

**State of New Jersey
Office of the State Comptroller**



INVESTIGATIVE REPORT
***An Investigation into the Fiscal Operations
of the Borough of Palisades Park***

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I. INTRODUCTION AND EXECUTIVE SUMMARY

An Office of the State Comptroller (OSC) investigation has found that the Borough of Palisades Park (Borough or Palisades Park) has adopted and maintained policies and practices that are inconsistent with state law. The Borough has also failed to adopt and implement internal controls that ensure accountability and that prevent waste, fraud, and abuse.

The investigation revealed that the Borough entered into a contract with its Business Administrator (BA) that provides the BA with generous benefits, including annual sick leave payments that have been prohibited for municipal administrators since 2007 and with severance payments that, along with other payouts, would require the municipality to pay the BA over \$360,000 if he retired today. The BA's contract also undermines the Palisades Park governing body's statutory right to remove him from that position by requiring a vote of all six members of the governing body when state law requires only four votes. The BA was also granted other extravagant benefits that wasted taxpayer money, including a \$350 monthly car allowance on top of fuel and car maintenance costs.

The Borough additionally contravened a 2010 state law by providing annual sick leave payments to employees hired after the effective date of that law. The 2010 law prohibits the municipality from making annual sick leave payouts to employees based on the date they were hired other than a one-time payment of up to \$15,000 at retirement. Nonetheless, the Borough paid out tens of thousands of dollars each year to employees who had unused sick time in violation of that law.

In alignment with these findings, OSC's investigation further revealed that the Borough does not have internal controls necessary to ensure the proper use of taxpayer dollars. Examples identified by OSC's investigation include:

- **Fuel Cards:** Palisades Park—a 1.25 square mile borough—spent \$120,000 on gas in one year. Borough administrators let certain employees buy gas for their personal cars using taxpayer money on Borough-issued fuel cards. Borough administrators do not track which employees have fuel cards and did not know how many fuel cards they had issued. No one in the Borough accepts responsibility for the Borough's use of fuel cards to ensure that they are properly used. There are no written policies for their use and there is no oversight.
- **Reimbursements:** The Borough has no effective processes in place for preventing the misuse of public funds through inappropriate reimbursements. For example, in 2017, the Borough inappropriately approved a \$68,000 reimbursement request made by the BA for costs he personally incurred responding to an investigation. The reimbursement, which was subsequently rescinded, included \$16,600 in accounting services for his private business, \$10,500 in legal fees for his wife, and \$5,200 for a cancelled pre-paid vacation. Further, the documents submitted in support of this request totaled significantly less than the amount requested, and the services described in many of the invoices were wholly unrelated to Borough business. None of the Borough officials who initially approved the \$68,000 reimbursement request in 2017—including the Borough's Chief Financial Officer (CFO), members of the governing body, and the Mayor—interceded to block public funds from being used to pay for the BA's personal expenses. OSC's investigation additionally found that the Borough commonly approved and paid employee reimbursement requests without regard to the nature of the expenditure, the appropriateness of the receipts provided, or whether the request was supported by adequate documentation or required signatures.
- **Disregard of Controls:** To the extent the Borough has any controls in place that safeguard public funds, OSC's investigation revealed they are frequently disregarded. For example, the Borough's CFO is rarely in the Borough's offices and has considerable other responsibilities outside of Palisades Park that may impact his ability to perform his duties. Indeed, the CFO reported that he has limited involvement in the writing of policies and procedures. OSC also found that he often approves financial transactions using Borough funds by text message and that his signature stamp is often used to approve documents without him reviewing or approving them. Additionally, the Borough has improperly reimbursed employees for sales tax, lacks policies addressing when employees can be reimbursed for meals, and has reimbursed credit card purchases by the BA even though it advised OSC that such purchases were not acceptable except in emergencies.

The Borough's failure to adopt and implement internal controls to protect Borough funds has resulted in hundreds of thousands of dollars of improper, fiscally irresponsible, or otherwise questionable payouts for the years reviewed. As a local governmental entity, the Borough is funded by, and entrusted with, taxpayer dollars to conduct its daily operations. It should carry out its duties efficiently and with transparency, but has failed to do so in many ways. OSC, through its recommendations, aims to ensure that the public's confidence in government entities generally, and the Borough in particular, is not misplaced.

II. BACKGROUND INFORMATION

A. Statutes Governing Certain Fiscal and Ethical Affairs of a Municipality

1. The Local Fiscal Affairs Law

The Local Fiscal Affairs Law (LFAL), *N.J.S.A.* 40A:5-1 to -42, establishes procedures that must be followed for a municipality to spend public funds. The LFAL provides that, with certain exceptions, a municipality “shall not pay out any of its moneys” unless two conditions are satisfied. *N.J.S.A.* 40A:5-16. First, the person “claiming or receiving” payment must present to the municipality “a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that the bill or demand is correct.” Second, the payment must include a certification from an “officer or duly designated employee . . . having knowledge of the facts that the goods have been received by, or the services rendered to, the [municipality].”

As a municipality subject to the LFAL, Palisades Park is required to meet the above conditions before making a payment from its accounts. The Borough has recognized this requirement through the adoption of a local ordinance.

2. Tax Exempt Status

As a political subdivision of the State of New Jersey, the Borough is exempt from sales and use taxes imposed by the “Sales and Use Tax Act.” *N.J.S.A.* 54:32B-9(a)(1).

3. Local Government Ethics Law

The Local Government Ethics Law (LGEL), *N.J.S.A.* 40A:9-22.1 to -22.25, provides a statewide code of conduct applicable to all officers and employees that serve in local government. The purpose of the LGEL is to provide standards of ethical conduct and

financial disclosure for local government officers and employees that are clear, consistent, and uniform. *N.J.S.A. 40A:9-22.2*. The LGEL recognizes that “[p]ublic office and employment are a public trust”; that “[t]he vitality and stability of representative democracy depend upon the public’s confidence in the integrity of its elected and appointed representatives”; and that “[w]henver the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled.” *N.J.S.A. 40A:9-22.2*. The LGEL provides that “[n]o local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.” *N.J.S.A. 40A:9-22.5(c)*.

B. The Borough of Palisades Park

Palisades Park is a borough in Bergen County with a total area of 1.25 square miles and an estimated population of 20,000 people. The Borough employs 86 full-time employees and 141 part-time employees. Thirteen of the full-time employees are designated “as needed,” which means they do not have a set work schedule. Some employees are covered by collective bargaining agreements (CBAs) that were negotiated with PBA Local 45 and Teamsters Local 97. Other employees have individual contracts with the Borough. Some employees are neither covered by a CBA nor party to an individual contract.

1. The Borough’s Administrative Functions

The Borough’s administrative functions are performed by the Office of the Borough Administrator and the Office of Finance.

The Office of the Borough Administrator consists of the BA, the Deputy Business Administrator (Deputy BA), and under the Office of the Borough Administrator is the

Borough Clerk (Clerk). The BA serves as the chief administrative officer for the municipality and is responsible “for the enforcement and execution of all ordinances of the Borough and all state laws and regulations subject to enforcement by Borough action and, in general, for the proper administration of all affairs of the Borough within the jurisdiction of the governing body.” Section 48-75 of the Borough of Palisades Park Code.

The BA’s responsibilities, which are established by the Borough Code, include:

- directing and supervising the administration of all departments and offices of the Borough government;
- working with the CFO to approve, and recommending to the Palisades Park Borough Council (Borough Council or Council) the payment of, all bills;
- establishing and maintaining sound working policies including scheduling of vacation, holiday, and sick leave; and
- enforcing the personnel policy of the Borough and any contractual obligations with employees.

The BA is assisted in his role by a Deputy Borough Administrator. Both the BA and the Deputy BA are appointed by the Mayor with the advice and consent of the governing body and may be removed by a two-thirds vote of the governing body.

The current BA has been employed by the Borough in this capacity since 2008. The BA’s terms of employment, including compensation, health and other benefits, and work hours, are set forth in an employment contract. The most recent contracts between the BA and the Borough were entered into in 2011 and 2015. In addition to his responsibilities as BA, he is also the highest ranking member of the Borough’s Planning Board and owns a private construction management company that is based in the Borough.

The Clerk's responsibilities are defined by *N.J.S.A 40A:9-133*. The Clerk is the secretary to the governing body, with various administrative duties, including reviewing all OPRA requests. The current Clerk has been employed in that position since 2015.

The Office of Finance handles the financial affairs of the Borough. Among other tasks, this includes processing all Borough payments, such as vendor payments, employee payroll, annual employee sick leave payouts, and employee expense reimbursements. The Office of Finance is overseen by the CFO and includes two clerks who are responsible for processing payments and reimbursements.

The current CFO is a part-time employee who works up to 10 hours per week for the Borough. He serves as the custodian of all Borough funds and is responsible for, among other things, preparing the Borough budget, monitoring budgeted appropriations and revenue, implementing and maintaining a system of internal controls to safeguard Borough assets, and processing payments from the appropriate municipal accounts. *See N.J.A.C. 5:32-2.1* (duties and responsibilities of a municipal Chief Financial Officer).

