



## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

### MANAGEMENT REVIEW CASE NUMBER: 2012-0015

Sheryl G. Steckler  
Inspector General

*"Enhancing Public Trust in Government"*

#### EXECUTIVE SUMMARY

On January 6, 2012, the City of West Palm Beach's (City) Internal Auditor (IA) reported the following information to the Office of Inspector General, Palm Beach County (OIG). According to the IA, on July 5, 2011, a meeting was held between City of West Palm Beach (City) employees and/or officials concerning an ongoing joint investigation<sup>1</sup> (hereinafter referred to as the "Joint Investigation") regarding possible time and attendance theft by employees of the City's Housing and Community Development Office (HCD). It was at this meeting that a dialogue ensued as to whether or not to notify the OIG.

Based on this, the OIG initiated a Management Review, which identified the following areas of concern:

- The City failed to promptly notify the OIG concerning allegations of possible time and attendance theft, as required by Section 2-423(4), Article XII, Palm Beach County Code of Ordinances (the Ordinance).

*The OIG review found that although these allegations were discussed amongst various City employees and/or officials, the OIG was not notified until January 6, 2012 by the City's IA. The Ordinance states "...each municipal manager, or administrator, or mayor where the mayor serves as the chief executive officer shall promptly notify the inspector general of **possible** [emphasis added]...fraud, theft, bribery..."*

- The City failed to develop procedures for reporting to the OIG, which is also a requirement under Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.

*City officials acknowledged that they did not currently have any OIG reporting procedures in place. The Ordinance clearly imposes responsibility on "...each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer...to develop reporting procedures for notification to the inspector general" thus placing this responsibility on the City.*

- A City official was not aware of the requirements under Sections 112.3187 - 112.31895, Florida Statutes (the "Whistle-blowers Act").

<sup>1</sup> The City's Internal Auditor and Human Resources Department coordinated the Joint Investigation.

- § 112.3187(6), F.S. (Reporting): Florida Statutes clearly outlines that “for disclosures concerning a local government entity, including any regional, county, or municipal entity...the information must be disclosed to a chief executive officer as defined in 447.203(9) or other appropriate local official.”

*The Ordinance designates the Inspector General, Palm Beach County, as the “designated local official” for purposes of reporting Whistle-blower complaints. Although the City does not have any policies or procedures regarding Whistle-blower complaints or how those complaints should be handled, the City Attorney indicated that she considered the City’s Internal Auditor as the equivalent of the “designated local official” for reporting purposes. It is noted that the City’s Internal Auditor stated that she does not consider herself the equivalent of the Inspector General, nor has she ever been advised that she is the “designated local official” for designating Whistle-blower status.*

- Confidentiality (§ 112.3188, F.S.): Florida Statutes clearly outlines that “all information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding investigations conducted pursuant to the administrative procedure established by ordinance by a local government...is confidential...”

*The City Attorney acknowledged that she was unfamiliar with the law requiring that the identity of a Whistle-blower remain confidential.*

## RECOMMENDED CORRECTIVE ACTIONS

Based on the findings in Issues (1), (2), and (3), the OIG recommends the following corrective action:

1. The City should coordinate with the OIG to develop a reporting procedure for promptly notifying appropriate matters to the OIG, in accordance with the Ordinance.
2. The City should develop a procedure which addresses potential “Whistle-blowers,” to include to whom such reports should be filed. While the Inspector General, Palm Beach County, is designated in the Ordinance as an “appropriate local official” for Whistle-blower complaints, if the City wishes to designate an additional “appropriate local official,” it should specify that option in its policy.
3. If the City designates an “appropriate local official,” in addition to the Inspector General, Palm Beach County, it is recommended that the policy include the procedures by which their “appropriate local official” will determine whether a reporting individual qualifies for the protections provided by the Whistle-blower’s Act. Included in that policy must be measures that will be employed to protect

the confidentiality of the complainant's name and identity, as required in Sections 112.3187-112.31895, Florida Statutes.

4. Upon implementation of Recommendations #1-3, the City should ensure that all employees are informed of their rights and responsibilities, to include their right to report information directly to the OIG.

