

July 20, 2023

Hon. J.P. Morrell  
Hon. Helena N. Moreno  
Hon. Joseph I. Giarrusso, III  
Hon. Lesli Harris  
Hon. Freddie King, III  
Hon. Eugene J. Green  
Hon. Oliver Thomas  
Council of the City of New Orleans  
1300 Perdido Street, Second Floor West  
New Orleans, LA 70112

RE: Upper Pontalba Apartment

Dear Councilmembers:

On March 16, 2023, the Office of Inspector General (OIG) released a letter concerning the Mayor's use of a second-floor apartment unit (Mayor's Apartment) in the Upper Pontalba Building, which is owned by the City of New Orleans (City). The letter asserted that because the French Market Corporation (FMC) does not collect fair market value rent from the current usage of the Mayor's Apartment, this arrangement, in the case of personal use by the Mayor, gives the appearance of a donation of public property in possible violation of the Louisiana Constitution. Additionally, the Mayor's personal use of the apartment is a possible grant of compensation in addition to the salary of the Mayor authorized by City Code and for which the City may not be making the required payroll deductions.<sup>1</sup>

The OIG recommended that the City relinquish the Mayor's Apartment to the FMC to collect fair market value rent from the public. This would not only eliminate any further controversy concerning use of the Mayor's Apartment, but it would also ensure that the City would receive an additional \$36,000 in annual rental income from the apartment.

On April 20, 2023, the City Council passed an ordinance that amended and re-ordained City Code Section 2-930 as follows:

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<sup>1</sup> City Code Section §2-34. - Salary of mayor.

No immovable property owned or controlled by the city or by a public benefit corporation may be used for residential occupancy by a city employee or elected official, except upon payment of fair-market rent pursuant to a written lease. ... The use authorized by this subsection must be directly attendant to the performance of the mayor's official duties or directly related to a city event or other public purpose. Overnight stays shall be prohibited.

In light of recent events regarding possible overnight stays at the Mayor's Apartment, the OIG requests that the City Council re-examine the ordinance passed in April 2023. As written, the ordinance does not appear to ensure that the City receives fair market value from the usage of the Mayor's Apartment. Additionally, the ordinance lacks an enforceable definition of what qualifies as an "overnight stay".

The OIG strongly recommends that the City Council adopt the recommendation included in our March 16, 2023 letter and relinquish the Mayor's Apartment back into commerce, which would generate an additional \$36,000 in annual rental income for the City. We have attached a copy of the letter for your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed Michel".

Edward Michel, CIG  
Inspector General

Enclosure: *Use of Upper Pontalba Apartment letter (March 16, 2023)*

March 16, 2023

Latoya Cantrell, Mayor  
City of New Orleans  
1300 Perdido Street  
New Orleans, LA 70112

Anna Tusa, Board President  
French Market Corporation  
1008 N. Peters Street  
New Orleans, LA 70116

Leslie T. Alley, Executive Director  
French Market Corporation  
1008 N. Peters Street  
New Orleans, LA 70116

RE: Use of Upper Pontalba Apartment

Dear Mayor Cantrell, Ms. Alley, and Ms. Tusa:

The Office of Inspector General (OIG) is authorized to comment on rules, regulations, policies, procedures, and transactions for the purpose of preventing fraud, waste, and abuse, or promoting efficient and effective government.<sup>1</sup> I am writing concerning the use of a second floor apartment unit in the Upper Pontalba Building (Upper Pontalba), which is owned by the City of New Orleans (City). For purposes of this letter, the apartment in question is referred to as the “Mayor’s Apartment”.<sup>2</sup> Under a management agreement with the City, the French Market Corporation (FMC) manages, operates and staffs the Upper Pontalba.<sup>3</sup> The Upper Pontalba’s website stated that its “50 apartment units are fully occupied and there is a waiting list for the building’s prized apartments.”<sup>4</sup> As of February 2023, 339 people were on the FMC’s residential waiting list for an Upper Pontalba apartment. However, due to an undocumented agreement between the FMC and the City, the Mayor’s Apartment remains vacant and is reserved at all times for events sponsored by the Mayor, which generates no income for the FMC and the City. Because the FMC does not collect fair market value rent from the current usage of the Mayor’s Apartment, this arrangement, in the case of personal use by the Mayor, gives the appearance of a donation of public property in possible violation of the Louisiana Constitution. Additionally, the Mayor’s personal use of the apartment is a possible grant of compensation in excess of the salary of the Mayor authorized by City Code Section 2-34 and for which the City may not be making the required payroll deductions.