By way of employment contract, the BA, Deputy BA, and Clerk are classified as "as needed" employees. The CFO is also classified as an "as needed" employee. He does not have an employment contract.

2. Borough Employee Expense Reimbursement Practices

The Borough permits employees to submit reimbursement requests for Borough-related purchases that were paid using their personal funds. Borough officials claimed in interviews that they follow a standardized procedure for the receipt, review, and approval of requested reimbursements. The procedure the Borough uses, however, is not in writing and has not been formally adopted by the Borough.

The reimbursement procedure used by the Borough requires multiple layers of review. The process begins when an employee prepares a reimbursement form and attaches to it documentation supporting the reimbursement (*e.g.*, receipts and bills). The employee or the employee's department head is responsible for reviewing the accuracy and suitability of the reimbursement.

After the department head completes the review, the request is sent to the finance clerks for a second review. The finance clerks are tasked with, among other things, confirming the validity of the request and ensuring that any sales tax paid by the employee is not included in the reimbursement. If the finance clerks are satisfied with the request, they prepare a purchase order to be signed by the requesting employee and the appropriate department head.

Once the purchase order has been prepared and signed, the CFO ensures the availability of municipal funds to satisfy the reimbursement, and is required to sign the purchase order.

The Finance Department then submits to the Borough Council a bills list, which includes all outstanding reimbursement requests, for approval. Once approved, the finance clerks will prepare a check containing the electronic signatures of the Mayor, Clerk, and Tax Collector/Treasurer. The check is then remitted to the employee. OSC was advised that this process can take months to complete.

3. Borough Sick Leave Policy

For non-unionized Borough employees, the terms of employment, including the Borough's sick leave policies, are set forth in the Employee Handbook. According to the current Employee Handbook, which was issued in 2019, "employees are entitled to 12

working days of sick leave per calendar year” and “an employee’s unused sick time is added to the allotment for the following year.” The accumulation of sick leave continues until the employee accrues more than 60 days of sick leave and becomes eligible to receive pay for the number of days above 60 days. The handbook distinguishes based on when an employee was hired as follows:

For Employees starting prior to 07/01/2016[:] [A]t the end of each calendar year, an employee’s unused sick time is added to the allotment for the following year. The accumulation continues until the employee accumulates a bank of 60 days, at which point the employee will be paid for their total accumulated unused sick time above 60 days, but not to exceed 12 days.

Employees [s]tarting after 07/01/2016[:] [A]t the end of each calendar year, an employee's unused sick time is added to the allotment for the following year. The accumulation continues until the employee reaches 60 days. Employees will be paid for one-half of their total accumulated unused sick time at the time the employee resigns or retires from employment if such time is accumulated.

For Borough employees who are members of a union, the terms of their employment, including sick leave polices, are contained in collective bargaining agreements (CBA). For instance, the CBAs between the Borough and the Teamsters Local 97 of New Jersey, provide that employees are to be paid annually by January 30 for their total accumulated unused sick time above 60 days. They may receive full pay for up to 12 or 15 days, depending on the maximum amount of leave provided to the employee, under those contracts.

4. Use of Borough Fuel Cards

The Borough uses fuel cards to purchase gas for Borough vehicles. In addition, specific Borough employees are permitted use of fuel cards to fuel their personal vehicles. The Borough does not have a written policy or procedure regarding use of the fuel cards.

III. METHODOLOGY

OSC's investigation was initiated upon receipt of a complaint. To conduct its investigation, OSC obtained and examined numerous documents, including internal policies and procedures, employment handbooks and contracts, collective bargaining agreements, bank records, and reimbursement records. OSC also reviewed expense records for the BA from January 1, 2009 to July 31, 2018; expense reports for 32 other Borough employees from January 1, 2015 to December 31, 2017; sick leave payouts made to Borough employees for the years 2018 and 2019; and records reflecting Borough employee fuel card usage for the period January 1, 2019 to December 31, 2019.

OSC conducted interviews with various employees of Palisades Park, including the BA, Deputy BA, CFO, Clerk, municipal finance clerks, and the Borough's auditor.

A draft of this report was provided to the Borough's governing body, administrative staff, and employees mentioned in the report to give them an opportunity to comment on the issues identified during the course of our investigation. Any responses received were considered in preparing this final report and have been addressed herein where appropriate.

In its response, the Borough stated that the "Governing Body has been in ongoing discussions with the Administrative staff and its professionals to address the issues set forth in [the] draft report." The Borough also identified actions it has already undertaken and actions it intends to take to redress issues uncovered by OSC. The Borough did not dispute the findings in the report.

IV. INVESTIGATIVE FINDINGS

A. The BA's Contract and Actions Taken by the Borough Pursuant to that Contract Violate State Law

Since he was appointed in 2008, the Borough has entered into multi-year contracts with the BA. The most recent contract was entered into on December 3, 2015 for a term of five years. According to the contract, the BA will receive the following compensation and benefits and agrees to the following terms:

- The Borough “agrees to provide and to pay for *all premiums and costs* for all health, hospitalization, surgical, dental and prescription drug plan(s) for [the BA] and his dependents” as well as a disability insurance plan. (Emphasis in original.)
- The Borough agrees to provide the BA with “vacation leave on an annual basis,” which is calculated “commensurate with the number of years of service” he has with the Borough “as identified by [his] PERS Enrollment date.” He currently receives 25 days of vacation to use annually. He also receives four personal days. The contract provides that he “shall be entitled to compensation for all unused vacation leave and accumulated sick leave upon termination or resignation of his employment.”
- The BA receives paid time off from work for 15 holidays and his birthday.
- With 12 sick days, 15 holidays, his birthday, 25 vacation days, and four personal days, the BA is eligible under his contract to receive pay but not work on 57 weekdays each year.
- The BA received a base pay of approximately \$159,000, an amount that has grown to over \$207,000. The contract provides for annual pay raises and under its terms is “automatically amended” to reflect authorized salary adjustments.
- The BA receives “an auto allowance in the amount of \$350 per month and the use of Borough fleet fuel card and needed auto maintenance.”
- The BA “serves at the pleasure of the full governing body and may be terminated by a unanimous vote of the full governing body for cause.”
- Upon termination or resignation, the BA will receive two weeks’ severance pay “for each year of service provided to the Borough” from his 1995 enrollment date in PERS, or currently approximately 50 weeks of pay. This is more generous than the Borough provides to other employees through its handbook, which provides as the

maximum amount of longevity pay that “[e]mployees completing sixteen (16) years of service [receive] 10% of base pay.” Using his enrollment date in PERS permits him to receive credit toward severance for thirteen years when he was a Borough councilman who earned less than \$2,000 annually.

- Upon termination or resignation, the BA is guaranteed “compensat[ion] for all accrued and accumulated sick, personal, severance and vacation time.”
- The BA is entitled to health insurance coverage for one year after his termination or resignation.

These contract terms contravene state law in three ways, as detailed below: The contract improperly insulates the BA from being terminated by the Borough Council; improperly provides the BA with supplemental sick leave compensation that is not available to municipal administrators under a 2007 law; and improperly provides the BA with the ability to accrue vacation leave year-to-year in violation of the same 2007 law.

1. The BA’s Five-Year Employment Contract Improperly Limits the Ability of the Borough Council to Remove Him

The contract between the Borough and the BA may upset the balance of power between a municipal administrator and governing body that is required by state law and local ordinance in providing that the BA can only be terminated “for cause” and through a unanimous vote of the full governing body.

N.J.S.A. 40A:9-137 provides that “[a]ppointment to the office of municipal administrator shall be made by the mayor or chief executive officer of the municipality with the advice and consent of the governing body” and that “[t]he term of office of the municipal administrator shall be at the pleasure of the governing body.” *N.J.S.A.* 40A:9-138 provides that “[t]he municipal administrator may be removed by a 2/3 vote of the governing body” and that “[t]he governing body may provide that the resolution shall

have immediate effect.” Section 48-72 of the Borough Code, which also requires a two-thirds vote, implements *N.J.S.A. 40A:9-138*.

The contract the BA negotiated in 2015 purports to place him in the extraordinary position of being able to remain as municipal administrator even if five of the six members of the Borough Council vote for him to be removed. The provision was newly added in 2015; the BA’s 2011 contract appropriately referenced the ordinance that adopted the removal provision for the position of the Municipal Administrator, Section 48-72 of the Borough Code. In requiring a unanimous vote of all six members of the governing body and stating that he can only be terminated “for cause,” the BA’s contract upends the balance of power required by state law, which in requiring a two-thirds vote means that only four of the six members must agree in order to replace a municipal administrator. *N.J.S.A. 40A:9-138*.¹ Palisades Park does not have the discretion to alter the requirements of state law or to contract away the requirements of its own ordinances. The unanimity requirement, therefore, is unlawful.

