

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 03/25/15
ITEM FROM FINANCE COMMITTEE MEETING OF 03/16/15

ISSUE:

19. Request for Approval of an Ordinance Amending Section 2-22 SFCC 1987 to Rename the "Internal Audit Department" the "Audit, Accountability and Performance Management Department"; Establish a Position of a Fraud Auditor to Investigate Fraud, Waste and Abuse Allegations; and Make Such Other Changes as are Necessary to Clarify Certain Provisions of the Accountability and Performance Management Ordinance. (Councilor Maestas) (Liza Kerr and Kelley Brennan)

Committee Review:

Audit Committee (approved)	03/04/15
City Council (request to publish)	03/25/15
City Council (public hearing)	04/29/15

Fiscal Impact – Yes

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

Approved Ordinance and FIR in the amount of \$117,992.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

Approved with condition that the position is created and funded during the budget process. Add Councilor Ives as co-sponsor.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA		X	
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2015-11

Internal Audit Department – Forensic Auditor

SPONSOR(S): Councilors Maestas and Ives

SUMMARY: The proposed bill amends Section 2-22 SFCC 1987 to rename the “Internal Audit Department” the “Audit, Accountability and Performance Management Department”; establish a position of a forensic auditor to investigate fraud, waste and abuse allegations; and make such other changes as are necessary to clarify certain provisions of the audit, accountability and performance management ordinance.

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: Yes

DATE: March 18, 2015

ATTACHMENTS: Bill
FIR

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2015-11

3 INTRODUCED BY:

4
5 Councilor Joseph Maestas

6 Councilor Peter Ives

7
8
9
10 AN ORDINANCE

11 AMENDING SECTION 2-22 SFCC 1987 TO RENAME THE "INTERNAL AUDIT
12 DEPARTMENT" THE "AUDIT, ACCOUNTABILITY AND PERFORMANCE
13 MANAGEMENT DEPARTMENT"; ESTABLISH A POSITION OF A FORENSIC
14 AUDITOR TO INVESTIGATE FRAUD, WASTE AND ABUSE ALLEGATIONS; AND
15 MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY CERTAIN
16 PROVISIONS OF THE AUDIT, ACCOUNTABILITY AND PERFORMANCE
17 MANAGEMENT ORDINANCE.

18
19 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

20 Section 1. Section 2-22 SFCC 1987 (being Ord. #2012-32) is amended to read:
21 2-22 [~~INTERNAL AUDIT~~] AUDIT, ACCOUNTABILITY AND PERFORMANCE
22 MANAGEMENT DEPARTMENT.

23 Section 2. Subsection 2-22.1 SFCC 1987 (being Ord. #2012-32, §2) is amended to
24 read:

25 2-22.1 Short Title.

1 Section 2-22 SFCC 1987 shall be cited as the "~~[Internal Audit]~~ Audit, Accountability and
2 Performance Management Department Ordinance."

3 Section 3. Subsection 2-22.2 SFCC 1987 (being Ord. #2012-32 §3, as amended) is
4 amended to read:

5 2-22.2 Findings; Purpose; Goals.

6 A. The governing body finds that good governance, transparency and accountability are
7 critical in the public sector for the effective and credible functioning of a healthy democracy, and in
8 fulfilling the government's responsibility to citizens and taxpayers.

9 B. Transparent and reliable reporting and effective auditing in government serve to
10 promote accountability, enhance the effectiveness of government services to its citizens, and increase
11 the public's confidence in their government.

12 C. The members of the governing body share a duty to ~~[insure]~~ ensure that the actions of
13 public officials, employees and contractors of the city are carried out in the most responsible manner
14 possible and that city policies, budgets, goals and objectives are fully implemented.

15 D. To accomplish this, the city requires the services of an independent office to provide
16 independent, objective assurance and review services designed to promote transparency,
17 accountability, efficiency and effectiveness of city government.

18 E. In 2013, the governing body enacted Section 19-2 SFCC 1987, the Fraud, Waste and
19 Abuse Hotline Ordinance, which was created for the purpose of establishing a mechanism for city
20 employees to report alleged fraud, waste or abuse by city employees or city public officers.

21 F. The intent of the governing body in enacting the Fraud, Waste and Abuse Hotline
22 Ordinance was to protect public employees by keeping confidential the name of the public employee
23 who lodges a good faith complaint through the fraud, waste and abuse hotline from retaliation.

24 G. There is a need to establish a position of forensic auditor to facilitate the purpose and
25 intent within the audit, accountability and performance management department to be responsible for

1 investigating fraud, waste and abuse, whether reported or identified through independent
2 investigation.

3 H. A forensic auditor will assist the governing body in evaluating and determining
4 whether there is a future need for an office of inspector general.

5 ~~[E]~~. The governing body does hereby establish the ~~[internal-audit]~~ audit, accountability
6 and performance management department, an independent city department of city government
7 reporting to the city manager~~[, which]~~. The department through the city auditor shall oversee the
8 ~~[internal auditor and the]~~ functions hereby established. To ensure independence and compliance with
9 generally accepted governmental auditing standards, the ~~[internal]~~ city auditor:

10 (1) Shall report results to ~~[the city manager,]~~ the audit committee, the city
11 manager, [the finance committee] and the governing body, through the finance committee;

12 (2) Is a city department located organizationally outside of other city
13 departments;

14 (3) Has access to the governing body in accordance with the Open Meeting Act;
15 and

16 (4) Is sufficiently removed from political pressures to conduct audits and report
17 findings, opinions and conclusions objectively without fear of political reprisal.

18 ~~[F]~~. The governing body also directs the ~~[internal-audit]~~ audit, accountability and
19 performance management department, through the city auditor, in cooperation with the audit
20 committee, to establish job descriptions and department policies and procedures based on generally
21 accepted ~~[governmental]~~ government auditing standards; and to adopt the Code of Ethics as defined
22 by the Institute of Internal Auditors.

23 **Section 4. Subsection 2-22.3 SFCC 1987 (being Ord. #2012-32 §4, as amended) is**
24 **amended to read:**

25 **2-22.3 Definitions.**

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

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

6 City auditor means the internal auditor who is the head of the audit, accountability and
7 performance management department.

8 *Committee* means the City of Santa Fe audit committee.

9 *Contractors* mean all city contractors.

10 Forensic auditor means the internal auditor whose primary focus is the identification and
11 investigation of fraud, waste and abuse.

12 *Internal auditor* means ~~[the internal auditor who is the head]~~ an auditor employed [of] in the
13 [internal audit] audit, accountability and performance management department.

14 *Employee* means a city employee.

15 *Official* means the mayor or a city councilor.

