

1 regular Investigation Reports or Investigation Reports resulting from an
2 assignment by the Board of Ethics and Campaign Practices at least until such
3 a time as they are completed.

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

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

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

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

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

21 (2) Prevent and detect fraud, waste[,] and abuse in city activities including
22 all city contracts and partnerships;

23 (3) Deter criminal activity through independence in fact and appearance,
24 investigation[,] and interdiction; and

25 (4) Propose ways to increase the city's legal, fiscal and ethical
26 accountability to [~~insure~~ ensure] that [~~tax payers'~~ taxpayers'] dollars are spent
27 in a manner consistent with the highest standards of local governments.

28 § 2-17-3 DEFINITIONS.

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

31 [ABUSE. Behavior that is deficient or improper when compared with
32 behavior that a prudent person would consider reasonable and necessary
33 operational practice given the facts and circumstances. This includes the

1 misuse of authority or position for personal gain or for the benefit of another.
2 Abuse does not necessarily involve fraud or illegal acts. However, it may be an
3 indication of potential fraud or illegal acts and may still impact the
4 achievement of defined objectives.]

5 COMMITTEE. The Accountability in Government Oversight Committee.

6 CONTRACTORS. All city contractors [including community-based
7 organizations].

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

10 EMPLOYEE. All city employees.

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

14 FRAUDULENT FINANCIAL REPORTING means intentional misstatements or
15 omissions of amounts or disclosures in the financial statements to deceive
16 financial statement users which may include intentional alteration of
17 accounting records, misrepresentation of transactions, or intentional
18 misapplication of accounting principles. MISAPPROPRIATION OF ASSETS
19 means theft of an agency's assets, including theft of property, embezzlement
20 of receipt, or fraudulent payments. CORRUPTION means bribery and other
21 illegal acts.

22 IMPROPER GOVERNMENTAL ACTION. Any action taken by a city
23 employee, an appointed member of a board, commission, or committee, or an
24 elected official of the city that is undertaken in the performance of such
25 person's duties with the city that is in violation of a federal, state, or local
26 government law or rule, an abuse of authority, of substantial and specific
27 danger to the public health or safety, or a gross waste of public funds that is
28 in violation of city policy or rules. The action need not be within the scope of
29 the person's official duties to be subject to a claim of improper governmental
30 action.

31 INVESTIGATION. A formal inquiry or systematic study conducted by the
32 Office of the Inspector General based on a complaint filed pursuant to this
33 article.]

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

4 [MISFEASANCE. The act of someone in authority performing a legal act in
5 an illegal way, often without intending to, but here harm is caused to another.

6 NONFEASANCE. The failure or omission to perform an obligatory or
7 compulsory act.]

8 OFFICE. The Office of the Inspector General.

9 OFFICIAL. The Mayor and Councilors.

10 PUBLISHED. An investigation report is published when it is [~~approved by~~
11 ~~the Board and~~ posted to the OIG website and] distributed in final form to the
12 [~~investigated party, to the~~] Mayor and Chief Administrative Officer, and to the
13 City Council. A published [~~investigation~~] report is available on request to the
14 public.

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

19 § 2-17-4 CREATION OF THE OFFICE OF THE INSPECTOR GENERAL;
20 RESOURCES; STAFF.

21 (A) The Office of the Inspector General is created as an independent
22 [~~and non-partisan~~] office of city government. The Office is not part of the city's
23 executive branch or the City Council. The Inspector General shall report to the
24 Committee.

25 (B) The Inspector General shall be able to manage a staff of professional
26 investigators, coordinate [~~referrals deriving from his~~] investigations [~~and~~
27 ~~referrals~~] with the [~~Internal City~~] Auditor and[, ~~if necessary,~~] prepare a file for
28 use by a prosecutorial agency.

29 (C) The Office of the Inspector General shall be funded [~~from~~ by] the
30 General Fund. [The appropriations available to pay for the expense of the
31 Office of the Inspector General for each fiscal year shall not be less than three
32 twenty-fifths of one percent (0.12%) of the City's overall recurring General
33 Fund budget and each subsequent year, shall not increase or decrease more

1 than five percent (5%) from the previous year. Any portion of the allocated
2 funds not expended or encumbered by the end of the fiscal year shall revert
3 back to the General Fund where it originated. In the event a fiscal emergency
4 is declared, City Council may adjust the funding model for the fiscal year to be
5 consistent with the model applied to all city departments. In the fiscal year
6 following the declaration of a fiscal emergency, the funding model described
7 above shall be reinstated.

