



City of Albuquerque

Office of the City Clerk

Timothy M. Keller, Mayor

Ethan Watson, City Clerk

Interoffice Memorandum

June 23, 2023

To: CITY COUNCIL

From: Camille Chavez, Assistant City Clerk *cc*

Subject: BILL NO. F/S O-22-55; ENACTMENT NO. O-2023-018

I hereby certify that on June 23, 2023, the Office of the City Clerk received Bill No. F/S O-22-55 as signed by the president of the City Council, Pat Davis. Enactment No. O-2023-018 was passed at the June 5, 2023 City Council meeting. Mayor Keller did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect without Mayor's approval or signature. This memorandum shall be placed in the permanent file for Bill No. F/S O-22-55.

Sincerely,

Ethan Watson
City Clerk

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1 City or in the event that the Office of the City Attorney is the subject of an
2 investigation; and

3 WHEREAS, the Office of Inspector General continues to meet or exceed the
4 goals as defined in the Accountability in Government Oversight Ordinance;
5 and

6 WHEREAS, the City further desires to amend certain elements of the
7 ordinance to provide clarity of language and improve realignment with existing
8 City regulations, professional standards, and practices.

9 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
10 ALBUQUERQUE:

11 SECTION 1. Chapter 2, Article 10 of the Revised Ordinances of
12 Albuquerque, New Mexico, 1994, the "Inspector General Ordinance" is hereby
13 amended as follows:

14 "§ 2-17-1 SHORT TITLE.

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

16 § 2-17-2 FINDINGS; PURPOSE; GOALS.

17 (A) The Council finds that good governance, transparency, and
18 accountability are critical in the public sector for the effective and credible
19 functioning of a healthy democracy, and in fulfilling the government's
20 responsibility to citizens and taxpayers. To accomplish this end, the City finds
21 the need for the services of an independent Inspector General. Effective
22 independent investigations, inspections, evaluations, and reviews along with
23 transparent and reliable reporting in government serves to promote
24 accountability, enhance the effectiveness of government services to its
25 citizens, and increase the public's confidence in their government.

26 (B) The Council finds that in order for the Inspector General to be effective,
27 the Inspector General must be authorized to maintain the confidentiality of
28 investigations resulting from an assignment by the Board of Ethics and
29 Campaign Practices until they are published.

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

33 (D) The Inspector General's goals are to:

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- 1 (1) Conduct investigations, inspections, evaluations, and reviews in an
- 2 efficient, impartial, equitable, and objective manner;
- 3 (2) Prevent and detect fraud, waste, and abuse in City activities including
- 4 all City contracts and partnerships;
- 5 (3) Carry out the activities of the Office of Inspector General through
- 6 independence in both fact and appearance, investigation, and interdiction; and
- 7 (4) Propose recommendations to increase the City's legal, fiscal and
- 8 ethical accountability to ensure that taxpayers' dollars are spent in a manner
- 9 consistent with the highest standards of local governments.

10 § 2-17-3 DEFINITIONS.

11 For the purpose of this article, the following definitions shall apply unless the

12 context clearly indicates or requires a different meaning.

13 **ABUSE.** The use of resources or exercise of authority that is contrary to

14 rule or policy, or knowingly inconsistent with any established mission or

15 objectives for the resource, or of the position held by the person exercising

16 the authority. Abuse does not necessarily involve fraud or illegal acts.

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

18 **CONTRACTORS.** All City contractors, including community-based

19 organizations.

20 **EMPLOYEE.** All City employees, including appointed employees.

21 **FRAUD.** A knowing misrepresentation of the truth, or concealment of a

22 material fact to induce another to act to his or her detriment.

23 **FRAUDULENT FINANCIAL REPORTING.** Intentional misstatements or

24 omissions of amounts or disclosures in the financial statements to deceive

25 financial statement users which may include intentional alteration of

26 accounting records, misrepresentation of transactions, or intentional

27 misapplication of accounting principles.

