

Bay Area Air Quality Management District

Performance Audit of Human Resources Management

November 2, 2022



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Glossary of Acronyms

APCO – Air Pollution Control Officer; also referred to as “Executive Officer / APCO” or “EO/APCO”

CAO – Chief Administrative Officer

DAPCO – Deputy Air Pollution Control Officer

DEI – Diversity, Equity, & Inclusion

DEO – Deputy Executive Officer

EA – Employees’ Association

EEO – Equal Employment Opportunity

EO – Executive Officer; also referred to as “Executive Officer / APCO” or “EO/APCO”

FLSA – Fair Labor Standards Act

FTE – Full-Time Equivalent

FYE – Fiscal Year End

IEDA – Industrial Employers Distributors Association

MOU – Memorandum of Understanding

PERB – Public Employee Relations Board

RESULTS

The actions of the Human Resources Office have not always been in alignment with Board requirements or best practices. This has led to personnel actions, including the hiring of personnel and compensation setting, that are not congruent with Board direction. In such cases, Human Resources leadership stated that they were following the direction of the Executive Officer / APCO. This audit did not find evidence to contradict this. Nevertheless, to support the interests of the Bay Area Air Quality Management District (Air District), Human Resources leadership must be empowered to uphold Board directives or authoritative statutes or rules, even if they conflict with the direction of management, and must demonstrate the leadership to do so.

BACKGROUND AND PURPOSE

The Air District was created by the California Legislature in 1955 as the first regional agency to tackle air pollution in California. Spanning much of the nine Bay Area County region, the Air District is governed by a Board of Directors consisting of elected officials from cities and counties throughout the region. The mission of the Air District is to “create a healthy breathing environment for every Bay Area resident while protecting and improving public health, air quality, and the global climate.”

The Human Resources Office—which is managed by the Human Resources Officer, who reports to the Chief Administrative Officer (CAO)—is responsible for a variety of administrative functions in support of Air District operations. This includes ensuring a qualified, well-trained, and motivated workforce; ensuring compliance with a variety of laws and regulations; and maximizing employee potential through proactive, quality employee relations, training programs, and professional development.

KEY FINDINGS

- Human Resources compensated certain air district employees in ways that did not comply with board-adopted requirements. This included setting or modifying compensation for Board-appointed positions without Board direction and misapplying compensation related to acting assignments for management employees.
- Human Resources has not consistently monitored or informed the Board of market compensation levels or reported all results of compensation studies to the Board. Recent studies show District compensation outpacing the market. The Air District has also not established a Compensation Philosophy as a framework for its compensation plan.
- Human Resources has not established a reliable method for controlling the allocation of staffing resources to Air District divisions. Human Resources processed the filling of several positions that the Board had placed on hold, and the position control document was generally out of sync with payroll records.
- Employee classifications often lacked critical information, such as FLSA designations, working conditions, reporting relationships, and distinguishing characteristics. Distinctions between management positions in particular were lacking, increasing the risk of inconsistency and confusion regarding the roles and responsibilities of management-level positions.
- Record retention practices were not consistent with best practices or legal mandates, with employee records disbursed among various filing systems. Improvements are needed to ensure Human Resources can produce a complete personnel file and to protect confidential information.
- Human Resources policies and procedures are outdated and require updating, including key provisions of the Administrative Code.
- Payroll functions are housed within Human Resources, increasing the risk that segregation of duties controls could be compromised.

KEY RECOMMENDATIONS

- Ensure compliance with Board direction regarding the allocation of positions and matters of compensation.
- Enhance controls over compensation, position management, recordkeeping, and performance management.
- Develop a compensation philosophy and conduct classification and compensation studies to update the Air District's compensation and classification plans.
- Update the Administrative Code and Human Resources policies and procedures.
- Building on existing workforce development efforts, develop a district-wide approach that ensures alignment with the Air District's strategic vision and initiatives.

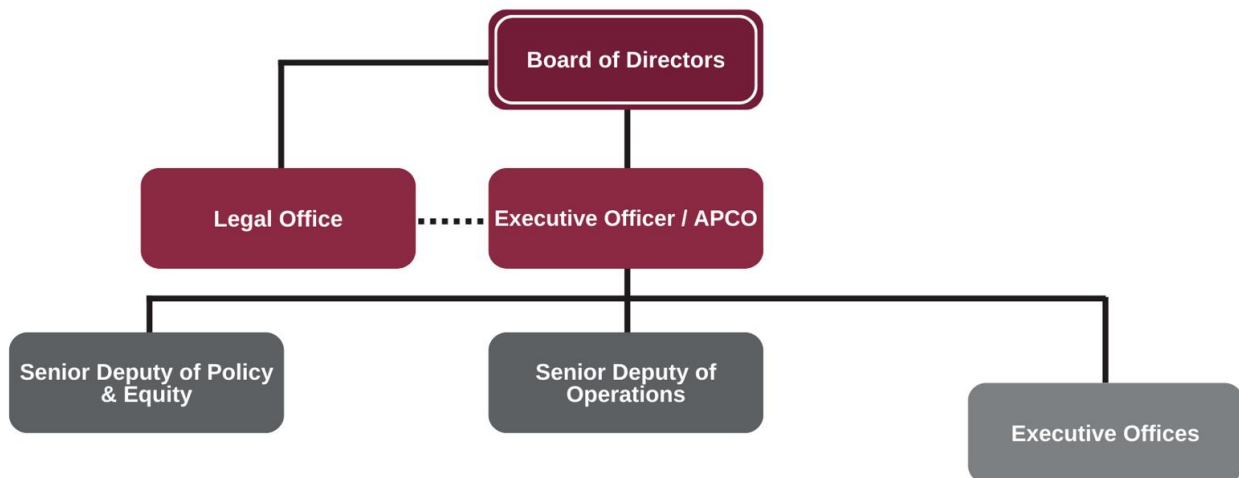
Introduction and Background

The Bay Area Air Quality Management District (Air District or District) was created by the California Legislature in 1955 as the first regional agency to tackle air pollution in California. Governed by a 24-member Board of Directors (Board) consisting of elected officials representing local governments located within the broad jurisdiction for which the Air District has regulatory authority, the mission of the Air District is to “create a healthy breathing environment for every Bay Area resident while protecting and improving public health, air quality, and the global climate.”¹

As of September 10, 2022, the Air District employed 398 persons with a broad range of responsibilities and functions, such as engineering, permitting, compliance, enforcement, meteorology, air quality monitoring and modeling, strategic policy and rulemaking, information technology, finance, and human resources. The purpose of the Human Resources Office (Human Resources) is to recruit, motivate, and retain a highly qualified and talented workforce.

In carrying out its mission, Human Resources is responsible for a variety of administrative functions in support of Air District operations. This includes ensuring compliance with a variety of laws and regulations; and maximizing employee potential through proactive, quality employee relations, training programs, and professional development. The Air District has centralized these core functions within the Human Resources Office under the purview of the Executive Officer / Air Pollution Control Officer (APCO). Human Resources is managed by the Human Resources Officer, which reports to the Chief Administrative Officer (CAO) as illustrated in Exhibit 1.

EXHIBIT 1. REPORTING RELATIONSHIP OF HUMAN RESOURCES TO CHIEF ADMINISTRATIVE OFFICER



Source: Official Bay Area Air Quality Management District Organization Chart.

Under this model, the Human Resources Officer is responsible for managing all activities and functions of the Human Resources Office, managing a professional system of human resources management in the Air

¹ Elected officials consist of county supervisors, mayors, and city council members chosen to represent Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, southwestern Solano, and southern Sonoma counties.

District, and developing administrative procedures and guidelines as necessary to assist in the administration of the human resources system, particularly with respect to the following areas:

- Classification and Compensation
- Recruitment and Staffing
- Performance Evaluations
- Training and Development
- Organizational Policies
- Safety and Wellness
- Benefits
- Payroll
- Employee and Labor Relations
- Workplace Investigations

In addition to these core responsibilities, Human Resources performs a variety of distinct and specialized functions, such as candidate application screening and background checks; new employee orientation, employee training, and performance assessments; leave accounting; workplace discrimination complaints; workforce and succession planning; records management, including and reviewing reporting structures; and assistance with establishing new positions and new reporting structures.

As the division responsible for the recruitment and development of qualified employees, Human Resources is an internal service provider, with the Air District's divisions as its clients. Successfully performing these diverse responsibilities requires Human Resources to be responsive to Air District management and employees, as well as the direction of the Board. In many respects, the value of Human Resources to an organization is dependent upon its ability to deliver for its clients, to respond to management's requests and meet their needs, and to do so in a timely manner. In this sense, Human Resources can be considered a "facilitator" to assist management in achieving its goals and objectives. Yet, this can and often does create a natural tension in any organization.

Like any human resources department within an organization, Human Resources is also responsible for ensuring the Air District as an employer adheres to a series of statutes that mandate specific benefits and rights for all employees. These include a variety of laws that prohibit discrimination in addition to guarantee rights of employees related to compensation (wage and hour laws), health and retirement benefits, mandated leave benefits, and privacy laws, among others, as well as the Air District's Administrative Code and District policies and procedures. It must do so in an equitable manner so as to avoid disparate treatment or impacts. In this sense, Human Resources serves a significant role in risk management, protecting the interests of the organization through human resources management.

Scope and Methodology

In December 2021, the Board authorized the execution of a contract between with the Air District and Sjoberg Evashenk Consulting, Inc., to provide independent management audit services on behalf of the Board. In January 2022, the Board authorized the Task Order #1 under this contract, which required a district-wide risk assessment for the purpose of identifying and prioritizing potential audit topics for the Board's consideration. As a result of this risk assessment, the Board authorized the execution of Task Order #2, a performance audit of human resources management functions within the Air District. The objectives of this performance audit were to determine whether:

- a. Established human resources management functions ensure compliance with federal and state laws, as well as District policies and directives.
- b. Human Resources business processes efficiently and effectively meet Air District priorities.
- c. The recruitment and filling of the 16 remaining FYE 22 vacancies is compliant with Board directives and the FYE 22 Budget.

The scope of this audit included all human resources management functions of the Air District between July 2018 through October 2022. To meet the audit objectives, the audit team performed the following general procedures:

- Interviewed Air District employees involved in human resources management activities, including the CAO, Human Resources Officer and Human Resources staff, management and staff within other District divisions, members of the executive team, and the Board Officers.
- Reviewed relevant federal and state statutes, the Air District Administrative Code, Human Resources policies and procedures, and the Memorandum of Understanding (MOU) between the Air District and the Bay Area Air Quality Management District Employees' Association, Inc., (Employees' Association).
- Analyzed personnel records in Dayforce, the Air District's human resources information system, including data related to compensation, Fair Labor Standards Act (FLSA) status, overtime worked, and employee classifications.
- Evaluated position records maintained by Human Resources, including the Air District's organization chart, position control documents, budgets, and data in Dayforce.
- Reconciled employee and position records between various data sources, including Dayforce, position control, organization chart, and budget to identify potential discrepancies.
- Reviewed Human Resources record-keeping processes, including electronic and hard-copy records for a sample of 10 Air District employees; evaluated completeness and consistency in organization.
- Assessed key human resources activities through interviews, observations, walk-throughs, and a review of documentation, including recruiting and hiring, classification and compensation, employee relations, labor relations, record-keeping, policies and procedures, and compliance with mandated benefit programs.

Audit fieldwork was performed between May and October 2022. On October 17, 2022, we provided the Human Resources Office with a draft of this report and, on October 24, 2022, discussed the report findings and recommendations in an exit conference with the Human Resources Officer and CAO. We incorporated the final report responses and input received into this report where warranted. The Human Resources Office generally disagreed with the conclusions and generally agreed with the recommendations of this report. Management's formal responses to the recommendations contained in this report are included in the report following each set of recommendations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

Compensation Plan Management

As a matter of professional practice, human resources management serves three critical purposes with respect to managing a compensation plan.

- ✓ Maintain a consistent and transparent compensation structure within an organization to guide decision and avoid unequal pay for similar work and increased administrative costs associated with tracking employee- or division-specific variations in pay. This includes determining the requirements of every job; grouping similar jobs—those with similar duties, responsibilities, and requirements—into classifications; and assigning each classification a salary range or compensation package sufficient to recruit, retain, and motivate a talented workforce.
- ✓ Stay informed of the market rates for compensation in the region and inform the Board if and when existing compensation levels begin to lag behind or outpace compensation in its employment market. Ultimately, the Board makes decisions regarding compensation; but, it is essential that Human Resources provides the Board with the requisite information to make informed decisions.
- ✓ Ensure compliance with compensation-related laws, including wage and hour laws (e.g., FLSA), discrimination laws, and the Air District Administrative Code. Federal law requires employers to pay their employees a minimum wage and compensate them for overtime—unless such employees have specifically been exempted from such rules—and pay employees of protected classes equal compensation for performing substantially equal work.

This audit revealed problems with respect to the methods Human Resources employed to manage the Air District's compensation structure, monitor market compensation, and ensure compliance with established requirements relating to compensation at the Air District.

Human Resources Compensated Certain Air District Employees In Ways That Did Not Comply With Board-Adopted Requirements

This audit revealed four problems surrounding how Human Resources ensures compliance with requirements set forth in the Health & Safety Code and the Air District Administrative Code related to executive compensation, compensation for acting assignments, the application of overtime pay for non-represented positions, and merit-based pay increases. Each is described below.

Human Resources Officer and the CAO Set and Modified Executive Compensation for Board-Appointed Employees Without Board Approval

The California Health and Safety Code stipulates that “the district board shall determine the compensation of ... the air pollution control officer, all other officers and employees, and members of the hearing board, of the district” (Health & Safety Code Section 40706). Consistent with this statute, the Board established a compensation structure applicable to all Air District employees. Most employees fall within the Air District's merit-based personnel system subject to the District's classification and compensation plans, and to the Executive Officer / APCO's hiring authority. However, two Air District employees—the District Counsel and the Executive Officer / APCO—are appointed by and report directly to the Board through employment

contracts between the appointed employee and the Board. As part of this contract, the Board sets compensation for each of these employees outside of the District's personnel system.

Since July 2021, there have been several appointments, temporary and permanent, to the two positions and, with each, modifications to employee compensation. This audit revealed that the CAO and Human Resources Officer acted outside of their authority to set and modify compensation of Board-appointed employees without verified direction or approval from the Board or the Board Officers. The CAO and Human Resources Officer believed that in adopting the annual salary schedule, which states the annual salary of the Executive Officer / APCO and District Counsel reflected in the respective employment contracts, the Board effectively authorized the CAO and Human Resources Officer to set compensation at that level for successive incumbents. In relying on the salary schedule, they acted in a manner consistent with past practice in Human Resources' administration of acting pay for existing Air District employees by using the only Board-approved compensation level that existed for the positions. As described further in this finding, we do not believe the salary schedule authorizes any District employee to set compensation for newly-appointed officials. Rather, our analysis found that salaries of both acting employees were established without formal direction from the Board or Board-approved Air District protocols, and actual salaries exceeded those expected by the Board Officers. However, it did not appear that either the Acting District Counsel or Acting APCOs actively participated in the negotiation or setting of compensation for their acting roles.

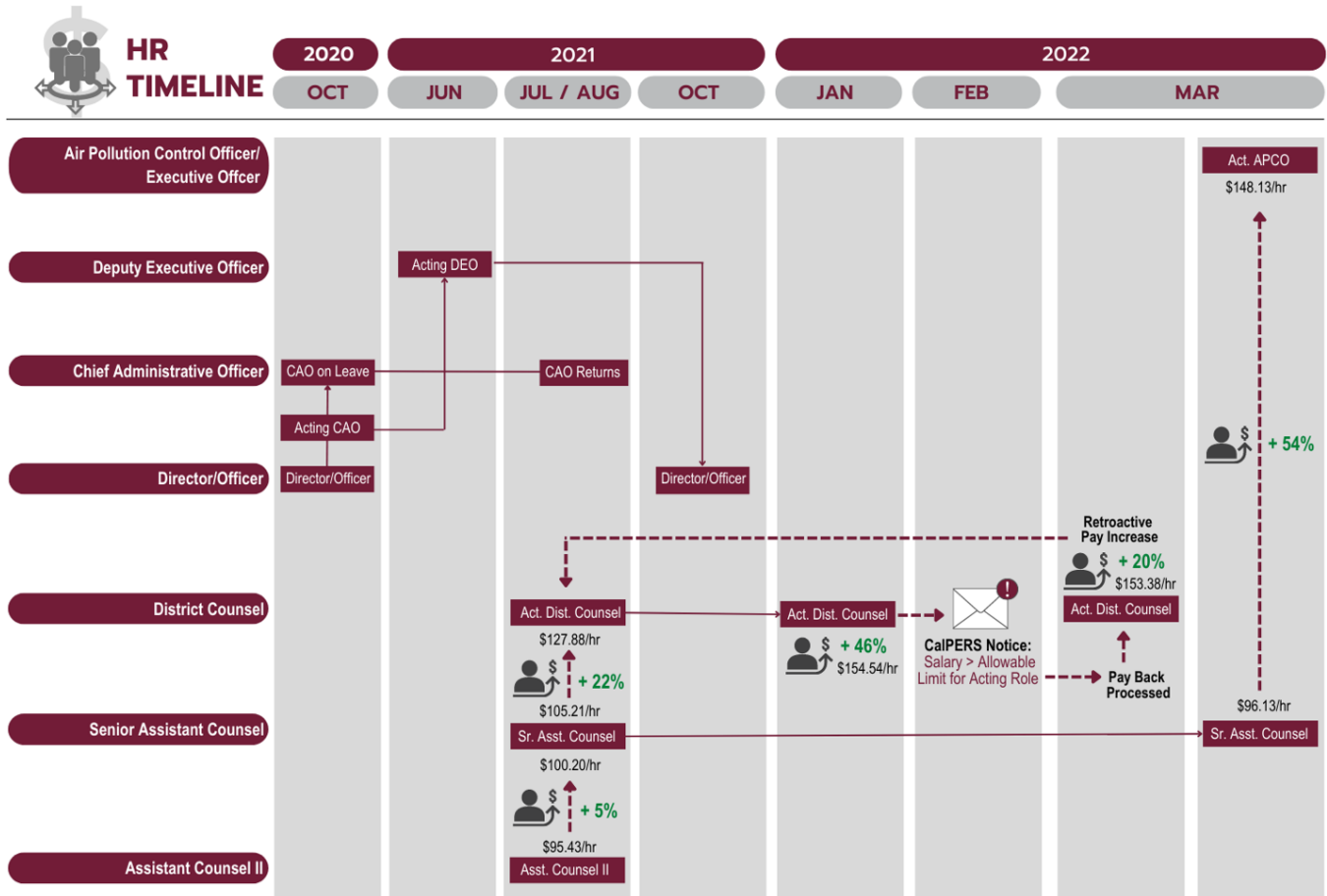
Specifically, in mid-2021, the District Counsel went on extended leave and eventually separated from District employment. In early 2022, the APCO also separated from District employment. In both cases, the Board, acting through the Board Officers, appointed an Acting District Counsel and an Acting APCO. The methods employed to set their respective salaries while serving in an acting capacity differed, as described in the bullets that follow and depicted in Exhibit 2—with both methods conflicting with Board direction and circumventing Board approval.

