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ANNUAL REPORT

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The Mount Vernon Office of Inspector General (OIG) is a new municipal office which was established by statute in February, 2008. The office was created by a new Mayor following federal investigations and audits initiated under the prior administration which resulted in several indictments and financial losses to the city in excess of several million dollars. The OIG is an independent organization within the municipal government.

The OIG's mission is to:

1. Conduct criminal and administrative audits and investigations relating to all municipal programs and operations;
2. Deter, detect and prosecute fraud, waste, corruption and abuse; promote economy, efficiency and effectiveness in programs and operations; and
3. Keep the Mayor and City Council informed about problems and deficiencies in programs and operations and the necessity for and progress of corrective action.

The OIG vision is to:

1. Be a leader in protecting and promoting the interests of the Government and the public.
2. Maintain the highest standards of professionalism, technical skills and innovation. Towards that end, the OIG has incorporated into its statute, the professional standards established by the Association of Inspectors General and the Association of Certified Fraud Examiners (ACFE)
3. Build upon success and embrace change as an opportunity for continuous improvement.

What is occupational fraud?

Most of the misconduct that one experiences within the workplace falls into a category of occupational fraud. This raises the question; what exactly is occupational fraud?

It is the use of ones occupation for personal enrichment through the deliberate misuse or misapplication of the employing organizations resources or assets.

The Association of Certified Fraud Examiners (ACFE) 2008 REPORT TO THE NATION on Occupational Fraud and Abuse found that U.S. organizations lose 8% of the value of total operating revenues to fraud. Applied to the City of Mount Vernon FY09 revenues of \$88 million, this calculation yields an anticipated \$7 million in annual fraud losses.

As described more fully below, Mount Vernon's losses and total exposure to fraud grossly exceeded this estimate over the past two years.

OIG AVOIDS MULTI-MILLION DOLLAR LOSS

At the time the Office of Inspector General was established, the City was faced with a liability claim of \$2.3 Million following an audit of its Section 8 Housing Program by the Housing and Urban Development (HUD) Office of Inspector General. HUD was threatening to file a lawsuit against the City of Mount Vernon under the Federal False Claims Act (FCA). That lawsuit was claiming \$2.3 Million in measurable damages.

Under the FCA, plaintiff is entitled to collect treble damages (i.e., three times the measurable damages) plus attorney fees. In addition, the defendant is subject to a fine of between \$5,500 - \$11,000 for each false transaction. The City had allegedly presented monthly invoices for 1,039 housing units when, in fact it had leased only 852 units during one year and 645 units during the other year of the audited period. Voucher invoices are submitted on a monthly basis. Under the accepted methodology used to count transactions under the FCA, this amounted to a total of 6981 false vouchers over a two year period. Assuming the minimum fine of \$5,500 per transaction, the total amount of fines could have been \$38.4 Million minimum to \$76.8 Million maximum.

The fact that the City had just established an Office of Inspector General to oversee operations and to pro-actively deter, detect and prosecute acts of fraud, waste, abuse and corruption was a key factor in maintaining Mount Vernon's credibility in the settlement negotiations. The HUD OIG recognized the good faith establishment along with the credible analysis of the Mount Vernon OIG in arriving at a mutually agreeable settlement which saved the City literally millions of dollars.

Absence of OIG May Expose City To Increased Fines

It should be noted at this point, that in cases of organizational fraud, federal prosecutors are directed to consider an organization's efforts to establish an internal compliance mechanism to address fraud, waste and abusive activity. Under federal sentencing guidelines, an organization with an established and functional compliance program may have their fines reduced by as much as 95 percent. Conversely, in the absence of an established and functional program, or in the case of a "paper only" program (lacking in staff, resources, and support), the fines may be increased by as much as 400 percent.

Accordingly, the presence of an effective fraud deterrence and compliance program has the potential of saving millions of dollars. Conversely, failure to either establish or properly support an existing program can expose the organization to increased fines in case of certain violations.

Other Federal Cases - Restitution

In addition to the HUD audit, the Mount Vernon OIG has participated in the pre-sentencing phase of two other federal criminal prosecutions; USA v. Albert Tranquillo and USA v. Constance Post and Wayne Charles. Each of these cases involve fraudulent transactions and are subject to orders of restitution. In addition to working with federal authorities to secure restitution the OIG is exploring alternative avenues for recovery of City funds in both cases.

Current Investigations

Because open investigative files are confidential and may not be disclosed prior to completion, we can only report categories of activity. The broad category listings are Corruption, Asset Misappropriation and Fraudulent Statements. A category labeled “Misconduct” has been added for other activity including allegations of nonfeasance.

