

County Council of Cuyahoga County, Ohio

Ordinance No. O2018-0013

<p>Sponsored by: Councilmembers Baker and Miller</p> <p>Co-sponsored by: County Executive Budish</p>	<p>An Ordinance amending Section 204.01 of the Cuyahoga County Code to require county agencies to provide a response to recommendations issued as part of an investigation of the Agency of Inspector General and to update the County Code in accordance with the adoption of Article XV of the County Charter, and declaring the necessity that this Ordinance become immediately effective.</p>
--	---

WHEREAS, the Agency of Inspector General was originally established by Cuyahoga County Council in 2011 pursuant to Ordinance No. O2011-0004, as amended and codified in Sections 204.01 and 407.01 of the Cuyahoga County Code; and

WHEREAS, Cuyahoga County Council unanimously referred to the ballot a charter amendment to formally incorporate the Agency of Inspector General into the Cuyahoga County Charter, which was approved by the county electors with the passage of Issue 12 at the November 6, 2018 general election; and

WHEREAS, the Inspector General is the chief ethics officer of Cuyahoga County and is charged with the responsibility of investigating and enforcing the ethics laws of Cuyahoga County as enacted in Title 4 of the Cuyahoga County Code; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Section 204.01 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 204.01 Agency of the Inspector General

A. Definitions As used in Section 204.01 of the Cuyahoga County Code:

1. “Agency” shall refer to the Agency of the Cuyahoga County Inspector General established herein.

2. “Cause” for purposes of removal for cause shall have the same meaning as legitimate cause under Ohio’s civil service law.

3. “Employee” / “Employees” shall mean County employees who operate within the County government established by the Cuyahoga County Charter.

4. “Investigation” means an examination, review, inquiry, study, inspection, analysis, probe, or appraisal.

45. “Public Official” / “Public Officials” shall mean the public officials of the Cuyahoga County government established by the Cuyahoga County Charter.

56. “County Contracts” shall mean all contracts to which the County is a party, excluding collective bargaining contracts and contracts with any other governmental entity.

B. The Cuyahoga County Inspector General Agency.

1. Establishment. There is hereby established the Agency of Inspector General to be known as the “Cuyahoga County Inspector General.”

2. Direction of Agency. The Inspector General shall direct the Agency and shall employ assistants and employees as shall be reasonably necessary to assist the Inspector General in carrying out the duties of the Agency in accordance with the budget parameters set forth in this Chapter. In employing the assistants and other employees, the Inspector General shall comply with the hiring rules, regulations and processes of the Human Resource Department of Cuyahoga County.

3. Investigative Powers and Duties. The Inspector General is hereby appointed to conduct ~~examinations~~ **investigations** under Section 2.05 **and Article XV** of the County Charter and shall, therefore, have all such rights and duties to investigate fraud, corruption, waste, abuse, misfeasance, malfeasance, and nonfeasance without interference or pressure from any other Public Official or Employee. The Inspector General shall also perform all of the following:

a. The Inspector General shall serve as the County’s chief ethics officer and is charged with the responsibility of investigating and enforcing Title 4 of the County Code in accordance with the terms of said Title. In so doing, the Inspector General shall cooperate with the County’s Personnel Review Commission. The Inspector General shall not interfere with the authority of the Personnel Review Commission to ensure “compliance with ethics resolutions or ordinances as passed by the Council” under Section 9.02(3) of the County Charter.

b. The Inspector General shall establish a “hotline” and web site to receive complaints from either anonymous or identified persons, and s/he shall investigate all complaints, tips, and any other filings and submittals received by the Agency regardless of the format or forum through which such information or documents are received. Without regard to how such documents are received by the Agency, all documents prepared or received by the Agency, including, without limitation, all complaints, tips, and any other filings and submittals received by it shall be considered part of the Inspector General’s investigative files, **provided however, the Inspector General may take steps to preserve the anonymity of complainants or sources in compliance with Ohio Public Records law.**

c. The Inspector General shall have the powers and rights to investigate all county contracts subject to the limitations set forth in Section 204.01(B)(4) of this Chapter.