- ✓ **Acting District Counsel.** Upon appointment by the Board Officers in July 2021, the Board Chair directed the Acting CAO to negotiate appropriate compensation with the Acting District Counsel because the CAO was on leave. In the CAO's absence, and at the direction of the Board Chair, the Acting CAO established a salary increase of approximately 20 percent, from \$105/hour (\$220,000) to \$128/hour (\$266,000)—within the salary range of the position of Deputy Executive Officer, which was accepted by the Acting District Counsel and was consistent with the Board Chair's expectations. The Acting District Counsel, who was previously in the position of Senior Assistant Counsel, received this compensation between July 2021 and January 2022, when the acting appointment was set to end.

In January 2022, after the CAO had returned from leave and when the acting appointment of the Acting District Counsel was set to expire, the Human Resources Officer confirmed with the CAO and Executive Officer / APCO that the appointment would continue and set the salary at the level of compensation received by the prior incumbent District Counsel, which was established by the Board through an employment contract with the incumbent. According to the CAO and Human Resources Officer, upon learning of the Acting District Counsel's previous compensation they inquired with the Acting CAO, Executive Officer / APCO, Acting Executive Officer / APCO—on his first day on the job—and the Acting District Counsel regarding why the salary was set at the level of a Deputy

Executive Officer instead of the salary paid to the previous District Counsel. According to the CAO and Human Resources Officer, none had any recollection or knowledge of how the salary was originally set. Therefore, the CAO took steps to change the compensation for the Acting District Counsel from \$128/hour to \$155/hour (\$322,000)—the level of compensation received by the prior incumbent District Counsel. This amounted to an increase of 21 percent over the acting pay previously authorized and 46 percent over the Acting District Counsel’s normal district salary.

EXHIBIT 2. EXECUTIVE LEAVE, ACTING POSITIONS, AND COMPENSATION FLUCTUATIONS, JULY 2021 TO MARCH 2022



Source: Air District personnel actions, including Personnel Action Forms and related correspondence.

In modifying compensation for the Board-appointed employee, the CAO and Human Resources Officer obtained the approval of the Executive Officer / APCO. However, we found no evidence that any discussed these changes with the Board or Board Officers to understand the basis or rationale behind the initial Acting District Counsel’s compensation level, nor did any discuss modifying the Acting District Counsel’s compensation with the Board Officers at the time. Without explicit direction or knowledge of the Board, the CAO and Human Resources Officer, with approval of the Acting Executive Officer / APCO, set the salaries of the Acting District Counsel at the higher level authorized in the previous employment contract between the Board and the prior District Counsel. According to the CAO, there was no need to discuss changes to the Acting District Counsel’s compensation with the Board Officers because the Board had already provided approval for the prior incumbent District

Counsel's salary through the budget process—it was the only Board-approved salary noted in the FYE23 budget. While the CAO and Human Resources Officer reported inquiring with the parties involved with the original appointment, neither inquired with the Board or any Board Officer.

This significant increase in compensation to the Acting District Counsel caused CalPERS to question the change when payroll updated CalPERS of current District salaries.² Such increases in compensation related to acting assignments could be considered an indicator of potential pension spiking or an error in the file. In response, Human Resources argued that the Acting District Counsel's original compensation was established in error and that the correct compensation should have been the same salary as the prior incumbent's—that is, the salary listed in the Board-adopted salary schedule. However, the Acting District Counsel's compensation was not established by mistake; it was, in fact, set consistent with the direction of the Board Officers. Without any information to the contrary, Human Resources notified CalPERS that it would retroactively amend the Acting District Counsel's compensation to reflect the higher rate of \$153/hour (or an annual salary of \$319,000).

By this point, in March 2022, the Executive Officer / APCO had separated from the Air District and the Board had appointed an Acting APCO. The CAO notified the Acting APCO on the first day of his appointment that the Acting District Counsel had been compensated in error for the first six months of his appointment, and that the District should correct the deficiency unless there had been specific Board direction to the contrary. The Acting APCO approved the retroactive increase in compensation.

- ✓ **Acting APCO.** When the Executive Officer / APCO separated from the Air District in March 2022, the Board Officers selected the Acting Senior Assistant Counsel to serve as Acting APCO effective March 14, 2022. Unlike compensation-setting for the Acting District Counsel, we found no evidence that any Air District employee received direction from the Board or any Board Officer regarding the setting of the Acting APCO's compensation. In this case, the CAO set the Acting APCO's compensation at the same level as the prior incumbent's salary (\$148/hour or \$308,000)—again, without discussion with the Board or the Acting APCO. While the salary was set at the level stated in the salary schedule, which was established through an employment contract with the prior incumbent, it was done so without knowledge or explicit authorization of the Board. This amounted to an increase of 54 percent over the employee's normal compensation at the time.

Subsequently, in May 2022, the Board appointed the Acting APCO to the position of District Counsel and appointed a new Interim APCO through a Board-approved employment contract. In July 2022, the Interim APCO went on an unexpected leave of absence and a Deputy Executive Officer was appointed Acting APCO in her stead. The CAO and Human Resources Officer followed the same protocol and applied the incumbent Interim APCO's salary to the Acting APCO, raising the Deputy Executive Officer's compensation from \$139/hour (\$291,000) to \$155/hour (\$324,000)—an increase of 11 percent. In this case, we did not identify any evidence suggesting the Board directed or

² CalPERS refers to the California Public Employees Retirement System.

approved this compensation for the Acting APCO, nor did the Board negotiate a salary with the Acting APCO.

Both the CAO and Human Resources Officer believed that the setting of compensation for both positions was appropriate and consistent with CalPERS requirements and that compensation for acting assignments was consistent with Board-approved salary schedules and that the setting of acting salaries for existing employees was equitable. According to the CAO and Human Resources Officer, setting salaries of both “acting” positions equal to the level of the prior incumbents’ salaries was appropriate because the Air District had a long-standing practice of applying this principle for all represented and non-represented employees of the Air District in accordance with its MOU between the District and the Employees’ Association.

Specifically, the MOU states that “when an employee is assigned in writing by his/her Division Director to perform all of the day-to-day duties of a position in a higher District classification due to a vacancy or temporary absence of the person normally assigned to perform those duties, the employee shall receive ‘Acting Pay’ from the first day of such assignment until the end of the assignment not less than 40 hours.”³ When placed in an acting assignment, the MOU requires the Air District to compensate the employee “the minimum salary for the higher position nearest a 5% increase (not less than 4.9%) above the employee’s former position, whichever is higher, provided the increase is within the range of the higher position.”⁴

However, the MOU is not authoritative in determining compensation practices for non-represented positions in general, and certainly not with respect to Board-appointed positions. Nevertheless, in applying this requirement, Human Resources’ practice for placement in an acting assignment for both represented and non-represented employees was to compensate the employee at the first step of the pay range of the higher position as long as the first step constituted a minimum of a 5 percent increase in pay. According to the CAO and Human Resources Officer, they believed the application of this principle to non-represented positions was consistent with Board actions based on two other guiding documents—although we disagree with their premise and find the compensation-setting actions were not aligned with Board direction.

- ✓ First, the Administrative Code includes a provision requiring the Air District to compensate employees in an acting assignment at a rate commensurate with the position to which they were appointed. Specifically, “If an employee is appointed by the Air Pollution Control Officer to be acting in a higher paying job, the employee is to receive the salary during that job tenancy for the time period after the passage of fifteen (15) working days which the employee would receive if the appointment were permanent.”⁵

According to the CAO, it has been the position of Human Resources that this provision of the Administrative Code, adopted in 1996, was effectively superseded by a 2002 Board resolution. Human Resources and, according to the CAO, District management in general historically interpreted this resolution to require the same protocols be followed for all District employees that

³ MOU Section 7.13(1)

⁴ MOU Section 7.02(2)

⁵ Administrative Code Division III Section 6.14

were established in the MOU with the Employees' Association for represented employees. This is discussed further in the next bullet.

Despite Human Resources' long-standing interpretation of the 2002 Board resolution, we do not find the Administrative Code provision to be relevant in the first place. Neither the District Counsel or Executive Officer / APCO is appointed by the APCO and this Administrative Code provision specifically relates to employees appointed by the APCO to acting assignments—not the positions of District Counsel or APCO that are appointed by the Board. The assertion that this provision supports the CAO's and Human Resources Officer's determination that compensation for the Acting District Counsel and Acting APCO must be set at the same level as the prior incumbent—i.e., the exact salary stated in the Board-adopted Salary Schedule established for all non-Board appointed employees—is also flawed because it presumes the Board would provide this same salary to all future incumbents. Moreover, this Administrative Code provision, which does not apply to the positions of District Counsel or APCO, requires the salary to be set at the level that "employee would receive if the appointment were permanent," and neither the CAO nor the Human Resources Officer have the authority to determine what any individual would be compensated if permanently appointed to the position of District Counsel or APCO. Those compensation decisions are at the sole discretion of the Board. According to the CAO and Human Resources Officer, the Administrative Code provision applies to all employees in the District's personnel system, regardless of the position to which they are appointed, therefore making the code applicable to Board-appointed positions. We do not believe the evidence supports this interpretation; the provision is applicable to persons appointed by the Executive Officer / APCO to positions within the District's personnel system.

- ✓ Second, following labor negotiations with the Employees' Association in 2002, the Board adopted Resolution 2002-17 specifying commensurate compensation increases for non-represented employees of the Air District, including management and confidential employees. It is relatively common for public agencies to adopt compensation increases for non-represented employees in a manner consistent with recently negotiated increases for represented employees. This helps to ensure consistent pay practices and internal equity. The practice also prevents compression where increasing compensation at the lower represented levels and not at the higher non-represented levels can "compress" or eliminate this gap so that lower-level employees could be paid substantively the same as the employees supervising them.

Regardless, it is evident that this Resolution was intended for general management and confidential employees and not Board-appointed employees. It is titled "A Resolution to Amend Non-Board of Director Appointed Management and Confidential Employee Salary and Fringe Benefits." According to the CAO, these were acting appointments of existing employees whose pay and benefits were governed by the Administrative Code, MOU and/or the 2002 Board resolution, and applying the principles established therein was appropriate, even though the positions to which the employees were appointed were outside of the District's personnel system, or the authority of the MOU, 2002 Board resolution, or cited provisions of the Administrative Code. Thus, it appears that the CAO and Human Resources Officer relied on and misapplied this compensation principle to a situation in which the principle does not apply.

According to the CAO, Human Resources followed long-standing practice of applying the same protocols for Board-appointed officials as it has always done for all district employees and, if the Board had intended to apply different compensation for acting appointments, it should have directed so. This audit confirmed that the Board Officers did provide verbal direction in one case, but did not appear to do so for the other acting appointments. In any case, it is our opinion that the compensation for any of the two Board-appointed employees should not have been determined without consultation with and explicit direction from the Board.

Consistent with practices observed in other public agencies, the Air District should revisit how compensation is set for acting board-appointed officials by having the Board consider the following options:

- ✓ Set the compensation at the time of appointment through an employment contract. While this is typical, particularly for longer-term appointments, it often cannot be achieved in cases of an emergency due to Brown Act requirements and it can be overly bureaucratic for short-term acting assignments. Thus, this option is more appropriate for longer-term acting assignments for which the Board has an opportunity to consider candidates, negotiate compensation, and establish an employment contract.
- ✓ Establish and follow succession protocols in law, including differential pay for acting assignments, that may be triggered in the event a board-appointed official cannot fulfill their duties, such as health emergencies, leaves of absence, termination for cause, or other circumstances. In such cases, the specific successors may assume the responsibilities, with a designated percent increase in compensation, until the governing body is able to take action. This approach is designed for shorter-term circumstances establishing prescribed protocols that can be implemented almost immediately.
- ✓ Adopt salary schedules with broadband salary ranges for board-appointed positions, allowing the governing body substantial latitude in setting compensation for appointed positions while also providing a minimum that should be paid to a successor should the incumbent go on leave or otherwise separate from employment.

Human Resources Misapplied Compensation for Some Acting Management-Level Positions

As previously described, the Administrative Code allows non-represented employees to receive acting pay when assigned to a higher-level position in an acting capacity after the passage of fifteen (15) working days. Yet, we found numerous instances in which Human Resources compensated management personnel, who are not represented by the Employees' Association, for acting assignments that did not qualify for an acting pay differential because the acting assignment was less than 15 working days.

For instance, in fiscal year 2019, there were 19 instances in which management personnel within the Air District received additional compensation for acting in a position while the incumbent was on leave or while the Air District recruited a replacement for a separated employee. Of these 19 instances, 17 appointments—or 89 percent—were less than the 15 working day threshold required to trigger additional compensation as shown in Exhibit 3. As a result, the Air District paid compensation equal to 451 days.

EXHIBIT 3. NUMBER OF DAYS WORKED FOR ACTING APPOINTMENTS OF NON-REPRESENTED EMPLOYEES

Fiscal Year	Total Number of Acting Appointments Receiving Acting Pay	In Position More Than 15 Days	In Position 15 Days or Less	Percent of Acting Appointments That Should Not have Received Acting Pay
2019	19	2	17	89%
2020	21	10	11	52%
2021	22	10	12	55%
2022	27	11	16	59%

Source: Payroll records showing all acting assignments during Fiscal Years 2019 through 2022.

Like Human Resources' approach to acting pay applied to the Air District's Board-appointed positions, Human Resources also generally applied the same approach to non-represented management as it would to represented employees. This approach requires the Air District to compensate employees according to the MOU, specifically "the minimum salary for the higher position nearest a 5% increase (not less than 4.9%) above the employee's former position, whichever is higher, provided the increase is within the range of the higher position."⁶ Yet, the Administrative Code requires all non-represented employees to be compensated only beginning on the 16th working day when working in an acting capacity. We found that the Air District inappropriately paid non-represented acting positions before the 16th day for the majority of its acting appointments between 2019 and 2022.

As described above, Human Resources' long-standing interpretation of Resolution 2002-17 was to apply benefits afforded to represented employees pursuant to the Districts MOU with the Employees' Association to all confidential and management personnel. According to Human Resources, Resolution 2002-17 superseded certain Administrative Code provisions, including protocols defined in the Administrative Code regarding acting assignments. We do not agree that the 2002 Resolution negated provisions of the Administrative Code that have remained in place since 1996. Resolution 2002-17 applies specifically to the MOU adopted in 2002 and subsequent modifications to confidential/management compensation based on the 2002 MOU. There is nothing in the 2002 resolution that expresses the Board's intent to override specific requirements set forth in the Administrative Code in perpetuity. In fact, as it relates to management personnel, the 2002 Resolution asserts two provisions: (a) it grants management personnel the same "fringe benefits" provided to represented personnel and (b) it provides management additional leave in lieu of overtime compensation. It also requires the Air District to re-evaluate its overall compensation structure, suggesting the resolution itself was intended to address the immediate compensation needs of the District's confidential and management personnel, and not to set compensation policy in perpetuity or to take precedent over the Administrative Code.

Air District Paid Overtime to Employees Not Entitled to Overtime Compensation and to Other Employees that May Be Exempt from Overtime Considerations

While Human Resources has not formally determined the FLSA designation for any of its employees—a problem discussed later in this report—the Board adopted provisions entitling many of the Air District's

⁶ MOU Section 7.02(2)

employees to overtime compensation as specified in the Administrative Code and the MOU between the Air District and the Employees' Association. The Administrative Code incorporates the Air District's classification structure in four categories: clerical, technical, professional, and management.⁷ In authorizing overtime, the Administrative Code states that "classifications in the Clerical and Technical Series identified in Section III-5.7 are entitled to overtime pay."⁸ Likewise, the MOU lists all classifications covered by the collective bargaining agreement, and states that "all represented employees who are authorized and work overtime shall be compensated."⁹ Further, subsequent to labor negotiations, the Board of Directors often adopted resolutions providing confidential employees similar benefits as those incorporated into the MOU, including overtime benefits. In effect, the Administrative Code and MOU collectively require the Air District to compensate overtime for (a) all represented employees and (b) all non-represented employees listed in the Administrative Code as "clerical" or "technical" employees. Further, subsequent to labor negotiations, the Board of Directors often adopted resolutions providing confidential employees similar benefits as those incorporated into the MOU, including overtime benefits.

While the Administrative Code and the MOU between the Air District and the Employees' Association allow for additional compensation when certain employees are required to work overtime, we identified numerous examples where the Air District may be incurring excessive overtime costs related to non-represented employees that should or could otherwise be considered exempt from FLSA overtime requirements. As a result, the Air District may have incurred overtime costs that could have or should have been avoided. Specifically:

- ✓ A review of classifications that qualify for overtime eligibility in the MOU and Administrative Code suggest that some employees designated as hourly could be considered exempt under federal law, such as engineering and other professional personnel, certain analysts, senior supervisory personnel, and high-level administrative personnel, among others. While the Administrative Code only qualifies clerical and technical positions for overtime, effectively exempting all professional and management personnel from overtime, the MOU provides overtime benefits to all represented employees. The designation of positions as exempt or non-exempt from FLSA overtime requirements is a matter of employer discretion and labor negotiation, to the extent that the designations comply with the law. However, the Air District's practice has not been informed by a methodical evaluation of the FLSA status of positions throughout the organization, as discussed later in this report.
- ✓ Likewise, a review of overtime charged by employees between 2019 and 2022 revealed numerous classifications that were neither listed in the MOU as a represented classification or in the Administrative Code as "clerical" or "technical." These included the Clerk of the Boards, Executive Assistant, Senior Executive Assistant, Senior Executive Secretary, Human Resources Analyst, and Senior Human Resources Analyst classifications. One classification, the Clerk of the Boards, is specifically designated as a Management position that is not "clerical" or "technical." Approximately 10 years ago, Human Resources redesignated this position from "management" to "confidential".

⁷ Administrative Code Division III Section 5.7

⁸ Administrative Code Division III Section 6.3

⁹ MOU Section 9.04(6)

While the Board-adopted salary schedule includes this position in the “confidential” category, the Administrative Code continues to designate the position in the management category.

Over this four-year period, the Air District paid employees in these classifications nearly \$90,000 in overtime. As an employer, the Air District maintains discretion to follow FLSA overtime requirements for all employees. Yet, doing so can be costly and, thus, should be done at the discretion and approval of the Board of Directors. The positions cited above were not identified in the MOU or Administrative Code as authorized to receive overtime, and may be eligible for FLSA exemption. It is incumbent on Human Resources management to eliminate any ambiguity regarding the FLSA status of all employees.

As is discussed later in this report, Human Resources has indicated that, while it agrees FLSA designations should be incorporated into employee classifications and/or job descriptions, the Employees’ Association has refused to agree to do so and such changes to Job Classifications were deemed by an arbitrator to be negotiated with the Employees’ Association.

