

1 shall engage in actions to deter and identify fraud, waste, and abuse within the
2 operation of the City government, its departments, agencies, special districts,
3 and entities seeking or receiving funds through the City in order to preserve
4 public trust.

5 (C) The Council finds that in order for the Inspector General to be effective,
6 the Inspector General must be authorized to maintain the confidentiality of
7 investigations resulting from an assignment by the Board of Ethics and
8 Campaign Practices at least until they are completed.

9 (D) The Council finds that the Office of the Inspector General should strive
10 to adhere to the “Association of Inspectors General Principles and Standards
11 for Offices of Inspector General” and participate in the Peer Review Process
12 by seriously pursuing any recommendations resulting from such a process.

13 (E) The Council finds that when the Inspector General is assigned an
14 investigation by the Board of Ethics and Campaign Practices, the usual
15 requirements concerning approval of Inspector General reports by the
16 Accountability in Government Oversight Committee and the publication of the
17 reports should not be followed so as to maintain the rights and duties of the
18 Board of Ethics and Campaign Practices to direct and limit the investigation.

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

22 [(G) (B)] The Inspector General's goals are to:

23 (1) Conduct investigations[, audits, inspections, evaluations, and reviews]
24 in an efficient, impartial, equitable[,] and objective manner;

25 (2) Prevent[, deter,] and detect fraud, waste[,] [and] abuse[, misfeasance,
26 or nonfeasance, defalcation, improper governmental conduct or illegal acts] in
27 city activities including all city contracts and partnerships;

28 (3) [~~Deter criminal activity~~] [Carry out the activities of the Office of
29 Inspector General] through independence in [both] fact and appearance,
30 investigation[,] and interdiction; and

31 (4) Propose ways to [make recommendations to] increase the city's legal,
32 fiscal and ethical accountability to [~~insure~~ ensure] that [~~tax payers'~~ taxpayers']

1 dollars are spent in a manner consistent with the highest standards of local
2 governments.

3 § 2-17-3 DEFINITIONS.

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

6 [ABUSE. Behavior that is deficient or improper when compared with
7 behavior that a prudent person would consider reasonable and necessary
8 operational practice given the facts and circumstances. This includes the
9 misuse of authority or position for personal gain or for the benefit of another.
10 Abuse does not necessarily involve fraud or illegal acts. However, it may be an
11 indication of potential fraud or illegal acts and may still impact the
12 achievement of defined objectives.]

13 COMMITTEE. The Accountability in Government Oversight Committee.

14 CONTRACTORS. All city contractors[, including those seeking to do
15 business with the City and community-based organizations].

16 [DEFALCATION: The taking or illegal use of money by someone who has
17 responsibility for it, such as a company or government official.]

18 EMPLOYEE. All city employees[, and elected or appointed officials].

19 [FRAUD. Includes, but is not limited to fraudulent financial reporting,
20 misappropriation of assets, corruption, and use of public funds for activities
21 prohibited by the Constitution or laws of the State of New Mexico.

22 FRAUDULENT FINANCIAL REPORTING means intentional misstatements or
23 omissions of amounts or disclosures in the financial statements to deceive

24 financial statement users which may include intentional alteration of
25 accounting records, misrepresentation of transactions, or intentional

26 misapplication of accounting principles. MISAPPROPRIATION OF ASSETS

27 means theft of an agency's assets, including theft of property, embezzlement
28 of receipt, or fraudulent payments. CORRUPTION means bribery and other
29 illegal acts.

30 IMPROPER GOVERNMENTAL ACTION. Any action taken by a city
31 employee, an appointed member of a board, commission, or committee, or an
32 elected official of the city that is undertaken in the performance of such
33 person's duties with the city that is in violation of a federal, state, or local

1 government law or rule, an abuse of authority, of substantial and specific
2 danger to the public health or safety, or a gross waste of public funds that is
3 in violation of city policy or rules. The action need not be within the scope of
4 the person's official duties to be subject to a claim of improper governmental
5 action.

