



Office of the City Auditor

CONSENT CALENDAR

March 7, 2006

To: Honorable Mayor and  
Members of the City Council

From: Ann-Marie Hogan, City Auditor

Submitted by: Ann-Marie Hogan, City Auditor

Subject: Amendments to Berkeley Municipal Code Regarding the City Auditor's Office

RECOMMENDATION

Adopt the first reading of an Ordinance repealing Berkeley Municipal Code Chapter 2.24 and reenacting a new Chapter 2.24 to implement the Charter duties and authority of the City Auditor relating to audit activities, administration, and oversight.

FISCAL IMPACTS OF RECOMMENDATION

First, the ordinance more fully describes the purpose of the performance audit function and the actual obligations imposed upon the Auditor by the Charter, and clarifies and expands upon the Council's obligation to continue to support the audit function. This includes criteria for interpreting the Charter's language regarding sufficiency of resources. Secondly, it codifies a practice recently agreed to by the City Manager, which is that, like the offices of other elected officials, the City Auditor's office will no longer have a budgeted target savings of 3 per cent of auditor salary and benefits cost. Based on the adopted budget book's actual salary costs for fiscal year 2005 and budgeted costs for the current fiscal year, the budget impact would be between \$40,000 and \$50,000. There is not necessarily any expenditure impact, however. When there are no position vacancies the office is forced to go "over budget" since the target savings amount exceeds the discretionary non-personnel costs in the budget and there is no provision for laying off employees to balance the budget once it is adopted. When the office has substantial position vacancies, far more than the target savings is returned to the City due to the difficulties involved in hiring timely. Finally, the ordinance enhances the Auditor's fiscal independence from the City Manager while recognizing that Council may take action as a body regarding any changes to the Auditor's Office budget once Council has approved the budget. The ordinance relieves the City Manager's office of the responsibility for approving changes from one line item to another of the Auditor's budget, for expenditures necessary to complete the audit plan presented to Council.

CURRENT SITUATION AND BACKGROUND

When local governments institute independent performance audit functions, they routinely modify municipal or county code in order to spell out more specifically the responsibilities of the office. When the City Charter was amended in 1998 in order to give the Auditor the authority and responsibility to conduct audits, no such modifications were made to the Berkeley Municipal Code. The new Berkeley Charter language was based on model charter language published by the national Association of Local Government Auditors.

This group also publishes model municipal code language, meant to expand upon and clarify the provisions of the charter language. While much of this language is based upon the model legislation, certain best practices appear to be in conflict with other provisions of the Charter, and so are not proposed in this revision.

While there is no perfect legislative solution for any circumstance, adoption of the attached Council policy and proposed municipal code should help to clarify the responsibilities of the Auditor and any related responsibilities of the Council and City Manager. Placing language in the municipal code to make clear the Auditor's responsibilities is also needed so that Berkeley voters, to whom the Auditor is directly responsible, have convenient access to the information they require.

#### RATIONALE FOR RECOMMENDATION

The *Guidelines and Model Legislation for Local Government Auditors* states that local government charters, ordinances and policy statements establishing an independent audit function should ensure that the auditor is independent of management. In addition, the guidelines name a number of key elements that are considered "crucial in providing for an effective independent audit function".

Some of these elements are explicitly stated in the charter; others are implicit in the Charter's requirement to "follow government audit standards." Other elements have been previously approved in Council resolutions, affirmed in the City Manager's Administrative Regulations, or negotiated between the Auditor and the City Manager on an ad hoc basis. It is the intent of this amendment to the Berkeley Municipal Code to regularize the agreed upon authority and responsibility of the Auditor, the City Manager, and the Council regarding the City Auditor's Office, while remaining consistent with the Charter.

#### ALTERNATIVE ACTIONS CONSIDERED

According to a recent peer review of the Auditor's office, independence of the office could be enhanced if additional changes to the Charter were made, regarding the City Manager's right to transfer the Auditor's staff. Other best practices regarding clearer budgetary independence, and oversight by the Auditor of all audit work, would also require an amendment to the Charter. Rather than incur the additional expense of a Charter amendment, the recommendation is to clarify these issues to the extent possible in the Berkeley Municipal Code.