Performance Evaluations and Merit-Based Salary Increases Were Not Administered In a Manner Consistent with the Administrative Code

The Air District has not complied with Administrative Code requirements related to the completion of performance evaluations and annual merit-based salary increases that require each employee receive at least one formal performance appraisal every year prior to the employee’s anniversary date—the date at which merit-based pay increases are set to take effect.¹⁰

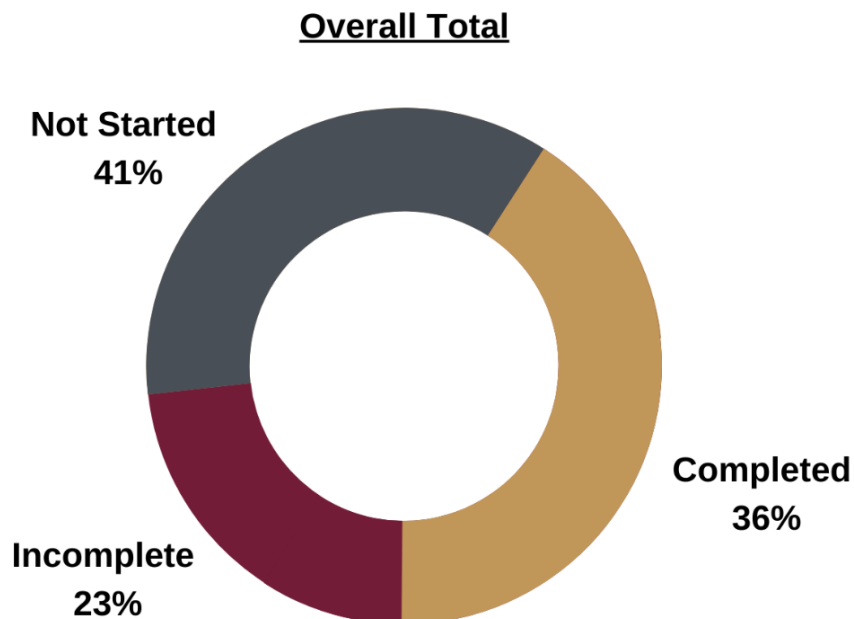
While the performance evaluation process is administered by Human Resources, the Administrative Code is clear, placing the responsibility to complete annual performance evaluations on supervisors throughout the Air District. Human Resources’ responsibility primarily rests in the administration of merit-based salary (step) increases on an employee’s anniversary date. Human Resources tracks the anniversary dates for all employees through an electronic NeoGov system, which automatically notifies employees and supervisors of upcoming deadlines to submit performance evaluations. Supervisors are required to complete evaluations and submit them through the NeoGov portal, which serves as the repository for all employee evaluations.

Our review of NeoGov records revealed that most Air District employees did not receive performance evaluations. Specifically, as illustrated in Exhibit 4, only an approximate 36 percent of Air District employees have received completed and approved performance evaluations as of September 30, 2022. For another 23 percent of employees, the performance review process has begun and is in various stages of drafting, rating, or approvals—but has not been completed. Regardless, employees received a merit step increase on their anniversary date. While the Administrative Code states that merit increases are based solely on the merit of

¹⁰ Division III Section 7 of the Administrative Code states that “Employment, passing of a probationary period and merit increases are based solely on merit of the individual employee. No employee is guaranteed a continuation of employment or the receiving of future salary benefits.” Further, it defines “The anniversary date for newly hired or promoted employees is the date of hire or date of promotion. The anniversary date will be used in determining when an employee receives salary increments. ... Approximately two weeks before the first day of the month in which the anniversary date and the length of service makes the employee eligible for a step increase, the supervisor will complete a performance evaluation and sign a merit increase recommendation. Employees at the top of the salary range will continue to be evaluated yearly. Performance evaluations are a continuing responsibility of each supervisor, and each supervisor will informally discuss employees’ performance as often as necessary to ensure effective work performance.”

the individual employee, as evidenced in performance evaluations, the MOU with the Employees' Association allows for automatic merit increases after 30 days of delayed evaluations.¹¹ While a significant percentage of employees' performance reviews have not been started, these results represent progress for the Air District from 2020 where staff estimated that only 25 percent of employees received performance evaluations.

EXHIBIT 4. STATUS OF 2022 PERFORMANCE EVALUATIONS DUE NO LATER THAN SEPTEMBER 30, 2022



Source: NeoGov report showing the status of employee performance evaluations

Performance evaluations present an important opportunity to provide feedback to employees and to foster professional development. They are the primary source of information regarding an employee's performance and are necessary to justify both salary increases and disciplinary action. The Air District's failure to complete performance evaluations for most of its workforce increases its exposure to employment-related risks, as does its practice of granting merit-based salary increases on an automatic basis—without any concrete evidence that merit warrants such an increase. Further, it significantly impairs the Air District's discretion in potentially denying future merit-based salary increases because of this past precedent and makes it more difficult to affect progressive discipline over time or to justify future disciplinary actions, including terminations. We recommend that the Air District ensure the consistent application of performance evaluations for this purpose.

Human Resources Has Not Consistently Monitored or Informed Air District Leadership of Market Compensation Levels

Often, employers create rewards programs to recruit, retain, and motivate the employer's workforce through compensation. With this goal in mind, human resources departments are responsible to inform executive management and the Board of market rates of compensation necessary to recruit, retain, and motivate; advocate internally-consistent pay levels throughout the organization; minimize compensation-related risks

¹¹ MOU Section 7.03.

related to federal and state statutory requirements; and to ensure compliance with organization-wide policies and procedures.

To facilitate this, the Administrative Code requires Human Resources to develop a Classification Plan, which “will include the organization of positions into classes based on the assigned duties, responsibilities and qualifications necessary to successfully perform the work.”¹² One key purpose of this plan is to facilitate the effective administration of the District’s compensation program. As part of its responsibilities under Health & Safety Code,¹³ the Board sets compensation for all District employees through Board-adopted salary schedules prepared by Human Resources¹⁴ with a salary range for each classification of positions that is informed by compensation studies initiated by the Board or the APCO.¹⁵ Routine compensation studies conducted on a periodic basis allow employers to monitor trends in the employment market. Often, organizations that fail to perform thorough market analyses could have employee recruitment and retention difficulties or could have excessive salary costs.

Our audit revealed that Human Resources generally did not perform compensation surveys for much of the past 20 years, but has performed compensation surveys regularly in the past 5 years. Its current practice is to conduct a compensation survey every three years. According to management, the Air District had commissioned a comprehensive classification and compensation study in 2000, but District management and the Employees’ Association were generally dissatisfied with the results. In 2002, the Board adopted Resolution 2002-17 instructing the Air District to conduct a compensation survey to gauge the market, report the results to the Board in 2003, and develop a compensation plan and survey model—including the identification of comparable geographical jurisdictions and comprehensive benefits—for use in future studies. This Board direction is consistent with leading compensation practices in the public sector. This audit did not find evidence regarding whether such a study had been conducted.

Human Resources Did Not Report All Compensation Study Results to the Board That Revealed Compensation Higher than the Market

According to Human Resources, it was not aware of any district-wide compensation studies between 2000 and 2016 until it initiated a study of compensation for certain “benchmark” positions within the Air District in preparation for negotiations with the Employees’ Association in 2017. It did, however, conduct individual compensation studies for Board-appointed positions upon request of the Board for use in negotiating employment contracts with the District Counsel and Executive Officer / APCO. Our review of the results of the 2017 compensation study revealed that Human Resources reported a summary of the results related to represented employees to the Board in February 2019 during discussions of labor negotiations. Human Resources conducted a follow-up compensation study in 2020, but District management did not present the results to the Board of Directors. Further, study results indicated that District salary and compensation were substantially higher than market medians.

¹² Administrative Code Division III Section 5.1

¹³ Health & Safety Code Section 40706

¹⁴ Administrative Code Division III Section 6.1

¹⁵ Administrative Code Division III Section 5.3

When setting salary and compensation to establish an employer’s competitive position, there are two key factors to consider. First, an employer must define how it will measure the market. For example, an employer may target the mean or the median of compensation provided by comparator agencies or it may target a certain percentile that is somewhat below the mean, such as the 40th percentile, or a percentile at the higher-end of the spectrum, such as the 80th percentile. It is common industry practice to use the median to indicate what the typical employee in that particular job market is paid, as it serves as a reliable measure of central tendency when establishing pay rates—which is consistent with the approach taken by the Air District. While these determinations are often driven by an organization’s budget, they should generally be recognized in policy. Second, an employer must define how it will measure its place in the market; i.e., a metric that indicates whether compensation is too low or too high when compared to the organization’s target in the market. Typically, if an employer’s compensation is within 5 percent of the market median, it is considered competitive—this is the standard adopted by many other Bay Area counties. Anything exceeding 5 percent of the market median can be considered on the high-end of the market and anything below 5 percent of the median may be considered not competitive.

We compared results of the 2017 and 2020 compensation studies for both represented and non-represented positions as shown in Exhibits 5 and 6. For the represented positions shown in Exhibit 5, both market studies compare the Air District’s salary and total compensation to the market’s median salary and to the total compensation provided by other comparable employers in the Air District’s employment market—that is, other employers with which the Air District competes for talent. To highlight how compensation provided by the Air District compares to other employers, we added a column showing the percent variance to the market median with deviations of more than 5 percent from the market median highlighted in red.

EXHIBIT 5. COMPARISON OF 2017 AND 2020 COMPENSATION STUDIES FOR REPRESENTED POSITIONS

Survey Class	2017						2020					
	Salary			Total Compensation			Salary			Total Compensation		
	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference
Accountant II	\$ 6,654	\$ 7,377	10.9%	\$ 8,823	\$ 9,141	3.6%	\$ 7,459	\$ 8,205	10.0%	\$ 9,569	\$ 10,300	7.6%
Accounting Assistant II	\$ 4,371	\$ 4,873	11.5%	\$ 6,418	\$ 6,637	3.4%	\$ 4,824	\$ 5,420	12.3%	\$ 7,190	\$ 7,514	4.5%
Administrative Secretary	\$ 5,549	\$ 5,923	6.7%	\$ 7,670	\$ 7,687	0.2%	\$ 5,757	\$ 6,588	14.4%	\$ 8,172	\$ 8,682	6.2%
Air Quality Chemist II (survey for Chemist)	\$ 7,069	\$ 8,133	15.1%	\$ 9,092	\$ 9,897	8.9%	\$ 7,798	\$ 9,046	16.0%	\$ 9,707	\$ 11,141	14.8%
Air Quality Engineer II (survey for Civil Engineer)	\$ 9,433	\$ 9,189	-2.6%	\$ 11,193	\$ 10,952	-2.1%	\$ 7,718	\$ 8,408	8.9%	\$ 10,346	\$ 12,314	19.0%
Air Quality Inspector II	\$ 7,023	\$ 7,559	7.6%	\$ 8,687	\$ 9,323	7.3%	\$ 7,602	\$ 8,408	10.6%	\$ 9,701	\$ 10,502	8.3%
Air Quality Instrument Specialist II	\$ 6,840	\$ 7,559	10.5%	\$ 8,793	\$ 9,323	6.0%	\$ 7,311	\$ 8,408	15.0%	\$ 9,098	\$ 10,502	15.4%
Air Quality Meteorologist II (survey for Meteorologist)	\$ 7,833	\$ 8,967	14.5%	\$ 8,663	\$ 10,731	23.9%	\$ 8,692	\$ 9,973	14.7%	\$ 9,556	\$ 12,068	26.3%
Air Quality Specialist II	\$ 7,591	\$ 8,751	15.3%	\$ 9,349	\$ 10,515	12.5%	\$ 8,024	\$ 9,733	21.3%	\$ 9,976	\$ 11,828	18.6%
Air Quality Technician II	\$ 5,658	\$ 7,200	27.3%	\$ 6,530	\$ 8,963	37.3%	\$ 6,183	\$ 8,007	29.5%	\$ 8,152	\$ 10,102	23.9%
AQ Case Settlement Specialist II	\$ 8,187	\$ 7,937	-3.0%	\$ 10,140	\$ 9,751	-3.8%	\$ 8,621	\$ 8,828	2.4%	\$ 10,271	\$ 10,923	6.4%
Environmental Planner II (survey for Planner)	\$ 8,264	\$ 9,648	16.7%	\$ 10,308	\$ 11,412	10.7%	\$ 9,077	\$ 10,731	18.2%	\$ 11,251	\$ 12,825	14.0%
Executive Secretary II	\$ 7,042	\$ 8,334	18.4%	\$ 9,251	\$ 10,148	9.7%	\$ 7,749	\$ 9,269	19.6%	\$ 10,008	\$ 11,721	17.1%
Help Desk/AQIS							\$ 7,718	\$ 8,408	8.9%	\$ 10,346	\$ 10,502	1.5%
Office Assistant II	\$ 4,035	\$ 4,641	15.0%	\$ 6,655	\$ 6,405	-3.8%	\$ 4,448	\$ 5,162	16.1%	\$ 6,769	\$ 7,256	7.2%
Program Analyst	\$ 7,475	\$ 8,133	8.8%	\$ 9,493	\$ 9,897	4.3%						
Public Information Officer II	\$ 6,897	\$ 8,133	17.9%	\$ 9,352	\$ 9,897	5.8%	\$ 7,316	\$ 9,046	23.6%	\$ 10,565	\$ 11,141	5.5%
Secretary	\$ 5,239	\$ 5,117	-2.3%	\$ 7,651	\$ 6,880	-10.1%	\$ 5,492	\$ 5,691	3.6%	\$ 7,755	\$ 7,785	0.4%
Staff Specialist II	\$ 7,726	\$ 8,751	13.3%	\$ 9,665	\$ 10,515	8.8%	\$ 8,710	\$ 9,733	11.7%	\$ 11,241	\$ 11,828	5.2%
Systems Analyst	\$ 8,792	\$ 8,967	2.0%	\$ 10,910	\$ 10,731	-1.6%	\$ 9,852	\$ 9,973	1.2%	\$ 12,426	\$ 12,068	-2.9%

Source: Compensation surveys commissioned by Human Resources.

In 2017, only one of the Air District’s positions (Secretary) had compensation considered non-competitive with the salary and total compensation being 2.3 and 10.1 percent below the median, respectively. All other positions were competitive, with many exceeding the market median between 6 and 27 percent according to

Human Resources' study. Similar results continued in 2020 where compensation for every position included in the study considered competitive with compensation for most exceeding the market median. In fact, salary levels for 17 of the 20 positions surveyed substantially outpaced the market between 8.9 percent and 29.5 percent and related total compensation for 8 of the 20 positions outperformed the market between 5.2 percent and 26.3 percent.

Similarly, Exhibit 6 compares the 2017 and 2020 survey results for the non-represented positions. According to management, this information was not formally presented to the Board. Like the represented positions, results showed that salary and total compensation for non-represented management positions mostly exceeded the market median—some significantly. For instance, the District Counsel's salary was 30.5 percent more than the median in 2017 although that variance dropped to 15.1 percent by 2020.

EXHIBIT 6. COMPARISON OF 2017 AND 2020 COMPENSATION STUDIES FOR NON-REPRESENTED POSITIONS

Survey Class (Not included in Board Presentation)	2017						2020					
	Salary			Total Compensation			Salary			Total Compensation		
	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference	Market Median	BAAQMD	Difference
Air Pollution Control Officer	\$ 20,918	\$ 23,480	12.2%	\$ 25,463	\$ 26,197	2.9%	\$ 22,359	\$ 25,676	14.8%	\$ 25,147	\$ 28,759	14.4%
Assistant Counsel II	\$ 11,486	\$ 14,328	24.7%	\$ 14,163	\$ 16,142	14.0%	\$ 13,403	\$ 15,936	18.9%	\$ 15,955	\$ 18,644	16.9%
Deputy Air Pollution Control Officer	\$ 13,864	\$ 16,996	22.6%	\$ 16,079	\$ 19,791	23.1%	\$ 19,384	\$ 18,903	-2.5%	\$ 18,901	\$ 21,725	14.9%
Director/Officer (survey for Director of Engineering)	\$ 13,356	\$ 15,314	14.7%	\$ 15,837	\$ 17,717	11.9%	\$ 15,297	\$ 17,033	11.3%	\$ 17,904	\$ 19,783	10.5%
District Counsel	\$ 16,930	\$ 22,093	30.5%	\$ 20,612	\$ 24,757	20.1%	\$ 22,258	\$ 25,615	15.1%	\$ 25,881	\$ 28,695	10.9%
Human Resources Analyst II	\$ 7,672	\$ 8,751	14.1%	\$ 9,756	\$ 10,565	8.3%	\$ 8,812	\$ 9,733	10.4%	\$ 10,687	\$ 12,202	14.2%
Human Resources Technician II	\$ 5,708	\$ 6,219	9.0%	\$ 7,962	\$ 8,033	0.9%	\$ 6,252	\$ 8,007	28.1%	\$ 8,543	\$ 10,410	21.9%
Legal Secretary II	\$ 5,815	\$ 6,219	6.9%	\$ 8,315	\$ 8,033	-3.4%	\$ 6,199	\$ 6,917	11.6%	\$ 8,378	\$ 9,278	10.7%
Manager (see Engineering Mgr as survey proxy)	\$ 11,730	\$ 12,410	5.8%	\$ 13,419	\$ 14,701	9.6%	\$ 12,855	\$ 14,106	9.7%	\$ 15,317	\$ 16,743	9.3%

Source: Compensation surveys commissioned by Human Resources.

It is imperative that District management provide the results of any compensation study commissioned by Human Resources to the Board given its role in setting compensation within the Air District. While not explicitly required, such a process is implied in the Administrative Code, which allows the Board or the APCO to initiate salary studies and provides the Board discretion “to implement, or not implement, any recommendation.”¹⁶ It is also consistent with prior direction from the Board as part of Resolution 2002-17, which required the Air District to commence a study and provide the report to the Board for consideration the following year.

Compensation Surveys Did Not Define or Include All Applicable Compensation or Benefit Components in Its Analysis of Total Compensation

The 2017 and 2020 studies executed by Human Resources included an analysis of both base salaries and “total compensation.” This is generally a sound approach, as it considers two important indicators of the competitiveness of Air District salaries and benefits. Evaluating base salary is simple and straightforward. Employers identify base salaries offered by comparable employers—or the minimum and maximum of salary ranges—and use these data points to determine market compensation.

Determining total compensation, however, is more complicated. It requires employers to identify (a) the types or elements of compensation it provides its employees and (b) the elements that it deems relevant for comparative purposes. This often includes, but is not limited to, salary, group benefit plans, retirement

¹⁶ Administrative Code Division III Section 5.3(d)

benefits, merit pay, incentives, premium pay practices, and leave. For those employers that analyze total compensation, industry best practice is to define the relevant components of their compensation plan and to include those same components of compensation provided by employers within the defined labor market to ensure a genuine comparison of compensation an individual can realistically earn within the labor market. The traditional goal in a total compensation approach is to evaluate competitiveness by deriving at a single aggregated dollar value of the total compensation provided by an average employer—rather than just salary—within a labor market.

When calculating total compensation for its analysis, Human Resources included the many critical elements of compensation, such as salaries, benefits (medical, dental, vision), and deferred compensation contributions. However, it did not include other elements, including leave, pension and retirement benefits, leave cash-outs, life and long-term disability insurance, premium pay or incentives, education allowances, or other cash compensation. Some of these elements could be more significant than others to determining the Air District's actual total compensation and comparing its levels to the competitive market. While there is no requirement that the Air District include all elements, it is a leading practice to define these elements in advance and make the components known to the Board. This will ensure clear communication regarding definitions of "total compensation" and a basis for understanding comparisons to other employers. It is also important to note that what is reflected as "total compensation" in the 2017 and 2020 studies does not represent the actual value of the total compensation packages provided either by the Air District or the agencies selected for comparison.

The Air District Has Not Established a Compensation Philosophy as a Framework for its Compensation Plan

A compensation philosophy lays out the guiding principles and serves as a mission statement for an organization's compensation policy, provides the employer's strategic approach to compensation and benefits, and gives both managers and employees—including labor representatives—a better understanding of the organization's position on compensation and benefits. Generally, a compensation philosophy guides all compensation-related matters and defines the employer's competitive market (i.e., what is the employer's market for talent and with whom does the employer compete for employees) and competitive position (i.e., compensation in relation to the market, such as setting base salaries to equal the median of the market). It also sets forth the employer's goals with respect to its compensation plan, as well as the balance of salary, benefits, and incentives in the compensation plan. For instance, it is not uncommon for public sector agencies, which have fiscal responsibilities to the public, to define its competitive market as other public sector employers and competitive position to equal the median of compensation provided by other public sector employers and have an increased focus on benefits and work-life balance. Regardless, establishing a compensation philosophy provides guidance in all compensation-related matters, including labor negotiations and compensation recommendations.