d. If an investigation reveals reasonable grounds to believe that a violation of any state, federal, or local law, rule, regulation, or policy has taken place, the Inspector General shall notify the appropriate civil, criminal, or administrative agencies in charge with enforcement of said violation. If an investigation reveals reasonable grounds to believe that a violation of a rule, regulation, or policy governing a County employee has taken place, the Inspector General shall notify the employee’s appointing authority and the applicable Department of Human Resources.

e. The County Executive or designee shall provide a written response or report following any investigation in which the Inspector General recommends an agency or department under the jurisdiction of the County Executive take a particular action. Prior to completing an investigation, the Inspector General may provide an opportunity for the County Executive or designee to submit a response or report for inclusion in the Inspector General’s investigative report or recommendations. If the Inspector General declines to provide such an opportunity, the County Executive or designee shall provide the response or report to the Inspector General within thirty days following the publication of an investigative report, or within a reasonable time as determined by the Inspector General. Such response shall indicate, at a minimum, those steps the Executive or designee has taken or plans to take, if any, to address the recommendation or recommendations in an Inspector General investigation; provided that any steps the Executive or designee plans to take are subject to change at the Executive or designee’s sole discretion.

f. All agencies, offices, or departments that are under the investigatory jurisdiction of the Inspector General but not under the jurisdiction of the

County Executive shall provide responses to any recommendations made by the Inspector General in the same manner as provided in paragraph (e) of this Section. Such response shall be provided by the chairperson, executive director, chief of staff, or similar managerial position, or their designee, as may be applicable for the particular agency, office, or department.

g. Nothing in paragraphs (e) or (f) of this Section is intended to prohibit any person from asserting a legally or constitutionally recognized right or privilege.

eh. The Inspector General shall cooperate with other governmental agencies to recover such costs from other entities involved in willful misconduct in regard to County funds and return said funds to the County's General Fund.

i. The Inspector General shall have the authority to issue subpoenas in accordance with Article XV of the County Charter.

fi. The Inspector General shall prepare and publish on its website semiannual reports (the first of which will cover the period January 1st – June 30th and will be due in July and the second of which will cover the period July 1st – December 31st and will be due in February) concerning the work and activities of the Agency pertaining to closed investigations, including statistical information regarding the disposition of closed investigations, audits, and other reviews, **and a summary of the Inspector General's recommendations and corresponding responses.** The reports shall include the total number of complaints received during each reporting period, the number that required active investigation, the number that resulted in prosecution or other disciplinary actions, and the number of investigations closed, along with the cost incurred over and above that of the cost of the salaries of the Agency.

4. Limitations on the Inspector General's Investigative Powers and Duties.

a. No Interference with Ongoing Investigations. The Inspector General shall not interfere with any ongoing criminal, administrative, or civil investigation or prosecution in the performance of his/her duties. If necessary, the Inspector General shall suspend all investigative activities to ensure that the Agency's actions do not interfere with any such investigations.

b. Protection of Constitutional and Civil Rights. The Inspector General shall manage the Agency and conduct all investigations in accordance with law and in a manner that protects the constitutional and civil rights of any person who is the subject of an investigation as well as the constitutional and civil rights of any potential witnesses. The Inspector General shall adopt policies

and procedures to ensure that such protections are in place in conducting any investigations or performing any other function.

c. Effect on Contracts. The enactment of this Code shall not be interpreted to interfere with or change the terms of any contracts with the County in place at the time of its enactment. All contracts and contract amendments entered into on or after the effective date of this Chapter, however, shall be subject to the requirements of this Chapter. In addition to the County's powers to enforce this Code under its home rule powers, this Chapter, including all obligations by contractors, shall be considered a material term of all contracts or contract amendments entered with the County on or after the effective date of this Chapter, and all contractors shall comply with its requirements as a material term of their contracts with the County. All Inspector General inspections or investigations of a contractor shall specifically relate to a contract with the County.

d. Relationship with Inspector General. The Inspector General shall cooperate with the Department of Internal Auditing to avoid duplication of effort and to share information, so long as such sharing does not compromise an ongoing investigation. At the request of the Inspector General and with the approval of the Internal Auditor, the Department of Internal Auditing may provide services to the Inspector General for a specific investigation. The Inspector General shall not interfere with the authority of the Internal Audit Department to conduct audits pursuant to the Charter, any applicable ordinances, and any rules established by the Internal Audit Committee.

