

2-22 - INTERNAL AUDIT.

Footnotes:

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Editor's note— Ord. #2020-22, § 12, adopted September 9, 2020, amended § 2-22 in its entirety to read as herein set out. Former § 2-22, pertained to internal audit department, and derived from Ord. #2012-32, §§ 2—11; Ord. #2013-34, §§ 1—9.

2-22.1 - Short title.

Section 2-22 SFCC 1987 shall be cited as the "Internal Audit Ordinance."

(Ord. #2020-22, § 12)

2-22.2 - Findings; purpose; goals.

- A. The governing body 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.
- B. Transparent and reliable reporting and effective auditing in government serve to promote accountability, enhance the effectiveness of government services to its citizens, and increase the public's confidence in their government.
- C. The members of the governing body share a duty to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and that city policies, budgets, goals and objectives are fully implemented.
- D. To accomplish this, the city requires the services of an independent office or contractor to provide independent, objective assurance and review services designed to promote transparency, accountability, efficiency and effectiveness of city government.
- E. The governing body does hereby establish the internal audit department, an independent city department of city government or an independent contractor reporting to the city manager, which shall oversee the functions hereby established. To ensure independence and compliance with generally accepted governmental auditing standards, the internal auditor:
 - (1) Shall report results to the city manager, the audit committee, the finance committee and the governing body;
 - (2) Has access to the governing body in accordance with the Open Meeting Act; and
 - (3) Is sufficiently removed from political pressures to conduct audits and report findings, opinions, and conclusions objectively without fear of political reprisal.
- F.

The internal audit department, in cooperation with the audit committee, shall establish job descriptions and department policies and procedures based on generally accepted governmental auditing standards; and to adopt the Code of Ethics as defined by the Institute of Internal Auditors.

(Ord. #2020-22, § 12)

2-22.3 - Definitions.

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

Auditees mean the city related departments, programs, activities, agencies, vendors, contractors, employees, public officials or other city related entities affected by an audit or investigation.

Committee means the City of Santa Fe audit committee.

Contractors mean all city contractors.

Employee means a city employee.

Internal auditor means the internal auditor who is the head of the internal audit department or the city's primary contact for the internal audit contractor.

Official means the mayor or a city councilor.

Report means an audit, a special audit, an investigation and/or an examination.

Special investigation or special audit means additional procedures or audits undertaken because the need was not previously foreseen.

(Ord. #2020-22, § 12)

2-22.4 - Creation of the internal audit department; resources; staff.

- A. The internal audit department is created as an independent office of city government. The internal auditor shall either be the head of the internal audit department or an independent contractor and shall report to the city manager.
- B. The audit committee shall review applications for and make a recommendation to the city manager for hiring an internal auditor.
- C. The internal auditor shall review applications and make recommendations to the city manager for hiring other internal audit department employees or procuring independent contractors for assistance with the internal audit.
- D. In accordance with law and in consultation with the city attorney's office, the city manager shall report proposed personnel actions, such as hiring, discipline, or termination, relating to the internal auditor to the audit committee in executive session, in accordance with the New Mexico

Open Meetings Act. Nothing in this paragraph shall prohibit the city manager from immediately placing the internal auditor on administrative leave due to a proposed personnel action; however, the city manager shall report the proposed personnel action to the audit committee, within seven (7) business days from the date the internal auditor is placed on administrative leave.

- E. The internal auditor's work shall result in a complete written final report being made of each annual audit, special audit, investigation and/or examination made ("report") and shall be delivered to the city manager, except if the city manager is the subject of the audit, then the report shall be delivered to the mayor. The internal auditor shall also notify the governing body in writing that the final report has been delivered. Each report, in its final form, shall set out in detail, in a separate section, any violation of law or good accounting practices found. Such reports are confidential under this section until placed on the finance committee's agenda or put in their final form, whichever occurs first. Reports shall not exist in a draft form for more than thirty (30) days without presentation to the finance committee. Final reports shall also be timely presented to the audit committee. If the draft report is not ready to be delivered to the city manager in its final form or is not ready to be presented to the finance committee after thirty (30) days, then staff shall inform the finance committee, in writing, the specific date, absent court order not exceeding twenty (20) days, when the final report will be delivered to the city manager or presented to the finance committee and the stated basis for the additional time needed.
- F. Any final report for presentation to city committees or the governing body shall be included in the meeting packet and such meeting packets shall be posted on the city's website.
- G. Prior to the committee meeting a final report placed on a committee agenda shall be accessible by all members of the governing body and the public, and at such time shall become a public record consistent with the Inspection of Public Records Act and its exemptions.
- H. Within thirty (30) days after receipt of the report, the employee and/or division and/or department audited may notify the internal auditor of any errors in the report. If the internal auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is erroneous, the internal auditor shall correct the report and furnish copies of the corrected report to all parties receiving the original report.
- I. The internal auditor may disclose audit information or audit documentation that is confidential, without losing the confidentiality under this Ordinance to an independent external auditor in connection with a special audit, performance audit, attestation engagement, or other existing or potential engagement regarding the financial affairs and transactions of the city.
- J. The auditor's budget shall be reflected in the city manager's proposed budget as a separate department. The budget shall be sufficient to allow the organization to carry out its responsibilities, including sufficient funding for annual continuing professional education

requirements and professional certification as required by the generally accepted governmental auditing standards. The auditor's proposed budget shall be prepared and presented to the finance director and the city manager.

