p>The fundamental purpose of an unclassified position is to provide flexibility for the Administrations in implementing goals and objectives during the administrative term. Maintaining that flexibility allows for the innovation and efficient implementation of new ideas.</p> <p>Furthermore, the current classification and compensation system (last updated in 1999) has not maintained competitive-based pay programs. The classification and compensation study will address guiding principles to appropriately balance unclassified and classified pay practices.</p> <p><u>ESTIMATED COMPLETION DATES</u></p> <p>Completion date of Class & Comp study -December 2023</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
<p>5. Require that requests for pay adjustments for employees in unclassified positions be supported by written justification explaining the business need for the salary increase, as well as the Fiscal Impact of the Position Update/Modification form detailing the fiscal years' reductions identified to offset the salary increase.</p>	<p>Chief Administrative Officer/Human Resources Department</p>	<p><input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur</p> <p>Written justification for pay adjustments on unclassified positions is required by the Human Resources Department. Fiscal Impact of the Position Update/Modification form detailing the fiscal years' reductions are not typically required. Budgetary impacts are maintained by Department of Finance and Administration. This FIA process would need to be developed and implemented through DFAS. The HRD will develop a process and procedure to capture the justification.</p> <p><u>ESTIMATED COMPLETION DATES</u></p> <p>June 30, 2023</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
<p>6. Develop policies to ensure that salaries for the unclassified positions are not greater than that to which the employee would be entitled under the City's classified pay plan or benefits schedule.</p>	<p>Chief Administrative Officer/Human Resources Department</p>	<p><input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur</p> <p>Although the Classification & Compensation Study will address guiding principles, maintaining the flexibilities outlined in the MSO for unclassified positions will be maintained.</p> <p>The city is also working on pay equity within all positions (A pending lawsuit-influenced). Pay disparities are occurring within unclassified and classified positions within the city. An example that exists within Council Services is the position of Senior Administrative Assistant (E13) which is paid higher than comparable individuals in other city departments. It should be noted Council Services does not require CAO approval of unclassified or classified hires or salaries.</p> <p><u>ESTIMATED COMPLETION DATES</u></p> <p>Completion date of Class & Comp study -December 2023</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>
<p>7. Require that job descriptions, detailing the position's minimum requirements, be created for future requests for unclassified non-senior management positions.</p>	<p>Chief Administrative Officer/Human Resources Department</p>	<p><input type="checkbox"/> Concur <input checked="" type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur</p> <p>Although the Classification & Compensation Study will address guiding principles, maintaining the flexibilities outlined in the MSO for unclassified positions will be maintained.</p> <p><u>ESTIMATED COMPLETION DATES</u></p> <p>Completion date of Class & Comp study -December 2023</p>	<p><input type="checkbox"/> Open <input type="checkbox"/> Closed <input checked="" type="checkbox"/> Contested</p>

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
8. Develop policies that specify when and where applications and/or resumes should be kept on file for employees hired in unclassified positions.	Chief Administrative Officer/Human Resources Department	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur The HRD collects either an application or resume for all new hires. This information is maintained their personnel file. Human Resources is currently reviewing all hiring processes. Based on the review of this process from IA, the research for these disclosures was only done through NeoGov. When an employee is appointed into an unclassified position, the hire is processed manually and not through NeoGov. The application and resume are required and provided by the appointee during the interview process or via email and can be located in the employee personnel file. Human Resources will develop a process and procedure to outline what forms will need to be completed and included during this manual appointment process. HR is also currently working with NeoGov to identify other uses within the system to better streamline all onboarding processes. <u>ESTIMATED COMPLETION DATES</u> N/A	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
9. Develop policies that specify the frequency at which employees in unclassified positions are required to complete the Relative Statement disclosure form and where completed forms should be retained.	Chief Administrative Officer/Human Resources Department	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur Human Resources will develop a process and procedure to ensure this is a standard review upon onboarding. <u>ESTIMATED COMPLETION DATES</u> June 30, 2023	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

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Recommendation	Responsible Department	Department Response	<u>OIA Use Only</u> Status Determination*
<p>10. Investigate whether a conflict of interest exists regarding the three employees who indicated on their application that they had relatives that worked for the City; require that they complete the Relative Statement disclosure form and that the completed form is retained as part of the employee's personnel records.</p>	<p>Chief Administrative Officer/Human Resources Department</p>	<p><input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur</p> <p>Human Resources is currently reviewing all hiring processes. Human Resources will investigate if any conflict of interest exists regarding the 3 employees disclosed. Human Resources can develop a process and procedure to ensure this is a standard review upon onboarding.</p> <p><u>ESTIMATED COMPLETION DATES</u></p> <p>The audit of the three individuals will be completed by October 31, 2022 and the process and procedure changes will be completed by June 30, 2023.</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>
<p>11. Investigate whether Background Investigation Disclosure and Consent Forms and Release of Liability & Felony Identification Forms were completed and retained for the fifty employees without either. Employees found to have no record of completing the forms should be required to do so and the completed forms should be retained as part of the employee's personnel records.</p>	<p>Chief Administrative Officer/Human Resources Department</p>	<p><input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur</p> <p>Human Resources is currently reviewing all hiring processes. Based on the review of this process from IA, the research for these disclosures was only done through NeoGov. When an employee is appointed into an unclassified position, the hire is processed manually and not through NeoGov. The Background Investigation Disclosure and Consent Forms and Release of Liability & Felony Identification are required forms and can be located in the employee personnel file. Human Resources can develop a process and procedure to outline what forms will need to be completed during this manual appointment process. HR is also currently working with NeoGov to identify other uses within the system to better streamline all onboarding processes.</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>

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		<u>ESTIMATED COMPLETION DATES</u> December 30, 2022.	
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