

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION" BY AMENDING ARTICLE IV, ENTITLED "OFFICERS AND EMPLOYEES," BY AMENDING DIVISION 4, ENTITLED "INDEPENDENT CITY AUDITOR," TO CREATE SECTION 2-254 THEREOF, ENTITLED "CITY'S INTERNAL AUDIT" TO ESTABLISH A CITY INTERNAL AUDITOR; AMENDING ARTICLE IV, ENTITLED "OFFICERS AND EMPLOYEES," BY AMENDING DIVISION 5, ENTITLED "OFFICE OF INSPECTOR GENERAL," BY AMENDING SECTION 2-256 THEREOF, ENTITLED "OFFICE OF INSPECTOR GENERAL," TO REFLECT THE REASSIGNMENT OF THE INTERNAL AUDIT FUNCTION UNDER THE AUSPICES OF THE CITY ADMINISTRATION; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, currently, under the City Code, one of the functions of the Office of the Inspector General ("OIG") is to serve as the City's internal auditor; and

WHEREAS, however, the internal audit function is a function that is separate from the traditional powers and duties of an inspector general; and

WHEREAS, historically, the Office of Internal Audit resided within the Office of Management and Budget, and the Internal Auditor reported directly to the City Manager; and

WHEREAS, as it is not customary for an OIG to assume the duties of an administrative internal audit function, the Mayor and City Commission desire to make the following amendments to provide for realignment of internal audit functions from the City's OIG to the City Administration.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 2-254 of Article IV, of Division 4 of Chapter 2 of the Code of the City of Miami Beach is hereby created as follows:

CHAPTER 2

ADMINISTRATION

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ARTICLE IV. OFFICERS AND EMPLOYEES

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DIVISION 4. INDEPENDENT CITY AUDITOR

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Sec. 2-251. Duties.

The duties of the independent city auditor are to:

- (1) Render a professional opinion on the fair presentation of the city's general purpose financial statements (GPFS) and prepare an audit in accordance with generally accepted accounting principals (GAAP) for the applicable fiscal year. The audit shall:
 - a. Be conducted in accordance with generally accepted accounting standards (GAAS) and generally accepted government auditing standards (GAGAS) applicable to financial statement and compliance audits.
 - b. Be performed in accordance with F.S. § 11.45 and shall comply with the state audit or general rule 10.550.
 - c. Include:
 1. An auditor's report on the fair presentation of the general purpose financial statements included in the comprehensive annual financial report.
 2. The necessary separately issued federal and state single audit reports in accordance with OMB circular A-128 and the rules of the auditor general of the state.
 3. A management letter for the mayor and city commissioners and the city's audit committee in compliance with the rules of the Auditor General.
 4. A report on irregularities and illegal acts, if warranted.
- (2) Fulfill all requirements as set forth by the Government Finance Officers Association (GFOA) in the Certificate of Achievement for Excellence in Financial Reporting Program in preparing the comprehensive annual financial report (CAFR).
- (3) Assist the city in planning and preparation for and implementation of new Government Auditing Standard Board (GASB) pronouncements.
- (4) Use the audit process to evaluate strengths and weaknesses in internal auditing controls and assess areas to improve the efficiency and effectiveness of accounting and related processes. These matters shall be communicated at least annually through management letters to the city manager.
- (5) Maintain a year-round dialogue with city commissioners and management of the city and related organizations.
- (6) Be available for related work not covered under the letter of intent, such as verification of data used in official statements, verification of bond escrow assistance with special projects and consent to use the auditor's report in official statements. A fee schedule for such related work shall be provided.

Sec. 2-252. Method of selection.

- (a) The independent city auditor shall be selected pursuant to a request for qualifications procedure. The proposals shall be publicly opened in the procurement division office at the time and date specified. Late proposals shall not be accepted or considered and shall be returned to the bidder unopened. The city reserves the right to accept any proposal deemed to be in the interest of the city or to waive any informality in any proposal. The city may reject any or all proposals and readvertise.

- (b) The city's audit committee shall appoint a subcommittee to review and recommend a list of auditors to the city commission which shall appoint the independent city auditor by resolution. The city commission shall have the authority to remove the independent city auditor with or without cause.

Sec. 2-253. Compensation.

- (a) The independent city auditor shall be paid either on an hourly rate or based on the service to be rendered. The services to audit the records of the general employees' pension system, unclassified employees' and elected officials' retirement system, the parking system fund and the city redevelopment agency shall be separately priced.
- (b) If payment is to be based on an hourly rate, the proposed fee schedule for such services shall set forth the title and classification of each person anticipated to render services, the maximum hours to be worked by each person and the hourly rate of each person.

Sec. 2-254. City's Internal Auditor.