The unanimity provision purports to insulate the BA from being held accountable by the governing body, and, through elections, by municipal residents. The BA possesses considerable day-to-day power within the Borough as “the Chief Administrative Officer of the Borough” who is responsible “for the proper administration of all affairs of the Borough within the jurisdiction of the governing body.” The role of the municipal

¹ Palisades Park’s ordinance regarding the removal of the Municipal Administrator states that “[t]he Municipal Administrator may be removed by a two-thirds vote of the full governing body.” (Emphasis added.) The BA’s contracts include the “full” requirement as well. This appears to also conflict with state law because it would prevent five of six members, for instance, from voting to remove him in the event one member does not attend the meeting.

administrator is especially important within a municipality if elected officials serve in a part-time capacity. It is certainly conceivable that residents who disapproved of a municipal administrator's performance or simply sought new leadership may seek to have the BA removed by voting for Council members who also disapproved of the administrator's performance. That could be accomplished in accordance with *N.J.S.A. 40A:60-2*, which requires annual elections of two members of the governing body. Such an effort though could be frustrated or delayed if all six members of the governing body must agree to remove the administrator.

The "for cause" requirement is also contrary to law. Serving "at the pleasure of the governing body," as required by *N.J.S.A. 40A:9-137*, means that a "for cause" requirement is not permitted in a contract for a municipal administrator.² Like any at-will employee, municipal administrators can be removed for any lawful non-discriminatory reason, or no reason, provided there is a two-thirds vote of the governing body to remove the administrator.

2. Provisions in the Borough Administrator's Employment Contract Regarding Sick and Vacation Leave Contravene a 2007 Law

The BA's 2015 contract guarantees him "compensat[ion] for all accrued and accumulated sick, personal, severance and vacation time." The Borough's records reveal that as of December 26, 2019, he had accumulated 72 days of sick leave and 155.5 days of vacation leave. The BA informed OSC that he has never taken a sick day during his time

² *Cabarle v. Governing Body of Pemberton*, 167 N.J. Super. 129, 140 (Law Div. 1979), *aff'd*, 171 N.J. Super. 586 (App. Div. 1980) (finding "for cause" requirement of municipal administrator termination ordinance "directly contrary to statutory direction" of *N.J.S.A. 40A:9-137* and therefore "not valid"); *see also Haus v. Borough of S. Plainfield*, 237 N.J. Super. 558, 561 (App. Div. 1990).

as a Borough employee. If he is sick, he uses vacation days to enable him to receive a sick leave payout for all of his sick leave. The Borough pays the BA for annual unused sick leave above 60 days and, according to its records, he continues to accumulate his unused vacation leave. Under state law, the 2015 contract and many actions taken by the Borough pursuant to the contract related to the BA and his sick and vacation leave appear unlawful.

a. 2007 Employee Benefits Payout Reform

On December 1, 2006, the Joint Legislative Committee on Public Employee Benefits Reform issued a report that recommended the passage of legislation capping sick leave payouts and the accumulation of vacation leave by local governments. The report noted that the then-current law did not “limit the amount of supplemental compensation for accumulated sick leave that may be paid to a local government or school board employee upon retirement. However, this benefit is limited by *N.J.S.A.* 11A:6-19 to \$15,000 for State employees.” The committee found that “[s]ick leave is not part of a general compensation plan” and that “[m]any school districts and municipal governments throughout the State grant and allow employees to accumulate significant amounts of sick, vacation, and other forms of paid leave and receive cash compensation for unused leave annually during employment and retirement.”

To address these concerns, the committee recommended as follows as to sick leave:

The Joint Committee recommends the enactment of legislation to limit sick leave compensation payable upon retirement to \$15,000 for local government and education employees. The legislation should apply to sick leave granted after enactment. Local government and school board employees who, as of the law’s effective date, have accrued supplemental compensation based upon accumulated sick leave in an amount in excess of \$15,000 should remain

eligible to receive the full accumulated amount as of the conclusion of an existing contract or \$15,000, whichever is greater. The legislation should take effect after the expiration of any collective bargaining agreement or individual contract of employment in effect at the time of enactment so that no obligation in a contract is impaired.

The Joint Committee has concluded that this recommendation will bring supplemental compensation for accumulated unused sick leave in line with the current law and practice for State employees, thus standardizing this benefit for public employees serving at different levels of government in the State. In addition, this recommendation will enable local governments to control public employee benefit costs which, in turn, will reduce property tax revenue needs.

The committee also made the following recommendation regarding accumulated vacation leave:

The Joint Committee recommends the enactment of legislation to limit the indefinite accumulation of vacation leave accruing after the legislation's enactment. The legislation should take effect after the expiration of any collective bargaining agreement or individual contract of employment in effect at the time of enactment so that no obligation in a contract is impaired. The indefinite accumulation of vacation leave by those employees should cease for vacation leave accruing after the legislation's effective date.

The Joint Committee has concluded that this recommendation will bring the carry forward of unused vacation time in line with the current law and practice for State employees, thus standardizing these benefits for public employees serving at different levels of government in the State. In addition, this recommendation will enable local governments to control public employee benefit costs which, in turn, will reduce property tax revenue needs.

In 2007, as part of its response to the work of the Joint Committee, the Legislature passed L. 2007, c. 92, a law that went into effect on June 8, 2007. That law included three statutes that mandated changes to sick leave policies for high level employees of civil

service municipalities, *N.J.S.A.* 11A:6-19.1, non-civil service municipalities, *N.J.S.A.* 40A:9-10.2, and school districts, *N.J.S.A.* 18A:30-3.5. Those statutes limit payments for accumulated unused sick leave to \$15,000 for covered officers and employees, which are defined as, among other things,

a person appointed by an elected public official or elected governing body of a political subdivision of the State, with the specific consent or approval of the elected governing body of the political subdivision that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State as that similarity is determined by the elected governing body and set forth in an adopted ordinance or resolution, pursuant to guidelines or policy that shall be established by the Local Finance Board in the Department of Community Affairs.

The three statutes prohibited payments for covered officers and employees from receiving annual sick leave payments, stating that “[s]upplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement.” The statutes permit covered employees to retain accumulated sick leave worth more than \$15,000 as of the effective date of the law to retain that greater amount, but prohibit them from accumulating more than that.

The Legislature as part of L. 2007, c. 92 also adopted two statutes imposing limitations on the accrual of vacation leave for non-civil service municipalities, *N.J.S.A.* 40A:9-10.3, and school districts, *N.J.S.A.* 18A:30-9. Those statutes provide that an officer or employee of a covered municipality and school district, as defined above, who does not take vacation “in a given year because of business demands shall be granted that accrued leave only during the next succeeding year,” except when there has been a gubernatorially-declared emergency. The statutes further provide that a person who as

of or after the effective date of the law is or becomes an officer or employee “and has previously accrued vacation leave shall be eligible and shall be permitted to retain and use that accrued vacation leave.”

The Local Finance Board was required by L. 2007, c. 92 to adopt guidelines or policy for local governmental units regarding the application of the new law. The Board issued Local Finance Notices (LFN) 2007-28 and 2008-10, which, among other things, identified the positions to which the newly imposed limits on accumulated leave payouts applied. LFN 2008-10 states that a municipal business administrator is subject to those restrictions.

b. Contract Provisions and Actions by the Borough that Violate the 2007 Law

Contrary to the 2007 law discussed above, the 2011 and 2015 contracts between the Borough and the BA have no limitations on sick leave payouts. The BA receives annual sick leave payouts in violation of *N.J.S.A. 40A:9-10.2*. He has received far in excess of the \$15,000 cap imposed by that law and received the funds before his retirement. For instance, he received sick leave payouts of approximately \$9,200 in 2018 and \$9,500 in 2019.

The BA's contracts require him to receive full compensation for all accrued and accumulated vacation time and do not acknowledge the limitations of L. 2007, c. 92. The Borough's records reflect that the vacation leave is accruing beyond the one-year period permitted by law. Under *N.J.S.A. 40A:9-10.3*, the BA was barred from accruing vacation leave for more than one year beyond when it was initially received, except in the event of gubernatorially declared emergency, which is not relevant here. Any vacation leave that would have accrued for more than one year since his appointment to the Borough

Administrator in 2008 has been improperly and unlawfully recorded as accruing in the Borough's records.

The Legislature sought in 2007 to protect taxpayers from excessive costs attributable to high level officials. The statutes it adopted, which plainly apply to the BA, appear to have been substantially, if not totally, ignored by Palisades Park. Under the terms of his current contract, the BA is required to receive nearly \$160,000 in pay for sick and vacation leave that the law prohibits him from receiving. Notably, this figure excludes annual payouts that the BA has already unlawfully received.

B. The Borough's Policy Allowing Annual Sellbacks of Unused Sick Leave Violates Statutory Sick Leave Limitations Adopted in 2010

The Borough spends substantial sums annually to pay employees for sick leave that is not used. It does so in accordance with its employee handbook and union contracts. The Borough's 2019 employee handbook and the current 2017 union contracts are inconsistent with state law and result in some employees receiving sick leave payouts annually who are prohibited by law from doing so.

