

ARTICLE 17: INSPECTOR GENERAL

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§ 2-17-1 SHORT TITLE.

Sections 2-17-1 et seq. may be cited as the "Inspector General Ordinance".

(Ord. 30-2010)

§ 2-17-2 FINDINGS; PURPOSE; GOALS.

(A) The organization and administration of the Office shall be sufficiently independent to assure that no interference or influence external to the Office adversely affects the independence and objectivity of the Inspector General.

(B) 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.

(Ord. 30-2010)

§ 2-17-3 DEFINITIONS.

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

COMMITTEE. The Accountability in Government Oversight Committee.

CONTRACTORS. All city contractors.

EMPLOYEE. All city employees.

INVESTIGATED PARTY. A city related department, program, activity, agency, vendor, employee, contractor or other city related entity affected by an investigation.

OFFICE. The Office of the Inspector General.

OFFICIAL. The Mayor and Councilors.

PUBLISHED. An investigation report is published when it is approved by the Board and distributed in final form to the investigated party, to the Mayor and Chief Administrative Officer, and to the City Council. A published investigation report is available on request to the public.

(Ord. 30-2010)

§ 2-17-4 CREATION OF THE OFFICE OF THE INSPECTOR GENERAL; RESOURCES; STAFF.

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

(B) The Inspector General shall be able to manage a staff of professional investigators, coordinate his investigations with the Internal Auditor and prepare a file for use by a prosecutorial agency.

(C) The Office of the Inspector General shall be funded from the General Fund.

(D) The Inspector General shall establish the organizational structure appropriate for carrying out the responsibilities and functions of the Office of the Inspector General.

(E) The Inspector General shall have, subject to appropriation by the City Council, the power to appoint, employ, and remove such assistants, employees and personnel and establish personnel procedures as deemed necessary for the efficient and effective administration of the activities of the Office of the Inspector General.

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

(G) Neither the Inspector General nor any employee of the Office of the Inspector General shall engage in any partisan political activities or the political affairs of the city during work hours.

(Ord. 30-2010)

§ 2-17-5 SELECTION AND RETENTION OF INSPECTOR GENERAL.

(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 that it finds to be the best qualified to be Inspector General indicating its ranking, and the Council shall appoint the Inspector General 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) In lieu of recommending three candidates to the Council, the Committee may recommend to the Council the reconfirmation of the incumbent Inspector General whom the Council may choose to reconfirm. Should the Council decline to reconfirm the incumbent Inspector General, 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 Inspector General, such person shall not investigate or assist in the investigation 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 investigations of such department or agency shall be referred by the Inspector General to an independent third party investigator who shall serve as an independent proxy for the Inspector General, vested with the full authority of the Inspector General only for the purposes of the specific investigation(s) so assigned.

(C) As a condition of retention, the Inspector General must obtain certification as a Certified Inspector General through the Association of Inspectors General or appropriate successor entity within two years of appointment. Other professional certifications, such as certified public accountant, certified internal auditor and certified fraud examiner are recommended.

(D) Prior to the final selection of the Inspector General, the candidate 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 Council shall consider whether the incumbent Inspector General should be reconfirmed pursuant to the provisions of Subsection (A)(2) of this Section no more than once every four years following the initial appointment.

(F) The Inspector General 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 Inspector General pursuant to Subsection E of this Section.

(Ord. 30-2010; Am. [Ord. 2013-003](#); Am. [Ord. 2015-027](#))

§ 2-17-6 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.

(A) If the Inspector General detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or investigated party, he shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the Inspector General shall immediately notify the appropriate prosecuting authority. If the irregularity is found in response to a complaint filed under the provisions of the Whistleblower Ordinance, the Inspector General shall notify the appropriate city department pursuant to the Whistleblower Ordinance. If the irregularity warrants an audit, then the Inspector General shall refer the matter to the Office of Internal Audit. The Inspector General shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(B) The Inspector General shall receive and investigate complaints referred to him by the Board of Ethics and Campaign Practices. In addition, the Inspector General shall receive and evaluate complaints referred to him by any official, employee, contractor or the public and initiate an investigation when he deems it appropriate. The Inspector General may also initiate an investigation.

