



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 26, 2023

Paul Kellen, Council President  
City of Madison  
PO Box 527  
Madison, NE 68748

Dear Mr. Kellen:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns involving the City of Madison's (City) Utilities Superintendent, James "Jim" Lewis (Superintendent). It was brought to our attention that, among other concerns, the Superintendent was allegedly using municipal equipment and resources for personal use during City time. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA obtained financial records and other relevant documentation from the City. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action. The following comments and recommendations, which have been discussed with the appropriate members of the City and its management, are intended to improve internal control or result in other operating efficiencies.

### **Comments and Recommendations**

#### **1. Personal Use of City Resources**

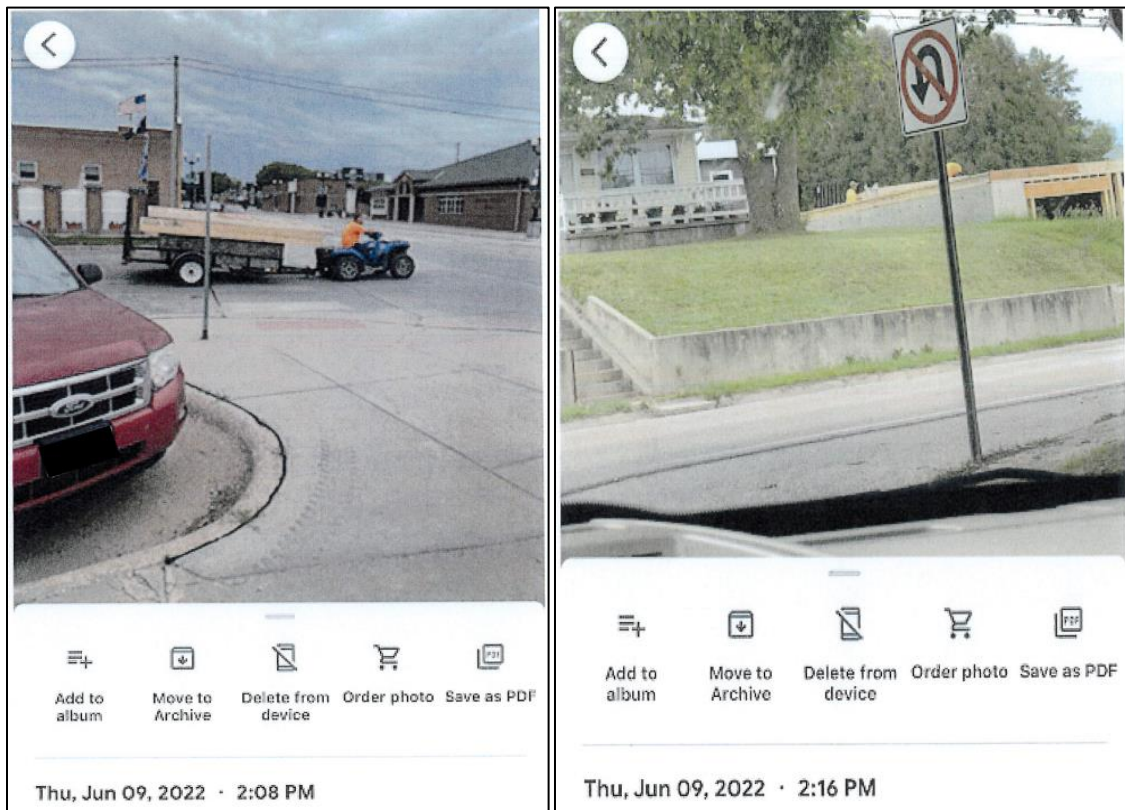
The APA received allegations that the Superintendent utilized City employees and municipal equipment to assist in the construction of a house on property that he owns. This is claimed to have been done, moreover, during the Superintendent's regular municipal working hours – time for which he received pay from the City. In addition, City vehicles were supposedly used to travel to Norfolk, NE, to obtain supplies for the house, which were then stored in the City's shop shed.

The house in question is located at 1005 S Main St., Madison, NE, 68748. According to the Madison County's Geographic Information Systems (GIS) website (<https://madison.gworks.com/>), the house is owned by "LEWIS/JAMES M & JANE E." The Superintendent was issued a City construction/demolition permit (#590011332) on September 16, 2020, for this address.