## ISSUES REVIEWED AND FINDINGS

### Issue (1):

***The City failed to promptly notify the OIG concerning allegations of possible time and attendance theft by City employees.***

### Governing Directives:

***Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.***

### Finding:

The OIG review found that although various City employees and/or officials were aware of the allegations of possible time and attendance theft, they failed to promptly notify the OIG, as required by Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.

### Statement of City Deputy Internal Auditor Joni Loehrig

Ms. Loehrig stated that on May 2, 2011, an unidentified City employee provided information to the IA office alleging time and attendance theft by HCD employees, to which City Senior Employee Relations Specialist Anthony Carrabis inquired as to the identity of the reporting employee. Ms. Loehrig stated that she refused to provide Mr. Carrabis the employee's name. Ms. Loehrig explained that soon after, IA and HR initiated the Joint Investigation which identified HCD employees who claimed hours worked when they (the employees) were not actually working.

Ms. Loehrig stated that on July 5, 2011, the status of the Joint Investigation was discussed between herself and two other City employees, Mr. Carrabis and Ethics Officer Norm Ostrau. Ms. Loehrig related that she advised Mr. Carrabis and Mr. Ostrau that the matter should be presented to the OIG, and, according to Ms. Loehrig, Mr. Carrabis concurred. Ms. Loehrig stated that following her conversation with Mr. Carrabis and Mr. Ostrau, she and Mr. Ostrau met with City Attorney Claudia McKenna to discuss reporting this matter to the OIG. According to Ms. Loehrig, there was a discussion between Mr. Ostrau, who believed that the matter should be reported to the OIG, and Ms. McKenna, who disagreed, claiming that the City had appropriate resources in-house to investigate the matter.

### Statement of City Ethics Officer Norm Ostrau

Mr. Ostrau stated that he recalled meeting (sometime in the Summer of 2011) with City Internal Auditor Imogene Isaacs and Ms. Loehrig regarding the allegations of time and attendance theft identified in the Joint Investigation. According to Mr. Ostrau,

subsequent to that meeting, there was a meeting (sometime in the Summer of 2011) between himself, Ms. McKenna, City Administrator Ed Mitchell, and City HR Director Patrick Cooney, where there was a general discussion about having the OIG involved in the Joint Investigation. Mr. Ostrau stated that he believed the information reported by the employee could be considered a potential Whistle-blower and that it should be reported to the OIG purely because of the Whistle-blower aspect. According to Mr. Ostrau's recollections, although he made this point known to the group, no one specifically stated that this matter should not be reported to the OIG. Mr. Ostrau stated that Ms. McKenna did not render a decision on this matter and believed that it was left to Mr. Mitchell to make a decision.

#### **Statement of City Senior Employee Relations Specialist Anthony Carrabis**

Mr. Carrabis stated that the Joint Investigation involved allegations of time and attendance theft concerning HCD employees. According to Mr. Carrabis, City Administrator Ed Mitchell directed him to be the lead on the Joint Investigation since IA did not work for the City and should not be investigating an employee. Mr. Carrabis stated that he recalled a discussion, possibly by a member of the IA office, which involved reporting the Joint Investigation to the OIG's office; however, Mr. Carrabis stated that he was never involved in any formal meeting regarding the matter. Mr. Carrabis stated that he did not have any conversations with Ms. McKenna involving reporting the matter to the OIG and that he did not know the identity of the original complainant.

#### **Statement of City Human Resources Director Patrick Cooney**

Mr. Cooney stated that he was present during a meeting (date unknown), in which Ms. Isaacs stated that she was going to "take this matter further" and he assumed she meant that it would be reported to the OIG. Mr. Cooney stated that he did not recall any meetings in which Ms. McKenna was present where notifying the OIG was discussed. Mr. Cooney advised that they were looking into this investigation as a possible theft of time. He also did not remember any discussion with Mr. Ostrau regarding taking the HCD investigation to the OIG but that he (Mr. Ostrau) might have said it.

#### **Statement of City Attorney Claudia McKenna**

Ms. McKenna stated that she did not remember a meeting in the Summer of 2011 in which the referral of the Joint Investigation to the OIG was discussed. It was Ms. McKenna's opinion that the elements did not exist for notifying the OIG concerning the Joint Investigation as she characterized it as a personnel matter. Ms. McKenna added that during a "kick off" meeting with the OIG, it was her understanding that the OIG would not get involved in personnel matters. Ms. McKenna stated that she did not recall directing anyone to not take the matter to the OIG.