(C) The Inspector General shall promulgate regulations to establish procedures for the Office of the Inspector General.

(D) The Inspector General 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 Director may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the Inspector General and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(E) The Inspector General shall maintain a complete file of each investigation made under legislative or special Committee authority for at least six years. The file should include work papers and other supportive material directly pertaining to the investigation. Records may be retained in electronic format at the Inspector General's election.

(F) The Inspector General shall investigate any alleged violation of the Code of Ethics or the Elections Code that the Board of Ethics and Campaign Practices directs him to investigate.

(G) The Inspector General shall not investigate complaints that are under the jurisdiction of the Police Oversight Commission or the Internal Affairs Division of the Albuquerque Police Department nor shall he access any Internal Affairs' files.

(H) In cases where the Inspector General deems it appropriate because of an investigation, he may refer opportunities for increased efficiency to the Office of Management and Budget to work with respective departments on management and process improvement.

(Ord. 30-2010)

§ 2-17-7 PROFESSIONAL STANDARDS.

(A) The Inspector General's investigations and inspections shall conform to the Association of Inspector General's professional standards.

(B) The Office of the Inspector General's investigations shall be subject to quality assurance reviews by an appropriate professional non-partisan objective group every three to five years. A copy of the written report resulting from this review shall be furnished to the Board.

(Ord. 30-2010)

§ 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

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

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

(C) Prior to publishing a report, the Inspector General 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 shall be public records except that the Inspector General 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 investigation release has been delayed shall be published promptly at the end of the condition giving rise to the delay.

(Ord. 30-2010)

§ 2-17-9 REPORTS TO THE COMMITTEE.

(A) Each investigation shall result in a written final report to the Committee. The Inspector General shall submit copies of each report to the Committee and shall retain a copy as a permanent record.

(B) The Inspector General's report shall include:

- (1) Specific citations to the law or policy that was allegedly violated;
- (2) An assessment of the validity of the allegations under investigation, including whether the allegations are criminal or civil in nature;
- (3) A list of the employee or official's supervisors;
- (4) A description of any corrective action or discipline to date;
- (5) If the case of a criminal violation, an evaluation of the likelihood of successful prosecution;
- (6) A summary of all of the direct and circumstantial evidence supporting the allegations; and
- (7) A description of which prosecutorial agencies may be contacted, have been involved or may be contacted.

(Ord. 30-2010)

§ 2-17-10 REPORTING.

(A) The Inspector General shall annually report to the Council and the Mayor regarding his activities and investigations.

(B) Within 60 days of the end of each fiscal year, the Inspector General shall issue a published report to the Committee that separately lists investigations and other assistance efforts completed during the fiscal year.

(C) The Inspector General shall notify members of the media and the public of the issuance of the published report. The Office of the Inspector General shall provide copies of the published report upon request.

(Ord. 30-2010)

§ 2-17-11 CONTRACT INVESTIGATORS, CONSULTANTS, AND EXPERTS.

Upon approval of the Committee, the Inspector General may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other Office of the Inspector General. Contractors performing investigations shall not have any financial interest in the affairs of the investigated party, officials or employees. The Inspector General shall coordinate and monitor investigations performed by persons under contract to the Inspector General.

(Ord. 30-2010)

§ 2-17-12 PENALTY; COOPERATION; RETALIATION PROHIBITED.

(A) All city officials, employees and contractors shall promptly notify the Inspector General of every instance of theft or other disappearance of cash, check, or property, of misfeasance or nonfeasance, defalcation, improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

(B) All city officials, employees and contractors shall provide the Inspector General 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 Inspector General'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 Inspector General shall notify the Board 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.

(C) 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 Inspector General Ordinance.

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

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

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

(Ord. 30-2010)