<u>Corruption</u>	<u>Asset Misappropriation</u>	<u>Fraudulent Statements</u>	<u>Misconduct</u>
10	3	2	3
<u>Reviews</u>	<u>Referral</u>		
2	1		

A chart is attached as Table 1 which provides a general description of the various categories.

Impairment Notice

The performance standards adopted by City Council require the OIG to disclose any impairment(s) which may exist and tend to influence or impact an investigation or audit in a material manner. The OIG has been severely resource constrained from its inception. There is neither an investigative staff nor an audit staff at present. In addition, the approved budget is insufficient to acquire software tools or to contract for outside services. These impairments adversely impact the ability of the office to efficiently and effectively respond to complaints and allegations.

At present, the resource constraints are limiting the ability of the office to thoroughly pursue certain open investigations.

Legislative Activity

In keeping the administration informed and advised of problems and deficiencies in operations and programs, the OIG made recommendations for amendments to the City Charter to clarify duties, scope of authority, and eliminate conflicting assignments among departments.

Legislation

1. Amend OIG enabling statute. The purpose of the OIG amendments was to:

- Adopt Professional Standards
- Ensure Records Confidentiality
- Define scope of jurisdiction
- Clarify scope of duties

2. Amend City Charter to Clarify Purchasing Responsibilities. Resolve conflict between:

Management Services
Finance Department - Purchasing duties

The above legislation was approved and enacted during 2009.

Systemic Problems

In conducting certain reviews and investigations, it became apparent that other problems exist which impact the efficiency of governmental administration. The efficiency of the local government is adversely impacted by at least three major inhibitors; (1) lack of effective communications between branches and departments, (2) self imposed autonomy, (3) absence of written internal controls and procedures, (4) reluctance to enforce compliance with established rules, regulations and procedures.

Lack of Communications

In general, there is a pervasive lack of effective communication between various departments within City Hall. The consequence of this failure to communicate results in inefficiencies, waste and lost revenue to the City. Examples were cited in the OIG report dated July 8, 2008. In that report it was noted that the lack of communications between the Treasurer of the IDA and the Assessor resulted in a potential loss of revenue from PILOT projects because organizations were inadvertently dropped from the tax rolls and/or were not being billed in a timely manner. That same report demonstrated an absence of communication between the Comptroller and City Council. The failure to properly respond and produce public documents resulted in the unnecessary hiring of outside counsel to serve subpoenas and the conducting of protracted investigative hearings at taxpayer's expense.

City Financial Strategy Not Shared With Policy Makers

Lack of communication is also evident in the area of fiscal management. The City is required to annually file a Multi-year Financial Plan to include a Fiscal Improvement Plan (FIP) and a Fiscal Accountability Report (FAR). These documents are intended to present a cohesive strategy to enable the government to pay for and provide services, given a set of policy and economic assumptions. These projections are intended to help policy makers assess expenditure commitments, revenue trends, financial risks and the affordability of new services and capital investments. Clearly, to be effective, such a plan should have the participation, support and commitment of the policy makers who are legally bound to manage the affairs of the City.

Although the City Comptroller has filed a Multi-year Financial Plan with the Office of the State Comptroller, evidence indicates the plan was never discussed or shared with City Council and/or the Mayor. It is impossible for a strategic plan of any kind to succeed if the Chief Executive Officer and the legislative body are unaware of its existence. Particularly in a time of fiscal crisis, it is imperative that policy makers have full access, participation and commitment to strategic financial plans.

Written Internal Controls and Procedures

In general, there is an absence of written internal controls and procedures. This issue was highlighted in the July 8, 2008 OIG report and recommendations were made to establish written controls and procedures. The 2008 report focused on the lack of written controls and procedures associated with the PILOT program. However, the lack of written policies, procedures and protocols extends to other matters. One example was the issue of the questionable disposition of an out of service emergency vehicle. The City Charter grants the Fire Commissioner jurisdiction and control over fire department personnel, apparatus and property. The Commissioner is authorized to adopt and enforce rules, orders and regulations for operating and governing the department. Regulations within the fire department grants full control over all apparatus to the fire chief. Those same regulations charge the chief with recommending disposal of unserviceable apparatus. There is no written policy, procedure or regulation that requires approval of City Council, or anyone else, to dispose of such apparatus.

The applicable language in the City Charter is contained in Section 91-a, Further duties of the Comptroller, and is permissive, rather than mandatory. That section states that the Comptroller “may” sell City property not needed for public use and authorized to be sold. However, there is no established protocol mandating an approval process for the disposition of unusable property.