16 *Report* means a written document of an audit, a special audit, an investigation and/or an
17 examination, or a summary of work performed.

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

20 **Section 5. Subsection 2-22.4 SFCC 1987 (being Ord. #2012-32 §5, as amended) is**
21 **amended to read:**

22 **2-22.4 Creation of the ~~[Internal Audit]~~ Audit, Accountability and Performance**
23 **Management Department; Resources; Staff.**

24 A. The ~~[internal audit]~~ audit, accountability and performance management department is
25 created as an independent office of city government. The ~~[internal]~~ city auditor is the head of the

1 ~~[internal-audit]~~ audit, accountability and performance management department and shall report to the
2 city manager.

3 B. The audit committee shall review applications for and make a recommendation to the
4 city manager for hiring of the ~~[internal]~~ city auditor, a city employee.

5 C. The ~~[internal]~~ city auditor shall review applications and make recommendations to
6 the city manager for hiring other ~~[internal-audit]~~ audit, accountability and performance management
7 department employees; or independent contractors to be procured for assistance to the ~~[internal-audit]~~
8 audit, accountability and performance management department.

9 D. Pursuant to Section 19-2 SFCC 1987, the Fraud, Waste and Abuse Hotline
10 Ordinance, a forensic auditor, an internal auditor within the audit, accountability and performance
11 management department shall:

12 (1) Investigate fraud, waste and abuse, whether reported or identified through
13 independent investigation;

14 (2) Increase efficiency throughout the city by finding opportunities for recovery
15 of revenue or other assets; and

16 (3) Send a strong message of zero tolerance for fraud, waste and abuse.

17 ~~[D]~~E. In accordance with law and in consultation with the city attorney's office, the city
18 manager shall report proposed personnel actions, such as hiring, discipline or termination, relating to
19 the ~~[internal]~~ city auditor to the audit committee in executive session, in accordance with the New
20 Mexico Open Meetings Act. Nothing in this paragraph shall prohibit the city manager from
21 immediately placing the ~~[internal]~~ city auditor on administrative leave due to a proposed personnel
22 action; however, the city manager shall report the proposed personnel action to the audit committee,
23 within seven (7) business days from the date the ~~[internal]~~ city auditor is placed on administrative
24 leave.

25 ~~[E.]~~ The ~~internal auditor's work shall result in a complete written final report being made~~

1 of each annual audit, special audit, investigation and/or examination made ("report") and shall be
2 delivered to the city manager, except if city manager is the subject of the audit, then the report shall
3 be delivered to the mayor. The internal auditor shall also notify the governing body in writing that the
4 final report has been delivered. Each report, in its final form, shall set out in detail, in a separate
5 section, any violation of law or good accounting practices found. Such reports are confidential under
6 this section until placed on the finance committee's agenda or put in its final form, whichever occurs
7 first. Reports shall not exist in a draft form for more than thirty (30) days without presentation to the
8 finance committee. Final reports shall also be timely presented to the audit committee. If the draft
9 report is not ready to be delivered to the city manager in its final form or is not ready to be presented
10 to the finance committee after thirty (30) days, then staff shall inform the finance committee, in
11 writing, the specific date, absent court order not exceeding twenty (20) days, when the final report
12 will be delivered to the city manager or presented to the finance committee and the stated basis for the
13 additional time needed.

14 F. — Any final report for presentation to city committees or the governing body shall be
15 included in the meeting packet and such meeting packets shall be posted on the city's website.

16 G. — Prior to the committee meeting a final report placed on a committee agenda shall be
17 accessible by all members of the governing body and the public, and at such time shall become a
18 public record consistent with the Inspection of Public Records Act and its exemptions.

19 H. — Within thirty (30) days after receipt of the report, the employee and/or division
20 and/or department audited may notify the internal auditor of any errors in the report. If the internal
21 auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is
22 erroneous, the internal auditor shall correct the report and furnish copies of the corrected report to all
23 parties receiving the original report.

24 I. — The internal auditor may disclose audit information or audit documentation that is
25 confidential, without losing the confidentiality under this Ordinance to an independent external

1 auditor in connection with a special audit, performance audit, attestation engagement or other existing
2 or potential engagement regarding the financial affairs and transactions of the city.]

3 [J]E. The [auditor's] audit, accountability and performance management department's
4 budget shall be reflected in the city manager's proposed budget as a separate department. The budget
5 shall be sufficient to allow the organization to carry out its responsibilities including sufficient
6 funding for annual continuing professional education requirements and professional certification as
7 required by the generally accepted [governmental] government auditing standards. The [auditor's]
8 audit, accountability and performance management department's proposed budget shall be prepared
9 by the city auditor and presented to the finance director and the city manager.

10 Section 4. Section 2-22.5 SFCC 1987 (being Ord. #2012-32 §6, as amended) is
11 amended to read:

12 2-22.5 [Internal] City Auditor's Duties; Responsibilities; Authority; Administrative
13 Subpoena Power.

14 A. If [the] an internal auditor detects instances of possible fraud, waste, or abuse or
15 potential violations of law by an auditee, [~~he shall report~~] the irregularities shall be reported to the
16 city manager and the audit committee, or the chairperson of the finance committee if the city manager
17 is involved.

18 (1) In accordance with Section 12-6-6 NMSA 1978 and state auditor's Rule
19 2.2.2.10K(3), a notification letter regarding the possible fraud, waste or abuse shall also be
20 sent to the state auditor's office whether or not an investigation by [the] an internal auditor is
21 conducted.

22 (2) If the irregularity is criminal in nature, the [~~internal~~] city auditor shall
23 immediately refer the irregularity to the appropriate prosecuting authority and apprise,
24 concurrently, the city attorney of such action.

25 (3) If the irregularity warrants a special investigation, audit, and/or special audit,

1 then the ~~[internal]~~ forensic auditor shall conduct a special investigation, audit and/or special
2 audit. The report shall be submitted to the audit committee, the city manager or the
3 chairperson of the finance committee if the city manager is involved, ~~[the audit committee,]~~
4 the auditee~~;~~ and the governing body through the finance committee.

5 (4) The ~~[internal]~~ city auditor shall not accept complaints related to
6 discrimination or labor law matters. ~~[In some cases, it may be appropriate for internal audit to~~
7 ~~work with or legal authorities, or withdraw from or defer further audit work on the audit or~~
8 ~~portion of the audit to avoid interfering with an ongoing investigation or legal proceeding]~~
9 The city auditor shall defer investigating complaints which are otherwise subject to
10 investigation pursuant to human resources department policies or the police department
11 internal affairs directives. In some cases, it may be appropriate for the city auditor to work
12 with investigators or legal authorities, or withdraw from or defer audit work on the audit or
13 portion of the audit to avoid interfering with an ongoing investigation or legal proceeding.

