

# Inspectors General in Small and Mid-Sized New York Municipalities: A Practical Approach

By Philip A. Zisman

*"Accountability is key to maintaining public trust in our democracy. Inspectors general are entrusted with fostering and promoting accountability and integrity in government."<sup>1</sup>*

## Introduction

In recent years, the New York State Inspector General and other state agencies charged with oversight and accountability<sup>2</sup> have been kept busy investigating the seemingly endless array of scandals emanating from the executive and legislative branches of government. Of course, such scandals are not limited to the state government. Many small and mid-sized New York municipalities have also suffered from crippling financial and ethics scandals. Without an inspector general to call on, however, elected officials in these municipalities have often had to scramble to find ways to deal with both unproven allegations of official misconduct and with the fallout from substantiated findings of wrongdoing. All too often these after-the-fact efforts fail to restore public trust and taxpayers' faith in their local government is diminished further.



Using the City of Yonkers, Department of Inspector General as a model, this article examines the role an inspector general can play in small and mid-sized municipalities, and provides practical information on how to incorporate IG principles into municipal government administration.

## The Yonkers Department of Inspector General

Yonkers, New York, the fourth largest city in the state, has a racially, ethnically, and economically diverse population of approximately 200,000. Because of the city's topography and its reputation for scandals and backroom political deal-making, it has long been referred to derisively as "the city of hills where nothing is on the level." For decades, elected officials have pledged to change Yonkers' image but have had little lasting success.

In 1995, in response to yet another cycle of municipal scandals, the mayor and city council approved legislation making Yonkers the first mid-sized city in the country to create an inspector general's office. Although Yonkers has not yet earned a reputation for open and honest government, by working to prevent abuses and ethics violations that undermine the public trust, the Yonkers Department of Inspector General has been recognized for its signifi-

cant positive impact on promoting government integrity and improving accountability of both the city's municipal government and the Yonkers Public Schools' administration.<sup>3</sup>

In its effort to root out fraud, waste, abuse and corruption, the Yonkers IG has documented a broad spectrum of misconduct and mismanagement. These include the abuse of overtime, the improper use of take-home vehicles and city gasoline, the cronyism of a former superintendent of schools, and cheating on standardized tests to inflate student test scores. With the advent of the Inspector General as the independent monitor of administrative operations, city and school district officials have had an opportunity to demonstrate that their administrations are indeed "on the level" and meet the highest standards of integrity.<sup>4</sup>

Given its twelve-year record of effectiveness, the Yonkers Inspector General's office can serve as a model for other mid-sized municipalities considering creation of an IG's office and for smaller municipalities seeking ways to incorporate IG concepts into their administrative operations.<sup>5</sup>

## Legislative Authority

Article VII of the Yonkers City Charter §§C7-1-3 establishes the Yonkers Department of Inspector General and sets forth the powers of the office. A summary of the statute is outlined below:

- Sections C7-1-3 of the Yonkers City Charter establish the Department of Inspector General. The IG is appointed by the mayor subject to the advice and consent of the city council, and serves a five-year term of office. The IG can only be removed from office for cause or upon recommendation of the mayor and a two-thirds vote of the city council for removal. The IG must be a lawyer, certified public accountant or otherwise have substantial auditing and investigative experience.
- Section C7-2 grants the IG authority to: 1) make any investigation directed by the mayor or city council; 2) make any investigation or review which in his or her opinion is necessary to uncover any wrongdoing or conflicts of interest in city government; 3) prepare written reports of investigative findings and forward such reports to appropriate authorities; 4) issue subpoenas and conduct hearings; 5) audit

and monitor government operations to ensure that adequate internal control procedures are in place to maximize the efficiency and integrity of agency operations and to reduce vulnerability to fraud, abuse and corruption.

- Section C7-3 requires the full cooperation of all employees with the IG and prohibits anyone from interfering with or obstructing any IG study or investigation. Any violation of this section constitutes cause for suspension or removal from employment.

