

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

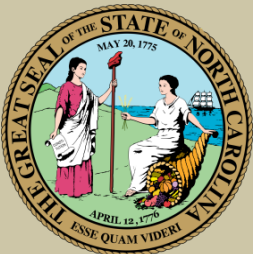
BETH A. WOOD, CPA



CITY OF ROCKY MOUNT

ROCKY MOUNT, NORTH CAROLINA

INVESTIGATIVE REPORT
MAY 2020



NC  **OSA**
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor (OSA) initiated an investigation in response to 213 complaints received through its Hotline and other means concerning misconduct by elected officials and employees of the City of Rocky Mount (City). Upon review of those complaints, OSA determined that a significant number of complaints questioned the appropriateness of operational and management decisions. OSA focused its primary efforts on fraud, waste, and abuse allegations. In addition, several allegations outside of OSA's authority were referred to the appropriate state agencies and legal authorities.

BACKGROUND

The City of Rocky Mount was incorporated on February 19, 1867, and is located in eastern North Carolina in the coastal plains area. The City operates under the council-manager form of government. The legislative body of the government of the City is comprised of a mayor and a seven-member City council.¹

The mayor is elected at-large by the citizens, serves a four-year term, and is the presiding officer of the council. The governing council is responsible for passing ordinances, adopting the budget, appointing committees, and hiring a city manager. City council members serve four-year terms and are elected by the voters of the wards in which they reside. The City is divided into seven wards and a council member who resides in the ward represents each ward. The city manager is responsible for carrying out the policies and ordinances of the governing body, overseeing the day-to-day operations of the City, and appointing the heads of various departments.²

The City provides a full range of services including police and fire protection, sanitation, public improvements, planning and zoning, parks and recreational activities, transportation, general administrative services, and the construction and maintenance of highways, streets, and other infrastructure. The City also operates electric, natural gas, water, sewer, and stormwater utilities for the incorporated and surrounding areas.³

KEY FINDINGS

- Multiple City officials prevented the Business Services Center from attempting to collect \$47,704 in utility bills owed by a City council member.
- Multiple Downtown Development Managers failed to follow program guidelines resulting in \$32,452 of uncollected loans and \$28,000 of improperly awarded funds.
- The Engineering Division's non-compliance with the City's *Code of Ordinances* could cost the City \$31,000.
- The City Manager failed to comply with the City's travel policy resulting in \$1,575 in unallowable travel expenses.

¹ *City of Rocky Mount Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2019.*

² Ibid.

³ Ibid.

EXECUTIVE SUMMARY (CONCLUDED)

KEY RECOMMENDATIONS

- The Business Services Center should be permitted to follow its Customer Service Policy without intervention from other City officials.
- The Assistant City Manager should enhance program oversight and monitoring activities to ensure recipients adhere to program guidelines.
- The Director of Engineering should ensure the City complies with its *Code of Ordinances* requirements regarding performance bonds and letters of credit.
- The City Manager should comply with the City's established policies related to travel.

Key findings and recommendations are not inclusive of all findings and recommendations in the report.

STATE OF NORTH CAROLINA
Office of the State Auditor



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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
Members of the North Carolina General Assembly
Members of the Rocky Mount City Council

Ladies and Gentlemen:

Pursuant to *North Carolina General Statutes §147-64.6(c)(16)* and *§147-64.6B*, we have completed an investigation of allegations concerning the City of Rocky Mount. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General, and other appropriate officials in accordance with *G.S. §147-64.6(c)(12)*. We appreciate the cooperation received from the management and employees of the City of Rocky Mount during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Beth A. Wood'.

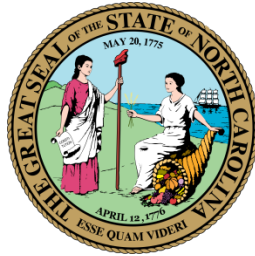
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State Auditor



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BACKGROUND

The Office of the State Auditor (OSA) initiated an investigation in response to 213 complaints received through its Hotline and other means concerning misconduct by elected officials and employees of the City of Rocky Mount (City). Upon review of those complaints, OSA determined that a significant number of complaints questioned the appropriateness of operational and management decisions. OSA focused its primary efforts on fraud, waste, and abuse allegations. In addition, several allegations outside of OSA's authority were referred to the appropriate state agencies and legal authorities.

Our investigation of these allegations included the following procedures:

- Review of applicable *North Carolina General Statutes*; *City of Rocky Mount, NC Code of Ordinances*; and City policies and procedures.
- Examination and analysis of available documentation related to the allegations.
- Interviews with personnel including the former mayor, City council members,⁴ current and former City employees, and vendors.
- Examination and analysis of electronic communications.

This report presents the results of the investigation. The investigation was conducted pursuant to *North Carolina General Statutes § 147-64.6(c)(16)* and *§147-64.6B*.

The City of Rocky Mount was incorporated on February 19, 1867, and is located in eastern North Carolina in the coastal plains area. The City has a population of approximately 54,000 and straddles the Nash County and Edgecombe County line.