14 B. The ~~[internal]~~ city auditor shall adhere to generally accepted governmental auditing
15 standards in conducting its work and will be considered independent as defined by those standards.

16 C. The ~~[internal audit]~~ audit, accountability and performance management department is
17 subject to a peer review by an appropriate professional non-partisan objective group every three (3) to
18 five (5) years. A copy of the written report shall be furnished to the city manager, audit committee,
19 and governing body, via the finance committee.

20 D. The audit, accountability and performance management department is authorized to
21 conduct the following audits as defined in generally accepted governmental auditing standards:

22 (1) Performance/Management Audits. Performance audits are defined as
23 engagements that provide assurance or conclusions based on an evaluation of sufficient and
24 appropriate evidence against stated criteria, such as specific requirements, measures, or
25 defined business practices.

1 (2) Financial Audits. Financial audits provide an independent assessment of
2 whether an entity's reported financial information (e.g., financial condition, results, and use
3 of resources) are presented fairly in accordance with recognized criteria.

4 (3) Attestation Engagements. Attestation engagements result in an examination,
5 a review, or agreed upon procedures about a subject matter that is the responsibility of
6 another party. This includes special audits.

7 (4) Advisory (Non-Audit) Services. This includes special investigations (e.g.
8 forensic audits). The issued report shall not include an opinion statement or a statement
9 indicating the investigation was done in accordance with generally accepted government
10 auditing standards. These services are subject to applicable professional standards.

11 E. The city auditor shall have the authority to conduct performance and financial audits,
12 attestation engagements or to provide advisory (non-audit) services to independently and objectively
13 determine whether:

14 (1) City, state or federal law authorizes the implemented activities and programs
15 that are the subject of the audit;

16 (2) The objectives intended by city, state or federal law are efficiently and
17 effectively accomplished in the implementation of activities and programs;

18 (3) The expenditure of funds was or is in compliance with applicable laws;

19 (4) The revenues were or are properly collected, deposited and accounted for;

20 (5) The entity, programs, activities, functions, or policies are effective, including
21 the identification of any causes of inefficiencies or uneconomical practices;

22 (6) The desired result or benefits are being achieved;

23 (7) Resources, including funds, property and personnel, were or are adequately
24 safeguarded, controlled and used in a faithful, effective and efficient manner;

25 (8) Financial and other reports fairly and fully disclosed all information as

1 required by law necessary to evaluate and ascertain the nature and scope of programs and
2 activities;

3 (9) Management established operating and administrative procedures and
4 practices, accounting internal control systems and internal management controls were and are
5 adequate and functioning as intended;

6 (10) City policies, budgets, goals and objectives were and are fully implemented;
7 and

8 (11) Reports or other indications of fraud, waste, abuse or illegal acts are valid
9 and need further investigation.

10 F. The [internal] city auditor shall have the power to subpoena witnesses, administer
11 oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In
12 the case of a refusal to obey a subpoena issued to any person, the [internal] city auditor may make
13 application to any district court in the state that shall have the jurisdiction to order the witness to
14 appear before the [internal] city auditor and to produce evidence if so ordered, or to give testimony
15 touching on the matter in question.

16 G. The city auditor may implement administrative procedures to effectuate the Audit,
17 Accountability and Performance Management Department Ordinance.

18 **Section 5. Section 2-22.6 SFCC 1987 (being Ord. #2012-32 §7, as amended) is**
19 **amended to read:**

20 **2-22.6 [Scope of] Audit Plan.**

21 ~~[A. Audits, except for special audits or special investigations/examinations, will be~~
22 ~~conducted based on an annual audit plan developed in accordance with applicable professional~~
23 ~~auditing standards. This plan and any modifications thereof, are to be reviewed by the audit~~
24 ~~committee and recommended for approval.~~

25 ~~(1) Within sixty (60) days before the beginning of each fiscal year, the internal~~

1 auditor shall submit a one-to-five-year audit plan to the audit committee, the city manager
2 and the governing body for review and comments, but the internal auditor shall have final
3 authority to select the audits planned. The proposed plan shall include the rationale for the
4 selections, for auditing departments, offices, boards, activities, subcontractors and agencies
5 for the period. This plan may be amended after review;

6 (2) — The final plan and any amendments will be presented to the audit committee,
7 the city manager, and subject to approval of the governing body;

8 (3) — In the selection of audit areas and audit objectives, the determination of audit
9 scope and the timing of audit work, the internal auditor should consult with federal, state and
10 other external auditors so that the desirable audit coverage is provided and audit effort is
11 properly coordinated.

12 B. — The internal auditor is authorized to conduct the following audits as defined in
13 generally accepted governmental auditing standards:

14 — (1) — *Performance/Management Audits.* Performance audits are defined as
15 engagements that provide assurance or conclusions based on an evaluation of sufficient and
16 appropriate evidence against stated criteria, such as specific requirements, measures, or
17 defined business practices.

18 — (2) — *Financial Audits.*

19 — (3) — *Attestation Engagements.* Attestation engagements result in an examination,
20 a review, or agreed upon procedures about a subject matter that is the responsibility of
21 another party. This includes special audits.

22 — (4) — *Advisory (Non Audit) Services.* This includes special investigations. The
23 issued report shall not include an opinion statement or a statement indicating the investigation
24 was done in accordance with generally accepted government auditing standards. These
25 services are subject to applicable professional standards.

1 C. ~~The auditor shall have the authority to conduct performance and financial audits,~~
2 ~~attestation engagements or to provide advisory (non-audit) services to independently and objectively~~
3 ~~determine whether:~~

4 ~~(1) The city, state or federal law authorizes the implemented activities and~~
5 ~~programs that are the subject of the audit;~~

6 ~~(2) The objectives intended by city, state or federal law are efficiently and~~
7 ~~effectively accomplished in the implementation of activities and programs;~~

8 ~~(3) The expenditure of funds was or is in compliance with applicable laws;~~

9 ~~(4) The revenues were or are properly collected, deposited and accounted for;~~

10 ~~(5) The entity, programs, activities, functions, or policies are effective, including~~
11 ~~the identification of any causes of inefficiencies or uneconomical practices;~~

12 ~~(6) The desired result or benefits are being achieved;~~

13 ~~(7) Resources, including funds, property and personnel, were or are adequately~~
14 ~~safeguarded, controlled and used in a faithful, effective and efficient manner;~~

15 ~~(8) Financial and other reports fairly and fully disclosed all information as~~
16 ~~required by law necessary to evaluate and ascertain the nature and scope of programs and~~
17 ~~activities;~~

18 ~~(9) Management established operating and administrative procedures and~~
19 ~~practices, accounting internal control systems and internal management controls were and are~~
20 ~~adequate and functioning as intended;~~

21 ~~(10) City policies, budgets, goals and objectives were and are fully implemented;~~

22 ~~and~~

23 ~~(11) Indications of fraud, waste, abuse or illegal acts are valid and need further~~
24 ~~investigation.]~~

25 Audits will be conducted based on an annual audit plan developed in accordance with applicable

1 professional auditing standards.