In the absence of either a written prohibition against disposal without specific authority or an established written protocol for the disposition of unserviceable assets, an employee who obtains approval from the chief to remove and dispose of an unserviceable asset cannot be held legally liable for conversion or misappropriation regardless of whether he ultimately receives any compensation from a third party. He has not violated any established law, policy or regulation.

Vendor Payments

Similarly, there should exist a written protocol for vendor payments. This protocol should be made available to all vendors that contract with the City. Establishment of a protocol and adherence to same will ensure uniformity and eliminate the imposition of arbitrary hurdles to payment of vendor invoices. At present, there are a number of vendors who refuse to provide goods or service to the City because they fear they will not be paid. This fear is based upon past experience. When invoices were submitted, vendors were often required to submit additional support or documentation that had not been previously requested. This exercise is often rationalized as an audit. The result is either a complete absence of payment or a protracted period of time before a vendor receives his/her earned fees.

Aside from the inconvenience imposed by vendors refusing to do business with the City, the City is unnecessarily exposed to lawsuits.

Reluctance to Enforce Compliance Programs

Elected officials must be more aggressive in implementing recommendations and acting upon reported violations. On at least two separate occasions, public accusations were made against elected and appointed officials involving ethics violations and conflict of interest. The OIG conducted investigations into each allegation and made a written report and recommendation to the appropriate bodies. To date, there has been no official response to either incident.

The details of these incidents will not be presented in this report because both of the allegations require a follow-up notice to the accused and a hearing by the appropriate body and/or official.

It is imperative that elected officials set the proper tone by enforcing the code of ethics and sanctioning violators. Unless and until the leaders establish a culture of compliance, prospects for adherence by the rank and file will not be promising.

Resource Requirements

The OIG is statutorily charged with conducting and reporting audits and investigations. However, the legislature has not approved a budget adequate to fulfill these requirements. To put this issue in perspective, we can look at a few examples. In 2008, the City requested that the New York Office of State Comptroller (OSC) conduct an audit of the Finance Department to look at revenue enhancement opportunities. The OSC assigned a supervisor and two auditors to conduct the audit. This is a standard sized team for an audit of this nature. The audit lasted for six months and the City is still awaiting the final official report.

In 2009, the City made an insurance claim for a fraud loss. The City must hire a forensic audit firm to analyze several boxes of documents to support their claim. Proposals submitted average approximately \$45,000 and indicate assignment of 2-3 personnel for this singular task.

In 2009, an incident of check fraud involving a City agency was reported. Local police assigned a supervisor and 2 detectives to the case. The case is still pending.

The approved budget for 2010 allocated a total of \$40,000 for contracted outside service for the OIG and no salaries for professional staff personnel. As indicated above, the OIG is charged with conducting audits, reviews and investigations of municipal operations. It is objectively unrealistic to expect the OIG to properly function with current resources and tools.

In addition, as stated earlier, the City is exposed in the event there is another fraud incident involving federal funds and false claims. Federal prosecutors are specifically directed to determine whether the organization made a good faith effort to properly staff and fund an effective fraud prevention program. If it is determined that the program was not properly funded and staffed, federal corporate sentencing guidelines allow for 400% increase in penalties and fines for repeat offenders.

Office Development Progress

Notwithstanding the constraints and impairments cited above, the office has realized professional growth and recognition. The Inspector General is officially credentialed as both (a) Certified Inspector General [CIG] and (b) Certified Inspector General Investigator [CIGI] by the Association of Inspectors General.

The office was recently recognized and accepted in the Law Enforcement Partnership Program of the Association of Certified Fraud Examiners (ACFE), an international organization whose mission is to combat and prevent fraud globally by providing certification, training, tools, resources and partnership opportunities.

In addition, as a member of the Institute of Internal Auditors (IIA), the Inspector General has completed IIA programs in Effective Fraud Investigations and Building Effective Fraud Risk Management Programs.

SUMMARY

The Mount Vernon Office of Inspector General, although new, is developing and is being recognized within the federal, state and local community of Inspectors General.

Since its inception, the office has helped the City avoid at least \$38 Million in penalties and fees under the federal False Claims Act.

The office has made several recommendations for internal controls and operational enhancements. If implemented, these recommendations may result in increased savings and efficiencies. It will be interesting to compare the audit results and recommendations of the New York Office of State Comptroller with those recommendations made by this office when the OSC final results are released.

In order for the taxpayers and the administration to fully benefit from the efforts of an Office of Inspector General, it is crucial that the public officials acknowledge and act upon the reported observations, findings and recommendations of the office.

In addition and as an adjunct to this report, an article entitled “Tone At The Top” is provided under separate cover. This article is published by the Association of Certified Fraud Examiners and discusses the importance of the attitude and conduct projected by the organization’s leadership.