The City operates under the council-manager form of government. The legislative body of the government of the City is comprised of a mayor and a seven-member City council.⁵

The mayor is elected at-large by the citizens, serves a four-year term, and is the presiding officer of the council. The governing council is responsible for passing ordinances, adopting the budget, appointing committees, and hiring a city manager. City council members serve four-year terms and are elected by the voters of the wards in which they reside. The City is divided into seven wards and a council member who resides in the ward represents each ward. The city manager is responsible for carrying out the policies and ordinances of the governing body, overseeing the day-to-day operations of the City, and appointing the heads of various departments.⁶

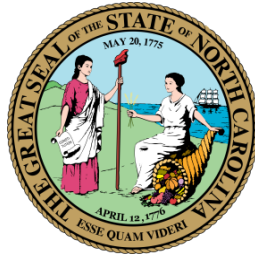
The City provides a full range of services including police and fire protection, sanitation, public improvements, planning and zoning, parks and recreational activities, transportation, general administrative services, and the construction and maintenance of highways, streets, and other infrastructure. The City also operates electric, natural gas, water, sewer, and stormwater utilities for the incorporated and surrounding areas.⁷

⁴ Refers to City council members prior to the general election on October 8, 2019.

⁵ *City of Rocky Mount Comprehensive Annual Financial Report*, Fiscal Year Ended June 30, 2019.

⁶ Ibid.

⁷ Ibid.



FINDINGS AND RECOMMENDATIONS

1. MULTIPLE CITY OFFICIALS PREVENTED THE BUSINESS SERVICES CENTER FROM ATTEMPTING TO COLLECT \$47,704 IN UTILITY BILLS OWED BY A CITY COUNCIL MEMBER

Multiple City of Rocky Mount (City) officials, including previous City managers and the former Finance Director, prevented the Business Services Center⁸ from adhering to its utility Customer Service Policy regarding a City council member's (Council Member) utility account. The City's utility Customer Service Policy outlined various collection methods including discontinuation of service for outstanding bills. However, the Business Services Center staff did not disconnect the Council Member's utility service. Instead, the Business Services Center staff initiated the write-off process for the \$47,704 owed by the Council Member. In addition, the Council Member accumulated an additional \$2,989 delinquent utility balance. Rather than following the normal collection process, multiple City officials gave the Council Member preferential treatment.

Failure to Follow Utility Customer Service Policy

The Business Services Center failed to follow the City's utility Customer Service Policy during the tenure of two former city managers. The former City Manager⁹ prevented staff from disconnecting the Council Member's utility services when he failed to pay his bills timely. As far back as 2003, City officials intervened to prevent disconnection. For example, the Council Member's account file included a statement from a former Business Services Manager that the former Finance Director "stopped disconnect."

Instead of disconnecting the Council Member's services, both the prior City Manager¹⁰ and the former City Manager allowed the Council Member to receive utility services while his delinquent balance continued to accumulate. In 2013 and 2017, under the tenure of the former City Manager, the Finance Director wrote off \$47,704¹¹ in outstanding utility bills for the Council Member.

- In May 2013, \$11,096, which covered utility usage at the Council Member's property¹² from 1999 to 2010, was written off.¹³
- In March 2017, \$36,608, which covered utility usage at the Council Member's property from 1999 to 2013, was written off.

Although the policy required disconnection after 60 days, the Council Member had outstanding balances that dated back to September 1999. As of January 29, 2020, the Council Member owed \$2,989 that exceeded 60 days.

Resulted in \$47,704 in Uncollected Utility Bills

Because multiple City officials over two decades did not follow the City's policy, the Council Member accumulated \$47,704 in uncollected utility bills. The City could have used those funds for operating costs for its public utilities.

In addition, the Council Member continued to receive utility services without paying his fair share. Other City residents had to pay their bills timely to continue to receive services.

⁸ The Business Services Center is a division within the Finance Department.

⁹ The former City Manager served from January 2011 to April 2017.

¹⁰ The prior City Manager served from January 1994 to December 2010.

¹¹ The amounts written off included utility usage charges, late payment fees, and interest.

¹² This is a residential account.

¹³ The total amount of the outstanding utility charges were not written off at this time.

Caused by Preferential Treatment

Multiple City officials involved themselves in the Council Member's account collection outside of the normal process. Typically, the Business Services Center handled account collection including making collection calls, mailing delinquent account notices, establishing payment arrangements, and writing off delinquent accounts. However, the Council Member's delinquent account included involvement by the former City Manager and the Finance Director.

In June 2016, the Business Services Manager contacted the Council Member regarding past due accounts. The Council Member contacted the former City Manager to complain about those conversations. The former City Manager then instructed the Finance Director to handle the Council Member's account moving forward. In a June 10, 2016 email, the former City Manager told the Finance Director, "Ask the Business office to not call [Council Member] about his utilities. If there is an issue either go through you or me." In addition, the former Business Services Manager claimed the former City Manager intervened under the direction of the Council Member whose utilities were past due. However, the former City Manager and the Council Member denied that assertion.

Utility Customer Service Policy Outlines Collection Process

Section 8 of the City's utility Customer Service Policy detailed payment requirements for utility services. Specifically:

Any bill for residential services not paid within twenty-eight days of the billing date is considered delinquent. Any bill for any other class of service not paid within twenty-one days of the billing date is considered delinquent.

The delinquent amount will appear on the current month's bill as a previous balance with a notice that the previous balance must be paid within seven days of the billing date or service will be discontinued.