While it is the role of the Board to direct and authorize a bargaining position with regard to negotiations, this audit found that the Air District did not have a clearly defined compensation philosophy or a strategic approach in establishing compensation levels that primarily occur during labor negotiations. Organizations without a clear, written compensation philosophy risk rewarding employees inconsistently, increasing the risk

of discrimination law violations, and either paying too much or too little in salaries impacting operating costs and employee retention.

For instance, a complete philosophy statement generally includes a set of guiding principles related to the following:

- Objectives and goals for the total compensation program define what the employer expects to accomplish with its compensation program.
- Competitive market, including the agencies or companies with which the employer competes for talent, and whether different competitive markets exist for different types of jobs.
- Competitive position, including where in the market—e.g., the percentile—that the employer wishes to compete.
- Market studies, including the type (comprehensive or benchmark), data source (custom survey or published datasets), and frequency of studies to be performed for the purpose of measuring competitiveness and market position.
- Internal comparisons, including how the employer intends to address the pay of jobs that are similar and those that are different.
- Benchmark positions, including how the employer will identify and select those positions that it will use to measure external market competitiveness.
- Benefits, including defining how competitive the employer *wants* to be or *can* be with respect to varying types of benefits.
- Employee pay, including the factors that will be used to determine an individual employee's starting compensation (e.g., education, related experience, certifications, etc.) and how will progression through the ranges be accomplished.
- Ability to pay, including a recognition that, as a public employer, the organization has a responsibility to the public in setting employee compensation, that compensation is dependent on the public sector employer's financial resources and health, and that increases in market compensation does not dictate increases in the employer's compensation plan.

There is no single correct approach to developing a compensation philosophy, and different public sector employers may reasonably make different decisions regarding any of these factors. Regardless of the approach adopted, a compensation philosophy serves three significant purposes. First, it provides the governing body a mechanism through which to set policy regarding how the organization will establish and evaluate compensation. In 2002, when the Board instructed management to conduct a compensation study, it first directed management to develop clear objectives and a model defining many of the elements described in the previous bullets—although Human Resources did not develop the objectives and model as directed. In 2017, when the Air District initiated its first compensation study more than fifteen years later, Human Resources still did not have clear objectives or the benefit of a compensation philosophy and made compensation survey decisions without Board insight or additional direction.

Second, a compensation philosophy provides an increased level of transparency and accountability in how an organization sets its own compensation and how it compares to other employers. Third, it provides a consistent methodology for compensation analyses. While compensation surveys provide point-in-time results, it is useful for employers to assess trends over time; reliable trend analyses require the consistent treatment of data to ensure like comparisons over time.

A philosophy statement is not intended to be so detailed as to cover all aspects of administering a compensation program. Rather, it is necessary to have sufficient details defining the framework for making compensation-related decisions, providing a benchmark against which District officials and Board directors may assess future compensation recommendations, and ensuring transparency and accountability in compensation-related matters.

According to Human Resources, some of the elements typically included in a compensation philosophy are addressed in various authoritative documents, including the Administrative Code and Board resolutions, but there is no comprehensive policy or philosophy to guide compensation practices. With this in mind, we recommend the Air District devise a compensation philosophy and consider three potential areas as follows:

- ✓ **Broaden the employers considered comparable to the Air District.** The 2017 and 2020 compensation surveys included comparable agencies in three primary sectors:
 - Special Districts, including Bay Area Rapid Transit District, East Bay Municipal Utilities District, and Metropolitan Transportation Commission
 - Air Districts, including Monterey Bay, Sacramento, San Diego, San Joaquin, and South Coast
 - General Government, including the nine Bay Area counties¹⁷ and the cities of San Jose and Oakland

In determining the employment market within which the Air District competes, we recommend the inclusion of some additional cities, the private sector, and the California Air Resources Board. Specifically, all nine Bay Area counties that the Air District recognized as comparable employers consider several additional Bay Area cities as competing for labor in the same labor market. These include some combination of the cities of Berkeley, Campbell, Concord, Cupertino, Daly, Fairfield, Fremont, Gilroy, Hayward, Mountain View, Palo Alto, Richmond, Sacramento, Santa Clara, Santa Rosa, Saratoga, Sunnyvale, Vacaville, Vallejo, and Walnut Creek. While the inclusion of all of these additional cities is not necessary and could prove overly cumbersome, the inclusion of more than just the cities of San Jose and Oakland would be more indicative of the Air District's labor market and provide a better balance between the Air District's the general government agencies currently surveyed, which are more heavily weighted toward Bay Area counties.

Beyond cities, it is also generally advisable to include employers with which the Air District competes for talent, which could include state and federal agencies such as the California Air Resources Board, the California Environmental Protection Agency, and/or the United States Environmental Protection

¹⁷ The nine Bay Area counties include Alameda, Contra Costa, San Francisco, San Mateo, Marin, Napa, Santa Clara, Solano, and Sonoma.

Agency. It could also involve private employers specializing in air quality, climate change, and the environmental sciences. Current survey methods ignore these segments of the labor market within which the Air District competes.

- ✓ **Include additional market indicators.** Currently, the compensation survey identifies and compares the maximum salary provided by other employers and the maximum of the range established by the Air District for comparable positions. This is a useful analysis, although additional indicators would be beneficial as well. Other indicators could include identifying the minimum salaries offered by peers and/or the actual salaries provided. We find the current approach generally provides Human Resources with meaningful insight into the salary ranges offered by other employers—many public sector employers provide a salary spread of approximately 40 percent, so identifying the maximum of a range gives some insight into the expected median and minimum of the ranges. However, without gathering information on the median and minimum salaries provided along with the maximum, the Air District is not able to evaluate the extent to which its entry level salaries compare with peer employers. Posting a salary range with a minimum that falls too far below the market could lead otherwise qualified candidates to decline applying altogether.

Further, while the current survey methods identify the average maximum salary offered by peers, as well as the median of the maximum salaries offered by peers, the surveys do not provide insight into the range of salaries or total compensation provided by peers. That is, it is relevant to know whether the range of salaries is narrow, consistent among employers—such that the highest salary and the lowest salary offered by peers does not deviate too far from the median—or whether the compensation offered to a specific position varies widely. To determine the extent to which the market varies for certain positions, compensation surveys often include additional percentiles, such as the 25th and 75th percentiles or 10th and 90th percentiles. This provides additional insight into the Air District’s actual position when compared to the market—e.g., whether its compensation is too low or too high. For instance, knowing that the maximum compensation for management positions within the Air District exceed the median maximum in the market by a certain percent—such as whether they all fall within the 75th percentile or whether compensation exceeds the 90th or 100th percentiles—is relevant for understanding survey results and what compensation actions may be needed.

- ✓ **Establish a clear approach for incorporating market comparisons into future compensation decisions.** While Human Resources conducted market studies in 2017 and 2020, it is not clear how that data was used to inform subsequent compensation decisions. According to Human Resources, because the results showed Air District compensation to be competitive, management’s focus has been and continues to be on internal equity. That is, Human Resources has not been focused on aligning Air District compensation with the market median (or another target or goal), but on ensuring staff within the agency are paid similarly when compared to similar positions.

With this focus, Human Resources continued to recommend the application of general cost of living adjustments in order to maintain its competitive position. At the same time, while the Air District has a favorable competitive advantage as it relates to public sector compensation, there are certain positions with compensation levels that merely match the market and do not exceed the market.

These positions have become the focus of Human Resources review and attention, with the intent to determine whether compensation increases for those positions is warranted.

Recommendations

In order to better ensure compensation practices are consistent with the Board's authority and direction, we recommend that Human Resources:

- 1.1 Refrain from engaging in the determination of compensation any Board-appointed employee absent the clear written direction from the Board of Directors.
- 1.2 Ensure all compensation practices are compliant with relevant provisions of the Administrative Code for all employees and with MOU provisions for represented employees, including those related to merit, differential, incentive, acting, and overtime pay.
- 1.3 Consult with District Counsel regarding the potential for recovering acting pay provided to non-represented employees in conflict with the Administrative Code.
- 1.4 Determine the FLSA status for every position within the Air District, document the status in position descriptions and/or classification specifications, and obtain the Board's approval for all designations.
- 1.5 Include in the performance evaluations of supervisors and management personnel the timely and quality completion of annual performance evaluations.
- 1.6 Prepare a compensation philosophy defining key parameters governing the Air District's compensation plan, as presented in this report, and present to the Board of Directors for consideration.
- 1.7 Continue conducting compensation studies on a periodic basis; in doing so, present all results to the Board of Directors for consideration and enhance study methods by:
 - a. Including compensation elements deemed relevant and material to the Air District's compensation plan;
 - b. Broadening the employers considered comparable to the Air District;
 - c. Incorporating additional indicators of market compensation; and
 - d. Establishing a clear approach for incorporating market comparisons into future compensation decisions.

We recommend that the Executive Officer / APCO:

- 1.8 Direct all Air District supervisors and management personnel to complete performance evaluations of all District staff in a manner that is compliant with the Administrative Code and timely.
- 1.9 Consult with District Counsel regarding the drafting and adopting of a resolution codifying succession protocols governing acting appointments.

Human Resources' Response

The Human Resources Management Team is awaiting a legal analysis and opinion, initiated by the EO/APCO, of the applicability of Board Resolution 2002-17, to determine the District's authority to provide certain pay and benefits to the management and confidential employee groups, including acting pay, before the Human Resources Management Team can provide comments responsive to the Auditor's opinions in this section.

Notwithstanding, the Human Resources Management Team is supportive of most of the recommendations that the Auditor has made in regards to compensation plan management and will add that we believe most of the recommendations will help the next generation of Air District leadership understand how pay and benefits are applied to employees at the Air District and why.

The entire Human Resources Office Team have always been focused on serving our workplace community and the Board with continual improvements to our services and we look forward to working with the Board and our workplace community in considering and implementing recommendations of the Auditor to help support those efforts now and into the future.

Historical Context of Resolution 2002-17

Also known as the "Me-Too Resolution," Resolution 2002-17 was passed on October 16, 2002, by the 2002 Board of Directors to provide certain equitable pay and benefits to the management and confidential employee groups as was provided to represented staff when the Board approved the adoption of a MOU with the EA earlier that same year.

In 2002 the Air District was undergoing similar leadership changes as it is today. The EO/APCO, District Counsel and Human Resources Officer left the Agency and many Air District staff had frustrations and concerns about the leadership of the Agency, the culture of the Air District and their rights as employees. The EA was so concerned about the status of employee rights that the organization sued the Air District and filed a PERB Complaint against their employer during this time.

To resolve these serious concerns, the 2002 Board of Directors hired an experienced public sector Administrator to serve as Interim EO/APCO to address the matters after the prior leadership left their roles. The new Interim EO/ACPO immediately secured an agreement with the EA on terms and conditions of employment for their members. The contract was retroactive to the Year 2000 and in place until 2006. At the same time, the management and confidential employee groups were advocating for their own pay and benefits with the 2002 Board of Directors. The Board hired the Industrial Employers Distributors Association (IEDA) to serve as the Board's labor representative with these groups. After extensive discussions, the Board and the Management and Confidential employee groups agreed to extend the same pay practices and benefits to those groups as had been previously negotiated with the EA for equity and consistency. The Board and Interim EO/APCO were focused on finding common ground with all Air District employees at the time, to ensure better equity in its pay and benefits for staff and improve the morale and culture of the Agency.

The acting pay section of the new MOU was clearly superior to the 1996 Section on Acting Pay in the Administrative Code. The MOU provision provided acting pay at the higher classification for any Air District employee who served 40 or more hours at the salary step in the Board-Adopted Salary Schedule for the position closest to the employee's regular pay, but in no circumstance would that pay be any less than 5% of their regular salary. Under the 1996 Administrative Code provision on Acting appointments, managers and confidential staff would not have been paid for the assignment if it was not at least 15 days in length. Most acting appointments at the Air District are one to two weeks in length and usually occur when the incumbent is on a vacation or longer if the incumbent is on a leave of absence or if they vacate a position. Managers and Confidential staff did not agree to act in higher level positions at the time because in most cases, they would not be compensated for it. It was not feasible to appoint a represented staff member to act at a higher level over non-represented managers who are responsible for managing those same staff.

Not long after the adoption of the new MOU and the Me-Too resolution, the District hired a new EO/APCO Jack Broadbent, who continued to work with the Board to improve pay equity by correcting inequitable pay practices of paying a technical manager the same as the executive office manager, and all of whom continued to provide acting pay for staff under the same terms, per Resolution 2002-17. Both positions managed people, programs and projects, and typically have the same level of budget authority and span of control depending on the type of work. 20 years ago, District Management rightly saw the value of pay equity.

Starting in 2021, the Air District began experiencing leadership changes that hadn't happened since the early 2000s. First, District Counsel Brian Bunger and then Executive Officer Jack Broadbent both retired with no prior notice. The Human Resources Management Team paid these acting employees the same as they would for any current employee and per the terms of Resolution 2002-17 and 20 years of past practice. The staff were paid at the salary for the positions of EO/APCO and District Counsel which were adopted by the Board as part of the Fiscal Year Ending 2023 Budget, which was equitable to what the prior incumbents were paid for the same job. It was evident to most everyone, including the Human Resources Management Team, that the staff acting in these appointments would be taking over the full position duties they were acting in because of the loss of these two executives without any prior notice. The acting appointments were even more challenging due to the immediacy of the change in position and the increase in their magnitude of responsibility.

Conclusion

The Human Resources Management Team is happy to work with the Board and staff on the best practices to ensure that benefits at the Air District are equitable and to codify past practice and to modernize the 2002-17 Resolution into a clear document for the administration of pay and benefits for our workplace community now and into the future.

Position Management

The bulk of human resources management focuses on the organization's employees—recruiting, hiring, onboarding, compensating, developing, evaluating, retaining, and offboarding individuals within the organization. Distinct from this, human resources agencies also play a critical role in position management. This includes planning, managing, and reporting on the positions within an organization regardless of the personnel assigned to the positions.

Position management also includes the manner in which positions are classified into groups based on key characteristics. For employers the size of the Air District, it is not efficient or practical to administer compensation on a position-by-position basis. Instead, grouping similar positions based on common characteristics into classifications has numerous benefits. It facilitates the creation of common pay ranges and a corresponding pay structure that helps set financial limits on compensation, promotes pay equity by ensuring similar pay for positions performing similar work, allows for market-based benchmarks and analyses to ensure competitive compensation plans, and facilitates the allocation of staffing resources to divisions and programs through transparent budgetary processes.

This audit identified two problems related to Air District's position management protocols. First, Human Resources has not developed controls to document, control, or report on the status of all positions within the Air District. Further, although the Air District's Administrative Code requires Human Resources to develop and maintain a Classification Plan for all positions within the District,¹⁸ the current plan does not adequately define the general duties, responsibilities, qualifications, and characteristics of each job. These problems are described further below.

Human Resources Has Not Established a Reliable Method for Controlling the Allocation of Staffing Resources to Air District Divisions or Programs

At its most basic level, position management requires documenting the status of every position within an organization, including whether the position is authorized and funded through appropriate budgetary procedures, the location of the position within the organization, and the classification to which the position has been allocated. Based on this information, the position should be incorporated into the organizational chart and position control document, and assigned a position control number. With the position authorized and established, human resources personnel may fill the position with an employee.

It is important to note that it is the role of human resources management to document and control positions within an organization, but human resources agencies—particularly in the public sector—do not have the authority to create, fill, modify, or move positions on their own. Rather, the power and authority to create and fund positions rests with an organization's governing body, and authority to fill positions rests with executive

¹⁸ Division III Section 5 of the Administrative Code states "The District's Classification Plan will include the organization of positions into classes based on the assigned duties, responsibilities and qualifications necessary to successfully perform the work. Maintenance of the plan is the ongoing responsibility of the Personnel Section. The Personnel Section will audit and update the plan as necessary, in order to effectively administer the District's recruitment and selection activities, training program, compensation system, and performance evaluation program."

management. Position management requires a Human Resources Office to serve as a control point prior to the creation or filling of positions, including:

- Verifying that a new position has been authorized by the governing body;
- Verifying that an existing position is funded and authorized to fill;
- Verifying that management has authorized the filling of the position;
- Verifying that the process to fill the position is consistent with human resources and agency guidelines;
- Verifying that management has approved the individual selected to fill the position;
- Documenting all changes to the status of a position within the position control document and organizational chart; and
- Reporting on the status of positions (e.g., vacant v. filled, personnel costs, etc.) for budgetary, cost recovery, or other business purposes.

This audit found that Human Resources did not effectively engage in position management. Below, we provide three examples that illustrate problems in the Air District's position management process.

- ✓ **The position control document and organization chart both contained numerous inaccuracies related to the location and status of authorized positions within the Air District.** Human Resources' process for updating the Position Control Document and the Organization Chart were of secondary priority to its processing of personnel actions—e.g., recruitments, promotions, transfers, etc. This meant that Human Resources staff would focus on processing personnel actions within Dayforce, but those changes would not always be reflected in the Position Control or Organization Chart at the same time. By the time of this audit, the Position Control Document and the Organization Chart were routinely out of sync with each other, with Dayforce, and with the Air District's budget.

To illustrate, we compared the status of each position as represented in the Position Control Document and the Organization Chart with the status of each employee reflected in Dayforce. We also compared both to the positions authorized by the Board in the Fiscal Year 2023 budget. Ultimately, we found each to be out of sync with one another. For instance:

- Of the roughly 400 employees as of July 2022, the position control document contained incorrect position control numbers for 37 positions (or 9 percent), with about half of them representing typos or formatting errors—such as employees with similar names assigned the incorrect position. The other half, or about 5 percent of the positions in the position control document, represented incorrect positions—either positions located in the wrong division or incorrect classifications within the same division. In many of these cases, positions that were actually allocated to the Executive Office in the Fiscal Year 2023 budget were assigned to other divisions (Administrative Services; Diversity, Equity & Inclusion; Finance and others) in the position control, suggesting that the actual allocation of positions differed from the Board-authorized allocation.

- Of the roughly 400 employees as of July 2022, there were nearly 70 instances (or 18 percent) where the position title did not match either the employee’s actual position as reflected in Dayforce or the position as reflected in the organization chart. Most represented discrepancies in position level (e.g., Air Quality Specialist I and Air Quality Specialist II). The position control document and Dayforce were routinely out of sync when referencing the Engineering or Compliance & Enforcement sections to which positions were allocated.

While many of these discrepancies were identified during the course of this audit and rectified by Human Resources in a timely manner, we found them to be the result of two control weaknesses. First, as noted previously, Human Resources updated Dayforce, the position control document, and the organization chart at different times and by different people. The records contained in each were at risk of lagging behind another, though Dayforce was typically the most up-to-date and reliable record. Second, Human Resources did not conduct reconciliations between these different records in order to detect potential discrepancies. Instead, the discrepancies built up over time, resulting in generally unreliable position management documents.

