WORK SESSION AGENDA

Mayor
Eric Enriquez

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores

Monday, July 8, 2024 at 1:00 PM

Council Chambers

CITY OF LAS CRUCES

CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004

700 N. Main St.
PHONE (575) 541-2067

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Council Work Session Summary

Meeting: Work Session - Jul 08 2024

TITLE: ANNUAL UPDATES FROM ECONOMIC DEVELOPMENT PARTNERS: FILM LAS CRUCES AND THE FARMERS AND CRAFTS MARKET OF LAS CRUCES

PURPOSE(S) OF DISCUSSION: ☒ **Inform/Update** ☐ **Direction/Guidance** ☐ **Legislative Development/Policy**

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Economic Development Department Partners are required to report to City Council annually. Both partners will review the metrics from the previous year with Council, then make a report of their accomplishments and challenges over the last year.

PLAN(S):

Elevate Las Cruces

Council Work Session Summary

Meeting: Work Session - Jul 08 2024

<u>TITLE</u>: INDUSTRIAL REVENUE BOND (IRB) POLICY.

PURPOSE(S) OF DISCUSSION: ☐ **Inform/Update** ☐ **Direction/Guidance** ☒ **Legislative Development/Policy**

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

City staff will be going over Industrial Revenue Bonds (IRBs) and the proposed policy (Attachment "A") that will be brought back for City Council adoption. An IRB is an economic development business incentive, and fundamentally, it is a tax subsidy. The subsidy may be one or more of (i) a property tax exemption (ii) a gross receipts tax deduction (and/or compensating tax exemption), (iii) an exemption of bond interest from New Mexico income taxation, and (iv) an exemption of bond interest from federal income taxation.

The City has always been able to offer IRBs to potential businesses or businesses that are expanding, but it has not been utilized in recent years. The proposed policy will put a formal process in place to apply for an IRB and the expectations for all parties involved.

SUPPORT INFORMATION:

Attachment A, IRB policy DRAFT

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

Attachment "A"

Modrall Sperling draft 4.15.24

CITY OF LAS CRUCES
RESOLUTION NO. 2024-____

PROVIDING FOR THE REVIEW OF INDUSTRIAL REVENUE BOND PROJECTS BY THE CITY OF LAS CRUCES, NEW MEXICO; ADOPTING STANDARDS FOR QUALIFICATION OF PROJECTS FOR FINANCING WITH INDUSTRIAL REVENUE BONDS TO BE ISSUED BY THE CITY; AND ADOPTING INDUSTRIAL REVENUE BOND POLICIES.

WHEREAS, the Municipal Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the "Act") authorizes New Mexico municipalities, including the City of Las Cruces (the "City"), to provide assistance through the issuance of industrial revenue bonds to finance eligible industrial, commercial and other types of projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the state; and

WHEREAS, as provided in the Act, the principal of and interest on industrial revenue bonds shall be secured by special revenues generated in connection with the project being financed thereby, and the City shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers; and

WHEREAS, the City desires to enact an industrial revenue bond policy and application procedures for the following purposes:

(1) to enable the City to evaluate the potential benefits and costs of projects proposed to be financed with industrial revenue bonds issued by the City;

(2) to assure that proposed projects are evaluated in a reasonably objective, thorough and consistent manner;

(3) to promote the development of eligible projects which provide specific types of identified benefits to the City and its residents;

(4) to require that projects that do not deliver the economic benefits anticipated by the project developer and the City be obligated to return to the City the property tax abatements and gross receipts tax and compensating tax benefits that such projects receive in connection with the issuance of industrial revenue bonds; and

(5) to require that the costs to the City of evaluating and implementing eligible projects be paid by the Applicants.

BE IT [RESOLVED] [ORDAINED] BY GOVERNING BODY OF THE CITY OF LAS CRUCES:

Section 1. Definitions. As used in this [Ordinance] [Resolution]:

A. "Act" means the Municipal Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended from time to time.

B. "Applicant" means the person or legal entity submitting an Application or, if submitted by an agent, the person or legal entity on whose behalf an Application is submitted.

C. "Application" means, collectively, the proposed form of Inducement Resolution, the Project Plan and such other information or materials that may be requested by Staff.

D. "Application Fee" means the fee charged by the City to the Applicant to pay the costs and expenses incurred by the City in evaluating an Application, which may include the fees and expenses of legal and financial consultants engaged by the City to assist in the evaluation.

E. "Bonds" or "IRBs" means any bond, debenture, note, refunding bond or note, warrant or other security evidencing an obligation, the proceeds of which, or a major portion thereof, are to be used in the trade or business carried on by someone other than the City and which are authorized to be issued by the City pursuant to the Act.

F. "City" means the City of Las Cruces, New Mexico.

G. "County" means the County of Doña Ana, New Mexico.

H. "Deposit" means the amount to be provided by an Applicant to pay the Application Fee and other related costs, including, without limitation, costs of outside consultants deemed by Staff to be necessary or appropriate to assist in the evaluation of an Application.

I. "Governing Body" means the City Council of the City, or any succeeding legislative body of the City, as such governing body from time to time may be constituted.

J. "Inducement Resolution" means a resolution of the Governing Body setting forth its good-faith intent to issue Bonds upon the prior satisfaction of all applicable land use and development requirements of the City, other than the issuance of a building permit.

K. "Payments in lieu of Taxes" or "PILOT" means payments to be made by the User to the City for the benefit of Taxing Districts, as required by the City and, to the extent applicable, the Act.

