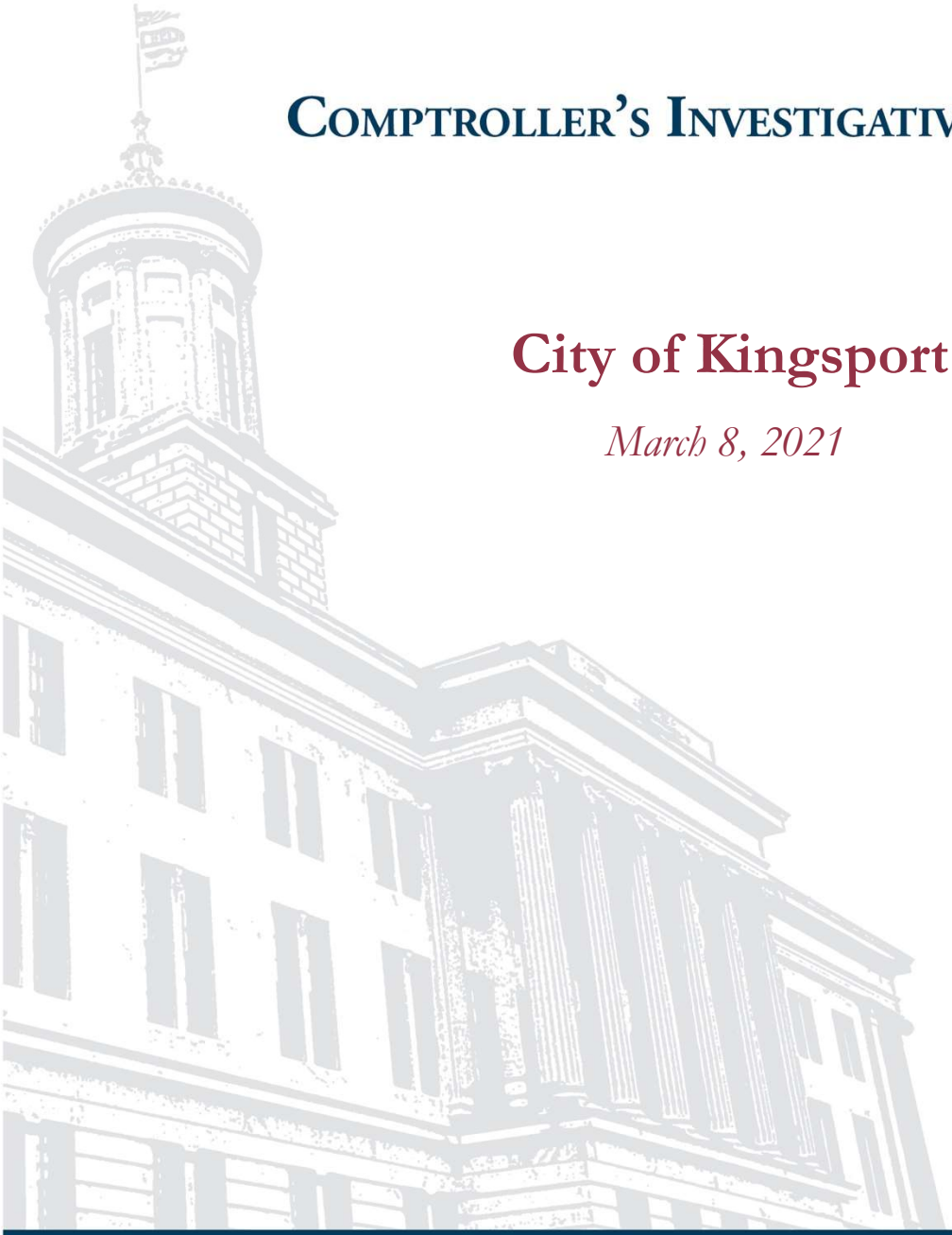


Comptroller's Investigative Report

City of Kingsport

March 8, 2021

Jason E. Mumpower
Comptroller of the Treasury

Division of Investigations

Jason E. Mumpower
Comptroller

March 8, 2021

City of Kingsport Mayor
and Board of Aldermen
225 West Center Street
Kingsport, TN 37660

Ladies and Gentleman:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the City of Kingsport, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 2nd Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at http://www.comptroller.tn.gov/ia/.