Ms. McKenna indicated that Mr. Ostrau met with her individually (sometime in the Summer of 2011) and spoke to her about possible Whistle-blower protection for the Complainant. Ms. McKenna added that she did not remember the full substance of the meeting but that Mr. Ostrau had a question about whether the Complainant in the Joint

Investigation was a Whistle-blower and that a review of the complaint be conducted outside the City.

Ms. McKenna characterized her conversation with Mr. Ostrau as casual and not a formal discussion about the complainant's status as a Whistle-blower. Ms. McKenna stated that she did not recall Mr. Ostrau advising that the Joint Investigation should be reported to the OIG to handle the Whistle-blower aspect and added that it would not have been her role to do so. Ms. McKenna stated that the ultimate decision to notify the OIG would be the Mayor's or her designee, the City Administrator; however, Ms. McKenna failed to provide a response when asked about whether she informed either Ms. Muoio or Mr. Mitchell about her conversation with Mr. Ostrau.

#### **Statement of City Administrator Ed Mitchell**

Mr. Mitchell related that the City's IA and HR offices worked together on the Joint Investigation. According to Mr. Mitchell, at the onset, Ms. Isaacs wanted to bring the matter to the State Attorney's Office. Mr. Mitchell expressed that he wanted to investigate matters internally prior to deciding if it was necessary to forward it elsewhere. Mr. Mitchell stated that he did not recall any discussion with Ms. McKenna regarding notifying the OIG concerning the Joint Investigation.

#### **Statement of City Mayor Jeri Muoio**

Ms. Muoio stated that she was not present at any meeting where a discussion concerning the Joint Investigation into the alleged theft of time by HCD employees should be presented to the OIG. Ms. Muoio explained that Ms. Isaacs completed an internal audit of the alleged theft of time, while the City initiated an in-depth internal investigation. According to Ms. Muoio, Ms. Isaacs wanted to refer the case to the State Attorney's Office; however, the City wanted to investigate the matter itself before "it went in any direction." Ms. Muoio indicated that she was unaware that Mr. Ostrau advised Ms. McKenna that this matter should have been referred to the OIG.

#### **Issue (2):**

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***The City failed to develop and implement procedures to comply with its obligations under Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.***

#### **Governing Directives:**

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***Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.***

#### **Finding:**

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Pursuant to Section 2-423(4), Article XII, Palm Beach County Code of Ordinances, the "county administrator and each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall coordinate with the inspector general to develop reporting procedures for notification to the inspector general." The OIG review found that the City has never developed procedures for notifying and/or reporting to the OIG, nor has the City attempted to coordinate with the OIG for assistance in developing their reporting procedures.

**Statement of City Administrator Ed Mitchell**

Mr. Mitchell stated that he was not aware of any City policy regarding reporting to the OIG; however, when presented with the Palm Beach County Code of Ordinances, Mr. Mitchell indicated that Mayor Muoio, as the Chief Executive Officer of the organization, would make that type of decision.

**Statement of City Mayor Jerry Muoio**

Ms. Muoio stated that she was not aware of any City policy regarding reporting to the OIG, but opined that “perhaps they should have a policy.” Ms. Muoio further stated that Ms. McKenna would be responsible for advising her on OIG matters.

**Statement of City Attorney Claudia McKenna**

Ms. McKenna stated that they (the City) would do the best job they could to coordinate and notify the OIG of matters that fall within the ordinance, with input from the Mayor, as well as others who would have an interest in a particular matter.

**Issue (3):**

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***A City official was not aware of the requirements under Sections 112.3187 - 112.31895, Florida Statutes (the “Whistle-blowers Act”).***

**Governing Directives:**

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***§ 112.3187 - § 112.31895, Florida Statutes.***

**Finding:**

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The OIG review found that a City official was not aware of the requirements under Sections 112.3187 - 112.31895, Florida Statutes, also known as “the Whistle-blower’s Act.” The Whistle-blower’s Act serves to “encourage the elimination of public corruption by protecting public employees who ‘blow the whistle.’”<sup>2</sup>

In the case of a county or municipality, the information must be disclosed to either the chief executive officer or “other appropriate local official.” The County’s Inspector General Ordinance designates the Inspector General as “an appropriate local official” of the county and any municipality for purposes of this Act. The Act does allow for a municipality to designate its own “appropriate local official,” if it so chooses, who must act within the confines of the Whistle-blower’s Act; however, the City has never designated any person as an “appropriate local official” to receive and evaluate such reports.