L. "Project" means a "project" as defined in the Section 3-31-1(B) of the Act.

M. "Project Plan" means the plan describing a Project which shall include the following information:

1. a general description and location of the Project;

2. the number and type of new jobs to be created by the Project;

3. the estimated percentage of jobs to be filled by persons who are residents of the City and County on the date of the Project Plan submission;

4. identification and the processing of any product or commodity associated with the Project;

5. any relocation of individuals or businesses anticipated to be caused by the Project;

6. the present use or conditions of the Project site;

7. the present assessed value of the Project site, if available;

8. the estimated value of the Project site (including the value of the Project) after completion of the project;

9. the total cost of the Project, including the cost of the improvements constituting the Project and land acquisition costs;

10. the maximum amount of the Bonds to be issued;

11. the maximum term for which the Bonds may be outstanding, which shall not exceed the maximum term permitted by the Act;

12. the present and proposed zoning;

13. a proposed construction schedule for the Project;

14. information relating to the feasibility of the proposed Project including information relating to the ability of the project to generate revenues to render the project self-liquidating;

15. the competition in type of commerce or industry in which the Project will be engaged that already exists within the City and its environs, including the County;

16. the effect on existing industry and commerce in the City and County, both during and after the construction period, including provisions for procurement of goods and services from businesses located within the City;

17. the amount of private investment in the Project in addition to the proposed Bond financing;

18. the date on which Bonds are proposed to be issued;

19. resumés showing the experience of the new development entity or principals, and the experience of the architect, contractor, and leasing agent, if relevant;

20. a description of management of the Project;

21. conceptual site plans for the Project;

22. a map depicting the Project area; and

23. other matters as may be relevant to or requested by the Governing Body or Staff.

N. "Staff" means the City Manager and other employees of the City assigned by the City Manager to review and make recommendations to the Governing body concerning the Project Plan and other Application materials.

O. "Taxing District" means a school district, community college district, special hospital district or other special district that levies ad valorem property taxes on taxable property within the City.

P. "User" means one or more persons or entities, or their successors, assigns or agents, who propose to acquire or construct a Project financed by or proposed to be financed by the proceeds of Bonds.

Section 2. <u>General Policy; Projects of Specific Interest to the City</u>.

A. The City will favorably consider proposed Projects which demonstrate that one or more of the following characteristics are likely to result from the proposed Project:

(1) A substantial increase in employment will result from development of the Project;

(2) The Project will significantly diversify the local or regional economy or have a positive economic impact on a particular location in the City in which economic development would be beneficial;

(3) The Project will utilize goods and/or services purchased in the City;

(4) The Project will expand the type of job skills in the local job market, or utilize skills of locally unemployed persons;

(5) The Project will provide or expand access to affordable housing that is not otherwise being provided within the City;

(6) The Project will provide or expand access to medical or health care that is not otherwise being provided within the City.

B. The City is specifically interested in providing assistance through industrial revenue bond financing for Projects which promote the following:

(1) Renewable energy development;

(2) Access to affordable housing or housing specifically addressing the needs of senior residents:

(3) Access to medical and healthcare;

(4) Other commercial, industrial, residential or recreational Projects identified by the City as objectives in its growth and development plans and policies.

C. The City will consider other proposed Projects which meet the requirements of the Act.

D. The City will favorably consider proposed Projects which would be located on parcels owned by the City and ground-leased to the Project developer or operator, in which case the industrial revenue bond transaction will be structured to maintain the City's ownership in fee of underlying parcel during and after the term of the industrial revenue bond.

E. Staff shall develop a form of Application to be utilized by each Applicant, which may include weighted scoring for one or more components of the Project Plan, and a minimum score required for recommendation of the Project Plan to the City Council, as well as exceptions for specified types of Projects, all of which shall be consistent with the provisions described in subsections A through D of this Section 2.

Section 3. Preliminary Review of Proposed Project.

A. The City Manager or person designated by the City Manager shall review all proposed Project Plans below to determine that proposed Project Plans are complete. Incomplete Project Plans shall not receive further consideration by the City until completed unless the City Manager determines, in their sole discretion, that specific information is not relevant or not required to be provided in order for Staff to make an informed recommendation to the Governing Body concerning approval of the Project Plan.

B. A request to issue Bonds for a Project shall be made by filing a proposed form of Inducement Resolution and submitting a Project Plan, Application Fee and Deposit with the City Manager. Following determination by City Staff that the Inducement Resolution is consistent with the Project Plan, Staff will arrange for introduction of the proposed Inducement Resolution to the Governing Body within the following 60 days.

Section 4. Approval of Project Plans; Recommendations to Board; Protest.

A. Staff shall make a recommendation to the Governing Body that a completed Application be approved, conditionally approved, or that no action be taken concerning the Project Plan or other features portion thereof submitted for its review.

B. Staff's recommendation for, and the Board's final action regarding approval, conditional approval, or disapproval of a Project Plan and Inducement Resolution, shall take into consideration the City's development plans and policies and the promotion of the health, safety, security and general welfare of the citizens of the City and the State of New Mexico.

C. Staff shall base its recommendation on the Applicant's responses to each of the components of the Project Plan described in defined term "Project Plan" in subsection L of Section 1 of this Resolution.

Section 5. Compliance with Land Use Requirements. After adoption of an Ordinance authorizing the issuance of the Bonds, the following steps shall be followed:

A. Any required site development plans shall be submitted to the City and shall be reviewed in accordance with the City's established land development and zoning procedures.

B. As evidence of compliance with all land development requirements, the User shall provide at any time prior to the issuance of the Bonds, a certificate of development compliance signed by the City Manager or their designee.