6 INVESTIGATION. A formal inquiry or systematic study conducted by the
7 Office of the Inspector General pursuant to this article.]

8 INVESTIGATED PARTY. A city[-]related department, program, activity,
9 agency, vendor, employee, contractor[,] or other city[-]related entity affected
10 by an investigation.

11 [MISFEASANCE. The act of someone in authority performing a legal act in
12 an illegal way, often without intending to, but where harm is caused to
13 another.

14 NONFEASANCE. The failure or omission to perform an obligatory or
15 compulsory act.]

16 OFFICE. The Office of the Inspector General.

17 OFFICIAL. The Mayor and Councilors.

18 PUBLISHED. An investigation report is published when it is [approved by
19 ~~the Board and~~ posted to the OIG website and is available on request to the
20 public. A report may only be published after it has been approved by the
21 Inspector General and has been presented to the Committee when not
22 otherwise prohibited and] distributed in final form to the [investigated party, to
23 ~~the] Mayor and Chief Administrative Officer, and to the City Council. [A
24 ~~published report is available on request to the public.]~~~~

25 [WASTE. The act of using or expending resources carelessly,
26 extravagantly, or to no purpose. Waste does not necessarily involve fraud or
27 illegal acts. However, it may be an indication of potential fraud or illegal acts
28 and may still impact the achievement of defined objectives.]

29 § 2-17-4 CREATION OF THE OFFICE OF THE INSPECTOR GENERAL;
30 RESOURCES; STAFF.

31 (A) The Office of the Inspector General is created as an independent
32 [and non-partisan] office of city government. The Office is not part of the city's

1 executive branch or the City Council. The Inspector General shall report to the
2 Committee.

3 (B) The Inspector General shall be able to manage a staff of professional
4 investigators, and others that may include evaluators, reviewers, inspectors,
5 contract specialists, etc., recognizing that many matters that properly come
6 before the Office of Inspector General are most effectively pursued through
7 the application of various skill sets, including investigations, audits,
8 evaluations, inspections, and reviews.

9 (C) The Inspector General shall] coordinate [his] referrals deriving from
10 external sources and work planned based on internal assessments, wherever
11 appropriate and necessary] [investigations] with the [Internal City] Auditor and
12 [other regulatory, law enforcement, or prosecutorial authorities.] [prepare a file
13 for use by a prosecutorial agency.]

14 ~~[(C)-(D)]~~ The Office of the Inspector General shall be funded ~~[from~~ by]
15 the General Fund. The appropriations available to pay for the expense of the
16 Office of the Inspector General for each fiscal year shall not be less than three
17 twenty-fifths of one percent (0.12%) of the City's overall recurring General
18 Fund budget and each subsequent year, shall not increase or decrease more
19 than five percent (5%) from the previous year. Any portion of the allocated
20 funds not expended or encumbered by the end of the fiscal year shall revert
21 back to the General Fund where it originated. In the event a fiscal emergency
22 is declared, City Council may adjust the funding model for the fiscal year to be
23 consistent with the model applied to all city departments. In the fiscal year
24 following the declaration of a fiscal emergency, the funding model described
25 above shall be reinstated.

26 (E) The Office of the City Attorney shall advise and represent the Office
27 of the Inspector General, except that the Office of the Inspector General may
28 select an independent legal counsel to advise and represent the Office of the
29 Inspector General as needed in the event of a conflict of interest.

30 (F) ~~(D)]~~ The Inspector General shall establish the organizational structure
31 appropriate for carrying out the responsibilities and functions of the Office of
32 the Inspector General.

1 ~~[(G) (E)]~~ The Inspector General shall have, subject to appropriation by the
2 City Council, the power to [recruit, hire,] appoint, employ, [set compensation
3 for, promote, discipline,] and remove such assistants, employees, and
4 personnel and establish personnel procedures as deemed necessary for the
5 efficient and effective administration of the activities of the Office of the
6 Inspector General.