Shown below is a photo of the house taken on March 30, 2023:



The APA had received several complaints, accompanied by photographs, that appear to show the Superintendent building the house during City time, using City employees, equipment, and resources. The following images are examples of two such complainant-provided photos:



Based on the time stamps of the two June 9, 2022, photographs above, it would appear that the labor being performed on the Superintendent's house was clearly occurring at the same time that he was supposed to have been working for the City.

The APA has included an image of the Superintendent's municipal timesheet below, showing that he claimed to have been working for the City when the above photographs were taken:

TIME SHEET for Utilities & Office

NAME Jim Lewis Pay Date From: June 4 To: June 17 2022

Dates	Hours Worked	Used Vac/Comp/Sick/Hol	Overtime		Description	Total Hours
			In / Out Times			
4 Saturday						x
5 Sunday						x
6 7:30 am-12:00 pm, 12:30 pm-4:00 pm						8
7 7:30 am-12:00 pm, 12:30 pm-4:00 pm					Meeting	8
8 7:30 am-12:00 pm, 12:30 pm-4:00 pm					2 1/2	8
9 7:30 am-12:00 pm, 12:30 pm-4:00 pm						8
10 7:30 am-12:00 pm, 12:30 pm-4:00 pm						8
11 Saturday						x

Additional examples of complainant-provided photos, along with the corresponding Superintendent timesheets, have been included in **Attachment A** hereto.

During September 2022, a City official interviewed the Superintendent and several of his subordinates at the City's Utilities Department (Department), about the suspected misuse of municipal equipment, personnel, and resources for personal gain. According to the official's written summary of that interview, one municipal employee stated that all of the Department's full-time personnel had worked on the Superintendent's house – including building the walls for the house with City equipment and storing those structures in the City's shop – during hours when they were supposed to have been working for the City. According to that employee, moreover, similar work was done for another Department employee's house and the houses of other municipal residents. That employee stated also that he and other Department personnel had used the City's truck to pick up wood and other supplies for the Superintendent's house.

Interestingly, other Department employees interviewed gave statements to the contrary. They claimed to have done only minimal labor on the Superintendent's house during City work hours, maintaining instead that they helped with the house construction primarily on their own time.

The Superintendent was reported to have admitted later, however, that he had he asked the Department employees to lie about working on the house.

#### Personal Purchases Made During Work Hours

In addition to using City property and resources, including the services of municipal personnel while on City time, to construct the house, the Superintendent appears to have made numerous purchases, either personally or through Department employees whom he supervised, from two different Menards home improvement retail stores in Norfolk, NE, and Columbus, NE. As with the house construction labor at issue, the shopping excursions to Menards occurred during times that the Superintendent or his subordinates were being paid to work for the City. The APA obtained directly from Menards specific rebate and purchase records, including detailed transaction information, pertaining to the Superintendent and his wife.

Moreover, the APA observed from information available through the "Rebates International" website (<https://www.rebateinternational.com/RebateInternational/tracking.do#track-rebate>), that several Menards rebates were issued and redeemed by the Superintendent or his wife during the period January 1, 2021, through December 31, 2022.

The following table lists not only the purchases made at both Menards locations during City work hours but also the Superintendent timesheet information corresponding thereto:

Per Menards Records					Per Timesheets		
Date	Time	Store Location	Pay Type	Amount	Clock-in Time	Clock-out Time	Total Hours
Friday, March 26, 2021	10:09 AM	Norfolk, NE	Cash	\$ 98.93	7:30 AM	4:00 PM	8
Thursday, April 29, 2021	3:11 PM	Norfolk, NE	Cash	\$ 141.21	7:30 AM	4:00 PM	8
Wednesday, May 5, 2021	2:21 PM	Norfolk, NE	Cash	\$ 218.02	7:30 AM	4:00 PM	8
Tuesday, May 11, 2021	2:29 PM	Norfolk, NE	Cash	\$ 181.01	7:30 AM	4:00 PM	8
Friday, June 25, 2021	2:43 PM	Norfolk, NE	Cash	\$ 72.87	<b>Note</b>		8
Monday, June 28, 2021	2:21 PM	Norfolk, NE	Cash	\$ 0.29			8
Monday, June 28, 2021	2:27 PM	Norfolk, NE	Cash	\$ 38.50			
Tuesday, July 6, 2021	2:03 PM	Norfolk, NE	Cash	\$ 126.76	<b>Note</b>		8
Friday, September 3, 2021	2:03 PM	Norfolk, NE	Cash	\$ 135.01	7:30 AM	4:00 PM	8
Friday, September 17, 2021	3:26 PM	Norfolk, NE	Cash	\$ 152.80	7:30 AM	4:00 PM	8
Tuesday, September 28, 2021	1:52 PM	Norfolk, NE	Cash	\$ 95.50	7:30 AM	4:00 PM	8
Thursday, October 14, 2021	2:54 PM	Columbus, NE	Cash	\$ 286.49	7:30 AM	4:00 PM	8
Tuesday, February 22, 2022	1:57 PM	Norfolk, NE	Cash	\$ 176.36	7:30 AM	4:00 PM	8
Wednesday, March 2, 2022	1:59 PM	Norfolk, NE	Cash	\$ 133.88	7:30 AM	4:00 PM	8
Thursday, March 3, 2022	3:15 PM	Norfolk, NE	Cash	\$ 47.01	7:30 AM	4:00 PM	8
Tuesday, March 15, 2022	1:56 PM	Norfolk, NE	Cash	\$ 109.59	7:30 AM	4:00 PM	8
Monday, March 28, 2022	2:01 PM	Norfolk, NE	Cash	\$ 221.06	7:30 AM	4:00 PM	8
Wednesday, April 13, 2022	2:16 PM	Norfolk, NE	Cash	\$ 174.27	7:30 AM	4:00 PM	8
Monday, May 2, 2022	3:03 PM	Norfolk, NE	Cash	\$ 221.88	7:30 AM	4:00 PM	8
Monday, June 13, 2022	1:56 PM	Norfolk, NE	Cash	\$ 124.68	7:30 AM	4:00 PM	8
Tuesday, June 14, 2022	1:49 PM	Norfolk, NE	Cash	\$ 168.02	7:30 AM	4:00 PM	8
Friday, June 24, 2022	2:11 PM	Norfolk, NE	Cash	\$ 182.95	7:30 AM	4:00 PM	8
Monday, June 27, 2022	1:55 PM	Norfolk, NE	Cash	\$ 40.57	7:30 AM	4:00 PM	8
Friday, July 1, 2022	2:52 PM	Norfolk, NE	Cash	\$ 116.07	7:30 AM	4:00 PM	8
Thursday, July 7, 2022	9:42 AM	Norfolk, NE	Cash	\$ 39.57	7:30 AM	4:00 PM	8
Friday, July 8, 2022	2:37 PM	Norfolk, NE	Cash	\$ 41.63	7:30 AM	4:00 PM	8
Thursday, July 14, 2022	2:09 PM	Norfolk, NE	Cash	\$ 36.98	7:30 AM	4:00 PM	8
Friday, July 15, 2022	2:24 PM	Norfolk, NE	Cash	\$ 65.21	7:30 AM	4:00 PM	8
Tuesday, July 19, 2022	3:16 PM	Norfolk, NE	Cash	\$ 103.54	7:30 AM	4:00 PM	8
Monday, July 25, 2022	2:05 PM	Norfolk, NE	Cash	\$ 136.06	7:30 AM	4:00 PM	8
Tuesday, August 16, 2022	1:54 PM	Norfolk, NE	Cash	\$ 80.91	7:30 AM	4:00 PM	8
Friday, August 19, 2022	10:18 AM	Norfolk, NE	Cash	\$ 329.93	7:30 AM	4:00 PM	8
Tuesday, August 30, 2022	10:51 AM	Norfolk, NE	Cash	\$ 68.31	7:30 AM	4:00 PM	8
Thursday, September 1, 2022	10:57 AM	Norfolk, NE	Cash	\$ 140.98	7:30 AM	4:00 PM	8
Thursday, September 8, 2022	2:19 PM	Norfolk, NE	Cash	\$ 130.28	7:30 AM	4:00 PM	8
Thursday, September 15, 2022	2:11 PM	Norfolk, NE	Cash	\$ 21.36	7:30 AM	4:00 PM	8
Monday, September 19, 2022	2:29 PM	Norfolk, NE	Cash	\$ 367.42	7:30 AM	4:00 PM	8
Monday, September 26, 2022	2:23 PM	Norfolk, NE	Cash	\$ 82.65	7:30 AM	4:00 PM	8
Tuesday, October 18, 2022	12:43 PM	Norfolk, NE	Cash	\$ 146.59	7:30 AM	4:00 PM	8
Wednesday, October 26, 2022	12:33 PM	Norfolk, NE	Cash	\$ 144.44	7:30 AM	4:00 PM	8
Friday, October 28, 2022	2:08 PM	Norfolk, NE	Cash	\$ 75.91	7:30 AM	4:00 PM	8
Tuesday, November 1, 2022	12:19 PM	Norfolk, NE	Cash	\$ 91.92	7:30 AM	4:00 PM	8
Friday, November 4, 2022	12:43 PM	Norfolk, NE	Cash	\$ 197.59	7:30 AM	4:00 PM	8
<b>Total</b>				<b>\$ 5,565.01</b>			

**Note:** These days did not have any clock-in or clock-out times recorded on the Superintendent's timesheets. However, the timesheets still reflected the Superintendent worked a total of eight hours on each of the days.

