

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 CREATING DIVISION 5, ENTITLED "OFFICE OF INSPECTOR GENERAL," TO CREATE THE CITY OF MIAMI BEACH OFFICE OF INSPECTOR GENERAL; ESTABLISH THE MINIMUM QUALIFICATIONS, APPOINTMENT, AND TERM OF OFFICE; ESTABLISH AN AD HOC INSPECTOR GENERAL SELECTION COMMITTEE; PROVIDE FOR A CONTRACT OF EMPLOYMENT; DEFINE THE FUNCTIONS, AUTHORITY, AND POWERS OF THE OFFICE; PROVIDE THAT THE INSPECTOR GENERAL SHALL SERVE AS THE CITY'S INTERNAL AUDITOR; PROVIDE FOR PHYSICAL FACILITIES AND STAFFING; ESTABLISH A PROCEDURE FOR ISSUANCE OF REPORTS AND RECOMMENDATIONS; PROVIDE FOR AN ANNUAL BUDGET; ESTABLISH REPORTING REQUIREMENTS; PROVIDE FOR REMOVAL OF THE INSPECTOR GENERAL; PROVIDE FOR THE AMENDMENT OR REPEALER OF THIS ORDINANCE; AND PROVIDE FOR ABOLITION OF THE OFFICE; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") is committed to high standards of ethics, transparency, and accountability; and

WHEREAS, Section (A)(18) of the Citizens' Bill of Rights declares that "[t]he public's confidence and trust in City of Miami Beach operations and government must meet the most demanding ethical standards and demonstrate the highest level of achievement in its adherence to ethics laws. City of Miami Beach officials and employees are agents of the people and hold their positions for the benefit of the public—as public servants, they are to observe in their official acts a high standard of conduct and to discharge faithfully the duties of their office regardless of personal considerations and interests, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern. In upholding the values of accountability and responsibility, all city officials and employees shall abide by applicable codes of ethical conduct, and be subject to all penalties provided for in such regulations"; and

WHEREAS, City Charter Section 2.03 authorizes the City Commission to "investigate the official acts and conduct of any City official, and by similar investigations may secure information upon any matter"; and

WHEREAS, on November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its

investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance; and

WHEREAS, the purpose of the Office of Inspector General is to identify efficiencies, and to detect and prevent fraud, waste, mismanagement, misconduct, and abuse of power in the City of Miami Beach; and

WHEREAS, in light of the policies stated above, the Mayor and City Commission now desire to implement the provisions of the newly created Article IX of the City Charter, entitled "Office of Inspector General," by adopting the City Code amendments set forth herein.

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

SECTION 1. Division 5, entitled "Office of Inspector General," of Article IV, entitled "Officers and Employees," of Chapter 2, entitled "Administration," of the Miami Beach City Code, is hereby created to state as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

Article IV. Officers and Employees

* * *

Division 5. Office of Inspector General

Sec. 2-276. 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 (10) 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 (2) year period immediately prior to appointment;
 - (f) has significant operational and/or audit experience, at least five (5) 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 (7) 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 (2) members with at least five (5) years of experience in a senior management position in the fields of accounting, ~~or~~ 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 (4) 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 twenty-four (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.
- (12) The Inspector General may investigate any matter involving an allegation of misconduct by an employee or public officer, subject to the referral provisions of 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: (i) referrals from the City Commission, (ii) requests by the City Manager, (iii) complaints

submitted by members of the public, and (iv) matters initiated by the Inspector General.

- (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) General Obligation Bond Program. The Inspector General shall review, audit, inspect, and investigate City contracts, programs, projects, procurements, and expenditures associated with the City's General Obligation Bond Program.
- (g) 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) 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 thirty (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) 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) *Budget.* The Inspector General's budget is subject to annual approval of the City Commission, in conjunction with its annual budget process. Within sixty (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.
- (ii) *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) *Removal.* The Inspector General may be removed from office upon ~~the affirmative vote of~~ a majority vote of the ~~members of the~~ City Commission.
- ~~(l) *Amendment or repealer.* Any amendment to this section which, whether through amendment, exemption, repeal, or otherwise, reduces the powers and duties of the Office of Inspector General, or creates less stringent standards or regulations, shall require the affirmative vote of [a majority OR five-sevenths (5/7)] of the members of the City Commission.~~
- ~~(m) *Abolition of the Office.* Notwithstanding the provisions of subsection (l), the~~ 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.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. 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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on _____, 2019.

PASSED and **ADOPTED** this _____ day of _____, 2019.

ATTEST:

Rafael E. Granado
City Clerk

Dan Gelber
Mayor

(Sponsored by the Mayor and City Commission)

Underline denotes additions

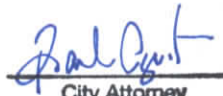
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Double underline denotes additions made at First Reading

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 1-30-19
City Attorney Date
NK