- ✓ **Human Resources processed the filling of several positions that the Board had authorized and that management had committed to placing on hold.** As part of an organization-wide risk assessment performed in early 2022, we were asked to evaluate the status of 26 newly-created positions within the Air District. At the time, the Board of Directors had authorized the creation of the positions but instructed District management not to fill the positions until after the risk assessment had been completed. Shortly after starting the assessment, we found that 10 of the 26 positions had already been filled, and the process to fill them began shortly after the beginning of the fiscal year. Specifically, District management had submitted requests to recruit all 10 of the filled positions to the Executive Officer / APCO between August 18 and August 25, 2021. In reviewing these requests, it was evident that District management—including Directors, Deputy Executive Officers, and the Executive Officer / APCO—directed Human Resources to fill the positions and were pressuring Human Resources to initiate recruitment efforts and process applicants because of their need for additional staffing. Requests to fill the positions were submitted between August and December 2021, after the recruitment process was complete and candidates were selected for the positions.

Our review of the District’s hiring of 10 positions recognized to be on hold revealed several problems. First, while, by the time of this study, management across the District acknowledged that the 26 positions allocated through the FYE 2022 were on hold, many were able to identify a specific date the positions were actually placed on hold. Human Resources had conveyed to management at least as early as August 2021 that while recruitments could begin the hiring process must remain on hold until the completion of the management audit. Given the commencement of hiring activities in August 2021 for all 10 positions, it appears that there was confusion regarding the “hold” status of the positions. Two factors contributed to this confusion:

- The Board’s direction to place positions on hold was never formalized in writing—such as in a motion, resolution, or budget condition item—allowing for the potential for misunderstanding regarding the mandate to hold off hiring.

- Human Resources had not incorporated a sufficient mechanism through which it would review the budget authority of positions prior to executing personnel changes related to those positions, or to definitively designate the positions as “on hold”. As described above, a key control in the position management function is the verification that the position has been authorized and funded by the governing body, and that management has the authority to fill the position. It is common in the public sector that a position may be authorized and unfunded (or otherwise “frozen”) at the same time. Human Resources had not developed a review step to ensure the Air District had the authority to fill the position. The purpose of such a control is to identify those positions that an employer is not authorized to fill. Instead, Human Resources’ position control document, which should indicate the status of the position—such as “on hold” or “frozen”—simply highlighted the on-hold positions and designated them positions as “approved for recruiting.”

It is important to note, however, that even if the position control effectively conveyed to all parties that District management was not authorized to fill the positions, management could decide to fill the positions anyway. In this case, management at various levels decided to fill the positions knowing the positions were on hold. The CAO and Human Resources Officer could have refused to process the personnel actions in accordance with the Board’s direction, but did not because neither believed they were empowered to do so.

It is evident that the Board communicated to the Executive Officer / APCO, who then communicated to District management, that the 26 positions were to remain on hold until after this Phase I report. By October 2021, management across the District recognized that the positions were on hold, and executive leadership committed to the Board that the positions would remain on hold until after this study. Despite the lack of formal processes to determine the District’s authority to fill the positions, it appears evident by October 2021 that management did not have the authority to fill the positions.

Yet, for at least four positions, recruitment remained underway and recommendations to hire were submitted to the Executive Officer / APCO after this commitment. According to the CAO, executive management—particularly the Executive Officer / APCO—directed the CAO and Human Resources to process the recruitments and to fill the positions. A review of contemporaneous documents, such as management’s requests to recruit and request to hire, suggest that management—despite acknowledging the direction of the Board—elected to continue with recruitment and hiring efforts. It is important to note that this audit did not reveal any evidence that Human Resources was the primary driver for these recruitments or hires; rather, the actions leading to the hiring of the 10 positions initiated with other members of the management team.

Recognizing that District management authorized, and potentially directed, Human Resources to process the recruitments and hiring of the 10 employees, it was Human Resources’ responsibility to ensure compliance with the Board’s direction, even if members of the management team contradicted it. Human Resources could have and should have stopped the efforts to fill the positions, but did not do so. Instead, it facilitated recruitment and hiring efforts.

Human Resources Management, as a function, is widely recognized as being responsible for ensuring organizational compliance with all relevant personnel rules, policies, mandates, and other guidance—including mandates originating from the Board of Directors. Human Resources continued to process the hiring of personnel into on-hold positions. However, as described in the introduction to this report, human resources agencies are required to strike a balance between facilitating management's requests and ensuring that the employer adheres to all relevant laws and directives. This can create a natural tension, and evidence suggests the Air District fostered an approach to human resources management that accommodated management's requests, sometimes in conflict with requirements set forth by the Board. To protect the long-term interests of the Air District, Human Resources leadership must be empowered to decline management directives if they conflict with those of the Board or other authoritative statutes or rules, and must demonstrate the leadership to do so.

- ✓ **The Human Resources and Finance Offices did not effectively coordinate to ensure the allocation of personnel resources was supported by Board-adopted budgets.** The authority underlying the existence of every position within the Air District is the Board-adopted budget, which is administered in Finance. The Board of Directors sets priority and allocates resources through the budgetary process, including the allocation of personnel resources. However, over time, the budget documents prepared by the Air District included less and less information regarding the actual allocation of positions. In the 1990s, Air District budgets presented to and adopted by the Board of Directors included information detailing all positions within the district, including the classification of the position, the position's location within the District, and any changes in positions from the prior year. As late as 2016, the budgets had eliminated information detailing the classification and location of positions within the District, but continued to report on all position changes occurring from one year to the next. By 2020, this information was nearly all removed from the budget. While budgets included the number of full-time equivalent (FTE) positions allocated to each division or program, these FTE positions were not representative of actual positions (including classification, level, or compensation) employed by the Air District. Rather, the FTE positions reflected in the budget represented the number of hours district staff might dedicate to a particular program or service. This information is useful for rate-setting purposes, but it does not facilitate the allocation of specific positions to divisions throughout the District, or the monitoring of how personnel resources are actually used.

In the Fiscal Year 2023 budget, the Executive Officer / APCO required the inclusion of a table detailing the actual allocation of positions in every division throughout the Air District. This process revealed certain discrepancies in how Human Resources recorded the status of each position, as described previously, and memorialized for the first time in several years the criteria against which Human Resources should evaluate its own records. Specifically, Human Resources should reconcile its position control document to the Board-approved allocation of positions to ensure all positions assigned to all divisions align with the budget. Second, moving forward, all changes to the position control should be supported by a review validating its consistency with the budget. This, we believe, is best achieved through a review performed by the budget office within the Finance Division.

Our analysis of Human Resources position control protocols revealed that it did not have adequate controls in place to prevent unauthorized personnel actions, or procedures that would have detected and revealed instances when management's actions were unauthorized. Because of this, we recommend that the Executive Officer / APCO work with Human Resources to develop internal controls designed specifically to prevent management in general, including Human Resources, from executing unauthorized position changes in the future. One option would be to incorporate a specific review by Finance's budget office to verify that the change in position status is indeed authorized pursuant to the budget. However, this type of control designed to prevent unauthorized activity is not sufficient. As these events illustrate, internal controls will not always prevent the willful circumvention of the Board's direction. Because of this, we also recommend the implementation of protocols requiring the reporting of the status of all positions within the Air District as part of the annual and mid-year budget cycles. Doing so will allow for a comparison between Board-authorized positions and the positions as they exist within the Air District.

The Air District Designed Overly-Broad Classification Specifications That Lacked Critical Information Necessary to Facilitate Position Management and Control Costs

Classification systems are typically developed through a multi-step process that includes identifying the specific work of each job, including the roles, responsibilities, duties, and qualifications through a complete job analysis, and grouping substantially similar jobs into classifications and job families. To provide an effective basis to allocate positions into classes, classification specifications must clearly define and differentiate positions throughout the organization. While the Administrative Code requires Human Resources to adhere to such a process, the most recent comprehensive classification study commissioned by the Air District was completed around 2000 according to management—more than 20 years ago.¹⁹ Since that time, the Air District's classification structure has undergone numerous changes. As is typical over a 20-year timeframe, the Air District's classification structure became inefficient to administer and resulted in an increasing number of classifications for positions performing similar work. Over the past several years, Human Resources has been engaged in classification maintenance studies, evaluating a small number of classifications each year with the goal to consolidate similar classifications and reduce or eliminate inequities. This is generally a positive trend and the efforts of Human Resources in this respect are notable.

Although Human Resources has recently engaged in classification maintenance efforts—including consolidating classifications, eliminating antiquated classifications, and developing new classifications—it has not performed a key step required in the Administrative Code. Specifically, it has not systematically analyzed or document the scope, duties, responsibilities, or job-related qualifications of all positions. Because of this, the Air District's Classification Plan does not adequately define essential characteristics of, or differentiate between, positions. This, in turn, increases the potential for excess overtime costs (by not classifying employees as subject to or exempt from FLSA requirements) and duties that do not align with positions and compensation.

¹⁹ Division III Section 5.1 states that "maintain the Classification Plan will include the following elements: (a) Analyzing and documenting the scope, duties, responsibilities, and job-related qualifications of positions to be classified, (b) Grouping positions into job classes based on the similarities of work performed and the qualifications required, and (c) Writing descriptions for each class of positions in order to define the positions and to serve as a guide in allocating and selecting individual positions to job classes.

A position-specific job description is a useful, plain-language tool that explains the tasks, duties, function and responsibilities of a position. It details who performs a specific type of work, how that work is to be completed, and the frequency and the purpose of the work as it relates to the organization's mission and goals. Job descriptions are used for a variety of reasons, such as conducting performance reviews, clarifying purposes and essential functions, establishing titles and pay grades, creating reasonable accommodation controls, recruiting, career planning and training programs, and establishing legal requirements for compliance purposes. Likewise, a supervisor can use a job description as a measuring tool to ensure that the employee is meeting job expectations.

According to the Society for Human Resources Management, a job or position description should include a variety of characteristics. This information is important to providing a clear and comprehensive definition of a job within the Air District, which is essential for determining appropriate compensation, evaluating performance, and administering reasonable accommodation requests, among other benefits. Because Human Resources had not developed position descriptions, we evaluated classification specifications and job postings to determine whether they incorporated this important information. Our review of the Air District's classification specifications and job postings revealed they do not always provide adequate information regarding the characteristics of a position or category of positions as highlighted in Exhibit 7 and discussed in the sections that follow.

EXHIBIT 7. COMPARISON OF AIR DISTRICT POSITION DOCUMENTS AGAINST LEADING INDUSTRY PRACTICES

Leading Practice for Position Descriptions	Practice is Not Adequately Addressed In Air District Broad Classification Specifications ¹
Summary/Objective	
FLSA Classification	✓
Salary Grade/Level/Family/Range	
Essential Functions	✓
Competency	
Required Education and Experience	
Preferred Education and Experience	
Additional Eligibility Requirements	
Reporting Relationships	✓
Supervisory Responsibilities	✓
Work Environment and Physical Demands	✓
Position Type, Expected Hours of Work, Travel Requirements	

Source: Society for Human Resources Management and a review of existing classification specifications.

Note 1: Because the Air District did not prepare position descriptions as required by the Administrative Code, we compared leading position description practices with the Air District's general classification specifications.

Specifically, we noted the following opportunities for improvement.

- ✓ **Existing Classification Specifications Do Not Include FLSA Designations Affecting Overtime Pay.** A critical element in classifying jobs for any employer within the United States is the identification and determination of those positions that the employer considers and designates as exempt from overtime requirements of the Fair Labor Standards Act (FLSA). FLSA requires most

employees in the United States to be paid at least the federal minimum wage for all hours worked, and overtime pay for all hours worked over 40 hours in a work week. However, the FLSA includes exemptions from the overtime pay requirement for employees who qualify under a specified set of guidelines related to different types of positions, including executive, professional (learned and creative), administrative, and employees specializing in computer systems.

The Air District has not explicitly classified its positions as either exempt or non-exempt under FLSA because, according to Human Resources, management has not been able to agree with the Employees' Association on studying the issue. Typically, FLSA designations would be included in position descriptions and, frequently, classifications. Such designations are also typically coded into an organization's human resources information system, which incorporate system controls designed to prevent exempt personnel from charging and being compensated for overtime. Human Resources has not evaluated all positions to determine whether they are eligible for FLSA exemption, it has not established FLSA designations for its positions, and it has not utilized system controls in Dayforce, its human resources information system, to prevent salaried employees from charging and being compensated for overtime. While the MOU grants overtime compensation for all represented employees, such designations and system controls are important for *all* employees, including those that are not represented.

As such, the Air District should take immediate steps to make an FLSA-designation for each classification to minimize ineligible overtime payments and update both the MOU and Administrative Code as appropriate.

- ✓ **Many Classification Specifications or Job Postings Do Not Provide Sufficient Detail Regarding the Work Environment or Physical Requirements of the Positions they Represent.** It is standard industry practice for position-specific job descriptions to include sufficiently detailed information regarding the environmental conditions and physical requirements of a specific position as a means of establishing a sound basis for reasonable accommodation protocols and decisions. Absent position descriptions, this type of information would typically be incorporated into classification specifications. This typically includes the attributes an employee must have to perform the job duties with or without a reasonable accommodation (e.g., the ability to drive or travel), the working conditions of a position (e.g., temperature, noise level, exposure to hazardous materials, working hours or shifts, etc.), and the physical demands of a job (e.g., bending, sitting, lifting, driving, etc.). Many of the District's classifications do not include this information.

As part of Human Resources' recent updates to certain classifications, it has begun incorporating language addressing such factors. However, without this level of detail, the environmental and physical demands of a specific position may be unknown resulting in unsuitable hiring decisions or reasonable accommodation determinations.

- ✓ **Classifications Lack Specifics Regarding Reporting Relationships or Spans of Control Leading to Missing Distinctions Needed between Management Positions.** Position descriptions and classifications typically include information that defines where in the organizational structure the position is placed, including the position to which an incumbent will report and whether the position

has supervisory responsibilities. This information sets parameters regarding the scope of authority and responsibility incumbents are expected to exercise in the position. For instance, a position that reports to a mid-level manager and supervises up to four staff would have a different level of authority or responsibility than a position that reports to a Deputy Executive Officer and manages a workforce of 80 employees. Including this type of information provides clear distinctions between different levels of similar classifications that can help identify requisite skills needed and establish pay differentials.

While the Air District’s classifications generally do not include this type of information, it is most pronounced at the supervisory and management levels where the distinctions between the positions—their duties, responsibilities, and qualifications—blur to the point that it can be difficult to determine the classification to which a position should be allocated other than compensation. For instance, as shown in Exhibit 8 for the Supervisor, Assistant Manager, Manager, and Director/Officer classifications, the roles, responsibilities, and spans of control can vary significantly for the same class of employees.

EXHIBIT 8. COMPARISON OF RESPONSIBILITIES BETWEEN SUPERVISORY AND MANAGEMENT LEVELS

Areas of Responsibility	Supervisor	Assistant Manager	Manager	Director/Officer
Supervision	Yes	Yes	Yes	Yes
Span of Control/Direct Reports	0 to 10 positions	0 to 4 positions	0 to 10 positions	1 to 9 positions
Management of Sections, Programs, or Services	None	1+ Programs or Services	1+ Sections, Programs or Services	Multiple Sections and Functional Areas

Source: The Air District’s position control and organizational chart documents, which reveal the span of control for supervisory, management, and director positions.

There are several **supervisory** positions throughout the Air District, with each providing management over assigned staff as well as offering technical support and/or professional services in support of the Air District’s goals and objectives. The position does not have direct or overall responsibility for assigned programs or services, which is what distinguishes it from management-level positions.

The **Assistant Manager** “has responsibility for one or more programs or functional areas and responsibility overseeing complex, diverse programs or services,” while the **Manager** “has direct managerial responsibility for one or more section(s), programs or functional areas of the District.” Both positions are responsible for one or more program(s) or functional area(s) and for supervising employees. The only distinction appears to be that Managers may oversee “sections” while both positions may oversee “programs.” Yet, we could not identify a clear distinction between a section and a program. In fact, the Air District’s budget uses the terms “sections” and “programs” interchangeably. Because of this, we find there to be an inadequate basis for distinguishing between the two positions, other than compensation.

The **Director/Officer** “has overall managerial responsibility for multiple sections or functional areas of a division.” The responsibilities for this position are diverse and inconsistent throughout the Division, with some Directors managing significant spans of control and some managing programs

smaller than those of many managers. For instance, divisions throughout the Air District are generally headed by a Director/Officer, but the responsibilities and spans of control of Director/Officer positions vary significantly over employees supervised and value of budgets managed ranging from one and six direct reports, two (2) to 85 employees, and a budget between \$300,000 and \$16 million.

In fact, the Director/Officer classification specification provides a vague description of the span of control of the position, mentioning only that an incumbent in the position “directs all activities of a division.” While there is no official definition of a division within the organization, it seems to be generally understood that a Director/Officer heads a division or office as specified within the Air District’s Budget. Yet, some divisions are substantial in size and others are quite small, and not all Directors actually head a division as illustrated in the bullets that follow.

- The Director of the Compliance and Enforcement Division is responsible for a budget of over \$16 million and a staff of 85 District employees. The Director has an immediate span of control of six direct reports, including five Managers with direct reports of two or three staff/supervisors each.
- The Director of the Engineering Division is responsible for a budget of over \$14 million and a staff of 70 District employees. The Director has an immediate span of control of six direct reports, including five Managers each with direct reports of between two and five staff/supervisors.
- The Director of the Meteorology & Measurement Division is responsible for a budget of over \$20 million and a staff of 67 District employees. The Director has an immediate span of control of seven direct reports, including five Managers with direct reports of between three and seven staff/supervisors each.

At the same time, other Director/Officers have limited responsibility over Air District resources or operations, as illustrated below.

- The Director of the Legislative Office is responsible for a budget of approximately \$600,000 and a staff of one District employee.
- The Director of the External Affairs Division is responsible for a budget of approximately \$300,000 and one budgeted staff position.
- The Director of My Air Online is responsible for a budget of over \$7.1 million and a staff of eight District employees. The Director has an immediate span of control of four direct reports, all Assistant Managers with either zero or one direct reports.

These examples illustrate the broad spectrum of responsibility that a Director may have over Air District resources; the remaining Director positions fall somewhere between these spans of controls, staff, and budgets. To determine compensation for the Director position, Human Resources compares Air District Director positions to director of engineering positions in other peer agencies—a relevant comparison for some Air District positions, but not for others. This approach could result

in compensation levels that are not commensurate with assigned duties and responsibilities, and could lead to a growing management class that may impact overall operational efficiency.

A classification is intended to group together positions that are sufficiently similar with respect to the various characteristics necessary to perform the work—duties, responsibilities, and qualifications, as defined in the Administrative Code. It is not clear that the Air District’s Director/Officer positions require the same duties, responsibilities, or qualifications to perform the work.

While all these positions head specific organizational units within the District, different divisions require diverse levels of responsibility where a tiered Director classification (e.g., Director I, II, and III) with varying levels of compensation is likely more appropriate based on specific characteristics of different positions.

- ✓ **In the Absence of Position Descriptions, the Air District’s Classifications Did Not Clearly Define Essential Functions, Increasing the Risk Actual Duties May Not Align with Position Requirements or Compensation.** There is an important distinction between position descriptions and classification specifications. Industry practices use individual position descriptions to detail the position number, another employee to which the position reports, and specific duties, responsibilities, and essential functions the position performs—while a broader classification specification would describe the general duties that the numerous positions within a classification have in common, since the specific duties of individual positions within a given classification can vary markedly. Not only did the Air District not use position descriptions, but its classification specifications did not define the essential functions of its positions.

