

**Legislative #**

**130625**

# MEMORANDUM

**Date:** April 16, 2014

**To:** Mayor and City Commissioners

**From:** Nicolle Shalley, City Attorney  
Kathy Viehe, Interim General Manager for GRU  
Russ Blackburn, City Manager  
Kurt Lannon, Clerk of the Commission

**cc:** Brent Godshalk, City Auditor  
Cecil Howard, Equal Opportunity Director

**Re:** Comments on the recommendations presented to the City Commission by the Equal Opportunity (EO) Director as part of Legistar Item #130625 - Annual Hiring Report for FY13

## Introduction

As requested at your regular City Commission meeting on March 6, 2014, the purpose of this memorandum is to provide comments from the Charter Officers on the recommendations presented to you by the Equal Opportunity (EO) Director as part of Legistar item #130625 Annual Hiring Report for FY13. The comments of the EO Director and the City Auditor are not included in this memorandum as each has indicated he will prepare separate comments.

As Charter Officers, we value diversity and carefully consider all efforts or measures that would help the City in achieving greater diversity and reaching the goals established in the Affirmative Action Plan. Our concerns with certain recommendations do not reflect a disagreement with the importance of diversity and equal opportunity. The background and our comments below reflect the serious consideration that we have given to these recommendations and we appreciate that you requested input from each of us on these matters.

## Background

On September 17, 2013, the EO Committee heard a presentation from the EO Director on Legistar item #130328 (Equal Opportunity Charter Provisions). The minutes reflect the EO Committee approved the following motion: "Direct the Charter Officers to review current practices addressing Sections 7 and 8 of the Equal Opportunity Charter, and submit recommendations during the November EOC meeting regarding additional practices that would be implemented in conjunction with the EO Office to include increased success with exit interviews and increased coordination with employee surveys and other workplace concerns."

The Charter Officers (with the exception of the Clerk of the City Commission who does not routinely attend unless there are specific agenda items that address the needs of the Clerk's office) meet monthly to review and discuss City/GRU policies and procedures, matters of importance to each Charter Officer and matters that have an organization-wide impact. At Charter Officer meetings on October 24, 2013 and November 18, 2013, the EO Director presented the current activities of his Office relative to Sections 7 and 8 of the City Charter and presented three potential actions for consideration by the Charter Officers: 1) diverse interview panels, 2) specific action plans for specific departments, and 3) individual affirmative action plans for each department. The Charter Officers discussed these issues and discussed the hiring of a diversity recruiter and the role of the EO Office in the Personnel Requisition Action Form (PRAF) approvals process (Note: the PRAF is used by City Departments to obtain approval at various steps in the process of filling a vacant position). There was consensus on some issues and concern with others (as you will see reflected in the comments section below).

At the January 14, 2014 EO Committee Meeting, the EO Director presented the following five recommendations (as part of Legistar item #130625 - Annual Hiring Report for FY13):

1. Continue with training and education of hiring managers with annual Affirmative Action Workplan Workshop with required attendance.
2. Continue with PRAF protocols
3. Continue with aggressive recruitment strategies and plans including the hiring of a professional recruiter
4. Interview all internal candidates meeting minimum qualifications
5. Establish racially diverse panels for all interviews for supervisor position and above

At the March 6, 2014 City Commission Meeting, the EO Director presented the same recommendations to the City Commission. The Commission referred the matter back to the EO Committee and requested that each Charter Officer provide their comments, if any, regarding these recommendations.

At the March 11, 2014 EO Committee Meeting, the EO Director presented a new recommendation. The minutes reflect the new recommendation and the Committee's further discussion and action as follows:

"The Equal Opportunity Committee discussed the motion that was referred back to Committee on the recommendation of diverse interview panels. The EO Director made a new recommendation asking the EOC to hear his revised proposal to completely remove the recommendation of ensuring each interview panel at the supervisory level and above be diverse. He then recommended instead, that himself or a member of the EO staff is placed to serve on the interview panels; therefore, alleviating the concern of violating the law on the fact of making appointments based

on race.” The Committee approved the following motion: “The EOC: 1) approve in concept of having the EO Director or a member of his staff serve on hiring panels for positions at the supervisor level or above; and 2) continue to pursue this in a manner he sees most appropriate including, if necessary, bring to City Commission for review including change of rules and adoption of recommendation requiring diverse hiring panels.”

### **Comments from the Charter Officers**

**Kurt Lannon, Clerk of the Commission** provides the following general comments on the recommendations: I have no supervisory positions. I have no internal candidates for opening since all four positions are the same. I normally do not utilize interview panels. I have had very few open positions and very few hires over a twenty plus year period. I probably hire on average one person every three years and normally interview by myself or occasionally with one other person. I advertise only for internal candidates and therefore interview only internal candidates. Therefore, any revised policies will probably have a limited impact on the Clerk’s office.