None of the above purchases were made on the City's charge account; however, all of the transactions occurred while the Superintendent or his subordinates were supposedly working for the City and being paid for it. No breaks or leave were recorded on the Superintendent's timesheets for any of these dates.

According to Google Maps, the roundtrip distance between Madison, NE, to the Menards in Norfolk, NE, is approximately 30 miles. It is about 66 miles to travel from Madison, NE, to the Menards in Columbus, NE, and back. Thus, the time required to make the purchases included a considerable amount of travel time as well.

In analyzing the information obtained from Menards, the APA noted that, on April 13, 2022, one of the Superintendent's subordinates in the Department purchased items, using the City's charge account, from the Norfolk Menards at 2:15 p.m. One minute later, at 2:16 p.m., a second cash purchase was made, as shown in the table above. The personal purchase of building materials included 15 pre-cut construction studs and 4 long 12-foot (2x4) construction boards. It appears, therefore, that both the Supervisor and the Department employee travelled to the Menards in Norfolk to make these purchases – or, at the very least, the employee made the cash purchase on the Superintendent's behalf. Regardless, the second purchase was made when both the Superintendent and his subordinate were on City time and supposed to be working.

On May 9, 2023, the APA contacted the Superintendent's subordinate to ask about the personal purchase. He confirmed that the Superintendent had given him cash and asked him to make the personal purchases using the City of Madison truck and on City time.

Furthermore, as shown in the March 30, 2023, photo of the Superintendent's house (page 2 herein), Menard's house wrap was affixed to the front of that dwelling. Per the above purchase table, Menards Typar House Wrap was bought from the Norfolk Menards on both August 19, 2022, at 10:18 a.m., and October 26, 2022, at 12:33 p.m., with cash.

The following is an image of the type of Menards Typar House Wrap purchased at the Norfolk Menards and used on the Superintendent's house:



As with other such documents observed, the Superintendent's timesheets for the dates on which the Menards Typar House Wrap was purchased show no breaks or leave recorded, as shown below:

TIME SHEET for Utilities & Office					
NAME <u>Jim</u>		Pay Date From: <u>8-12</u> To: <u>8-26</u> , 20 <u>22</u>			
Dates	Hours Worked	Used Vac/Comp/Sick/Hol	Overtime In / Out Times	Description	Total Hours
<u>13</u>	Saturday				
<u>14</u>	Sunday				
<u>15</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>16</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>17</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>18</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>19</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>20</u>	Saturday		<u>2 hr outage</u>	<u>Steve</u>	

CITY OF MADISON TIME SHEET				
EMPLOYEE NAME: <u>Jim Lewis</u>				
PAY PERIOD FROM: <u>10-22-22</u> TO: <u>11-04-22</u>				
DATE	IN	OUT	DESCRIPTION	TOTAL
10-24-22	7:30	4:00	3 city cleanup	8+3 11
			3 " "	
10-25-22	7:30	4:00	2	8+3 11
			2 Pk on Fire skyline	
10-26-22	7:30	4:00	drive	8+2 10

### City Memorandum

On December 12, 2022, the City issued a formal Memorandum to address officially the allegations of misconduct against the Superintendent. The introduction to that document states the following:

*The purpose of this Memorandum is to address numerous policy violations and deficiencies in your job performance through a Written Warning, to suspend you from employment for a period of three (3) workdays without pay, to advise you of the consequences of further deficiencies, to require restitution to the City, and to set forth a 90-Day Performance Improvement Plan for your immediate and sustained correction of these issues.*

According to the Memorandum, the Superintendent had been “counseled regarding the City’s expectations of you and your job duties on numerous occasions.” The City Treasurer is noted, for instance, to have informed the Superintendent verbally in mid-2021 of “a citizen complaint regarding the work being performed on your residential property during the workday.”

The Memorandum records the Superintendent as having responded to that information, “F\*ck them, it’s none of their business.”