The Yonkers statute satisfies the core principles necessary for an inspector general to fulfill his or her mandate as the public official responsible for government accountability and oversight. The legislation provides for an independent IG who does not report to the executive or legislative branches of government, although both the city council and mayor are empowered to direct the IG to conduct investigations they deem appropriate. The IG serves for a definite five-year term and can only be removed for cause or upon recommendation of the mayor and a two-thirds vote of the city council. Moreover, the IG is given broad authority, including subpoena powers, to conduct any investigation or review that he or she determines necessary to ensure open and honest government.

### **Core Functions of the Yonkers IG's Office— Focus on Auditing**

The IG's primary focus is not law enforcement. This is consistent with the city charter, which neither designates the Department of Inspector General as a law enforcement agency nor grants it enforcement powers. Although the IG has broad authority to conduct wide-ranging investigations, any criminal activities uncovered are referred to an appropriate prosecutor. Numerous external law enforcement agencies, including the District Attorney, U.S. Attorney, the Attorney General, the State Comptroller, and the State Organized Crime Task Force have jurisdiction to conduct public corruption investigations and prosecutions in the City of Yonkers. The IG's mandate is to cooperate with these agencies, not to compete with them.

There are also practical reasons why law enforcement is not the primary focus of the office. The IG has a small budget and staff.<sup>6</sup> Its resources are not adequate to conduct complex and often protracted criminal investigations, which can be more appropriately handled by other agencies. The IG can easily consult with law enforcement agencies on criminal matters, and when necessary make appropriate referrals. Prosecutors typically want to show they are actively fighting public corruption, so are generally eager to investigate allegations of official misconduct and welcome referrals from the IG. The city charter also makes it clear that the IG's primary objective is to monitor government and hold public officials accountable for the proper administration of governmental operations.

To fulfill this responsibility and monitor government effectively, the IG must concentrate on the audit and review functions.

When the Yonkers Department of Inspector General was established in 1998, it was clear that the city was not in need of another law enforcement agency. There was, however, a pressing need for the creation of an internal audit function within the city and the school district. Many departmental policies and procedures were outdated and inefficient, and many administrative operations had never been subject to an external review or evaluation. There was little objective information on how effectively the city and school administrations were delivering services. Moreover, the limited resources of the Inspector General's office could be used most effectively to conduct specific and discrete audits of the administrative operations most vulnerable to fraud, waste, abuse, and inefficiency.

The objectives of the operational audits are to ensure that there are adequate internal control procedures to promote the efficiency and integrity of agency operations, to make recommendations to management for improving agency effectiveness, and to provide information to elected officials and the public about the detailed workings of a specific municipal operation.

By initially focusing on audits of administrative operations, such as audits of contracts and of the clerk's office, parking violations bureau, assessor's office, and building department, the IG's office was able to integrate itself into the operations of Yonkers City government. Not only did these audits provide the public with information about the inner workings of government, they also provided valuable information and recommendations to department heads on how to run their departments more efficiently and effectively. The audits also facilitated discussions between the IG's office and department heads about administrative problems, and gave the Inspector General an opportunity to answer questions and provide immediate guidance on correcting any deficiencies that were found. In addition, the audits provided a framework for future communications between agency heads and the IG in which the IG could serve as a sounding board to ensure that future agency decisions would be lawful, ethical, and further the public interest. The IG's focus on the audit function did not preclude the office from conducting investigations based on specific allegations of employee or official misconduct. That too remains a core function of the office.

### **Core Activities Outside of the Audit Function**

Although performance audits have been the central focus of the Yonkers Inspector General's office, there are five additional core activities that the Inspector General regularly performs:

## 1. Investigations into Allegations of Employee and Official Misconduct

According to the Yonkers city charter, the IG shall conduct investigations at the direction of the mayor, city council or as deemed necessary by the Inspector General. Discretionary investigations undertaken by the Inspector General are usually based on complaints or tips (both signed and anonymous), information provided by city officials and employees, information reported in the news media, and information developed independently by the IG's Office through government monitoring efforts. All complaints received by the IG are subject to a preliminary review to determine if a full investigation or audit is required, if the complaint should be referred to another agency with jurisdiction over the matter, or if the matter should be closed because the initial review indicates no further action is warranted.