The **City Manager, Interim General Manager for Utilities and City Attorney** provide the following comments on the five original recommendations and one new recommendation:

**Recommendation 1: Continue with training and education of hiring managers with annual Affirmative Action Workplan Workshop with required attendance.** We support this recommendation, but believe no further action by the City Commission is necessary as this is within the EO Director’s duties and authority set forth in the City Charter.

**Recommendation 2: Continue with PRAF protocols.** We support this recommendation, but believe no further action by the City Commission is necessary as this has been implemented by the Human Resources Department.

**Recommendation 3: Continue with aggressive recruitment strategies and plans including the hiring of a professional recruiter.** We support this recommendation, but believe no further action by the City Commission is necessary as this position has been budgeted and is anticipated to be hired within the Human Resources Department in FY2014-2015.

**Recommendation 4: Interview all internal candidates meeting minimum qualifications**

Russ Blackburn, City Manager: The City of Gainesville General Government includes over 1100 positions. Our average turn-over per year is a little less than 5% which requires a substantial number of interviews to fill positions. In some cases we have received as many as 700 applicants for a position; most externally advertised positions will generate at least 100 applicants. My predisposition is to give internal candidates every opportunity to be fairly considered and also to compete against others so that they can prove to themselves and to the organization that they are the most qualified candidate for a position. With regards to the

recommendation to interview all internal candidates, applying this concept uniformly would create a burden on hiring managers. Adoption of a policy which requires all internal candidates be interviewed may impact productivity in cases where large numbers of internal applicants apply. As an alternative, I recommend that the City Commission adopt several policy statements which provide direction to hiring managers for external and internal recruitments. My recommendations are an attempt to balance workload, productivity and provide internal applicants with the opportunity to interview and compete for City positions. I support a policy for externally advertised positions that would require interviewing of all minimally qualified internal candidates if there are three or fewer internal candidates meeting minimum qualifications. I also support and recommend that for positions which are posted internally (City of Gainesville only) where there are seven or fewer candidates that we commit to interview all candidates who meet minimum qualifications. For positions at the management level where there are three or fewer internal candidates who meet minimum qualifications, all minimum qualified candidates shall be interviewed. Due to the impact on productivity, policy should allow hiring managers the final decision in selecting the interview field if more than three minimally qualified candidates are in an interview field.

Kathy Viehe, Interim General Manager for Utilities: I am concerned about unintended consequences. By that I mean I am concerned that a requirement to interview all qualified internal candidates may have unintended consequences. If the organization, especially in certain job classifications or departments, is not diverse, then interviewing all internal candidates may perpetuate this lack of diversity. It may also give the hiring manager “permission” to hire from within when going outside the organization might provide a more diverse applicant pool.

I am also concerned about cost. Although this is not the case for most positions, some positions will have a large number of candidates meeting minimum qualifications. In one case in the past year, we had 22 employees that met the minimum qualifications. Assuming we use diverse interview panels, and using the salaries of the three employees involved in the process noted above, the cost would be about \$2,721 to interview 22 applicants. In a time when we are asking everyone to reduce expenses to mitigate rate increases, anything we can do to improve efficiency would be of value. In my opinion, this moves in the other direction and I don’t believe the outcome would be any different - to hire the best qualified candidate. In looking at the cost, it is relatively low compared to our overall budget; however, what isn’t included in the cost above is the lost opportunity cost (3 staff X 22 candidates = 66 hours, or more than a week of staff time). The employees on the interview panel would spend hours doing these interviews rather than focusing on other things.

I am also concerned that we would be interviewing less qualified candidates. One of the ways we try to get the best qualified candidate is by using “preferred qualifications” in the job description. The preferred qualifications are often what separate average applicants from best qualified.

Hiring the best qualified is always our goal. Hiring all who meet the minimum qualifications rather than “preferred” lowers our standards for internal applicants only.

I also see this as an issue of fairness. If 22 employees apply for a job and all meet the minimum qualifications and out of those 22, five have taken numerous classes and taken other steps to prepare for a new position, I do not think it is fair to then interview all candidates when clearly five employees are better qualified. It might feel good to those 17 others, but it is not going to feel very good to the 5 who are already more qualified and have taken more initiative.

Nicolle Shalley, City Attorney: As a Charter Officer, my concerns with this recommendation are policy concerns, not legal concerns. It has been my experience that the pool of applicants screened through by the HR Department as meeting minimum qualifications is often large (35, 42 and 80 for my last three hiring process) and the hiring manager must determine a reasonable number of applicants to interview based on qualifications (which can include consideration of their employment with the City – e.g., their institutional knowledge - if that is appropriate to the position). As a matter of consistency and fairness, I do not believe hiring managers should be required to interview all internal candidates that merely meet the minimums any more than we should be required to interview all external applicants that merely meet the minimums. We should select a reasonable number of the most qualified applicants to interview. I generally interview 6-8 applicants for a position and it is a time consuming process.

There is a cost to the City in lost productivity and time, both for the employees serving on the panel and those internal (employee) candidates that the panel would be required to interview. That is valuable time (taken away from other important business of the City) to spend on an applicant who meets only the minimums and is unlikely to be hired when competing with a number of more highly qualified candidates.

