

CITY OF WESTLAKE



INVESTIGATIVE AUDIT  
ISSUED MARCH 6, 2013

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

March 6, 2013

**THE HONORABLE DANIEL CUPIT, MAYOR,  
AND CITY COUNCIL  
CITY OF WESTLAKE**  
Westlake, Louisiana

We have audited certain transactions of the City of Westlake. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain financial transactions.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the Fourteenth Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/dl

WESTLAKE 2013

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## EXECUTIVE SUMMARY

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### **City Vehicles Improperly Used, Marked, and Equipped**

Our audit revealed that certain City vehicles were improperly used, marked, and equipped as follows:

1. Mayor Daniel Cupit used a City vehicle for personal purposes without the approval of the City council, which may have violated state law.
2. The City vehicles driven by Mayor Cupit, Chief Administrative Officer Lonnie Smart, and Director of Finance Jimmy Ashworth were not marked in accordance with state law. By operating City vehicles not marked in accordance with state law, Mayor Cupit, Mr. Smart, and Mr. Ashworth may have violated state law and may be subject to fines of \$25 to \$50 per instance as prescribed by law.
3. Mayor Cupit had emergency blue flashing lights installed on his City vehicle, which may have violated state law.

### **Mayor's Improper Appointments of Department Heads**

Mayor Cupit may have violated state law on multiple occasions by appointing department heads without the approval of the City council. Mayor Cupit improperly appointed (1) Lonnie Smart as the City's director of finance, (2) Lonnie Smart as the City's chief administrative officer, and (3) Jimmy Ashworth as the City's director of finance.

### **Improper Compensatory Leave Payment**

In December 2010, the City improperly paid \$1,038 to Lonnie Smart for compensatory leave that he did not earn, which may have violated the Louisiana Constitution.

## BACKGROUND AND METHODOLOGY

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The City of Westlake (City) is located in Calcasieu Parish and has a population of 4,568 (Year 2010 Census). Westlake was incorporated in 1945 under the provisions of the Lawrason Act, which is a mayor-city council form of government. Mayor Daniel Cupit took office as interim mayor in 2007 and is currently serving his 2<sup>nd</sup> elected four-year term. The City council consists of five elected members. The City provides public safety (police and fire), streets, sanitation, recreation, public improvements, and general administrative services.

This audit was initiated after receiving allegations regarding improper personal use of a City credit card by an employee. Upon our visit to the City, we confirmed that the employee had reimbursed the City for the improper purchases prior to the start of our audit. However, other matters came to our attention during the audit and we expanded our scope to address them.

The procedures performed during this audit included:

- (1) interviewing employees of the City;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of the City;
- (4) gathering documents from external parties; and
- (5) reviewing applicable state laws and regulations.

## FINDINGS AND RECOMMENDATIONS

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### City Vehicles Improperly Used, Marked, and Equipped

Our audit revealed that certain City vehicles were improperly used, marked, and equipped as follows:

1. **Mayor Daniel Cupit used a City vehicle for personal purposes without the approval of the City council, which may have violated state law.<sup>1,2,3</sup>**
2. **The City vehicles driven by Mayor Cupit, Chief Administrative Officer Lonnie Smart, and Director of Finance Jimmy Ashworth were not marked in accordance with state law.<sup>4</sup> By operating City vehicles not marked in accordance with state law,<sup>4</sup> Mayor Cupit, Mr. Smart, and Mr. Ashworth may have violated state law<sup>5</sup> and may be subject to fines of \$25 to \$50 per instance as prescribed by law.<sup>6</sup>**
3. **Mayor Cupit had emergency blue flashing lights installed on his City vehicle, which may have violated state law.<sup>7</sup>**

#### Mayor Cupit's Personal Use of City Vehicle

Mayor Cupit used a City vehicle for personal purposes during the past five years (2007-2012) without approval of the City council. The personal use of a City vehicle is an employment fringe benefit which, in accordance with Internal Revenue Service (IRS) rules,<sup>8</sup> should be calculated and included as part of the Mayor's compensation. However, this fringe benefit was not included in Mayor Cupit's compensation that was approved by the City council.<sup>3</sup>

Mayor Cupit stated that he used the City vehicle for personal reasons as did the mayor before him. The City policy manual<sup>9</sup> designates the Mayor as a 24-hour on-call employee and allows him to take his vehicle home, but limits his use to public purposes in respect to his employment duties. In addition, we reviewed the minutes from the meetings of the City council and did not find where approval was given to Mayor Cupit to use a City vehicle for personal purposes.

City records indicate that from July 2009 through June 2012 (three-year period), Mayor Cupit purchased 2,980 gallons of fuel totaling \$8,606. According to fuel receipts, he drove 52,352 miles<sup>A</sup> during this period. Our audit revealed that Mayor Cupit regularly drives his City vehicle from Westlake to Many, Louisiana (210 miles roundtrip) to attend monthly meetings of the Sabine River Authority (SRA) of which he is an appointed member.