Sincerely,

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

City of Kingsport

The Office of the Comptroller of the Treasury, in conjunction with the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General, investigated allegations of malfeasance related to the City of Kingsport's (city) department of community development. The investigation was limited to a review of selected records for the period July 1, 2007 through January 31, 2020. The results of the investigation were communicated with the Office of the District Attorney General of the 2nd Judicial District.

BACKGROUND

Incorporated in 1917, the City of Kingsport is located in Sullivan and Hawkins Counties in Tennessee. The city is governed by a Board of Mayor and Aldermen, which is vested with legislative authority for the city. The Board is comprised of six Aldermen who are elected at-large to four-year staggered terms. The Mayor is elected at-large to a two-year term and serves as head of the Board. The city operates through departments that provide various services to residents.

The city's department of community development administers an annual HUD funded Community Development Block Grant (CDBG). Title 42 *United States Code* Section 5301(c) states the primary objective of the community development program "…is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." To meet this objective, the city uses a portion of the annual CDBG to fund home rehabilitation (home repair) projects for citizens of low and moderate income. Citizens must submit home repair applications to the city's department of community development. The city hired Mark Haga as a community development program coordinator on August 28, 1995. Beginning July 1, 2007, Haga became the city's only community development program coordinator, which made him solely responsible for determining home repair eligibility, granting project awards, and hiring contractors for all

community development home repair projects. He resigned from this position with the city effective January 31, 2020.

The city's CDBG program is administered under the authority of city policy, state law, and federal law. According to the city's code of ethics policy, "In any situation in which a personal interest under this code of ethics is also a conflict of interest under state law, the provisions of the state law shall govern." Section 12-4-114, *Tennessee Code Annotated*, states that:

> "No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that…[t]he employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction…As used in this section, 'immediate family' means spouse, dependent children or stepchildren, or relatives by blood or marriage."

In addition, as a direct federal grant, the city's CDBG program is governed by the authority of federal regulations for the program. Title 24, *Code of Federal Regulations* Section 570.611(b) and (c) states that no employees of a grant recipient:

> "…who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter."

RESULTS OF INVESTIGATION

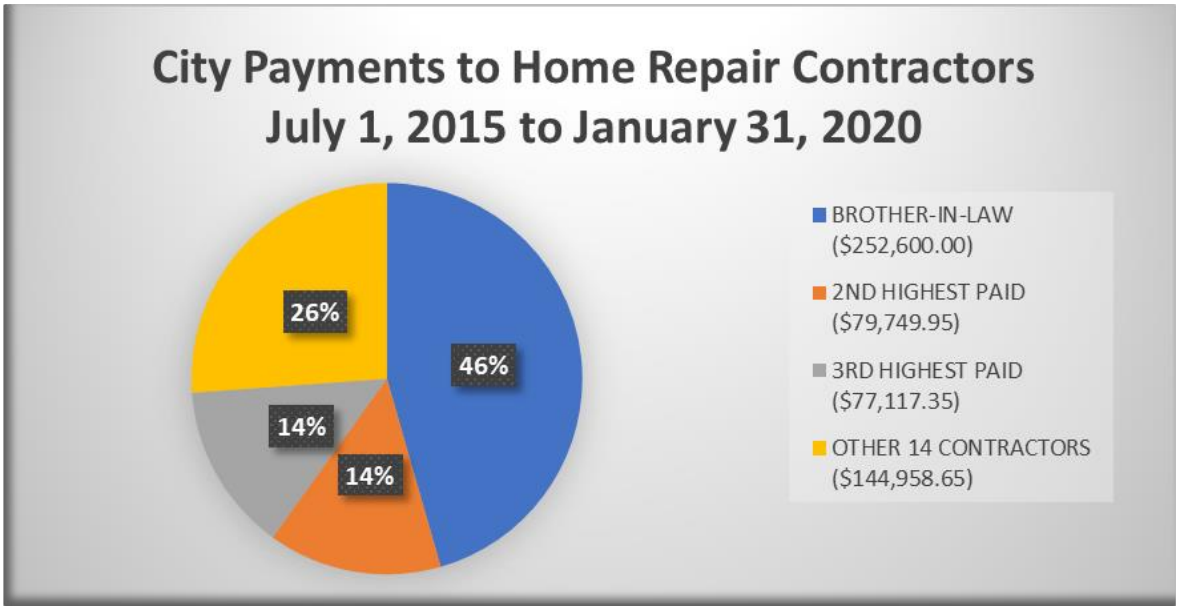
1. COMMUNITY DEVELOPMENT PROGRAM COORDINATOR MARK HAGA HAD A CONFLICT OF INTEREST WHEN HE AWARDED CONTRACTS TO HIS BROTHER-IN-LAW FOR CITY HOME REPAIR PROJECTS TOTALING $731,940