The failure to define “essential functions” of a position creates the risk that, over time, the purpose of the position can become unclear or the scope of the position duties could expand beyond what was intended. Further, the lack of defining characteristics of a position could become blurred to the point that a single position could be categorized into more than one classification. In such a case, the Air District could be challenged to justify why an employee is working in a lower-level classification leading to complaints of pay inequities or differential treatment and an increased number of managers and directors with duties that are incongruous with the position and compensation.

- ✓ **The Lack of Position Descriptions affects the Quality of Information Available to Candidates During Recruitment Efforts.** We also found the Air District’s job postings often lacked specificity regarding the duties performed by a specific position being filled. Our review of the recruitments revealed that job postings primarily consisted of the broad classification for which the Air District was hiring, not a specific position description. In some cases, divisions throughout the Air District have crafted position-specific job postings that provide greater insight into the essential functions and characteristics of certain positions. Yet, these descriptions are not centralized with or controlled by Human Resources, and the consistency with which they are reviewed or updated may vary. If job postings are not specifically tailored to each position, the District may not be attracting the type of applicant needed to fulfill District duties and the best applicants may not apply for the position. According to Human Resources, management is generally in agreement, but is severely constrained

by the Employees' Association in its ability to modify job postings in a manner that reflects the District's expectations of the positions it intends to fill.

A Comprehensive Classification Study is Necessary

Over time, even seemingly insignificant changes to employees' functions, responsibilities, or duties compound, potentially rendering the classifications to which the employees are allocated to become outdated. Therefore, it is best practice to conduct periodic system maintenance studies. Such studies can be comprehensive (analyzing all classifications within the personnel system) or they can be specific to a subset of classifications. Standard practice is to conduct a comprehensive system maintenance study every 15 to 20 years and conduct system maintenance studies on a select number of classifications on a periodic, even annual, basis.

As noted previously, the Air District has been engaged in evaluating and updating of subsets of classifications within its Classification Plan since 2017. However, keeping the Air District's classification system up-to-date requires the periodic evaluation of *all* existing classifications, with the goal of aligning and maintaining the entire system, not simply updating specific classifications or positions. Some classifications have not been updated in nearly 30 years, and those that have been updated more recently still lack essential information as discussed throughout this report section. Because the Air District's Classification Plan serves as the basis for defining job expectations and compensation, this condition ultimately impacts the Air District's ability to recruit, retain, and motivate a qualified and talented workforce.

We find that the requirement set forth in the Administrative Code for the development of the Classification Plan remains appropriate. This involves documenting the scope, duties, responsibilities, and qualifications for every position; grouping positions into job classes based on the similarities; and drafting classification specifications with sufficient detail to eliminate, to the extent possible, ambiguities when allocating positions to job classes. Such an effort will take time and resources, but it is necessary to resolve the problems observed within the Air District's Classification Plan.

While we recommend a comprehensive classification study be performed, we also recognize that the processes to maintain the classification system have been lacking in the past. Recent efforts have certainly improved the classification system, and the Air District's approach to identifying classifications for maintenance studies appears appropriate. However, without the development of position descriptions, conducting maintenance studies of a small number of classifications will not suffice. Rather, we recommend building classification maintenance efforts into more rudimentary aspects of human resources management—such as recruitments, promotions, position modifications, and transfers.

Specifically, every time the status of a position changes—when it is created or vacated, moved to a different division, a recruitment begins to fill it—the position description should be reviewed by the supervisor/manager of the divisional unit and by Human Resources. With this type of review, the division and Human Resources collaborate on exactly what the position will look like moving forward, how new responsibilities will be addressed, how changes in technology will be recognized, and when division names will be updated. The reality is that the process is fluid and positions evolve over time, not once every 15 or 20 years. Taking the opportunity to review the position, its purpose and role, essential functions of the position, and the

qualifications required to perform the work every time there is a change in position status will over time ensure that the foundation of the Classification Plan—position descriptions—remain up to date. Human Resources is already engaged with divisions in the review and updating of job postings as part of the recruitment process; the incorporation of position descriptions into the process will add formality and will place greater control of how positions are defined with Human Resources.

Similarly, when recruitments occur, the requesting divisional unit and Human Resources should review and update the position description before routing the request to fill a position for management and converting the position description to a job posting. This should not substantially change existing processes, but will formalize decisions made, employer expectations, and positional changes, and it will ensure position descriptions are routinely updated and that job postings remain up-to-date and specific to the position being filled. Further, the approach will provide a stronger basis upon which the new employee can be evaluated, allow executive management to new or changed positions in relation to the Air District's broader strategic goals, and facilitate Human Resource's review of all positions over time to ensure they are allocated to the appropriate classification. For many positions, this will require very little effort as position expectations do not change much over time; the additional effort needed for other positions will directly benefit and help maintain the currency of the Classification Plan.

Recommendations

In order to better plan, manage, and report on the positions within the Air District, we recommend that Human Resources:

- 2.1 Develop position management protocols that
 - a. Incorporate the following control points:
 - Verifying that a new position has been authorized by the governing body;
 - Verifying that an existing position is funded and authorized to fill;
 - Verifying that management has authorized the filling of the position;
 - Verifying that the process to fill the position is consistent with human resources and agency guidelines;
 - Verifying that management has approved the individual selected to fill the position; and
 - Documenting all changes to the status of a position within the position control document and organizational chart.
 - b. Incorporate additional segregation of duties control by requiring budgetary review of position status changes to ensure the change is consistent with the Air District's budget authority; this should be memorialized through a signature of the Budget Officer similar to reviews of other divisions.

- 2.2 Incorporate into the budget cycle—such as the preparation of the annual budget and mid-year adjustments—reporting procedures that require updates to the Board on the status of positions for budgetary, cost recovery, or other business purposes.
- 2.3 Develop procedures to update the position control document and organization chart immediately as changes to positions are executed.
 - a. As part of these procedures, periodically reconcile the position control, organization chart, and human resources information system to ensure that all position- and employee-related information in all records remain in sync and up-to-date.
- 2.4 Conduct a comprehensive classification study that adheres to Division III Section 5.1 of the Administrative Code. This should include:
 - a. The development of position descriptions; and
 - b. Sufficient detail as recommended by the Society for Human Resources Management and documented in this report.
 - c. Revising classifications for management personnel such that each provides clear characteristics that differentiate positions based on similarity of duties, responsibilities, and qualifications.
- 2.5 Once developed, update position descriptions at points during which the status of the position undergoes change, such as being vacated or filled, evaluated for reclassification, transferred to another division, etc., in order to keep them as up-to-date as practical.

Human Resources' Response

The Human Resources Management Team has provided extensive documentation and analysis to the auditor about position control, the filling of FYE 22 positions and have made our comments clear and we generally disagree with the auditor's findings and opinions regarding position management.

Notwithstanding, the Human Resources Management Team is supportive of the recommendations that the Auditor has made in regards to position management.

The entire Human Resources Office Team have always been focused on serving our workplace community and the Board with continual improvements to our services and we look forward to working with the Board and our workplace community in considering and implementing recommendations of the Auditor to help support those efforts now and into the future.

General Human Resources Processes and Controls

Human resources departments experience an inherent tension between serving the needs of management—through approving and processing management requests in a timely manner—and ensuring compliance with Board policies and minimizing personnel-related risks. To navigate this tension, it is essential for human resources departments to establish systems of internal control that are designed to prevent or detect inappropriate activities, ensure compliance with the law and Board policies, protect the organization’s interests, and further the strategic goals of the organization. In this section, we discuss several areas related to the Air District’s system of controls over human resources practices that require attention, including processes related to record retention, workforce development and recruiting, policies and procedures, segregation of duties, and the consistent application of background checks.

Record Retention Practices Are Not Consistent with Best Practices or Legal Mandates

All employers must capture and maintain key employee information to document the basis for employment decisions and personnel actions. Developing and maintaining an efficient system for capturing, recording, accessing, and storing this critical employee information ensures that relevant information is both properly secured and readily available at the time that personnel decisions are being made. These employment-related decisions are better facilitated when employers maintain a complete employment history on each employee, including information relating to positions held, pay rates, performance assessments, disciplinary actions, significant achievements, and professional development activities. In addition to informing personnel decisions, employment records are also useful in justifying employment decisions, defending against legal challenges for disciplinary or other personnel actions, and ensuring compliance with federal and state employment law and Air District policies and procedures.

Although the importance of maintaining comprehensive and confidential personnel records is required and reflected in the Air District’s Administrative Code, the Air District could not produce complete employment-related files and its decentralized recordkeeping was not only duplicative, but also did not appropriately protect confidential employee information.²⁰

Employment Documentation is Required by Law and Needed to Adhere to Policy

The importance of an employer’s documentation of personnel actions is memorialized in both federal and state law, which generally requires employers to obtain and retain information relating to personnel, payroll, medical, benefit, and residency matters. Specifically, documentation is necessary to demonstrate compliance with federal and state employment law, including, but not limited to wage and hour laws (e.g., the Fair Labor Standards Act), mandated leave benefits (e.g., the Family and Medical Leave Act), equal employment and non-discrimination laws (e.g., the Americans with Disabilities Act), employee relations, and other statutes.

²⁰ Administrative Code Section 12.2 requires “The [Human Resources Office] maintains a personnel file on each employee containing application form or resume, references, and other pertinent forms, correspondence and materials. Necessary personal and job-related information about each employee is retained in an official personnel file in the [Human Resources Office]. Each file contains basic identifying information, completed employment application, as well as other hiring-related documents; salary information; fringe benefit and beneficiary information; leave and attendance records; performance evaluation, disciplinary documents; and other job-related information deemed essential by management. All file contents are confidential.”

Additionally, files are needed to demonstrate adherence to organizational policies and procedures, such as those relating to employee compensation, eligibility for advancement, professional development, and performance evaluation, among other areas. Documentation should include the following:

- **Personnel Files:** Employers routinely capture and maintain general personnel records, including employment applications, employment references and recommendations, results of background checks, employee licenses, performance evaluations, compensation records, disciplinary records, grievance records, and a wide variety of other employment records.
- **Medical Files:** In certain circumstances, employers must gather and retain employee information relating to physical examinations (e.g., periodic or post-job offer), drug and alcohol testing, occupational health and medical records, disability and health insurance claims records, medical information related to medical leaves of absence, and medical information related to workers' compensation claims.
- **Payroll Files:** Employers must gather and retain payroll-related information for each employee, including Forms W-4, wage and salary data, time cards and attendance records, authorization for payroll deductions or withholdings, garnishments, child support deduction orders, etc.
- **Benefits Files:** Employers are required to maintain information relating to an employee's insurance provider, enrollment information, and beneficiary information.
- **U.S. Citizenship and Immigration Services Form I-9 Files:** Employers are required to maintain Form I-9, include residency, citizenship, and immigration-related information regarding employees or prospective employees, information which is used to verify employment eligibility.
- **Investigation Files:** Employers must maintain results from past investigations of internal or external charges.

Just as important as an employer's documentation of personnel actions is *how* the employer maintains and retains personnel records of current and past employees. Recordkeeping requirements and protocols in the field of human resources management focus on three key principles. First, documentation should be sufficient to demonstrate compliance with applicable federal and state laws, as well as employer human resources policies and procedures. Second, to be useful, personnel records should be complete and maintained in an organized and consistent manner. Strong recordkeeping reduces organizational risk because employment records can be used to justify employment decisions or defend against legal challenges to disciplinary or other personnel actions. Third, and final, all employee information is sensitive and confidential, and is relevant to only certain aspects of human resources management.

Human Resources Stores Employee Records Spanning Decades in Multiple Locations, Impeding Its Ability to Produce a Complete Employee File

Typically, personnel records are generated centrally through the Human Resources Office, such as those initiated through the new-hire orientation process, employee performance evaluations, requests to hire a candidate, or other related personnel actions. Regardless of how a record is initiated, preparing the record for inclusion in an employee's personnel file requires the submission of the record to the Human Resources Office, the processing of the record, and the filing of the record. Human Resources processes for document

management and retention have changed over the years, and are expected to change significantly in the upcoming years. Specifically, with the implementation of Dayforce complete, Human Resources has begun the implementation of a documentation management system that will eventually digitize all personnel records and better enable the centralization and control of personnel records in the future. Understanding this, we evaluated the current state of Human Resources document retention system and found that personnel records were dispersed into a variety of digital and hard-copy filing locations, as shown in Exhibit 9. This presents an increased risk that personnel records could be incomplete if and when needed by Human Resources, employees, investigators, or other personnel.

EXHIBIT 9. TYPES OF EMPLOYMENT RELATED DOCUMENTS MAINTAINED, LOCATION, AND RETENTION PERIODS

Employment Document Files	Format	Location	Required Retention Period	Actual Retention
Recruitment Documents <ul style="list-style-type: none"> • Job Postings • Applications and Resumes • Interview Notes • Selection Criteria 	Physical File	Shelf in Secured HR File Room	7 Years from Separation	More than 20 Years
Background Check Results	Electronic	Cloud	7 Years from Separation	While Vendor is under Contract
Form I-9s Folder	Physical File	Shelf in Secured HR File Room	7 Years from Separation	Indefinitely
Personnel Files <ul style="list-style-type: none"> • Personnel Record • Payroll Record • Performance Evaluations • Medical Records¹ 	Physical File	Shelf in Secured HR File Room	7 years from Separation	More than 40 Years
NeoGov System <ul style="list-style-type: none"> • Recruiting Documents • Performance Evaluations 	Electronic	Cloud	7 Years from Separation	Indefinitely
Payroll Files <ul style="list-style-type: none"> • Personnel Action Forms 	Physical File	Shelf in Secured HR File Room	7 Years from Separation	More than 20 Years
Dayforce System <ul style="list-style-type: none"> • Personnel Action Forms 	Electronic	Cloud	7 Years from Separation	Indefinitely

Source: Based on observations and review of Air District personnel files and storage facilities.

Note ¹: Medical records related to applicable workplace injury, workers' compensation, extended leaves of absence, or other related matters.

While Human Resources developed checklists for its personnel and payroll files identifying documents that should be included in each file and how the files should be organized, none of the records reviewed for 10 Air District employees were complete or organized in the same manner. In fact, official employee records were stored across multiple physical and electronic sources. For example, we found recruiting applications in NeoGov and/or recruitment folders; background checks kept offsite with an external vendor; performance evaluations in personnel folders or NeoGov; and Personnel Action Forms in either payroll files and/or Dayforce. In some cases, employee records were placed in a miscellaneous storage folder until they would be filed in the appropriate employee personnel file. In other cases, we were unable to locate certain employee

records altogether, including performance reviews, building access card requests, employee onboarding checklists, standard Social Security Administration forms, documentation of employee trainings, and other documents listed within Human Resources personnel file checklists.

With records stored in such a dispersed manner, Human Resources cannot be assured that it is able to compile a complete set of official personnel records associated with any given employee should the need arise. All records pertaining to an employee's employment status within an organization or personnel actions taken with respect to the employee are official personnel records that must be accessible to any Air District employees upon request. These existing recordkeeping practices pose an unnecessary risk to the Air District should legal action be taken and the District cannot locate its files and documents required by law.

We noted challenges with the location and availability of data as follows:

- ✓ **Cloud-Based Records.** Human Resources uses external vendors to facilitate key functions and store different types of employee files. This includes employee background check results that are maintained by Info Cubic, a cloud-based service provider. Recruitment results, including employee resumes and applications, as well as employee performance evaluation documents are retained in NeoGov, a third-party service provider of web-based human resources tools, guidelines and resources relating to job posting, recruiting, hiring, performance evaluation, and other related processes. A variety of personnel records, including Personnel Action Forms, are retained in Dayforce, the Air District's human resources information system. While Human Resources' practice is to keep a copy of some of these records, including resumes and applications, in its hard copy recruitment files, we found that it did not do so in most cases.

In addition to Dayforce, electronic personnel records including employee social security numbers, birthdays and other personally identifiable information is maintained in the Air District's legacy human resources information system, JD Edwards, an Oracle system that functions as the Air District's financial enterprise system.

There are several problems with maintaining key employee records in disparate cloud-based systems. First, if Human Resources were to need to produce a complete personnel file, it would need to research multiple systems in order to find and gather all relevant documents, increasing the risk that it may miss a record. Second, with data stored in the cloud by a service provider, there remains a risk that the Air District may lose access to the important documents; this risk may be low based on information system controls put in place by the service providers, but the risk would be reduced or eliminated if Human Resources controlled and possessed the records itself. Third, if the Air District were to destroy old records in accordance with its record retention policy and schedule, Human Resources staff would need to review background checks, applications and resumes, performance evaluations, and other documents one-by-one to identify those meeting the criteria for document destruction. Indefinite storage of personnel records through vendor-specific web portals is not recommended for these reasons.

- ✓ **Recruitment Files (Hard Copy).** When the Air District opens a recruitment to fill one or more positions, Human Resources creates a file that will contain the job posting, applications and resumes

received from candidates selected for consideration, interview notes and selection criteria. The purpose of retaining such records is to provide contemporaneous documentation supporting decisions to hire or promote candidates. The Air District may place a copy of the hired employee's resume and application in the employee's personnel file, but often did not. Of 10 personnel files reviewed as part of this audit, only one contained the employee's application and resume. According to management, maintaining the application and resume in the personnel file and in the recruitment file would be redundant. While the Air District's Record Retention Schedule requires recruitment records to be retained for seven years, we observed records for recruitments that occurred as far back as 2011. Resumes and applications submitted by Air District employees prior to 2011 could be lost forever if a copy was not also placed in the personnel file.

- ✓ **Miscellaneous Documents.** In addition to the employee records organized in the files described above, Human Resources also maintains a compilation of employee records that have yet to be filed. Particularly because of the pandemic, Human Resources staff processed employee paperwork, but often set it aside to be placed in the appropriate employee file at a later date. This practice comingled different types of records for a wide variety of employees in a single file. If Human Resources were to receive a request for a personnel file, staff would need to manually review documents within this temporary storage file to identify any relevant records, increasing the risk that the personnel file could remain incomplete.
- ✓ **Form I-9 Files.** Files were stored together on shelves adjacent to active employee personnel files along with the personnel files for separated employees. The files contained completed Form I-9s, copies of employee identification documents (social security, driver's license, passport, etc.), and completed e-Verify submittals. Form I-9 records for current employees were comingled with records for separated employees, without a clear designation indicating when the forms could or would be destroyed.

Decentralized Recordkeeping Practices are Duplicative and Do Not Adequately Protect Confidential Data

We found the Air District's recordkeeping practices to be overly cumbersome and ineffective as discussed in the following bullets.

- ✓ **The Process is Duplicative:** By storing personnel files in the various locations shown in Exhibit 9, many employee records are filed in more than one location making it difficult to identify the official document and ensure completeness of records. Employee applications, performance evaluations, Form I-9 information, and other personnel records may be located in multiple locations, both in hard copy and electronic formats. Each record must be maintained and secured in a manner compliant with federal and state law, which requires ongoing resources and unnecessarily increases the number of Air District employees with access to confidential employee records, which in turn increases the risk of unauthorized disclosure or breach of personally identifiable information or personal health information.
- ✓ **Access to Confidential Personnel Records is Not Sufficiently Restricted.** As a general principle, access to sensitive or confidential information—no matter the type or subject—should be restricted

to only those employees that require such access to carry out assigned duties. Confidential data maintained by Human Resources and available to access includes:

- Form I-9 files with copies of employee identification documents (social security, drivers' license, passport, etc.), and completed federal e-Verify immigration verification submittals.
- Payroll records including direct deposit forms with employee bank account information, payroll registers with employee names, social security numbers, addresses, birthdays, and other identifying information.
- Dayforce, electronic personnel records including employee social security numbers, birthdays and other personally identifiable information in addition to a variety of employee records including personnel status, compensation and benefits, reporting relationships, payroll, workplace safety incidents, and other employment-related information.