1. Sick Leave Payout Reform

In 2010, also in response to the December 1, 2006 report by the Joint Legislative Committee on Public Employee Benefits Reform, the Legislature passed legislation to implement partially the committee's recommendations. L. 2010, c. 3. Upon introduction of Senate Bill 4 (2010), which became L. 2010, c. 3, the sponsors of the legislation included a February 8, 2010 statement that identified one of the committee's goals as "bring[ing] supplemental compensation for accumulated unused sick leave in line with the current law and practice for State employees, thus standardizing this benefit for public employees serving at different levels of government in the State." The statement further noted:

This bill provides that supplemental compensation for accumulated unused sick leave payable to any local government or school district officer or employee cannot exceed \$15,000 and can only be paid at the time the officer or employee retires. This provision would apply only to officers and employees who commence service with a local government or a school district on or after the bill's effective date.

Current law limits to \$15,000 the maximum amount that may be paid to a State employee for accumulated unused sick leave when the employee retires. However, there is currently no such limit with regard to local government and to school district officers or employees, except with regard to certain high level local government and school district officers.

[S. 4 (Sponsors' Statement), 214th Leg. 14-15
(N.J. Feb. 8, 2010).]

The 2010 law instituted a cap on compensation for unused sick leave for municipalities and counties, among other entities, that have elected to be involved in the civil service system, stating:

Notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has not adopted the provisions of Title 11A of the New Jersey Statutes, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.

Similar provisions were adopted for municipalities, counties, and other non-State entities involved in the civil service system, *N.J.S.A.* 11A:6-19.2, and school boards, *N.J.S.A.* 18A:30-3.6.³

These three statutes by their terms do not apply to any employee who commenced service with a local government prior to May 21, 2010. For employees who commenced service with a local government on or after May 21, 2010, or who were hired in accordance with a CBA that was not in effect as of that date, the three provisions permit one and only one form of sick leave payout: A payment of up to \$15,000 at retirement. Annual payments to employees covered by the law are not permitted.

2. The Borough's Sick Leave Supplemental Compensation Policies Do Not Comply With the 2010 Law

The Borough's policies contravene *N.J.S.A.* 40A:9-10.4 in three ways.

First, the Borough does not enforce the date restriction in *N.J.S.A.* 40A:9-10.4 in the union contracts it entered into after May 21, 2010, with regard to newly hired union employees hired after the effective date, or in its non-union employment policies. The Borough should have applied the limitation on sick leave to contracts that went into effect after May 21, 2010 and recognized the obligation to comply with *N.J.S.A.* 40A:9-10.4 in

³ These statutes have been applied, interpreted, and distinguished in various contexts and currently remain in effect. *See, e.g., Barila v. Bd. of Educ. of Cliffside Park*, 241 N.J. 595, 602 n.1 (2020); *New Jersey Ass'n of School Adm'rs v. Schundler*, 211 N.J. 535, 556, 559 (2012) ("The legislative history for *N.J.S.A.* 18A:30-3.6 reveals that the Senate and Assembly meant to expand the sick leave cap in *N.J.S.A.* 18A:30-3.5 to cover a greater number of employees"); *In re City of Atl. City*, Docket No. A-3817-14T2, 2017 N.J. Super. Unpub. LEXIS 2366 (App. Div. Sep. 20, 2017) (interpreting *N.J.S.A.* 11A:6-19.2); *Howell Tp. Bd. of Ed.*, P.E.R.C. No. 2015-58 (2015) (interpreting *N.J.S.A.* 18A:30-3.6); *Township of Little Falls*, P.E.R.C. No. 2016-42 (2015) (interpreting *N.J.S.A.* 40A:9-10.4).

those contracts. *See Howell Tp. Bd. of Ed.*, P.E.R.C. No. 2015-58 (2015). The Borough did not do so in any of the multiple contracts that went into effect after that date. This puts the Borough in the unfortunate position of being contractually bound to do something that state law prohibits. For example, two contracts with the Teamsters union, which went into effect in 2015, have no limit, stating simply that “[a]ny employee who has accumulated sixty (60) days of [sick leave] time will be paid for the unused sick leave from the previous year [at] 100% of regular salary. Payment shall be made no later than January 30 of the year following the accrual.” Those contracts plainly contravene *N.J.S.A. 40A:9-10.4*. Further, two earlier contracts with the Teamsters were entered into “as of” January 1, 2010, but according to resolutions OSC reviewed, the contracts were not approved by the governing body until June 15, 2010 and could not have been executed until on or after that date. Because the contracts were not in effect on May 21, 2010, *N.J.S.A. 40A:9-10.4* barred any employee hired after that date from receiving annual sick leave payouts.

Second, the Borough’s Employee Handbook does not align with state law. The Borough’s Employee Handbook distinguishes between employees who commenced service on or after July 1, 2016, more than six years after the statutory deadline. The Employee Handbook, and the Borough’s employment policies implemented in accordance with the handbook, therefore violate *N.J.S.A. 40A:9-10.4* as well. Additionally, the Borough has not implemented the \$15,000 cap in the Employee

Handbook or in the union contracts with the Teamsters and the Palisades Park PBA Local No. 45, even when it otherwise imposes some of the limitations required by law.⁴

Third, due to the Borough's failure to implement *N.J.S.A. 40A:9-10.4*, it still permits *annual* sick leave payouts to employees who by state law are prohibited from receiving them. This means that certain Borough employees are receiving, or are eligible under Borough policy to receive, annual payments when by state law they may only receive a single capped payment at retirement. Although it uses the wrong date, the Borough's Employee Handbook does limit some employees to a single payment at retirement, which constitutes partial compliance with *N.J.S.A. 40A:9-10.4*. Employees hired between May 21, 2010 and June 30, 2016 are still eligible to receive an annual payout under the Borough's unlawful policy. The Borough Clerk, for instance, an employee who commenced service after May 21, 2010, received a total of nearly \$10,000 for 2018 and 2019 alone. The limited records OSC reviewed indicate that she is not alone in receiving unlawful annual sick leave payouts.

The Borough's failure to comply with *N.J.S.A. 40A:9-10.4* by limiting sick leave payments to employees covered by that law has exposed the taxpayers of Palisades Park to substantial and unnecessary financial obligations that the Borough was barred from assuming. The statewide mandate to protect taxpayers from the costs of runaway sick leave payments has been substantially disregarded in the Borough of Palisades Park.

⁴ OSC has not reviewed the sick leave provisions included in the PBA contract and does not comment here on those provisions.

C. The Borough's Sick Leave Policy and Annual Payouts are Wasteful and Inefficient

The Borough retains substantial discretion as to employees not covered by the 2007 and 2010 laws limiting sick leave payouts. OSC's investigation revealed the Borough uses that discretion wastefully and inefficiently in ways that unnecessarily increase costs to taxpayers, but achieve few, if any, of the valid purposes of offering sick leave to employees.

Documents reviewed by OSC reveal that the Borough does not have a formalized, consistent, centralized approach for recording full-time salaried employees' sick time. Rather, sick leave for full-time employees is tracked by each employee's supervisor, who, at the end of each year, advises the Finance Department of the number of sick days taken by each employee. The employee's sick time bank is then reduced accordingly. Sick leave requests are communicated verbally, by e-mail, by written request, or documented on a shared calendar, depending on the department. OSC also found that some employees self-report their sick time to the Finance Department. One supervisor told OSC that there is no daily record maintained for the employees he supervises. He said that he is made aware of leave time during his bi-weekly staff meetings. The Borough's reliance on an unsystematic, decentralized approach is especially puzzling given that payroll companies and online services make tracking paid time off very simple.

For many employees, it appears that sick leave is used as a vehicle for increasing employee compensation, rather than for legitimate illness that requires time off. Full-time employees with accumulated sick leave exceeding 60 days rarely use their sick leave. In 2018, for instance, two of the 25 employees with sick leave banks exceeding 60 days took sick days over the course of the year. Notably, those two employees were still eligible

for and received a payout for the remaining leave over 60 days they accumulated. Likewise, 2019 followed a nearly identical pattern—only two employees with sick leave of more than 60 days took sick leave throughout the year. Those two employees received a payout for their remaining leave above 60 days.

The amounts spent were substantial. In 2018, the Borough paid over \$109,000 to 27 employees who, under the 2010 law, should not have received such sick leave payouts. Similarly, in 2019, the Borough improperly paid over \$95,000 to 22 employees. Most payments were between \$3,000 and \$5,000.

The Borough's "as needed" employees appear to benefit more often from sick leave payouts than other employees. These employees are charged with determining for themselves how many hours of work are required to accomplish their job functions each day. OSC was advised that these employees are considered full-time and paid a salary that is based on a typical work week from 35-40 hours. During the 2018 and 2019 fiscal years, none of the "as needed" employees who accrued 60 days of leave used even a single day of sick leave. All nine "as-needed" employees who receive an allocation of sick leave and accrued sixty days, including employees hired after May 21, 2010, received a payout for their accumulated sick time over 60 days, totaling \$44,020.37 in 2018 and \$49,850.07 in 2019.