In August 2022, the memorandum continues, the Mayor notified the Superintendent verbally “regarding you misusing City employees, property and resources to build your residential property on City time.” According to the Memorandum, the Superintendent offered what appears to have been a somewhat more penitent response. “During this conversation,” the memorandum states, “you admitted that you ‘f\*cked up,’ asked if you were going to be fired, and asked what could be done to resolve the matter.”

With respect to a meeting that occurred between the Superintendent and a Council member “on or about September 23 and September 26,” the Memorandum states the following:

*During this meeting, you stated that you knew you had “screwed up” and you admitted you and other City employees had been working on your residential property during City time, and that you had used City equipment to perform such work.*

In addition to reiterating the above information, while referencing other meetings or communications pertinent thereto, the Memorandum details various unrelated, though also serious, problems with the Superintendent’s job performance.

For instance, the Memorandum describes a situation in which the Superintendent’s previously surly attitude appears to have resurfaced:

*During your meeting with the City Council on November 28, 2022, you acknowledged that you needed to make a change with regard to your language, yet you continued to express profanities throughout the meeting (i.e., “just f\*cking fire me”).*

The Memorandum identified 15 specific “performance deficiencies” on the part of the Superintendent, including the following:

- A. *Performing unauthorized work on your personal residential property on City time, misusing City property, resources, and employees to conduct such work. Specifically, several City employees reported that employees supervised by you have been working on your residential property on City time, that they had built all the walls for your property on City time, in the City's shop, using City equipment, that employees built a shed for you, and that employees had traveled to and from Menards in Norfolk on City time, with the City's truck, to purchase lumber and supplies for your residential building project. Employees reported delivering items on City time to your property. Similarly, at least two Council Members and residents of the City reported seeing City employees working on your residential property during the workday using City equipment.*

\* \* \* \*

- D. *Falsifying City personnel records, such as employee timecards, by misrepresenting and overstating the actual hours worked by employees you supervise.*

\* \* \* \*

- G. *Threatening and intimidating other City employees. At least one subordinate employee reported that they believed they had no choice but to follow your orders or they would not have a job with the City. Other City employees reported that you came into the City office, became very upset, and verbally attacked others for records from you.*

...

\* \* \* \*

- H. *Instructing or asking subordinate City employees to lie for you and cover up facts during the investigation of your conduct, which you admitted to Council Member Kellen when he interviewed you on or about September 26, 2022.*

\* \* \* \*

- K. *Providing favors to City employees who performed work benefiting you.*

Under the title “EXPECTATIONS GOING FORWARD,” the Memorandum concludes by specifying 12 standards of conduct to which the Superintendent is expected to adhere, including the following:

- D. *To devote your full working time and attention to your position for the benefit of the City, to avoid performing unauthorized personal work for yourself or other on City time, and to avoid unauthorized use of City equipment*

....

- E. *To make prompt restitution to the City, based on an amount calculated and determined by the City Council and Treasurer, to include employee wages, equipment, and rental rates, supplies and other expenses, and other miscellaneous charges associated with your misuse of City property and resources. The amount determined shall be calculated based on the applicable posted rates, which apply to all City residents.*

- F. *To ensure others do not misuse City property or resources, and to enforce compliance with the City's posted rates applicable to all City residents for use of City equipment and resources.*

\* \* \* \*

- I. *To avoid the falsification of personnel and other City records, such as employee timecards (Section 9.03 of the Personnel Manual).*

- J. *To avoid engaging in any activity or enterprise that conflicts with or creates the appearance of conflicting with your City duties (Section 3.11 of the Personnel Manual).*

The Superintendent signed the Memorandum, acknowledging his understanding of “the performance deficiencies noted herein.”

Aside from requiring the “prompt restitution” specified in the Memorandum, the City suspended the Superintendent for three days without pay, and set in place a 90-day Performance Improvement Plan (Plan).

The Superintendent paid the mandated restitution on February 14, 2023, in the amount of \$390. However, the City paid that same amount back to the Superintendent on March 8, 2023, ostensibly to reimburse him for the rental fee of a telehandler used for work on the City’s auditorium renovation project. The APA did not receive any documentation to support how the restitution amount was determined, but it does not appear that this restitution amount would cover fully the cost of the several months’ worth of apparent misuse of municipal property and resources, including the services of public employees while on City time.