Further, Section 13 specified when a customer's utility services should be disconnected. The policy stated:

It is the policy of the City to discontinue utility service to customers by reason of nonpayment of bill only after proper notice and a meaningful opportunity to be heard on disputed bills.

If the City plans to interrupt the customer's service due to failure to pay, and if the customer can show that he/she is unable to pay the account in full at once, the customer may make installment payments designed to pay the delinquent account in full within 3 months and to keep all present and future accounts current. Under extraordinary circumstances, the Director of Finance may extend this period to 6 months. Under special circumstances, the City will not interrupt service during the winter [between November 1 and March 31]. (See Section 14 of the Customer Service Policy.)

RECOMMENDATIONS

The Business Services Center should be permitted to follow its Customer Service Policy without intervention from other City officials.¹⁴

¹⁴ A recommendation could not be made to collect on the utility bills written off because the time to commence an action may have expired pursuant to *NC General Statute §1-52*.

The Business Services Center Manager should review all accounts and disconnect services for accounts overdue in accordance with the policy.

2. MULTIPLE DOWNTOWN DEVELOPMENT MANAGERS FAILED TO FOLLOW PROGRAM GUIDELINES RESULTING IN \$32,452 OF UNCOLLECTED LOANS AND \$28,000 OF IMPROPERLY AWARDED FUNDS

City of Rocky Mount (City) Downtown Development Managers failed to follow program guidelines for the downtown roof replacement and building assistance programs. As a result, the City failed to collect loan payments of \$32,452 and inappropriately awarded grants totaling \$28,000 to ineligible recipients. The Downtown Development Managers did not adequately oversee these programs. Program guidelines outlined proper program management procedures.

Failure to Follow Program Guidelines

Downtown Development Managers failed to adhere to program guidelines for the Downtown Roof Replacement Assistance Program and Downtown Business Assistance Program. Specifically, these managers failed to collect loan payments from property owners and awarded funds to ineligible recipients.

Downtown Roof Replacement Assistance Program (DRRAP)

DRRAP is a City program funded solely through local funds that assisted owners of commercial properties that had roof problems within the downtown revitalization area. Approved applicants received a maximum of \$10,000 in the form of a loan at three percent interest to assist with roof replacement. Loan repayments during the first year were set at \$50 per month to encourage property owners to obtain a Certificate of Occupancy within one year of the loan. Once a property owner received a Certificate of Occupancy, the loan balance was forgiven as long as the property met all City and Historic Preservation guidelines.

The prior Downtown Development Manager¹⁵ failed to follow program guidelines for the following five properties:

- The prior Downtown Development Manager failed to initiate collections on DRRAP loans for four properties that either did not obtain a Certificate of Occupancy as required or obtained it well after the one-year incentive period. The repayments, if made, would have totaled \$32,452.
- The prior Downtown Development Manager awarded an \$8,000 loan to an ineligible property located outside the boundaries of the Downtown Revitalization Area.

Downtown Building Assistance Program (DBAP)

DBAP is a City program funded solely through local funds that attempted to attract new businesses and create jobs in the Central City Business District by making funds available to match private investment in exterior and interior building improvements in that area. Approved applicants received funding on a 50/50 match basis with a maximum grant award of \$20,000 per parcel. Any work done prior to the approval of a grant application was not eligible for funding.

¹⁵ The prior Downtown Development Manager served in this role from October 2010 through October 2013.

The former Downtown Development Manager¹⁶ failed to follow program guidelines for a \$20,000 grant for the DBAP by:

- Allowing construction work completed by the property owner prior to the approval of the application to be considered as reimbursable funds.
- Not requiring a property owner to obtain a Certificate of Occupancy for the property at the time of application or upon completion of the project as required by program guidelines.

Resulted in Uncollected Loans and Inappropriate Grant Awards

The uncollected DRRAP loan repayments totaling \$32,452 could have been used for other City projects or expenditures.

Improperly awarded DRRAP and DBAP program funds totaling \$28,000 could have been awarded to another eligible applicant or used for other City expenditures.

Caused by Failure to Follow Guidelines and Inadequate Oversight

The prior Downtown Development Manager and former Downtown Development Manager¹⁷ failed to follow or elected to ignore program guidelines. In addition, the former Director of Community and Business Development¹⁸ did not provide adequate oversight.

Roof Replacement Program and Building Assistance Program Guidelines and Code of Ordinances Outlined Proper Program Management Practices

The DRRAP guidelines¹⁹ contained the following provisions:

- “Commercial properties located within the boundaries indicated on the map of the Downtown Revitalization Area...are eligible to participate in the Roof Replacement Assistance Program.”
- “All loans shall be secured by a Promissory Note, Loan Agreement and Deed of Trust and shall bear an annual interest of 3% and amortized over a five year period. The loan will be payable in installments and forgiven once a certificate of compliance/occupancy is secured for the building or portion of the building. To provide further incentive to the property owner to obtain the certificate of occupancy within one year of the grant, the payments for the first year of loan will be \$50.00 per month.”

The DBAP guidelines provided that:

- “To be eligible for funding from the grant, the building must qualify for a Certificate of Occupancy at the time of application or at the completion of the project. (In other words, the grant may not be used for improvements to a building which may not be occupied due to code violations or issues.)”

¹⁶ The former Downtown Development Manager served in this role from May 2014 through October 2018.