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<sup>A</sup> According to <http://www.city-data.com/city/Westlake-Louisiana.html>, the City of Westlake has a total land area of 2.35 square miles.

Mayor Cupit's appointment is in his capacity as a resident of Calcasieu Parish, not in his capacity as mayor of Westlake. In addition, Mayor Cupit stated that he has driven the City vehicle to Many to visit his camp when there was not an SRA meeting being held and that he has driven the City vehicle to a hospital in Texas. The City was not reimbursed by Mayor Cupit for any of these personal trips.

Mayor Cupit further stated that he did not keep a mileage log for the City vehicle to document his personal use (or business use). Beginning in February 2011<sup>B</sup> (subsequent to Mayor Cupit's compensation being approved by the City council), the City's payroll records show that \$15 per week (\$3 per day) of additional income was added to the Mayor's salary to report his estimated personal use of the vehicle. Although this additional income is consistent with the amount required under the IRS's commuting rule,<sup>10</sup> elected officials are specifically prohibited<sup>11</sup> (by the IRS) from using the commuting rule. Therefore, since Mayor Cupit did not maintain records of his business and personal use of the City vehicle, the City cannot demonstrate that the \$15 of additional income per week is appropriate. Furthermore, since the City council did not authorize Mayor Cupit's personal use of a City vehicle, Mayor Cupit may have violated state law.<sup>1,2,3</sup>

#### City Vehicles Not Properly Marked

Upon our initial visit to the City on August 20, 2012, the City vehicles used by Mayor Cupit, Mr. Smart, and Mr. Ashworth were not marked in accordance with state law.<sup>4</sup> Mayor Cupit stated that he was not aware of the decal requirements. As of September 13, 2012, all three vehicles were marked in accordance with state law.<sup>4</sup> However, by operating City vehicles not marked in accordance with state law,<sup>4</sup> Mayor Cupit, Mr. Smart, and Mr. Ashworth may have violated state law<sup>5</sup> and be subject to fines not less than \$25 nor more than \$50 for each such violation as prescribed by state law.<sup>6</sup> State law<sup>5</sup> also provides that each day upon which such a violation is committed shall be considered a separate offense.

#### Mayor Cupit Had Blue Lights Installed on his City Vehicle

Contrary to state law,<sup>7</sup> in 2011, Mayor Cupit had his City vehicle (Chevrolet Tahoe) equipped with blue flashing exterior lights, which cost the City \$3,207. State law<sup>7</sup> states, "All persons other than law enforcement officers on official duty are prohibited from equipping, operating, or using motor vehicles with blue colored electric lights thereon."

Police Chief Michael Dickerson stated that the Mayor does not perform police duties and that the Mayor's car is never used in a law enforcement capacity. Mayor Cupit stated that he had the lights installed on his car because during some of the storms he was not allowed to drive his vehicle through some places in the City. However, the City's paid invoice indicates the blue lights were installed on Mayor Cupit's vehicle on August 9, 2011, almost three years after the last major storm (Hurricane Ike) impacted the City.

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<sup>B</sup> Prior to February 2011, City records indicate that no additional income was reported to the IRS for the Mayor's personal use of a City vehicle.



Since Mayor Cupit equipped his City vehicle with blue flashing lights and he is not a law enforcement officer, he may have violated state law.<sup>7</sup>

### **Mayor's Improper Appointments of Department Heads**

**Mayor Cupit may have violated state law<sup>12</sup> on multiple occasions by appointing department heads without the approval of the City council. Mayor Cupit improperly appointed (1) Lonnie Smart as the City's director of finance, (2) Lonnie Smart as the City's chief administrative officer (CAO), and (3) Jimmy Ashworth as the City's director of finance.**

The City of Westlake operates under the Lawrason Act,<sup>12</sup> which provides, among other things, that the Mayor's appointment of department heads is subject to approval by the City council. Furthermore, the Louisiana Attorney General has opined<sup>13</sup> that the appointment and removal of all department heads of a Lawrason Act municipality must be approved by the governing body. The City's organization chart portrays and Mayor Cupit confirmed that the CAO and the director of finance are both department head positions. However, Mayor Cupit stated that he only needs council approval for the hiring and firing of the city clerk and the director of public works.

According to City records and council minutes, Mayor Cupit hired Lonnie Smart in December 2009 as Director of Finance for the City of Westlake without the approval of the City council. One year later in December 2010, without council approval, the Mayor promoted and appointed Mr. Smart to CAO<sup>c</sup> and reassigned some duties from the municipal clerk to Mr. Smart. At the same time, and also without council approval, the Mayor promoted and appointed Mr. Jimmy Ashworth to the City's director of finance position.