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<sup>1</sup> Home Rule Charter of the City of New Orleans Article IX, § 9-401(2); City Code Section §2-1120(10)(f).

<sup>2</sup> While reviewing past interviews with FMC board members as well as invoices for repairs and maintenance to the Mayor’s Apartment, the OIG noted that it was often referred to as the “Mayor’s Apartment” or “Mayor’s Unit”.

<sup>3</sup> The FMC is a non-profit corporation formed by the City on January 1, 1972 to provide for the operation and maintenance of the French Market properties owned by the City, including the Upper Pontalba.

<sup>4</sup> <http://upperpontalba.org/public-benefit-corporation/>.

In response to an OIG document request, the FMC provided a residential tenant policy manual, which established general rules and regulations for all residential tenants of the Upper Pontalba.<sup>5</sup> However, both the FMC and the City were unable to provide the OIG with any written agreements documenting the public purpose of reserving the Mayor's Apartment at all times for the Mayor's use, or any policies establishing rules and regulations for use of the apartment. FMC management responded to an OIG document request by stating, "No such documents exist or are in the FMC's possession." The OIG also reviewed archived documents from previous administrations at the City Archives.<sup>6</sup> The OIG concluded both the FMC and the City had no written agreements or policies in their possession governing the use of the Mayor's Apartment. A 2011 newspaper article stated,

Historically, City Hall has controlled one of the Pontalba apartments, an 1,800-square-foot unit on the second floor. The space, which generates no income, is usually used to host events sponsored by the mayor's office or for visiting dignitaries.<sup>7</sup>

In recent interviews with local media, officials from former administrations recalled the Mayor's Apartment was used on occasion by the Mayor for meetings and special events, or as lodging for visiting dignitaries, but not for daily use.<sup>8</sup> Former Mayor Marc Morial recently affirmed, "It's not meant to be a residence for the mayor, period."<sup>9</sup> However, in addition to the Mayor's daily usage of the apartment during both work and evening hours, recent overnight guests at the Mayor's Apartment have included visiting family members of the Mayor.<sup>10</sup> FMC management affirmed it "does not have any records related to the mayor's use of the City's apartment in the Upper Pontalba Building..." in response to an OIG document request for dates the Mayor's Apartment was used by the Mayor and/or guests of the Mayor.

According to the FMC's rent roll for Upper Pontalba's residential apartments, the City is listed as the tenant for the Mayor's Apartment. The rent roll listed the monthly rent value of the Mayor's Apartment at \$2,991 if it were leased to the public.<sup>11</sup> As shown in Figure 1, the Mayor's Apartment would have generated approximately \$36,000 in annual rent income for the FMC if leased to the public during the 12 month period October 1, 2021 through September 30, 2022. Additionally, the

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<sup>5</sup> French Market Corporation. *Upper Pontalba Building Residential Tenant Policy Manual*, Revised January 10, 2020.

<sup>6</sup> <http://archives.nolalibrary.org/~nopl/spec/speclist.htm>.

<sup>7</sup> Donze, Frank, and Michelle Krupa. "Upper Pontalba Building Apartments on Jackson Square Are in Line for Higher Rents." *The Times-Picayune (New Orleans, LA)*, May 11, 2011. [https://www.nola.com/news/politics/upper-pontalba-building-apartments-on-jackson-square-are-in-line-for-higher-rents/article\\_6bbc41cb-bb8c-53ff-9bb0-5dc60ba0dff7.html](https://www.nola.com/news/politics/upper-pontalba-building-apartments-on-jackson-square-are-in-line-for-higher-rents/article_6bbc41cb-bb8c-53ff-9bb0-5dc60ba0dff7.html).

<sup>8</sup> "Former Mayoral Administrations Say City-Owned Pontalba Apartment Was Never Lived In," *FOX 8 WVUE-TV*, September 29, 2022. <https://www.fox8live.com/2022/09/30/former-mayoral-administrations-say-city-owned-pontalba-apartment-was-never-lived/>.

<sup>9</sup> Zurik, Lee and Dannah Sauer. "ZURIK: Former Mayor Contradicts Mayor Cantrell's Claims About Pontalba Apartment.," *FOX 8 WVUE-TV*, December 15, 2022. <https://www.fox8live.com/2022/12/16/zurik-former-mayor-contradicts-mayor-cantrells-claims-about-pontalba-apartment/>.