**Statement of City Attorney Claudia McKenna**

When asked about the City’s decision to not refer a specific, potential “Whistle-blower” situation to the OIG, Ms. McKenna opined that doing so was not required as the City was permitted to handle the matter internally. Ms. McKenna further opined that a City employee could be afforded Whistle-blower protection; however, such protection was not granted, it was acquired through the act of reporting a matter. Ms. McKenna acknowledged her unfamiliarity with the requirement of the Whistle-blower’s Act that

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<sup>2</sup> Reference Martin County v. Willie Edenfield, Sr., 609 So. 2d 27 (Fla. 1992)

the identity of Whistle-blowers be maintained in confidentiality by the designated local official to whom such reports are submitted.

Ms. McKenna further stated that she considered the City's IA as the City's equivalent of the Inspector General for Whistle-blower purposes and that the IA is an "appropriate local official."

*It is noted that both Ms. Isaacs and Ms. Loehrig advised the OIG that they are not the equivalent of the Inspector General for Whistle-blower purposes and have never been informed that they were "an appropriate local official" for such purposes.*

## ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, City Mayor Jeri Muoio was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days. Ms. Muoio's response (*attached in its entirety*) contained the following pertinent information:

- **City Comment:** *The City notes as a preliminary matter that the Office of Inspector General (OIG) has no jurisdiction to conduct this management review. The draft findings plainly state that the call to the City about time and attendance occurred on May 2, 2011. On that date, the OIG ordinance had not even been submitted to the County Commission for approval. The OIG ordinance became effective June, 1, 2011, almost a month after the call to the City occurred.*

**OIG Response:** Although the time and attendance matter was initially brought to the Internal Auditor (IA) on May 2, 2011, the OIG review referenced a July 5, 2011 meeting, at which time City officials and/or employees discussed bringing this matter to the OIG. The IA subsequently brought this matter to the OIG on January 6, 2012.

It is important to note that although the OIG's jurisdiction over municipalities began on June 1, 2011, OIG jurisdiction encompasses matters occurring before that date.

### **Issue (1):**

- **City Comment:** *The City respectfully believes that the "theft" for which mandatory notice to the OIG is required is the "theft" which constitutes a violation of law under the Florida Statutes. It is the City's experience that the State Attorney will not prosecute a "theft" of time by a city employee as a crime. The City believes that the alleged "theft" of time this finding addresses would be conduct which "may" fall within the inspector general's jurisdiction. That would mean that the City had no obligation whatsoever to notify the OIG unless it decided to exercise its discretion to do so.*

**OIG Response:** The Ordinance clearly states that “...each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall promptly notify the inspector general of **possible [emphasis added]**...theft...” The Ordinance contains no exclusions for what the State Attorney’s Office may or may not subsequently do or the relevancy of the City’s past experiences with the State Attorney’s Office.

**Issue (2):**

- **City Comment:** *The finding indicates that the governing directive is Section 2-423(4), Article XII, Palm Beach County Code of Ordinances...The section does not require a written policy. It requires reporting procedures for notification to the inspector general.*

**OIG Response:** The OIG review only states that the City failed to develop and implement procedures to comply with its obligations under the Ordinance. It does not address an obligation on the part of the City to create a *written* procedure.

- **City Comment:** *On June 23, 2011, several City representatives...attended the OIG “kick off” meeting. The City understood the purpose of the meeting was to understand the expectations of the OIG and to discuss how the municipalities would interact with the OIG. At that meeting, the City was requested to identify a liaison from the City who would be the primary contact with the OIG...*

*The City assumed that notification would occur by the liaison contacting an appropriate individual at the OIG. The OIG ordinance is the written directive on when mandatory notification is required and when discretionary notifications may occur. The City has fulfilled its obligation under the OIG ordinance to coordinate with the inspector general regarding reporting procedures for notification to the inspector general.*

**OIG Response:** During the OIG’s review, the Mayor and the City Administrator stated that they were not aware of any City policy regarding reporting matters to the OIG. The City’s response to the OIG review now indicates that the Ordinance and the City’s designated “liaison” to the OIG satisfies the Ordinance’s requirement to develop an OIG reporting procedure. The Ordinance in and of itself is not a City-developed reporting procedure.