7 ~~[(H) (F)]~~ The Office of the Inspector General shall provide staff support to
8 the Committee.

9 ~~[(I) (G)]~~ Neither the Inspector General nor any employee of the Office of
10 the Inspector General shall engage in any partisan political activities or the
11 political affairs of the city during work hours.

12 § 2-17-5 SELECTION AND RETENTION OF INSPECTOR GENERAL.

13 (A) (1) The Committee, through its staff, shall accept applications from
14 candidates, interview candidates and shall submit to the City Council the
15 names of the three candidates that it finds to be the best qualified to be
16 Inspector General indicating its ranking, and the [City] Council shall appoint
17 the Inspector General from the three. The Committee's recommendation to
18 Council shall be based on the candidates' integrity, capability for strong
19 management and demonstrated ability in accounting, auditing, financial
20 analysis, law, management analysis, public administration, investigation,
21 criminal justice administration or other closely related fields.

22 (2) In lieu of recommending three candidates to the Council, the
23 Committee may recommend to the Council the reconfirmation of the
24 incumbent Inspector General whom the Council may choose to reconfirm.
25 Should the Council decline to reconfirm the incumbent Inspector General, the
26 Council President will notify the Committee that it needs to provide the
27 Council with three alternate candidates pursuant to the provisions of
28 Subsection A(1).

29 (B) If a current or prior city employee or official is appointed to the
30 position of Inspector General, such person shall not investigate or assist in
31 the investigation of the department or agency where such person previously
32 served or was employed for a period of four years from the last day of such
33 prior employment or service. Any investigations of such department or agency

1 shall be referred by the Inspector General to an independent third[-]party
2 investigator who shall serve as an independent proxy for the Inspector
3 General, vested with the full authority of the Inspector General only for the
4 purposes of the specific investigation(s) so assigned.

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

11 (D) Prior to the final selection of the Inspector General, the candidate
12 shall be fingerprinted and shall provide two fingerprint cards or the equivalent
13 electronic fingerprints to the Committee to obtain the candidate's Federal
14 Bureau of Investigation record. Records and related information shall be
15 privileged and shall not be disclosed to anyone other than Committee
16 members. The city shall pay for the cost of obtaining the Federal Bureau of
17 Investigation records.

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

22 (F) The Committee shall review the salary of the Inspector General
23 annually and may propose a salary adjustment. The Committee recognizes
24 that the Inspector General must possess vast knowledge and experience in all
25 facets of government including federal, state, and local laws, regulations, and
26 policies, and must be well-versed in their application, whereas other Director
27 roles may be limited to the management of a specific field. The Inspector
28 General shall be provided with compensation relative to their oversight
29 responsibilities at a level consistent with other City Department Directors.
30 Experience, performance, certifications, and advanced degrees may be
31 considered in determining compensation.

32 (G) The Inspector General may be removed from office [for cause] only
33 upon an affirmative vote of two-thirds (2/3) of the members of the Committee,

1 or upon the City Council's decision to not reconfirm the Inspector General
2 pursuant to Subsection E of this Section.

3 § 2-17-6 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY;
4 ADMINISTRATIVE SUBPOENA POWER.

5 (A) If the Inspector General detects apparent or potential violations of
6 law or apparent instances of misfeasance or nonfeasance by an official or
7 investigated party, he shall report the irregularities in writing to the
8 Committee. If the irregularity is criminal in nature, the Inspector General shall
9 immediately notify the appropriate prosecuting authority. If the irregularity is
10 found in response to a complaint filed under the provisions of the
11 Whistleblower [Protection Act Ordinance], the Inspector General shall [~~notify~~
12 ~~the appropriate city department pursuant to the Whistleblower Ordinance~~
13 conduct an investigation in accordance with NMSA 1978, § 10-16C-1 et seq.,
14 the Whistleblower Protection Act]. If the irregularity warrants an audit, then the
15 Inspector General shall refer the matter to the Office of Internal Audit. The
16 Inspector General shall not accept complaints related to discrimination or
17 labor law matters [as they pertain to the union agreements], or other matters
18 that are the subject of pending litigation.