2 A. Within sixty (60) days before the beginning of each fiscal year, the city auditor shall
3 submit a one-to-five-year audit plan to the audit committee, the city manager and the governing body
4 for review and comments, but the city auditor shall have final authority to select the audits planned.
5 The proposed plan shall include the rationale for the selections, for auditing departments, offices,
6 boards, activities, subcontractors and agencies for the period.

7 B. This plan may be amended after review;

8 C. The final plan and any amendments will be presented to the audit committee, the city
9 manager, and the governing body through the finance committee;

10 D. In the selection of audit areas and audit objectives, the determination of audit scope
11 and the timing of audit work, the [internal] city auditor shall consult with federal, state and other
12 external auditors so that the desirable audit coverage is provided and audit effort is properly
13 coordinated.

14 E. The final plan shall set aside time for unforeseen investigations and audits.

15 **Section 6. Section 2-22.7 SFCC 1987 (being Ord. #2012-32 §8, as amended) is**
16 **amended to read:**

17 **2-22.7 Reports.**

18 A. The [internal] city auditor shall report results of all types of audits, investigations
19 and/or engagements in their final report form to the auditees, the audit committee, the city manager,
20 [the auditees,] and the governing body via the finance committee, except if the city manager is the
21 subject of the audit, then the report shall be delivered to the chairperson of the finance committee.

22 B. All types of audit reports, investigations and/or engagements[~~in their final report~~
23 form,] are public records, available for public inspection.

24 C. The [internal] city auditor's reports, including attestation engagements, shall follow
25 the guidelines as specified in generally accepted governmental auditing standards, or in the case of a

1 non-audit service applicable professional auditing standards.

2 D. At a minimum audit and attestation engagement reports should include:

3 (1) Statements describing the objectives, scope and methodology of the audit;

4 (2) A statement that the audit was performed in accordance with generally
5 accepted government auditing standards;

6 (3) Background information, audit results, and findings as appropriate;

7 (4) A conclusion based on the audit objectives and the audit findings.

8 (5) The findings in the audit report should present sufficient, appropriate
9 evidence to support the conclusion in relation to the audit objectives.

10 E. Responses submitted by the [city manager] auditee relevant to the audit findings must
11 include a remediation plan specifying dates and corrective action to be taken to resolve the issue.

12 (1) A response is required within fourteen (14) days of receipt of a final report;

13 (2) If no response is received, the [internal] city auditor will note that fact in the
14 transmittal letter and will release the report without a remediation plan.

15 [~~F. The internal auditor shall submit an annual report to the audit committee, city
16 manager, and governing body via the finance committee within sixty (60) days after fiscal year end
17 indicating all audits, investigations and/or engagements completed, major findings, corrective actions
18 taken by administrative managers, and significant issues which have not been fully addressed by
19 management.]~~

20 **Section 7. Section 2-22.8 SFCC 1987 (being Ord. #2012-32 §9) is amended to read:**

21 **2-22.8 Reporting.**

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

1 The city auditor shall submit an annual report to the audit committee, city manager, and
2 governing body via the finance committee within sixty (60) days after fiscal year end indicating all
3 audits, investigations and/or engagements completed, major findings, performance improvements,
4 efficiencies, loss identifications, corrective actions taken by administrative managers, and significant
5 issues which have not been fully addressed by management.

6 **Section 8. Section 2-22.9 SFCC 1987 (being Ord. #2012-32 §10, as amended) is**
7 **amended to read:**

8 **2-22.9 Contract Auditors, Consultants, And Experts.**

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

16 **Section 9. Section 2-22.10 SFCC 1987 (being Ord. #2012-32 §11, as amended) is**
17 **amended to read:**

18 **2-22.10 Penalty; Cooperation; Retaliation Prohibited.**

19 A. All city officials, employees and contractors shall provide [~~the~~] internal [~~auditor~~]
20 auditors full and unrestricted access to all city offices, employees, records, information, data, reports,
21 plans, projections, matters, contracts, memoranda, correspondence, electronic data, property,
22 equipment and facilities and any other materials within their custody. At the [~~internal~~] city auditor's
23 request, an official, employee or contractor shall prepare reports and provide interviews. If an auditee,
24 official, employee, vendor or contractor fails to produce the requested information, the [~~internal~~] city
25 auditor shall notify the city manager requesting his assistance in causing a search to be made and

1 germane exhibits to be taken from any book, paper or record, written or electronic, excepting personal
2 property. The city manager shall require the officials, employees, vendors or contractors to produce
3 the requested information. If the city manager is the auditee, then a city official shall be appointed by
4 the chairperson of the finance committee to be the point of contact for the city auditor. Further, all
5 contracts with outside contractors and subcontractors shall contain a "right-to-audit" clause providing
6 the [internal] city auditor access to the contractor's employees and to all financial and performance
7 related records, property, and equipment purchased in whole or in part with governmental funds.

8 B. ~~[No person shall retaliate against, punish or penalize any other person for~~
9 ~~complaining to, cooperating with or assisting the internal auditor in the performance of his office. The~~
10 ~~internal auditor, all city employees and public officials and any person cooperating with the internal~~
11 ~~auditor in performance of duties has the same protections as provided for in the Federal Whistle~~
12 ~~Blower Protection Act and the New Mexico Whistleblower Protection Act, Sections 10-16C-1 et seq.~~
13 ~~NMSA 1978]~~ An official or employee shall not be dismissed, threatened with dismissal, or otherwise
14 singled out for retaliation because the person has cooperated or assisted the city auditor in the
15 performance of an audit.

16 C. Any official or employee who violates this section may be subject to discipline as
17 may be specified in applicable city ordinances or any applicable collective bargaining agreement.