The payments to the BA, which are prohibited by law, have been discussed above, but he is not alone in supplementing a substantial salary with sick leave payouts. Another employee with an annual salary of approximately \$144,000 received a payout of \$5,862 for 2018 and \$8,318 for 2019. A third employee with an annual salary exceeding \$109,000 received sick time payouts of \$4,636 for 2018 and \$5,043 for 2019.

The Borough's policies show that the Legislature's passage of the 2007 and 2010 laws was appropriate. In the Borough, payments for sick leave appear to be more often than not used to supplement salaries rather than being used to provide a stable source of income to a person who is actually sick. The Borough's sick leave payments are wasteful and result in taxpayers having to pay inflated compensation to employees.

D. The Borough's Supplemental Compensation Payments Including Longevity and Severance are Wasteful

Problems with longevity payments, severance payments, and other payments that increase pay to public employees and expose taxpayers and municipalities to large unnecessary financial obligations have been well documented by OSC and the State Commission of Investigation (SCI).⁵ Consistent with the findings in reports issued by OSC and SCI, the Borough's supplemental compensation policies are wasteful and result in unnecessary payments to public employees that inflate compensation through various means while still providing annual raises to employees.

This is most clearly the case with the BA. The BA's 2015 contract provides him with far greater benefits than other employees. Unlike all of the other employees whose contracts we reviewed, including union employees, the BA's contract does not require him to contribute to his health insurance. To the contrary, his contract requires the Borough "to provide and to pay for *all premiums and costs* for all health, hospitalization, surgical,

⁵ See [Controls Over Personnel and Fiscal Policies at Selected New Jersey Municipalities](#), Office of State Comptroller (Dec. 18, 2014); [Selected Financial and Operating Practices of New Jersey Turnpike](#), Office of State Comptroller (Oct. 19, 2010); [The Beat Goes On and On: Waste and Abuse in Local Public Employee Compensation and Benefits](#), State Commission of Investigation (Feb. 2020); [The Beat Goes On: Waste and Abuse in Local Government Employee Compensation and Benefits](#), State Commission of Investigation (Dec. 2009).

dental and prescription drug plan(s) for [the BA] and his dependents.” (Emphasis in original.)

The BA’s severance (or terminal) pay is based on a calculation of two weeks’ severance pay “for each year of service provided to the Borough” from his 1995 enrollment date in PERS, or currently approximately 50 weeks of pay. Using the BA’s enrollment date in PERS permits him to receive credit toward severance for thirteen years when he was a Borough councilman who earned less than \$2,000 annually. His contract suggests he will receive more than \$100,000 in terminal leave for thirteen years (1995-2007) during which he earned a total of just \$24,000. This is based on 26 weeks of his current base salary. A Council member or other Borough resident who reviewed the BA’s contract, perhaps prior to the meeting at which the Borough Council considered whether to approve it, may not know about this retroactive 13-year additional benefit to his severance package because the contract is silent on when the BA enrolled in PERS.

Whereas other employees may not accumulate and carry over more than one year’s worth of vacation to be used in the subsequent year, the BA’s contract includes no such limitation. As of 2019, he had 28.5 weeks of vacation for which his contract entitled him to reimbursement.

Upon termination or resignation, the contract guarantees the BA to “compensat[ion] for all accrued and accumulated sick, personal, severance and vacation time.” Under that provision, as of the end of 2019, the BA would receive in excess of \$160,000 in pay for sick and vacation leave as previously noted in this report for 12 weeks of sick leave and 28.5 weeks of vacation. Additionally, using his base salary of \$207,000 annually he would receive 50 weeks of terminal pay totaling nearly \$200,000 in

compensation. The combined total value of “all accrued and accumulated sick, personal, severance and vacation time” is at least \$360,000 in supplemental compensation upon the BA’s retirement or termination as of the end of 2019.⁶

Other Borough employees also benefit from compensation that supplements their normal salaries. Borough employees receive three other kinds of compensation that either enhance their normal pay or compensate them for days that they did not work.

First, in addition to regular annual raises, the Borough’s union contracts for white collar and blue collar employees provide between 2%-10% longevity pay that is paid in normal paychecks for employees working between four and 20 years. For police officers, the longevity pay is as high as 12%, although it has been eliminated for PBA employees hired after January 1, 2017. Likewise, non-union Borough employees hired after July 1, 2016 are ineligible for longevity pay.

Second, in addition to many of the employees receiving annual sick leave payouts, certain employees pursuant to their CBAs may receive up to four months’ salary at retirement without regard to the \$15,000 cap. Employees under the various union contracts may also receive compensation for up to one year of accrued vacation.

Third, two union contracts allow for severance payments. Severance or terminal leave, which really is just a large bonus an employee receives at the end of the employee’s career, is paid to employees at a graduated rate of one month of salary for an employee

⁶ This amount notably includes funds that may not be lawfully paid to the BA. The BA is not permitted to receive more than \$15,000 in sick leave and is not permitted to receive vacation leave that has accumulated for more than one year. This would only result in an approximately 30-percent reduction in the amount he receives at any point under current terms because so much of his retirement or termination compensation is tied to his terminal leave, which has been accruing a rate of two weeks per year since 1995.

with 10 years of service up to five months of salary for an employee with 40 years of service. Employees hired after January 1, 2017 are capped at 30 days of terminal pay.

All of these additional forms of compensation show that the Borough provides unnecessary payments to employees that place extreme burdens on taxpayers. The Borough has commendably eliminated longevity pay and capped terminal leave for some employees. Nonetheless, substantial unnecessary expenses are likely to continue. The Borough should continue to find ways to reduce unnecessary expenses involving public employees.

E. The Borough's Fuel Purchases are Subject to Waste, Fraud, and Abuse

In 2019, the Borough, a 1.25 square mile municipality, spent \$120,000 to purchase fuel for vehicles. Borough leaders do not know who used that fuel, what vehicles it was used in, and how much of it was used for Borough versus personal purposes. The Borough's lax approach to fuel card usage has resulted in waste, fraud, and abuse.

The Borough does not have any policies, standards, or controls over the use of Borough supplied and paid fuel cards. Fuel cards are available for fleet vehicles, such as fire, police and Borough-owned vehicles available for use by employees. The Borough provides fuel cards to department heads and others. The Borough also provides car allowances in accordance with their contracts to the BA, the Deputy BA, and the Clerk.

No Borough department or employee is primarily responsible for monitoring or accounting fuel card usage. The BA said he thought the "job of tracking gas cards usage was too a great a job for one person" and that oversight was the responsibility of the department heads and the Finance Department. The CFO, however, disagreed that the responsibility lays with him and the department he leads, explaining that he simply

approves monthly payments to the credit provider and does not conduct a detailed review of the bills. He explained that, in the event he noticed significantly higher fuel charges from one month to the next, he would only bring it to someone's attention if it affected the overall budget. The CFO, who is charged by state law with "[d]evelop[ing] and implement[ing] a system of internal controls to safeguard assets and monitor compliance" and "[s]erv[ing] as custodian of all public funds," placed sole responsibility on the department heads, which is noteworthy because there is no indication department heads have access to information regarding which employees use or possess fuel cards.

The Borough's failure to adopt any controls involving fuel cards means there are no limits on how much an employee can charge, and there are no ways to detect fraud. All of the Borough-issued fuel cards contain the same account number, require the employees to enter the same PIN at the pump, and have no visible unique identifier. The Borough does not require, for instance, the use of a license plate number or any other individual or vehicle user identifiers. In response to OSC's document request, the Borough could not provide a list of current or former employees who were provided fuel cards. Worse, the Borough did not even know how many fuel cards have been issued under its credit account.

The Borough also lacks billing information. The Borough could not provide OSC with any billing documents beyond aggregated monthly statements from its fuel card credit provider. These monthly statements, however, contained no details, even as basic as individual versus fleet usage. Borough employees told OSC that they simply pay the monthly fuel card bills without a detailed review.

OSC questioned how the Borough would retrieve a fuel card from an employee whose employment with the Borough is ending. The Borough reported that it would generally request the return of all Borough property, which would include any fuel cards issued to the employee. In the absence of any records or oversight, however, there is no way for the Borough to know whether or not the employee whose employment is ending ever had a fuel card. Additionally, in view of the fact that the Borough does not keep an accounting of individual cards or usage, it would have no way to close the individual account or know whether a former employee continued to use the card after leaving employment with the Borough.

The BA confirmed that if an employee were to leave without turning in the fuel card, that former employee would still be able to use the card as long as the employee has the PIN number, which as previously stated is the same for all cards issued. In his view, the BA believed the Borough was “small enough that they should know if someone didn’t turn in their gas card” at termination.

OSC obtained records directly from the third-party vendor that provides fuel cards to the Borough. The vendor provided OSC with monthly Vehicle Analysis Reports for 2019 that detailed purchases per card. The cards are designated “fleet” and “non-fleet,” although the relevance of that distinction is unclear given the absence of controls and knowledge regarding which employees use fleet and non-fleet cards. Usage per card varied greatly, ranging from less than \$40.00 to \$5,234 for 2019. Due to the Borough’s lack of controls for tracking which employees, former employees, or other persons used which card, OSC was unable to determine individual usage and unable to flag individual transactions as legitimate or illegitimate.