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

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

27 (D) The Inspector General shall have the power to subpoena witnesses,
28 administer oaths and require the production of records subject to the New
29 Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena
30 issued to any person, the Director may make [an] application to any District
31 Court in the state that shall have the jurisdiction to order the witness to appear
32 before the Inspector General and to produce evidence if so ordered, or to give
33 testimony touching on the matter in question.

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

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

9 (G) The Inspector General shall not investigate complaints that are
10 under the jurisdiction of the [~~Police Oversight Commission~~ Civilian Police
11 Oversight Agency] or the Internal Affairs Division of the Albuquerque Police
12 Department nor shall he access any Internal Affairs[?] files.

13 (H) In cases where the Inspector General deems it appropriate because
14 of an investigation, he may refer opportunities for increased efficiency to the
15 [~~Office of Management and Budget~~ Department of Finance and Administrative
16 Services] to work with respective departments on management and process
17 improvement.

18 [(I) Reports of fraud, waste, and abuse made by employees, public officials,
19 contractors, or members of the public may be made telephonically or in
20 writing through the hotline or website established by the Inspector General for
21 the confidential reporting of financial fraud, waste, and abuse in government.
22 Reports received or created by the Inspector General are investigatory
23 information and investigatory documentation in connection with the Inspector
24 General's duty to inspect or investigate the financial affairs and transactions
25 of the City, its departments, contractors, or vendors in whole or in part.

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

32 [(K) The Inspector General will provide information that is either confidential
33 and/or related to an Office of Inspector General case that is not otherwise

1 public where required by law. The Office of Inspector General is encouraged to
2 work as collaboratively as possible in all other matters. Nothing in this
3 Ordinance would prevent the Inspector General from complying with all
4 requirements for information from external audits or reviews regarding the
5 management of the office from a fiscal, management, or non-case-related
6 request.]

7 § 2-17-7 PROFESSIONAL STANDARDS.

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

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

14 § 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

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

19 ~~(B) [During the course of investigations, all records shall be considered~~
20 ~~deliberative in process and not available for outside review. Confidentiality of~~
21 ~~the Investigation Files and Investigation Reports. Pursuant to this Ordinance,~~
22 ~~Investigation Files and Investigation Reports are confidential and shall not be~~
23 ~~divulged to any person or agency, except to the United States Attorney, the~~
24 ~~New Mexico Attorney General, or the Second Judicial District Attorney's~~
25 ~~Office, or any other bona fide law enforcement or investigatory agency, or as~~
26 ~~otherwise required by law, until the report is published, unless it is necessary~~
27 ~~for the Inspector General to make such records public in the performance of~~
28 ~~his or her duties.]~~

29 (C) ~~[Prior to publishing a report, the~~ Sharing of Information with City
30 Departments. The] Inspector General may share selected information [not
31 otherwise made confidential by law or this Ordinance] with other city
32 departments if the information is ~~[needed for decision-making purposes~~
33 necessary to prevent harm or loss to the City or its employees]; otherwise,

1 reports remain confidential until published, at which time they become public
2 record.

3 (D) The names and identities [or other information that could reasonably
4 disclose the identity] of persons making complaints and providing information
5 shall not be disclosed without the written consent of the person unless
6 otherwise required by law or judicial processes.

7 (E) Published reports shall be public records except that the Inspector
8 General shall delay the publication of reports when criminal conduct is found
9 and the Inspector General or appropriate law enforcement authority is
10 pursuing an investigation and release of the report might jeopardize further
11 investigation. An investigation release [that] has been delayed shall be
12 published promptly at the end of the condition giving rise to the delay.

13 § 2-17-9 REPORTS TO THE COMMITTEE.

14 (A) Each investigation~~[, other than those resulting from assignment by~~
15 the Board of Ethics and Campaign Practices,] shall result in a written final
16 report to the Committee. The Inspector General shall submit copies of each
17 report to the Committee and shall retain a copy as a permanent record.