(a) Internal audit. The city manager shall designate an internal auditor, reporting directly to the city manager, who shall serve as the city's internal auditor, and, in such capacity, shall, at a minimum, perform the following functions:

- (1) Audits required by the City Code, state law, or a city contract to be performed by the internal auditor;
- (2) Parking-related audits;
- (3) Resort tax audits;
- (4) Audits of franchise waste fees; and
- (5) Any other audit requested by the city commission or city manager

(b) If, as part of any routine audit, the internal auditor identifies a matter that, in the internal auditor's professional judgment, should be reviewed by the office of the inspector general pursuant to Section 2-256 of the city code, the internal auditor shall refer such matter to the inspector general for appropriate action.

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SECTION 2. That Section 2-256 of Article IV, of Division 5 of Chapter 2 of the Code of the City of Miami Beach is hereby amended as follows:

DIVISION 5. OFFICE OF INSPECTOR GENERAL

Sec. 2-256. Office of inspector general.

- (a) *Created and established.* The City of Miami Beach Office of Inspector General is hereby created as an independent body to perform investigations, audits, reviews, and oversight of municipal matters including city contracts, programs, projects, and expenditures, in order to identify efficiencies, and to detect and prevent fraud, waste, mismanagement, misconduct, and abuse of power. For purposes of this section, the office of inspector general shall be referred to as the office. The inspector general shall head the office. The organization and administration of the office shall be sufficiently independent to assure that no interference or influence external to the office adversely affects the independence and objectivity of the inspector general.
- (b) *Minimum qualifications, appointment, and term of office.*

- (1) *Minimum qualifications.* The inspector general shall be a person who:
- a. Has at least ten years of cumulative experience in any one, or in any combination, of the following professions or fields:
 - (i) Operational and/or audit experience in the public or private sector;
 - (ii) Federal, state, or local government attorney;
 - (iii) Progressive supervisory experience in an investigative public agency similar to an inspector general's office;
 - (iv) Federal, state, or local law enforcement officer; and/or
 - (v) Federal or state court judge;
 - b. Has, at a minimum, a four-year degree from an accredited institution of higher learning;
 - c. Has demonstrated the ability to work with local, state, and federal law enforcement agencies and the judiciary;
 - d. Has managed and completed complex investigations involving allegations of fraud, waste, mismanagement, misconduct, and abuse of power;
 - e. Has not been employed by the city (in any capacity other than as the city's inspector general, or as a member of the office management personnel) during the two-year period immediately prior to appointment;
 - f. Has significant operational and/or audit experience, at least five years of which is in the public sector;
 - g. Has not been found guilty of or entered a plea of nolo contendere to any felony, or any misdemeanor involving a breach of public trust; and
 - h. Has not been subject to any finding of a violation, or any other enforcement action, by the Miami-Dade County Commission on Ethics and Public Trust, or the Florida Commission on Ethics.
- (2) *Appointment.* The inspector general shall be appointed by the ad hoc inspector general selection committee (hereinafter referred to as the selection committee). Before any appointment by the selection committee shall become effective, the appointment must be approved, at the next regularly scheduled city commission meeting after the appointment, by a majority vote of the city commission. In the event that the appointment is not approved by the city commission, the appointment shall become null and void, and the selection committee shall promptly make a new appointment, which shall likewise be submitted for approval by the city commission.

The selection committee shall be composed of seven members selected as follows:

- a. The state attorney in and for the Eleventh Judicial Circuit of Florida;
- b. The Miami-Dade County Inspector General;
- c. The Executive Director of the Miami-Dade Commission on Ethics and Public Trust;
- d. The city attorney;
- e. A member of the city's audit committee, who shall be selected by majority vote of the audit committee; and

- f. Two members with at least five years of experience in a senior management position in the fields of accounting general business, or law, each of whom shall be selected by majority vote of the city commission.

The members of the selection committee shall elect a chairperson who shall serve as chairperson until the selection committee's appointment of the inspector general is approved by the city commission. The selection committee shall select the inspector general from a list of qualified candidates submitted by the city manager's designee, who shall be the city's human resources director.

- (3) *Term.* The inspector general shall be appointed for a term of four years. In case of a vacancy in the position of inspector general, the city commission shall promptly appoint a qualified member of the office management personnel as interim inspector general, until such time as a successor inspector general can be appointed, in the manner described in subsection (b)(2) above. Any successor appointment made by the selection committee as provided in subsection (b)(2) shall be for a full four-year term.

At least 30 days prior to the expiration of each term, the city commission may, by majority vote, re-appoint the inspector general to another term. In the event that the city commission fails to re-appoint the inspector general prior to the expiration of a term, the city commission shall reconvene the selection committee to appoint an inspector general, in the manner described in subsection (b)(2). Nothing herein shall be construed to prevent the incumbent inspector general from submitting his or her name to the selection committee as a candidate to be considered for appointment.