28 **INVESTIGATION.** A formal inquiry or systematic study conducted by the

29 Office of the Inspector General pursuant to this article. A formal systematic

30 study may include inspections, evaluations, and reviews which are analyses

31 of operations and programs for the purposes of providing information for

32 decision-making, and making recommendations to improve programs,

33 policies, or procedures.

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1 INVESTIGATED PARTY. A City-related department, program, activity,
2 agency, vendor, employee, contractor, or other City-related entity affected by
3 an investigation.

4 MISAPPROPRIATION OF ASSETS. Theft of an agency's assets, including
5 theft of property, embezzlement, or fraudulent payments.

6 OFFICE. The Office of the Inspector General.

7 OFFICIAL. The Mayor, City Councilors, and appointed members of City
8 boards, commissions, or committees.

9 PUBLISHED. A report that, unless otherwise prohibited, has been
10 presented to the Committee, distributed in final form to the Mayor and Chief
11 Administrative Officer, and to the City Council, and is available to the public.

12 WASTE. The thoughtless or careless expenditure, mismanagement, or
13 abuse of resources to the detriment of the City.

14 § 2-17-4 CREATION OF THE OFFICE OF THE INSPECTOR GENERAL;
15 RESOURCES; STAFF.

16 (A) The Office of the Inspector General is created as an independent and
17 non-partisan office of City government. The Office is not part of the City's
18 executive branch or the City Council. The Inspector General shall report to the
19 Committee.

20 (B) The Inspector General shall manage a staff of professional
21 investigators, and others operating at the direction of the Inspector General
22 that may include evaluators, reviewers, inspectors, contract specialists.

23 (C) The Inspector General shall coordinate referrals deriving from external
24 sources and work planned based on internal assessments, wherever
25 appropriate and necessary with the City Auditor and other potentially relevant
26 regulatory, law enforcement, or prosecutorial authorities.

27 (D) The Office of the Inspector General shall be funded from the General
28 Fund. Adequate funding shall be provided to uphold the ability of the Office of
29 the Inspector General to carry out its duties and support its staff and
30 operating expenses.

31 (E) The Office of the City Attorney shall advise and represent the Office of
32 the Inspector General, except that the Office of the Inspector General may
33 select independent legal counsel from the conflict counsel list maintained by

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1 the Office of the City Attorney, or other attorney selected with the assistance
2 of and through the City Attorney's office.

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

6 (G) The Inspector General shall have, subject to appropriation by the City
7 Council, and within the guidelines and criteria set by City personnel rules and
8 regulations, the power to recruit, hire, appoint, employ, set compensation for,
9 promote, discipline, and remove such assistants, employees, and personnel
10 and establish personnel procedures as deemed necessary for the efficient and
11 effective administration of the activities of the Office of the Inspector General.

12 (H) The Office of the Inspector General shall provide staff support to the
13 Committee.

14 (I) Neither the Inspector General nor any employee of the Office of the
15 Inspector General shall engage in any partisan political activities or the
16 political affairs of the City during work hours.

17 (J) The Inspector General shall strive to adhere to the "Association of
18 Inspectors General Principles and Standards for Offices of Inspector General"
19 and participate in the Peer Review Process by seriously pursuing any
20 recommendations resulting from such a process.

21 **§ 2-17-5 SELECTION AND RETENTION OF INSPECTOR GENERAL.**

22 (A) (1) The Committee, through its staff, shall accept applications from
23 candidates, interview candidates and shall submit to the City Council the
24 names of the three candidates that it finds to be the best qualified to be
25 Inspector General indicating its ranking, and the City Council shall appoint the
26 Inspector General from the three. The Committee's recommendation to
27 Council shall be based on the candidates' integrity, capability for strong
28 management and demonstrated ability in accounting, auditing, financial
29 analysis, law, management analysis, public administration, investigation,
30 criminal justice administration or other closely related fields.

31 (2) In lieu of recommending three candidates to the Council, the
32 Committee may recommend to the Council the reconfirmation of the
33 incumbent Inspector General whom the Council may choose to reconfirm.