18 **Section 10. Section 2-22.11 SFCC 1987 (being Ord. #2013-34 §9) is amended to read:**

19 **2-22.11 Audits and the Inspection of Public Records Act.**

20 A. This subsection is adopted pursuant to the general welfare and police powers
21 conferred upon the City of Santa Fe by §3-17-1 et seq. and §3-18-1 et seq. NMSA 1978, pursuant to
22 the powers conferred upon the City of Santa Fe by the New Mexico Constitution, Article X §§6(D)
23 and 6(E) and the Municipal Charter Act §3-15-1 et seq. NMSA 1978, which have been exercised by
24 the city's adoption of the Santa Fe Municipal Charter. The purpose of this subsection is within both
25 the city's home rule powers and the delegated powers that all municipalities have to provide for the

1 general welfare of their residents by the general welfare clause in Section 3-17-1(B) NMSA 1978 and
2 police power to "protect generally the property of its municipality and its inhabitants" and to
3 "preserve peace and order within the municipality" by Section 3-18-1(F) and (G) NMSA 1978.

4 B. At all times during the audit process and after the report becomes a public record;
5 [the] internal [auditor] auditors shall follow applicable standards and 2.2.2 NMAC regarding the
6 release of any information relating to the audit. Applicable standards include but are not limited to the
7 AICPA Code of Ethics Rule 301 and related interpretations and guidance, Institute for Internal
8 Auditors interpretations and guidance and GAGAS 4.30 to 4.32 and GAGAS 4.40 to 4.44.

9 **Section 11. A new Subsection 2-22.12 SFCC 1987 is ordained to read:**

10 **2-22.12 [NEW MATERIAL] Review; Reporting.**

11 A. This Ordinance shall be reviewed by the governing body within one (1) year of a
12 forensic auditor being employed by the city.

13 B. The forensic auditor, in coordination with the city auditor, shall provide a report to
14 the governing body on all matters regarding investigations of, fraud, waste and abuse along with
15 resulting performance improvements, efficiencies, and loss identifications so that the governing body
16 may determine whether an inspector general office would be beneficial for the city of Santa Fe.

17 APPROVED AS TO FORM:

18 

19
20 KELLEY A. BRENNAN, CITY ATTORNEY

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution: _____
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AN ORDINANCE AMENDING SECTION 2-22 SFCC 1987 TO RENAME THE "INTERNAL AUDIT DEPARTMENT" THE "AUDIT, ACCOUNTABILITY, AND PERFORMANCE MANAGEMENT DEPARTMENT"; AND ESTABLISH A POSITION OF A FORENSIC AUDITOR TO INVESTIGATE FRAUD, WASTE, AND ABUSE ALLEGATIONS.

Sponsor(s): Councilor Maestas
Reviewing Department(s): Internal Audit
Persons Completing FIR: Liza Kerr Date: 03/09/2016 Phone: 505.955.5728

Reviewed by City Attorney: Kelley A. Brennan Date: 3/11/15
(Signature)

Reviewed by Finance Director: [Signature] Date: 3-11-2015
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:
The purpose of the bill is to create a forensic auditor position to investigate allegations of fraud, waste and abuse, whether reported or identified through independent investigation. This auditor will also look for ways to increase efficiency and effectiveness, identify performance improvements, recover revenue, and identify and eliminate loss.

Section C. Fiscal Impact

- Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:
- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
 - b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
 - c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*
- 1. Projected Expenditures:**
- a. Indicate Fiscal Year(s) affected -- usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
 - b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
 - c. Indicate: "R" -- if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
 - d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
 - e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: _____

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
Expenditure Classification	FY 15/16	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected	

Personnel*	\$75,000	N	R	\$			
Fringe**	\$42,992	N	R	\$			
Capital Outlay	\$			\$			
Land/ Building	\$			\$			
Professional Services	\$			\$			
All Other Operating Costs	\$			\$			
Total:	\$117,992			\$			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
Type of Revenue	FY 15/16	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected	

Loss recovery/ identification	\$117,992	R	\$		
	\$		\$		
	\$		\$		
Total:	\$117,992		\$		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The intention is to identify loss and recover revenue where possible, and to minimize future loss resulting in cost savings. Also, as strong internal controls are recommended and implemented cost savings will be realized in more efficient and effective performance.

=====

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None noted

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

Fraud, waste, and abuse occurring at the City could go undetected and unreported. Revenues could be lost due to misappropriation of funds, or inappropriate use of resources. Inefficiencies in internal control and program management could also go undetected.

The City has recently implemented a fraud, waste and abuse hotline. If calls come into the hotline and are not responded to appropriately it may have a negative impact on employees willingness to come forward.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None noted

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The hiring of a forensic auditor will have a positive impact on the community and employees morale. A strong message of intolerance for fraud, waste, and abuse coupled with consequences when appropriate assures public trust. The City has a fiduciary responsibility to ensure that taxpayer money is safeguarded and used wisely. The hiring of a forensic auditor sends a strong message that the City is serious about this responsibility. The public appreciates this strong oversight. Additionally, the majority of employees are honest and trustworthy. Knowing they are working in an organization with a commitment to excellence, strong ethics, honesty and integrity increases morale and a sense of job security.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

Mr. Tupler would like to see a separate fund that holds restricted cash which would be like our liabilities.

Chair de Schweinitz agreed - good point.

Mr. Tupler commented that having restricted and unrestricted cash gives a better understanding of our cash situation.

The Committee briefly discussed the beginning balance issue further.

Mr. Rodriguez said at some point when they have a better handle, he would be interested in any of the Audit Committee's recommendations regarding beginning balance.

Chair de Schweinitz asked the members and Ms. Kerr to work on that before the next meeting.

Chair de Schweinitz pointed out that General Counsel is here that the Committee needs to let her talk too.

Mr. Rodriguez said he would follow up in email and excused himself from the meeting.

Chair de Schweinitz modified the agenda again to hear from Ms. Brennan.

9. NEW BUSINESS

a. **Proposed Ordinance Amendment - Renaming the Committee to Accountability and Performance Management Department and adding Fraud Auditor**

Chair de Schweinitz welcomed Ms. Brennan and introduced her to the members.

Ms. Brennan thanked the Committee for allowing her to speak now. She wanted to give the Committee some history of this proposed ordinance. The Committee has the working draft and fiscal impact report [attached as Exhibit C]. This reflects many comments from the Audit Committee and Ms. Kerr. It also has some from Councilor Maestas, who is interested in the Office of Inspector General. Council asked her to look at it. The information she gathered, under certain circumstances, could be a good thing for municipalities. She could not find any comparison to municipalities of the size of Santa Fé. She looked at Albuquerque also. She had a conversation long before with Ms. Kerr and her work and whether it would be beneficial to have a forensic auditor to help her accomplish all of her responsibilities. At the same time, the fraud, waste and abuse hotline was being pursued by the City. It seemed the best way was to start with small steps to see if there was a basis to establish the office of inspector general. The City needed to give Ms. Kerr the resources she needed and take the opportunity to amend the ordinance and provide for a forensic auditor. These things came together.

