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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 Association of Inspectors General – an international
7 authority on the profession – and the City’s Accountability in Government
8 Oversight Committee all support the effort to strengthen and preserve the
9 structural independence of the Office of Inspector General by amending the
10 Accountability in Government Ordinance and the Inspector General
11 Ordinance; and

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

15 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
16 OF ALBUQUERQUE:

17 SECTION 1. Chapter 2, Article 10 of the Revised Ordinances of
18 Albuquerque, New Mexico, 1994, the “Inspector General Ordinance” is hereby
19 amended as follows:

20 “§ 2-17-1 SHORT TITLE.

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

22 § 2-17-2 FINDINGS; PURPOSE; GOALS.

23 (A) [The Council finds that good governance, transparency, and
24 accountability are critical in the public sector for the effective and credible
25 functioning of a healthy democracy, and in fulfilling the government’s
26 responsibility to citizens and taxpayers. Effective independent investigations,
27 inspections, evaluations, and reviews along with transparent and reliable
28 reporting in government serves to promote accountability, enhance the
29 effectiveness of government services to its citizens, and increase the public’s
30 confidence in their government.

31 (B) The Mayor and City Council share a duty to ensure that the actions of
32 public officials, employees, and contractors of the City are carried out in the
33 most responsible manner possible and that city policy, budgets, goals, and

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1 objectives are fully implemented. To accomplish this end, the City requires the
2 services of an independent Inspector General to engage in a program that will
3 involve investigations and may include inspections, evaluations, and reviews
4 of the City government to assist in improving operations, supporting
5 accountability, and enhancing transparency. The Office of Inspector General
6 shall engage in actions to deter and identify fraud, waste, and abuse within the
7 operation of the City government, its departments, agencies, special districts,
8 and entities seeking or receiving funds through the City in order to preserve
9 public trust.

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

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

17 [(E) (B)] The Inspector General's goals are to:

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

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

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

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

30 § 2-17-3 DEFINITIONS.

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

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1 [ABUSE. The use of resources or exercise of authority that is contrary to
2 rule or policy, or knowingly inconsistent with any established mission or
3 objectives for the resource, or of the position held by the person exercising
4 the authority. Abuse does not necessarily involve fraud or illegal acts.]

5 COMMITTEE. The Accountability in Government Oversight Committee.

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

8 EMPLOYEE. All city employees[, including appointed employees].

9 [FRAUD. A knowing misrepresentation of the truth, or concealment of a
10 material fact to induce another to act to his or her detriment.

11 FRAUDULENT FINANCIAL REPORTING. Intentional misstatements or
12 omissions of amounts or disclosures in the financial statements to deceive
13 financial statement users which may include intentional alteration of
14 accounting records, misrepresentation of transactions, or intentional
15 misapplication of accounting principles.

16 INVESTIGATION. A formal inquiry or systematic study conducted by the
17 Office of the Inspector General pursuant to this article. A formal systematic
18 study may include inspections, evaluations, and reviews which are analyses
19 of operations and programs for the purposes of providing information for
20 decision-making, and making recommendations to improve programs,
21 policies, or procedures.]

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

25 [MISAPPROPRIATION OF ASSETS. Theft of an agency's assets, including
26 theft of property, embezzlement, or fraudulent payments.

27 OFFICE. The Office of the Inspector General.

28 OFFICIAL. The Mayor [and] [, City] Councilors[, and appointed members of
29 City boards, commissions, or committees].

30 ~~PUBLISHED. [An investigation report is published when it is approved by the~~
31 ~~Board and distributed in final form to the investigated party, to the Mayor and~~
32 ~~Chief Administrative Officer, and to the City Council. A published report is~~
33 ~~available on request to the public. A report that, unless otherwise prohibited,~~

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1 has been presented to the Committee, distributed in final form to the Mayor
2 and Chief Administrative Officer, and to the City Council, and is available to
3 the public.]

4 [WASTE. The thoughtless or careless expenditure, mismanagement, or
5 abuse of resources to the detriment of the City.]

6 § 2-17-4 CREATION OF THE OFFICE OF THE INSPECTOR GENERAL;
7 RESOURCES; STAFF.

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

11 (B) The Inspector General shall ~~[be able to]~~ manage a staff of professional
12 investigators, [and others operating at the direction of the Inspector General
13 that may include evaluators, reviewers, inspectors, contract specialists.]