It is further noted that at no time prior to a copy of the IA report being forwarded to the OIG, did the City’s “liaison” notify the OIG regarding the allegations of time and attendance theft.



**Issue (3):**

- **City Comment:** *This finding does not indicate the source of the OIG's authority to investigate whether a city official is aware of the requirements of the Florida Whistle-blower's Act.*

**OIG Response:** An OIG Management Review is not an investigation, but a review of a process or procedure. The examination of the City's understanding of Florida's Whistle-blower requirements arose from statements made by a City official to the OIG and as such, needed to be addressed.

- **City Comment:** *The City's reading of the OIG ordinance indicates that the OIG ordinance merely identifies the inspector general as an "appropriate local official" to whom information may be disclosed.*

*Significantly, section 112.3178(6), entitled "To Whom Information Disclosed" provides as follows:*

*However, for disclosures concerning a local governmental entity, including any...municipal entity,...the information must be disclosed to a chief executive officer as defined in s.447.2-3(9) or other appropriate local official.*

*The chief executive officer of the City is the mayor...Under the City's code of ordinances, the internal auditor is an appropriate local official to whom the time and attendance allegations could be reported.*

**OIG Response:** The Mayor advised the OIG that she was not aware that the City's Ethics Officer advised the City Attorney that the matter should've been reported to the OIG for Whistle-blower consideration. While the Internal Auditor may be an appropriate local official for reporting allegations of time and attendance theft, the OIG review relates specifically to the issue surrounding Whistle-blower reporting requirements.

Furthermore, as the OIG review indicates, the OIG is not the "exclusive official" for Whistle-blower purposes as the Act allows for a municipality to designate its own "appropriate local official," if it so chooses. If the City chooses to designate its own, it must act within the confines of the Whistle-blower's Act, to include confidentiality.

***This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.***



**Jeri Muoio, Ph.D.**

**Mayor**

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*"The Capital City of the Palm Beaches"*

April 25, 2012

Donald Balberchak  
Director of Investigations  
Office of Inspector General PBC  
PO Box 16568  
West Palm Beach, FL 33416

Dear Mr. Balberchak,

Please consider this the City's written response to the draft findings of the Management Review you provided to the City on April 17, 2012. The City notes as a preliminary matter that the Office of Inspector General (OIG) has no jurisdiction to conduct this management review. The draft findings plainly state that the call to the City about time and attendance allegations occurred on May 2, 2011. On that date, the OIG ordinance had not even been submitted to the County Commission for approval. The OIG ordinance became effective June 1, 2011, almost a month after the call to the City occurred.

Because it is apparent that the OIG spent substantial time and resources on this management review, however, the City, as a professional courtesy, will respond to the draft findings. The City's response is as follows:

Issue (1):

*The City failed to promptly notify the OIG concerning allegations of possible time and attendance theft by City employees.*

The finding indicates the governing directive is Section 2-423(4), Article XII, Palm Beach County Code of Ordinances. That section states as follows:

(4) Where the inspector general suspects a possible violation of any state, federal, or local law, he or she shall notify the appropriate law enforcement agencies. The county administrator and each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall promptly notify the inspector general of possible mismanagement of a contract (misuse or loss exceeding five thousand (\$5,000.00) in public funds), fraud, theft, bribery, or other violation of law which appears to fall within the jurisdiction of the inspector general, and may notify the inspector general of any other conduct which may fall within the inspector general's jurisdiction. The county administrator and each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall coordinate with the inspector general to develop reporting procedures for notification to the inspector general.

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This section of the OIG ordinance contains two notification requirements for municipalities. One is mandatory, i.e. a municipality "shall" notify the OIG of mismanagement of a contract with a loss exceeding \$5,000 in public funds, fraud, theft, bribery or other violation of law. The other is discretionary, i.e. a municipality "may" notify the OIG of any other conduct which may fall within the OIG's jurisdiction.

