

# **ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT**

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### **§ 2-10-1 SHORT TITLE.**

Sections 2-10-1 through 2-10-16 may be cited as the "Accountability in Government Ordinance".

(Ord. 1-2005; Am. Ord. 2016-018)

### **§ 2-10-2 FINDINGS; PURPOSE; GOALS.**

(A) The Council finds that good governance, transparency and accountability are critical in the public sector for the effective and credible functioning of a healthy democracy, and in fulfilling the government's responsibility to citizens and taxpayers. Transparent and reliable reporting and effective auditing in government serve to promote accountability, enhance the effectiveness of government services to its citizens, and increase the public's confidence in their government.

(B) The Mayor and City Council share a duty to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and

that city policies, budgets, goals and objectives are fully implemented. To accomplish this end, the city requires the services of an independent organization to perform internal audits, conduct management studies and investigate claims of waste and mismanagement.

(C) The Committee shall oversee the City Auditor and the Inspector General, whose goals are to:

(1) Conduct audits and 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) Propose ways to increase the city's legal, fiscal and ethical accountability through the use of audit and management studies to insure that tax payers' dollars are spent in a manner that improves the economy of operations; and

(4) Deter criminal activity through independence in fact and appearance, audit, investigation and interdiction.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010; Am. Ord. 2016-018)

### **§ 2-10-3 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AUDITEES.** Auditees are the city related departments, programs, activities, agencies, vendors, contractors or other city related entities affected by an audit or investigation.

**CITY AUDITOR.** The Director of the Office of Internal Audit.

**COMMITTEE.** The Accountability in Government Oversight Committee.

**CONTRACTORS.** All city contractors.

**EMPLOYEE.** All city employees.

**EXPANDED SCOPE AUDIT.** An audit whose original scope is modified by the City Auditor or the Committee based on circumstances and findings uncovered during the audit.

**INSPECTOR GENERAL.** The Inspector General created pursuant to the Inspector General Ordinance (§§ 2-17-1 et seq.).

**OFFICIAL.** The Mayor and Councilors.

**PUBLISHED REPORT.** An audit report that has been distributed in final form to the auditees, to the Mayor and Chief Administrative Officer, and to the City Council. A published audit report is available on request to the public.

**SPECIAL AUDITS.** Exigent audits not included in the annual audit plan, because the need for the audits was not foreseen when the audit plan was adopted.

**STRATEGIC REVIEWS.** Reportable non-audit work including but not limited to benchmarking, best practices, and compliance reviews requested by an official or the City Auditor and at the discretion of the City Auditor.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

#### **§ 2-10-4 CREATION OF THE OFFICE OF INTERNAL AUDIT; RESOURCES; STAFF.**

(A) The Office of Internal Audit is created as an independent office of city government. The Office of Internal Audit is not part of the city's executive branch or the City Council. The City Auditor shall report to the Committee.

(B) The Office of Internal Audit shall independently administer its own budget, and supervise its own staff in compliance with the city's Merit Ordinance and contractual services policies and procedures.

(C) The Office of the City Attorney shall advise and represent the Office of Internal Audit, except that the Office of Internal Audit may, in consultation with the City Attorney, select an independent legal counsel to advise and represent the Office as needed in the event of a conflict of interest that the City Attorney determines cannot otherwise be cured internally.

(D) The Office of Internal Audit shall comply with all city ordinances and policies dealing with administrative functions including but not limited to those dealing with personnel, the merit system, and procurements.

(E) The Office of Internal Audit shall employ such staff as necessary to carry out its functions as prescribed by this article, including but not limited to the City Auditor, professional audit staff and other staff as may be necessary, subject to budget sufficiency and city personnel policies and procedures. The City Auditor has sole authority to hire, promote, set compensation for, discipline or discharge the staff of the Office of Internal Audit in a manner consistent with the Merit System Ordinance and the Grade Series Pay Plan.

(F) The Office of Internal Audit shall provide staff support to the Committee and administrative staff support to the Office of the Inspector General.

(G) Neither the City Auditor nor any employee of the Office of Internal Audit shall engage in any partisan political activities or the political affairs of the city during work hours.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

#### **§ 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.**

(A) The "Accountability in Government Oversight Committee" is created. The Committee shall consist of five members who are residents of the city and who are not employed by the city, or in a direct contractual relationship or similar business relationship with the city. At least one Committee member shall be a CPA, at least one Committee member shall have a law enforcement or law background and at least one Committee member shall be a professional management consultant. The Mayor and one Councilor appointed annually by the Council President shall be nonvoting ex officio members. The Mayor and the appointed Councilor may

send designees to the Committee meetings. The committee may request the attendance of other city personnel or auditees.