(Ord. #2020-22, § 12)

2-22.5 - Internal auditor's duties; responsibilities; authority; administrative subpoena power.

- A. If the internal auditor detects instances of possible fraud, waste, or abuse or potential violations of law by an auditee, the auditor shall report the irregularities to the city manager and the audit committee.
 - (1) In accordance with Section 12-6-6 NMSA 1978 and state auditor's Rule 2.2.2.10K(3), a notification letter regarding the possible fraud, waste, or abuse shall also be sent to the state auditor's office whether or not an investigation by the internal auditor is conducted.
 - (2) If the irregularity is criminal in nature, the internal auditor shall immediately refer the irregularity to the appropriate prosecuting authority.
 - (3) If the irregularity warrants a special investigation, audit, and/or special audit, then the internal auditor shall conduct a special investigation, audit and/or special audit. The report shall be submitted to the city manager, the audit committee, the auditee, the governing body through the finance committee.
 - (4) The internal auditor shall not accept complaints related to discrimination or labor law matters. In some cases, it may be appropriate for internal audit to work with investigators or legal authorities, or withdraw from or defer further audit work on the audit or portion of the audit to avoid interfering with an ongoing investigation or legal proceeding.
- B. The internal auditor shall adhere to generally accepted governmental auditing standards in conducting its work and will be considered independent as defined by those standards.
- C. The internal auditor's work is subject to a peer review by an appropriate professional non-partisan objective group every three (3) to five (5) years if the internal auditor is an employee; contract internal auditors shall serve for no more than four (4) consecutive years. A copy of the written report by an objective group shall be furnished to the city manager, audit committee, and governing body, via the finance committee.
- D. The internal auditor 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 internal auditor may make application to any district court in the state that shall have the jurisdiction to order the witness to appear before the internal auditor and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(Ord. #2020-22, § 12)

2-22.6 - Scope of audits.

- A. Audits, except for special audits or special investigations/examinations, will be conducted based on an annual audit plan developed in accordance with applicable professional auditing standards. This plan and any modifications thereof, are to be reviewed by the audit committee and recommended for approval.
- (1) Within sixty (60) days before the beginning of each fiscal year, the internal auditor shall submit a one-to-five-year audit plan to the audit committee, the city manager and the governing body for review and comments, but the internal auditor shall have final authority to select the audits planned. The proposed plan shall include the rationale for the selections, for auditing departments, offices, boards, activities, subcontractors and agencies for the period. This plan may be amended after review;
 - (2) The final plan and any amendments will be presented to the audit committee, the city manager, and subject to approval of the governing body;
 - (3) In the selection of audit areas and audit objectives, the determination of audit scope and the timing of audit work, the internal auditor should consult with federal, state, and other external auditors so that the desirable audit coverage is provided and audit effort is properly coordinated.
- B. The internal auditor is authorized to conduct the following audits as defined in generally accepted governmental auditing standards:
- (1) *Performance/Management Audits.* Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient and appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices.
 - (2) *Financial Audits.*
 - (3) *Attestation Engagements.* Attestation engagements result in an examination, a review, or agreed upon procedures about a subject matter that is the responsibility of another party. This includes special audits.
 - (4) *Advisory (Non-Audit) Services.* This includes special investigations. The issued report shall not include an opinion statement or a statement indicating the investigation was done in accordance with generally accepted government auditing standards. These services are subject to applicable professional standards.
- C. The auditor shall have the authority to conduct performance and financial audits, attestation engagements or to provide advisory (non-audit) services to independently and objectively determine whether:

- (1) The city, state or federal law authorizes the implemented activities and programs that are the subject of the audit;
- (2) The objectives intended by city, state, or federal law are efficiently and effectively accomplished in the implementation of activities and programs;
- (3) The expenditure of funds was or is in compliance with applicable laws;
- (4) The revenues were or are properly collected, deposited, and accounted for;
- (5) The entity, programs, activities, functions, or policies are effective, including the identification of any causes of inefficiencies or uneconomical practices;
- (6) The desired result or benefits are being achieved;
- (7) Resources, including funds, property and personnel, were or are adequately safeguarded, controlled, and used in a faithful, effective, and efficient manner;
- (8) Financial and other reports fairly and fully disclosed all information as required by law necessary to evaluate and ascertain the nature and scope of programs and activities;
- (9) Management established operating and administrative procedures and practices, accounting internal control systems and internal management controls were and are adequate and functioning as intended;
- (10) City policies, budgets, goals, and objectives were and are fully implemented; and
- (11) Indications of fraud, waste, abuse, or illegal acts are valid and need further investigation.