Since Mayor Cupit appointed Mr. Smart and Mr. Ashworth to department head positions without council approval, he may have violated state law.<sup>12</sup>

### **Improper Compensatory Leave Payment**

**In December 2010, the City improperly paid \$1,038 to Lonnie Smart for compensatory leave that he did not earn, which may have violated the Louisiana Constitution.<sup>14</sup>**

According to our review of the City's payroll records, Mr. Smart was overpaid \$1,038 due to both the miscalculation of his compensatory overtime hours and the incorrect recording of his actual hours worked. This overpayment may have violated the Louisiana Constitution.<sup>14</sup> Mr. Smart stated that he does not know who miscalculated his compensatory leave payout, but he agreed that he was overpaid. According to management's response, Mr. Smart is in the process of repaying the City the difference.

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<sup>c</sup> Mayor Cupit stated the CAO position did not exist prior to his appointment of Mr. Smart.

### **Recommendations**

We recommend that the City:

- (1) seek legal advice as to the appropriate actions to be taken, including recovering funds related to the unauthorized use of a City vehicle and fuel purchased for the vehicle;
- (2) require mileage logs to be maintained for all vehicles;
- (3) determine the proper amount of personal benefit for all employees with take-home vehicles and report to the IRS;
- (4) ensure that take-home vehicles are properly approved;
- (5) mark all City-owned vehicles as required by state law prior to being placed into service;
- (6) remove the blue flashing lights from the Mayor's vehicle;
- (7) ensure all department heads are properly approved by the City Council as required by the Lawrason Act;
- (8) seek legal advice as to the appropriate actions to be taken, including recovering funds related to the overpayment of compensatory leave to Lonnie Smart; and
- (9) implement internal controls to ensure the accurate recording and calculation of compensatory leave.

## LEGAL PROVISIONS

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<sup>1</sup> **Louisiana Revised Statute (R.S.) 14§68(A)** states, in part, “Unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently.”

<sup>2</sup> **R.S. 42§1461(A)** states, in part, “Officials, whether elected or appointed and whether compensated or not, and employees of any “public entity”...by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

<sup>3</sup> **R.S. 33§404.1** states, in part, “The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers.”

<sup>4</sup> **R.S. 49§121(A)(1)** states, in part, “Every boat, watercraft, aircraft, automobile, truck, or other vehicle belonging to the state or to any of its political subdivisions...shall, if required by law to bear a Louisiana license plate, bear a public license plate, and each such vehicle also shall have inscribed, painted, decaled, or stenciled conspicuously thereon, either with letters...or with an insignia...the name of the board, commission, department, agency, or subdivision of the state to which the boat, watercraft, aircraft, automobile, truck, or other vehicle belongs...”

<sup>5</sup> **R.S. 49§121(F)** states “No officer or employee of the state or any of its political subdivisions shall drive or operate any publicly owned land vehicle, air craft or water craft not marked in accordance with the provisions of this Section, and no public officer or employee shall request, direct or permit any other public official or employee or any other person to drive or operate any such vehicle.”

**R.S. 49§121(G)** states, “The head of any department or board of the state or any of its subdivisions who operates or who orders, requests or permits any employee under his control or supervision or any other person to operate any publicly owned land vehicle, water craft or air craft not marked in accordance with the provisions of this Section shall be guilty of a violation thereof. Each day upon which such a violation is committed shall be considered a separate offense.”

<sup>6</sup> **R.S. 49§123** states, “Whoever violates any provision of this Part shall be fined not less than twenty-five dollars nor more than fifty dollars for each such violation.”

<sup>7</sup> **R.S. 32§318(F)(2)** states, “All persons other than law enforcement officers on official duty are prohibited from equipping, operating, or using motor vehicles with blue colored electric lights thereon.”

<sup>8</sup> **IRS Publication 15-B, Employer’s Tax Guide to Fringe Benefits**, states, in part, “Any fringe benefit you provide is taxable and must be included in the recipients pay unless the law specifically excludes it.”

<sup>9</sup> **Work Policy for the City of Westlake, Rule 18: Vehicles, Section 18.2 Use of City Vehicles** states that “The intent of which is to be used for public use in respect to their employment duties. All personnel allowed to use city vehicles will be designated by the Mayor. **A. Personnel 1.** Key city personnel on 24 hour call, seven days a week, are authorized to use city vehicles after normal duty hours. Their employment duties require that, for public safety, (those jobs with a greater potential for life-threatening situations) they remain on a 24 hour response and can monitor transmissions that are related to their job duties within an immediate response area. These personnel are:  
a. Mayor”

<sup>10</sup> **IRS Publication 15-B, Employer’s Tax Guide to Fringe Benefits “Commuting Rule”** states, in part, “Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by \$1.50.”