Yet, we found that all Human Resources employees have access to all employee records in the file room and those maintained in the Dayforce system. According to Human Resources, staff are essentially generalists who perform or backup others who perform a variety of human resources management functions and, therefore, it is common for a single employee to work on recruitments and benefit enrollments, and Personnel Action Form (PAF) data entry. Human Resources employees performing recruitment activities do not need access to employee performance evaluations; similarly, a benefits administrator does not need access to sensitive Form I-9 information and a workers' compensation analyst does not need access to payroll records. The purpose of segregating certain files or records is to ensure, to the extent possible, that access is restricted to only those individuals that require the access to perform their assigned duties. In such cases, particularly when personnel records are stored in hard-copy format, a double-locking system—where highly sensitive records are stored in locked filing cabinets within a secured filing room, for instance—is recommended. While Human Resources staff are generalists cross-trained in a variety of areas, routine access to Form I-9s, medical records, and other sensitive records is not necessary or recommended.

Moreover, we found that nearly 50 other individuals beyond the 14 Human Resources (permanent and temporary) personnel also have access to all personnel files—even though some of those individuals with access are not Air District employees. These other individuals include nearly 40 building management, janitorial, and security personnel as well as seven employees of the Metropolitan Transportation Commission (MTC). According to the CAO, when this was brought to the attention of Human Resources, MTC employee access to the Air District's confidential personnel records filing room was eliminated.

Given the sensitivity of the personal information maintained in such records, standard industry practice suggests that employers develop and communicate to its employees a formal, written employee records policy addressing several key aspects of employee records management. This includes, but is not limited to, records description, information sources, review cycles, record retention, employee file inspection, adding or modifying employee records, information requests by employees or external sources, records maintenance, confidentiality and access, file security, and records destruction. While the Air District had established a records retention policy in the

Administrative Code and a record retention schedule that identified the number of years different types of files must be retained,²¹ the Human Resources Office has not developed a comprehensive records maintenance protocols to address all these factors.

While Human Resources designed records maintenance protocols segregating various types of sensitive employee data, it did not ensure the sensitive and confidential data was properly secured. For instance, as shown earlier in Exhibit 9, Human Resources stored general personnel information for each employee in one “personnel” folder on a shelf in the Human Resources file room, but also stored separate physical folders with sensitive personnel information (such as medical-related, performance and disciplinary, and payroll information) for each employee together on the same shelf in the file room. In that same file room, completed confidential employee immigration status and employment authorization forms (Form I-9) were stored in physical folders on the next shelf and payroll records with additional personally identifiable information were stored on yet another shelf.

Segregating records in this manner allowed Human Resources, in the event an individual within or outside of the Department were to review a personnel file, to restrict access to only the elements they need without disclosing information they do not need. Despite this, it is considered best practice to maintain personnel records in a double-locked location (such as in a locked file cabinet located in a locked room) to which only those employees whose assignments require it have access. The Human Resources Office does not do this. Because these “separate” files were all located in the same area accessible to all Human Resources employees—including temporary staff, custodial staff, maintenance staff, security staff, and non-Air District employees—the Department did not adequately protect personnel records with personally identifiable, health, and tax information. Further, to avoid unauthorized disclosure or breach of employee personally identifiable information or personal health information, access to personnel records should be limited to only those authorized human resources professionals that require access in order to perform assigned human resources duties.

- ✓ **Untimely Record Destruction Increases Exposure of Confidential Information:** For most personnel records, the Air District’s record retention schedule allows for the destruction of records after seven or fewer years. The Administrative Code requires the destruction of records “as soon as possible after the retention period has passed.”²² Yet, Human Resources has not implemented procedures to identify those records eligible for destruction on a timely basis and has not initiated the systematic destruction of sensitive personnel records for as long as Human Resources management could recall. As discussed previously and shown in Exhibit 9, some separated employee documents still maintained by the District were more than 40 years old spanning back to the 1980s. While employers are required to maintain some personnel records for extended periods of time, it is best practice to limit records retained to only those required by law or other governing principle. Further, we found that certain Form I-9 records for current employees were comingled with records for separated employees, without a clear designation indicating when the forms could or would be destroyed.

²¹ Administrative Code Division I Section 11.1

²² Administrative Code Division III Section 11.4(c)

There are inherent risks to retaining personnel records, which may contain medical records, disciplinary records, personally identifiable information, and other sensitive and confidential information, long after the record is required to be retained. For instance, a future unauthorized breach or disclosure of such records, if it were to occur, would pose significant financial risks and potential liability to the Air District. We recommend that Human Resources consult with District Counsel regarding the destruction of all records that are no longer legally required to be retained and ensure the records are appropriately destroyed.

- ✓ **Personnel Records Inappropriately Include Payroll-Related Information:** Nearly all personnel files reviewed contained payroll information, such as employee requested tax withholding forms (IRS Form W-4), even though payroll is not a traditional function of human resources departments. It is standard industry practice that payroll records (such as tax information, withholdings, garnishments, etc.) be kept separate from personnel records because any disclosure of such information to individuals without a need-to-know could be considered a violation of employees' right to privacy under federal law.

There are inherent risks to retaining personnel records, which may contain medical records, disciplinary records, personally identifiable information, and other sensitive and confidential information, long after the record is required to be retained. A future unauthorized breach or disclosure of such records, if it were to occur, would pose financial risks to the Air District. We recommend that Human Resources consult with District Counsel regarding the destruction of all records that are no longer legally required to be retained.

Workforce Development and Recruitment Efforts Lack Strategic Focus

An essential function of human resources management is to ensure organizations have the right number of people, with the right skills, at the right time to perform the required work. This is the goal of workforce planning. To be most effective, workforce planning should be integrally linked to an organization's strategic planning efforts. The Air District, however, has not engaged in a strategic planning process in years, yet it faces many competing priorities and workload demands. Human Resources has undertaken many efforts to develop workforce planning functions, including implementing workforce development and planning meetings held with District divisions; coordinating with the Diversity, Equity, & Inclusion (DEI) Office on DEI efforts; coordinating with the Cultural Advisory Team; and developing the Learning Management System and other training opportunities. Its work with management in various divisions throughout the Air District is notable, and it is evident that certain divisions have benefited from Human Resources as a workforce development resource in recent years—particularly those divisions within Policy & Equity.

However, we recommend here that Human Resources, and the Air District as a whole, embrace workforce development on an agency-wide and strategic level. True workforce development requires a substantial link between the organization's strategic planning efforts and the unique role of Human Resources. The Air District has not undergone substantive strategic planning efforts in recent years, limiting the ability of Human Resources to truly link its efforts to the strategic goals and mission of the Air District. With this in mind, we present the following opportunities for improvement as Human Resources, and the Air District as an organization, consider strategic planning moving forward.

✓ **Substantial Agency-Wide Workforce Planning & Recruitment Activities Have Not Been Performed**

While it is a best practice for Human Resources to develop an active recruitment program designed to meet current and projected employment needs, we did not find that the tools and resources developed thus far sufficiently meet this objective. Instead, workforce planning and recruitment efforts have been focused on immediate divisional needs, workload demands, and program goals—with divisions and programs often competing with one another for resources.

Rather, an active recruitment program requires a level of coordination and workforce planning that the Air District has not yet undertaken. Public sector services are changing and evolving, placing new demands on the skills and abilities of their employees. Identifying current competencies and delineating future needs assists agency leaders to determine near- and long-term gaps that may impede their ability to meet key strategic goals or objectives, and to develop training and hiring strategies to meet those needs. Workforce planning—a responsibility of Human Resources—is designed to identify such gaps and to develop strategic initiatives that address them in ways that are consistent with the organization’s strategic vision. This includes but is not limited to:

- Assessing the organization’s strategic direction—including its vision and key strategic goals—to determine the impact the agency’s workforce will have on its ability to achieve these goals.
- Summarizing its current demographic profile, including workforce statistics by gender, age groups, ethnicity, and disabled employee representation.
- Analyzing current and projecting future separation trends, organized by classifications, position types, and/or occupational series.
- Analyzing and forecasting separations and retirements, including relevant data related to transfers, voluntary separations, number of employees that have reached a certain age, total retirements in the last 12 months, and trends vs. actual separations.
- Identifying competencies necessary today and expected for the future to successfully achieve the organization’s mission and critical functions.
- Summarizing employee preferences, experiences, and perceptions, as illustrated by an employee survey.
- Conducting a workforce gap analysis, including recruitment gaps, retention issues/gaps, professional development challenges, knowledge transfer challenges, associated risks, and priority order of challenges that will be addressed.
- Developing initiatives, based on the results of this workforce gap analysis, that will be implemented or improved on to meet workforce needs.

In this manner, workforce planning efforts will focus on preparing the Air District’s current employees for the workload demands of the future, as well as inform position allocation and recruitment efforts of today. It will help define, in a strategic manner, the types of positions needed to fulfill specific

needs in different divisions, determine when and how those positions will be filled, and reduce competition among divisions for limited resources by developing agency-wide priorities—with Board and management buy-in—for the personnel needs of divisions throughout the District.

A successful workforce development plan will depend largely on the Air District developing a well-designed strategic plan that accounts for the personnel resources available to the District in executing critical goals and objectives. Despite this, Human Resources can begin to lay the foundation for a successful workforce development plan by gathering and analyzing the information described above, and taking inventory of the Air District's strengths and weaknesses.

✓ **Workforce Development and Training Efforts are Uncoordinated and Disparate**

The Air District has implemented several approaches to promote the professional development of its workforce. This includes incentivizing employees to take related coursework or attain certifications, centralized training opportunities offered through the Human Resources Office, and decentralized opportunities facilitated by divisions throughout the Air District. For instance, the Human Resources Office administers a training program that offers both mandatory training (e.g., sexual harassment, ethics, etc.) and generalized training (e.g., training on computer applications, supervision, management, etc.). Human Resources also hosts orientation for all employees, a process that covers benefits, work culture, harassment training and rules of conduct, and other logistical matters. In addition to training offered by Human Resources, significant employee training and professional development occurs outside the purview of the Human Resources Office. This includes longer-term employee onboarding processes and specialized training that address the unique needs and work of each Air District division. Since 2000, Human Resources has also implemented the Learning Management System with the intent to expand professional development opportunities and to consolidate employee training and professional development records. In addition, Human Resources has implemented the work of the Cultural Advisory Team in developing a mentor program and the Leadership Development Program.

While we find these efforts to be positive, aligned with leading practices, and indicative of the value the Air District places on the professional development of its workforce, these efforts are disconnected from broader strategic goals for the organization. The Air District's efforts to support training and development for individual employees have not typically been documented in employee files or incorporated into performance evaluations, nor did Human Resources regularly evaluate the impact of these efforts on the organization's broader strategic goals. In part this is because training offered by Human Resources is primarily related to general or mandatory topics of employment; training offered by divisions is related to specific job performance; and educational pursuits incentivized by the District need only to be tangentially related to the employees current or potential future role with the Air District.

While department managers remain best-suited to coordinate specialized training for assigned personnel, Human Resources is better suited to develop a comprehensive training program that accounts for career growth and promotes professional development in areas applicable across the Air District. This could include offerings that align with the Air District's strategic goals and objectives; quality assurance to ensure training provides significant benefits and trainers are trained themselves

in teaching; continuous monitoring and modification of training programs based on staff feedback and management need for staff skill improvement. Additionally, Human Resource workforce training should focus on job-specific programs available for unique skill sets with clearly established and specific objectives; leadership skills for employees on track to assume supervisory positions; training schedules that employees can plan for as part of their own professional development; mandatory management training for new managers, and mandatory refresher courses for all managers and supervisors regarding employment law requirements and leadership techniques. It should also include centralized tracking of all training courses, including those administered at the department-level. According to Human Resources, all training currently offered by the Air District is now reflected in Dayforce; however, training records preceding the implementation of the Learning Management System in 2000 may not be retained by Human Resources.

Human Resources has not been as involved in these activities as would generally be expected of a Human Resources Office because, in part, its role has traditionally been viewed as administrative, not strategic, in nature. Human Resources has largely been organized to provide administrative support to departments, consult with management in appropriate personnel actions, and process and file paperwork submitted by divisions with a focus on maintenance, regulatory compliance, and administrative tasks. However, best practices for human resources departments focus on human resources assuming tactical and strategic roles within organizations, developing and implementing programs that support the overall growth of the organization, productivity improvement, workforce planning, succession planning, employee relations, and talent management and development.

Human Resources Policies and Procedures Are Outdated and Require Updating

Human resources-related policies and procedures are memorialized in two primary documents, the Administrative Code (Division III, Personnel Policies & Procedures) and the Human Resources Office Policy and Procedure Guidance, otherwise known as Human Resources standard operating procedures. These two authoritative documents contain a substantial amount of information detailing key policies and procedures established by the Air District to ensure compliance with federal, state, and local requirements. Our review of these documents, however, revealed that they are outdated in some respects, and that they should be updated to reflect current requirements and practice. Below, we present several observations and opportunities for improvement.

- ✓ **Administrative Code.** While Human Resources has been engaged in periodic updates to certain provisions of the Administrative Code, many provisions have not been updated since 1996 and are out of date. Below are a few examples:
 - As described earlier in this report, the classification system presented in Section III-5.7 is outdated and includes many classifications no longer in use and neglects several other classifications that are in use.
 - The Equal Employment Opportunity (EEO) provision includes numerous protected classes—such as race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation—but neglects many others, such as

genetic information, gender identity/gender expression, Civil Air Patrol status, military/veteran status.²³

- The Administrative Code requires employees experiencing discrimination to file a complaint within 30 days of the alleged discrimination.²⁴ Specifically, it states: “The written complaint must be received by the EEO Officer within 30 days of the alleged discrimination and must specify the particulars of the alleged discrimination.” The statute of limitations related to acts of discrimination under the EEO can extend to 180 days or longer. Stating the 30-day requirement may discourage reporting of events after the 30-day period.
- The Administrative Code defines the parameters for employees taking Family Care and Medical Leave and was last updated in 2010.²⁵ The code states that employees may take leave to care for the employee’s own serious health condition or to care for a spouse, domestic partner, child or parent with a serious health condition.” However, the law requires employers to allow employees to take job-protected leave to care for, in addition to those listed above, a grandparent, grandchild, or sibling with a serious health condition.

Furthermore, the Administrative Code, which would typically include district-wide policies and Board directives, regularly elaborates on specific procedures Human Resources and District employees should follow in carrying out their responsibilities. For instance, the Administrative Code provides step-by-step procedures for the filing of recruitment activities, EEO complaints, workplace violence issues, filing grievances, and layoff and recall processes, among others. Generally, the Administrative Code is not the most appropriate medium for conveying detailed procedures. Over time, particularly over three decades, procedures will evolve even if policies remain relatively unchanged. As this happens, actual procedures begin to deviate from those codified in the Administrative Code, creating areas of non-compliance even when staff adhere to the intent of the policy.

We understand that District Counsel has initiated efforts to review the Administrative Code and recommend updates to the Board in the future. We agree with this initiative and we recommend that the Air District update the Administrative Code to ensure all human resources-related provisions are up-to-date and reflect the Board’s current expectations. In doing so, we recommend the District limit detailed procedures to only those deemed essential by the Board.

- ✓ **Policy and Procedure Guidance.** The Human Resources Office Policy and Procedure Guidance serves two purposes that are not entirely compatible. It provides policy and procedure guidance to Air District staff, similar to an employee manual, and it details internal human resources procedures for which District employees do not have a need to know. The result is a 100-page manual that is more dense than is recommended for an employee manual, which should be written for a layperson, that details the roles and responsibilities of individual Human Resources employees.

²³ Administrative Code Division III Section 2

²⁴ Administrative Code Division III Section 2.3

²⁵ Administrative Code Division III Section 11.7

At the same time, while the manual is overly cumbersome for the ordinary Air District employee, it is not sufficiently detailed or comprehensive for Human Resources staff. It does not contain detailed policies and procedures for record retention practices, for instance, or the development and maintenance of a position control document. Instead, Human Resources maintains a wide range of miscellaneous procedures, guides, and tools used for a variety of practices, including training and development, workforce planning, workers' compensation, wellness and safety, recruitment activities, performance evaluations, onboarding procedures, and many others. Some of these are in draft form, others have been in place for years.

For the benefit of District employees and Human Resources staff, we recommend that Human Resources develop a dedicated employee handbook that provides all essential policies required by federal and state law, as well as key policies adopted by the Board relevant to employees in general, and a separate Human Resources Office procedure manual designed to provide guidance for Human Resources staff in complying with established policies.

Ultimately, we recommend that the Air District improve the manner in which human resources-related policies and procedures are memorialized and conveyed district-wide. This should include clearly defining those policies directed by the Board (in the Administrative Code), defining and presenting all relevant policies (including those designed to meet federal and state requirements) in a dedicated employee manual, and developing detailed guidelines in an internal Human Resources procedure manual that can be updated and revised on a regular basis by Human Resources management.

The Human Resources Office Appears Appropriately Staffed, but Certain Activities are Not Structured in a Manner Consistent with Industry Standards

There is no single organizational structure that is considered “best practice” in the field of human resources management, although, Human Resources Offices are generally responsible for all aspects of human resources activities, including employment, training, safety programs, benefits, compensation, employee relations, labor relations, personnel file maintenance, employee programs and services, and termination-related activities. Even when a decentralized model is employed, human resource specialists are involved in each of these functional areas in some capacity. Ultimately, though, an entity's organizational structure for its human resource activities will follow the function the department is expected to fulfill.

While there are benefits and challenges with respect to the variety of different human resources office structures to carry out core functions, we found the Air District's Human Resources Office staffing and reporting span of control aligns with standard guidelines—although certain activities related to payroll and technology are not structured consistently with industry practices.