(Ord. #2020-22, § 12)

2-22.7 - Reports.

- A. The internal auditor shall report results of all types of audits, investigations and/or engagements in their final report form to the audit committee, the city manager, the auditees, and the governing body via the finance committee.
- B. All types of audit reports, investigations, and/or engagements, in their final report form, are public records, available for public inspection.
- C. The internal auditor's reports, including attestation engagements, shall follow the guidelines as specified in generally accepted governmental auditing standards, or in the case of a non-audit service applicable professional auditing standards.
- D. At a minimum audit and attestation engagement reports should include:
 - (1) Statements describing the objectives, scope and methodology of the audit;
 - (2) A statement that the audit was performed in accordance with generally accepted government auditing standards;
 - (3) Background information, audit results, and findings as appropriate;
 - (4) A conclusion based on the audit objectives and the audit findings; and

- (5) The findings in the audit report should present sufficient, appropriate evidence to support the conclusion in relation to the audit objectives.
- E. Responses submitted by the city manager relevant to the audit findings must include a remediation plan specifying dates and corrective action to be taken to resolve the issue.
- (1) A response is required within fourteen (14) days of receipt of a final report;
- (2) If no response is received, the internal auditor will note that fact in the transmittal letter and will release the report without a remediation plan.
- F. The internal auditor shall submit an annual report to the audit committee, city manager, and governing body via the finance committee within sixty (60) days after fiscal year end indicating all audits, investigations, and/or engagements completed, major findings, corrective actions taken by administrative managers, and significant issues which have not been fully addressed by management.

(Ord. #2020-22, § 12)

2-22.8 - Reporting.

The internal auditor shall follow the internal audit plan, report to the governing body via the finance committee, the auditees, the city manager, and the audit committee regarding all audit activities, results, and conclusions. Depending on the type of audit, the internal auditor shall report more frequently when requested.

(Ord. #2020-22, § 12)

2-22.9 - Contract auditors, consultants, and experts.

Within budgetary constraints, the internal auditor may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors, or other professional experts necessary to perform the functions of the internal audit department. Contractors performing an audit shall not have any financial interest in the affairs of the auditees, officials, or employees. The internal auditor shall coordinate and monitor auditing performed by persons under contract to the internal auditor.

(Ord. #2020-22, § 12)

2-22.10 - Penalty; cooperation; retaliation prohibited.

- A. All city officials, employees, and contractors shall provide the internal auditor 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 internal auditor's request, an official, employee, or contractor shall prepare reports and provide interviews. If an

auditee, official, employee, vendor, or contractor fails to produce the requested information, the internal auditor shall notify the city manager requesting the city manager's assistance in causing a search to be made and germane exhibits to be taken from any book, paper, or record, written or electronic, excepting personal property. The city manager shall require the officials, employees, vendors, or contractors to produce the requested information. Further, all contracts with outside contractors and subcontractors shall contain a "right-to-audit" clause providing the internal auditor access to the contractor's employees and to all financial and performance related records, property, and equipment purchased in whole or in part with governmental funds.

- B. No person shall retaliate against, punish, or penalize any other person for complaining to, cooperating with, or assisting the internal auditor in the performance of the office. The internal auditor, all city employees and public officials, and any person cooperating with the internal auditor in performance of duties has the same protections as provided for in the Federal Whistle Blower Protection Act and the New Mexico Whistleblower Protection Act, Sections 10-16C-1 et seq. NMSA 1978.
- C. Any official or employee who violates this section may be subject to discipline as may be specified in applicable city ordinances or any applicable collective bargaining agreement.

(Ord. #2020-22, § 12)

2-22.11 - Audits and the Inspection of Public Records Act.

- A. This subsection is adopted pursuant to the general welfare and police powers conferred upon the city of Santa Fe by § 3-17-1 et seq. and § 3-18-1 et seq. NMSA 1978, pursuant to the powers conferred upon the city of Santa Fe by the New Mexico Constitution, Article X §§ 6(D) and 6(E) and the Municipal Charter Act § 3-15-1 et seq. NMSA 1978, which have been exercised by the city's adoption of the Santa Fe Municipal Charter. The purpose of this subsection is within both the city's home rule powers and the delegated powers that all municipalities have to provide for the general welfare of their residents by the general welfare clause in Section 3-17-1(B) NMSA 1978 and police power to "protect generally the property of its municipality and its inhabitants" and to "preserve peace and order within the municipality" by Section 3-18-1(F) and (G) NMSA 1978.
- B. At all times during the audit process and after the report becomes a public record; the internal auditor shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Ethics Rule 301 and related interpretations and guidance, Institute for Internal Auditors interpretations and guidance and GAGAS 4.30 to 4.32 and GAGAS 4.40 to 4.44.

(Ord. #2020-22, § 12)