<sup>11</sup> **IRS Publication 15-B, Employer’s Tax Guide to Fringe Benefits “Commuting Rule”** states, in part, “You can use the commuting rule...If this vehicle is an automobile, the employee who uses it for commuting is not a control employee.”

**IRS Publication 15-B, Employer’s Tax Guide to Fringe Benefits “Commuting Rule”** states, in part, “A control employee for a governmental employer for 2012 is...an elected official.”

<sup>12</sup> **R.S. 33:404(A)(3)** states, in part, “Subject to applicable state law, ordinances, and civil service rules and regulations, to appoint and remove municipal employees, other than the employees of a police department with an elected chief of police. However, appointment or removal of a nonelected chief of police, the municipal clerk, the municipal attorney, or any department head shall be subject to approval by the board of aldermen, except that in the case of a tie vote, the recommendation of the mayor shall prevail.”

<sup>13</sup> **Attorney General Opinion 11-0084** states, in part, “we conclude that La. R.S. 33:404A(3) requires a mayor to obtain approval from the board of aldermen before the appointment or removal of a department head occurs...”

<sup>14</sup> **Louisiana Constitution Article VII, Section 14(A)** states, in part, “Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

## APPENDIX A

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### Management's Response



# City of Westlake

1001 Mulberry Street • P.O. Drawer 700 • Westlake, LA 70669-0700  
Phone (337) 433-0691 • Fax (337) 433-9350  
Telecom Device for the Deaf (337) 494-1247

*"One City One TEAM"*

## Mayor

Daniel W. Cupit

## Mayor Pro-Tempore

Wally Anderson

## Council Members

John Cradure

Robert "Bob" Hardey

Lori Peterson

Dan Racca

February 11, 2013

Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
P.O. Box 94397  
Baton Rouge, La 70804-9397

Dear Mr. Purpera:

The attached report is in response to your draft investigative audit report for the City of Westlake, dated January 30, 2013.

After consulting with our City Attorney, Louisiana Government Consultants Group, and auditors the attached information is submitted to the best of my ability. If additional information is needed please call 337-540-8555 or email at [dannycupit@yahoo.com](mailto:dannycupit@yahoo.com).

Sincerely,

Daniel W. Cupit, Mayor

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LEGISLATIVE AUDITOR  
2013 FEB 13 AM 9:06

February 11, 2013

**Pg.4 Item 1:**

A city vehicle was provided for the Mayor to use as prescribed by city policy. The Mayor is on call twenty four hours a day seven days a week, as per city policy. **(See Incl. 1)**

The vehicle was not used for personal vacations or pleasure; however I did use the city vehicle to attend the Sabine River Authority (SRA) monthly meetings with approval of our city attorney.

Also, in a discussion with a state compliance person I asked two questions:

1. Could I serve as a State appointed SRA commissioner and an Elected Mayor? The answer: was YES.
2. Could I drive the city vehicle to SRA monthly meetings? The answer: it was not a problem driving a government vehicle to a government meeting as long as SRA did not reimburse mileage or vehicle expense. No reimbursement was received.

The Sabine River Authority (SRA) provides surface cooling water to all Calcasieu parish major industrial entities. **(See Incl. 2)** Many Westlake citizens are employed by these entities. We have also discussed purchase of water supplied by SRA diversion canal for city use.

We respectfully disagree that reportable compensation to the IRS as a result of the Mayor's use of a public vehicle is compensation that requires council approval. The City does not budget this as a fringe benefit and disburses no funds to the Mayor as a result of his vehicle usage, but is required to report the appropriate amount of compensation to the IRS.

Additionally, effective November, 2011, additional income of fifteen dollars per week was added to the Mayor's compensation for commuting mileage. Based on the new information provided by the Legislative Auditor's office, the city will now calculate actual mileage amounts to be included in income for all applicable personnel and follow IRS regulations.

**I will now use my personal vehicle to attend all SRA meetings, accepting reimbursement for mileage expense from the SRA. Also mileage log sheets for city vehicles are being prepared for use.**



**Pg.4 Item 2:**

Some city vehicles were using non-permanent magnetic decals allowed by city policy. **(See Incl. 3)** Three of sixty-one city vehicles used magnetic decals .Upon learning that our policy does not comply with state law, permanent decals was immediately attached to the vehicles in question. All other city vehicles complied with state law. Our city policy is being revised to comply with state law.

**All city vehicles now have permanent , correct size and color decals.**

**Pg.4 Item 3:**

As Mayor, emergency lights were installed to allow me access to situations such as future storms but more important city emergencies. (Gas blowouts, sewer blowouts, water main breaks, fires, industrial emergencies, wrecks, etc.) As Mayor I felt it is my responsibility to show support and concern to our city workers.