¹⁷ The prior Downtown Development Manager position reported to the Assistant City Manager. The former Downtown Development Manager position reported to the Director of Community and Business Development.

¹⁸ The former Director of Community and Business Development resigned on September 19, 2019.

¹⁹ The DRRAP guidelines originated in 2011 and were revised in 2014. However, none of the revisions resulted in substantive changes to program requirements.

- “In order to receive funding, the application must show that upon completion of scheduled improvements, and in order to receive award funds, the property must at a minimum receive a [Certificate of Occupancy].”
- “Subject to the availability of funding, incentives will be awarded on a 50/50 matching basis with a maximum grant award being \$20,000 per parcel. Any work done prior to the approval of a grant application is not eligible for funding.”
- “Reimbursement or payment will only be made for materials and labor not performed by the owner. There will be no reimbursement or payment for labor performed by the owner. However, labor performed by the owner may be credited as match for the grant provided that the labor can be verified, the labor is applicable to the project approved for funding and the labor rate is reasonable in line with market rates.”

RECOMMENDATION

The Assistant City Manager, who is currently serving as the interim Director of Community and Business Development, should enhance program oversight and monitoring activities to ensure recipients adhere to program guidelines.²⁰

3. THE ENGINEERING DIVISION’S NON-COMPLIANCE WITH THE CITY’S *CODE OF ORDINANCES* COULD COST THE CITY \$31,000

In 2009, the City of Rocky Mount (City) Engineering Division violated the City’s *Code of Ordinances* by not collecting on a letter of credit²¹ as required after two years. Instead, the City allowed a developer²² to renew the letter of credit related to required improvements to a subdivision. In 2010, the Engineering Division allowed the letter of credit to expire. The City did not collect any funds from the letter of credit even though the developer did not complete the improvements. The City ultimately agreed to provide “an amount not to exceed \$31,000” to another developer for the needed improvements nine years later.

Engineering Division management chose to follow a practice that did not comply with the *Code of Ordinances* by allowing the developer to renew its letter of credit beyond two years. Additionally, the Engineering Division did not clearly assign responsibility for monitoring letters of credit. The *Code of Ordinances* required that letters of credit should not exceed two years from the date of Planning Board approval.

Failure to Comply with City’s *Code of Ordinances*

The Engineering Division did not comply with the City’s *Code of Ordinances* when it failed to properly review an expiring letter of credit. The letter of credit ensured the completion of required improvements for a subdivision. However, the Engineering Division allowed the letter of credit to extend beyond the two-year maximum period permitted by the *Code of Ordinances*.

²⁰ A recommendation could not be made to collect the funds because the time to commence an action may have expired pursuant to *NC General Statute § 1-52*.

²¹ A letter of credit is a financial instrument used by banks to guarantee a buyer’s (developer) obligations to a seller (City).

²² A partner in the development company was also the City’s mayor from December 2007 to December 2019, which encompasses the date of the renewal.

In October 2007, a developer obtained a one-year letter of credit for \$32,868 to complete remaining improvements to a 31-lot subdivision. That same month, the City's Planning Board approved the final plat.

In October 2008, the Engineering Division allowed the developer²³ to renew the letter of credit for an additional year. In October 2009, the Engineering Division allowed the letter of credit to be renewed again despite the developer not completing improvements within the required two-year period.

In October 2010, the letter of credit expired and the Engineering Division failed to initiate the collection process for the \$32,868.

Resulted in Potential Costs of \$31,000 to Complete Improvements

The failure to follow the City's *Code of Ordinances* could cost the City \$31,000. Because no work was performed on the subdivision between October 2010 and August 2018, the total costs of needed improvements increased. In 2019, the City entered into an agreement with another developer. The City agreed to pay "an amount not to exceed \$31,000" of the estimated \$123,270 of necessary improvements to the subdivision.

The Engineering Division failed to call on the letter of credit that could have been used to complete the required improvements to the subdivision. Because the letter of credit expired in 2010, the Engineering Division lost its opportunity to collect the \$32,868 letter of credit which could have been used to offset necessary improvements.

Caused by Engineering Division Management Decision

The Director of Engineering (Director) told investigators that the Engineering Division chose not to follow the two-year limitation on letters of credit. Instead, the Director said he allowed developers to renew letters of credit beyond two years unless he believed a developer would be unable to complete improvements.

Code of Ordinances Requirements

The *Code of Ordinances* outlined the requirements for guaranteeing improvement completion. Specifically, Section 1310A.2 of the *Code of Ordinances* required that:

If the subdivider has not completed all of the required improvements or has completed the improvements which have not been approved by the director of engineering, the subdivider shall file with the city a performance bond from a surety company...with a financial institution designated as an official depository of the city in the amount of one hundred ten (110) percent of the estimated cost of said improvements as estimated by the director of engineering. Said bond, letter of credit or check shall be in a form or manner acceptable to the city prior to approval of the final plat. **Said guarantees shall be for a specific period of time not to exceed two (2) years from the date of planning board approval of the final plat.** [emphasis added]

²³ A partner in the development company was also the City's mayor from December 2007 to December 2019, which encompasses the date of the renewal.

RECOMMENDATION

The Director of Engineering should ensure the City complies with its *Code of Ordinances* requirements regarding performance bonds and letters of credit.