Ms. Brennan said most of the changes to this proposed ordinance came from comments from the Committee and Ms. Kerr. The Council heard her report and recommendation and decided that starting with

a phased approach was best. Part of her concern was about these roles and how they would affect employment practice and collective bargaining agreements. She didn't want to lose time frames, given the legal requirements. She made some changes, including taking the whistle blower statute out of the ordinance but it still applies because it is a statutory requirement. Councilor Maestas has taken a strong interest in this and the Audit Committee will be assisting with the effort.

Ms. Kerr had her emailed timeline. This is on the agenda for the Finance Committee on March 16 and City Council on March 25. In light of that, she asked when the Audit Committee needed to get recommended changes to her.

Ms. Brennan said they should be sent in a week but if that was impossible, they could adjust that schedule.

Chair de Schweinitz said he and Ms. Romero spent time on this already and have some comments. In his mind, he thought the new title is a bit too global. They thought it should at least keep the term "audit" in there.

Ms. Brennan said Councilor Maestas was interested in considering this title but she thought the Committee's suggestion was right.

Ms. Romero pointed out that the term "audit" is clear defined and this name is kind of vague.

Chair de Schweinitz thought the fraud and abuse hot line is not even up yet.

Ms. Kerr said she talked to the City Manager about not having a press release yet but it is officially going into the payroll on Friday.

Chair de Schweinitz pointed out that we don't know to what extent there is fraud and abuse yet. It seems this might be premature.

Ms. Brennan agreed. That part of the value of creating a position would be useful in any event.

Mr. Tupler asked what title other cities used.

Ms. Brennan said Albuquerque created an Office of Inspector General and an Accountability Committee but Santa Fe did not feel the City should start with that.

Ms. Kerr asked if that was now defunct in Albuquerque.

Ms. Brennan had not heard that.

Chair de Schweinitz was not sure it was defunct but they had some big problems complying with the IPRA - (inspection of public records).

Ms. Brennan said they actually called her and talked about that. There is an opinion of the Attorney

General on that point.

Chair de Schweinitz noted she pulled that 30-day part.

Ms. Brennan agreed. That was one of her changes.

Chair de Schweinitz's other concern about who oversees the City Auditor. This proposed ordinance says the Department would oversee her. He realized that meant there is no person to oversee her. The current ordinance has the same language that there is some entity out there overseeing her. The Audit Committee doesn't see itself as overseeing her because it is advisory.

Ms. Brennan you are right.

Ms. Kerr offered to go through it and do word changes with Ms. Romero and Chair de Schweinitz.

Chair de Schweinitz thought Councilor Maestas seems keen on auditing as a way to bring back money to the City. It worried him that the City might be moving toward a money return angle and getting away from the risk-based stuff.

Ms. Brennan didn't think that was the intention of the Council but it was rather to gain efficiencies and to control loss. So saving money might not be the way to express that in a report.

Chair de Schweinitz thought in some ways that was corrected on page 15 and mitigate the tendency toward cost reimbursement as opposed to risk.

Ms. Kerr said she talked with Ms. Brennan about this paragraph and considered taking out "cost savings."

Ms. Brennan suggested the word "opportunity" might have a role to play. Is there a mechanism to adopt?

Chair de Schweinitz said he could help with the language. The time line seemed pretty fast to him. He asked if the City Auditor would be the supervisor of new forensic position.

Ms. Brennan thought so. This would be a position that could grow and change.

Ms. Romero said they talked about the City Auditor would be the main position with internal auditors under the Auditor and one of those is the forensic auditor. She asked if the current internal auditor position would become the City Auditor once this ordinance is approved.

Ms. Brennan said that is still up in the air.

Ms. Kerr referred to the last sentence on page 17 that said, "The Governing Body may determine whether an Inspector General office is required." She suggested that "is required" be changed to "would be beneficial."

Ms. Brennan supported that.

Chair de Schweinitz noted there is one section in the current ordinance about the types of audits to be done: financial, performance, etc. He asked if it should have the definition of what a forensic audit is.

Ms. Kerr said the definitions come out of governmental audit standards (GASB) so that would just fall under special audits.

Ms. Romero said it was on page 8.

Ms. Kerr said that would fall under category 4 - Special investigations.

Chair de Schweinitz said with a new position like this Ms. Kerr will control what work is undertaken.

Ms. Brennan agreed. The management relationship is for Ms. Kerr. Otherwise conflicts arise.

Chair de Schweinitz asked if Ms. Brennan wanted Audit Committee members to attend the meeting.

Ms. Brennan said that would be fine. If we can stick to this time frame that would be great.

Ms. Romero asked about the changes made here.

Ms. Kerr said she would put them in as tracked changes.

Ms. Romero agreed and asked that she send them back to the members.

Chair de Schweinitz thanked Ms. Brennan for attending.

Ms. Brennan left the meeting.

The Committee went back to the approved agenda.

5. EXTERNAL AUDIT MATTERS

a. Completed Audits within the Last Four Years with Open Findings (Liza Kerr)

Chair de Schweinitz said this item should be limited to the ones the Committee is going to talk about each time. The Committee should spend some time on the Santa Fe Railyard Audit.

Ms. Kerr said she did split the reports between external and internal. The first was External Audits completed with the last four years with open findings. [The report is attached to the minutes as Exhibit D.] She pointed out that there are only sixteen open findings now. The four findings from the CAFR won't be cleared until the audit is done next year.

they going to put the glass. That's the danger is biking with a glass schooner. I think we should be open minded. I support the amendment, but if I had to compromise, I would compromising on limiting the servings to see how it goes and allow the 16 ounces."

Chair Dominguez doesn't mind the two 16-ounces, but he wants to make sure we have one or the other so staff and everyone knows exactly what the expectations are.

Councilor Lindell asked the sponsor of the event if three 12-ounce drinks is acceptable, and preferred over the two 16-ounce.

Mr. Goblet said, "At this point, I'm think about both the local resident as well as the tourist who is coming to visit us who has traveled a long way to a Bike and Brew event. I think the customer perception is that three 12-ounce beers over a 6 hour period of time feels like than two 16-ounce beers would feel. So in the interest of figuring out which would have the better consumer perspective, I think allowing a person to consume 3 beverages over a 3½ hour concert or a 6 hour period of time would be perceived of more value."

Councilor Maestas asked if any glass schooners are 12 ounces.