**The emergency lights were immediately removed from the Mayor's vehicle, and returned to the city inventory for future use.**

**Pg.8 Comp pay:**

On December 22, 2010 Lonnie Smart's Comp time was miscalculated by the city when he requested to be paid. It was previously recorded at time and a half. When the check was being cut it was converted once again. Records show he was paid for 118.22 hours which should have been 78.81 hours.

**Upon learning of the discrepancy, Lonnie Smart is in the process of repaying the city the difference. Policy and Procedures have been put in place to keep this error from happening in the future.**

**Pg. 7 Appointments:**

We respectfully challenge your finding reference appointments. Under the Lawrason Act the council must create a department by way of ordinance before they can name a department head. Neither Lonnie Smart nor Jimmy Ashworth was assigned to a new department that was created by the council. Additionally, they were not placed in an established department without a department head already appointed. Both were and are currently assigned to the General and Administration Department which is headed by the Mayor. As shown on the organizational chart. **(See Incl.4)**, they had no supervisory duties over department heads, only coordination/administrative duties.

**Effective November 1, 2012 we no longer have a City (CAO) and Jimmy Ashworth is now the City Accountant. Lonnie Smart was reassigned to another city position within the general and administration department and has no supervisory responsibility. Jimmy Ashworth is responsible for accounting duties within our city finance section.**

**Pg.8 Recommendations:**

All of your recommendations (1-9) either have been completed or will be completed as shown below.

1. City Attorney is taking appropriate action as required.
2. Mileage log sheets for all city vehicles are being prepared for use.
3. As previously stated we disagree with a city vehicle being considered a fringe benefit; however, the city accountant is in the process of insuring proper reporting to the IRS.
4. City policy will address the use of take home city vehicles.
5. All city vehicles are marked per state law.
6. Emergency lights were removed from the Mayor's city vehicle upon learning of the violation.
7. All department heads, as defined by Lawrson Act, have been approved by city council.
8. Under guidance of the City Attorney, Lonnie Smart is in the process of reimbursing the city for over payment.
9. Controls are in place to insure proper recording and calculation of compensatory leave.

RULE XVIII: VEHICLES

18.1 DECALS AND LOGOS - Every automobile, truck or other vehicles belonging to the City of Westlake, shall have a decal or logo not less than 144 square inches, or if circular, not less than 8 inches in diameter. The decal or logo shall be placed on the outside of the door on each side of every automobile, truck or other vehicle. If the vehicle is equipped with more than one door on each side, the decal or logo shall be placed on the outside of the doors nearest the front of the vehicle. All vehicles will be numbered according to the unit number assigned. The decal number will be placed on the rear window of city vehicles. Decals or logos may be affixed to the vehicle in a non-permanent status as determined by the Mayor.

18.2 USE OF CITY VEHICLES - The intent of which is to be used for public use in respect to their employment duties. All personnel allowed to use city vehicles will be designated by the Mayor.

A. PERSONNEL

1. Key city personnel on 24 hour call, seven days a week, are authorized to use city vehicles after

Incl 1

normal duty hours. Their employment duties require that, for public safety, (those jobs with a greater potential for life-threatening situations) they remain on a 24 hour response and can monitor transmissions that are related to their job duties within an immediate response area. These personnel are:

- a. Mayor
  - b. Chief of Police
  - c. Director of Public Works
  - d. Fire Chief
  - e. Civil Defense Director
  - f. Gas Superintendent (Because of the hazardous conditions that could exist within the gas system)
2. Other key city personnel on 24 hour call but not required to monitor transmissions after work hours may take the vehicle home. However, they may only use the vehicle for job related activities or upon receipt of a call. These personnel are:
- a. Water Superintendent
  - b. Street Superintendent

# SRA WATER SALES

TOLEDO BEND WATER CUSTOMERS
South Toledo Bend Water District
Town of Logansport
City of Mansfield
Cleco
International Paper Company
Town of Many
Pendleton Water Association
Desoto Water District

SRD WATER CUSTOMERS
PPG
Lyondell
Citgo
Entergy
Firestone
LA Pigment
Air Liquide
Air Products
Conoco
MG Industries
Westlake Petrochemicals
Basell
Dever Nursery
Sulphur Parks
Houston River Water Works
Habetz Bros. Farm
Lawrence Heinen
John Dickerson
Kenneth Racca

SABINE RIVER Authority

Incl 2

RULE XVIII: VEHICLES

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18.2 USE OF CITY VEHICLES - The intent of which is to be used for public use in respect to their employment duties. All personnel allowed to use city vehicles will be designated by the Mayor.