Section 6. Industrial Revenue Bonds; Multi-Family Housing Projects; Additional Requirements. The City recognizes that there is a need for multi-family housing for low income families and elderly persons. All multi-family housing projects shall follow the definitions and standards set forth in Chapter 13, Housing, of the Las Cruces Municipal Code. The City will consider the issuance of Bonds for a multi-family Project when a User can demonstrate (i) that the Project will further the City's affordable housing policies; and (ii) that the private sector is not meeting the low or moderate income family housing needs in the immediate area of the City for which the Project is proposed; or (iii) that the private sector is not meeting the housing needs of elderly persons in the immediate area of the City for which the Project is proposed. In addition to the submission of the information required by Sections 2 and 3 of this Resolution, all multi-family housing projects must be reviewed by the Affordable Housing Committee before being introduced to the governing body. In addition, if the Bonds to be issued are to be used to acquire or construct a multi-family housing Project, the User shall submit the following information:

A. The proposed Project is located within the City;

B. The proposed Project is not inconsistent with the long-term development plans of the City;

C. All prospective tenants of the Project will be offered comparable services without any discrimination as to income of the tenant;

D. A detailed description of the financing of the Project, including sources and uses of funds including but not limited to proceeds of the Bonds;

E. Explanation that the proposed Project will not adversely affect existing multi-family housing in the area of the proposed Project;

F. Demonstration that the proposed Project will generate revenues sufficient to pay the debt service on the Bonds and to otherwise render the proposed Project self-liquidating;

G. Proposed regulatory agreement or relevant excerpts thereof requiring the User to submit to the City and the trustee for the Bonds, at least annually, evidence that the percentage of low and moderate income tenants is in compliance with the requirements of federal law for tax-advantaged bonds.

Section 7. Incentives and Clawbacks.

A. Approved Projects will be subject to abatement of ad valorem property taxes equal to 100% of the property tax that would otherwise be payable on taxable Project property, subject to the provisions for PILOT as provided in subsection D of this Section 7.

B. The City will cooperate with the User's use of nontaxable transaction certificates for all qualifying purchases of equipment, fixtures and furnishings necessary for the Project.

C. 100% of abated property tax will be reimbursed by the User if Project operations permanently cease within 5 (five) years following issuance of the Bonds.

D. Unless otherwise required by the Act, a User shall pay to the City a PILOT in an amount determined by the City to reasonably hold harmless each Taxing District from recurring costs likely to be incurred by each Taxing District as a result of the development of the Project, which the City shall remit to each Taxing District in the applicable amount annually during the term of the Bonds issued to finance the Project.

E. The lease agreement, installment agreement or other financing agreement entered into by the City and the User of an Approved Project shall include (i) appropriate and specific performance criteria for the Project, including, without limitation, job creation and retention, gross receipts tax revenue generation, capital investment in the Project, and creation of affordable housing units; and (ii) provisions for repayment of the portion of abated taxes in the event that specified performance criteria are not achieved within 5 (five) years following issuance of the Bonds, as follows:

90% - 100% of projected performance = 0% repayment
80% - 90% of projected performance = 10% repayment
70% - 80% of projected performance = 20% repayment
60% - 70% of projected performance= 35% repayment
50% -60% of projected performance= 50% repayment
Less than 50%=100% repaid.

The foregoing provisions shall expire beginning 10 (ten) years after issuance of the Bonds. Upon recommendation of the City Manager, the Governing Body may, in its discretion, modify the foregoing provisions for an individual Project, based on the specific features of the Project which justify (x) achievement of the performance criteria at an earlier or later time, (y) a longer or shorter period during which the performance criteria should be maintained, or (z) both (x) and (y).

Section 8. Attorney Review on Behalf of City. All resolutions and ordinances, financing agreements, closing documents and other documents relating to the authorization and issuance of the Bonds shall be reviewed by the City Attorney or other attorneys representing the City as designated by the City Manager, which may include the City's bond counsel, in sufficient time for review by such attorneys prior to the

Governing Body taking any required action on such documents or execution of the documents by City officials, as applicable.

Section 9. Rules. The Governing Body may establish such rules, not inconsistent with the City's ordinances, enactments or this resolution, as it shall deem necessary to carry out the powers granted to it hereunder.

Section 10. Status of Bonds. The principal and interest of the Bonds approved by the Governing Body shall be payable solely out of the revenue derived from the financing, sale, or leasing of the Project with respect to which the Bonds are issued or from a guarantee agreement, or agreements, or a credit enhancement device, or devices, upon which the guarantor or obligator is other than the City. The Bonds shall never constitute a debt or indebtedness of the City \within the meaning of any provision or limitation of the New Mexico Constitution or statutes of the State of New Mexico and such Bonds shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 11. Fees. In addition to any other fee imposed pursuant to City ordinances or resolutions, the User shall make the following payments and deposits to the City the following fees:

A. At the time the Application is submitted to the City for review by Staff, $7,500.00 shall be paid to the City to compensate it for its reasonable administration expenses incurred in reviewing the Application (the "City Application Fee"). The Governing Body may, in its sole discretion, waive all or a portion of the City Application Fee.

B. At least 30 days prior to the date on which a proposed Inducement Resolution will be introduced to the Governing Body, an initial deposit of $20,000.00 shall be made with the City, to be applied against the payment of fees of bond counsel representing the City in connection with the authorization and issuance of the Bonds (the "Initial Bond Counsel Deposit").

C. If Staff determines that a municipal advisor should be engaged by the City to assist in its review of an Application, at least 30 days prior to the date on which a proposed Inducement Resolution will be introduced to the Governing Body, an initial deposit of $10,000.00 shall be deposited and applied against the payment of fees of municipal advisors representing the City in connection with the authorization and issuance of the Bonds (the "Initial Advisor Deposit");

D. Within five (5) days after an ordinance authorizing issuance of the Bonds is scheduled for first reading by the Governing Body, a second deposit of $20,000.00 shall be made with the City, to be applied against the payment of additional fees of bond counsel representing the City in connection with the authorization and issuance of the Bonds and not expected to be covered by the Initial Bond Counsel

Deposit (the "Second Bond Counsel Deposit" and, together with the Initial Bond Counsel Deposit, the "Bond Counsel Deposits");

E. If the City has engaged a municipal advisor as provided in subparagraph C of this Section and Staff determines that the City has incurred or will incur advisory fees in excess of the Initial Advisor Deposit, a second deposit of $10,000.00 shall be made with the City, to be applied against the payment of additional fees of municipal advisors representing the City in connection with the authorization and issuance of the Bonds and not expected to be covered by the Initial Advisor Deposit (the "Second Advisor Deposit" and, together with the Initial Advisor Deposit, the "Advisor Deposits");

F. The City reserves the right to increase, decrease, or otherwise adjust any of the above-described deposits to address circumstances that it anticipates in connection with an Application.

