

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

TO: Members of the City Commission  
Jimmy L. Morales, City Manager

cc: Raul J. Aguila, City Attorney  
Rafael E. Granado, City Clerk

FROM: Mayor Dan Gelber 

DATE: December 13, 2017

SUBJECT: **Creation of City of Miami Beach Office of Inspector General**

---

Pursuant to this memorandum, I have placed the above-referenced item on the December 13, 2017 City Commission meeting agenda, as a referral to the Finance and Citywide Projects Committee (the "Committee"). Upon my request, the City Manager and City Attorney have met with the Miami-Dade County ("County") Inspector General and the General Counsel to the Inspector General, for the sole purpose of gathering information to discuss what would be required to create a City of Miami Beach ("City") Office of Inspector General ("OIG"), which would be independent of the County OIG, but similar in powers and duties. The proposed City Inspector General would serve the City as an autonomous watchdog, providing ethical oversight and identifying waste and abuse.

I envision a two-step process to create a City OIG. First, I propose that the City, through the City Manager and City Attorney, contact Mayor Carlos Gimenez and the County Attorney to enter into discussions for a potential interlocal agreement between the City and the County, to be funded by the City, for the limited purpose of auditing a City department or a specified large-scale City project (as may be determined by the City Commission). This, of course, would be contingent upon County Commission approval. The City's interest in entering into this agreement would be to learn more about the role and operations of the County OIG, and to determine how a City OIG (if created) would ultimately function. The County Commission's input as to whether or not to enter into the interlocal agreement would be critical, as I do not wish to limit nor hinder the County OIG's ability to fulfill its primary responsibilities to the County.

Second, and more importantly, I intend to propose an amendment to the City Charter, for placement on the ballot in November 2018, in order to create an independent City OIG, with similar powers and duties as the County OIG. A summary of the framework of the County OIG is set forth in Section I of this memorandum.

The purpose of this initial referral to the Committee is to garner public input. However, given the great importance of this proposal, I invite all members of the City Commission to co-sponsor this discussion.

## **I. Miami-Dade County Inspector General**

The Miami-Dade County Office of Inspector General was created by the Board of County Commissioners on December 16, 1997. The County Inspector General Ordinance establishes the minimum qualifications, appointment procedure (including the composition and powers of the Ad Hoc Inspector General Selection Committee), and term of appointment, as well as the functions, authority, and powers of the OIG. See Miami-Dade County Code Section 2-1076 (attached hereto as Exhibit "A").

The County OIG has the authority to conduct investigations; require reports from County elected officials and administrators; subpoena witnesses and require the production of records; make reports and recommendations to the Board of County Commissioners regarding County projects, programs, contracts and transactions; conduct reviews, audits, investigations, or analyses of County operations and County contracts<sup>1</sup>; notify relevant law enforcement agencies of potential corruption or fraud; investigate citizen complaints; and perform any other functions or duties described in the County Inspector General Ordinance.

A two-thirds (2/3) vote of the members of the Board of County Commissioners is required to remove the County Inspector General from office, or to abolish the County OIG entirely.

Whenever the County OIG concludes a report or recommendation which contains findings as to a person or entity being reported on, or who is the subject of the recommendation, the OIG is required to provide the affected person or entity with a copy of the report or recommendation, and the affected person or entity shall have 10 working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized. Any such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. (These requirements do not apply when the OIG, in conjunction with the State Attorney, determines that supplying the affected person or entity with such report would jeopardize a pending criminal investigation.)

Finally, the Inspector General is required to submit an annual report to the County Mayor and Board of County Commissioners regarding the work and activities of the OIG including, but not limited to, statistics regarding the disposition of closed investigations, audits, and other reviews. See, e.g., 2016 Annual Report, Miami-Dade County Office of the Inspector General, attached hereto as Exhibit "B".