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

19 (1) ~~[Specific citations to the law or policy that was allegedly violated~~ A
20 description of any complaint or other information received by the Inspector
21 General pertinent to the investigation];

22 (2) ~~[An assessment of the validity of the allegations under~~
23 investigation, including whether the allegations are criminal or civil in nature A
24 description of any illegal conduct, waste, or abuse or violation of laws or
25 regulations with specific citations to the law or policy that was allegedly
26 violated];

27 (3) ~~[A list of the employee or official's supervisors~~ Recommendations
28 for corrective actions];

29 (4) A description of any corrective action or discipline to date;

30 (5) ~~[If the case of a criminal violation, an evaluation of the likelihood of~~
31 successful prosecution;

32 —(6)] A summary of all of the direct and circumstantial evidence
33 supporting the allegations; and

1 ~~[(6) (7) A description of which prosecutorial agencies may be~~
2 ~~contacted, have been involved or may be contacted~~ Other information as the
3 inspector General may deem relevant to the investigation or resulting
4 recommendations].

5 ~~[(C) The Inspector General may informally brief the Committee as to the~~
6 commitment of resources to any investigation assigned by the Board of
7 Ethics and Campaign Practices and the progress being made towards the
8 completion of the investigation.]

9 **§ 2-17-10 REPORTING.**

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

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

15 (C) The Inspector General shall notify members of the media and the
16 public of the issuance of the published report. The Office of the Inspector
17 General shall [publish the reports publicly on the website of the Office of the
18 Inspector General and] provide copies of the published report upon request.

19 **§ 2-17-11 CONTRACT INVESTIGATORS, CONSULTANTS, AND EXPERTS.**

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

27 **§ 2-17-12 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

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

1 **(B) All city officials, employees and contractors**[, including those who
2 are actively engaged in seeking to do business,] shall provide the Inspector
3 General full and unrestricted access to all city offices, employees, records,
4 information, data, reports, plans, projections, matters, contracts, memoranda,
5 correspondence, electronic data, property, equipment and facilities and any
6 other materials within their custody. At the Inspector General's request, an
7 official, employee or contractor shall prepare reports and provide interviews. If
8 an official, employee, vendor or contractor fails to produce the requested
9 information, the Inspector General shall notify the **[Board Committee]**and
10 make **[a]** written request to the Chief Administrative Officer for his assistance
11 in causing a search to be made and germane exhibits to be taken from any
12 book, paper or record excepting personal property. The Chief Administrative
13 Officer shall require the officials, employees, vendors or contractors to
14 produce the requested information.

15 **(C) Every city contract, bid, proposal, application or solicitation for a city**
16 **contract and every application for certification of eligibility for a city contract**
17 **or program shall contain a statement that the** ~~**[individual understands and will**~~
18 ~~**abide by all**~~ **contracting parties will be subject to the]** provisions of the
19 Inspector General Ordinance.

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

23 **(E) [False claims penalty. Any person who makes a false statement or**
24 **who files a false complaint, for which there is no evidence to support, shall be**
25 **guilty of knowingly furnishing misleading information and shall be subject to**
26 **the provisions of ROA 1994 § 1-1-99.]**

27 **[(F)]** Each and every violation of this article is a criminal violation subject
28 to the provisions of § 1-1-99 ROA 1994.

29 **[(G) (F)]** Any official or employee who violates the Inspector General
30 Ordinance may be subject to discipline as may be specified in the Merit
31 System Ordinance or any applicable collective bargaining agreement.”

32 **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
33 clause, word, or phrase of this ordinance is for any reason held to be invalid

1 or unenforceable by any court of competent jurisdiction, such decision shall
2 not affect the validity of the remaining provisions of this resolution. The
3 Council hereby declares that it would have passed this resolution and each
4 section, paragraph, sentence, clause, word, or phrase thereof irrespective of
5 any provisions being declared unconstitutional or otherwise invalid.

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

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

11