14 ~~[(C) The Inspector General shall]~~ coordinate ~~[his investigations referrals~~
15 deriving from external sources and work planned based on internal
16 assessments, wherever appropriate and necessary] with the ~~[Internal City]~~
17 Auditor and [other potentially relevant regulatory, law enforcement, or
18 prosecutorial authorities.] ~~[prepare a file for use by a prosecutorial agency.]~~

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

31 (E) The Office of the City Attorney shall advise and represent the Office
32 of 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)~~ (D) 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)~~ (E) The Inspector General shall have, subject to appropriation by the
7 City Council, the power to [recruit, hire,] appoint, employ, [set compensation
8 for, promote, discipline,] and remove such assistants, employees, and
9 personnel and establish personnel procedures as deemed necessary for the
10 efficient and effective administration of the activities of the Office of the
11 Inspector General.

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

14 ~~(I)~~ (G) 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
26 the 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
32 annually and shall notify the Department of Finance and Administrative
33 Services and the Human Resources Department of any salary adjustment.

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1 which will be subject to budget sufficiency and City personnel rules and
2 regulations.

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

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

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

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

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

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

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

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

24 (G) The Inspector General shall not investigate complaints that are under
25 the jurisdiction of the ~~[Police Oversight Commission~~ Civilian Police Oversight
26 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 of
29 [an] investigation [activities], ~~[he~~ the Inspector General] may refer
30 opportunities for increased efficiency to the ~~[Office of Management and~~
31 Budget Department of Finance and Administrative Services] to work with
32 respective departments on management and process improvement.

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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 information and may not be disclosed except as required by ROA
14 1994 Section 2-17-6(A) or other law.

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

23 § 2-17-7 PROFESSIONAL STANDARDS.

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

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

30 § 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

31 (A) The Inspector General shall maintain the confidentiality of any public
32 records that are made confidential by law and shall be subject to the same

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1 penalties as the custodian of those public records for violating confidentiality
2 statutes.

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

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

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

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

30 § 2-17-9 REPORTS TO THE COMMITTEE.

31 (A) Each investigation~~[, other than those resulting from assignment by the~~
32 Board of Ethics and Campaign Practices,] shall result in a written final report

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1 to the Committee. The Inspector General shall submit copies of each report to
2 the Committee and shall retain a copy as a permanent record.

3 (B) [For the purpose of review during the report presentation, the
4 Committee, at its sole discretion, may request and allow the attendance of City
5 personnel or investigated parties at an Accountability in Government
6 Oversight meeting.

7 (C) The Inspector General's report shall include:

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

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

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

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

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

20 (6) A summary of all of the direct and circumstantial evidence
21 supporting the allegations; and

22 [(6) Other information as the Inspector General may deem relevant to
23 the investigation or resulting recommendations.]

24 ~~[(7) A description of which prosecutorial agencies may be~~
25 ~~contacted, have been involved or may be contacted.]~~

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

30 § 2-17-10 REPORTING.

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

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

4 (C) The Inspector General shall notify members of the media and the public
5 of the issuance of the published report. The Office of the Inspector General
6 shall publish the reports publicly on the website of the Office of the Inspector
7 General and provide copies of the published report upon request.

8 § 2-17-11 CONTRACT INVESTIGATORS, CONSULTANTS, AND EXPERTS.

9 Upon ~~approval of~~ notification to the Committee, the Inspector General may
10 obtain the services of certified public accountants, qualified management
11 consultants, certified fraud examiners, forensic auditors or other ~~[Office of the~~
12 ~~Inspector General~~ professionals. Contractors performing ~~[investigations~~
13 services for the Office of Inspector General] 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~~ the work]
16 performed by 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 rules and
23 regulations of which they are aware.

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

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

5 (C) Every city contract, bid, proposal, application or solicitation for a city
6 contract and every application for certification of eligibility for a city contract
7 or program shall contain a statement that the ~~[individual understands and will~~
8 ~~abide by all~~ contracting parties will be subject to the provisions of the
9 Inspector General Ordinance.

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

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

15 ~~[(G) (F)]~~ Any official or employee who violates the Inspector General
16 Ordinance may be subject to discipline as may be specified in ~~[the Merit~~
17 ~~System Ordinance~~ City Ordinance, rules and regulations] or any applicable
18 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.