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1 Should the Council decline to reconfirm the incumbent Inspector General, the
2 Council President will notify the Committee that it needs to provide the
3 Council with three alternate candidates pursuant to the provisions of
4 Subsection (A)(1).

5 (B) If a current or prior City employee or official is appointed to the position
6 of Inspector General, such person shall not investigate or assist in the
7 investigation of the department or agency where such person previously
8 served or was employed for a period of four years from the last day of such
9 prior employment or service. Any investigations of such department or agency
10 shall be referred by the Inspector General to an independent third-party
11 investigator who shall serve as an independent proxy for the Inspector
12 General, vested with the full authority of the Inspector General only for the
13 purposes of the specific investigation(s) so assigned.

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

20 (D) Prior to the final selection of the Inspector General, the candidate shall
21 be fingerprinted and shall provide two fingerprint cards or the equivalent
22 electronic fingerprints to the Committee to obtain the candidate's Federal
23 Bureau of Investigation record. Records and related information shall be
24 privileged and shall not be disclosed to anyone other than Committee
25 members. The City shall pay for the cost of obtaining the Federal Bureau of
26 Investigation records.

27 (E) The City Council shall consider whether the incumbent Inspector
28 General should be reconfirmed pursuant to the provisions of Subsection (A)(2)
29 of this Section no more than once every four years following the initial
30 appointment.

31 (F) The Committee shall review the salary of the Inspector General annually
32 and shall notify the Department of Finance and Administrative Services and

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1 the Human Resources Department of any salary adjustment, which will be
2 subject to budget sufficiency and City personnel rules and regulations.

3 (G) The Inspector General may be removed from office for cause upon an
4 affirmative vote of two-thirds (2/3) of the members of the Committee; upon an
5 affirmative vote of two-thirds (2/3) of the members of the City Council; or upon
6 the City Council's decision to not reconfirm the Inspector General pursuant to
7 Subsection E of this Section. For purposes of this Section, cause may include,
8 but is not limited to, conduct that is inconsistent with obligations under this
9 ordinance, or otherwise inconsistent with responsibilities to the committee.

10 § 2-17-6 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY;
11 ADMINISTRATIVE SUBPOENA POWER.

12 (A) If the Inspector General detects apparent or potential violations of law
13 or apparent instances of misfeasance or nonfeasance by an official or
14 investigated party, the Inspector General shall report the irregularities in
15 writing to the Committee. If the irregularity is criminal in nature, the Inspector
16 General shall immediately notify the appropriate prosecuting authority. If the
17 irregularity is found in response to a complaint filed under the provisions of
18 the Whistleblower Protection Act, the Inspector General shall conduct an
19 investigation in accordance with NMSA 1978, § 10-16C-1 et seq., the
20 Whistleblower Protection Act. If the irregularity warrants an audit, then the
21 Inspector General shall refer the matter to the Office of Internal Audit. The
22 Inspector General shall not accept complaints related to discrimination or
23 labor law matters, or other matters that are the subject of pending litigation.

24 (B) The Inspector General shall receive and investigate complaints referred
25 by the Board of Ethics and Campaign Practices. In addition, the Inspector
26 General shall receive and evaluate complaints referred by any official,
27 employee, contractor, or the public and initiate an investigation when deemed
28 appropriate. The Inspector General may also initiate an investigation when
29 there is predication.

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

32 (D) The Inspector General shall have the power to subpoena witnesses,
33 administer oaths and require the production of records subject to the New

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1 Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena
2 issued to any person, the Director may make an application to any District
3 Court in the state that shall have the jurisdiction to order the witness to appear
4 before the Inspector General and to produce evidence if so ordered, or to give
5 testimony touching on the matter in question.

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

11 (F) The Inspector General shall investigate any alleged violation of the Code
12 of Ethics or the Elections Code that the Board of Ethics and Campaign
13 Practices directs the Inspector General to investigate. When the Inspector
14 General is assigned an investigation by the Board of Ethics and Campaign
15 Practices, the usual requirements concerning approval of Inspector General
16 reports by the Accountability in Government Oversight Committee and the
17 publication of the reports is not followed so as to maintain the rights and
18 duties of the Board of Ethics and Campaign Practices to direct and limit the
19 investigation.