- (4) *Staffing of selection committee.* The city manager's designee, who shall be the human resources director, shall provide staffing to the selection committee; shall advertise, as necessary, the acceptance of resumes for the position of inspector general; and shall provide the selection committee with a list of qualified candidates. The human resources director shall also be responsible for ensuring that background screening investigations are conducted on any candidate selected for interview by the selection committee. The results of the background screening investigations shall be provided to the selection committee prior to the interview of candidates.

- (c) *Contract.* The city attorney shall negotiate a contract of employment with the inspector general, except that before any contract shall become effective, the contract must be approved by majority vote of the city commission.

- (d) *Functions, authority, and powers.*

- (1) The office shall have the authority to conduct any reviews, audits, or investigations relating to any past, present, and proposed city contracts, programs, projects, and expenditures.
- (2) The office shall be authorized to conduct any reviews, audits, inspections, or investigations relating to city departments, agencies, boards, and committees.
- (3) The office shall have the power to require reports from the city manager, city departments, city agencies, boards, and committees, and city officers and employees, regarding any matter within the jurisdiction of the inspector general.
- (4) The inspector general shall, subject to the provisions in subsections (d)(4)a. and (d)(4)b. below, have the power to subpoena witnesses, administer oaths, and require the production of records regarding any matter within the jurisdiction of the office. In the case of a refusal to obey a subpoena issued to any person, the inspector general may make application to any circuit court of this state which shall have jurisdiction to order

the witness to appear before the inspector general and to produce evidence, if so ordered, or to give testimony related to the matter in question.

- a. Prior to issuing a subpoena, the inspector general shall notify the state attorney and the U.S. Attorney for the Southern District of Florida. The inspector general shall not interfere with any ongoing criminal investigation of the state attorney and/or the U.S. Attorney for the Southern District of Florida, where the state attorney and/or the U.S. Attorney has explicitly notified the inspector general, in writing, that the inspector general's investigation is interfering with an ongoing criminal investigation.
 - b. The subpoena power set forth in this subsection (d)(4) shall not extend to subpoenas to law enforcement officers in connection with investigations of complaints against them.
- (5) The inspector general shall have the power to report and/or recommend to the city commission and/or city manager whether a particular project or program is, or was, necessary and, if deemed necessary, whether the method used for implementing the project or program is, or was, efficient both financially and operationally. Any review of a proposed project or program shall be performed in such a manner as to assist the city commission and city manager in determining whether the project or program is the most feasible or efficient solution to a particular need or problem. Monitoring of an existing project or program may include reporting whether the project is on time, within budget, and in conformity with plans, specifications, and applicable law.
 - (6) The office shall have the power to analyze the need for, and the reasonableness of, proposed change orders.
 - (7) The inspector general may, on a random basis, perform audits, inspections, and reviews of all current city contracts.
 - (8) The inspector general is empowered to conduct investigations that may result in referrals to law enforcement agencies and/or criminal investigations; provided, however, as follows:
 - a. In the event that the inspector general detects corruption or fraud, the inspector general shall promptly notify all appropriate law enforcement agencies. Subsequent to notifying the appropriate law enforcement agency or agencies, the inspector general may assist each law enforcement agency in concluding the investigation.
 - b. In the event that the inspector general detects a violation of any of the ordinances within the jurisdiction of the Miami-Dade County Commission on Ethics and Public Trust (hereinafter referred to as the ethics commission), the inspector general will promptly refer the matter to the ethics commission.
 - (9) As applicable to the city's procurement of goods and services, the inspector general shall have the power to audit, investigate, monitor, inspect, and review the operations, activities, performance, and procurement process (including, but not limited to, establishment of bid specifications, bid submittals, past contract performance, and other activities) of a bidder, contractor, subcontractor, consultant, or subconsultant, or any such entity's officers, agents, employees, or lobbyists, as well as any such related activities of city staff, in order to ensure compliance with bid and contract specifications and to detect and prevent fraud, waste, mismanagement, misconduct, and abuse of power.

