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May 16, 2018

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POSITION PAPER
(PROPOSED) AMENDMENTS JEFFERSON PARISH CODE OF ORDINANCE
SECTIONS 2-162.3, Duties of the Director
DEPARTMENT OF INTERNAL AUDIT

This position paper is offered by the Jefferson Parish Office of Inspector General (“JPOIG”) pursuant to the provisions of the Jefferson Parish Code of Ordinances (“JPCO”), Section 2-155.10(11)(f) which provides, in pertinent part, the authority to the JPOIG to “[e]ngage in prevention activities” including but not limited to “review of legislation.”

The Jefferson Parish Council is meeting Wednesday, May 16, 2018. At that time, the Parish Council will have before it for consideration Summary No. 24976 which calls for amendments to the JPCO Sections 2-162.3 relative to the duties of the Director of Internal Audit. It appears as Item No. 66 on the agenda. The JPOIG last commented on the position of Director of Internal Audit, proposed policies and organizational placement in an “Open Letter to the Parish President,” dated September 11, 2017. Given the relative responsibilities of the Department of Internal Audit and the JPOIG, as well as the risk of impairment to either, the JPOIG remains mindful of needed and appropriate operational boundaries.

The JPOIG is opposed to proposed amendments to Section 2-162.3, *Duties of the director*, Department of Internal Audit for following reasons:

- The proposed language is redundant and redundancy creates a risk of noncompliance by the Director of Internal Audit as well as the Parish as a whole;
- The proposed language implies authority of the Director of Internal Audit which exceeds boundaries of qualifications and purpose of department;

- The proposed language, if adopted, will operate to risk the confidentiality of persons wishing to report on fraud, waste, abuse and illegal acts affecting Parish government as well as information regarding same;
- The proposed language, if adopted, will operate to obstruct the JPOIG in meeting its purpose of identifying and deterring fraud, waste, abuse and illegal acts within Parish government.

CURRENT LEGISLATION

Presently, JPCO 2-162.3(k), *Duties of the director*, for Department of Internal Audit provides:

The director shall refer all information indicating the presence of fraud, waste or abuse in a confidential manner to the inspector general for evaluation, giving no further notice to any person or agency, internal or external, and shall refrain from publishing audit findings until the office of inspector general has completed its investigation, if any.

PROPOSED LEGISLATION

The proposed amendment to JPCO 2163.3(k) creates a mandate of the Director of Internal Audit regarding matters which lie within the purview of the JPOIG. The proposed language amends JPCO 2-162.3(k) to add the following:

Notwithstanding the foregoing, the Director shall, as required by state law, immediately notify, in writing, the legislative auditor and the district attorney for Jefferson Parish upon actual knowledge of or reasonable cause to believe there has been a misappropriation of public funds or assets. Additionally, as required by state law, the Director shall report any violations of the Louisiana Code of Governmental Ethics to the Louisiana Board of Ethics. The Director shall also notify the Sheriff's Office for Jefferson Parish upon actual knowledge of or reasonable cause to believe any illegal activity has occurred. The Director shall comply with all reporting requirements regarding the misappropriation of public funds or assets or any other illegal activity as mandated by any local, state or federal laws.

ANALYSIS

First, the JPOIG opposes the proposed amended language because the current legislation aligns with the respective purposes of the Department of Internal Audit and the JPOIG and supports necessary, operational boundaries:

- *Identifying and deterring fraud and illegal activity is the function of the JPOIG.* Under the Jefferson Parish Charter, Section 4.09, the JPOIG is charged with the responsibility of identifying and deterring fraud, waste, abuse and illegal acts and to provide increased accountability in matters related to parish government. To that end, the Jefferson Parish Charter provides that any investigation within the purview of the Inspector General shall

take preference and priority over any investigation of the same person or activity conducted by the Parish. Investigating fraud and illegal activity affecting Parish government, be it by the JPOIG's Investigation Section or Audit Section, lies squarely within the purview of the JPOIG.

- *Performing financial and operational audits to provide independent and objective analysis of government functions is the function of Internal Audit.* Under the JPCO Section 2-162(b), the purpose of the Department of Internal Audit is to provide the council, administration and other stakeholders with independent and objective analysis as to whether management is using its financial, physical, and informational resources effectively, efficiently, economically, ethically and equitably in compliance with laws. Auditing for fraud, waste, abuse or illegal activity is not within the purview of the Department of Internal Audit.