In support of the misconduct charges against the Superintendent, the Memorandum references Section 4.04 (“Accurately Recording Work Time”) of the City’s Personnel Manual (Manual), which states the following:

*Employees must record all hours that they work on a daily basis, and record those hours on the timecards provided by the City. **Working off the clock is not permitted.***

*In recording time worked, employees must record the actual time they started and stopped work. Rest breaks of 15 minutes or less are considered time worked and should not be entered on the time record. Meal periods extending 30 minutes (where the employee is relieved of all job duties) are unpaid and must be recorded on the time record. Timing and length of lunch periods are generally assigned by the employee’s department head.*

*Absences and late arrivals must be indicated on the time record, and department heads must indicate the pay status for each such absence (Paid Vacation, Holiday, unpaid, etc.).*

*Except for department head’s adjustments to time records to comport with actual time worked, no employee may alter another employee’s time record in any manner. Falsifying or altering time sheet will result in disciplinary action, up to and including termination of employment.*

Additionally, the Memorandum references Section 9.03 (“Causes for Disciplinary Action”) of the Manual, which prohibits the following:

*g. Any falsification of personnel or other City records. (D)*

*\* \* \* \**

*n. Performing unauthorized personal work on City time. (R, W, S, D)*

*\* \* \* \**

*q. Leaving work during working hours without permission of supervisor. (W, S, D)*

*\* \* \* \**

*s. Unauthorized operation of machines, tools, or equipment. (R, W, S, D)*

*t. Theft, abuse, or misuse of City property, tools or equipment. (D)*

Per that same section of the Manual, the letters written out to the right on each line indicate the “progressive discipline which is generally afforded for the first and subsequent violations of the rule,” as follows:

*R = Verbal reprimand W = Written warning S = Three-day suspension D = Discharge*

In addition to these local administrative regulations, certain State statutes appear to be applicable some of the issues addressed in the Memorandum.

To start, Neb. Rev. Stat. § 28-515 (Reissue 2016) prohibits “theft of services,” as follows:

*(1) A person commits theft if he or she obtains services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, cable television service, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property. When compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.*

*(2) A person commits theft if, having control over the disposition of services of others to which he or she is not entitled, he or she diverts such services to his or her own benefit or to the benefit of another not entitled thereto.*

(Emphasis added.) Moreover, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act places the following restriction upon the use of property under the “official care and control” of a public official or public employee:

*A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.*

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor . . . .”

Thus, the misuse of municipal equipment, personnel, and resources for personal gain is strictly prohibited under State law.

Furthermore, Neb. Rev. Stat. § 28-911 (Reissue 2016) prohibits “abuse of public records,” as follows:

*(1) A person commits abuse of public records, if:*

*(a) He knowingly makes a false entry in or falsely alters any public record; or*

*\* \* \* \**

*(d) He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.*

*(2) As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.*

*(3) Abuse of public records is a Class II misdemeanor.*

If, as indicated by the Memorandum, the Superintendent was found to have been “[f]alsifying City personnel records, such as employee timecards,” such activity would appear to constitute a clear violation of the above statute.

Further, good internal control requires procedures to ensure that City personnel do not use municipal property and resources, including the services of public employees while on City time, for improper personal gain. Those same procedures should ensure also that municipal employee timesheets provide truthful and accurate representations of actual work hours performed.

Without such procedures, there is an increased risk for not only loss of, or damage to, municipal equipment, as well as inaccurate – or even fraudulent – reporting of employee hours worked, but also violations of both City regulations and State statutes.

We recommend the implementation of procedures to ensure City personnel do not use municipal property and resources, including the services of public employees while on City time, for improper personal gain. Those same procedures should ensure also that municipal employee timesheets provide truthful and accurate representations of actual work hours performed. Additionally, due the nature of the concerns discussed in this comment, the APA will forward this information to the Nebraska Attorney General, the Madison County Attorney, and the Nebraska Accountability and Disclosure Commission for further review.

## 2. Menards Rebates

The APA's examination of the records received from Menards revealed that the Superintendent or his subordinates in Department made purchases, totaling \$538.33, on the City's charge account ending in XXX272. Those purchases resulted in a total of \$59.22 in rebates.

