

Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015

CHAPTER 2-3. - CITY AUDITOR.

§ 2-3-1 – DEFINITIONS.

(1) **ABUSE** means the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen.

(2) **FRAUD** includes, but is not limited to:

(a) the unauthorized taking of a City resource for personal gain by deception including by forgery or by altering any document;

(b) the misappropriation of funds, supplies, or another City resource, through methods including, but not limited to fraud, theft, embezzlement, and misrepresentation;

(c) the intentional improper handling of or reporting of money or financial transactions;

(d) the intentionally improper destruction or removal of records or other City resources; or

(e) the misuse of official City information for personal benefit.

(3) **WASTE** means:

(a) the grossly inefficient or uneconomical use of City assets or resources; or

(b) the unnecessary incurring of costs to the City as a result of grossly inefficient practices, systems, or controls.

(4) **PERSONAL BENEFIT** means:

(a) anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

§ 2-3-2 - APPOINTMENT.

(A) The office of the city auditor is created under Section 17 (City Auditor) of Article VII (Finance) of the Charter. A majority of the council shall appoint a city auditor in accordance with the procedure established in Section 2-3-3 (Selection Process; City Auditor Vacancy).

(B) The council may not appoint as city auditor a person who:

(1) has served as the City's mayor, a council member, or city manager within five years before the date of the appointment; or

(2) is related, by affinity or consanguinity within the second degree, to the mayor, a council member, or the city manager.

(C) The council shall provide the city auditor with a discrete budget sufficient to perform the auditor's responsibilities and duties under this chapter.

(D) A majority vote of the members of the council is required to remove the city auditor as provided by Section 17 (City Auditor) of Article VII (Finance) of the City Charter.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

37 Source: 1992 Code Sections 2-8-1(A), and 2-8-2(A), (C), and (J); Ord. 031204-9; Ord. 031211-11.

38 **§ 2-3-3 - SELECTION PROCESS; CITY AUDITOR VACANCY.**

39 (A) The council shall appoint a nominating committee to recommend candidates for city auditor. The
40 committee shall consist of five members, including:

- 41 (1) three council members appointed by the council;
- 42 (2) the state auditor; and
- 43 (3) the city manager.

44 (B) Not later than the 15th day after its members are appointed, the nominating committee shall hold its
45 first meeting to consider applicants for city auditor. The committee shall select a chair and vice chair
46 by majority vote.

47 (C) Not later than the 90th day after its first meeting, the nominating committee shall recommend to the
48 council three candidates selected by a majority of the committee members.

49 (D) Not later than the 15th day after the council receives the nominating committee's recommendation,
50 the council shall select a city auditor from the recommended candidates.

51 (E) If the city auditor's position is vacated, the auditor's first assistant shall serve as acting city auditor
52 during the vacancy.

53 Source: 1992 Code Section 2-8-8; Ord. 031204-9; Ord. 031211-11; Ord. No. 20150129-026, Pt. 8, 2-9-
54 15.

55 **§ 2-3-4 - QUALIFICATIONS FOR CITY AUDITOR.**

56 The city auditor must:

- 57 (1) be knowledgeable in performance and financial auditing, public administration, and public
58 financial and fiscal practices;
- 59 (2) be licensed as a certified public accountant or certified internal auditor; and
- 60 (3) exercise due professional care in carrying out the auditor's duties, and ensure that due
61 professional care is employed to conduct an audit.

62 Source: 1992 Code Section 2-8-1(B); Ord. 031204-9; Ord. 031211-11.

63 **§ 2-3-5 - INDEPENDENCE, OBJECTIVITY, AND AUDIT STANDARDS.**

64 (A) The city auditor shall organize and administer the auditor's office to operate without interference or
65 influence that might adversely affect an independent and objective judgment of the auditor.

66 (B) The city auditor:

- 67 (1) shall organize the auditor's office as necessary to perform the auditor's responsibilities and
68 duties under this chapter;
- 69 (2) may not be actively involved in partisan City political activity;
- 70 (3) may not conduct or supervise or allow an employee to conduct or supervise an audit of an
71 activity for which the person was responsible or in which the person was employed during the
72 two years before the date of the audit;

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (4) shall adhere to government auditing standards established by the Comptroller General of the United States to conduct the auditor's work and be independent as defined by the standards; and
- (5) shall follow accepted industry standards to conduct the auditor's investigative work, such as the general and qualitative standards under the "Quality Standards for Investigations" established by the Council of the Inspectors General on Integrity and Efficiency; and
- ~~(6)~~ is responsible for selection of an audit area and may consider requests from council and the city manager in selecting an audit area.