Mr. Goblet said they won't be able to purchase glasses for the event. They will change strategy and move to a biodegradable 12 ounce glass. He said one of the other recommendations that came from the BQL is that he event would be green, so we're going to toe the line between a suitable glass size, and move away potentially from the commemorative glass to something different.

Chair Dominguez thanked Mr. Goblet him for being amenable with the changes, which demonstrates his willingness to understand best practices and changing the social norms in Santa Fe, commenting it is not easy, and won't happen overnight. Mr. Goblet thanked the Committee and said he will see them in two weeks.

VOTE: The motion was approved unanimously on a voice vote.

- 19. REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SECTION 2-22 SFCC 1987, TO RENAME THE "INTERNAL AUDIT DEPARTMENT," THE "AUDIT, ACCOUNTABILITY AND PERFORMANCE MANAGEMENT DEPARTMENT;" ESTABLISH A POSITION OF A FRAUD AUDITOR TO INVESTIGATE FRAUD, WASTE AND ABUSE ALLOCATIONS; AND MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY CERTAIN PROVISIONS OF THE ACCOUNTABILITY AND PERFORMANCE MANAGEMENT ORDINANCE (COUNCILOR MAESTAS AND COUNCILOR IVES). (LIZA KERR AND KELLEY BRENNAN) Committee Review: Audit Committee (approved) 03/04/15; City Council (request to publish) 03/25/15; and City Council (public hearing) 04/29/15. Fiscal Impact – Yes**

Councilor Lindell said in theory she feels supportive of this Ordinance. However we just adopted a hotline which has been up and running for 1-2 weeks, and asked how hot the line has been.

Liza Kerr said they have had 4 calls in one week.

Councilor Lindell said we've not been inundated, but we've had some calls. Councilor Lindell said there is a lot in this which she completely agrees. However, she doesn't think she can support this. She said right now we're working on a new budget, and she is unsure about creating a new position at a cost of \$118,000, just prior to going through the budget, and she also is unsure this position is the absolute number one priority in terms of positions that we need in the City. She said, "Considering what we know about our budget situation right now, I feel we should go through that process and see if this is the absolute priority position that we have with the City right now, so I think there is a lot of this Ordinance I would absolutely support, but I just can't right now, until we go through the budget process, support the creation of a new position."

Councilor Rivera said he has some of the same concerns as Councilor Lindell with the cost. He said his other concern is that we just started the Fraud, Waste and Abuse Hotline and we need to give it the time it needs which is a year to figure out where other positions would need to fit in "your program." He said it may be a director position or people under you that help in other ways. He said we all understand and acknowledge that your department needs to grow, that you need help and that you can't do it by yourself. He said where the pieces fall will take time to figure out.

Councilor Rivera continued, "Councilor Maestas, I'm not opposed to this plan, I think it's a good idea. I would rather just wait a little while to figure out where the actual pieces will fit in. So at this time I wouldn't be able to support it, but after some time and some day coming back from the Fraud, Waste and Abuse Hotline, I would probably entertain ideas of where this position and may others may need to fit into the program itself."

Councilor Maestas asked, "Where is the money coming from to pay for this position."

Ms. Kerr said, "I don't think that's necessarily been identified at this time, but I do know that a forensic auditor, there's a lot of work they can do to help identify lost revenue sources, duplicate payments in Accounts Payable. If we do an audit of Accounts Payable, that's a common audit that a forensic auditor would do. You can identify duplicate payment made to vendors and request the money back. That would be one example of many ways that we could recoup money. And just loss identification. If there is a situation where is an inefficiency, where we've identified a situation where fraud might be occurring and we stop the fraud, we may not be able to recover it, but we keep it from getting worse."

Councilor Maestas said this is a culmination on one year's work by staff, noting the initial approach was to adopt a Resolution of establishing an Inspector General position to really have the separation within the City to objectively and timely investigate fraud, waste and abuse in the City. He thinks we have all the parts with the exception of the investigation part, and this fraud investigator is just that part. He said when we looked at the success of inspector general in other cities, those positions more paid for themselves several times over.

Councilor Maestas continued saying looking at this as an additional FTE isn't looking at the big picture in the potential of what this position could be. He said having such a position will cause more employees to come forward with allegations of fraud, waste and abuse now knowing there is such a position. It won't get bogged down in delays. There will be no conflicts of interest associated with any supervisor of employees that could be involved.

Councilor Maestas continued, "This sends a strong message that we are serious about being strong stewards of taxpayer money. I think every city that has had an inspector general has done very very well. And not just cost recovery, but for investigating fraud. It really is going to help us to improve our programs as well. Obviously if we have programs, whether it's the nature of the program or the oversight, if it's open to tendencies of fraud, waste and abuse, this position can investigate it, find out who is at fault, and improve the very process that led to the fraud, waste and abuse. It's a mechanism to continually improve our performance, our processes. It's a position that can pay for itself. And again, I think we always know if the taxpayers care about anything, it's how well we care about their money. I think this is the missing piece of the entire fraud, waste and abuse program. I think just loss prevention alone will help us immensely."

Councilor Maestas continued, saying in every audit, there typically are problems with internal controls. And a position like this is a part of the entire department, is going to minimize any kind of audit findings associated with internal controls. To institutionalize this kind of investigative focus in a department will really improve our internal controls going forward. He said these are the kinds of positions that pay for themselves. Staff has done a lot of work. The Audit Committee has gone through the entire Ordinance and signed off on the changes. He said there is no point of delaying this, and "this is going to come up in the budget hearings obviously. It's going to be in the budget. The time is here, and we're starting budget hearings in April. I say let's approve this, and if you can't find the appropriation then fine, we won't implement it." He said he is willing to take up the debate during the budget hearings.

Councilor Rivera said when new positions are created there usually are other areas that need to be figured out as well. For example office space, computer, office supplies, and none of that is in here, it is just personnel. He asked if there are licenses associated with new personnel, or any new contracts and vehicle requirements.

Ms. Kerr said, "What we have now will be adequate for an additional person. There is also an additional space connected to my office, or right there, they're considering using for another project for a short amount of time, but we potentially could use that for this person as well, just migrate them into that space when the other project is completed. The question of needing a computer and that type of equipment. As far as additional contracts or anything like that, I don't think so. I'm looking for somebody that's a certified forensic auditor, so they will come with those credentials, and bring that with them. I'm not looking for somebody that we need to train to do that type of work. I'm looking for somebody that already has the certification and has already paid for that, so that's a given. As far as a car goes, there's a motor pool now that is available if somebody needs a car. Does that answer your question."

Councilor Rivera asked for the cost of a desk top and laptop computers.

Ms. Kerr said it would be under \$500 for any of that type of stuff. If they needed a laptop it would be less than \$500, and a desktop would be even less than that, depending on where you buy it.