The table below lists the purchases made on the City's charge account at Menards and the resulting rebates:

Purchases Made to City's Charge Account				Menards Rebates			
Transaction Date	Transaction Number	Amount	Utilities Dept. Signer	Amount	Issue Date	Issued To	Redemption Date
3/25/21	1933	\$ 59.90	Employee #1	\$ 6.59	4/15/21	Superintendent's Wife	8/13/22
9/2/21	4239	\$ 165.63	Employee #2	\$ 18.22	9/27/21	Superintendent's Wife	8/13/22
2/24/22	0660	\$ 179.90	Employee #1	\$ 19.79	3/30/22	Superintendent's Wife	8/13/22
4/13/22	0714	\$ 76.98	Employee #1	\$ 8.47	6/3/22	Superintendent's Wife	8/13/22
7/26/22	2667	\$ 55.92	Employee #1	\$ 6.15	9/23/22	Superintendent's Wife	N/A
<b>Totals</b>		<b>\$ 538.33</b>		<b>\$ 59.22</b>			

As shown above, the Superintendent did not sign for the purchases at issue; rather, Department employees signed for them. Nevertheless, the rebates on those purchases were issued to the Superintendent's wife.

Consequently, the Superintendent or his wife appear to have received the direct benefit of rebates earned from the expenditure of public funds. In actuality, those rebates belonged to the City, constituting municipal property, and should not have been issued to the Superintendent's wife in the first place. The City created the underlying charge account, and the purchases thereon are assumed to have been made for strictly municipal purposes; therefore, neither the Superintendent, his wife, nor any municipal official or employee was entitled to claim the resulting rebates for his or her own personal gain.

Per the records obtained from Menards, all but one of the rebates listed in the above table were redeemed on August 13, 2022, and used to discount the purchase of five windows. The following types of windows were purchased:



As shown in the March 30, 2023, photograph of the Superintendent's house (page 2 herein), at least three of the five windows purchased with the rebates appear to have been installed in that dwelling.

Neb. Rev. Stat. § 28-511(1) (Reissue 2016) states the following:

*A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.*

As mentioned previously herein, Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2021) of the Nebraska Political Accountability and Disclosure Act places the following restriction upon the use of property under the "official care and control" of a public official or public employee:

*A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.*

Good internal controls require procedures to ensure that rebates received from vendors through municipal purchases are tracked properly, treated as City property, and used only for appropriate public purposes. Without such procedures, there is an increased risk of rebates belonging to the City being used for improper personal gain.

We recommend the City implement procedures – possibly through the adoption of a formal policy – to ensure that rebates received from vendors through municipal purchases are tracked properly, treated as City property, and used only for appropriate public purposes.

*City's Overall Response: The City of Madison is aware of the issues brought up in this letter and has already taken steps to ensure that these issues will not happen again. As you know, the City Council has implemented employment consequences for Mr. Lewis and others in his department, and we are continuing to review the situation, including restitution issues. The city has begun to implement new procedures to ensure appropriate use of city resources, including not renting city equipment for personal use and installing digital time-clocks to ensure employee work hours are accurate. The city will also look to create an official policy in dealing with vendor rebates to make sure they are used for appropriate public purposes. The city will continue to monitor these issues and make every effort to make sure they will not happen again.*

\* \* \* \* \*

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and suggestions that we hope will be useful to the City.

Draft copies of this letter were furnished to the City to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the City and its management. It is not intended to be, and should not be, used by anyone other than these specified parties. However, this communication is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor

Mason Culver – Auditor-In-Charge

Destini Morales – Auditor

Sincerely,



Craig Kubicek, CPA, CFE

Deputy Auditor

Auditor of Public Accounts

Room 2303, State Capitol

Lincoln, NE 68509

Phone (402) 471-3686

[craig.kubicek@nebraska.gov](mailto:craig.kubicek@nebraska.gov)

CITY OF MADISON  
Time-stamped Photos of City Utilities Superintendent's House Construction

**Attachment A**



TIME SHEET for Utilities & Office					
NAME <u>Jim Lewis</u>		Pay Date From: <u>4-9</u> To: <u>4-22</u> 2022			
Dates	Hours Worked	Used Vac/Comp/Sick/Hol	Overtime In / Out Times	Description	Total Hours
<u>9</u> Saturday					<u>0</u>
<u>10</u> Sunday					<u>0</u>
<u>11</u> 7:30 am-12:00 pm, 12:30 pm-4:00 pm					<u>5</u>
<u>12</u> 7:30 am-12:00 pm, 12:30 pm-4:00 pm					<u>5</u>
<u>13</u> 7:30 am-12:00 pm, 12:30 pm-4:00 pm					<u>5</u>
<u>14</u> 7:30 am-12:00 pm, 12:30 pm-4:00 pm					<u>5</u>
<u>15</u> 7:30 am-12:00 pm, 12:30 pm-4:00 pm					<u>5</u>

CITY OF MADISON  
Time-stamped Photos of City Utilities Superintendent's House Construction