20 (G) The Inspector General shall not investigate complaints that are under
21 the jurisdiction of the Civilian Police Oversight Agency or the Internal Affairs
22 Division of the Albuquerque Police Department, nor access any Internal
23 Affairs' files.

24 (H) In cases where the Inspector General deems it appropriate because of
25 investigation activities, the Inspector General may refer opportunities for
26 increased efficiency to the Department of Finance and Administrative Services
27 to work with respective departments on management and process
28 improvement.

29 (I) Reports of fraud, waste, and abuse made by employees, public officials,
30 contractors, or members of the public may be made telephonically or in
31 writing through the hotline or website established by the Inspector General for
32 the confidential reporting of financial fraud, waste, and abuse in government.
33 Reports received or created by the Inspector General are investigatory

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1 information and investigatory documentation in connection with the Inspector
2 General's duty to inspect or investigate the financial affairs and transactions
3 of the City, its departments, contractors, or vendors in whole or in part.

4 (J) The identity of a person making a report and associated allegations
5 made directly to the Inspector General orally or in writing, or telephonically or
6 in writing through the Inspector General's hotline or website, or through any
7 other means, alleging financial fraud, waste, or abuse in government is
8 confidential information and may not be disclosed except as required by ROA
9 1994 Section 2-17-6(A) or other law.

10 (K) The Inspector General shall provide information that is either
11 confidential and/or related to an Office of Inspector General case that is not
12 otherwise public where required by law. The Office of Inspector General shall
13 work as collaboratively as possible in fulfilling the duties and functions
14 prescribed by this Ordinance. Notwithstanding any of the foregoing, the
15 Inspector General shall comply with all requirements for information from
16 external audits or reviews regarding the management of the office from a
17 fiscal, management, or non-case-related request.

18 § 2-17-7 PROFESSIONAL STANDARDS.

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

21 (B) The Office of the Inspector General's published investigations shall be
22 subject to quality assurance peer reviews by an appropriate professional non-
23 partisan objective group every three to five years. A copy of the written report
24 resulting from this review shall be furnished to the Committee and posted on
25 the website of the Inspector General.

26 § 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

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

31 (B) Confidentiality of the Investigation Files and Investigation Reports.
32 Pursuant to this Ordinance, Investigation Files and Investigation Reports are
33 confidential and shall not be divulged to any person or agency, except to the

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1 United States Attorney, the New Mexico Attorney General, or the Second
2 Judicial District Attorney's Office, or any other bona fide law enforcement or
3 investigatory agency, or as otherwise required by law, until the report is
4 published, unless it is necessary for the Inspector General to make such
5 records public in the performance of their duties.

6 (C) Sharing of Information with City Departments. The Inspector General
7 may share selected information not otherwise made confidential by law or this
8 Ordinance with other City departments if the information is necessary to
9 prevent harm or loss to the City or its employees; otherwise, reports remain
10 confidential until published, at which time they become public record.

11 (D) The names and identities or other information that could reasonably
12 disclose the identity of persons making complaints and providing information
13 shall not be disclosed without the written consent of the person unless
14 otherwise required by law or judicial processes.

15 (E) Published reports shall be public records except that the Inspector
16 General shall delay the publication of reports when criminal conduct is found
17 and the Inspector General or appropriate law enforcement authority is
18 pursuing an investigation and release of the report might jeopardize further
19 investigation. An investigation release that has been delayed shall be
20 published promptly at the end of the condition giving rise to the delay.

21 § 2-17-9 REPORTS TO THE COMMITTEE.

22 (A) Each investigation, other than those resulting from assignment by the
23 Board of Ethics and Campaign Practices, shall result in a written final report to
24 the Committee. The Inspector General shall submit copies of each report to
25 the Committee and shall retain a copy as a permanent record.

26 (B) For the purpose of review during the report presentation, the
27 Committee, at its sole discretion, may request and allow the attendance of City
28 personnel or investigated parties at an Accountability in Government
29 Oversight meeting.