Although the absence of reliable records makes it difficult to assess how much of the fuel purchased with Borough funds was not used for Borough purposes, it is clear that occurred. Multiple witnesses OSC interviewed acknowledged that Borough employees who receive fuel cards as part of their employment contract are permitted to use the fuel for both personal and Borough-related purposes. The BA confirmed that there are no restrictions or rules on the use of fuel cards. He explained that he uses the card to fill up his personal vehicle and “could not recall ever questioning the use of gas cards.”

It is not possible to calculate how much of a personal benefit Borough employees have received through the improper use of Borough-purchased fuel for their personal purposes. It appears though that employees of this 1.25 square mile Borough, whose work would be substantially performed in offices, received a very substantial financial benefit when they were permitted to fuel their personal vehicles with fuel paid for by the residents of Palisades Park. The Borough’s failure to track personal versus business vehicle miles makes it impossible to distinguish between fuel costs that relate to personal versus business purposes and make it impossible to evaluate how much in public funds was used improperly.

By way of contrast, the State of New Jersey utilizes mileage reimbursement as a means for repaying employees for fuel and car usage associated with work related travel that occurs in a personal vehicle. According to Treasury Circular No. 20-02-OMB, use of a State-owned vehicle or a State-contracted rental is the preferred means for transportation. In the event those options are not available, a State employee may use the employee’s personal vehicle and be reimbursed for mileage in lieu of actual expenses. A voucher must be completed and signed by appropriate supervisory personnel before a

reimbursement will be issued. This method ensures government employees are only reimbursed for business-related travel while using their personal vehicles. In some circumstances, a State vehicle may be assigned to an employee who travels an average of 1,250 business miles per month. In all circumstances, personal use of a State vehicle, except for lunch or work breaks, is prohibited.

Finally, the use of public funds to pay for personal fuel usage may run afoul of local government ethics rules. The LGEL was enacted to prohibit, among other things, conduct that advances a government official's or employee's own self-interest over the public's interest in the integrity of government. *N.J.S.A. 40A:9-22.5(c)* expressly prohibits a local government officer or employee from using or attempting to use "his official position to secure unwarranted privileges or advantages for himself or others." Using Borough-purchased fuel in a personal vehicle for personal purposes may constitute an unwarranted privilege. OSC will refer this matter to the Local Finance Board within the Division of Local Government Services for further investigation and any action deemed appropriate.

F. The Borough's Car Allowances Appear to be Excessive and Wasteful

The Borough provides monthly car allowances to Borough employees, including the BA, Deputy BA, and Clerk. These car allowances are paid by the Borough annually at the beginning of the year, according to the records we reviewed.

The BA receives a \$350 monthly (or \$4,200 annually) car allowance, in addition to the Borough covering costs for fuel and car maintenance. His 2015 contract states:

Employer also agrees to budget for and to pay for auto, fuel, auto maintenance, travel, subsistence and expenses of Employee and for the short courses and seminars that are necessary for the Employee professional development and for the good of the Employer. The employee shall receive an auto

allowance in the amount of \$350.00 per month and the use of a Borough fleet fuel card and needed auto maintenance.

[Emphasis added.]

The Clerk receives \$300 monthly (or \$3,600 annually) for a car allowance. This is in addition to fuel, but not maintenance.

The Deputy BA's \$250 (or \$3,000 annually) car allowance appears, based on his contract, to be in addition to being given a vehicle. That contract provides that he will be provided with "an unmarked automobile to be used for public works and as needed during his employment and/or a car allowance not to exceed \$250." As it relates to the use of a Borough vehicle, the contract states that "[t]he Borough shall pay all expenses for the operation and upkeep of the automobile, such as car insurance, tires, gas, oil changes, and any other necessary repairs."

There is no indication that the employees who receive these payments incur costs proportionate to the payments they receive. No records are kept of actual miles traveled on Borough business. In the absence of a clear and tailored justification for providing public employees with substantial payments, the car allowances provided by Palisades Park appear to be excessive and wasteful.

G. The Borough Improperly Approved the BA's Reimbursement Request for Nearly \$68,000

In 2017, the BA submitted, and the Borough Council approved, an expense reimbursement request for nearly \$68,000 in expenses related to a government investigation. That payment, which was subsequently rescinded, reveals the existence of substantial problems with the lack of internal controls and demonstrates that the Borough

does not have systems in place to distinguish between legitimate and illegitimate requests for indemnification.

1. Background Information

The BA's reimbursement request was submitted to the Borough on December 20, 2017 with a cover sheet and supporting documentation. The cover sheet, which was prepared by the BA, indicated that the reimbursement request was for "Legal and Related Cost" and included an itemization of 20 separate expenses categorized as legal, accounting, personal (other expenses), and reproduction. For each item for which reimbursement was sought, the request included the date of service, a category, a description, and the amount for which the BA sought reimbursement. The items totaled \$67,783.50.

The purchase order reveals that the request was approved both by the BA and the CFO. The Clerk also approved the reimbursement request on a requisition form dated December 20, 2017 and approved the funds being paid out of the legal account for the Borough. The Borough Council approved the request on December 20, 2017. A check with that date was made out to the BA and signed by the Mayor, the Clerk, and the Tax Collector.

In May 2018, after OSC commenced its investigation, the \$67,783.50 check issued to the BA was internally voided by the Borough. According to Borough officials, including the CFO, the reimbursement request was placed under review by him and the Borough Auditor. To date, none of the charges included in the request have been reimbursed. The BA reported that he requested that the reimbursement not be resubmitted until OSC completes its investigation.

According to the CFO, his subsequent review of the reimbursement request led him to conclude that there were ineligible charges. He believed the correct reimbursement amount to be approximately \$37,000, which is \$30,000 less than the original request. He believes the auditor reached a similar conclusion. When the auditor was questioned, he could not recall the amount he had determined as appropriate. Notably, neither the CFO nor the auditor formally memorialized the details of their analysis or the basis for their conclusions. There is no indication the reimbursement request was ever reviewed by the Borough's attorney even though it was characterized as a "legal" expense.

2. The Borough Approved the Reimbursement Request Despite Obvious Deficiencies

There are six noteworthy and problematic aspects of the BA's reimbursement request.

First, the documentation submitted in support of the reimbursement totaled only \$28,833.80, at least according to what was provided to OSC. The BA and others claimed during the investigation that additional documents exist, but they were never provided to OSC, even after they were requested. Based on the documentation available to us, it appears that the request did not include documentation for \$38,949.70 of the \$67,783.50 requested.

Second, the BA improperly sought reimbursement for a \$15,000 retainer paid to his legal counsel. He sought reimbursement for the retainer and for five invoices for legal services that had been previously applied against that retainer, thus seeking double payment of the retainer fee. That the invoices were paid using the retainer was obvious on the face of those invoices, but no one who reviewed and approved the reimbursement request rejected it due to this the problem.

Third, the BA requested reimbursement of approximately \$10,500 for legal services performed on behalf of his wife, who is not an employee of the Borough. No justification was provided in the reimbursement request for why the Borough should pay legal costs incurred by a person who is not a Borough employee.

Fourth, the BA requested reimbursement for “reproduction” costs, including the purchase of a scanner. The documents that he reproduced were provided to investigators in response to a federal subpoena. One of the reproduction charges, totaling \$2,372.70, was unaccompanied by a supporting invoice, receipt, or even written justification, according to the records provided to OSC, although the BA claims that at one point a handwritten bill was included. The BA explained that this charge represented a portion of his hourly rate for time spent copying and scanning documents in connection with the investigation. Without any documentation of that time and without even knowing what the charge was for, according to the records available to OSC, the Borough approved it.

The request to pay the BA for his time is inappropriate because, even if the documents he was copying were Borough-related, he is a salaried as-needed employee whose contract recognizes that he is required to work outside of normal work hours. He was compensated through his normal salary for any work he performed.

Fifth, the BA requested reimbursement of \$16,603 for accounting services provided mostly in connection with his privately-owned business. Most of these charges involved preparation of tax returns, including corporate tax returns. The Borough agreed to indemnify the BA, not a corporation that he controls. There is also no plausible basis for claiming that the preparation of annual personal and corporate tax returns relate to the investigation.

Sixth, the BA sought reimbursement for \$5,200 for a pre-paid vacation that he claims he was required to cancel as a result of the investigation. Although the BA told OSC that the Borough attorney recommended he not go on vacation in the midst of the investigation, this was ultimately the BA's decision. Even this extraordinary request does not appear to have led to greater scrutiny by the Borough.