Haga, in his role as community development program coordinator, awarded contracts to a contractor for home repairs that violated the state's conflict of interest statute, Section 12-4-114, *Tennessee Code Annotated,* and the home repairs funded by CDBG funds appeared to violate federal conflict of interest regulation, Title 24, *Code of Federal Regulations* Section 570.611(b) and (c). Haga awarded contracts to his brother-in-law's construction company to perform work on 105 home repair projects between May 23, 2008 and January 27, 2020. The city paid Haga's brother-in-law $731,940 for these projects, of which $660,970.74 was funded by CDBG funds and $70,969.26 was funded by other sources appropriated by the Board of Mayor and Aldermen. The repairs primarily consisted of interior remodels and exterior roof and deck replacements. All of the city's payments to Haga's brother-in-law were for $15,000 or less. Since the city's procurement policy requires quotes for purchases greater than $15,000, Haga could solely select contractors without thorough review, formal

quotes, or sealed bids by the city's procurement department. The following table summarizes city payments to Haga's brother-in-law:

Summary of City Payments to Haga's Brother-In-Law			
	Source of Funds		
Year	CDBG	Other	Total Payments
2008	$ 9,650.00	$ 5,400.00	$ 15,050.00
2009	55,310.00	-	55,310.00
2010	70,880.00	880.00	71,760.00
2011	124,500.00	15,000.00	139,500.00
2012	52,250.00	36,250.00	88,500.00
2013	42,560.74	13,439.26	56,000.00
2014	33,950.00	-	33,950.00
2015	47,920.00	-	47,920.00
2016	64,900.00	-	64,900.00
2017	35,950.00	-	35,950.00
2018	33,800.00	-	33,800.00
2019	69,300.00	-	69,300.00
2020	20,000.00	-	20,000.00
Total	$ 660,970.74	$ 70,969.26	$ 731,940.00

Investigators reviewed all available supporting documentation for 113 home repair payments to all contractors during the period July 1, 2015 through January 31, 2020. For this period, Haga's brother-in-law received $252,600 (46% of the $554,425.95 in total contractor payments), as detailed in the graph below:



Haga told investigators that he was not aware of nor had he been trained on any Tennessee conflict of interest laws. Haga told investigators he had researched federal conflict of interest regulations prior to hiring his brother-in-law and thought there was no conflict because his brother-in-law did not meet the definition of an immediate family member. Although CFR does not clearly define an immediate family member for the CDBG program, investigators discovered training materials in Haga's office that defined a conflict of interest and immediate family member in the CDBG program (**Refer to Exhibit 1**). Title 24, *Code of Federal Regulations* Section 570.611(d) allows for exceptions to the conflict of interest regulations, but the CDBG recipient must submit a written request to HUD, and HUD must give approval for any such transactions. Haga told investigators he did not submit any written correspondence to HUD requesting exceptions to potential conflicts of interest.

Exhibit 1

- **Prohibited Actions**
  - It is a conflict of interest for any employee, agent, consultant, officer, or elected or appointed official to provide inside information, or participate in approving a Loan or Grant action when the person has business ties with the applicant or is a member of his/her immediate family.

"Immediate family" is generally defined as the employee, spouse and children (of any marriage of either), parents and siblings, by blood or marriage – mother/father, step mother/father, mother/father-in-law, sister/brother, step sister/brother, sister/brother-in-law.

The definitions above come from pages 5-2 and 5-3 of a 2002 "CDBG Basics: Training for Practitioners" training manual created by the National Community Development Association, which investigators found in Haga's city office.