The City respectfully believes that the "theft" for which mandatory notice to the OIG is required is the "theft" which constitutes a violation of law under the Florida Statutes. It is the City's experience that the State Attorney typically will not prosecute a "theft" of time by a city employee as a crime. The City believes that the alleged "theft" of time this finding addresses would be conduct which "may" fall within the inspector general's jurisdiction. That would mean that the City had no obligation whatsoever to notify the OIG unless it decided to exercise its discretion to do so.

It may be helpful to the OIG to know what the official records of the City indicate as to this matter. The internal auditor's office had the matter from May 2, 2011 until June 22, 2011, during which it conducted an investigation based on contact the office received on May 2, 2011. On June 22, 2011, the internal auditor's office contacted the human resources department and advised the department that their review of timekeeping, payroll and attendance records for all of the employees of the Housing & Community Development department (HCD) showed that such records for three employees were not consistent with City policies governing time keeping practices, payroll reporting and ethics. At the time the internal auditor's office contacted human resources, the review was based solely on electronic data.

From the time of the June 22, 2011 contact by the internal auditor's office, the human resources department and City administration treated the issue as a personnel matter involving three employees and the possibility of violating timekeeping policies. The internal audit staff assisted the human resources department staff by providing the timekeeping, payroll and attendance records it had gathered during its investigation. On August 11, 2011, a preliminary report of findings was issued to the three employees. At this stage of the City's review, the information regarding the possible policy violations was still based solely on electronic data and no interviews had been conducted. The three employees were given the opportunity to respond to the findings and to provide any information, including records that would address the findings.

Between September 30, and October 5, 2011, a Report of Findings was issued as to each of the three employees. Because the employees provided substantial information regarding their time and attendance for the relevant period, what remained of the initial preliminary findings resulted in the following discipline: one employee received a 24 hour suspension; one employee received a written reprimand; one employee received a verbal reprimand.

The employee who received a verbal reprimand filed an EEOC charge alleging race and age discrimination, together with retaliation. The City has filed a detailed response (1200+ pages) describing the extent and scope of the review and the justification for the discipline. The response is a matter of

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public record and is available to the OIG if it is interested in the work performed by the City in connection with this personnel matter.

Issue (2):

*The City failed to develop and implement procedures to comply with its obligations under Section 2-423(4), Article XII, Palm Beach County Code of Ordinances.*

The finding indicates that the governing directive is Section 2-423(4), Article XII, Palm Beach County Code of Ordinances. The full text of this section is stated in Issue (1) above. The section does not require a written policy. It requires reporting procedures for notification to the inspector general.

On June 23, 2011, several City representatives, including Ed Mitchell, City Administrator, Dorritt Miller, Deputy City Administrator, Claudia McKenna, City Attorney, Imogene Isaacs, Internal Auditor, and Norm Ostrau, Ethics Officer, attended the OIG “kick off” meeting. The City understood the purpose of the meeting was to understand the expectations of the OIG and to discuss how the municipalities would interact with the OIG. At that meeting, the City was requested to identify a liaison from the City who would be the primary contact with the OIG. The OIG introduced the organization personnel responsible for the various activities of the OIG.

The City assumed that notification would occur by the liaison contacting an appropriate individual at the OIG. The OIG ordinance is the written directive on when mandatory notification is required and when discretionary notifications may occur. The City has fulfilled its obligation under the OIG ordinance to coordinate with the inspector general regarding reporting procedures for notification to the inspector general.

Issue (3):

*A City official was not aware of the requirements under Sections 112.3187 – 112.31895, Florida Statutes (the “Whistle-blowers Act”).*

This finding does not indicate the source of the OIG’s authority to investigate whether a city official is aware of the requirements of the Florida Whistle-blower’s Act. The City’s reading of the OIG ordinance indicates that the OIG ordinance merely identifies the inspector general as an “appropriate local official” to whom information may be disclosed.

Significantly, section 112.3187(6), entitled “To Whom Information Disclosed” provides as follows:

However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s.447.203(9) or other appropriate local official.

