

NB 9. REFERRAL TO THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE TO DISCUSS POTENTIALLY ENACTING A RED FLAG ORDINANCE REQUIRING THE OFFICE OF THE INSPECTOR GENERAL TO REVIEW CITY COMMISSION AGENDAS AND MAKE RECOMMENDATIONS CONCERNING ALL AGENDA ITEMS THAT WILL LIKELY RESULT IN AN EXPENDITURE GREATER THAN \$100,000.00.

Applicable Area:



Joseph M. Centorino, Inspector General

TO: Finance and Economic Resiliency Committee Members
FROM: Joseph Centorino, Inspector General
DATE: October 8, 2024
RE: OIG Comments on Proposed Red Flag Ordinance C4J
OIG No. 24-23

This item involves a proposal of Vice-Mayor Alex Fernandez that was referred to the Finance and Economic Resiliency Committee ((FERC) that would enact a Red Flag Ordinance requiring the Office of the Inspector General to review City Commission agendas and make recommendation concerning all agenda items that would likely result in an expenditure greater than \$100,000.

The OIG values the opportunity to express its views on issues of importance in the City falling within its mandate to ferret out waste, fraud, abuse and inefficiency. It does so regularly in audits, investigations, reviews and inspections carried out by OIG staff, resulting in written reports with findings on matters to which it has dedicated significant research. Final reports generated in this fashion are usually forwarded directly to the City Commission with affected members of the City Administration copied. As public records, they are also accessible on the OIG website and are made available to the public as well as the media.

The OIG follows the procedural requirements set out in the City's enabling ordinance for the OIG, which requires that reports containing findings affecting any party be provided in draft form to such parties who may provide written responses to the reports within 30 working days. Such responses are attached to or incorporated within the reports before they are finalized and made public. The OIG also follows the Independence Standard for Offices of Inspector General set out in the "Principles and Standards for Offices of Inspectors General," established by the Association of Inspectors General. Key provisions of these guidelines are intended to ensure that an OIG maintain its independence as an oversight agency that is not under the direct control or influence of the governing body of an agency or its administration.

The OIG's independence requires as a corollary to its function that it maintain a separation between its oversight work and managerial decisions of the City Administration. While it may comment as it deems appropriate on issues under consideration, as well as specific proposals or decisions that may address such issues, it must do so in a way that does not compromise its independence. Any given policy, program, contract, or expenditure may at some point fall within its purview and be subject to an OIG analysis and report. However, the OIG maintains no administrative decision-making or policy-making authority, and it is not suitable for an OIG to

critically review any administration decision or Commission policy proposal in which it played an authoritative role.

Additionally, the OIG must maintain strict confidentiality on information pertaining to certain investigative and/or audit matters for it to properly perform its functions. On such matters, no comment may be made to anyone not authorized to receive the confidential information, which may preclude even an acknowledgement of the existence of any given investigation or audit to a public official.

With these parameters in mind, the OIG met on more than one occasion with the Vice-Mayor, who proposed the Red Flag Ordinance, as well as with the City Attorney, to work on the wording of an ordinance that would fulfill the beneficial intention of the original proposal to maximize the value that the OIG may add to the City Commission and Administration consideration of matters within OIG authority, but also maintain its independence and not stretch its limited resources beyond what is available to it.

The attached amendment to the OIG's enabling ordinance provides four separate means of accomplishing the stated intent of the original proposed ordinance for the OIG, within appropriate procedural guidelines, to take the following actions:

- (1) Notify members of the City Commission and/or City Administration regarding the violation of any city policy, procedure, ordinance or law.
- (2) Notify members of the City Commission and/or City Administration regarding agenda items that may pose a significant negative impact involving waste, fraud, abuse or inefficiency.
- (3) Respond to an inquiry made by a member of the City Commission or any other City official.
- (4) Assist the City Commission and City Manager in carrying out their respective duties under the City Charter.

It should be noted that the OIG has taken some of these actions in the past without the benefit of these more specific guidelines. The adoption of these provisions will provide the basis for the OIG to expand its mission within these stated guidelines in a way that will further promote the City's commitment to high standards of transparency, accountability, and integrity, as well as protect the OIG's independence under the City Charter.

Red Flag Amendments to OIG Enabling Ordinance Sec. 256(d)

Section 256(d) *Functions, Authority and Powers*, of the Miami-Beach Code of Ordinances is amended by adding the following subsections:

256(d)(16) The Inspector General shall notify members of the City Commission and/or City Administration whenever the Inspector General has concluded, after consultation with the City Attorney, that an action expected to be taken by the City Commission, or by any official or employee of the city, would violate any city policy, procedure, ordinance or other applicable law unless such notice would interfere with an ongoing criminal investigation or ongoing litigation matter or adversarial administrative proceeding.

256(d)(17) The Inspector General shall notify members of the City Commission and/or City Administration whenever the Inspector General has conclusively determined that any item appearing on a meeting agenda of the City Commission or any of its committees will have a significant negative impact involving waste, fraud, abuse, or inefficiency in connection with any city program, project, contract, or expenditure, and the notice could serve to avoid or diminish such impact. The notice may be made orally or in writing in such form and detail as the Inspector General shall determine will best serve the interests of the City.

256(d)(18) The Inspector General shall respond, publicly or privately, to any inquiry made by any member of the City Commission or any other city official regarding any city matter whenever, in the judgment of the Inspector General, such response would serve to support or promote integrity and efficiency in city operations without interfering with an ongoing investigation, audit, inspection, review or any matter requiring confidentiality.

256(d)(19) The Inspector General shall exercise the functions, authority, and powers provided for in this section in such a manner that will assist the City Commission and City Manager in protecting the public trust while carrying out their respective duties under the City Charter, and maintain the independence of the Office of the Inspector General pursuant to the City Charter and the Independence Standard for Offices of Inspector General established by the Association of Inspectors General.