A. PERSONNEL

1. Key city personnel on 24 hour call, seven days a week, are authorized to use city vehicles after

*Incl. 3*



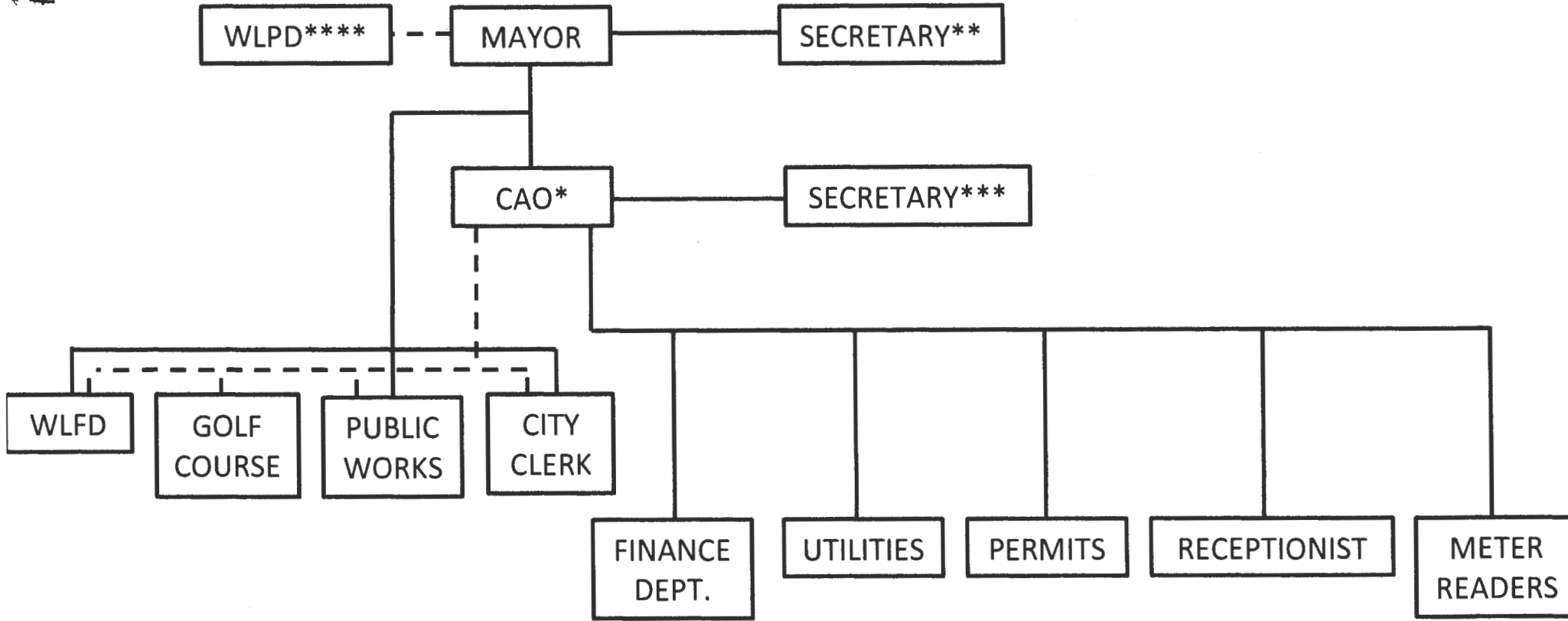


Inc. 3

Magnetic issued for use on city vehicles —

Shel  
4

### CITY OF WESTLAKE ORGANIZATIONAL CHART



{ - - }=ADMINISTRATION/COORDINATION CONTROL

{ — }=COMMAND/SUPERVISORY CONTROL

\*=CHIEF ADMINISTRATIVE OFFICER

\*\*=PROVIDE SECRETARIAL ASSISTANCE TO MAYOR

\*\*\*=PROVIDE SECRETARIAL ASSISTANCE TO CAO AND DIRECTOR OF FINANCE

\*\*\*\*=PROVIDE BUDGETARY CONTROL ONLY

**RESPONSE BY  
WESTLAKE CITY COUNCIL  
TO FINDINGS AND RECOMMENDATIONS  
OF LOUISIANA STATE AUDITOR'S OFFICE**

**Mayor Cupit's Personal Use of City Vehicle**

The use of public vehicles for personal benefit has been addressed with the Mayor twice during his tenure as Mayor of Westlake. The first occasion was during his first term of office and the issue was resolved. The situation reemerged and it was again readdressed on several occasions, involving other administrative employees. A meeting was scheduled in June, 2011 with the Mayor, two council members, and the city attorney. The personal use of city vehicles and other ongoing problems in the city were discussed. The city attorney advised the Mayor that the city vehicles could not be used for personal use, as this violates state law and the city's work policy. We were assured that this would be resolved. The problem still exists with not only the Mayor, but with administrative staff as well.

Mayor Cupit states that he used the city vehicle for personal purposes as did the mayor before him. To our knowledge, the former mayor did not use the city vehicle for personal use. The former mayor served on several state boards in his capacity as the mayor of Westlake and used the city vehicle to travel to these meetings.