#### CONTACT PERSON:

Ann-Marie Hogan, City Auditor, Office of the City Auditor, 981-6750

Attachments:

1. Ordinance

ORDINANCE NO. -N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 2.24 CONCERNING THE CITY AUDITOR'S OFFICE AND THE ROLE, RIGHTS AND RESPONSIBILITIES OF THE AUDITOR TO IMPLEMENT THE BERKELEY CITY CHARTER

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 2.24 (Ordinance No. 3,069-N.S. as amended by Ordinance 5,434-N.S.) is hereby repealed.

Section 2. That a new Berkeley Municipal Code Chapter 2.24 is hereby reenacted to read as follows:

**Chapter 2.24**  
**City Auditor's Office**

**Sections:**

- 2.24.010 Findings.**
- 2.24.020 City Auditor's Office created.**
- 2.24.030 Authority, responsibility and independence.**
- 2.24.040 Funding.**
- 2.24.050 Scope of audits.**
- 2.24.060 Audit schedule.**
- 2.24.070 Access to employees, contractors, taxpayers, records and property.**
- 2.24.080 Agency response.**
- 2.24.090 Audit reports.**
- 2.24.100 Audit follow-up.**
- 2.24.110 Right to retain contract auditors, consultants and experts; Cooperation with City Manager.**
- 2.24.120 Quality assurance reviews.**

**2.24.010 Findings.**

The Berkeley City Council finds and declares as follows:

A. Public officials, government managers, and private citizens want and need to know not only whether government funds are handled properly and in compliance with laws and regulations, but also whether public programs are achieving the purposes for which they were authorized and funded, and whether they are doing so efficiently and economically.

B. The activity of government auditing independently reviews, evaluates and reports on the financial condition of the audited entity, the accuracy of financial record keeping, compliance with applicable laws, policies, guidelines and procedures, and the efficiency, effectiveness, and equity of operations.

C. An independent auditing function can provide objective information on the operations of government programs, assist managers in carrying out their responsibilities, and help ensure full accountability to the public.

D. An effective auditing function requires that audit results be accepted and used by public officials. Such acceptance in turn requires that the audit function be understood and recognized as valid, and that it be established on a firm foundation of professional competence.

E. The independence and public accountability of the Auditor can be assured by provision for an elected Auditor as provided for in the City of Berkeley Charter.

F. The effectiveness of the audit function is enhanced when the Auditor is required to adhere to government auditing standards, and that these standards require that the Auditor has an unrestricted right to audit and sufficient resources to audit.

G. Standards for the conduct and practice of governmental auditing have been developed by the Comptroller General of the United States.

H. The audit function in the City of Berkeley is required, based on a Charter amendment approved by the voters in 1998, to adhere to government auditing standards. This helps to ensure that public officials and employees understand the role and function of auditing, to lend consistency and credibility to ongoing audit work, and to provide a basis for monitoring and evaluating the work of audit staff.

I. It was the City's intent in placing a requirement that resources be provided for performance of audits in the Charter to constrain Councils from limiting the Auditor's ability to audit.

J. This funding requirement is subject to available resources and recognizes that the substantial elimination of departments, programs, and services in the City could affect the extent of auditable entities for the Auditor's office.

K. Sufficiency in audit resources is related to the extent of auditable entities and audit opportunities, the degree of risk, the complexity of operations, and the opportunities for identifying control weaknesses, areas for improvement, or areas for revenue enhancements.

L. Audit services are especially needed in difficult economic times, in order to ensure that the City Council and the public are provided independent and objective information.

M. It is vital to the independence of the Auditor that decisions made about audit resources are made after public discussion, to avoid any appearance that resource decisions may be made so as to influence the Auditor's choice of audit subjects or findings and recommendations.

N. It is vital to the effectiveness of audit work that it be performed by staff who collectively possess sufficient professional proficiency, qualifications and skills, which may be demonstrated by obtaining relevant certifications such as a CIA (Certified Internal Auditor), CPA (Certified Public Accountant) or degrees in relevant fields such as public policy, public administration, accounting, business administration, political science or related fields, and the City Council may wish to consider taking such competencies and certifications into account in setting the salary for the Auditor and other audit staff.

O. Charter requirements to follow government auditing standards should be codified as to the structuring and expectations of the Auditor's office.