G. Any fees of (i) the City's bond counsel not previously paid from the Bond Counsel Deposits, and (ii) the City's municipal advisor not previously paid from the Advisor Deposits shall be paid at the time that the City issues and delivers the Bonds, and shall be a precondition of such issuance and delivery, unless otherwise agreed by the City's bond counsel and the City's municipal advisor, as applicable.

H. If, prior to the issuance of the Bonds, the User determines that it will pursue issuance of the Bonds, Staff will request final invoices from bond counsel to the City and, if applicable, the municipal advisor to the City. If, after payment of such final invoice(s) there are unspent portions of the Bond Counsel Deposits or the Advisor Deposits, the City shall remit such portions to the User.

I. Irrespective of whether the Bonds are issued, to the extent that the fees and deposits set forth in this Section 11 are not sufficient, the User shall pay (i) all fees and expenses of the attorneys representing the City in connection with the authorization, issuance and administration of the Bonds, in accordance with the professional service agreement by and between the City and such attorneys, and (ii) the fees and expenses of a municipal advisor retained by the City, if applicable. The City will require that the ordinance authorizing issuance of Bonds for a Project and the lease agreement or other financing documents to be entered into in connection with the Bonds include provisions making the User's failure to pay the City's costs incurred in connection with the review of an Application, the authorization and issuance of the Bonds, and the administration of the Project, including the fees and expenses of its attorneys and financial advisors an event of default thereunder.

Section 12. <u>Sunset Date; Date of Issue</u>.

A. The Inducement Resolution shall set a final date for issuance of the proposed Bonds, which shall constitute a "sunset date" or termination date for the Inducement Resolution if the Bonds are not issued within the specified time. The "sunset date" may be extended if the User presents a revised Project schedule with supporting evidence to the satisfaction of the Governing Body that the extension is justified for good cause and necessary for Project completion.

B. The ordinance authorizing issuance of the Bonds shall include provisions for determining Series Date of the Bonds (i.e. the year in which the Bonds are issued) and may delegate authority to the Mayor or City Manager to determine the year in which the Bonds will be issued.

Section 13. Tax Abatement.

A. No property tax abatement shall be given for any Bond-financed Project exceeding thirty (30) years from the date the Bonds are issued. The User will have the Project property assessed in the User's name no later than the first January following thirty (30) years from the date the Bonds were originally issued and the User will pay all *ad valorem* taxes on the Project from and after such first January.

B. The lease agreement or other financing agreement relating to the industrial revenue bonds shall contain agreements that, as a condition for the issuance of the Bonds, (i) the User will pay all special assessments (if any) on the Project.

Section 14. Severability Clause. If any section, subsection, sentence, clause, word or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Board hereby declares that it would have passed this resolution and such section, subsection, clause, word or phrase thereof irrespective of nay one or more sections, subsections, clauses, words or phrases being declared unconstitutional or otherwise invalid.

ADOPTED AND APPROVED this ____ day of ___________, 2024.

CITY OF LAS CRUCES, NEW MEXICO

____
Mayor

[SEAL]

____
Clerk

Council Work Session Summary

Meeting: Work Session - Jul 08 2024

TITLE: ACCOUNTABILITY IN GOVERNMENT ORDINANCE DISCUSSION.

PURPOSE(S) OF DISCUSSION: ☐ **Inform/Update** ☒ **Direction/Guidance** ☒ **Legislative Development/Policy**

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In November of 2018, Ordinance 2881 Accountability in Government approved the restructuring of the City's Legal Department by the creation of the Office of the Inspector General and an independent board named the Oversight Committee, which is tasked with reviewing reports in the interest of transparency. Revisions to the Ordinance are recommended to improve independence, effectiveness, and transparency and provide clarification for the application of the Ordinance to the Office of Internal Audit, Office of the Inspector General, and the Oversight Committee.

The City Manager's Office and City Attorney's Office have been restructured to align industry best practices and professional standards to optimize independence of the Office of Internal Audit and Office of the Inspector General. This has been accomplished by adding the Office of Internal Audit and Office of the Inspector General to the City Manager's Office Department.

Audits conducted by the City of Las Cruces Office of Internal Audit are conducted in accordance with policies and procedures that are based on the Institute of Internal Auditors (IIA) Standards. Audits may have financial and/or performance objectives and are subject to in-depth requirements for sufficient, appropriate, relevant, and complete evidence and documentation that support audit findings. A cornerstone of the audit standard is for the auditor to remain independent and objective at all times.

Investigations conducted by the Inspector General are usually undertaken in response to reports of fraud, waste, and/or abuse and often focus upon a person or small group of people. Investigations are conducted pursuant to the Association of Inspectors General (AIG) standards. Investigation reports may be prepared to refer matters for prosecution, inform the agency of a basis for potential discipline, correct serious deficiencies, or inform other government agencies of the need for action within their jurisdiction.

Key aspects of best practice models are (1) create maximum independence and objectivity by prohibiting the ability of agency heads to influence, prevent, or limit the Auditor or IG from initiating, carrying out, or completing an audit or investigation; (2) create an independent board, that does not fall within the audit or investigative jurisdiction of the Auditor or IG, that will review reports in the interest of transparency, but not influence or change reports; and (3) provide for the authority and independence of the Auditor and the IG through legislative mandate.