(B) As vacancies on the Committee occur, the Council and Mayor shall alternatively appoint new members with the Council making the first appointment. All appointments shall be subject to Council approval. The existing Committee members may make recommendations to the Mayor and Council for candidates to fill vacancies on the Committee. If either the Mayor or Council fails to name a replacement Committee member within 45 days of the vacancy, then the other body shall make the appointment. The Committee members shall be appointed for staggered terms of three years unless an appointment is to fill a vacancy. An appointment to fill a vacancy shall be for the unexpired term. Terms shall begin on the first day of September. The Committee members shall elect the Committee Chair annually.

(C) The Committee shall meet at least four times per year, but may also meet monthly or upon the call of the Chair or a majority of its members.

(D) Committee members shall not receive compensation for their service. Voting members of the Committee shall not serve on any other city board, commission or task force.

(E) The Chief Administrative Officer and the Director of Council Services or their designees may attend all Committee meetings.

(F) If an Official is the subject of an investigation, then the ex officio members or their designees, shall be recused from all meetings where that particular investigation is being discussed and they shall not have access to the investigative file during the pending investigation.

(G) The Committee is a management committee and not a public board, commission or committee as specified by §§ 2-6-1-1 et seq. and not subject to the Open Meetings Act. The Committee is not formed to formulate public policy nor has authority to formulate public policy been delegated to the Committee. The Committee and its members are subject to the City Charter, Article XII Code of Ethics.

(H) The Committee shall annually recommend the Office of Internal Audit and Inspector General budget to the Mayor and Council through the normal city budget process for city departments in an amount sufficient for both offices to fulfill their respective function, which proposal may include a salary adjustment for the City Auditor or the Inspector General.

(I) The Committee may provide the City Auditor and the Inspector General with guidance, priorities and potential areas for investigations and audits. The Committee may also lend advice to the City Auditor and the Inspector General regarding technical issues that may arise.

(J) The Committee shall not prohibit the City Auditor or the Inspector General from initiating, carrying out or completing and reporting on any audit, investigation or strategic review. If a majority of the Committee members finds that an audit, investigation or strategic review is questionable, then the Committee may issue a cautionary statement to the City Auditor or the Inspector General, as appropriate.

(K) The Committee shall review any audit, investigatory or strategic review reports at each meeting. If the committee approves a report then the City Auditor or Inspector General shall

immediately cause the report to become a published report. If the committee does not approve a report, then the City Auditor or Inspector General shall cause the report to become a published report no sooner than 15 business days from the date of the committee's review or consideration. The committee may draft a cautionary statement for inclusion with the report during this 15 day period which, if provided to the City Auditor or Inspector General within this timeframe, will be made part of the published report.

(L) The Committee shall prepare a job description, specify qualifications for applicants, work with the Director of the Human Resources Department to advertise for the position and develop the applicant search procedure and make recommendations to the Council on the selection of the City Auditor and the Inspector General. The committee shall apply human resources best practices to its applicant search relating to advertisement periods, job posting locations including with national industry-oriented groups or associations, application review processes, interview processes, and contacting of references and prior employers as may be recommended by the Director of Human Resources or other reliable sources.

(M) Any discipline of the City Auditor or the Inspector General, as provided by § 3-1-6 ROA 1994, shall be by the Committee. The City Auditor and the Inspector General shall report to the Committee for approval of vacation, sick, emergency and city business leave.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2013-003; Am. Ord. 2015-026; Am. Ord. 2016-018)

## **§ 2-10-6 SELECTION AND RETENTION OF CITY AUDITOR.**

(A) (1) The Committee, through its staff, shall accept applications from candidates, interview candidates, and shall submit to the City Council the names of the three candidates (or more in the event that candidates are tied in ranking) that it finds to be the best qualified to be City Auditor indicating its ranking, together with a general description of its selection process, and the Council shall appoint the City Auditor from the three. The Committee's recommendation to Council shall be based on the candidates' integrity, capability for strong management and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields.

(2) Upon the expiration of four years from the date of the City Auditor's last appointment by the City Council, the Committee shall submit three candidates to the Council for its consideration for appointment to the position of City Auditor, or in lieu of recommending three candidates to the Council, the Committee may recommend to the Council the reappointment of the incumbent City Auditor. Should the Council decline to reconfirm the incumbent City Auditor, the Council President will notify the Committee that it needs to provide the Council with three alternate candidates pursuant to the provisions of subsection (A)(1).

(B) If a current or prior city employee or official is appointed to the position of City Auditor, such person shall not audit or assist in the audit of the department or agency where such person previously served or was employed for a period of four years from the last day of such prior employment or service. Any audits of such department or agency shall be referred by the City Auditor to an independent third party auditor who shall serve as an independent proxy for the City Auditor, vested with the full authority of the City Auditor only for the purposes of the specific audit(s) so assigned, and who shall report to the Committee relating to the audit in the

same manner as the City Auditor would under this article. If a current or prior city official, contractor, or employee is one of the three recommended to the City Council for possible appointment, the Committee shall submit to the Council a statement describing its assessment of possible conflicts or appearances of conflicts, if any, that may result during the fulfillment of duties as City Auditor if that candidate is appointed.

