



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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DATE: March 28, 2022

SUBJECT: Alleged fraud and abuse by DMD Director regarding their violation of City Ordinance with residential lighting

FILE NO: 22-0021-C

INVESTIGATOR: M. Santistevan

STATUS: Closed

Informative Case Synopsis

On February 8, 2022, the Office of Inspector General (OIG) received a request for an investigation into the alleged fraud and abuse by the Director of Municipal Development regarding their violation of City Ordinance with residential lighting. The allegation stated “The streetlights in our residential neighborhood have light sources that are visible and require shielding to be compliant with City Ordinance 14-16-5-8(D)(2) of the Integrated Development Ordinance. I brought the request to the DMD Director Patrick Montoya, and so he is well aware of the violation as well as the remedy needed for correction, but he is refusing to take action. He attempted to deceive me by requiring Neighborhood Association approval, when the IDO has no such requirement. And his disapproval of bringing the lights into compliance represents abuse of his position since the streetlamp condition is unlawful.” Upon receiving this complaint, the OIG determined that the allegations did rise to the level of potential fraud, waste or abuse. The OIG initiated a case and began a fact-finding investigation.

Pursuant to City Ordinance 2-17-2, the Inspector General's goals are to: (1) Conduct investigations in an efficient, impartial, equitable and objective manner; (2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

While conducting our fact-finding investigation, the OIG Investigator reviewed the information provided in the complaint, reviewed emails, researched ordinances, regulations, and physically inspected the installation. OIG conducted information gathering interviews with Engineers, City Attorney's and other City employees and management.

Allegation 1: DMD violation of City Ordinance with residential lighting.

While performing our fact-finding investigation, the OIG reviewed pictures of PNM street lamps located in the public right of way provided by the complainant. The PNM Street lamps were installed for public safety and they are recessed inside the fixture which meets City requirements. The OIG discovered that there are no regulations over what the City can or cannot install on a public right of way. The public right of way extends from back of sidewalk on one side of the road to back of sidewalk on the other side of the road. Additionally, the OIG reviewed Ordinance 14-16-1-4 as it relates to the applicability of the IDO. 14-16-1-4 specifically states:

1-4(A) This IDO applies to all private land in the City, and the owners and occupants of all land in the City are required to comply with the regulations of this IDO applicable to the zone district in which the property is located, except as noted in this Section 14-16-1-4.

1-4(A)(1) Development after the Effective Date of this IDO

All development after the effective date of this IDO is subject to IDO standards.

1-4(A)(2) Development prior to the Effective Date of this IDO

Development that existed prior to the IDO is subject to timeframes established for compliance with IDO standards, including but not limited to standards for nonconformance in Section 14-16 6-8 (Nonconformities), to be calculated from the effective date of this IDO.

1-4(A)(3) Approvals Granted prior to the IDO

See Section 14-16-1-10 (Transitions from Previous Regulations).

1-4(B) This IDO is not applicable to federal activities or development on federally-owned lands where either the federal government has retained from the time of statehood or subsequently obtained the right to legislate in relation to such lands or the State of New Mexico has ceded jurisdiction to legislate back to the United States in relation to such lands. Private activities or development for private purposes on such lands shall be subject to this IDO.

1-4(C) This IDO is applicable to City activities or development on properties owned or leased by the City.

1-4(D) This IDO may not be applicable to state or governmental activities or development on lands owned by a state or governmental or quasi-governmental entity, to the extent the State of New Mexico has explicitly exempted them from the operation of local land use regulations.

Allegation 1 that DMD violated the City Ordinance with residential lighting could not be substantiated.

Allegation 2: Director of DMD committed fraud by attempting to deceive the complainant by requiring Neighborhood Association approval when the IDO as no such requirement.

While looking into allegation 2, the OIG reviewed correspondence between City officials and the complainant. Upon receipt of the list of fifty-eight (58) PNM street lamps, the Director explained to the complainant that he would consider shielding one or two PNM street lamps if they were

affecting his personal property. The Director of DMD did inquire as to whether the Neighborhood Association agreed with the request to shield fifty-eight (58) PNM street lamps. Correspondence with the Neighborhood Association revealed that association has not now or ever opposed the shielding of street lamps. There is no indication that the neighborhood association requested the street lamps to be shielded. The OIG could not substantiate that the Director of DMD intended to deceive the complainant.

Allegation 3: Director of DMD abused the position by refusing to bring the lights into compliance.

With regard to allegation 3, it was determined that the IDO is not applicable to the public right of way and to street lamps installed for public safety. The OIG found that the complainant provided a request for light shields for a list of fifty-eight (58) PNM street lamps. Correspondence reviewed by the OIG revealed that the Director of DMD explained that the IDO did not apply to the PNM street lamps in the public right of way but if the complainant had one or two specific lights that were affecting his personal property, as a courtesy, the City would consider installing shielding. The Director did state that the City would not grant a request to shield the list of fifty-eight (58) PNM street lamps as they met requirements when they were installed. There was evidence of correspondence between City engineers, City Attorneys, the DMD Director and other city employees whereby extensive discussion was had regarding the City's obligation to grant a request of such magnitude that would require significant city resources. The OIG found that the Director, along with City Engineers, has the authority to refuse a request that is not addressed through an Ordinance, regulation or law. The OIG could not substantiate abuse of position by the Director refusing to bring the lights into compliance when the IDO does not apply to PNM street lamps in the public right of way.

Based on the information obtained during our fact-finding investigation, the allegations in the complaint are not substantiated and as such this case is being closed.