4. THE CITY MANAGER FAILED TO COMPLY WITH THE CITY'S TRAVEL POLICY RESULTING IN \$1,575 IN UNALLOWABLE TRAVEL EXPENSES

The City Manager failed to comply with the City of Rocky Mount's (City) travel policy resulting in \$1,575 in unallowable travel expenses. From July 2016 through May 2019, the City paid for travel expenses that exceeded the per diem rate or lacked a clear business purpose. The City Manager chose to disregard the City's travel policy which specified a per diem rate for meals.

City Paid for Travel Expenses that Exceeded Allowable Amounts

From July 2016 through May 2019, the City paid for travel expenses for the City Manager that exceeded the per diem rate. The City paid for the City Manager's actual meal expenses in excess of the amounts allowable under the City's travel policy. Investigators identified 23 instances totaling \$1,575 in which the City Manager's meal expenses exceeded the allowable rate.²⁴ Of this total, the City Manager charged \$1,531 on a credit card issued to her by the City. She charged the remaining \$44 on her personal credit card and was later reimbursed.

Resulted in \$1,575 in Unnecessary Travel Expenses

The City spent \$1,575 in unnecessary travel expenses. These funds could have been used for other City programs.

Caused by Disregard for the Travel Policy

The City Manager disregarded the established travel policy. She believed that she was exempt from the City's travel policy and not subject to per diem amounts. In an email dated October 5, 2018, the City Manager stated, "I am not to be held to any city policy or practice that restricts my food choices, the number of times I chose to eat, or the cost of my meals while on official business and/or travel for the city." In the same email, the City Manager further stated, "limitations imposed by anyone on my ability to chose [sic] my meal selections restricted to a per diem, or the practice of deducting for meals that appear on a meeting or conference agenda is not recommended or advisable and therefore, will not be undertaken in the reconciliation of my travel reports."

In addition, the City Manager failed to familiarize herself with the City's travel policy. When investigators asked the City Manager about the City's per diem rates, the City Manager said, "I don't even know what the per diem is."

²⁴ On two occasions, the City Manager used her City-issued credit card to charge a total of \$892 of unallowable travel expenses for meals for others including some Council members and their spouses.

City Policies Outline Allowable Travel Expenses

The City’s Travel, Training, and Business Meeting Expense Reimbursement policy specified that employees may receive a per diem for meal expenses during overnight travel. The per diem rate is \$8 for breakfast, \$11 for lunch, and \$21 for dinner. According to the policy, “meals that are included in an events registration costs should not be claimed as a per diem expense.”

The City’s Credit Card Policy sets forth the requirements for charges related to travel:

Charges related to travel, training, and meeting expenses must be in compliance with the City of Rocky Mount Administrative Policy II.9 Travel, Training, and Business Meeting Expense Reimbursement. Meals are paid at a per diem. Use of the credit card for meals is subject to settlement on the travel reimbursement report.

RECOMMENDATIONS

The City Manager should comply with the City’s established policies related to travel.

The City should require employees to sign acknowledgement forms stating they have read and will comply with the City’s policies related to travel.

The City should seek repayment from the City Manager for travel expenses that exceeded allowable amounts.

5. THE CITY DID NOT DESIGNATE AN AMERICAN WITH DISABILITIES ACT COORDINATOR AS REQUIRED BY FEDERAL LAW

The City of Rocky Mount (City) failed to designate an American with Disabilities Act (ADA) coordinator since 2010. As a result, citizens and City employees may not have known to whom to report ADA matters and potential ADA violations. City officials did not realize that an ADA coordinator had not been designated. Federal regulations required the designation of an ADA coordinator for public entities with 50 or more employees.

Failure to Designate an ADA Coordinator

The City has not had a designated ADA coordinator since 2010. In 1992, the City adopted an ADA Transition Plan which identified the former Director of Human Relations as the designated ADA coordinator. When this Director of Human Relations retired in January 1998, the City designated the successor Director of Human Relations as the ADA coordinator. The successor Director of Human Relations retired in September 2010. However, multiple City Managers did not designate another employee as the ADA coordinator after her retirement.

Resulted in Increased Risk of Noncompliance with the ADA

Since 2010, citizens and City employees did not have a designated contact for reporting allegations of potential violations of the American with Disabilities Act. This could result in noncompliance with ADA regulations and place the City at greater risk of legal liability for ADA violations.

Caused by Lack of Oversight by City Manager

In 2010, the prior City Manager²⁵ failed to designate a new ADA coordinator when the prior ADA coordinator retired. The current City Manager failed to recognize the existence of a requirement to designate an ADA coordinator. Specifically, the City Manager stated, "I don't think there is anyone that I am aware of that I would contact specifically about ADA; it just depends on what the issue is."

Americans with Disabilities Act Required Coordinator Role

28 CFR § 35.107 - *Designation of responsible employee and adoption of grievance procedures*, provided that:

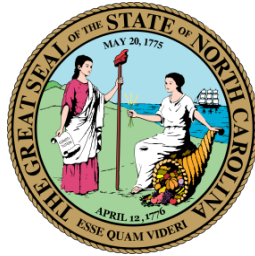
(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

RECOMMENDATION

The City Manager should designate an ADA coordinator and make the coordinator's name, office address, and telephone number available to all interested individuals.