**City Vehicles Not Properly Marked**

Mayor Cupit states that he was unaware of the decal requirements for city vehicles. As Mayor of the city of Westlake, it is his responsibility to know these requirements.

Furthermore, until November 1, 2012 the vehicles used by Mr. Smart and Mr. Ashworth were not budgeted for use. The police department, fire department, and public works department have line items for gas, oil, and maintenance for the vehicles used in their respective departments and are budgeted money for this expense by the council. The administrative department only has line items for gas, oil, and maintenance for the mayor's vehicle, which money is budgeted by the council. Gas for the vehicles used by Mr. Smart and Mr. Ashworth is being charged to the administrative line item for office expense. In the current budget, which took effect on November 1, 2012, the council added a line item to the administrative department for gas, oil, maintenance, and repairs for the administrative department vehicles. In the budget year 2010/2011 the council budgeted \$14,000 for office expenses. The administration spent \$35,436.08 for office expenses. This amounts to \$21,436.08 of expenditures for office expenses not approved by the council in the budget. In the budget year 2011/2012 the council again budgeted \$14,000 for office expenses. The administration spent \$31,143.97 for office expenses. This amounts to \$17,143.97 of expenditures for office expenses not approved by the council in the budget. The office expense line item is just one

of several line items in the administrative department where money spent was not appropriated by the council in the budget. This shows a complete lack of budgetary control by the administration. As the council does not receive monthly financial statements, as required by law, we were totally unaware of this. The subject of not receiving financial statements was also discussed in the meeting on June of 2011 and we were assured that we would begin receiving them every month.

### **Mayor Cupit had Blue Lights Installed on his City Vehicle**

As stated previously, it was his responsibility, as Mayor of the city of Westlake, to determine that the installation of blue lights on the city vehicle conformed to state law.

Every year the council budgets money for new equipment required for each department. Money for this equipment was not budgeted in the 2011/2012 budget year. The cost for these lights do not fall in the line item for the mayor's car repairs and maintenance or the line item for the mayor's gas, food, and hotel. Therefore, the money for this expense was not budgeted by the council. As this equipment was never approved for funding, we feel that the city should be reimbursed for all cost associated with the equipment including the installation and removal.

### **Mayors Improper Appointments of Department Heads**

Sometime in the fall of 2010, the mayor spoke to the council about restructuring the staff at city hall. He presented the council with a copy of his restructuring plan. On November 8, 2010 the mayor sent the council an email informing us that he was sending his restructuring plan to the city attorney. Once he had the attorney's approval and the approval of the city council, the plan would be put into effect no later than January 1, 2011. The council was not in favor of the mayor's restructuring plan. The mayor knew he did not have the support of the council for this restructuring, but implemented the restructuring plan in December of 2010 without council approval.

In the meeting previously stated above in June of 2011, this issue was also addressed. The position of CAO and other positions created in the restructuring plan were discussed. The mayor was informed that these positions did not exist in the city's Policy and Procedure Manual that list all job positions and the job duties for each position. These positions and their respected job duties must be approved by the governing body of the city, which is the city council. The mayor does not have the authority to change policies or procedures without council approval. We requested some type of justification for the money being spent for these new positions that were not approved. The mayor was asked what the job duties were for the CAO of the city. He could not provide us with an answer. It was advised by the city attorney, and agreed by the mayor, to present the council with a list of the CAO job duties. To this day, the council has not received the list of job duties for the CAO job position.

The council budgets money for employee training in the administrative department each year. In the budget year 2010/2011 the council budgeted \$7,000 for employee training. The administration spent \$32,755.53 for employee training. This amounts to \$25,755.53 of expenditures for employee training not approved by the council in the budget. For the budget year 2011/2012 the administration requested \$30,000 for employee training. The council questioned the addition of \$23,000 above the previous year's budget of \$7,000. We were informed the additional amount was requested because the administration would like to increase the entire staff's training in computer tech, customer service, and professional development, and they could achieve this goal for an additional \$8,000. The council approved the additional \$8,000 and budgeted a total of \$15,000 for employee training. The administration actually spent \$33,937.62 for employee training. The additional \$18,937.62 of expenditures for employee training was not approved by the council in the budget. It appears that in the 2011/2012 employee training expenses only one item for website training may have been for the whole staff. The remaining employee training expense funding seems to have been utilized by five administrative employees. There are approximately thirteen or fourteen administrative employees at city hall. The employee training expense is another line item in the administrative department where the amount of money spent was not appropriated by the council in the budget. This, again, shows a complete lack of budgetary control by the administration.

Again, as the council is not receiving monthly financial statements, as required by law, we were totally unaware of this.

