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City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 22-0106-C

SUBJECT MATTER: The Planning Department Code Enforcement Division Deputy Director’s statement “The property owner is in compliance with the Integrated Development Ordinance” was dishonest, fraudulent, and abusive of the position.

STATUS: Final

INVESTIGATOR: M. Santistevan

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August 1, 2022
Date of Completion

DocuSigned by:
C. Jack Emmons
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C. JACK EMMONS, VICE CHAIR
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE

8/29/2022 | 1:08 PM PDT

Date of Approval

DISTRIBUTION:

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Department Director**
- Members, Accountability and Government Oversight Comm**

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EXECUTIVE SUMMARY

According 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.

On May 26, 2022, the Office of Inspector General (OIG) received an email complaint alleging the Planning Department Code Enforcement Division Deputy Director's statement "The property owner is in compliance with the Integrated Development Ordinance" was dishonest, fraudulent, and abusive of the position. The OIG determined that the allegation contained elements of potential fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the fact-finding investigation was to gather factual information pertaining to the alleged statement by the Deputy Director that "The property owner is in compliance with the Integrated Development Ordinance" was dishonest, fraudulent, and abusive of the position.

While conducting our fact-finding investigation, the OIG Investigator reviewed the information and photographs provided in the complaint, reviewed the complaint to identify each allegation, reviewed the City's Integrated Development Ordinance (IDO), and completed a property search through tax records to determine if the subject property was private property, conducted a physical observation of the subject property and lighting, reviewed historical complaints and correspondence regarding this property, and requested a test be performed on the lighting to determine if the light source exceeded 200 foot-lamberts of spillover.

As a result of the fact-finding investigation, the OIG could not substantiate *allegation 1* that the Deputy Director's statement "The property owner is in compliance with the integrated Development Ordinance" was fraudulent as it pertained to the lighting section of the IDO.

ABBREVIATIONS

OIG: Office of Inspector General
CITY: City of Albuquerque
CED: Code Enforcement Division
C1: Complainant
O1: Code Enforcement Officer

INVESTIGATION

Background

The City has a Code Enforcement Division (CED) to enforce code violations set forth in the Integrated Development Ordinance (IDO). The IDO is subject to revisions annually and the City has a public process for these revisions. The IDO includes chapters for each area it governs and outdoor lighting is specifically addressed. The lighting section of the IDO is referred to as 14-16-5. The CED has been contacted multiple times regarding the lighting at different properties along this section of [REDACTED]. The following complaint is being quoted in its entirety at the request of the complainant with the personally identifiable information of private citizens being redacted.

*“Dear Inspector General,
I am submitting the following factual case for investigation and I request to remain anonymous.*

IN order to keep the focus on facts, I ask that you quote my complaint in its entirety for your report. The case regards multiple Lighting Code violations at a residential property and a fraudulent claim being made by the new Deputy Director of the Planning Department, [REDACTED], who oversees the Code Enforcement Division. In response to Lighting Code violations the following email was received:

*subject: RE: CODE VIOLATION BEING IGNORED --PLEASE SOMEBODY HELP
date: May 4, 2022 at 4:19 PM
from [REDACTED]*

*Good afternoon,
I understand that you are in disagreement with the decision that was made in reference to the property located at [REDACTED]. The property owner is in compliance with the Integrated Development Ordinance. The City of Albuquerque considers this matter closed and our position remains unchanged.*

*Thank you,
[REDACTED]
Planning Department Deputy Director
[REDACTED]
cabq.gov/planning*

*-----
At issue concerning fraudulence is the Director's statement "The property owner is in compliance with the Integrated Development Ordinance."*

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I will now provide you factual evidence of the Code violations as provided to the Deputy Director, taken fact-by-fact so that the Office of the Inspector General must either deny one or more facts, or find the Deputy Director [REDACTED] to be engaging in fraud.

Note that the Director's statement is all-encompassing, claiming compliance with the entire IDO. While there may be other Code violations that test the veracity of the Director's claim, Lighting violations (and two in particular) were the source of this particular complaint and remain the need for Enforcement action and the Inspector General's disciplinary action.

Taking it fact by fact:

Fact 1. The subject property is located in Albuquerque. (The OIG will either have to deny this fact or move on to the next as they build upon)

Fact 2. The subject property is private property. (Again, the OIG needs to either deny this fact or accept its outcome.)

Fact 3. The IDO states: 14-16-1-4(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"

Fact 4. The Lighting section 14-16-5-8(D) opens with "All sources of light visible from the exterior of a property shall meet these standards. 5-8(B)(1) adds "The standards of this section shall apply to both new lighting and the replacement of fixtures (excepting lamp replacement), regardless of type, mounting, or location." 5-8(A) specifically states the Purpose "to reduce light pollution between private properties", which makes its application obligatory for this situation.

Fact 5. A new floodlight (IMG_8709.JPG) was installed on the Eastside after July 2019.

<https://blogs.bing.com/maps/2019-07/we-ve-released-new-birds-eye-imagery>

It says Albuquerque was updated on July 11, 2019. (or see screenshot) See the bird's eye view here: [https://www.bing.com/maps?q=\[REDACTED\]&FORM=HDRSC4](https://www.bing.com/maps?q=[REDACTED]&FORM=HDRSC4) Right-click and select "View bird's eye" (or see screenshot)

The satellite image shows there was no floodlight in July 2019; there was not even an electrical junction box.

Fact 6. A new floodlight (IMG_8470.JPG) was installed in the driveway after March 2019.