<sup>10</sup> Zurik, Lee and Dannah Sauer. "Zurik: Mayor Cantrell Allowed Family Members to Use City-Owned Upper Pontalba Apartment, Emails Show," *FOX 8 WVUE-TV*, February 6, 2023. <https://www.fox8live.com/2023/02/07/zurik-mayor-cantrell-allowed-family-members-use-city-owned-apartment-during-essence-fest-emails-show/>.

<sup>11</sup> The auditors reviewed the FMC's "Rent Roll with Lease Charges" for the 12 month period October 31, 2021 through September 31, 2022. The Mayor's Apartment, designated "City Apartment" on the rent roll, was listed with a monthly market rate of \$2,991 if it was leased to the public during the period.

FMC would have avoided approximately \$5,000 in annual utility expenses it paid for the Mayor’s Apartment. Total annual rental income/savings to the FMC would have exceeded \$40,000 if the Mayor’s Apartment was leased to the public.<sup>12</sup>

**Figure 1.** Upper Pontalba Forgone Rental Income and Paid Utilities that Benefitted the Mayor

Month	Market Value Rent (FMC)	Electricity (Entergy)	Sewerage and Water (S&WB)	Telephone Service (AT&T)	Monthly Utilities Total	Total Monthly Rent & Utilities
Oct-21	2,991	129	48	254	431	3,422
Nov-21	2,991	112	44	253	409	3,400
Dec-21	2,991	79	40	253	372	3,363
Jan-22	2,991	78	48	253	379	3,370
Feb-22	2,991	102	43	290	435	3,426
Mar-22	2,991	104	65	280	449	3,440
Apr-22	2,991	71	48	280	399	3,390
May-22	2,991	79	49	280	408	3,399
Jun-22	2,991	134	44	280	458	3,449
Jul-22	2,991	209	57	39	305	3,296
Aug-22	2,991	219	49	- <sup>13</sup>	268	3,259
Sep-22	2,991	166	48	-	214	3,205
<b>Total</b>	<b>\$ 35,892</b>	<b>\$ 1,482</b>	<b>\$ 583</b>	<b>\$ 2,462</b>	<b>\$ 4,527</b>	<b>\$ 40,419</b>

Louisiana Constitution Article VII, Section 14(A) prohibits the donation of public property stating, “property ... of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”<sup>14</sup> The Attorney General has consistently opined that “La. Const. art. VII, Sec. 14 prevents [a political subdivision] from simply donating property ... as doing so would be a gratuitous donation of public property.”<sup>15</sup> Therefore, the City must “effectively demonstrate that it has a reasonable expectation of receiving a value in cash, services and/or benefits that is commensurate with the fair value of the leased...” public property in order to remain compliant with the Louisiana Constitution.<sup>16</sup>

<sup>12</sup> The OIG also noted the FMC paid invoices, totaling \$13,551, for various repairs and maintenance to the Mayor’s Apartment during the 12 month period October 1, 2021 through September 30, 2022, as well as invoices for repairs and maintenance specific to the apartment, totaling \$14,817, in July 2021.

<sup>13</sup> FMC management stated that it disconnected telephone service to the Mayor’s Apartment in July 2022 because the telephone line was not in use.

<sup>14</sup> La. Const. art. VII, Sec. 14(A).

<sup>15</sup> La. Attorney General Opinion No. 13-0005.

<sup>16</sup> La. Attorney General Opinion No. 15-0030.

The Louisiana Attorney General uses the “Cabela’s test”<sup>17</sup>, which requires all three of the following elements must be met for an expenditure or transfer public funds or property to be permissible under Article VII, Section 14(A):<sup>18</sup>

1. The expenditure or transfer of public funds or property must be for a public purpose;
2. The expenditure or transfer of public funds or property, taken as a whole, does not appear to be gratuitous; and
3. Evidence must demonstrate that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

The FMC and the City were unable to provide any written agreements documenting the public purpose, intended use, or expected benefit received by leaving the Mayor’s Apartment vacant and reserved at all times for events sponsored by the Mayor. However, recent use of the apartment by the Mayor did not appear to satisfy any of the three elements of the Attorney General’s *Cabela’s* test:

1. The FMC and the City were unable to provide any written policy or agreement documenting a public purpose for reserving the Mayor’s Apartment for the Mayor’s use at all times. However, use of the apartment as an office and/or special event space for the Mayor appeared to duplicate the public purpose of other City properties. City Hall, which is located a mile away<sup>19</sup> and functions as the chief administrative building of the City, provided office space for the Mayor<sup>20</sup>. As directed in the City’s Home Rule Charter, “[t]he Mayor's office shall be in the City Hall....”<sup>21</sup> Similarly, Gallier Hall, a City property “used mainly as the official reception hall for the Mayor”, provided a superior public venue for any special events that would have been held at the Mayor’s Apartment.<sup>22</sup> Additionally, the historic French Quarter offers an abundance of hotels to accommodate visiting dignitaries or other distinguished guests of the Mayor, which is more cost efficient to the City than reserving the Mayor’s Apartment at all times for such visitors.
2. The FMC received no rental income from the Mayor’s use of the apartment, whereas the FMC would have otherwise collected \$36,000 in rent annually if it was leased to the public. Additionally, the FMC paid all monthly utilities for the Mayor’s Apartment. Therefore, the

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<sup>17</sup> The “Cabela’s test” was developed by the Louisiana Attorney General following the Louisiana Supreme Court’s *Cabela’s* decision: *City of Port Allen v. Louisiana Risk Management, et al.*, 439 So.2d 399 (La. 1983) abrogated by *Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al*, 938 So.2d 11 (La. 9/6/06).

<sup>18</sup> “Legislative Auditor’s *Cabela’s* Test and Cooperative Endeavor Agreements.” Louisiana Legislative Auditor, September 2, 2022. [https://app.la.state.la.us/llala.nsf/9EB337F0C1BA94D886257AB500752B32/\\$FILE/CEA%20Memo%20and%20Sample.pdf](https://app.la.state.la.us/llala.nsf/9EB337F0C1BA94D886257AB500752B32/$FILE/CEA%20Memo%20and%20Sample.pdf).

<sup>19</sup> According to Google Maps, City Hall is located 1.1 miles, or a 23-minute walk, from the Upper Pontalba.

<sup>20</sup> <https://nola.gov/next/mayor/home/>.

<sup>21</sup> Home Rule Charter of the City of New Orleans Article IV, § 4-207.

<sup>22</sup> Gallier Hall is managed by the Department of Property Management. In addition to its role as the reception hall for the Mayor, it is “rented regularly [to the public] for dinner parties, wedding receptions, balls, movie shoots and various meetings.” <https://nola.gov/property-management/>.

Mayor's use of the Apartment gave the appearance of a gratuitous transfer of public funds and property.

3. The FMC did not effectively demonstrate that it had a reasonable expectation of receiving a benefit or value from leaving the Mayor's Apartment vacant and permanently reserved for the Mayor's use that was at least equivalent to the apartment's fair market rent value.

The OIG recommends that the City relinquish the Mayor's Apartment to the FMC to rent to the public. This would not only eliminate any further controversy concerning use of the Mayor's Apartment, but it would also ensure that the City receives a benefit equivalent to the fair market value from this high demand property with a waitlist of over 300 people. In 2011, the City justified raising rent for residential tenants at the Upper Pontalba apartments, stating the City and the FMC were "committed to getting a good, fair market value for taxpayer-owned property."<sup>23</sup> Leasing this desirable apartment to the public would honor this commitment and the FMC would collect an additional \$36,000 in annual rental income from the apartment, whereas it has previously been collecting no income while spending thousands annually on the unit's utilities and maintenance costs.

In the event the FMC and the City choose not to lease the Mayor's Apartment to the public, the FMC, as property manager, should implement a cooperative endeavor agreement (CEA) with the City defining how the apartment is to be used. At a minimum, the CEA should include the following in order to comply with the Louisiana Constitution:

1. The public purpose of the apartment;
2. Restrictions on any uses of the apartment that would appear gratuitous and in violation of the Louisiana Constitution; and,
3. Effectively demonstrate the FMC has a reasonable expectation of receiving a benefit or value at least equivalent to the fair market value if the apartment was leased to the public.

In addition, FMC, as property manager, should keep the apartment key secure when the Mayor's Apartment is not in use and maintain a guest log documenting when the key is checked out and returned.

Sincerely,



Edward Michel, CIG  
Inspector General

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<sup>23</sup> Egger, Bruce. "Upper Pontalba Renters Suing the City to Try to Overturn Recent Rent Increases." *The Times-Picayune/The New Orleans Advocate*, July 18, 2011. [https://www.nola.com/news/politics/upper-pontalba-renters-suing-the-city-to-try-to-overturn-recent-rent-increases/article\\_021c24ee-e476-5705-963a-1f1dce708919.html](https://www.nola.com/news/politics/upper-pontalba-renters-suing-the-city-to-try-to-overturn-recent-rent-increases/article_021c24ee-e476-5705-963a-1f1dce708919.html).