(C) As a condition of retention, the City Auditor must obtain certification as a Certified Public Accountant or Certified Internal Auditor through the appropriate entity within two years of appointment. Other professional certifications, such as certified fraud examiner are recommended.

(D) Prior to submission of the final three candidates to the City Council, the three City Auditor candidates shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the Committee to obtain the candidate's Federal Bureau of Investigation record. Records and related information shall be privileged and shall not be disclosed to anyone other than Committee members. The city shall pay for the cost of obtaining the Federal Bureau of Investigation records.

(E) The City Auditor may be removed from office only upon an affirmative vote of two-thirds (2/3) of the members of the Committee, or upon the City Council's decision to not reconfirm the City Auditor pursuant to subsection (A)(2) of this section. Within five days of removal of the Director the Committee shall report the reasons for that removal to the Mayor and the Council.

(Ord. 1-2005; Am. Ord. 39-2007; Am. Ord. 30-2010; Am. Ord. 2013-003; Am. Ord. 2016-018)

#### **§ 2-10-7 CITY AUDITOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.**

(A) If the City Auditor detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or auditee, the City Auditor shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the City Auditor shall immediately refer the irregularity to the appropriate prosecuting authority and notify the Inspector General. The City Auditor shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(B) Upon request of the Mayor or City Council, the City Auditor shall assist or provide resources to assist city departments in the review of state and federal legislation, city ordinances, resolutions, rules, regulations and policies pertaining to that particular city department or office.

(C) The City Auditor shall promulgate regulations to establish procedures for the Office of Internal Audit.

(D) The City Auditor shall have the power to subpoena witnesses, administer oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena issued to any person, the City Auditor may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the City Auditor and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(E) The City Auditor shall maintain a complete file of each audit report and each report of other investigations and strategic reviews made under legislative or special Committee authority for six years from the date that the audit or review is closed, or longer if required by law. The file should include audit work papers and other supportive material directly pertaining to the report. Records may be retained in electronic format at the City Auditor's election.

(F) In cases where the City Auditor deems it appropriate because of an audit, investigation, or strategic review, the City Auditor may refer opportunities for increased efficiency to the Office of Management and Budget to work with respective departments on management and process improvement.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010; Am. Ord. 2016-018)

### **§ 2-10-8 PROFESSIONAL STANDARDS.**

(A) The City Auditor shall adhere to generally accepted government auditing standards in conducting its work and will be considered independent as defined by those standards.

(B) The Office of Internal Audit's audits, investigations, and strategic reviews are subject to quality assurance reviews by an appropriate professional non-partisan objective group every three years. A copy of the written report resulting from this review shall be furnished to the Committee.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

### **§ 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.**

(A) The City Auditor shall maintain the confidentiality of any public records that are made confidential by law and is subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

(B) During the course of audit activities, all records shall be considered deliberative in process and not available for outside review.

(C) Prior to publishing a report, the City Auditor may share selected information with other city departments if the information is needed for decision-making purposes; otherwise, reports remain confidential until published, at which time they become public record.

(D) The names and identities of persons making complaints and providing information shall not be disclosed without the written consent of the person unless otherwise required by law or judicial processes.

(E) Published reports are public records except that the City Auditor shall delay the publication of reports when criminal conduct is found and the Inspector General or appropriate law enforcement authority is pursuing an investigation and release of the report might jeopardize further investigation. An audit report that has been delayed pursuant to this section shall be published promptly at the end of the condition giving rise to the delay.

(F) The City Auditor may release a preliminary draft of an audit of anyone other than a city department or agency to the auditee for review and comment if the auditee agrees to restrict its use and to maintain the confidentiality of the information.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

**§ 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.**

(A) The Office of Internal Audit shall conduct audits and strategic reviews of all auditees to independently determine whether:

- (1) The city, state or federal law authorizes implemented activities and programs;
- (2) The objectives intended by city, state or federal law are efficiently and effectively accomplished in the implementation of activities and programs;
- (3) The expenditure of funds complies with applicable laws;
- (4) The revenues are properly collected, deposited and accounted for;
- (5) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
- (6) Financial and other reports fairly and fully disclose all information as required by law necessary to evaluate and ascertain the nature and scope of programs and activities;
- (7) Management established operating and administrative procedures and practices, accounting internal control systems and internal management controls are adequate and functioning as intended; and
- (8) City policies, budgets, goals and objectives are fully implemented.

(B) At an official's request, the City Auditor shall initiate special audits or strategic reviews subject to the provisions of § 2-10-12.