### **Improper Compensatory Leave Payment**

We realize, at certain times, employees in salary positions are going to be required to work more than forty hours a week and therefore accumulate comp time. We have always encouraged these employees to take the time off for extra hours worked. Compensation leave and the requirements for payment is addressed in the city's work policy. Although it is addressed, money for compensatory leave has never been budgeted by the council. We believe that if compensatory leave is to be paid to an employee, it has to be brought back to the council for approval so the budget can be amended to reflect the changes.

Mr. Smart has also received payment for unused vacation. This, also, is not budgeted by the council and would need to be brought back to the council for approval.

It also appears Mr. Smart is receiving a salary above what was budgeted by the council. In the 2010/2011 budget, Mr. Smart's budgeted salary was \$40,100. Mr. Smart received a raise in December of 2010 without council approval. The 2011/2012 budget, due to lack of all supporting documents needed in the budget proposal submitted to the council, was adopted exactly as the 2010/2011 budget and amended at a later date. All employees received a three and one-half percent raise. This would have increased Mr. Smart's salary to \$41,503.50. When we received the 2012/2013 budget proposal from the administration, Mr. Smart's salary was listed as \$49,000. There are several more administration department employees that

received raises during the 2010/2011 fiscal year and were paid more money than was budgeted. These raises were also not presented to the council for approval. Although funding for Mr. Smart's position as CAO was eliminated in the 2012/2013 budget, he continues receiving the same salary.

Again, as the council is not receiving monthly financial statements, as required by law, we were totally unaware of this.

The council approves cost of living raises, longevity raises, department salary adjustments, and various certification raises in the budget each year, which take effect upon passage of the budget. Any salary adjustments during the budget year must be brought back to the council for consideration. The police and fire departments have come back to the council during the fiscal year to get approval for restructuring their departments, along with raises for the affected employees in the restructuring.

### **Summary**

The council has been requesting monthly financial reports for several years. If the council had received these reports, as required by law, many of the above mentioned violations could possibly have been prevented. In the past year or so proof of the unlawful acts mentioned above have become evident to the council. The council has called for special meetings in an attempt to resolve some of the issues only to have the mayor refuse to schedule the called meeting. The council believes the infractions addressed in this response do not represent all of the issues the city is facing.

The council wants to recoup all monies not appropriated in the budget and all training expenses for job positions not approved by the council. The taxpayers of Westlake should not have to absorb the cost caused by the negligence committed by the city administration.

Respectfully submitted by



Wally Anderson  
Mayor Pro-Tempore  
City of Westlake

RECEIVED  
LEGISLATIVE AUDITOR

February 25, 2013 2013 FEB 27 AM 9:38

Mr. Daryl G. Purpera  
Louisiana Legislative Auditor  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Re: City Of Westlake Investigative Audit Report  
Westlake City Council Response

Dear Mr. Purpera,

I find it incumbent upon me to write this letter with regards to the audit response written by Westlake Mayor Pro-Tem Wally Anderson and received by your office, relating to the above referenced subject matter. Within the document submitted by Mr. Anderson, it is inferred that the remarks/comments reflect the opinions of all city council members. Additionally, the response alludes that council members participated in the writing of said document.

The purpose of this letter is to clarify that I as a member of the Westlake City Council was not contacted for input or participated in the preparation of the response prepared by Mayor Pro-Tem Wally Anderson. Furthermore, comments, statements, and accusations contained within the document are not an accurate representation of the entire council.

I do appreciate the thoroughness by which your office conducted its investigation. In recent conversations with Mayor Dan Cupit I am confident that deficiencies revealed through the audit process have either been corrected immediately, or are being corrected in an expeditious manner.

I appreciate your attention to my submittal, if you should require any additional information or, if I maybe of any assistance, please do not hesitate to contact me.

Respectfully,



Lori Peterson Manuel  
Westlake City Council Member  
District B

P.O. Box 623, Westlake, Louisiana 70669

RECEIVED  
LEGISLATIVE AUDITOR  
2013 FEB 28 AM 9:16

February 26, 2013

Mr. Daryl G. Purpera  
Louisiana Legislative Auditor  
P. O. Box 94397  
Baton Rouge, LA 70804-9397

Reference: City Of Westlake Audit Report  
Mayor Pro-Tem Response

Dear Sir,

It is my understanding; you have received a response to the audit you conducted on the City Of Westlake from Mayor Pro-Tem Wally Anderson. I am submitting this letter to clarify for the record, at no time was I contacted or asked to participate in the writing of the response from the Westlake City Council. I have no knowledge of other council members participating in the process of the response. Therefore, it is my opinion the comments provided in the response are those of Mr. Anderson alone.

I appreciate your time and the professionalism displayed by your office during the audit process.

Please do not hesitate to contact me should you have any questions.

Regards,



Dan Racca  
Westlake City Council Member  
District D

1324 Hilma Street  
Westlake, LA 70669