30 (C) The Inspector General's investigation and inspection reports shall
31 conform to the Association of Inspectors General professional standards.

32 (D) The Inspector General may informally brief the Committee as to the
33 commitment of resources to any investigation assigned by the Board of Ethics

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1 and Campaign Practices and the progress being made towards the completion
2 of the investigation.

3 **§ 2-17-10 REPORTING.**

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

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

9 (C) The Inspector General shall notify members of the media and the public
10 of the issuance of the published report. The Office of the Inspector General
11 shall publish the reports publicly on the website of the Office of the Inspector
12 General and provide copies of the published report upon request.

13 **§ 2-17-11 CONTRACT INVESTIGATORS, CONSULTANTS, AND EXPERTS.**

14 Upon notification to the Committee, the Inspector General may obtain the
15 services of certified public accountants, qualified management consultants,
16 certified fraud examiners, forensic auditors or other professionals.

17 Contractors performing services for the Office of Inspector General shall not
18 have any financial interest in the affairs of the investigated party, officials or
19 employees. The Inspector General shall coordinate and monitor the work
20 performed by persons under contract to the Inspector General.

21 **§ 2-17-12 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

22 (A) All City officials, employees and contractors shall promptly notify the
23 Inspector General of every instance of theft or other disappearance of cash,
24 check, or property, of misfeasance or nonfeasance, defalcation, improper
25 governmental actions and non-compliance with federal and state law, City
26 ordinances and City rules and regulations of which they are aware.

27 (B) All City officials, employees, contractors, and offerors in a City
28 procurement process shall provide the Inspector General full and unrestricted
29 access to all City offices, employees, records, information, data, reports,
30 plans, projections, matters, contracts, memoranda, correspondence,
31 electronic data, property, equipment and facilities and any other materials
32 within their custody. At the Inspector General's request, an official, employee
33 or contractor shall prepare reports and provide interviews. If an official,

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1 employee, vendor or contractor fails to produce the requested information, the
2 Inspector General shall notify the Committee and make a written request to the
3 Chief Administrative Officer for assistance in causing a search to be made and
4 germane exhibits to be taken from any book, paper or record excepting
5 personal property. The Chief Administrative Officer shall require the officials,
6 employees, vendors or contractors to produce the requested information.

7 (C) Every City contract, bid, proposal, application or solicitation for a City
8 contract and every application for certification of eligibility for a City contract
9 or program shall contain a statement that the contracting parties will be
10 subject to the provisions of the Inspector General Ordinance.

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

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

16 (F) Any official or employee who violates the Inspector General Ordinance
17 may be subject to discipline as may be specified in City Ordinance, rules and
18 regulations or any applicable collective bargaining agreement.”

19 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
20 clause, word, or phrase of this ordinance is for any reason held to be invalid
21 or unenforceable by any court of competent jurisdiction, such decision shall
22 not affect the validity of the remaining provisions of this ordinance. The
23 Council hereby declares that it would have passed this ordinance and each
24 section, paragraph, sentence, clause, word, or phrase thereof irrespective of
25 any provisions being declared unconstitutional or otherwise invalid.

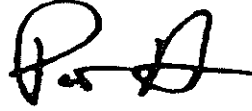
26 SECTION 3. COMPILATION. The amendments set forth in SECTION 1
27 above shall amend, be incorporated in, and made part of the Revised
28 Ordinances of Albuquerque, New Mexico, 1994.

29 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days
30 after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 5th DAY OF June, 2023
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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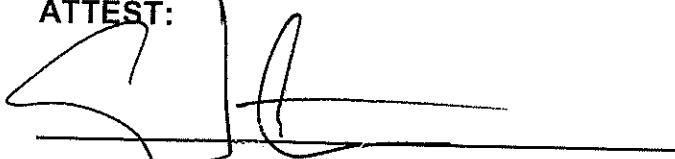
Pat Davis, President
City Council

APPROVED THIS _____ DAY OF _____, 2023

Bill No. F/S O-22-55

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

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