SUPPORT INFORMATION:

DIVISION_6 Internal Audit Revisions as of 062524 (002)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DIVISION 6. ACCOUNTABILITY IN GOVERNMENT

Sec. 2-174. Short title.

Article III, division 6 et seq. may be cited and referred to as the "accountability in government" ordinance.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-175 Purpose.

The purpose of this division is to provide increased accountability, transparency, integrity, and oversight of the entire consolidated government through review of internal audit and inspector general activities, to assist in promoting economy and efficiency, improve operations, and deter and identify waste, fraud, and abuse.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-176. Definitions.

Abuse means improper or unreasonable employee behavior and/or misuse of a position of authority. This includes intentional destruction, diversion, manipulation, or excessive use of government resources.

Committee means the oversight committee.

Contractors means all city contractors, subcontractors, and lower tier subcontractors.

Employee means all full-time, part-time, temporary, and contracted city employees.

Fraud means the intentional misappropriation or taking of anything of value that belongs to another by means of deceitful conduct, practices, or representations.

~~*Director* means the city attorney.~~

Official means the mayor, city councilors, appointed officials.

Published means an investigation or internal audit report is published when it ~~is approved~~ has been reviewed by the committee and distributed in final form to the investigated party or auditee, to the city manager, and to the mayor ~~and city manager~~ and ~~to the~~ city council. An investigation or internal audit report is subject to the requirements of the New Mexico Inspection of Public Records Act (IPRA).

~~*Published report* means an audit report that has been distributed in final form to the auditees, to the city manager, and to the city council. A published audit report is available upon request of the public.~~

Special internal audit~~s~~ means exigent internal audits not included in the annual internal audit plan, because the need for the internal audit was not foreseen when the internal audit plan was adopted.

Strategic reviews ~~-~~means reportable non-audit work including but not limited to bench marking, best practices, and compliance reviews requested by an official or the city auditor and at the discretion of the city auditor.

Waste means incurring unnecessary costs due to inefficient and/or ineffective practices, systems, or controls.

Whistleblower means an employee communicating information to the public employer or a third party about an action or failure to act that the public employee believed in good faith constituted an unlawful or improper act. Good faith means that a reasonable basis existed for the belief as evidenced by the facts available to the public employee.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-177. Establishment of the office of the inspector general.

(a) There shall be within the city ~~legal department~~ a full-time inspector general. The organization and administration of the inspector general shall be sufficiently independent to assure that no interference or influence will adversely affect the independence and objectivity of the inspector general.

(b) Neither the city manager nor the city council shall prevent, impair, or prohibit the inspector general from initiating, carrying out, or completing any investigation or review.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-177.1. Jurisdiction and authority of inspector general.

(a) The inspector general shall have the authority to investigate, either by request or initiated by the inspector general, municipal matters that involve elected or appointed officials, employees, municipal agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors, and other parties doing business with the city or receiving city funds.

(b) The inspector general may receive, evaluate, and investigate complaints referred by the board of ethics or other city complaint reporting mechanism. The inspector general may also independently initiate an investigation.

(c) The inspector general is authorized to ~~audit,~~ inspect, evaluate, and investigate the activities, records, and individuals affiliated with contracts and procurements undertaken by the city and any other official acts or function of the city.

(d) The inspector general shall have the power to subpoena witnesses, administer oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena issued to any person, the ~~director~~ inspector general may make application to any district court in the state that shall have the jurisdiction to order a witness to appear before the inspector general and to produce evidence if so ordered, or to give testimony on the matter in question.

(e) ~~The inspector general shall not investigate complaints that are under the jurisdiction of the police department internal affairs division or fire department internal affairs, nor shall the inspector general access any internal affairs files~~ If there is an allegation of fraud, waste, and/or abuse related to an LCPD or LCFD employee, the Inspector General shall have the right to attend all hearings and/or meetings that fall under the purview of police department internal affairs and the functional equivalent thereof for the fire department.

(f) The inspector general may undertake a formal investigation of any matter if it appears to the inspector general that such matter falls within the scope of responsibilities described in this division. The city manager shall have no authority to limit the scope of the inspector general's investigations. The city attorney~~, as director of the legal department,~~ shall have no authority to limit the scope of the inspector general's investigations unless such investigation would interfere with another federal, state or local agency's criminal investigation or an investigation otherwise mandated by state or federal law, or would be a violation of law or court order, or violate existing collective bargaining agreements or laws as they relate to employment or contracts.

(g) If after or during the course of a formal investigation the inspector general determines that there is reason to believe that a criminal act occurred, the inspector general shall refer such complaint to the appropriate prosecuting authority or law enforcement agency.

(h) If the inspector general detects an irregularity that warrants an internal audit, the matter shall be referred to the office of internal audit and reported to the city manager. ~~and reported to the director. The inspector general shall not accept or investigate complaints related to discrimination or labor law or other matters that are the subject of pending or threatened litigation.~~

(i) The inspector general shall not accept or investigate complaints related to discrimination or labor law or other matters that are the subject of pending or threatened litigation. The inspector general may assist with the aforementioned, in coordination with the legal department, if requested to do so by the human resources director. ~~of human resources or the director.~~

(j) The city attorney shall advise and represent the office of the inspector general, except that the office of the inspector general may, in consultation with the city attorney, select independent legal counsel to advise and represent the inspector general as needed in the event of a conflict of interest that the city attorney determines cannot be otherwise cured internally.

(k) The inspector general shall maintain a complete file of each investigation, inspection, and hotline complaint in accordance with city retention schedules.