One of the most significant Yonkers IG investigations was a 2005 investigation into allegations of that the superintendent of schools violated civil service law and school district ethics policy by improperly hiring a friend of his daughter as a highly paid senior accountant. The investigation substantiated the allegation, and, thereafter, the superintendent and the school district chief financial officer were indicted for perjury because they lied under oath to the Inspector General.

## 2. Ethics Investigations and Ethics Counseling

For many years the Yonkers IG served as the city's *de facto* ethicist, and in that capacity rendered numerous opinions interpreting the Yonkers Code of Ethics and other applicable New York State ethics provisions. In this capacity the IG also regularly provided informal ethics advice to public officials and employees.

In 2005, Yonkers adopted a new ethics code that empowered the Board of Ethics to render formal opinions. These new provisions gave the IG joint jurisdiction with the Board of Ethics over investigations that involve allegations of ethical misconduct by city officials or employees. The IG's office conducts such ethics investigations at the request of the Ethics Board or as otherwise deemed appropriate. The IG's findings and recommendations from such investigations are forwarded to the Ethics Board, which is empowered to exact fines of up to \$10,000 for substantiated ethics violations.

## 3. Contract Monitoring and Vendor Background Screening

The IG's office monitors Yonkers city and school district contracts. The objective is to ensure the integrity of the city's contracting process, and once a contract is in place, to ensure compliance with contractual terms and conditions. As part of this program, the office conducts background screening of potential vendors in an effort to ensure that only responsible vendors and contractors are hired to provide goods and services to the city

and school district. As part of this process, vendors and contractors applying for city contracts must submit vendor background questionnaires ("VBQs"). The VBQs for contracts exceeding \$100,000, or for lesser amounts when requested, are verified for accuracy before final contracts are approved.

In verifying VBQ accuracy, the IG's office seeks to discover undisclosed arrests, indictments, convictions, and criminal associations of company principals, as well as disbarments, defaults, suspensions and/or terminations by other government entities. The office also checks for undeclared bankruptcy proceedings and undisclosed investigations involving the vendors. If discrepancies are found in a VBQ, the appropriate city or school district officials are notified. If required, a hearing is held with the vendor.<sup>7</sup> Material misstatements on a VBQ can lead to the disqualification of a vendor for city or school district contracts.

## 4. Review of Community-Based Organizations

Pursuant to a legislative directive of the Yonkers City Council, the Inspector General implements an ongoing program to monitor community-based organizations (CBOs) and other entities that receive grant funding from the City of Yonkers. The IG provides an independent assessment of how city grant funds are being spent.

## 5. Review of Developers' Promises to Provide Community Benefits

To ensure that developers who have received project approvals from the city meet their binding commitments to provide ancillary benefits—agreed to as a condition of development approval—the city council has directed the IG's office to maintain an ongoing oversight program to monitor "community benefits" of development projects. As part of this program, the IG's office identifies specific "community benefits" set forth in the public record that may include the promise to provide jobs, hire minority and women contractors, and to provide affordable housing, and determines whether the developer has met—or is in the process of meeting—these commitments.

## Core Principles in Conducting IG Investigations and Audits

There is very little room for error in any of the work an inspector general undertakes. In almost every investigation or audit, there is the possibility that the findings will have negative consequences for employees and officials found at fault or otherwise criticized. If an IG reports ethics violations, mismanagement or neglect, even when there are no substantiated criminal findings, careers and reputations can be severely damaged. Simply put, because so much is at stake for the people involved, each and every inspector general audit and investigation must be performed meticulously and faultlessly, and all written reports must be clear, concise, and well documented.