Source: 1992 Code Section 2-8-2(B) and (D) through (G); Ord. 031204-9; Ord. 031211-11.

§ 2-3-6 - POWERS AND DUTIES.

- (A) The city auditor shall examine City operations to identify an opportunity to reduce costs, increase efficiency, quality, and effectiveness, or otherwise improve management of a City function, program, service, or policy. The auditor shall manage a reporting system through which a City employee or a member of the public may submit an allegation of wrongdoing. The person making an allegation need not provide the person's name. An allegation may include:
- (1) an allegation of fraud, waste or abuse;
- (2) a violation of personnel policy; or
- (3) a violation of law, including a violation of Chapter 2-7 (Ethics and Financial Disclosure)
- (B) The city auditor shall communicate directly with the council audit committee and the council, attend council audit and finance committee meetings, and regularly meet with council.
- (C) The city auditor shall establish audit policies and procedures consistent with government auditing standards established by the Comptroller General of the United States, and applicable law and regulation.
- (D) The city auditor may conduct a performance or financial-related audit, investigation, and other audit work to determine if:
- (1) a current City function, program, service, or policy:
- (a) is authorized by the council or other legal authority; and
- (b) is conducted to accomplish its intended objective;
- (2) a function, program, service, or policy is effective in achieving its stated or intended result or benefit, including the level of effectiveness;
- (3) an audited function, program, service, or policy effectively, economically, and efficiently acquires, protects, and uses its resources, including personnel, property, and space;
- (4) a function, program, service, or policy complies with a mandate regarding efficiency, economy, effectiveness, or expenditure of public funds adopted by council or other legal authority;
- (5) management for a function, program, service, or policy has adopted an administrative and accounting control system to effectively, economically, and efficiently carry on the function or program; and
- (6) a function, program, service, or policy is providing financial and performance reports that accurately, fully, and fairly disclose all information required by law or other criteria necessary to:
- (a) ascertain the nature and scope of the function, program, service, or policy; and
- (b) establish a proper basis for evaluating the results of the function, program, service, or policy.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (E) When required or implied by audit objectives, the auditor shall determine the cause of an inefficient, uneconomical, or ineffective function, program, service, or policy.
- (F) The city auditor may conduct follow-up review determined to be necessary by the city auditor to verify a report or plan from the city manager in response to an audit recommendation. The city auditor shall review a follow-up report or plan from the city manager in response to an audit recommendation.
- (G) If the city auditor determines that a city employee or official may have violated the law, or may be reasonably anticipated to commit a violation, the auditor shall:
- (1) consult with and obtain advice from the city attorney;
 - (2) promptly ~~immediately~~ report the suspected violation to the appropriate authority; and
 - (3) if the suspected violation is criminal, notify the appropriate chief prosecuting authority.
- (H) The city auditor may hire a certified or registered public accountant, qualified management consultant, or other professional expert necessary to perform the auditor's duties, in compliance with the City's procurement requirements.
- (I) Notwithstanding any other provision of the City Code, neither the auditor nor any external party hired by the auditor shall make a determination concerning an allegation of a violation of Chapter 2-7, Article 4 (Code of Ethics).
- ~~(J)~~(J) Notwithstanding any other provision of the City Code, the auditor shall hire an external party to investigate any material allegation alleging a violation of City Code that constitutes fraud, waste, or abuse, by a member of the city council, a member of a council member's direct staff, or the city manager. The auditor shall submit the results of any substantiated external investigation to the Ethics Review Commission, which shall make the final determination on the allegation.
- ~~(J)~~(K) If the auditor conducts an investigation of an allegation alleging a violation of City Code that constitutes fraud, waste, or abuse by the city clerk, the clerk of the municipal court, a municipal court judge, a person appointed by the mayor or the city council to a City board, task force or similar body, or by a City employee who is not either a member of the classified municipal civil service system or of a state civil service system the auditor shall submit the results of any substantiated investigation to the Ethics Review Commission, which shall make the final determination on the allegation.
- ~~(K)~~(L) The auditor may conduct an investigation of an allegation alleging a violation of law or policy by a City employee who is a member of the classified municipal civil service system or of a state civil service system. If the auditor conducts an investigation of an employee covered by a civil service system, the investigation must be done in a way that is consistent with the law and any applicable labor agreement. If the auditor obtains sufficient evidence that indicates that a violation has occurred, the auditor shall provide a copy of the result of an investigation under this section to the city manager or other appropriate party. The city manager or appropriate party may conduct a separate investigation. The city manager or appropriate party has the authority to determine that a violation has occurred and the appropriate disciplinary action.
- ~~(L)~~(M) A person who is the subject of an investigation by the auditor may bring to any interview with the auditor a representative or advisor of the person's choice.
- ~~(M)~~(N) For each investigation in which the auditor obtains sufficient evidence that indicates that a violation has occurred, the auditor shall prepare a draft investigative report, which shall remain confidential, and deliver the draft report to the person who is the subject of the investigation and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct. The person who is the subject of the investigation and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct may submit a written response to the draft report