- (10) The inspector general shall be notified, in writing, prior to any meeting of a selection committee where any matter relating to the procurement of goods or services by the city is to be discussed. The notice required by this subsection (d)(10) shall be given to the inspector general as soon as possible after a meeting has been scheduled, but in no event later than 24 hours prior to the scheduled meeting. The inspector general may, at the inspector general's discretion, attend all city meetings relating to the procurement of goods or services as provided herein, and, in addition to the exercise of all powers conferred by this section, may pose questions and raise concerns consistent with the functions, authority, and powers of the inspector general.
 - (11) The inspector general may review, audit, or investigate any expenditure of city funds in excess of \$50,000.00.
 - (12) The inspector general may investigate any matter involving an allegation of misconduct by an employee or public officer, subject to the referral provisions in subsection (d)(8) hereof.
 - (13) The inspector general shall have the power to review and investigate any complaint filed by a member of the city commission, the city manager, or any member of the public, regarding a city contract, program, project, expenditure, or city employee or public officer.
 - (14) ~~With the exception of the internal audit functions enumerated in subsection (e), and the general obligation bond program functions enumerated in subsection (f), both of which must be performed,~~ The inspector general may exercise any of the powers set forth in this section upon the inspector general's own initiative. However, the inspector general shall utilize best efforts to perform its investigations, audits, reviews, and oversight in accordance with the following order of precedence:
 - a. Referrals from the city commission,
 - b. Requests by the city manager,
 - c. Complaints submitted by members of the public, ~~and~~
 - d. Matters initiated by the inspector general, and
 - e. Referrals from the city internal auditor
 - (15) The inspector general shall have the authority, subject to budgetary allocation by the city commission, to retain and coordinate the services of other professionals (except for legal services, which shall be provided and or retained by the office of the city attorney) as required when, in the inspector general's discretion, the inspector general concludes that such services are needed to perform the duties and functions enumerated in subsection (d) herein. Any such retention and/or procurement of services shall be coordinated through the city's procurement department.
- ~~(e) *Internal audit.* The inspector general shall serve as the city's internal auditor and, in such capacity, shall, at a minimum, perform the following functions:~~
- ~~(1) Audits required by the City Code, state law, or a city contract to be performed by the internal auditor;~~
 - ~~(2) Parking-related audits;~~
 - ~~(3) Resort tax audits;~~
 - ~~(4) Audits of franchise waste fees; and~~

~~(5)~~ Any other audit requested by the city commission or city manager.

~~(f)~~ (e) *General obligation bond program.* Consistent with the inspector general's powers under subsection (d)(1), the inspector general shall ~~may~~ review, audit, inspect, and investigate city contracts, programs, projects, procurements, and expenditures associated with the city's general obligation bond program.

~~(g)~~ (f) *Physical facilities and staff.*

(1) The city manager shall provide the office with appropriately located office space and sufficient physical facilities, together with necessary office supplies, equipment and furnishings, to enable the office to perform its functions.

(2) The inspector general shall have, subject to annual budgetary allocation by the city commission, the power to appoint, employ, and remove such employees, consultants, and/or independent contractors as deemed necessary for the efficient and effective administration of the activities of the office. All such employees shall be city employees and, accordingly, the office's personnel-related matters shall be coordinated through the city's human resources department.

~~(h)~~ (g) *Procedure for finalization of reports and recommendations which make findings as to the person or entity being reviewed or inspected.* Notwithstanding any other provision of this section, whenever the inspector general concludes a report or recommendation which contains findings as to the person or entity being reported on, or who is the subject of the recommendation, the inspector general shall provide the affected person or entity a copy of the report or recommendation, and such person or entity shall have 30 working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. The requirements of this subsection ~~(h)~~ (g) shall not apply when the inspector general, in conjunction with the state attorney and/or U.S. Attorney, determines that supplying the affected person or entity with such report will jeopardize a pending criminal investigation.

~~(i)~~ (g) *Budget.* The inspector general's budget is subject to annual approval of the city commission, in conjunction with its annual budget process. Within 60 days of appointment, the inspector general shall submit a proposed annual budget to the city commission covering the city fiscal year following the year in which the inspector general is appointed. In each subsequent city fiscal year, the inspector general shall submit a proposed budget to the city commission in accordance with the city's regular budget process. Each proposed budget shall include a reasonable estimate of operating and capital expenditures of the office. The city commission shall provide sufficient funds, as determined by the city commission, for the inspector general to carry out his or her duties in an efficient manner.

~~(j)~~ (i) *Reporting requirements.* The inspector general shall annually prepare and submit to the city commission a written report concerning the work and activities of the office including, but not limited to, detailed results of the office's investigations, audits, and reviews; the financial impact of the office's activities; and statistical information regarding the disposition of closed investigations, audits, and other reviews. In addition to the foregoing, the inspector general shall, at least quarterly, prepare and submit to the city commission a written report concerning the planning and execution of the general obligation bond program including, but not limited to, progress reports, financial analyses, and potential risks.

~~(k)~~ (j) *Removal.* The inspector general may be removed from office upon a majority vote of the city commission.

(+) (k) *Abolition of the office.* The office is created pursuant to Article IX of the City Charter and, therefore, the office may only be abolished upon approval by a majority vote of the city's voters voting in a citywide referendum.

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SECTION 3. CODIFICATION

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect 10 days after passage.

PASSED AND ADOPTED this _____ day of _____, 2022.

ATTEST:


Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(sponsored by Commissioner David Richardson)

Underlined denotes new additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *FA*

7-12-22
Date