(Ord. 1-2005; Am. Ord. 39-2007; Am. Ord. 2016-018)

**§ 2-10-11 ANNUAL AUDIT PLAN.**

(A) Prior to the beginning of each fiscal year, the City Auditor shall submit an annual audit plan to the Committee for review and comment. As part of these deliberations, the officials shall be invited to recommend areas for inclusion in the plan. The plan shall include the auditees scheduled for audit during the year, a statement of the scope of the audit and the estimated time required to complete the audit.

(B) The annual audit plan shall be transmitted to the Council for final approval as a resolution.

(C) This plan may be amended during the year after review with the Committee.

(D) In the selection of audit areas, the determination of audit scope and the timing of audit work, the City Auditor should consult with federal and state auditors and independent auditors so that the desirable audit coverage is provided and audit effort may be properly coordinated.

(E) The City Auditor shall make reports at least quarterly to the Committee on the status of the work plan.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010; Am. Ord. 2016-018)

**§ 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.**

(A) In all cases, the City Auditor shall, within 48 hours of implementation, notify the Committee when a special audit or strategic review is being undertaken.

(B) A draft of the report shall be forwarded to the auditees and the Chief Administrative Officer for review and comment before it is provided to the Committee for pre-publication review. The auditees, including departments whose assistance is needed in order to accomplish any audit recommendation, shall respond to the City Auditor, in writing, within 14 days of receipt of the audit report.

(C) The auditees' written response shall specify agreement with each of the audit findings and recommendations or reasons for disagreement with findings or recommendations. The auditees' written responses shall include auditees' plans for implementing solutions to identified problems including timetables to complete such activities.

(D) Auditees' comments to the preliminary draft may be utilized to amend the report if appropriate. If the preliminary audit report is amended, the auditees will be given a copy of the amended draft, and the auditees will be given seven to 14 days, as determined by the City Auditor and the auditees, to respond to the amended draft of the audit report.

(E) The City Auditor shall include the auditees' responses in the audit report.

(Ord. 1-2005; Am. Ord. 2016-018)

**§ 2-10-13 REPORTS TO THE COMMITTEE.**

(A) Each investigation, audit and strategic review shall result in a written final report.

(B) The City Auditor shall submit at least five copies of each report to the Committee and shall retain a copy as a permanent record for six years from the date it became a published report or longer if required by law.

(C) If appropriate, the report shall contain the professional opinion or conclusions of the City Auditor.

(D) The City Auditor's audit reports shall include:

(1) A precise statement of the scope encompassed by the audit;

(2) A statement that the audit was performed in accordance with generally accepted government auditing standards;

(3) A statement that an examination for compliance with applicable laws, policies and regulations was conducted, and a presentation of the findings associated with that examination;

(4) A statement of significant audit findings, including a statement of the underlying causes, evaluative criteria used and the current and prospective significance of the findings;

(5) A statement that internal control systems were examined and a report of any material weaknesses found in the internal control systems;

(6) Statements of response submitted by the auditees relevant to the audit findings;

(7) A concise statement by the auditees of the corrective actions previously taken or contemplated as a result of the audit findings and a timetable for their accomplishment; and

(8) Recommendations for additional necessary or desirable action.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

#### **§ 2-10-14 ANNUAL REPORTING.**

(A) The City Auditor shall annually report to the Council and the Mayor regarding his activities.

(B) Within 60 days of the end of each fiscal year, the City Auditor shall issue an annual report to the Committee that separately lists audit reports, review reports and other assistance efforts completed during the fiscal year.

(C) The Office of Internal Audit shall provide copies of the annual report upon request.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

#### **§ 2-10-15 CONTRACT AUDITORS, CONSULTANTS, AND EXPERTS.**

The City Auditor may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other professional experts necessary to perform the functions of the Office of Internal Audit. Contractors performing an audit shall not have any financial interest in the affairs of the auditees, officials or employees. The City Auditor shall coordinate and monitor auditing performed by persons under contract to the City Auditor.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)

#### **§ 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

(A) All city officials, employees and contractors shall provide the City Auditor full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, electronic data, property, equipment and facilities and any other materials within their custody. At the City Auditor's request, an official, employee or contractor shall prepare reports and provide interviews. If an official, employee, vendor or contractor fails to produce the requested information, the City Auditor shall notify the Committee and make written request to the Chief Administrative Officer for his assistance in causing a search to be made and germane exhibits to be taken from any book, paper or record excepting personal property. The Chief Administrative Officer shall require the officials, employees, vendors or contractors to produce the requested information.

(B) Every city contract, bid, proposal, application or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a statement

that the individual understands and will abide by all provisions of the Accountability in Government Ordinance.

(C) No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the City Auditor in the performance of his office.

(D) Each and every violation of this article is a criminal violation subject to the provisions of § 1-1-99 ROA 1994.

(E) Any official or employee who violates the Accountability in Government Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

(Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 2016-018)