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

within 20 working days after receiving the report. The auditor shall deliver a copy of the final report, including any response submitted, to the appropriate authority, the person who is the subject of the investigation, any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct, the council, and the city manager. The auditor shall retain a copy of the report in the auditor's office for the applicable retention period under the City's records management program.

(O) The city auditor shall refer an allegation enumerated in this subsection to the city manager. The city manager shall design a process to inform the city auditor of the disposition of the referred allegations for recordkeeping purposes. The allegations covered by this subsection are those related to:

(1) A personnel issue;

(2) An operational issue;

(3) A de minimus fraud, waste or abuse violation;

(4) A public safety issue that is not related to fraud, waste or abuse; and

(5) An issue that the auditor is not authorized to investigate, and that is not within the jurisdiction of the Ethics Review Commission.

(P) City employees and officials shall cooperate with auditor investigations.

(P) The city manager shall produce a report on the status of investigations regarding fraud, waste, and abuse conducted by the city manager at least twice annually to the Council Audit and Finance Committee.

Source: 1992 Code Sections 2-8-1(B)(3), 2-8-3(B), and 2-8-6; Ord. 031204-9; Ord. 031211-11.

§ 2-3-7 - EMPLOYEES.

(A) Except the city auditor and an assistant otherwise designated by the city auditor, an appointee or employee of the city auditor's office is in the City's classified personnel service.

(B) The city auditor has the authority to appoint, employ, and terminate an assistant or other personnel as necessary to operate the city auditor's office, independently of the direction of the city manager or the council, subject to the budget approval process and personnel policy established by the council for each City department.

(C) The city manager or council may not direct the city auditor to appoint, employ, or terminate an assistant city auditor or other auditor's office personnel, subject to the City's grievance procedure.

Source: 1992 Code Sections 2-8-2(H) and (I); Ord. 031204-9; Ord. 031211-11.

§ 2-3-8 - ANNUAL AUDIT PLAN AND SPECIAL AUDITS.

(A) Not later than the 30th day before the beginning of a calendar year, the city auditor shall submit an annual audit plan to the council for review and comment through the council audit and finance committee.

(B) An annual audit plan under this section shall identify the scope of each audit the city auditor intends to conduct, including:

(1) the department, organization, service, program, function, and policy to be audited; and

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

(2) each potential audit objective to be addressed.

(C) If the city auditor notifies the council audit and finance committee and obtains comments from the committee, an annual audit plan may be amended by the city auditor. The city auditor may request an amendment independently, or at the request of the council audit and finance committee or the city manager.

(D) The city auditor may initiate, conduct, or expand the scope of an audit or investigation if the auditor determines that fraud, waste, abuse, or illegality may have occurred or is occurring, or if an audit finding requires expansion of the scope of the audit or of an investigation in progress. The auditor shall notify the council audit and finance committee of an action under this section., if the auditor determines that:

~~(1) fraud, abuse, or illegality may have or is occurring; or~~

~~(2) an audit finding requires expansion of the scope of an audit or investigation in progress; and~~

~~(3) notify the council audit and finance committee of action take under this section.~~

(E) The city auditor shall distribute the results of a special audit in accordance with Section 2-3-9 (Report Preparation and Release).