(l) If a complaint concerning fraud, waste, and/or abuse is received and the Inspector General and/or any of their designees is the focus of the complaint, the Inspector General shall immediately notify the City Manager and the City Attorney. The complaint shall then be referred to external review counsel for an independent investigation. At the conclusion of the investigation, external review counsel shall make a recommendation as to whether the complaint should be forwarded to the Ethics Policy Review Committee for further action. In addition, the City Manager may refer any complaints regarding the Inspector General to the Association of Inspectors General for review and recommended action.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-177.2. Inspector general professional standards.

(a) The inspector general's investigations and inspections shall conform to the Association of Inspector General's Professional Standards.

~~(b) The director shall submit for approval to the committee, rules and procedures governing the inspector general and office operations.~~ The inspector general shall create procedures governing the inspector general and office operations.

(c) All city policies and ordinances shall apply to the inspector general, including personnel policies and regulations, to the extent that they are not in conflict with the spirit and intent of this division. Any executed employment or professional services contract for an inspector general shall conform to the requirements of this division.

(Ord. No. 2881, § I, 11-19-18)

~~Sec. 2-177.3. Qualifications and requirements of inspector general.~~

~~(a) The director shall make a recommendation to the committee, and the committee shall approve, an inspector general. The recommendation shall be based on the candidate's integrity, capability for strong management and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields. This process shall~~

~~not apply to the first hire for inspector general, but the first hire shall consider the qualifications contained in this section. In addition to the qualifications set forth in this section, the candidate is subject to regular city employment requirements.~~

~~(b) Minimum qualifications shall be:~~

~~(1) At least seven years in any one or a combination of the following fields: federal, state or local law enforcement officer/official; federal, or state court judge; federal, state, or local government attorney with experience in investigating fraud, mismanagement or corruption; an inspector general, certified public accountant, or internal auditor; a person with progressive supervisory and managerial experience in an investigative public agency similar to an inspector general's office;~~

~~(2) Demonstrated ability to work with local, state or federal law enforcement agencies and the judiciary;~~

~~(3) A bachelor's degree from an accredited institution of higher learning. A master's degree or higher is preferred;~~

~~(4) May not have been employed by the city subject to the authority of the inspector general during the two-year period immediately prior to selection, unless the employment has been with the inspector general.~~

~~(c) Highly qualified candidates will have audit-related skills and/or one or more of the following professional certifications at the time of the selection: certified inspector general (CIG), certified inspector general investigator (CIGI), certified inspector general auditor (CIGA), certified public accountant (CPA), certified internal auditor (CIA), or certified fraud examiner (CFE). If the selected candidate does not hold one of the previously mentioned certifications at the time of hire, she/he must complete such certification within two years from the date of hire.~~

~~(d) A complete job description for the inspector general shall be prepared by the director and approved by the director of human resources and shall not be otherwise inconsistent with this division.~~

~~](Ord. No. 2881, § I, 11-19-18)~~

Sec. 2-177.3 Investigation reports.

A draft of an investigation report shall be forwarded to the legal department and to the city manager for review and comment before it is provided to the committee for pre-publication review. The legal department and city ~~manager shall~~manager shall respond to the inspector general, in writing, within 14 calendar days of receipt of the investigation report.

(Ord. No. 2881, § I, 03-12-24)

Sec. 2-178. Office of internal audit.

(a) The organization and administration of the office of internal audit shall be sufficiently independent to assure that no interference or influence will adversely affect the independence and objectivity of internal audit staff or the city auditor.

(b) The office of the city attorney shall advise and represent the office of internal audit, except that the office of internal audit may, in consultation with the city attorney, select independent legal counsel to advise and represent the office of internal audit as needed in the event of a conflict of interest that the city attorney determines cannot be otherwise cured internally.

~~(c) Neither the city auditor nor any employee of the office of internal audit shall engage in any partisan political activities or the political affairs of the city during working hours.~~

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-178.1. City auditor's duties; responsibilities; authority; administrative subpoena power.

(a) The duties and responsibilities contained in this section are not intended to replace or supersede the duties and responsibilities contained in the approved official job description of the city auditor and are only intended to be supplemental to the extent consistent with this division. All city policies and ordinances shall apply to the city auditor and all internal auditors, including personnel policies and regulations, to the extent that they are not in conflict with the spirit and intent of this division. Any executed employment or professional services contract for city auditor shall conform to the requirements of this division.

(b) If the city auditor detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or auditee, the city auditor shall report the irregularities in writing to the committee. If the irregularity is potentially criminal in nature, the city auditor shall immediately refer the irregularity to the appropriate prosecuting authority and notify the inspector general. The city auditor shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(c) The city auditor shall promulgate regulations to establish procedures for the office of internal audit.

(d) The city 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 city auditor may make application to any district court in the state that shall have the jurisdiction to order the witness to appear before the city auditor and to produce evidence if so ordered, or to give testimony relating to the matter in question.

(e) The city auditor shall maintain a complete file of each internal audit report ~~and each report of investigations~~ and strategic review~~s~~ made under legislative or special committee authority ~~for six years~~ in accordance with city retention schedules. ~~from the date that the audit or review is closed, or longer if required by law.~~ The file should include internal audit work papers and other supportive material directly pertaining to the report. Records may be retained in electronic format at the city auditor's election.

(f) In cases where the city auditor deems it appropriate because of an internal audit~~, investigation,~~ or strategic review, the city auditor may refer opportunities for increased efficiency to the office of the city manager to work with respective departments on management and process improvement.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-178.2. Audit professional standards.

(a) The city auditor shall maintain generally accepted government auditing standards in conducting work when applicable.