2. HAGA HAD A CONFLICT OF INTEREST BY AUTHORIZING HOME REPAIRS ON HIS SISTER-IN-LAW'S RESIDENCE TOTALING $18,100

Haga authorized two home repair projects that violated the state's conflict of interest statute, Section 12-4-114, *Tennessee Code Annotated,* and appear to violate federal conflict of interest regulation Title 24, *Code of Federal Regulations* Section 570.611(b) & (c). The city disbursed CBDG funds for repairs on his sister-in-law's residence totaling $18,100. Haga's brother-in-law (the sister-in-law's brother) performed the work on both projects. The following table details work performed on both projects:

Summary of Home Repairs		
Check Date	**Check Amount**	**Description of Repairs**
Haga's Sister-In-Law		
1/13/2017	$ 9,800.00	removed wall and ceiling coverings in living room, kitchen, bath, two bedrooms, and hallway; replaced 200 feet of wall studs and ceiling joists; installed 210 sheets of drywall; finished and painted; installed 3 new windows
2/27/2018	8,300.00	removed old roof and installed new roof; removed damaged bathroom drywall and installed new drywall; finished and painted new bathroom drywall.
Total	$ 18,100.00	

Haga told investigators that he was not aware of nor had he been trained on any Tennessee conflict of interest laws. Haga told investigators he had researched federal conflict of interest regulations prior to authorizing home repairs on his sister-in-law's residence and thought there was no conflict because his sister-in-law did not meet the definition of an immediate family member. Although CFR does not clearly define an immediate family member for the CDBG program, investigators discovered training materials in Haga's office that defined a conflict of interest and immediate family member in the CDBG program (**Refer to Exhibit 1**). Title 24, *Code of Federal Regulations* Section 570.611(d) allows for exceptions to the conflict of interest regulations, but the CDBG recipient must submit a written request to HUD, and HUD must give approval for any such transactions. Haga told investigators he did not submit any written correspondence to HUD requesting exceptions to potential conflicts of interest. Investigators did not find complete applications submitted to the city and signed by Haga's sister-in-law for the home repair projects on her residence; therefore, investigators could not determine the eligibility criteria Haga used to approve these projects.

3. A CITY EMPLOYEE WITH CDBG RESPONSIBILITIES HAD A CONFLICT OF INTEREST WHEN THE CITY PAID FOR HOME REPAIRS ON HER PERSONAL RESIDENCE AND HER DAUGHTER'S RESIDENCE TOTALING $59,976.18

The city disbursed CDBG funds for repairs on the residences of Haga's executive secretary and her daughter totaling $59,976.18. These home repairs appear to violate federal conflict of interest regulation Title 24, *Code of Federal Regulations* Section 570.611 (b) & (c). The executive secretary had CDBG responsibilities that included taking information for home repair applications and submitting requisitions for contractor payments. Investigators could not accurately determine when the executive secretary began taking information for home repair applications; however, the executive secretary submitted requisitions to the procurement office for all contractor payments related to repairs on her personal and her daughter's residences. The following table details work performed on both residences:

Summary of Home Repairs				
Check Date	Check Amount		Individual Total	Description of Repairs
Executive Secretary				
10/3/2014	$11,045.00			bathroom remodel
8/3/2015	13,675.00			replaced 2 doors; replaced all gutters and downspouts; repaired roof; installed new vinyl siding; installed 3 new windows; poured step off side porch; built covered porch; replaced rotten wood; repaired heat pump lines; painted brick; repaired crawl space door
10/1/2015	600.00			replaced rotten wood
10/13/2019	350.00			replaced 5 pieces of siding; installed new foam board; removed old door
11/9/2019	2,480.00		$28,150.00	replaced roof
Daughter of Executive Secretary				
5/20/2016	$ 4,388.00			installed new air & gas furnace
5/24/2016	10,400.00	*		replaced roof
6/10/2016	8,300.00	*		replaced porch; removed damaged bedroom drywall, installed new drywall, finished and painted.
12/9/2016	1,456.00			new gutters and downspouts on front of house and garage; intalled gutter guard on garage
8/25/2017	1,249.40			new water heater, vent, chimney cap, water heater expansion tank
12/15/2017	595.00			repaired window sill
10/8/2019	5,437.78		$31,826.18	installed french drain in back yard
Total	$59,976.18		$59,976.18	

* The city paid Haga's brother-in-law for these home repairs.