## **II. Creation of a City of Miami Beach Office of Inspector General**

### **A. Phase One: Interlocal Agreement with Miami-Dade County**

Because an amendment to the City Charter is necessary (as further detailed below) to grant the City OIG the same powers as the County OIG, I am proposing, as a possible first step, that the City enter into discussions with Mayor Carlos Gimenez and the County Attorney regarding a potential interlocal agreement with the County OIG for limited inspector general services. Any such agreement would be contingent on County Commission approval, including as to whether

---

<sup>1</sup> The County Inspector General Ordinance authorizes the Inspector General to, "on a random basis, perform audits, inspections and reviews of all County contracts." County Code Section 2-1076(d)(6). Subject to the exceptions in the Ordinance, "[t]he cost of random audits, inspections and reviews shall . . . be incorporated into the contract price of all contracts and shall be one quarter (¼) of one (1) percent of the contract price (hereinafter 'IG contract fee')."



the County OIG's current resources would allow it to perform these services, while maintaining its current level of service to the County. The scope of the interlocal agreement would be restricted to auditing a specific City department or a specified large-scale City project, as may be determined by the City Commission. I hereby request that the City Manager assist in identifying a City department or large-scale City project to be audited. The interlocal agreement will allow the City to immediately begin receiving the public benefits associated with an inspector general, until the City OIG is created. Given that these services will impose a cost, the City Administration and City Commission will need to identify a funding source.

#### B. Phase Two: City Charter Amendment

Second, and more importantly, I intend to sponsor, and I would like the City Commission to unanimously co-sponsor, a ballot question and corresponding City Charter amendment to create an independent City OIG. The Charter amendment will, at a minimum, define the powers and duties of the inspector general; the procedure to appoint the inspector general; the inspector general's term of office; and the procedure to remove the inspector general.

A City Charter amendment is necessary to grant the City OIG the same or similar powers and duties as the County OIG. For instance, as a legal matter, a City Charter amendment is required to confer upon the OIG the authority to subpoena witnesses and to order the production of records. The subpoena power is critical to the OIG's ability to complete thorough investigations and to identify fraud, waste, and abuse.

The question of how a public official or body may be delegated the power to subpoena witnesses or order the production of witnesses was addressed by the Third District Court of Appeal in the 1991 case of *Barry v. Garcia*. In *Barry*, two City of Miami police officers challenged the authority of the City of Miami Ad Hoc Independent Review Panel ("Panel") to issue subpoenas and to compel the attendance of witnesses. The City Resolution creating the Panel purported to grant the Panel subpoena powers, in conjunction with its responsibility to "investigat[e] and review[] community relations between police officers and the residents in the Overtown area."

The District Court recognized that, "[w]hen a municipal charter or special act grants the use of subpoena power and prescribes, if any, its manner of delegation, the specific delegation authorized is the only means available by the governing authority to the exclusion of any general grant of power or authority." *Barry v. Garcia*, 573 So. 2d 932, 936 (Fla. 3d DCA 1991). Like the Miami Beach City Charter, the Miami City Charter only delegated the authority to issue subpoenas to the City Commission. No other reference was made in the Miami City Charter to the delegation of subpoena powers to any other City board, committee, or agency (other than City Commission committees and the Civil Service Board). Accordingly, the District Court held that, "[i]f the city opts to change the manner in which subpoena power is to be exercised, including the power to delegate same to a citizen board . . . , then such change must be accomplished in accordance with the provisions of the Charter and the Municipal Home Rule Powers Act; i.e., by a referendum of the electors of the city." *Id.* at 938.

Miami Beach City Charter Section 2.03, which grants the City Commission certain investigatory powers (including the authority to require the attendance of witnesses and the production of records), is the sole expression in the City Charter relating to the delegation of subpoena powers. Accordingly, and pursuant to the ruling in *Barry v. Garcia*, the City may only grant subpoena powers to the City OIG by amending the City Charter.

### **III. Proposed Schedule**

Assuming the County Commission agrees to provide the City with limited inspector general services during the interim, and once an interlocal agreement with the County has been finalized, I intend to ask the City Commission to join me in directing the City Attorney to draft a ballot question and Charter amendment to create a City OIG.

Concurrent with the drafting of the proposed Charter amendment, a regular funding source would need to be identified, during the City's annual budget process, to staff the City OIG. The OIG would be housed within the City, and would include an inspector general, as well as supervisors and support staff who report directly to the inspector general. The City OIG may include oversight by the County OIG.

I propose to submit the subject Charter amendment to the City's voters in the Fall of 2018, on the same ballot as the special election to approve the issuance of general obligation ("G.O.") bonds. I can think of no better way to oversee the estimated \$500 million in capital projects proposed to be funded by the G.O. bonds, than to create a City OIG with the necessary powers and resources to do so.