(b) The office of internal audit will comply with the Institute of Internal Auditors professional auditing standards. ~~International Standards for the Professional Practice of Internal Auditing.~~

~~(c) The office of internal audit's audits, investigations, and strategic reviews are subject to quality assurance reviews by an appropriate professional non-partisan objective group every five years. A copy of the written report resulting from this review shall be furnished to the committee.~~

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-178.3. Annual internal audit plan.

(a) Prior to the beginning of each fiscal year, the city auditor shall submit an annual internal audit plan to the committee for review and comment. The plan shall include the internal audits scheduled for the year~~, a statement of the scope of the audit~~ and the estimated time required to complete the internal audit.

(b) The annual internal audit plan shall be approved by the council by resolution.

(c) The annual internal audit plan may be amended during the year after review with the City Manager ~~with the committee~~.

(d) The city auditor shall make reports at least quarterly to the committee on the status of the ~~work~~ annual internal audit plan.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-178.4. Special audits; audit reports.

(a) In all cases, the city auditor shall~~, within 48 hours of implementation,~~ notify the ~~director~~ city manager and the committee at the next scheduled committee meeting when a special internal audit or strategic review is initiated. ~~undertaken.~~

(b) A draft of the internal audit report shall be forwarded to the city manager for review and comment before it is provided to the committee for pre-publication review. The auditees, including departments whose assistance is needed in order to accomplish any internal audit recommendation, shall respond to the city auditor, in writing, within 14 calendar days of receipt of the internal audit report.

(c) The auditees' written response shall specify agreement with each of the internal audit findings and recommendations or reasons for disagreement with findings or recommendations. The auditees' written responses shall include auditees' plans for implementing solutions to identified problems including timetables to complete such activities.

(d) Auditees' comments to the preliminary draft may be utilized to amend the internal audit report if appropriate. If the preliminary internal audit report is amended, the auditees' will be given a copy of the amended draft and the auditees will be given ~~seven~~ 7 to 14 calendar days, as determined by the city auditor and the auditees, to respond to the amended draft of the internal audit report.

(e) The city auditor shall include the auditees' responses in the internal audit report.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-179. Oversight committee creation; duties; powers; membership.

(a) The "oversight committee" is created to serve in an advisory capacity. The committee shall consist of three members who are residents of the city and who are not employed by the city, or in a direct contractual relationship with the city. At least one committee member shall have an accounting, auditing, or inspector general background. ~~be a certified public accountant or auditor~~. At least one committee member shall have law enforcement or legal background. At least one committee member shall have experience or background in professional management or business. The mayor and one councilor appointed annually by the council shall be nonvoting ex officio members. The mayor and the appointed councilor may send designees to the committee meetings. Designees shall be ~~a member~~members of city council. The committee may request the attendance of other city personnel or auditees. So not to form a quorum, no more than three council members shall be in attendance at committee meetings.

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(b) As vacancies on the committee occur, the council shall appoint new members. All appointments shall be subject to council approval. The existing committee members may make recommendations to the mayor and council for candidates to fill vacancies on the committee.

(c) The committee members shall be appointed for staggered three-year terms. The council may appoint one committee member ~~for~~ to a two-year term and one committee member to a one-year term for the first committee appointments, and thereafter each committee member shall be appointed for a three-year term. An appointment to fill an existing vacancy shall be for the unexpired term. Terms shall begin October 1st~~.~~ of each calendar year. The committee members shall elect the committee chair annually.

(d) The committee shall meet at least four times per calendar year, but may also meet monthly or upon call of the chair or a majority of its members.

(e) Committee members shall not receive compensation for their service. Voting members of the committee shall not serve on any other city board, commission or task force.

(f) If any member of City Council ~~official~~ is the subject of an investigation, then the ex officio members shall be recused from all meetings where that particular investigation is discussed and they shall not have access to the investigative file during the pending investigation.

(~~g~~f) The committee is a management committee and not a public board, commission or committee as specified by chapter 2, article IV et seq., and not subject to the Open Meetings Act. The committee is not formed to formulate public policy nor has the authority to formulate public policy been delegated to the committee. The committee and its members are subject to chapter 2, article I et seq., ethics ordinance.

(~~h~~g) The committee may provide the city auditor and the inspector general with recommendations for priorities and potential areas for investigations and internal audits. The committee may also lend advice to the city auditor and inspector general regarding technical issues that may arise.

(~~i~~h) The committee shall not prohibit the inspector general or the city auditor from initiating, carrying out or completing any internal audit, investigation or strategic review. If a majority of the committee members find~~s~~ that an internal audit, investigation or strategic review is questionable, then the committee may issue a recommendation ~~cautionary statement~~ to the inspector general or the city auditor, as appropriate, with copy to the city manager ~~attorney~~.

(~~j~~i) The committee shall review and make recommendations on finalized city auditor and redacted inspector general reports ~~any audit, investigatory or strategic review reports~~ at each meeting. Committee recommendations, if provided to the city auditor or inspector general within 14 calendar days from the date of the committee's review, shall be made part of the published report. ~~If the committee approves a report, then the inspector general or the city auditor may immediately cause the report to become a published report. If the committee does not approve a report, then the inspector general or the city auditor shall cause the report to become a published report no sooner than 15 business days from the date of the committee's review or consideration. The committee may draft a cautionary statement for inclusion with the report during the 15-day period which, if provided to the inspector general or the city auditor within the timeframe, will be made part of the published report.~~

~~(k) The committee may seek the assistance from the city attorney at any time. The committee and the city attorney may agree that it is appropriate to engage outside counsel for a particular issue or investigation. In making such determination, the city attorney shall adhere to the New Mexico Rules of Professional Conduct.~~

~~(l) Any discipline of the inspector general or the city auditor shall be reported to the committee and they may provide written recommendations to the city attorney.~~

~~(m) The committee may provide written budget recommendations for the inspector general and city auditor and operations related to the duties and responsibilities of the inspector general and the city auditor to the city attorney, the city manager and the city council during annual budget review.~~

(j) Any requests from the public, group, or outside agency to speak to any member of the committee, or the committee as a whole regarding any matter subject to pending committee review, shall be submitted to the City Attorney's Office for placement on a committee meeting agenda and shall be reviewed and approved by the committee prior to scheduling the discussion. Approved discussions shall be placed on a committee agenda.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-180. Reports to the committee.

