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Members of New Orleans City Council
1300 Perdido Street
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Dear Councilmembers:

The Bureau of Governmental Research appreciates the opportunity to comment on the proposed ordinance to establish the Office of Inspector General (OIG) in the City of New Orleans. We applaud the City Council for taking on the difficult task of establishing an effective, impartial investigatory office.

As you are aware, an office of inspector general can provide a strong force for honest, efficient and accountable government -- or a mere illusion of oversight. Its effectiveness depends on a number of factors, including the character and capabilities of the office holder, the structure of the office, and the powers and resources with which it is provided.

We are offering comments and suggestions in three major areas covered by the ordinance introduced on September 21: mandate and powers, the selection process (including qualifications), and funding sources. We are also including comments on a number of miscellaneous items.

Expand the Mandate and Powers

In order to function properly, the OIG must have a clear mandate and the necessary powers to implement it. The following changes would define the mandate more clearly and give the OIG essential powers.

Entities, Persons and Transactions Covered. The ordinance is unclear and, in some respects, too limited in scope. It should clearly state that the OIG's authority to audit, evaluate, and investigate extends to all city departments and agencies, to attached and unattached boards and commissions, enterprise funds, trust funds, public benefit corporations, and all other entities through which the city conducts business. It should also extend to any entity where a majority of the governing members are city elected officials and/or appointed by city elected officials. (We refer to the city government and other entities described in this

paragraph as “Related Entities”.) This will require changes throughout the ordinance.

The ordinance should clearly indicate that the OIG’s authority to audit, inspect, evaluate, and investigate matters within its purview extends to elected and appointed officials, as well as to employees and agents, of the Related Entities. This change will require new language throughout the ordinance.

Section 10(a) of the current draft indicates that the OIG has the power to “audit, evaluate, investigate and inspect the activities, records and individuals with contracts, procurements, grants, agreements and other programmatic and financial arrangements undertaken by the City....” We recommend three changes:

- The word “associated” should be added before the phrase “with contracts” to make clear that the powers are not limited to the contract signatory.
- The ordinance should clearly state that the OIG’s authority extends beyond prime contracts and contractors to subcontracts and subcontractors.
- The OIG’s authority should extend to review of contracts and arrangements of all Related Entities, not just those of the City.

The language of Section 11(b) is unclear. At a minimum, the section should be amended by deleting the phrase “in official and.”

It has been suggested that the OIG’s investigations should be restricted to future events. That suggestion, which would have the effect of providing amnesty for prior wrongdoing, should be firmly rejected.

Critical Powers Missing. To function effectively, the OIG must be able to require entities and individuals to produce documents and information and to respond to questioning. The powers should be expanded to include the power of subpoena for persons and documents in regard to any matter within the jurisdiction of the Inspector General. The Inspector General should have the power to impose fines and to institute legal proceedings if a party does not respond appropriately to a subpoena within a reasonable time.

Professionalize the Appointment Process

Under the proposed ordinance, the Ethics Review Board would select and appoint the Inspector General. If the Board fails to act within 30 days from the date the ordinance is passed, City Council becomes the appointing authority.

While there is an advantage to appointment by a group that is not a part of city government, the proposal presents several problems. Not the least of these is the fact that the Ethics Review Board has not been appointed and is highly unlikely to be able to act within the appointed time frame. The likely result is that the search will be conducted by, and the Inspector General selected by the City Council – one of the bodies subject to the Inspector General’s oversight.

BGR recommends that the ordinance establish a selection committee consisting of high-ranking individuals in law enforcement and ethics. Possible committee members would include the U.S. attorney, the State's Legislative Auditor, the head of the City's Ethics Review Board, and the President of the Association of Inspector Generals.¹ The selection committee would recommend its candidate of choice to the Ethics Review Board or City Council for appointment. The Board or Council would have the right to reject the nominee by a two-thirds vote, after a public hearing. If the Board or Council failed to approve the selection, the selection committee would submit another nominee for consideration.

Clarify Qualifications of Inspector General

The qualifications required for the position of Inspector General are unclear. The first sentence of Section 3(e) appears to require a demonstrated ability in financial analysis, management analysis, law, accounting, auditing, public administration, or other related fields. The next sentence appears to require experience in conducting audits and investigations, foreclosing some of the backgrounds permitted in the first sentence. Section 3(f), which sets forth minimum requirements, also appears to foreclose some of the backgrounds permitted under (e).

Amend the Funding Sources

The ordinance calls for funding the OIG's office from a 0.25% fee on contracts of \$10,000 or more. It also allows the OIG to receive contributions, grants and revenue from other local, state or federal government sources.

The dedicated fee is designed to enhance the independence of the office by providing it with a source of funding independent of the general fund and the city's appropriation process. While the goal is admirable, there are some offsetting negative considerations:

First and foremost, it creates a conflict of interest by making the OIG's funding dependent on contracts over which the office has oversight. This may provide an inducement to overlook problems in an area that is rife with problems.

Second, the amount of revenue generated by the fee would fluctuate, making it difficult to plan work and hire qualified personnel.

BGR suggests eliminating the fee and replacing it with a clear commitment to appropriate a percentage of the General Fund annually. An annual appropriation of 0.1% of the General Fund revenue would provide the OIG with approximately \$475,000 a year.² Alternatively, to ensure a stable flow of funds, the Council could seek voter approval to rededicate a portion of an existing millage, such as the millage committed to economic development.

¹ The concept is similar to that used in Miami-Dade County. The Miami-Dade County ordinance calls for a five-person selection committee that includes four law enforcement officials familiar with Miami-Dade County and the chair of Miami-Dade's version of an Ethic Review Board:

² BGR calculation based on the 2005 budget.

BGR agrees that other sources of funding should supplement the General Fund allocation. One possible source would be reimbursement by other Related Entities for expenses for audit or investigations of those entities. Contributions or grants from private entities should be clearly prohibited.

Miscellaneous Matters

Abolition and Removal from Office. Section 5(a) specifies the grounds for removal from office. We note that it may also be necessary to remove the Inspector General if he is unable to perform his duties because of an extended illness or disability.

Ban on Political Activities. The ordinance should ban political contributions to or endorsement of local or state candidates for office. The prohibition should extend to the Inspector General, OIG staff, and contract employees.

Civil Service Issues. The Civil Service Commission should allow the Inspector General wide latitude in staff selection. Managerial and professional positions should be unclassified. In the case of classified positions, the OIG should have authority to go outside the city civil service system if an otherwise-qualified applicant would, in his opinion, pose a conflict of interest risk.

Attendance at Meetings. Section 10(m) would give the OIG the right to attend meetings held by the City Council, the Office of the Mayor, and any other city department and agency. Section 10(q), on the other hand, states that the Inspector General may attend "all duly noticed" city meetings relating to procurements. BGR believes that the OIG should be authorized to attend *all* meetings relating to procurements, including unofficial meetings and any meeting attended by the mayor, a councilmember, or any other official, employee or agent of a Related Entity.

Thank you again for your efforts to reassure New Orleans' citizens and the outside world of the honesty of local government. We hope that you will find our observations on the proposed ordinance helpful. If you have any questions regarding the comments, please contact me at (504) 525-4152 ext. 107.

Sincerely yours,

Janet R. Howard
President & CEO