²⁵ The prior City Manager served from January 1994 to December 2010.



STATE AUDITOR'S RESPONSE

The Office of the State Auditor (OSA) strives to provide reports with complete and accurate information to the Governor, the General Assembly, and the citizens of North Carolina. When the response to an OSA investigation potentially **obscures** an issue, **misleads** the reader, or inappropriately **minimizes** the importance of investigative findings and recommendations, OSA provides clarifications regarding the entity's response.

In its response to this investigative report, the City of Rocky Mount (City) made several statements that attempted to obscure issues, mislead the reader, and minimize the importance of OSA's findings and recommendations. To ensure complete and accurate information, OSA offers the following clarifications.

Failure to Follow Utility Customer Service Policy

OSA investigators found that multiple City officials, including previous City managers and the former Finance Director, prevented the Business Services Center from adhering to its utility Customer Service Policy regarding a City council member's (Council Member)²⁶ utility account. Investigators further determined City officials intervened to prevent disconnection of the Council Member's utilities and that the Business Services Center staff ultimately initiated the write-off of \$47,704 owed by the Council Member.

The City's response **inaccurately** claimed that, "A total of \$47,000 has never been substantiated by City Staff or the OSA but was gleaned from a data dump performed by the City's Finance Department." The City's Finance Department and OSA investigators both substantiated the \$47,704 write-off amount. Investigators obtained the **underlying account detail** for each of the two write-offs (totaling \$47,704) for the Council Member's utility account.

The City's response referred to a "data dump" which, in actuality, consisted of detailed records of billings, payments, interest, and penalties for the Council Member's utility account dating back as far as October 1999. Additional supporting documentation of the \$47,704 included notes to the Council Member's utility account dating back to January 2001. Of the **234** notes for that utility account, at least **125** of these notes recorded by Business Services Center staff related to communications with the Council Member regarding late payments, broken payment arrangements, returned checks, and balance inquiries.

The City's response claimed that the Council Member's account may have been subject to "manipulation" **without providing any evidence** to support that claim. A review of the utility account notes revealed **no** references or claims by the Council Member of any manipulation to his account nor challenges to the amounts owed.

In its response, the City blamed the high write-off amount on "high usage of wastewater over a sustained time." However, according to the account detail, only \$3,066 (6.4%) of \$47,704 written off was attributable to wastewater usage.

The City's response attempted to justify the preferential treatment given to the Council Member regarding his delinquent utility account balances by stating that other customers were treated in a similar fashion. OSA's report noted that, "The former City Manager then instructed the Finance Director to handle the Council Member's account." The City provided **no evidence** that any other customer had their outstanding utilities accounts handled in this manner.

²⁶ The Council Member currently serves on the Rocky Mount City Council.

The City's proposed corrective action to restructure the Business Services Center by removing the Finance Director from direct oversight did not address the problem of preferential treatment. Additionally, the City's assertion that it "will continue to follow our collection policies and practices..." demonstrates an **unwillingness** to acknowledge that the City failed to follow its collection policies in the past.

The City's response also noted planned corrective action of providing training on best practices. However, best practices training would not prevent the City from giving preferential treatment to elected officials.

Not Following Grant Program Guidelines

Downtown Roof Replacement Assistance Program

In its response, the City **inaccurately** claimed a certificate of occupancy (CO) was not required for grant eligibility for the property at 325 Nash Street. The City **improperly** asserted that a CO was not necessary because an operating business existed at that location on the grant award date. However, the *Roof Replacement Assistance Program Guidelines* (Program Guidelines) **did not waive** the CO requirement if an operating business existed on the grant award date. In addition, the City failed to provide any documentation (including a CO) for the grant for this property.

The City's response also noted that the property at 116 Tarboro Street "received a CO during the 5 year term..." and **admitted** it did not attempt to collect on the loans for properties at 118 Sunset Avenue and 112 Tarboro Street. According to the Program Guidelines, the City should have collected loan payments on all properties until those properties obtained COs. The City **could not provide evidence** of any efforts to collect loan payments for **any** of the above four properties.

In its response, the City challenged the disqualification of the property at 300 N. Grace Street and argued that properties on Grace Street fell within program boundaries "as eligible for grants." However, Program Guidelines stated, "Commercial properties located **within** [emphasis added] the boundaries located on the map of the Downtown Revitalization Area ... are eligible to participate in the Roof Replacement Assistance Program." The property at 300 N. Grace Street was located **outside** the Downtown Revitalization Area boundary line.

Downtown Building Assistance Program

The City's response claimed that "The City did not have a file on this grant [119-121 N. Washington Street], but from the documents provided by OSA it appears that the work covered by the grant was completed after the application was made." This statement is misleading to the reader. The work done on the Washington Street property that was questioned by the investigators was work that was completed **before** the grant application **approval** in November 2014. The *Downtown Building Assistance Program Guidelines* required, "Any work done **prior to the approval** [emphasis added] of a grant application is not eligible for funding."

Noncompliance with Code of Ordinances

In its response, the City acknowledged its practices did not comply with its policy and that it failed to monitor the expiration of the letter of credit as investigators noted in the report.

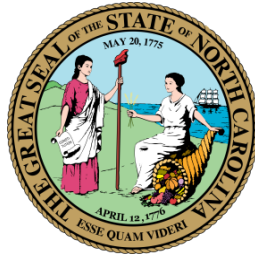
However, the City failed to acknowledge the lost funds that could have been collected if the letter of credit had not been allowed to expire.