Councilor Maestas said we just approved a contract for independent investigations, very similar to what this position would be doing, Human Resources, which was well over 6 figures. He said, "Internal Affairs with our Police Department, if we had to quantify what it cost them to do independent internal affairs investigations it would far exceed the estimated fiscal impact for this position." He said this gives the opportunity to contract out and have person in-house and responding to whatever comes up. He said, "You know that procurement is not as nimble when there is somebody in house to respond to some of these investigations."

Councilor Rivera asked Councilor Maestas if he heard him say that part of this means you're doing away with the Police Internal Affairs.

Councilor Maestas said, "No. What I'm saying is the cost of doing similar independent investigations for the P.D. probably exceeds the fiscal impact of this position. And I made the point that H.R. does its own independent investigations and we contracted that out for 6 figures, so I think we've been there and I think this is a bargain compared to contracting those kinds of services out."

MOTION: Councilor Maestas moved, seconded by Councilor Trujillo, to approve this request

DISCUSSION: Councilor Ives said he will be brief, and asked to join as a cosponsor of this bill. He said this would leverage our ability to get ahead of issues where there are inefficiencies, such as the parking tickets where we had millions of dollars uncollected over an extended period time, by having capable staff to look at those issues, bring them to our attention in timely fashion and be sure we address them.

Chair Dominguez said this creates a new department.

Ms. Kerr said she believes it just changes the name of the Internal Audit Department to the Audit Accountability and Performance Management Department.

Chair Dominguez asked who would the new position respond and report to.

Ms. Kerr said it would be the same, with the same controls to be an independent position. She said, "Right now, the way I do my reporting is administratively to the City Manager, and then I report to you guys and also to the Audit Committee, so there's a three-prong approach to get that independence."

Chair Dominguez asked who the Forensic Auditor will be reporting to, and Ms. Kerr said the position would be reporting to her.

Chair Dominguez said, "This person has autonomy just via that relationship from management."

Ms. Kerr said yes, absolutely.

Chair Dominguez asked if the City Manager has approved this proposal.

Ms. Kerr said, "Not that I know of."

Chair Dominguez said, "The reason I ask is, if we approve this as is, we're basically mandating to the City Manager to create a position. I'm not necessarily opposed to the position, but I would rather have a discussion about that in the context of the entire budget. Essentially, if we're going to create this position, our expenses will increase, right. Or, if we are going to take another position from another department and do some sort of reorganization, where is that going to come from. Those are some of the questions I would like answered before this gets approved."

Chair Dominguez continued, "Typically, whenever we do these sorts of things, it is in the context of approving a full budget. At least, that's the way we've done it in the past. When I did the Parks & Recreation Department last year, I brought that up at budget time and had that consideration at budget. The majority of the Finance Committee has said they support the context in the need, I shouldn't say need, and I don't want to speak to them, but the importance of the Committee addressing this."

Councilor Maestas said, "Just on point, I think there is an example where we do adopt a budget without secured revenues, and I think it's in Economic Development. We just passed an amendment approving revenues to pay for the remainder of the program. So this isn't precedent setting. I think we had 90 unfunded mandates through Resolutions going back 3-4 years. And so this is not unlike the practice of this Governing Body or approval of certain programs during the budget process that didn't have secured revenues."

Councilor Dominguez asked, "Are we going to increase our expenses with this position."

Councilor Maestas said everything is subject to an appropriation.

FRIENDLY AMENDMENT: Chair Dominguez proposed to amend the motion to add that this position is subject to an appropriation at the budget hearing. **THE AMENDMENT WAS FRIENDLY TO THE SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

CONTINUATION OF DISCUSSION ON THE MOTION, AS AMENDED: Chair Dominguez said what is all comes down to is whether we can afford it. He said, "On one hand can we afford not to, right, but on the other hand can we afford it when we talk about priorities. Another position may have a higher priority, relative to..... as Councilor Ives said, it would have been good to have this position some time ago, but we'll have that discussion for priorities." He asked Councilor Maestas if he is okay with that.

Councilor Maestas said yes and this is a lesson learned.

Councilor Lindell asked how this works, noting it will go to Council for public hearing on March 29th and we won't be complete with our budget by then. She asked if it will go forward with the amendment. She said, "What we're doing is essentially approving this in concept, but unless we find the appropriation for it in our budgeting, we won't have this position."

Chair Dominguez said, "That's essentially what it means."

Councilor Lindell asked, "Is that your understanding Councilor Maestas." Councilor Maestas said, "Yes."

Councilor Rivera said assuming this isn't funded during the budget session, we in essence have created a position. So this creates a position and leaves it as a vacant, unfunded position, which is something that has been a huge topic of discussion with the Finance Committee for the past 3 months, talking about vacant positions, getting rid of them. So now we're creating another vacant position that stays on the books until it is funded or done away with.

Chair Dominguez sees it as the position wouldn't get created unless there was an appropriation for the position. He doesn't want to create a position, as an unfunded shell. His preference is to determine through the budget process whether we can fund this position, and if so it is created, but not simply to create a position. We would actually have to fund it in order to be "quote unquote created."

Ms. Byers suggested a possible amendment on page 17, where it talks about Review and Reporting, and it says, "This Ordinance shall be reviewed by the Governing Body within one year of a forensic auditor being employed by the City." Ms. Byers suggest, "I would recommend or suggest putting in a appropriations paragraph saying unless sufficient appropriation is made the position will not be implemented," or something to that effect. This is for the forensic auditor portion of this, commenting the Ordinance also contains other changes to clarify other provisions. This isn't just about a forensic auditor, so her suggestion is specifically about the forensic auditor position.

RESTATEMENT OF THE MOTION, AS AMENDED: Councilor Maestas said, "We moved for approval, but with the proviso that the Fraud Investigator Position be created and funded, subject to appropriations during the budget hearing process."

VOTE: The motion was approved on a voice vote with Councilors Lindell, Maestas and Trujillo voting in favor of the motion and Councilor Rivera voting against..

- ~~20. **REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO THE SINGLE-USE CARRYOUT BAG ORDINANCE, SECTION 21-8 SFCC 1987; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT A PAPER GROCERY BAG CHARGE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60-DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE (COUNCILORS IVES AND, LINDELL, AND RIVERA). (JOHN ALEJANDRO) Committee Review: City Council (Request to publish) 03/25/15; Public Utilities Committee (scheduled) 04/01/15; City Business & Quality of Life Committee (scheduled) 04/08/15; and City Council (public hearing) 04/29/15. Fiscal Impact – Yes.**~~