The model is made by Eufy, model T84201W1, released in March 2019.

<https://www.eufylife.com/products/variant/smart-floodlight-with-camera/T84201W1>

(see screenshot, email, or contact the manufacturer independently at support@eufy.com)

Since the floodlight was manufactured after March 2019, it was installed after March 2019.

Fact 7. Both of these dates are after the effective date of the IDO.

1-5 states: "The effective date of this IDO is May 17, 2018"

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Fact 8. 14-16-1-4(A)1: "All development after the effective date of this IDO is subject to the IDO standards"

So, Facts 1 through 8 have established that there are two outdoor light fixtures at the property that must meet the standards of 14-16-5-8(D) in order for the property to be considered in compliance of the IDO. Fact 9 now proves the Deputy Director's claim of compliance to be dishonest and fraudulent, abusive of his position in overseeing Code Enforcement.

Fact 9. 14-16-5-8(D)(2) in the Lighting section states: No light source for any outdoor light fixture shall be directly visible from any adjacent property or public right-of-way" Both IMG_8709.JPG and IMG_8470.JPG have light sources directly visible from both adjacent property and public right-of-way, which makes the violation flagrant and impossible to miss. And if the Inspector General needs to know what a light bulb looks like:

Fact 10. from the IDO's glossary:

Light source

The element of a lighting fixture that is the point of origin of the lumens emitted by the fixture. It is the element that, if removed, would render the fixture incapable of producing light.

See "IDO requirements for floodlights.jpg" showing floodlights must be pointed straight down or a shield completely hiding the bulb from view. The IDO's illustration leaves no doubt that the Deputy Director is lying about compliance.

So, with 10 Facts of the matter and a Planning Department in denial, the Inspector General now has a newsworthy investigation.

The only possible way for the Deputy Director's claim to even be remotely true is for the property to have been granted a variance. But according to the Zoning Hearing Examiner, who approves deviations from Code, no variance has ever been granted nor even applied for by the property in violation. [REDACTED] claim of total compliance therefore stands as a bold-faced lie, according to the facts-- --facts that are crisp and clean and plain to see. "

Allegation 1: The statement by the Deputy Director that "The property owner is in compliance with the Integrated Development Ordinance" was dishonest, fraudulent, and abusive of the position.

Given the complaint and each statement of fact provided by C1, the OIG felt it necessary to address each statement and then provide an assessment of the allegation.

OIG Response to Fact 1: The OIG agrees that the subject property is located in Albuquerque.

OIG Response to Fact 2: The OIG agrees that the subject property is private property.

OIG Response to Fact 3: The OIG agrees that IDO section 14-16-1-4(A) does state "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"

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OIG Response to Fact 4: The OIG agrees that the IDO Lighting section 14-16-5-8(D) opens with "All sources of light visible from the exterior of a property shall meet these standards. 5-8(B)(1) adds "The standards of this section shall apply to both new lighting and the replacement of fixtures (excepting lamp replacement), regardless of type, mounting, or location." 5-8(A) specifically states the Purpose "to reduce light pollution between private properties", which makes its application obligatory for this situation.

OIG Response to Fact 5: The OIG could not validate that a new floodlight was installed on the Eastside of the property after July 2019, given that there is no attestation that the information contained on the website was validated at the time of posting.

OIG Response to Fact 6. The OIG can validate that Eufy, model T84201W1 was manufactured after March 2019 however, we are unable to validate the exact model of the lighting installed on the property through the pictures provided.

OIG Response to Fact 7. The OIG agrees that the original effective date of the IDO is May 17, 2018, however, amendments to the IDO are applicable when they are approved by the City Council as identified by the effective date of the amendment.

OIG Response to Fact 8. The OIG agrees that IDO Section 14-16-1-4(A)1 states "All development after the effective date of this IDO is subject to the IDO standards"

OIG Response to Fact 9. While the OIG agrees that the statement presented by C1 is included in the IDO, the OIG concludes that the IDO Lighting Section, known as 14-16-5-8, should be read as a whole in order to obtain a clear understanding of the ordinance as it pertains to the specified area of concern. When certain parts of the IDO Section are quoted as fact, the substance can be lost and can cause the reader to erroneously apply context and intent.

OIG Response to Fact 10. The illustration showing examples of fully shielded luminaires does not override the text as written in the IDO.

IDO Sections 5-8 (D) (2) and 5-8 (D) (3) state that "No light source for any outdoor light fixture shall be directly visible from any public right-of-way or any adjacent property and shall not be visible from a distance greater than 1,000 feet in any Residential zone district" and "All outdoor lighting shall be shielded and aimed so that light spillover onto the area 10 feet beyond the property line shall not exceed 200 foot-lambert's the property line except where adjacent to walkways, bicycle paths, driveways or public or private streets."

The OIG requested testing of the lighting at the subject property for which the report prepared by O1 concluded that the lighting at the property did not demonstrate spillover onto the area 10 feet beyond the property line in excess of 200 foot-lamberts. Additionally, a physical inspection, by the OIG, of the lighting on the property revealed that each of the lights was properly shielded. The evidence obtained during the OIG fact-finding investigation, taken fact by fact as presented by C1 did not reveal a lighting violation that would be required to substantiate the allegation that the statement by the Deputy Director was dishonest, fraudulent, and abusive of the position.

Allegation 1 Conclusion: The OIG could not substantiate the allegation that the Deputy Director's statement "The property owner is in compliance with the integrated Development Ordinance" was fraudulent as it pertained to the lighting section of the IDO.