In order to meet the highest standards of professionalism and avoid any criticism that an investigation is flawed or biased, an inspector general should adhere strictly to the following principles:<sup>8</sup>

**Independence**—As IG, establish that you and your office are independent—in fact and in appearance—and focused solely on carrying out the mandates of the office. The IG works in the public’s interest and must not be beholden to the executive or legislative branches of government or to any political party.

**Transparency**—At the outset of all investigations and audits, the IG must set forth the procedures to be followed. Include an explanation of the scope of the report and methodology used in each investigative or audit report. In the course of your work as IG, explain to staff, agency employees, officials, and the public, why you are undertaking the review. Document everything.

**Integrity of the Process**—The IG’s office must handle information with care and without leaks. Treat everyone with impartiality regardless of who is involved. Avoid any conflicts of interest or appearances of such a conflict. Ensure that investigations and audits are comprehensive. Use the full authority granted to the office; do not hold back.

**Develop Good Working Relationships**—In small and mid-sized municipalities where the number of people employed by and doing business with city government is limited, one works and interacts with the same people repeatedly. Keep relationships professional. Explain your actions as IG. To the extent possible, keep interested parties informed about the status of any review. Try to avoid surprising people. Give commissioners and department heads an opportunity to respond to draft findings and recommendations.

**Review Existing Policies and Procedures**—Departments within small and mid-sized municipalities may often not have formally established policies and procedures or they may be out-of-date. If none exist, recommend that policies and procedures be established. If antiquated, recommend improvements, which include internal control procedures to safeguard operations. Recommend that supervisors and employees be held accountable for implementing and following the new policies and procedures.

**Utilize a Skilled Forensic Accountant**—Some IG investigations and audits require sophisticated analysis of voluminous accounting records or raw financial data. It is important to have someone on the IG’s team who has the technical expertise to conduct statistical and financial analysis of this information.

**Use Investigations and Audits as an Opportunity to Educate Municipal Officials and the Public**—As part of an investigation or audit, include background information about the inner workings of the office or administrative function being reviewed. Point out the adequacy of exist-

ing internal controls, describe administrative weaknesses, and recognize administrative strengths. As part of the process, give officials and the public an opportunity to learn about the specific government operations under review.

**Make the Report Understandable and Readable**—To be meaningful, the investigation or audit report must be clear and to the point. In long reports, include an executive summary that sets forth the reasons for the review and lists the findings and recommendations.

**Recommend Solutions**—An IG’s report should not only point out problems; it should also provide realistic solutions. Remember, however, that there are limitations, many of them budgetary, as to what municipal governments can do. Do not recommend solutions that are beyond reach.

**Do Not Duck the Hard Issues**—Do not avoid controversial issues. Follow the evidence and address all questions presented fairly. To be credible, an inspector general who has the independent discretion to undertake investigations and audits must take on issues important to a municipality’s integrity, no matter how controversial or difficult.

**Follow Up**—If possible, the IG’s office should retain jurisdiction over the subject of investigation or audit. Conduct appropriate follow-up audits to ensure problems identified have been addressed.

**Use Your Support Network**—Ask for help. There is a network of professionals working in the public sector with a wealth of experience in conducting investigations and audits who can provide an IG with valuable assistance. It is important to have others review your work and edit your reports.

## **The Benefits of Establishing an IG’s Office**

In debating whether to establish an inspector general’s office, elected officials in small and mid-sized municipalities often claim that the added expense cannot be justified, especially during recessions when budget deficits make it difficult to maintain current programs and services. It is also frequently claimed that the services provided by the IG duplicate those of the finance, law, and police departments.

For small municipalities, the financial arguments may be persuasive because there is unlikely to be enough work to justify a full-time inspector general and a separate staff, however small. However, in cities and counties with annual budgets that exceed several hundred million dollars, the costs of funding the relatively small annual operating budget for an inspector general’s office of three or four employees can easily be justified by the considerable benefits and potentially significant savings an inspector general’s office can generate. A list of some of these benefits is enumerated below:

**Increased Government Accountability**—An IG's primary function is to hold government officials and employees accountable to the public. The creation of an independent IG's office provides an important check and balance to ensure that the elected and appointed municipal officials are indeed working in the public interest. The presence of an IG serves as a significant deterrent to officials and employees who might abuse their positions in government.