Unallowable Travel Expenses

Rather than addressing the failure to comply with travel policies, the City's response focused on the fact that \$892 of the unallowable travel expenses²⁷ related to two dinners at conferences. The City failed to note that these unallowable expenses included meals for City Council member spouses or that the costs for each meal far exceeded the allowable per diem rate. Specifically, the City Manager used the City's credit card to charge an average of \$95.40 per person for one meal and \$50.69 per person for the other meal instead of the allowable \$21 per diem dinner rate. These amounts clearly did not represent a prudent use of taxpayer funds.

In its response, the City argued that the City Manager was allowed to exceed the per diem rate "as a reasonable accommodation for her medical condition." However, City policies included no medical exceptions to the per diem rate. In addition, a review of the City Manager's meals expenses included extravagant items such as lobster and steak dinners (total cost \$87.30 at one meal and \$74.06 on another occasion) and an individual steamed seafood bucket (\$56.95 total cost). Again, these expenses did not represent a prudent use of taxpayer funds.

²⁷ Investigators questioned \$892 of the total \$1,416.12 spent for meals at conferences in Charlotte (\$858.62) and Asheville (\$557.50).



RESPONSE FROM THE CITY OF ROCKY MOUNT

5/1/20
(updated 5/8/20)

**CITY OF ROCKY MOUNT RESPONSE TO
OFFICE OF STATE AUDITOR'S DRAFT
FINDINGS AND RECOMMENDATIONS**

**1. MULTIPLE CITY OFFICIALS PREVENTED THE BUSINESS SERVICES
CENTER FROM ATTEMPTING TO COLLECT \$47,704 IN UTILITY BILLS
OWED BY A CITY COUNCIL MEMBER**

The City's Response: The write off amount the City reported due to the Council Member (customer) did not have supporting documentation in the form of printable billings that verified the total amount. A true or even proximate value could never be reconciled to the amount that was reported to the OSA. A total of \$47,000 has never been substantiated by City Staff or the OSA but was gleaned from a data dump performed by the City's Finance Department. The write off in question was conducted by City Finance management officials according to City procedures without interference from the City Council or former City Management.

In addition, many of the balances referenced by the OSA dating back to 1999 were much higher than normal residential accounts and defied logic as to how the calculations of those amounts were made, much less confirmed. It is not clear whether the OSA investigated, when informed, that the account in question was subject to possible manipulation by unauthorized City staff for a good portion of the time that the write-offs covered.

The reported \$47,000 write off was comprised of two accounts that had a huge discrepancies in the periods of activity. The balances accumulated quicker on an account that had less time open than the one that was open longer. There was no confirmation from City Finance staff that could confirm the validity of the amount reported other than the data dump. This is not sufficient evidence to conclude that those balances were accurate and legitimate. During this time the utility account clearly evidenced high usage of wastewater over a sustained time. The utility customer was never notified by City Finance staff, which is normal City procedure, when there is higher than normal water and wastewater usage. That amount was never reconciled with the customer, nor adjusted by the City.

The OSA appeared not to take into account that there were other utility account holders, both residential and business, with payment arrangements beyond the 60 days policy period that were active and ongoing. There were several business and residential accounts that were written off at the same time. Staff also provided information on over 30 accounts with delinquent balances with continuing active service. It does not appear these accounts were investigated. The fact this account holder is current on all other utility accounts was never represented or reported.

The OSA alleges that the City gave preferential collections treatment to a member of the City Council. However, City Staff also presented other incidents where numerous accounts were managed with customers in similar fashion to the City Council representative.

Corrective Action: The City Manager will reorganize the organization into a single centralized function for utility billing and collections, fees and loan payments and collection into one department that reports to the City Manager. Through the statutory responsibilities assigned to the Finance Director (reports to the City Manager) and the additional oversight of the Internal Auditor (reports to the City Manager with quarterly reports to the City Council) and the City Manager, we will ensure that we will continue to follow our collection policies and practices, and retain all billing information for all debt collected upon and owed to the city. We will also investigate best practices for training all personnel involved in loan arrangements and collections.

Individual Responsible for Corrective Action: City Manager

Time for Completion: 30 days

2. MULTIPLE DOWNTOWN DEVELOPMENT MANAGEMENT FAILED TO FOLLOW PROGRAM GUIDELEINES RESULTING IN \$32,452 OF UNCOLLECTED LOANS AND \$28,000 OF IMPROPERLY AWARDED FUNDS

The City’s Response: The five (5) roof replacement grant properties identified in conversation with the OSA are set out below:

Roof Replacement Grants				
<u>Fiscal Year</u>	<u>Property</u>	<u>Amount</u>	<u>Check Date</u>	<u>CO Received</u>
FY 2012				
118 Sunset Avenue	Building For Life Computer Center	8,152.00	3/27/2012	Property foreclosed on prior to issuance of CO, new owner got CO
112 Tarboro Street	Canade Enterprises	8,394.00	3/20/2012	No CO
325 Nash Street	D&P Enterprises	10,000.00	3/20/2012	Operating business on date grant issued, no CO required
FY 2013				
300 N Grace Street	Rocky Mount OIC	8,000.00	5/21/2013	2/11/2013
FY 2014				
116 Tarboro Street	Garland Clark	10,000.00	10/1/2013	1/21/2016

The Downtown Roof Replacement Assistance Program provides approved applicants with a loan of up to \$10,000 at 3% interest. Loan repayments are set at \$50 per month during the first year. Once a Certificate of Occupancy is received the loan balance is forgiven. If the CO is not received during the first year the 3% interest payments begin, with principal and interest amortized over the remaining 5 year term of the loan. Once a CO is received the remaining principal balance is forgiven.