Source: 1992 Code Section 2-8-2(G)(1) through (3); Ord. 031204-9; Ord. 031211-11.

§ 2-3-9 - REPORT PREPARATION AND RELEASE.

(A) The city auditor shall prepare a draft audit report for each audit and deliver the report to the city manager.

(B) The city manager shall send the city auditor written comment on the reported audit findings and a written response to each recommendation on or before a date agreed to by the city manager and the city auditor. The city manager's response shall:

(1) state whether the city manager agrees or disagrees with each recommendation;

(2) include the reason for a disagreement; and

(3) describe the action, if any, that will occur in response to a recommendation.

(C) If the city manager's response is timely delivered to the city auditor, the city auditor shall include a copy of the response in the city auditor's final report.

(D) The city auditor shall file a final audit report with the council and the city manager, and retain a copy in the city auditor's office as a permanent record.

(E) An audit report prepared under this section shall adhere to the reporting standards for financial-related and performance audits prescribed by government audit standards.

(F) If appropriate, the city auditor may issue other advisory reports to provide information to the city manager and council.

(G) The auditor shall prepare a summary of the reporting program's activities at least twice annually for presentation to the council audit and finance committee.

Source: 1992 Code Section 2-8-5; Ord. 031204-9; Ord. 031211-11.

§ 2-3-10 - COUNCIL AUDIT AND FINANCE COMMITTEE.

(A) The council audit and finance committee shall assist the council in oversight of and responsibility for the City's financial and performance reporting practices, internal controls, compliance with applicable law and regulation, and initiatives to improve service.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

(B) The committee shall:

- (1) review and make a recommendation to the full council regarding the city auditor's annual audit plan;
- (2) monitor the city auditor's audit results and follow-up activity;
- (3) monitor the City's internal controls through external audits and the city auditor's audits and other activity;
- (4) provide reasonable assurance to the council that the City is in compliance with applicable law and regulation, is conducting its affairs ethically, and is maintaining effective internal controls against a conflict of interest or fraud;
- (5) meet with the director of the Finance and Administrative Services Department on financial questions and to review:
 - (a) the City's financial reports, including a comparison between actual financial performance and the approved budget;
 - (b) the City's fiscal policy, internal control policy, investment policy, debt management policy, and other financial management policies; and
 - (c) the status of the capital improvement program and related projects;
- (6) recommend to the full council an external auditor to conduct the City's annual financial audit; and
- (7) meet with the external auditor approved by the council as necessary, and review financial statements, auditors' opinion, and management letters resulting from the City's annual financial audit.

Source: 1992 Code Section 2-8-3; Ord. 031204-9; Ord. 031211-11; Ord. 20060824-060; Ord. 20090806-032; [Ord. No. 20150129-026, Pt. 5, 2-9-15.](#)

§ 2-3-11 - PEER REVIEW.

- (A) The city auditor is subject to peer review not less than once every three years by a professional, non-partisan, objective person or group, including an auditor or other professional with appropriate government auditing expertise and experience.
- (B) Peer review shall determine compliance by the city auditor with government auditing standards and the quality of the auditor's audit effort and reporting, including:
 - (1) general standards, including staff qualifications, due professional care, and quality assurance;
 - (2) fieldwork standards, including planning, supervision, and audit evidence; and
 - (3) reporting standards, including report content, presentation, and timeliness.
- (C) After the council audit and finance committee has reviewed and approved the written peer review report, the committee shall provide a copy of the written peer review report to each member of the council.
- (D) The city auditor shall pay the cost of the peer review, including reasonable travel and living expenses, from the city auditor's budget.

Source: 1992 Code Section 2-8-7; Ord. 031204-9; Ord. 031211-11.

§ 2-3-12 - ACCESS TO RECORDS AND PROPERTY.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- 277 (A) Each City officer and employee shall provide the city auditor with free and open access to and
278 furnish copies of information in any medium, including a record, book, account, internal or external
279 memorandum, tape, report, file, diskette, computer data, money, fund, or other information.
- 280 (B) Each City officer and employee shall provide the city auditor with free and open access to property,
281 equipment, facilities, and operations for inspection or observation by the auditor.
- 282 Source: 1992 Code Section 2-8-4; Ord. 031204-9; Ord. 031211-11.

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