**An Internal Mechanism to Resolve Disputes**—An IG's office provides an internal mechanism for resolving disputes based on allegations of misconduct and corruption. In a relatively short period of time, an IG can determine the facts surrounding allegations of wrongdoing by conducting an investigation and issuing a report. The IG can be particularly useful in resolving disputes between the executive and legislative branches of government, disputes that can lead to unproductive, protracted and often expensive legal battles. By having an independent IG conduct necessary investigations and audits, public officials can avoid claims that any such investigations or audits are self-serving or biased.

**Transparency in Government Administration**—Allegations against public officials involving claims of corruption, ethics violations, and abusive practices are now commonplace. All governments need an orderly process for reviewing such claims and, when necessary, for taking appropriate action. An IG review of such allegations—with a public release of the findings and recommendations—is an important step in ensuring that allegations of misconduct are fully vetted and that the public is kept informed. The IG is also able, in short order, to dispatch specious claims of official or employee misconduct.

**Restoration of the Public Trust**—After a political or ethics scandal, the public loses faith their local government officials. An IG can help restore public trust. The IG's office can conduct appropriate investigations and audits to address the deficiencies in a government's internal controls that led to the scandal and make recommendations for improving policies and procedures to prevent recurrences. Moreover, the IG can monitor specific areas of municipal operations implicated in a scandal or otherwise deemed susceptible to fraud, waste, and abuse. A meaningful ongoing accountability and oversight program is the only realistic way to restore public confidence in government after it has been tarnished by scandal.

**Deterrence of Crime**—Much of the workplace fraud committed by government employees are crimes of opportunity, often based on employees' knowledge that administrative operations lack effective internal preventative controls and oversight, leading to a belief that chances of being caught are low. An active IG's office, along with a comprehensive ethics code and whistleblower policies, greatly increase the likelihood of detecting employee crime. As a result, fewer employees will risk engaging in fraudulent activities.

**Cost Savings**—Although difficult to quantify, the potential deterrent effect of an active IG's office may result in annual savings of thousands of dollars even after factoring in the administrative costs of the office. Further savings can be realized when specific IG recommendations for eliminating waste and abuse are implemented. Moreover, once in place, IGs provide comprehensive and cost-effective, in-house investigative and audit services.

### **Recommendations for Officials in Small Municipalities to Consider in an Effort to Incorporate Inspector General Concepts into Their Government's Administration**

Most, if not all, local government officials would be quick to assert that under their leadership their administrations are honest, transparent, accountable, efficient, and effective. It is the inspector general's role to verify these claims and confirm the integrity of government. In smaller municipalities, where it may be financially impractical to create an IG's office, elected and appointed officials must still be able to verify claims of transparency and accountability. Listed below are measures that officials of small municipalities can take proactively to incorporate inspector general principles into their governmental administrations:

**Review and Improve Policies and Procedures**—It is difficult to hold employees and managers accountable without specific standards with which to measure their performance. Officials should ensure that all municipal policies and procedures are up-to-date and contain appropriate internal controls that minimize opportunities for employee fraud, waste, and abuse.

**Open Meeting and Freedom of Information Law Compliance**—Make it easy for the public to submit Freedom of Information Law (FOIL) requests via email and establish a policy that the municipality will process all FOIL requests as quickly as possible. Make commonly requested documents accessible on the municipality's website. Similarly, ensure that public meetings comply with the Open Meetings Law. Contact the New York State Committee on Open Government for help in understanding and complying with these laws.

**Emphasize Ethics in Government**—Adopt a comprehensive Code of Ethics implemented by a Board of Ethics. Provide regular ethics training for all municipal employees. Designate an ethicist to provide employees and the public with informal and confidential government ethics guidance so that actions that may constitute ethics violations are avoided.