According to the City’s records all of the above properties received a CO during the 5 year term or already had a CO on the grant date except for 118 Sunset Ave. (foreclosure property) and 112

Tarboro Street. The City's records do not indicate collection effort were undertaken with respect to either of these properties.

300 N. Grace Street is located on the western side of Grace Street, and received an \$8,000 roof replacement grant. The boundary line for the roof replacement eligible properties runs down Grace Street. The OSA interprets this as making properties on eastern side of Grace Street as eligible and properties on the western side of Grace as ineligible. The City however, has consistently interpreted property located on both sides of "boundary streets" as eligible for grants, and that interpretation continues in effect today.

OSA advised the City that the former Downtown Development Manager did not follow DBAP guidelines for 119-121 N. Washington Street. The City did not have a file on this grant, but from the documents provided by OSA it appears that the work covered by the grant was completed after the application was made.

Corrective Action: The City has employed a new Community and Business Development Director that reports to the Assistant City Manager. Oversight for the loan programs are vested in the Director and the Assistant City Manager. The centralization of collection and accountability for all loan collection will include oversight of the Business Services Director, the Finance Director, the Internal Auditor and the City Manager through monthly compliance reporting.

Individual Responsible for Corrective Action: Assistant City Manager

Time for Completion: 30 days

3. THE ENGINEERING DIVISION'S NON-COMPLIANCE WITH THE CITY'S CODE OF ORDINANCES COULD COST THE CITY \$31,000

The City's Response: Section 1310A.2 of the City's Code of Ordinances requires that a developer provide security guaranteeing the completion of all subdivision improvements prior to approval of the final plat. Final plat approval enables the developer to begin selling lots in the subdivision. The Ordinance provides that "Said guarantees shall be for a specific period of time not to exceed two (2) years from the date of planning board approval of the final plat." It is clear the initial guarantee must be for a specific period of time not to exceed two (2) years. However, the Ordinance does not address the question of whether the two (2) year period can be extended. The City does not read the Ordinance to require that all improvement must be completed within two (2) years and has routinely extended the time period if the developer continues to maintain adequate security and is working in good faith to get the subdivision completed. In the City's view this complies with Ordinance. This practice is consistent with the practices of other local government across the State, particularly during real estate downturns. The only other option is to collect on the security and complete the improvements, something most local government are not equipped to do, and thus undertake as a last resort.

However, since the OSA interprets the provision as putting a two (2) year limit on the time for completion of all subdivision improvements, the City will amend this section of the Code to be consistent with current practice. The problem with this subdivision was not the length of time granted for the developer to complete the improvements, but the failure of the City to realize the letter of credit was about to expire

The work in the subdivision by the new developer has not been completed as of this date. The City anticipates its reimbursement obligation under the contract with the new developer will be approximately \$13,000. All work has been completed except one patch.

Corrective Action: The City will amend the Code of Ordinances to specifically state that the time period for subdivision guarantees may be extended beyond the initial two (2) year period. The City has already put in place enhanced procedures to improve tracking of letters of credit to ensure they are either renewed or called prior to expiration if the improvements have not been completed.

Individual Responsible for Corrective Action: Director of Engineering

Time for Completion: 60 days

4. THE CITY MANAGER FAILED TO COMPLY WITH THE CITY'S TRAVEL POLICY RESULTING IN \$1,575 IN UNALLOWABLE TRAVEL EXPENSES

The City's Response: Most of the \$1,575 was related to dinners purchased by the City Manager for the City Council and staff at two (2) conferences: National League of Cities, Charlotte (\$858.62) in November 2017, and ElectriCities, Asheville (\$557.50) in August 2018.

As for the balance, the City Manager presented documentation to the Finance Director that additional meal expenses were required as a reasonable accommodation for her medical condition had been established and placed in the records of the City's Occupational Health Office in 2018. The City Manager believed that she was granted a medical exception because the Finance Director did not direct her to do anything different.

Corrective Action: The travel policy will be amended to provide for reimbursement of additional and reasonable travel expenses incurred by an employee on official City business and determined to be necessary as a reasonable accommodation by the City's ADA Coordinator.

Individual Responsible for Corrective Action: City Manager

Time for Completion: 30 days

5. THE CITY DID NOT DESIGNATE AN AMERICAN WITH DISABILITIES ACT COORDINATOR AS REQUIRED BY FEDERAL LAW

The City's Response: The City agrees that it should designate at least one employee as an ADA Coordinator

Corrective Action: Appoint two (2) ADA Coordinators and make the Coordinators' names, office addresses, and telephone numbers available to all interested individuals.

Individual Responsible for Corrective Action: City Manager

Time for Completion: 15 days

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This investigation required 4,058 hours at an approximate cost of \$421,284.