As discussed further below, there may be some aspects to indemnification that require a more nuanced inquiry, but the above six problems should have led one of the many people responsible for reviewing and approving such a large expenditure—the Finance Department employees, the CFO, the Clerk, the municipal attorney, the six members of the governing body, or the Mayor—to have stopped the process and demanded a justification. That did not happen. Each step of the way, a reimbursement request that should have set off alarm bells was instead pushed along. That constitutes a startling failure by Borough officials and employees to protect the public funds entrusted to them by the residents of Palisades Park.

Equally troubling is that our investigation revealed that no one involved in approving the BA's reimbursement request took responsibility for decisions that nearly led the Borough to payout improperly tens of thousands of dollars. The CFO did not hold himself accountable and did not hold the BA or any of the Finance Department's staff responsible. In his view, the BA's attorney was to blame.

The speed at which the reimbursement was approved also raises concerns. A review of the Borough Council minutes revealed that the Council approved the reimbursement on December 20, 2017, the same date on the requisition form. Borough employees stated that the reimbursement request was submitted and approved on the

same day. The BA and CFO provided conflicting explanations as to whether the expense request was processed and approved on same day. The BA claimed the date on the requisition form was an error because it could not have been processed and included on the bills list for approval by the Council that quickly. Moreover, the BA's recollection was that the request was submitted around Thanksgiving of that year. The CFO, for his part, explained that the check was expedited because the request was previously submitted and never processed. That a reimbursement request is delayed does not justify it moving through a process so quickly that it is effectively not reviewed.

3. The Borough Issued a Check for Expenses That Are Not Related to the BA's Employment with the Borough

The threshold legal issue when a municipality faces a request for indemnification is whether the employee seeking indemnification was acting within the scope of the employee's official duties. Based on OSC's review of the reimbursement package submitted by the BA, it appears that only some of the expenses relate to his duties with the Borough.

Except in areas in which indemnification is required, municipalities have substantial discretion regarding when they indemnify employees and officials. The Borough has exercised that discretion by adopting a general indemnification provision by ordinance that applies to employees and officials. That provision is referenced in the Deputy BA's and the Clerk's employment contracts.

By contrast, the BA's contract does not mention the Borough's ordinances on indemnification, but rather includes language that he negotiated with the Borough. The differences between the ordinances and the BA's contract are stark. Whereas the Borough's ordinances give the Borough control over when and whether the Borough pays

for outside counsel or for Borough General Counsel, the BA's contract states that for him, "[t]he selection of such professionals as needed shall be at the discretion of the employee." The Borough's ordinance provides that when the Borough is funding a defense, the Borough may assume exclusive control of the litigation, but the BA's contract provides "[a]ny settlement of any claim must be made with prior approval of the Employee." The Borough's ordinance states in multiple places that an employee must have acted in good faith in order to receive indemnification, while the BA's contract does not mention such a showing. Rather, according to the BA's contract, his costs must be paid by the Borough "where the action relates to matters in connection with and within the scope of his job as Municipal Administrator or personally while employed by the Borough." The contract, unlike the ordinance, places no obligation on the BA to have acted in good faith and therefore, if the BA acted in bad faith, all of his costs would still be paid.

A municipality evaluating whether to pay the litigation costs of a municipal employee must conduct "a fact-sensitive inquiry requiring analysis of the public official's action in its context to determine if it reasonably relates or has a reasonable nexus to the public office. The question, then, is whether the subject matter of the official's action relates to the public, rather than merely a personal, interest." *McCurrie v. Town of Kearny*, 174 N.J. 523, 532 (2002). The central question is whether the actions taken by the municipal employee for which indemnification is sought involve the powers and duties of the employee's office and are within the scope of employment. *Kress v. La Villa*, 335 N.J. Super. 400, 414-15 (App. Div. 2000).

Many of the charges submitted by the BA do not appear to be properly reimbursable costs because they do not relate to the performance of his duties as the

Borough Administrator. There does not appear to be a plausible basis for a person who is the spouse of a municipal employee, but not herself an employee, to be reimbursed for expenses she incurred in obtaining separate legal counsel in an investigation. The same is true for the \$16,603 in accounting services provided mostly in connection with tax returns for the BA's business and for himself and the \$5,200 for a pre-paid vacation that the BA claims he elected to cancel as a result of the investigation. These expenses are personal, or related to his privately-owned business, and do not relate to his duties as BA. The same may be true for his request to be reimbursed for \$2,913 in alleged reproduction costs. If they are connected to something that is Borough-related, then the BA should not be reimbursed for his time because he is a salaried employee.

That the BA's official role and private business interests intersected in an investigation does not mean that all of his or his wife's financial costs related to that investigation become costs that Palisades Park is required to, or even may, assume. He elected to be the BA, to serve on the Palisades Park Planning Board, and to run a construction business that does a substantial amount of work in and around Palisades Park. It may be that his simultaneous public and private roles drew attention to him, but that does not mean that all of his private and corporate expenses related to the investigation become the burden of Palisades Park. The financial costs of running a private business that is being investigated should be shouldered by the business, not by taxpayers. The Borough is not permitted to reimburse an employee for costs that have not been incurred by the employee in the employee's official capacity and within the scope of the employee's role in the Borough. Any future indemnification requests by the BA or

any other employee should be cleared by legal counsel to ensure that the Borough complies with the law of indemnification.

The BA's request for reimbursement for the \$15,000 he paid to his attorney may be appropriate, but further information should be submitted. To the extent the BA's attorney represented him in his role as the Borough Administrator, the Borough would appear to be required to reimburse him for that expense.⁷ The invoices submitted by the BA indicate that much of the work done by his attorney was related to responding to a subpoena. If that subpoena was issued to the BA in his capacity as a principal with his private construction business or issued to that entity directly, it appears unlikely that responding to that subpoena could be considered within the scope of his employment. Legal fees exclusively related to activities outside the scope of an employee's official duties should not be reimbursed by Palisades Park.

This report is not intended to and does not adjudicate any rights that the Borough, the BA, or any other person or entity has under the Borough's ordinances or contracts. The power to adjudicate rights under law, including contractual rights, in this context belongs exclusively to the judiciary. OSC is charged with identifying waste and abuse involving public funds and makes the above observations exclusively in an effort to carry out those duties.

⁷ Reimbursement requests submitted by seven other Borough employees involved in the same investigation sought reimbursement for attorney's fees alone. The BA was the only employee reimbursed for charges other than legal fees.

H. The Borough Lacks Effective Internal Controls to Safeguard Public Funds

Our investigation revealed four additional issues that the Borough should address in order to safeguard public funds, discourage waste and abuse, and comply with the LFAL.

First, the part-time CFO is rarely in the Borough's offices and has considerable other responsibilities outside of Palisades Park that may impact his ability to perform all of the duties expected of a CFO for the Borough. Pursuant to *N.J.A.C. 5:32-2.1*, the CFO is charged with serving as the custodian of all Borough funds and is responsible for, among other things, preparing the Borough budget, monitoring budgeted appropriations and revenue, implementing and maintaining a system of internal controls to safeguard Borough assets, and processing payments from the appropriate municipal accounts. He is also responsible for “[e]nsur[ing] compliance with all statutes, rules, regulations, and directives pertaining to financial administration.”

The CFO is required to work up to 10 hours per week for the Borough. The CFO is employed as a CFO by four municipalities in both full- and part-time capacities and expected to work approximately 52-57 hours per week. He does most of his work for the Borough from home; does not have any set hours for the Borough; and does not complete any timesheets. The Borough is his only employer that does not have any set hours of work. The Borough CFO also works as the fire subcode official in two municipalities.

Our investigation suggests that the CFO does not ensure all of the required functions of a municipal CFO are performed. The CFO reported that he has very limited involvement in the writing of policies and procedures for the Borough and that he could not recall making any recommendations for policies and procedures in his current

position. The CFO also said that writing policies and procedures is the responsibility of the BA, along with the Borough Attorney and the Borough Clerk. The CFO reported that his signature stamp is used to approve documents on his behalf without him actually reviewing and approving the documents. When that occurs, it is not memorialized in writing. There are no written policies detailing when his signature stamp can or cannot be used by staff in the Finance Department. The CFO most often approves vouchers, purchase orders, and checks through text messages.

Borough employees appear unclear regarding who is responsible for safeguarding public funds from improper reimbursement requests. According to the BA, it is the finance clerk who bears the responsibility for reviewing and verifying reimbursement requests. The CFO stated that department heads and the finance clerks are responsible for ensuring the expenditures are appropriate for reimbursement. He took very little responsibility for ensuring those tasks are performed in compliance with the law. One finance clerk who processes reimbursement requests acknowledged that, contrary to the CFO's view, the clerks do not scrutinize every line of a submission, and instead rely on the department heads to verify the expense packages. Confusion like this is a sign of inadequate internal controls.

Second, according to our review of 243 reimbursement packages totaling \$140,545.20, the Borough reimbursed employees for sales tax even though it is exempt from paying sales tax, thus incurring unnecessary costs. Borough employees have access to, and are expected to use, tax-exempt forms that can be presented to vendors and suppliers to receive a sales tax exemption on purchases. OSC was advised that in circumstances in which those forms are not utilized, and taxes are paid on municipal

purchases, employees are not supposed to be reimbursed for the amount of sales tax paid, but that policy is not consistently enforced. Furthermore, our investigation did not identify a single instance in which the taxes paid by the employee were deducted from the reimbursement amount.

