

To: Members of the City Council

Date: April 15, 2011

From: Debbie L. Mahler, Director of Finance/City Clerk

Meeting Date: April 18, 2011

Subject: Status of Audit recommendations

This staff report presents an overview of the steps taken to address the recommendations addressed in the Management Letter of the State Auditor's office.

BACKGROUND/ANALYSIS

As you are aware, the State Auditor's office conducted an accountability audit for the period of January 1, 2009 through October 31, 2010. There were no findings or any reportable problems, but they did note areas where the City's internal controls could be improved and these were outlined in a Management Letter. I will go through each item that was addressed.

1. **Contract Review and Monitoring of the City's Building Official.** The general issue raised in this section of the Management Letter was that the City did not perform adequate review of the contracted Building Official's invoices to insure it received the services being paid for.

With respect to the registration fees for two conferences in 2009, the Mayor did authorize the Building Official in advance to attend the Washington Association of Building Officials conference. The purpose of the conference was to enable the Building Official to be current on building code issues and to enable him to perform services on behalf of the City in a competent and efficient manner. While there is not a specific reference to payment for such training in the contract, the City received value in the training that the Building Official received and the City considered the training as included within the general scope of services to be provided to the City.

With respect to billing to permit numbers that didn't exist, the reason is human error. Transposing numbers and incorrect entry for example: job number 08-05-052 was entered as 08-04-052 and not corrected. The actual job reference number "052" was entered correctly however the building type was indicated incorrectly as "04". The errors did not affect the account to which the billings were applied. However, we have verified with the Building Official that all billed work was performed. While some of the Building Official's billing was for work that was performed where permit numbers did not exist, we have verified with the Building Official that the work was in fact performed

and the reason why there was not a permit number is that the tasks performed were general administrative work not tied to any one project such as meetings with potential applicants to discuss projects, time spent fielding questions from the public; internal meetings with staff, filing, code studies, etc.

With respect to calculation of fees for permits, the Building Official did determine fees utilizing the fee schedule established by City Ordinance, and while not available in every file, such calculations were performed in accordance with the City's fee schedule and all applicable codes. The valuation of the buildings and all fees calculated are shown on the all permits. City policy has also now been revised to retain a copy of the calculation sheet in every file. Additionally, the Building Official is now a part-time City employee and no longer a contractor.

2. **Unauthorized Board Action.** The concern raised is that by an ordinance adopted in November, 2008, which stated the Mayor would be "deemed an employee". While the ordinance may admittedly have been in-artfully worded, it is up to the legislative body – the Langley City Council to determine the intent and meaning of the ordinance. The intent of the words "deemed an employee" as used in the ordinance and as declared by the City Council is that the Mayor would be treated the same as an employee for purposes of benefits, but not made an employee. In order to clarify the City Council's intent and as the Auditor has correctly noted, in September, 2010 the City Council adopted a revised ordinance deleting the language which was of concern.

3. **Restricted Revenues.** The issue raised by the Auditor is that the City used hotel/motel taxes for an unallowable purpose. The specific concern raised was that the City paid amounts to maintain City parks and trees in 2009 and 2010. Previous audits have never raised a complaint about this practice which was put into place by the City Council twelve to fifteen years ago and has been previously looked at many times. The City felt that the improvement and maintenance to its parks does have a direct nexus to the promotion of tourism as required by State law. However, the Auditor is not requiring the City to return any of these funds that were used to maintain parks and the City changed the allocation of those funds in the 2011 budget. The 2011 allocation of hotel/motel taxes was changed to reimburse police and public works wages and benefits spent on special events such as Choochokum, to pay for new signage, to support the Whidbey Children's theater, and increased the amount paid to the Langley Chamber of Commerce for promotion of tourism. These budget allocations were reviewed and approved by the Auditors while they were here.

4. **Whistleblower Policy.** The issue of concern raised by the Auditor was that while the City does have a whistle blower policy it did not comply with it when it did not respond to an employee's complaint in a timely manner. The employee raising concerns stated a large number of inter related and complex issues that all had to be investigated. The initial complaint was issued on 11-30-09. By memo dated 12-4-09, the City did clearly respond to the employee within 30 days that it would investigate and respond. The Mayor also wrote the employee on 12-30-09 indicating more research would be required and that a response would be forthcoming. Given the number of issues raised the time it took for investigation and final response was reasonable, but was not within

the time limit stated in the policy. While the above-referenced two memos were not the City's final response, the City did follow its policy by acknowledging receipt of the complaint and indicating that an investigation and further response would be forthcoming. This was the first whistleblower action ever raised in the City and a learning experience for us all. The problem with our policy is that it states any investigation of a claim will be complete within thirty days regardless of the complexity of the issues. We will be changing this deadline. The Whistleblower procedures are a part of our Personnel Policies. Currently, the City's Personnel Policies are being reviewed by Councilman Seligson's ad hoc committee and our City Attorney is also reviewing the whistleblower section for any needed changes. When these reviews are complete, we will present an amended policy that better fits the needs of the City.

5. **Failure to Document Open Public Meetings.** The issue of concern raised by the Auditor is that the City did not take minutes at workshops conducted in 2009 and 2010 and that minutes were not taken in July 2009 at its annual retreat. The Management Letter cites RCW 42.32.030 as requiring the City to promptly record minutes at all regular and special meetings. An agenda and record of every special meeting or workshop held was kept and those were reviewed by the Auditors at every audit. While such records may not be in the same format as formal minutes of regular meetings, a record of what subjects were discussed was kept and can be considered minutes. However, because of this recommendation, formal minutes and recordings of every workshop and special meeting are now being made.

RECOMMENDED ACTION

No further action needs to be taken by Council at this time. Once the reviews of the Whistleblower policy are complete, we will bring forward a new policy for your approval.