**Adopt Legislation That Promotes Administrative Integrity**—Pass legislation or issue an executive order that requires all municipal department heads to maintain and monitor procedures that maximize the effectiveness, efficiency, and integrity of departmental operations in

order to reduce government vulnerability to fraud, waste, abuse and conflicts of interest. In the legislation, require department heads to submit annual reports detailing their efforts to ensure the integrity of department operations. Require all employees to report activity that could be considered criminal or corrupt. Require all employees to cooperate fully with any investigation into allegations of misconduct.

**Require Productivity Reporting**—In addition to integrity reporting, require department heads to issue regular statistical reports quantifying the productivity of their operations. Hold public meetings to review the reports and verify their accuracy.

**Devise a Plan for Addressing Allegations of Official Misconduct**—Public officials need to be prepared to handle claims of official misconduct and provide an orderly and expeditious process for addressing such allegations. If possible, determine in advance of any such claims who will conduct an appropriate, independent investigation and what procedures will be followed. Require a written, public report of the investigation and its findings unless the release of such a report would violate applicable privacy laws or otherwise compromise an ongoing criminal investigation. Include in the plan the possibility of seeking help from the State Comptroller, the Attorney General or the local district attorney.

**Hire Consultants to Conduct Critical Audits**—If there are concerns that important municipal operations and programs such as payroll, fringe benefits, and overtime expenditures lack adequate internal controls, hire an external auditor to review these operations or consider asking the State Comptroller to conduct these audits.

**Create an Internal Audit Function in the Finance and Law Departments**—Expand the missions of the finance and law departments to include performance audits of municipal operations. Although a small municipality may not be able to afford an independent inspector general's office, it may be able to incorporate a performance-auditing component into existing departments.

**Lobby the County Government to Create an Inspector General's Office That Would Be Available to Provide Services to Municipalities Within the County Through Inter-municipal Agreements**—If an individual municipality is too small to establish its own inspector general's office, an IG would probably be appropriate at the county level. In addition to monitoring county government, a designated

county IG could provide services to municipalities within the county in accordance with duly adopted inter-municipal agreements.<sup>9</sup>

Although a smaller municipality may not be able to establish its own inspector general's office, there are many steps that public officials in such municipalities can take to promote the integrity of local governments. These efforts will help build public confidence in local government and demonstrate the commitment of elected and appointed local public officials to open and honest government.

## Endnotes

1. ASS'N OF INSPECTORS GEN., *Principles and Standards for Offices of Inspector General* 3 (2001) ("Green Book").
2. In addition to the Inspector General, the Attorney General, the Comptroller, and the New York State Commission on Public Integrity are all actively engaged in conducting audits and investigations of state government.
3. See *Journal News* Editorial Sept. 3, 2009, "For more than a decade [the] Yonkers Inspector General...has been on the side of the taxpayer, helping to uncover financial waste and malfeasance..."
4. Information on the Yonkers Department of Inspector General and copies of the Department's published reports are available at <<http://www.yonkersny.gov/Index.aspx?page=94>>.
5. Two other mid-sized New York municipalities have experimented with the appointment of an inspector general. In Rochester, the mayor created the Office of Public Integrity, headed by a director/inspector general, which is part of the executive branch of government. Mount Vernon created an office of inspector general by local law in 2008. The models for these offices differ significantly from the Yonkers model, because in both cases the IG is or was part of the executive branch of government and not truly independent.
6. In addition to the IG, the staff includes a deputy inspector general in charge of audits, and a senior investigator. By necessity all staff members are engaged in the substantive work of the department and have skills and training in both investigations and audits.
7. If a municipality is considering disqualifying or debaring a vendor based on integrity concerns, due process requires that the vendor receive an appropriate opportunity to be heard.
8. These principles are based, in part, on Inspector General Glenn Fine, U.S. Dep't of Justice, *Eight Principles for the OIG*.
9. See General Municipal Law Article 5-G.

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