When questioned about the payment of taxes and presented with several examples for which tax was reimbursed to employees, a finance clerk acknowledged that the tax amounts should have been deducted from the total reimbursement. The other clerk admitted that he sometimes neglects to deduct sales taxes. Neither clerk was aware that tax-exempt forms, which can be used by employees, were available to Borough employees.

Third, the Borough does not have policies addressing when employees can be reimbursed for meals, such as the maximum per meal allowance or the documentation required to establish that the meal or food items were, in fact, for an approved, work-related purpose. OSC uncovered deficiencies in a large majority of the food-related reimbursement requests it reviewed. The majority of the meal receipts reviewed were supported with nothing more than a non-itemized credit card receipt. None of the requests contained all of the signatures required by the Borough's own purchase order form. Similarly, reimbursements submitted for food items purchased in connection with specific Borough events did not contain a requisition form. Despite these clear deficiencies, the Borough approved these requests for payment.

Fourth, OSC was advised by the BA and CFO that credit card purchases were not acceptable except in emergencies. OSC's investigation found, however, a significant number of credit card purchases made and reimbursed by the Borough, including credit

card purchases made by the BA. When questioned about the improper payments, Borough employees acknowledged to OSC that they should not have been approved.

V. RECOMMENDATIONS AND REFERRALS

A. Recommendations

Municipalities are required to ensure taxpayer dollars are properly expended in accordance with state law. Through these recommendations, OSC urges the Borough of Palisades Park to engage in a comprehensive review of the problems identified in this report to ensure appropriate standards are in place to guard against fraud, waste, and abuse. These recommendations relate to employee contracts, sick leave policies, tracking of attendance and paid time off, fuel card usage, car allowances, employee reimbursements, employee tax reimbursements, and overall internal controls.

OSC makes the following specific recommendations for the Borough's consideration:

1. To comply with *N.J.S.A. 40A:9-138*, the Borough should notify the BA that the provision in his contract regarding his employment being terminated only by a unanimous vote of the governing body is unlawful. The Borough should not comply with that provision and going forward should decline to enter into any contracts that violate *N.J.S.A. 40A:9-138*.

2. To comply with *N.J.S.A. 40A:9-137*, the Borough should notify the BA that the provision in his contract providing that he may only be removed "for cause" is unlawful. Going forward, the Borough should decline to enter into any contracts that violate *N.J.S.A. 40A:9-137* or any other law.

3. To comply with the requirements of L. 2007, c. 92, including *N.J.S.A. 40A:9-10.2*, the Borough should notify the BA that he may no longer receive annual sick leave payouts and that he is capped at one \$15,000 payment that is payable only at

retirement. The Borough should also notify any other employees covered by L. 2007, c. 92 regarding the requirements of that law.

4. The Borough should recoup annual sick leave payments paid out improperly to the BA since 2008 and to any other employee covered by that law in violation of *N.J.S.A. 40A:9-10.2*.

5. The Borough should comply with *N.J.S.A. 40A:9-10.3*, which limits how much vacation the BA and any other employees covered by that statute may accrue.

6. The Borough should determine how much has been spent in violation of L. 2007, c. 92, including *N.J.S.A. 40A:9-10.2* and *N.J.S.A. 40A:9-10.3*. The Borough should review previous and planned future payments to the BA and should evaluate whether the Borough has implemented the requirements of L. 2007, c. 92 as to other covered employees and in full conformance with LFNs 2007-28 and 2008-10. This information should be used to recoup misallocated funds and to insure that appropriate adjustments are made prospectively to prevent future improper expenditures.

7. The Borough should recoup funds improperly paid out in violation of L. 2007, c. 92.

8. To comply with the requirements of L. 2010, c. 3, including *N.J.S.A. 40A:9-10.4*, the Borough should notify employees covered by that law that they may no longer receive annual sick leave payouts and are capped at one \$15,000 payment that is payable only at retirement. The Borough should also take whatever steps are required to amend contracts and employee handbooks to comply with L. 2010, c. 3.

9. The Borough should recoup amounts paid out improperly to employees covered by L. 2010, c. 3 since 2010.

10. The Borough should determine how much has been spent in violation of L. 2010, c. 3, including *N.J.S.A. 40A:9-10.4*. The Borough should review previous and planned payments to employees and should review whether the Borough has implemented the requirements of L. 2010, c. 3 as to other covered employees. This information should be used to recoup misallocated funds and to insure that appropriate adjustments are made prospectively to prevent future improper expenditures.

11. The Borough should eliminate all sick leave payouts, except for payouts at retirement that are capped at \$15,000.

12. The Borough should institute a centralized system for tracking hours worked, vacation, sick leave and other information.

13. The Borough should ensure that it does not make unlawful payments at termination or retirement and should seek to reduce or eliminate all terminal, severance and other payments at termination or retirement, including payments to the BA.

14. The Borough should discontinue its current practice of issuing fuel cards to Borough employees who use their personal vehicles for business purposes. The Borough should institute a policy that reimburses employees for mileage associated with business-related travel if they are required to use their personal vehicle.

15. The Borough should institute controls involving monitoring and overseeing fuel card usage for Borough vehicles. This should include controls that allow the Borough to identify which employees are assigned cards and to track fuel card usage by that employee. Any employee issued a Borough fuel card should receive written policies from the Borough describing permissible uses of the card and clearly instructing that personal use of fuel is prohibited.

16. The Borough should engage a fuel card provider that allows for identification and accounting of individual fuel cards through the use of unique identifiers such as account numbers, PIN numbers, or some other mechanism that provides a link between the fuel card and its individual user or the vehicle to which that card is assigned.

17. Monthly car allowances should be eliminated and replaced with a process by which miles travelled in a personal vehicle are reimbursed when a Borough vehicle is not available.

18. The Borough should ensure that it does not issue checks indemnifying employees for costs that are not directly related to their employment in accordance with applicable case law.

19. The Borough should evaluate all existing processes involving Borough funds and evaluate whether the processes can be improved. In particular, the Borough should implement policies and procedures for the authorization and approval for the use of Borough funds to ensure that expenditures are appropriate, reasonable, based on sufficient supporting documentation, and in compliance with all relevant laws. The policies and procedures should include specific guidance regarding the types of expenditures that are allowable to ensure appropriate use of funds that are for legitimate Borough business and not considered wasteful or abusive. Particular attention should be given to the types of expenditures that can be reimbursed for employees and should exclude sales tax reimbursements. At a minimum, the Borough should ensure adequate internal controls are in place regarding the approval and authorization of Borough funds, including the specific staff role and authority, with appropriate segregation of

duties, appropriate supervisory review, management monitoring and oversight of all transactions.

20. The Borough should evaluate whether the CFO is available to satisfy the requirements of N.J.A.C. 5:32-2.1 and should ensure that all functions required of a CFO are fully performed for the Borough. The Borough should prohibit approvals by text message and informal delegations of power that enable an employee, for instance, to use the CFO's signature stamp without the CFO's knowledge or approval.

In response to the above recommendations, the Borough prepared a list of actions the Borough has already taken or will take in the future to address OSC's findings. Specifically, the Borough advised that it now prohibits employees from using personal vehicles for Borough business; that it eliminated the use of Borough vehicles for personal use; and that the use of Borough vehicles is limited to authorized individuals and only for specific Borough purposes. The Borough also stated in its response that it has restricted its expense reimbursement practices by requiring preapproval and adherence to the Borough's purchasing policy. The Borough further stated that it has updated its sick and vacation leave tracking system by requiring the use of a standardized form and requiring supervisory approval.

The Borough also stated in its response that it was taking a number of corrective actions, including the following: restructuring the finance department with clearly delineated job responsibilities; formalizing all policies and procedures, including revising the employee handbook to conform with the law; eliminating meal reimbursements; conducting a thorough review of employee contracts, including the BA's contract; revising ordinances and contracts regarding indemnification and reimbursement for legal fees;

taking steps to comply with *N.J.S.A.* 40A:9-10.4 and 10.5; undertaking an audit of sick leave accumulation and payouts; eliminating car allowances; limiting the use of gas cards to certain vehicles; and maintaining mileage logs.

The above measures are positive and, once fully implemented, will help ensure taxpayer dollars are appropriately spent. OSC notes, however, that the Borough did not supply OSC with any updated policies or supporting documentation reflecting the institution of these changes.

B. Referrals

The information obtained by OSC in the course of this investigation indicates that certain Borough employees may have engaged in acts that violate the Local Government Ethics Law. That law prohibits local government employees from using “their official position to secure an unwarranted privilege or advantage for themselves or others.” *N.J.S.A.* 40A:9-22.5(c). This matter will be referred to the Local Finance Board within the Department of Community Affairs, Division of Local Government Services for any action deemed appropriate.

This report will further be referred to the Director of the Division of Local Government Services for any action deemed appropriate.