I have heard from the EO Director that the City’s existing workforce lacks diversity. If so, requiring interviews of internal candidates seems counter-intuitive to increasing opportunities for external, more diverse recruitment and applicants.

**Original Recommendation 5: Establish racially diverse panels for all interviews for supervisor position and above.** In most all hiring processes, we strongly encourage hiring managers to utilize a panel to provide input and recommendations to the hiring manager throughout the process. In addition, we support and value having panel members that provide diverse perspectives. We recognize that “diversity” may be provided by persons of different ages, races, genders, work experience with the City, life experiences or other personal traits or characteristics that contribute to the unique perspective of each person.

Given these many “faces” of diversity, it would be difficult to define or create a formula for diversity that would be a workable or enforceable requirement for every hiring process. In addition, the City Attorney’s Office has advised that it is not legally defensible for the City to

make assignments (e.g., you are assigned to serve on this hiring panel) based on race, gender or other protected characteristics. However, this does not preclude hiring managers from inviting qualified, diverse panelists to serve on a panel.

As such, we support advising the City's hiring managers that, when inviting qualified persons to serve on an interview panel, they are fully encouraged to have diverse representation on the panels.

**New Recommendation 5: Require that the EO Director (in his discretion) appoint a member of his staff (including himself) to serve on interview/hiring panels for all Supervisor and above positions**

Russ Blackburn, City Manager: The EO Director has been invited in the past to serve on interview panels where there is a substantial interaction between EO and a portion of the GG organization. The recent panel which provided input to the hiring managers to select the Human Resources Director included the Director of Equal Opportunity. I do not recommend that the EO Director be required to participate on all interview hiring panels for supervisor and above. I believe that aggrieved individuals may perceive that they would not receive a fair and impartial hearing through the Equal Opportunity Office if the Director or designated EO employee participated on hiring panels which become the subject of discrimination complaints.

Kathy Viehe, Interim General Manager for Utilities: One of the duties assigned to the Charter Officers is hiring of personnel. These duties are then delegated to appropriate management personnel. Generally, I am in favor of the managers who have the responsibility for providing the various services also having the authority to hire the best qualified personnel and determining who they will involve in the interview process. The hiring manager is ultimately responsible for the work being performed by whoever is hired and for that reason alone, I strongly believe that the hiring manager overseeing a particular hiring process should select panelists for interviews. The panelists should be selected based on their knowledge of the job and the skills needed to do the job, making sure they hire the most qualified candidate. I do not believe that any of the Charter Officers should insert themselves in the hiring duties of the other Charter Officers (unless asked) as I do not believe their background and expertise is such that they could fairly evaluate the best qualified candidate. Rather, any hiring manager should have the ability to ask for assistance from another department should they find they need it for a particular position. For example, the skills, knowledge and abilities for a Power Plant Operator are very different than a Police Officer. The only person who should determine the interview panel is the hiring manager responsible for providing services to our customers.

Nicolle Shalley, City Attorney: As a Charter Officer, I have both policy and legal concerns with this recommendation. A hiring manager should choose panel members based on their familiarity with the requirements and demands of the job vacancy and their ability to evaluate applicants on

what it takes to be successful in the job. I do not believe that EO staff has this familiarity and ability with respect to all supervisor (and above) positions hired in the City.

I am concerned that the EO Office may seek to create diversity by influencing the hiring process on the basis of race, gender or other protected characteristics. This would be contrary to the legal guidance provided to the City's hiring managers -- once a hiring process moves beyond recruitment it must be "neutral," meaning that decisions (on who to interview or who to hire) should be based solely on qualifications and suitability for the position, and not on race, gender or any other protected characteristics.

I am also concerned the EO Office may assert or imply that the hiring manager did not make the appropriate hire or made a discriminatory decision -- if the decision differs from the recommendation/input of the EO Office panel member. It is not the role of the EO Office to serve on every hiring panel to assure that discrimination is not occurring, just as it is not the role of the City Attorney's Office to serve on every hiring panel to assure that employment laws are being followed. The roles of the EO Office and the City Attorney's Office are similar -- we are to train and advise the Human Resources Department and hiring managers so that they understand how to carry out their duties in accordance with equal opportunity guidance and employment law. If a complaint is filed alleging that a hiring manager carried out their duties in a discriminatory manner, then the EO Office has the additional duty of investigating that complaint.

The City Charter does not contemplate the EO Office having a decision-making role in the duties (such as hiring) of other Charter Offices. The Charter defines the role of the EO Office as one of investigating complaints of discrimination, harassment, retaliation; reporting on EO activities and programs; preparing and monitoring of the City's Affirmative Action Plan; developing EO training; and reviewing city policies and monitoring hiring processes for compliance with EO laws. Confidence in the role of the EO Office as a neutral and independent investigator would be eroded and an actual conflict may exist where the complaint arises out of a hiring process that the EO Office directly participated in.