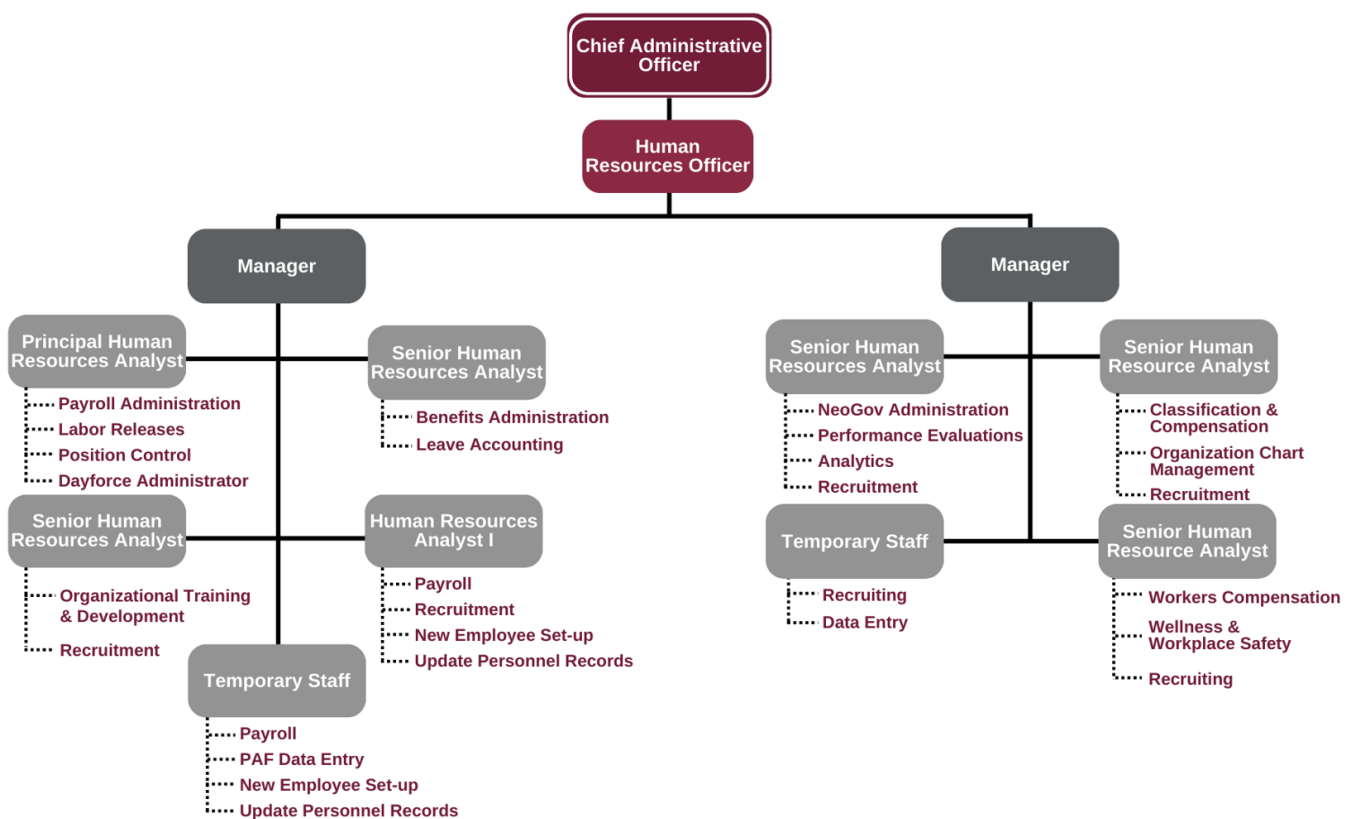
Staffing Levels are Appropriate, although the Allocation of Staff Resources to Core Human Resources Functions Could Be Improved

While staffing of the Human Resources Office is commensurate with the size of the Air District and direct reporting relationships align with industry guidelines, certain staff resources are allocated to payroll and technology activities typically performed by other functional areas within the organization. Reassigning these

activities to staff organized outside the Human Resource Office would allow resources to be better focused on core human resource functions and lessen current workload.

As shown in Exhibit 10, the Human Resources Office consists of ten full-time permanent positions, including a Director/Officer, two Managers, and seven resource analysts and five full-time temporary positions. The Human Resources Officer allocates workload to staff in a manner that is generally consistent with other public sector human resources agencies of a similar size, with distinct functions such as classification and compensation, workers compensation, wellness, organizational development, labor relations, and benefits assigned to specific employees. Other functions, such as payroll and recruitment are assigned to multiple employees.

EXHIBIT 10: HUMAN RESOURCES OFFICE ORGANIZATIONAL CHART

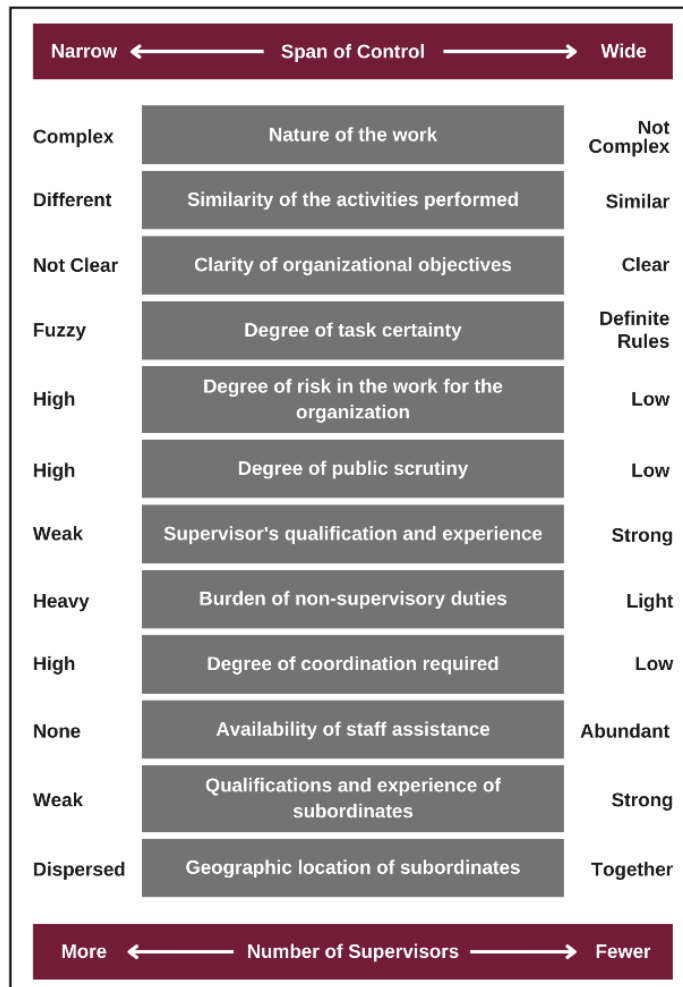


Source: Air District's organizational chart and interviews with Human Resources management and staff.

When compared to industry standards and comparably-sized organizations, the number of staff in Human Resources is appropriate for the size of the Air District. With its 10 full-time permanent staff, serving an Air District workforce of approximately 465 authorized positions, the Human Resources Office employs a ratio of 2.15 full-time permanent staff for every 100 Air District employees. Industry standards suggest a generally accepted ratio between one (1) and two and a half (2.5) full-time human resources employees for every 100 employees in the organization, with the assumption that those employees are fully qualified and trained human resources professionals. According to the Society for Human Resources Management, the average size of a human resources department for an organization with between 250 and 1,000 employees is 1.22 FTE human resources positions for every 100 employees. Numerous factors impact the ideal ratio an

employer should consider targeting when staffing a Human Resources function, such as the extent to which functions are decentralized, relative complexity of an organization’s strategic mission and objectives for the human resources function and level of automation within a Human Resources Office as shown in Exhibit 11.

EXHIBIT 11: SPAN OF CONTROL CONSIDERATIONS



Source: Review of best practices related to span of control in Human Resources Management, including performance audits conducted by the Portland City Auditor.

Further, the span of control within Human Resources results in a direct reporting relationship of 4:1; that is, the Director has two direct reports (two manager positions) and each Manager has three or four direct reports (permanent employees). While there is some disagreement in the industry regarding the appropriate span of control between supervisor and staff because of the many factors impacting the ideal level of control, the Air District direct report ratio seems to be generally in line with typical industry practice.

For instance, a wide span of control with many direct reports is most appropriate in organizations where the work is not complex, is similar for all employees, is relatively low risk, and requires a low degree of coordination. While some human resources functions can be simpler homogenous processing paperwork, recruiting and onboarding, or performing data entry tasks, most human resources functions are complex, differ significantly, and are associated with a significant amount of risk associated with classification and

compensation, labor relations, employee benefits, employee relations, federal and state compliance, EEO, and workforce development. These functional activities do not simply represent variations in the type of work performed, but they are discrete areas of professional specialization and expertise required that are governed by well recognized bodies of knowledge and industry standards.

Thus, we find the Air District's 4:1 span of control to be appropriate with no evidence suggesting a need for additional permanent staffing for the Human Resources Office at this time. Not only are staffing ratios and span of control ratios within the norm for public sector human resources operations, but also implementing improvements recommended in this audit report will alleviate some of the workload demand currently faced by Human Resources staff. This includes eliminating duplicative recordkeeping, implementing a robust document management system for personnel records, and updating policies and procedures. Based on the implementation of these improvements, we recommend the re-evaluation of human resources staffing and business processes.

Beyond potential inefficiencies, the Human Resources Office is engaged in functions that are not traditionally the responsibility of human resources offices. Specifically, as described more fully in the section that follows, Human Resources is fully responsible for payroll functions within the Air District—activities that are typically considered accounting functions and are the responsibility of finance departments. Likewise, Human Resources is fully responsible for the administration of its automated human resources information system, a function typically overseen by centralized technology departments, in addition to Human Resources' responsibility for position control, a function that is typically shared in other public sector organizations between human resources and budget operations. Shifting some of these responsibilities to Finance and Information Services will reduce the workload of Human Resources staff as well as the need for additional staffing resources in addition to refocusing those efforts on critical core human resource functions.

Conflicting Human Resources and Payroll Functions Are Not Adequately Segregated

When examining basic internal controls related to Human Resources and Payroll operations, we found that payroll operations are not appropriately segregated from human resources operations. Specifically, Human Resources assigns most functions related to maintaining employee records and payroll to a group of five or six permanent and temporary employees that are collectively responsible for administering the onboarding process, entering new employee information into Dayforce, setting and updating employee compensation and benefits, entering all Personnel Action Forms and effectuating ongoing personnel status changes for existing employees, reviewing employee timesheets, processing payroll deductions, initiating the bi-weekly payroll process, and reconciling the payroll register to pre-processing reports and to the general ledger file submitted to Finance. Yet, employees have a level of access to Dayforce functions that give them the ability to initiate and complete a wide range of employee transactions. While this audit did not identify any instances of fraud—e.g., the ability to create fictitious employees, establish pay grades or anniversary dates to fraudulently increase compensation, and initiate and receive a paycheck without management detection—this is an inherent risk associated with human resources management of any employer. The ability of one employee to perform all these tasks conflicts with best practice and creates the heightened risk of inappropriate activity.

Mitigating this risk often requires the reassignment of these tasks and access to two separate employees—usually, one to enter the information into the human resources information system and the other to review

and approve the entries. According to Human Resources, it agrees this is appropriate and generally segregates such functions where necessary, given staffing constraints. In addition to creating preparer-reviewer roles for human resources staff, it is common practice to assign a separate group the responsibility to administer and oversee payroll functions—typically located in an organization’s finance department. In doing this, payroll staff have direct insight into the creation and termination of employees, the application of differential pay, overtime charges, and other activities affecting compensation to all employees. As a rule and matter of common practice, human resources departments are responsible for ensuring all employee personnel records are accurately reflected in the payroll systems and payroll departments are responsible for ensuring supervisors approve timesheets and for issuing paychecks, ensuring payroll expenses are appropriately accounted for, and auditing and reconciling payroll activity. Human Resources staff do not need the ability to modify payroll records, calculations, or reconciliations, and Payroll staff do not need the ability to modify any personnel information that is not directly pertinent to payroll determinations, calculations, and reconciliations. This distinction in roles and responsibilities is illustrated in Exhibit 12.

EXHIBIT 12: BEST PRACTICES AND CONTROLS SEGREGATING HUMAN RESOURCES AND PAYROLL DUTIES

Human Resources	Payroll
<p>Maintain Personnel File</p> <hr/> <p>Establish New Employees in Dayforce, including all personnel and compensation-related information</p> <hr/> <p>Final Approval of New Compensation and Compensation Changes, After Management Approval</p> <hr/> <p>Enters Approved Salary, Differential Pay, Benefits, Leave Allowances, etc., in the Payroll Module</p> <hr/> <p>Leave Accounting, Track Leave Balances</p>	<p>Maintain Payroll File (W-2, Employee-Requested Payroll Deductions, Garnishments, etc.)</p> <hr/> <p>Enter Payroll Deduction, Withholding, etc., Information into Payroll System</p> <hr/> <p>Receive and Review Timekeeping Records; Ensure Appropriateness of Leave and Overtime (Does not Approve or Modify Timesheets)</p> <hr/> <p>Computes and Issues Payroll</p> <hr/> <p>Prepares payroll register, Reconciles Payroll, Records Payroll in General Ledger</p> <hr/> <p>Prepares/Submits Tax Payments and Tax Reports</p>

Source: Auditor-generated based on best practices in public sector human resources and payroll internal controls.

Over the past couple years, the Air District’s external auditor has found a general lack of appropriate segregation of duties among human resources and payroll functions. Human Resources staff have access to modify payroll in ways that create the potential for fraud or abuse. Because of this, the external auditor recommended modifying user access profiles to prevent and eliminate this potential. Human Resources has hired additional personnel to keep up with workload demand, which has also enabled it to better segregate functions assigned to different individuals. We do not find that this has fully resolved the problem. Human Resources personnel continue to have incompatible responsibilities. Therefore, we are recommending the Air District take this one step further and reassigning the payroll function to Finance, thereby fully segregating payroll functions from human resources functions. Segregating functions in this manner ensures that no single employee is responsible for or has the capability to add or modify employee information in both human

resources and payroll systems, nor has the access and ability to modify timekeeping and payroll information. It will also reduce the workload currently assigned to Human Resources staff.

Human Resources Handles the Administration of its Dayforce Human Resources Information System Without Appropriate District-Wide Information Technology Oversight

Unlike many other public sector agencies, information technology at the Air District is not centralized into an information technology department. While the Information Services Division manages and supports technology operations, infrastructure, data systems, and information security, the administration of core information systems is decentralized and handled at the divisional level. Finance administers the Air District's enterprise system. Operations administers the Air District's production system. And, Human Resources administers the Air District's human resources information system, Dayforce. This includes contracting with the vendor, working with the vendor to resolve questions or problems as they arise, determining and administering user access roles and rights within the system, coordinating with other Air District divisions, such as Finance, regarding interfaces with the Dayforce system, ensuring the system is properly controlled and secured, and many other responsibilities.

While such functions can be carried out by Human Resources staff, there are important reasons why they should not be performed by Human Resources. First, ensuring proper security and internal controls in an information system requires the perspective and expertise of information technology professionals. Second, the effort expended by Human Resources personnel performing these functions detracts from the resources available to dedicate to the core functions of the Human Resources Office. Third, human resources management, like financial functions within an organization, is a business function that is prone to the potential for fraud and abuse. Human resources information systems, along with payroll systems, are often programmed with system controls designed to prevent or detect potentially fraudulent or abusive activity. Granting Human Resources staff administrative rights to the system risks the potential that staff could override such controls and engage in fraudulent or abusive activity undetected.

Furthermore, placing the administration of the human resources information system under the purview of a centralized information technology division, such as Information Services, ensures that key decisions related to information technology will be informed by agency-wide priorities and not only the needs of specific divisions or programs. The importance of an agency-wide perspective in the design and implementation of information systems is illustrated in the rollout of Dayforce and its impact on the Finance Division. Specifically, as is common among enterprise and human resources systems, vendors routinely upgrade and rebrand their systems, requiring agencies to undertake system upgrades on a periodic basis. In 2019, the Air District's human resources information system (Ceridian) was due for a vendor upgrade and Human Resources took advantage of the opportunity to initiate the upgrade. In doing so, however, existing interfaces that the payroll system had with the finance system were rendered obsolete and updated interfaces with the new system (Dayforce) were required. According to Finance, it had struggled with manual and inefficient processes needed to process payroll on a bi-weekly basis resulting from the rollout of the payroll system. Human Resources' decision to implement the system upgrade was not particularly unusual, and often leads to enhanced functionality and user experience. However, even with the District's Information Services Division serving in a consultative role, the Air District's decentralized approach to information technology management in general, not solely as it relates to Human Resources, contributed to a lack of perspective as it relates to

agency-wide impacts of information technology, and directly impacted Finance and its responsibility to record payroll in a timely manner.

Human Resources Should Develop and Implement Background Checks Policies and Procedures

Historically, the Air District began performing background checks in the early 2000s, but the practice was inconsistently applied at certain points in the past. At least as far back as August 2017, Human Resources began to consistently apply background checks for newly-hired employees. Since this time, the Air District conducted approximately 260 background checks, including references, criminal history, education, and other factors. This represents around 60 percent of the District's workforce. Our review of this process revealed a few opportunities for improvement.

- ✓ First, while there is evidence that Human Resources has been conducting background checks on new-hires since 2017, personnel files did not contain evidence that Human Resources staff had conducted professional reference checks on a regular basis. Human Resources policy states that “personal and professional reference checks should be conducted by the HR Office or hiring manager before the job offer is made. Employment will be contingent upon the results of the pre-employment investigation.” If conducted, the results of reference checks should be included in the personnel file along with other pre-employment documentation such as the application, resume, proof of academic credentials, and background check results. As noted previously, personnel files regularly did not include this information. While Human Resources stated that background checks are generally maintained in the recruitment file along with the records of other candidate records, not in the employee file, recruitment files were only retained dating back to 2000 or so. The status of background checks for employees hired prior to this is unknown.
- ✓ Second, while the percentage of the Air District's employees that have undergone background checks will grow over time as Human Resources continues to implement its policy, the implementation of background checks for new-hires does not address a potential need in the short-term. Specifically, management continues to fill vacancies in high-level positions throughout the Air District, many of which represent promotional opportunities for long-term employees that have never undergone background checks. These positions may include significant responsibilities, control over significant Air District resources, access to confidential and highly-sensitive information, and other conditions that may pose higher risk of fraud, waste, and abuse.

Because of this, we recommend that the Air District improve recordkeeping to ensure that all documentation demonstrating background and reference checks performed be incorporated into each employee's personnel file. We also recommend the Air District consider the development of a policy that requires a new background check for employees promoted into management roles within the District. In implementing such a policy, we recommend Human Resources consult with District Counsel.

Recommendations

In order to improve upon the system of internal controls administered by the Human Resources Office, we recommend that Human Resources:

- 3.1 Develop record retention protocols that achieve the following criteria:
 - a. All personnel records relating to any Air District employee are centralized into personnel files—either electronic or paper—such that, at any time, the Air District could produce a complete and comprehensive personnel file to the employee, investigator, or other person with authority in a timely manner.
 - b. Access to personnel records is limited to only those human resources personnel that require access, following the principle of least privilege. This will require securing different types of personnel records differently; many Human Resources personnel require access to the general personnel file; fewer require access to medical records; and fewer require access to Form I-9s. The records should be stored and secured accordingly.
 - c. Adhere to record retention schedules and destruction protocols for all human resources records.
- 3.2 Update the records retention schedule to reflect retention and destruction requirements that reflect federal and state law, limiting the extent to which confidential personnel information is retained longer than statutorily required.
- 3.3 Re-examine building security protocols and the individuals that currently have access to the Human Resources file room, and promptly restrict access to only those persons that require access to carry out legitimate and assigned duties.
- 3.4 Develop a workforce development plan that incorporates the best practices identified in this report, incorporating broader strategic goals and initiatives into decisions regarding the allocation of staffing resources.
- 3.5 Update all human resources policies and procedures, including those codified into the Administrative Code, documented in the Policies and Procedures Guidance, and informally developed and documented into Human Resources guidelines.
- 3.6 Develop policies and procedures regarding background checks within the Air District, including:
 - a. Requiring all background, reference, and academic checks to be documented in the employee's personnel file; and
 - b. Implementing procedures for conducting background checks for personnel being promoted into management positions within the District.

We also recommend that the Executive Officer / APCO:

- 3.7 Reassign all payroll-related activities currently performed by the Human Resources Office to the Finance Division.

3.8 Reassign the responsibility to administer the human resources information system (Dayforce) to Information Services.

Human Resources' Response

The Human Resources Management Team is supportive of best record retention practices and the auditor's findings in this section and is supportive of the recommendations that the Auditor has made in regards to position management.

The entire Human Resources Office Team have always been focused on serving our workplace community and the Board with continual improvements to our services and we look forward to working with the Board and our workplace community in considering and implementing recommendations of the Auditor to help support those efforts now and into the future.