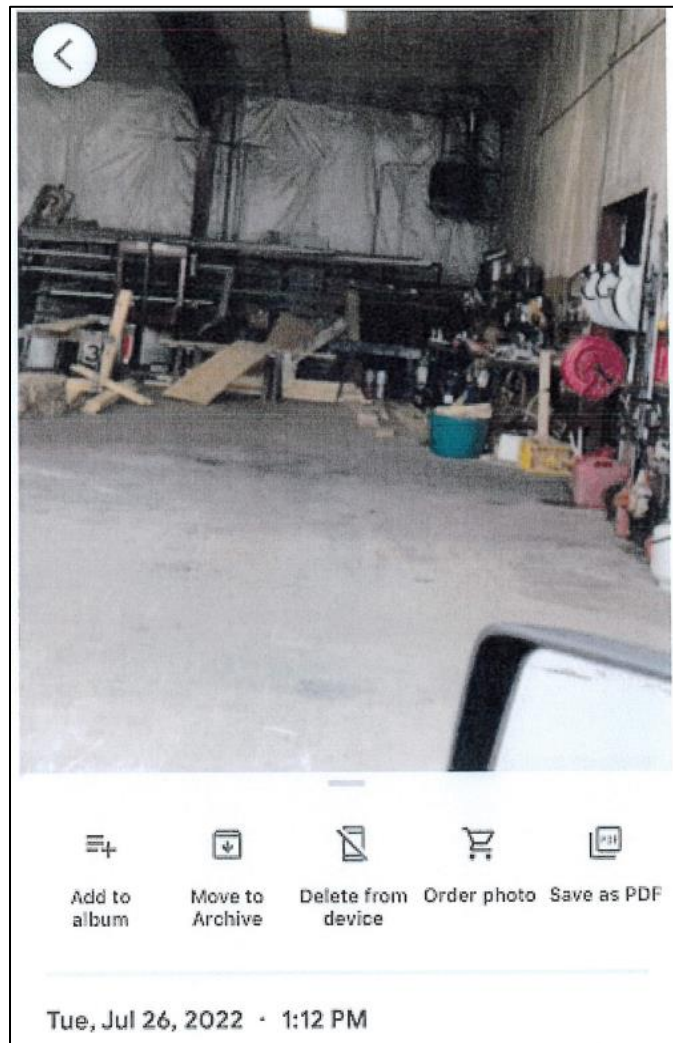
**Attachment A**



TIME SHEET for Utilities & Office					
NAME <u>Jim Lewis</u>		Pay Date From: <u>7-2</u> To: <u>7-15</u> 2022			
Dates	Hours Worked	Used Vac/Comp/Sick/Hol	Overtime In / Out Times	Description	Total Hours
<u>2</u>	Saturday				
<u>3</u>	Sunday				
<u>4</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm	<u>Holiday</u>			<u>8</u>
<u>5</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>6</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm		<u>2 1/2</u>	<u>Meeting</u>	<u>8</u>
<u>7</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>8</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>

CITY OF MADISON  
Time-stamped Photos of City Utilities Superintendent's House Construction

**Attachment A**



TIME SHEET for Utilities & Office					
NAME <u>Jim Lewis</u>		Pay Date From: <u>7-16</u> To: <u>7-29</u> 2022			
Dates	Hours Worked	Used Vac/Comp/Sick/Hol	Overtime In / Out Times	Description	Total Hours
<u>16</u>	Saturday				<u>4</u>
<u>17</u>	Sunday				<u>7</u>
<u>18</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>19</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>20</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>21</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>22</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>23</u>	Saturday			<u>2 hrs lift station &amp; Pump out in town</u>	<u>4</u>
<u>24</u>	Sunday				<u>4</u>
<u>25</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>26</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>
<u>27</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>5</u>

CITY OF MADISON  
Time-stamped Photos of City Utilities Superintendent's House Construction

**Attachment A**



TIME SHEET for Utilities & Office

NAME Jim Pay Date From: 8-12 To: 8-26, 2022

Dates	Hours Worked	Used	Overtime	Description	Total Hours
		Vac/Comp/Sick/Hol	In / Out Times		
<u>13</u>	Saturday				
<u>14</u>	Sunday				
<u>15</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>16</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>17</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>18</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>19</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>20</u>	Saturday				
<u>21</u>	Sunday			<u>2 hr outage Steve</u>	
<u>22</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>23</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>24</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>
<u>25</u>	7:30 am-12:00 pm, 12:30 pm-4:00 pm				<u>8</u>