5. Inspector General's Budget. **The Inspector General's budget shall be submitted as part of the county's biennial budget process in accordance with Article XV of the County Charter. Nothing contained herein shall be construed to prohibit the Inspector General from transmitting to the Council supplemental budget requests, which shall be reviewed and considered in the normal budgetary process.**

~~a. Initial Budget. Through the remainder of the year 2011, the Inspector General's budget shall be \$375,000.00.~~

~~b. Subsequent Annual Budget. With the benefit of having experienced the needs and expenses of the Agency for the year 2011, the Inspector General shall submit a proposed budget for the year 2012 in accordance with the time parameters of Council's regular budgetary practices.~~

~~c. Requests for Additional Funding. Nothing contained herein shall be construed to prohibit the Inspector General from transmitting to the Council supplemental budget requests, which shall be reviewed and considered in the normal budgetary process.~~

6. Agency's Facilities, Furniture, Equipment and Software. The County shall exercise good faith efforts to provide the Agency with appropriately located office space and sufficient physical facilities, including office furniture, equipment, and software, commensurate with other County departments of similar size and needs.

C. Selection, Term, Qualifications, and Removal of Inspector General.

~~1. Incumbent Inspector General. Without regard to the appointment requirements of Section 204.01(C)(2) herein, and subject to the removal provisions of Section 204.01(D) herein, the incumbent Inspector General, Nailah Byrd, shall have the right to continue to serve as the County's first Inspector General without confirmation of Council until June 30, 2016.~~

~~21. Appointment of Inspector General. The Inspector General shall be appointed by the County Executive for a term of five **four** years subject to confirmation by Council **in accordance with Article XV of the County Charter**. In the case of a vacancy in the position of Inspector General, the Executive shall appoint a successor Inspector General, subject to the confirmation of Council, to the term of the Inspector General. The Executive may appoint, with the approval of the President of Council, an Interim Inspector General for a period not to exceed 90 days.~~

~~32. Term of Office of Inspector General. The term of the Inspector General shall be **fixed in accordance with Article XV of the County Charter** for five years.~~

~~43. Qualifications of Inspector General. **The qualifications of the Inspector General are specified in Article XV of the County Charter**. In appointing and confirming the Inspector General, the Executive and the Council shall exercise good faith efforts to seek highly qualified candidates who have demonstrated the ability to work with local, state, and federal law enforcement agencies and who have audit-related skills and professional certifications in relevant fields. The selected Inspector General shall have the following minimum qualifications:~~

~~a. A juris doctorate degree from an accredited institution of higher learning; and;~~

~~b. At least ten years' experience in any one or a combination of the following fields:~~

~~i. as a federal, state, or local law enforcement agent/official;~~

~~ii. as a licensed attorney;~~

~~iii. as an inspector general, certified public accountant, or internal auditor; or~~

~~iv. as a person with escalating supervisory and managerial experience in an investigative public agency similar to an inspector general's agency.~~

D. Removal. The Inspector General may only be removed from office for cause **in accordance with Article XV of the County Charter**. ~~Either the Executive or Council may initiate the process to remove the Inspector General by resolution before Council. To effectuate such removal, the resolution must receive the affirmative vote of at least eight members of Council.~~

E. Abolition of the Office. ~~The Agency of the Inspector General shall only be abolished upon the affirmative vote of at least eight members of Council and executed by the Executive.~~

F. No Classified Positions. Nothing in this Chapter, including the removal procedures, is intended to make the position of Inspector General or any of its employees a classified employee of the County.

SECTION 2. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 3. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Miller, seconded by Ms. Baker, the foregoing Ordinance was duly enacted.

Yeas: Gallagher, Schron, Conwell, Jones, Brown, Stephens, Simon, Baker, Miller, Tuma and Brady

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: December 11, 2018

Committee(s) Assigned: Council Operations, Intergovernmental Relations & Public
Transportation

Legislation Substituted in Committee: April 2, 2019

Additional Sponsorship Requested: May 2, 2019

Legislation Substituted in Committee: May 7, 2019

Committee Report/Second Reading: May 14, 2019

Journal CC034
May 28, 2019