Further, the JPOIG opposes the proposed amendment because the language is redundant and redundancy creates a risk of noncompliance for the following reasons:

- *Director of Internal Audit is obliged by ordinance to perform audits in accordance with published standards.* Proposed amendment creates redundancy as it relates to the Director of Internal Audit's responsibilities to perform audit activity in accordance with specific standards. JPCO 2-162.1(a), *Independence and objectivity; professional standards*, mandates that the Director of Internal Audit conduct audit activity in accordance with standards published by the Institute of Internal Auditors, Government Accountability Office, and the American Institute of Certified Public Accountants. Each of these have established standards regarding the role and conduct of an internal auditor when there is indicia of fraud or illegal activity. In connection therewith, these standards separately acknowledge that the detection of fraud is not the primary responsibility of an Internal Auditor. For example, Government Auditing Standards Sections 4.09 and 6.35, regarding financial and performance audits respectively, require auditors avoid interference with investigation in pursuing indications of fraud, noncompliance with provisions of laws, regulations, contracts, grant agreements or abuse.
- The proposed language mandates the Director of Internal Audit report certain activity "as required by state law," implicitly suggesting that the Director of Internal Audit has an affirmative obligation greater or different from another director. Under La.R.S. 24:523, *Notification of the legislative auditor and district attorney*, requires an "agency head of an auditee who has actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds or assets of his agency" to immediately notify the legislative auditor and the district attorney where the agency is domiciled. For purposes of La.R.S. 24:523, "agency head" shall have the same meaning as provided in La.R.S. 42:1102. La.R.S. 42:1102 defines "agency head" as the chief executive or administrative officer of an agency. It defines "agency" to be a "department, office, division... or other organizational unit of a governmental entity." Thus, La.R.S. 24:523 creates an affirmative obligation for all directors, "agency heads," within Parish government to report the applicable conduct. Distinguishing the Director or Internal Audit risks negatively communicating that others are excused from this affirmative obligation.

- *JPOIG has affirmative duty to refer matters to appropriate external entity.* Under JPCO Section 2-155.10(11)(o), the JPOIG is required to report fraud, waste, abuse or illegal acts to district attorney, United States attorney or other appropriate law enforcement agency. The JPOIG, as a designated law enforcement agency, also has the ability to conduct joint investigations with outside enforcement entities. The current legislation supports a channel for information to be properly and appropriately referred to the correct external entity and allows for joint investigations between the JPOIG and external entities. The authority vested in the JPOIG is derived from state enabling legislation. La. R.S. 33:9611 *et seq.* There is no like enabling legislation which vests the Department of Internal Audit with the authority and power to investigate indicia of fraud or illegal activity.

Next, the JPOIG opposes the proposed amendment because the ordinance, as amended, would imply authority of the Director of Internal Audit that exceeds the qualifications of the position and purpose of department. For reasons similar to those outlined above, the Director of Internal Audit is not qualified to engage in investigations nor is the Department of Internal Audit designed to do so, either by way of an audit, investigation or solicitation of information aimed at detecting fraud, waste, abuse or illegal conduct.

- *Qualifications for Director of Internal Audit.* The qualifications for the position of Director of Internal Audit require education, training, experience and an active license as a certificated public accountant or certified internal audit to perform audit activity, financial and performance. Conversely, the qualifications for the position of Inspector General call for specific experience in the areas of “investigation of fraud, mismanagement, waste, corruption and abuse of power,” and anticipates experience consistent with an ability to work with local, state and federal law enforcement agencies. While both Internal Audit and the JPOIG conduct “audits,” there is a recognized distinction and difference between financial and performance audits and auditing for fraud, waste and abuse. The current legislation, therefore, properly requires that the Director of Internal Audit “refer all information indicating the presence of fraud, waste or abuse” to the Inspector General, who possesses the requisite training and experience to assess, with or without additional investigation, whether there exists “reasonable cause to believe there has been a misappropriation of public funds or assets.”
- *Department of Internal Audit is not designed to investigate fraud, waste and illegal conduct.* The Director of Internal Audit is soliciting complaints of fraud, waste and abuse. The Internal Audit webpage on the Jefferson Parish website reads:

“The Internal Audit Department is available to investigate allegations of suspected fraud, waste, abuse or violations of Parish policies or resources. Employees, citizens, or vendors may report such problems anonymously or may leave contact information for follow-up.”

The function of the Department of Internal Audit is not to investigate fraud, waste, and abuse. Further, information received by the Director of Internal Audit is subject to the Louisiana Public Records law. As a matter of state law, records of the JPOIG, including the identify of those providing information, are exempt from the Louisiana Public Records Act during the pendency of an investigation into fraud, waste, abuse and illegal conduct and beyond if the matter is referred to law enforcement for further action. La.R.S. 33:9614, *Confidentiality of certain records*.

Finally, the JPOIG opposes the proposed amendment because the ordinance, as amended, will operate to obstruct the JPOIG in fully meeting its purpose of identifying and deterring fraud, waste, abuse and illegal acts within Parish government. Mandating the Director of Internal Audit to report “actual knowledge of or reasonable cause to believe there has been a misappropriation of public funds or assets,” will, regardless of intent, serve to facilitate the Director of Internal Audit investigating indicia of fraud, waste, abuse or illegal acts instead of referring the it to the JPOIG. The amendment will operate to blur critical operational boundaries between the two departments. Under state enabling legislation, the JPOIG is uniquely and specifically empowered to investigate and to audit for fraud, waste, abuse and illegal activity. Regardless of how benign the language of the proposed amendment may be, the subject is nonetheless fraud, waste, abuse and illegal activity affecting Parish government. This subject is the purview of the JPOIG.

For these reasons, the JPOIG opposes the proposed amendments.

Respectfully,



David McClintock

cc: Keith Conley, Chief Operating Officer,
Michael J. Power, Parish Attorney,