8 (D) The Office of the City Attorney shall advise and represent the Office
9 of the Inspector General, except that the Office of the Inspector General may
10 select an independent legal counsel to advise and represent the Office of the
11 Inspector General as needed in the event of a conflict of interest.

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

15 [(F) (E)] The Inspector General shall have, subject to appropriation by the
16 City Council, the power to appoint, employ, [set compensation for, promote,
17 discipline,] and remove such assistants, employees and personnel and
18 establish personnel procedures as deemed necessary for the efficient and
19 effective administration of the activities of the Office of the Inspector General.

20 [(G) (F)] The Office of the Inspector General shall provide staff support to
21 the Committee.

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

25 **§ 2-17-5 SELECTION AND RETENTION OF INSPECTOR GENERAL.**

26 **(A) (1) The Committee, through its staff, shall accept applications from**
27 **candidates, interview candidates and shall submit to the City Council the**
28 **names of the three candidates that it finds to be the best qualified to be**
29 **Inspector General indicating its ranking, and the [City] Council shall appoint**
30 **the Inspector General from the three. The Committee's recommendation to**
31 **Council shall be based on the candidates' integrity, capability for strong**
32 **management and demonstrated ability in accounting, auditing, financial**

1 analysis, law, management analysis, public administration, investigation,
2 criminal justice administration or other closely related fields.

3 (2) In lieu of recommending three candidates to the Council, the
4 Committee may recommend to the Council the reconfirmation of the
5 incumbent Inspector General whom the Council may choose to reconfirm.
6 Should the Council decline to reconfirm the incumbent Inspector General, the
7 Council President will notify the Committee that it needs to provide the
8 Council with three alternate candidates pursuant to the provisions of
9 Subsection A(1).

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

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

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

32 (E) The City Council shall consider whether the incumbent Inspector
33 General should be reconfirmed pursuant to the provisions of Subsection (A)(2)

1 of this Section no more than once every four years following the initial
2 appointment [not to exceed a total of eight years].

3 (F) [The Committee shall review the salary of the Inspector General
4 annually and may propose a salary adjustment. The Committee recognizes
5 that the Inspector General must possess vast knowledge and experience in all
6 facets of government including federal, state, and local laws, regulations, and
7 policies, and must be well-versed in their application, whereas other Director
8 roles may be limited to management of a specific field. The Inspector General
9 shall be provided with compensation relative to their oversight responsibilities
10 at a level consistent with other City Department Directors. Experience,
11 performance, certifications, and advanced degrees may be considered in
12 determining compensation.

13 (G) The Inspector General may be removed from office [for cause] only
14 upon an affirmative vote of two-thirds (2/3) of the members of the Committee,
15 or upon the City Council's decision to not reconfirm the Inspector General
16 pursuant to Subsection E of this Section.

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

19 (A) If the Inspector General detects apparent or potential violations of
20 law or apparent instances of misfeasance or nonfeasance by an official or
21 investigated party, he shall report the irregularities in writing to the
22 Committee. If the irregularity is criminal in nature, the Inspector General shall
23 immediately notify the appropriate prosecuting authority. If the irregularity is
24 found in response to a complaint filed under the provisions of the
25 Whistleblower Ordinance, the Inspector General shall ~~[notify the appropriate~~
26 ~~city department pursuant to the Whistleblower Ordinance~~ conduct an
27 investigation in accordance with NMSA 1978, § 10-16C-1 et seq., the
28 Whistleblower Protection Act]. If the irregularity warrants an audit, then the
29 Inspector General shall refer the matter to the Office of Internal Audit. The
30 Inspector General shall not accept complaints related to discrimination or
31 labor law matters [as they pertain to the union agreements], or other matters
32 that are the subject of pending litigation.

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

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

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

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

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

24 (G) The Inspector General shall not investigate complaints that are
25 under the jurisdiction of the ~~[Police Oversight Commission~~ Civilian Police
26 Oversight Agency] or the Internal Affairs Division of the Albuquerque Police
27 Department nor shall he access any Internal Affairs['] files.