4. THE EXECUTIVE SECRETARY AND HER DAUGHTER DID NOT OWN THEIR HOMES WHEN THEY RECEIVED THE MAJORITY OF CDBG REPAIRS

Haga's executive secretary and her daughter did not own their homes when they received the majority of CBDG funded repairs. To be eligible for the city's community development home repair program, Haga told investigators that applicants had to live within the city limits, meet income requirements, prove home ownership (**Refer to Exhibit 2**), and prove they were not delinquent on their property taxes. These eligibility requirements appear accurate based on other interviews, applications and related supporting documentation obtained by investigators. Investigators did not find applications submitted to the city by the executive secretary or the executive secretary's daughter for home repair projects on their residences; therefore, investigators could not determine the eligibility criteria Haga used to approve these

projects. Investigators confirmed that the executive secretary's mother owned her residence during the period, and the executive secretary's daughter did not own her home until January 10, 2017, well after most of the repairs were completed. Therefore, Haga approved most of the repairs on the executive secretary's and her daughter's homes without requiring proof of home ownership. Haga told investigators that the initial home repairs on the executive secretary's residence were approved by his immediate supervisor at the time. Investigators spoke with this supervisor, and the supervisor did not recall approving these home repairs; due to the complexity of the program and Haga's expertise, the supervisor stated he would have redirected approval to Haga to ensure it met federal requirements.

Exhibit 2

I herby make the following certifications:

1. That I occupy the same said property.
2. That I hold a fee simple title to said premises.
3. That the premises are occupied by _____ persons.
   (number)
4. That the income of all household members have been fully disclosed (must be verifiable)
5. That by signing my name to this certification, I state and affirm that all of the above information is correct, and should any of the above be investigated and found to be incorrect, my grant application will become automatically void.

Haga gave a blank CDBG home repair application to investigators on January 30, 2020. On this portion of the application, the homeowner is required to make certain certifications regarding the property to be repaired, including holding title to the premise.

On February 24, 2021, the Sullivan County Grand Jury indicted Mark Haga on 20 counts of Official Misconduct.

City of Kingsport Investigation Exhibit

INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

Our investigation revealed deficiencies in internal control and compliance, some of which contributed to conflicts of interest without prompt detection:

Deficiency 1: **The city's procurement policy does not require sufficient review of community development projects**

The city's procurement policy does not require a city project to be competitively bid unless it exceeds $50,000 or require quotes unless it exceeds $15,000. Due to each CDBG home repair project being $15,000 or less, the city's procurement department did not thoroughly review community development home repair projects, publicly solicit sealed bids for each project, ensure the lowest possible cost of each project, or require contractors to certify that conflicts of interest do not exist. The lack of oversight by the procurement department due to current policy allowed for multiple conflicts of interest involving CDBG and other taxpayer funded community development home repair projects to go unnoticed.

Deficiency 2: **The city did not adequately retain CDBG documentation**

The city did not adequately retain CDBG documentation. On November 20, 2007, the city authorized the use of the University of Tennessee, Municipal Technical Advisory Service's *Records Management for Municipal Governments Manual* for its records retention policy. According to the manual, the city should retain grant documentation and files for the life of the grant plus seven years. The city did not maintain complete CDBG agreements with HUD, action plans, performance and evaluation reports, or grant closing documents for the period. In addition, investigators reviewed all available supporting documentation for 113 home repair projects during the period July 1, 2015 through January 31, 2020. While the city's finance department was able to provide appropriate purchasing documents, the community development department was only able to provide 33 applications for these home repair projects, and many did not have complete/adequate supporting documentation regarding program eligibility. Due to the lack of project applications and supporting documents, investigators could not determine if all projects followed federal regulations or if homeowners met eligibility requirements. Investigators did not find complete applications or supporting documents for the projects on Haga's sister-in-law's residence, on the executive secretary's residence, or the executive secretary's daughter's residence.

Department officials indicated that they have corrected or will correct these deficiencies.