The chief executive officer of the City is the mayor. In addition, section 2-398 of the City Code provides that the internal auditor may receive requests for audits from any person or entity. The section states in pertinent part:

Such audits may include operational, compliance, performance, management, investigative, and other audits which are intended to independently determine whether:

- (1) Activities and programs being implemented have been authorized by the city commission.
- (2) Activities and programs are being conducted in a manner that will effectively accomplish the goals and objectives adopted by the city commission.
- (3) Activities or programs serve the intended purpose in an efficient and effective manner.
- (4) Activities and programs are operated in compliance with applicable laws, policies and procedures.
- (5) Revenues are being properly collected, deposited and accounted for.
- (6) Resources, including funds, property and personnel, are adequately safeguarded, controlled, and used in a faithful, effective, and efficient manner.
- (7) Financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities, that is necessary to establish a proper basis for evaluating programs and activities.
- (8) There are indicators of fraud, abuse, or illegal acts.
- (9) There are adequate operating and administrative procedures and practices, systems, or accounting internal control systems and internal management controls which have been established by management.
- (10) There has been adequate fiscal evaluation of all large purchases of real property by the city or sale of city property.

Under the City's code of ordinances, the internal auditor is an appropriate local official to whom the time and attendance allegations could be reported. As section 2-398 indicates, the internal auditor's investigatory authority is extremely broad and includes the same areas of concern as the OIG ordinance. Significantly, the OIG ordinance does not make the inspector general the exclusive official to whom information may be disclosed. The person who called the internal auditor on May 2, 2011 had the

absolute right to contact the internal auditor rather than the inspector general. Because of the nature of the information disclosed, the internal auditor had no mandatory obligation to notify the inspector general.

The finding does not indicate the identity of a City official who was not aware of the requirements under Sections 112.3187 – 112.31895 or what requirements were being referred to. Because the only witness statement included is the statement of Claudia McKenna, City Attorney, the City assumes this finding may be directed to Ms. McKenna. Although Ms. McKenna does not have a copy of her recorded witness interview, her best recollection of the information she provided to the OIG can be summarized as follows:

- There was no “decision” by the City to not refer a specific, potential “Whistle-blower” situation to the OIG;
- The City has no information that the person who called the internal auditor in May, 2011 was seeking whistle-blower status;
- The City has no information that the person who contacted the internal auditor has been retaliated against in violation of the Whistle-blower statute;
- Ms. McKenna has no authority to give direction to the internal auditor; the internal auditor answers to the City Commission;
- Ms. McKenna has no authority to give direction to the ethics officer; the ethics officer is a contract consultant of the City Commission;
- At all material times, the City understood it was dealing with a personnel matter which did not require notification to the OIG;
- At all material times, the City understood the OIG did not want to be involved in municipal personnel matters;
- In response to a lengthy statement/question by the OIG general counsel regarding the whistle-blower act, Ms. McKenna stated she would need to see the exact language of the whistle-blower statute before she could agree with the counsel’s statement/question;
- The OIG ordinance does not give the inspector general the power to “grant” whistle-blower status; a person acquires whistle-blower status because they meet the disclosure requirements of the whistle-blower statute; the inspector general is someone to whom a whistle-blower can disclose information.

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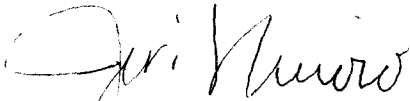
In addition to the summary of Ms. McKenna's statements, it may be helpful for the OIG to know that Ms. McKenna has been employed by the City for over fifteen years. In that time, the City has never had to defend a claim of violating the confidentiality requirements of the whistle-blower statute. It should be noted that persons who are allowed under the statute to have knowledge of the identity of a whistle-blower are the staffs of an agency inspector general, internal auditor, local chief executive officer or other appropriate local official's staff.

#### Conclusion

The City, through the Mayor, its elected officials, the City Attorney, and other City employees, has repeatedly stated publicly that it supports the inspector general program. The City's expectation, however, is that the inspector general will engage in productive, meaningful review of City activities. The City is disappointed that such extensive City and OIG resources were expended on a matter for which: 1) the OIG had no jurisdiction; 2) the efforts resulted in no positive assistance to the City.

We would appreciate the opportunity to schedule a meeting with the inspector general, key OIG staff, the City's key administrative staff and the City Attorney, to explore the ways in which we can improve future outcomes.

Sincerely,



Jeri Muoio  
Mayor

C: Ed Mitchell, City Administrator  
Dorritt Miller, Deputy City Administrator  
Claudia McKenna, City Attorney