28 (H) In cases where the Inspector General deems it appropriate because
29 of an investigation, he may refer opportunities for increased efficiency to the
30 ~~[Office of Management and Budget~~ Department of Finance and Administration]
31 to work with respective departments on management and process
32 improvement.

1 [(I) Reports of fraud, waste, and abuse made by employees, public officials,
2 contractors, or members of the public may be made telephonically or in
3 writing through the hotline or website established by the Inspector General for
4 the confidential reporting of financial fraud, waste, and abuse in government.
5 Reports received or created by the Inspector General are investigatory
6 information and investigatory documentation in connection with the Inspector
7 General's duty to inspect or investigate the financial affairs and transactions
8 of the City, its departments, contractors, or vendors in whole or in part.

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

15 [(K) A report alleging financial fraud, waste, or abuse in government that is
16 made directly to the Inspector General orally or in writing, or telephonically or
17 in writing through the Inspector General's hotline or website, any resulting
18 investigation, inspection, evaluation or review, and all records and files related
19 thereto are confidential audit documentation and may not be disclosed by the
20 Inspector General, except to an independent auditor, performance audit team,
21 or forensic accounting team in connection with a special audit, performance
22 audit, attestation engagement, forensic accounting engagement, non-attest
23 engagement, or other existing or potential engagement regarding the financial
24 affairs or transactions of an agency. Any information related to a report
25 alleging financial fraud, waste, or abuse in government provided to the
26 Inspector General, an independent auditor, performance audit team, or
27 forensic accounting team, is considered confidential audit or engagement
28 documentation and is subject to confidentiality requirements, including but
29 not limited to, requirements under the Public Accountancy Act and the AICPA
30 Code of Professional Conduct.]

31 § 2-17-7 PROFESSIONAL STANDARDS.

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

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

5 § 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

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

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

20 (C) [~~Prior to publishing a report, the~~ Sharing of Information with City
21 Departments. The] Inspector General may share selected information [~~not~~
22 otherwise made confidential by law or this Ordinance] with other city
23 departments if the information is [~~needed for decision-making purposes~~
24 necessary to prevent harm or loss to the City or its employees]; otherwise,
25 reports remain confidential until published, at which time they become public
26 record.

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

30 (E) Published reports shall be public records except that the Inspector
31 General shall delay the publication of reports when criminal conduct is found
32 and the Inspector General or appropriate law enforcement authority is
33 pursuing an investigation and release of the report might jeopardize further

1 investigation. An investigation release [that] has been delayed shall be
2 published promptly at the end of the condition giving rise to the delay.

3 § 2-17-9 REPORTS TO THE COMMITTEE.

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

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

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

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

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

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

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

22 ~~—(6)]~~ A summary of all of the direct and circumstantial evidence
23 supporting the allegations; and

24 ~~[(6) (7) A description of which prosecutorial agencies may be~~
25 contacted, have been involved or may be contacted Other information as the
26 inspector General may deem relevant to the investigation or resulting
27 recommendations].

28 [(C) The Inspector General may informally brief the Committee as to the
29 commitment of resources to any investigation assigned by the Board of
30 Ethics and Campaign Practices and the progress being made towards the
31 completion of the investigation.]

32 § 2-17-10 REPORTING.

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

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

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

9 § 2-17-11 CONTRACT INVESTIGATORS, CONSULTANTS, AND EXPERTS.

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

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

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

24 (B) All city officials, employees and contractors shall provide the
25 Inspector General full and unrestricted access to all city offices, employees,
26 records, information, data, reports, plans, projections, matters, contracts,
27 memoranda, correspondence, electronic data, property, equipment and
28 facilities and any other materials within their custody. At the Inspector
29 General's request, an official, employee or contractor shall prepare reports
30 and provide interviews. If an official, employee, vendor or contractor fails to
31 produce the requested information, the Inspector General shall notify the
32 [Board Committee] and make [a] written request to the Chief Administrative
33 Officer for his assistance in causing a search to be made and germane

1 exhibits to be taken from any book, paper or record excepting personal
2 property. The Chief Administrative Officer shall require the officials,
3 employees, vendors or contractors to produce the requested information.

4 (C) Every city contract, bid, proposal, application or solicitation for a city
5 contract and every application for certification of eligibility for a city contract
6 or program shall contain a statement that the individual understands and will
7 abide by all provisions of the Inspector General Ordinance.

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

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

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

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

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

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

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

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