



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. F/S O-22-55 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan, by request

ORDINANCE

F/S Amending The City Inspector General Ordinance, Chapter Two, Article Seventeen Of The Revised Ordinances Of Albuquerque (Bassan, by request)

WHEREAS, instituting dedicated funding for the Office of Inspector General sends a strong signal that the City of Albuquerque is committed to independent, objective, and unbiased evaluations of government programs and practices that promote accountability and integrity in government; and

WHEREAS, dedicated funding insulates the Office of Inspector General from political interference, and provides stability by ensuring more equitable and reliable funding for the investigation function; and

WHEREAS, recurring budgets are funded each period to support the current level of service, while non-recurring budgets are typically created for special purposes and through the City's normal budget process for city departments, the Office of Inspector General's annual budget has averaged nearly one-thirteenth of one percent (0.076%) of the City's overall recurring General Fund budget since fiscal year 2012, when the Office of Internal Audit and the Office of the Inspector General were operationally separated; and

WHEREAS, the demands on Inspectors General are increasing and the salaries offered are not keeping pace; and

WHEREAS, the Accountability in Government Oversight Committee should have the ability to ensure the salary for the Inspector General is maintained at a level commensurate with the responsibilities and at a level consistent with other city departments with comparably skilled

professionals; and

WHEREAS, the ability of the Office of Inspector General to obtain independent legal counsel prevents potential, perceived, or actual conflicts of interest that may arise due to the City Attorney's client relationship with the City or in the event that the Office of the City Attorney is the subject of an investigation; and

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

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

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

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

"§ 2-17-1 SHORT TITLE.

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

§ 2-17-2 FINDINGS; PURPOSE; GOALS.

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

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

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

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

- (1) Conduct investigations~~[, inspections, evaluations, and reviews]~~** in an efficient, impartial, equitable~~[,]~~ and objective manner;
- (2) Prevent and detect fraud, waste~~[,]~~ and abuse** in city activities including all city contracts and partnerships;
- (3) ~~[Deter criminal activity]~~ [Carry out the activities of the Office of Inspector General]** through independence in [both] fact and appearance, investigation~~[,]~~ and interdiction; and
- (4) Propose [ways recommendations]** to increase the city's legal, fiscal and ethical accountability to ~~[insure]~~ ensure that ~~[tax-payers' taxpayers']~~ dollars are spent in a manner consistent with the highest standards of local governments.

§ 2-17-3 DEFINITIONS.

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

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

COMMITTEE. The Accountability in Government Oversight Committee.

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

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

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

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

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

INVESTIGATED PARTY. A city~~[-]~~related department, program, activity, agency, vendor,

employee, contractor[,] or other city[-]related entity affected by an investigation.

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

OFFICE. The Office of the Inspector General.

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

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

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

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

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

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

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

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

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

other attorney selected with the assistance of and through the City Attorney's office.]

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

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

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

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

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

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

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

(2) In lieu of recommending three candidates to the Council, the Committee may recommend to the Council the reconfirmation of the incumbent Inspector General whom the Council may choose to reconfirm. Should the Council decline to reconfirm the incumbent Inspector General, the Council President will notify the Committee that it needs to provide the Council with three alternate candidates pursuant to the provisions of

Subsection A(1).

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

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

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

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

(F) [The Committee shall review the salary of the Inspector General annually and shall notify the Department of Finance and Administrative Services and the Human Resources Department of any salary adjustment, which will be subject to budget sufficiency and City personnel rules and regulations.]

(G)] The Inspector General may be removed from office [for cause] upon an affirmative vote of two-thirds (2/3) of the members of the Committee, [or] upon [an affirmative vote of two-thirds (2/3) of the members of the City Council; or upon] the City Council's decision to not reconfirm the Inspector General pursuant to Subsection E of this Section. [For purposes of this Section, cause may include, but is not limited to, conduct that is

inconsistent with obligations under this ordinance, or otherwise inconsistent with responsibilities to the committee.]

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

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

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

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

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

(E) The Inspector General shall maintain a complete file of each investigation made under legislative or special Committee authority for at least six years. The file should include work papers and other supportive material directly pertaining to the investigation.

Records may be retained in electronic format at the Inspector General's election.

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

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

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

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

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

[(K) The Inspector General shall provide information that is either confidential and/or related to an Office of Inspector General case that is not otherwise public where required]

by law. The Office of Inspector General shall work as collaboratively as possible in fulfilling the duties and functions prescribed by this Ordinance. Notwithstanding any of the foregoing, the Inspector General shall comply with all requirements for information from external audits or reviews regarding the management of the office from a fiscal, management, or non-case-related request.]

§ 2-17-7 PROFESSIONAL STANDARDS.

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

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

§ 2-17-8 PUBLIC RECORDS; CONFIDENTIALITY.

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

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

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

(D) The names and identities [or other information that could reasonably disclose the identity] of persons making complaints and providing information shall not be disclosed

without the written consent of the person unless otherwise required by law or judicial processes.

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

§ 2-17-9 REPORTS TO THE COMMITTEE.

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

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

[(C)] The Inspector General's [investigation and inspection] report[s] shall [include:] [conform to the Association of Inspectors General professional standards.]

~~[(1) Specific citations to the law or policy that was allegedly violated;~~

~~(2) An assessment of the validity of the allegations under investigation,~~

~~including whether the allegations are criminal or civil in nature;~~

~~(3) A list of the employee or official's supervisors;~~

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

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

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

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

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

§ 2-17-10 REPORTING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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