(a) Each investigation, internal audit, and strategic review by the inspector general and city auditor shall result in a written final report to the committee. The inspector general and city auditor shall submit copies of the report to the committee and shall retain a copy as a permanent record in accordance with city retention schedules and ~~for no less than six years or~~ as otherwise required by law. All final reports and supporting documentation shall be stored in a secured location.

(b) The city auditor's internal audits and reports to the committee shall be submitted in conformance with section 2-178.2. The city auditor's reports shall contain:

(1) A precise statement of the scope encompassed by the internal audit;

(2) When applicable, a statement that the internal audit was performed in accordance with generally accepted IIA standards;

(3) A statement that an examination for compliance with applicable laws, policies and regulations was conducted, and a presentation of the findings associated with that examination;

(4) A statement of significant audit findings, including a statement of the underlying causes, evaluative criteria used and the current and prospective significance of the findings.

(c) The inspector general's reports shall include:

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

(2) An assessment of the validity of the allegations under investigation, including whether the allegations are criminal or civil in nature;

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

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

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

(6) A description of which prosecutorial agencies may be contacted, or have been involved. This shall include, but not be limited to, criminal prosecution, administrative agencies, and licensing boards.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-180.1. Reporting.

(a) Within 60 days of the end of each fiscal year, the inspector general and the city auditor shall each submit a report to the city manager and the committee for review and comment that lists internal audits, investigations, or other assistance efforts completed during the fiscal year. Reviewed year-end investigations and internal audit reports shall become published reports. The inspector general and city auditor shall annually report to the city council completed internal audits, activities, and investigations.

~~(b) Within 60 days of the end of each fiscal year, the inspector general and the city auditor shall issue a published report to the city attorney and the committee, that separately lists investigations and other assistance efforts completed during the fiscal year.~~

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-181. Public records and confidentiality.

(a) The city auditor, the inspector general and the committee shall maintain the confidentiality of any ~~public~~ records that are made confidential by law and they are subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

(b) During the course of city auditor or inspector general activities, all records and information shall be considered deliberative in process and not available for outside review or release by the committee, city auditor, the inspector general or any other city department, employee or city official until such time that the records or information are~~is~~ published or as otherwise required by law or court order.

(c) Prior to publishing an investigation or internal audit report, the city auditor or the inspector general may share selected information with other city departments if the information is needed for decision-making purposes; otherwise, investigation and internal audit reports remain confidential until published, at which time they become public record.

(d) The names and identities of persons making complaints and providing information to the inspector general shall not be disclosed without the written consent of the person unless otherwise required by law or by judicial process.

(e) Published investigation and internal audit reports shall be public records except that the inspector general ~~shall~~ may delay the publication of redacted investigation reports when criminal conduct is found and the inspector general or appropriate law enforcement authority is pursuing an investigation and release of the report might jeopardize further investigation. An investigation release that has been delayed shall be published promptly at the end of the condition giving rise to the delay.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-182. Penalty; cooperation; retaliation prohibited.

(a) All city officials, employees and contractors shall promptly notify the inspector general of every instance of theft or other disappearance of cash, check, or property, ~~of~~ misfeasance or nonfeasance, misappropriation, violation of state, federal or city ordinance, and city regulations, of which they are aware.

(b) All elected or appointed officials, employees, municipal agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors, and other parties doing business with the city or receiving city funds, shall provide the inspector general or city auditor full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, matters, contracts, documents, electronic data, property, equipment and facilities and any other materials within their custody. At the inspector general's or city auditor's request, those under the jurisdiction of the inspector general or city auditor, consistent with this division, shall prepare reports and provide interviews. The inspector general or city auditor shall notify the committee and request the city manager for assistance in causing a search to be made and germane exhibits to be taken from any book, document, or record, if the subject of the request fails to comply. The city manager shall require officials, employees, vendors or contractors to produce requested information. Any contractors, subcontractors, or lower tier subcontractors who violate any provision in this division shall be subject to disbarment at the City's discretion, and they will be prohibited from bidding and participating in City of Las Cruces contracts for a specified time period.

(c) Every city contract, bid, proposal, application or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a statement that the individual understands and will abide by all provisions of this division.

(d) No person shall retaliate against, punish, or penalize any person for complaining to, cooperating with or assisting the inspector general or the city auditor in performance of their duties.

~~(e)~~ ~~Each and every violation of this division is a criminal violation subject to the provisions of section 1-10 et seq., as amended.~~

(~~f~~ e) Any official or employee who violates this division may be subject to discipline as may be specified in the city personnel manual or any applicable collective bargaining agreement.

(~~g~~ f) Jurisdiction for injunctive, equitable or appropriate relief sought in application and enforcement of this division, is with the Dona Ana County Third Judicial District Court.

(Ord. No. 2881, § I, 11-19-18)

Sec. 2-183. Contract auditors, consultants, and experts.

The ~~city attorney~~ city auditor or inspector general may obtain services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other professional experts necessary to perform the functions of the inspector general or the office of internal audit. Contractors performing an outsourced audit or investigation shall not have any financial interest in the affairs of the auditees, officials, or employees. The city auditor or inspector general may be requested to coordinate and monitor the outsourced audit~~ing~~ or investigation performed by persons under contract with the city.

(Ord. No. 2881, § I, 11-19-18)

Secs. 2-184, 2-185. Reserved.