P. The government auditing standards in use in 2006 are Government Auditing Standards (also known as "yellow book" standards) issued by the Comptroller General of the United States in 2003, published by the General Accountability Office (GAO) and available in 2006 at: <http://www.gao.gov>.

#### **2.24.020 City Auditor's Office created.**

A City Auditor's Office is created under the direction of the Auditor, which shall consist of such employees as are budgeted and approved by the City Council.

**2.24.030 Authority, responsibility and independence.**

A. As required by Government Auditing Standards, the Auditor shall ensure that: (1) independence and objectivity are maintained; (2) professional judgment is used in planning and performing the work and in reporting the results; (3) the work is performed by personnel who are professionally competent and collectively have the necessary skills and knowledge; and (4) an independent peer review is periodically performed, resulting in an opinion issued as to whether an audit organization’s system of quality control is designed and being complied with to provide reasonable assurance of conforming with professional standards. These reports shall be provided to the City Council.

B. In order to offer audit services that are valuable to management and to the City Council while meeting Government Auditing Standards regarding freedom from external impairments to independence regarding restriction of or interference with audit work, the Charter specifies that the Auditor shall consult with the Mayor, City Council and City Manager regarding the selection of audit entities, but the final decision of what to audit shall remain with the Auditor.

C. Auditor employee classifications (such as Auditor I, Senior Auditor, and Audit Manager) shall be unique to the Auditor’s Office. The City Council shall strive to ensure that the independence of staff auditors is maintained to the extent consistent with the Charter.

D. If the Auditor conducts an audit of an activity for which the elected Auditor is or was responsible, the audit scope will state that the auditors are not organizationally independent with regard to the entity being audited, as required by Government Auditing Standards.

E. The Auditor shall have the right to place items on the City Council agenda for discussion without interference.

**2.24.040 Funding.**

A. In order to meet Government Auditing Standards regarding impairment to independence caused by restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization’s ability to carry out its responsibilities, the Charter states that sufficient funds shall be provided to carry out the responsibilities of the Audit function, subject to available resources.

B. The Auditor’s Office shall be exempt from any City Manager or City Council policy to require City departments to save a portion of their budget as targeted savings, except where Council determines otherwise. The Auditor shall be authorized to transfer budgeted funds between personnel and non-personnel line items, to the extent that those resources are needed to complete the audit plan that has been presented to the City Council, and provided that the Auditor’s Office remains within the budget adopted by the City Council.

**2.24.050 Scope of audits.**

A. The Auditor may conduct financial, performance, and other audits of all agencies, offices, boards, activities, and functions of the City of Berkeley to include but not be limited to the objectives of independently determining whether:

1. Activities and programs being implemented have been authorized by government charter or code, state law or applicable federal law or regulations;
2. Activities and programs are being conducted as prescribed by management/governing body to accomplish the objectives intended by government charter or code, state law or applicable federal law or regulations;
3. Activities or programs efficiently and effectively serve the purpose intended by government charter, code, state law or applicable federal law or regulations;

4. Activities and programs are being conducted and funds expended in compliance with applicable laws;
5. Payers of City taxes and fees are submitting accurate information and correct amounts; revenues are being properly collected, deposited and accounted for;
6. City contractors are providing efficient and effective service to the City in compliance with the terms of their contracts;
7. City resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
8. City financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities and that is necessary to establish a proper basis for evaluating City programs and activities;
9. The City has adequate operating and administrative procedures and practices, systems of accounting, internal control systems, and internal management controls;
10. There are indications of fraud, abuse or illegal acts which need further investigation.

B. The Auditor shall conduct his/her work in accordance with government auditing standards applicable to financial, performance, attestation, or other activities of an audit organization.

C. Non-audit and Similar Services, Charter mandated non-audit services:

Government Auditing Standards make a distinction between audit services and non-audit services that auditors may perform. These are generally services that auditors are typically well qualified to perform, but which often do not result in a written audit report. Non-audit services work may be initiated by the Auditor or performed by the Auditor at the request of the City Manager and shall be performed to the extent mandated by the City Charter and consistent with the professional standards applicable to such non-audit work by auditors except where such work is expressly required by the City Charter. In order to continue to maintain independence, and in particular to avoid a situation in which auditors may in appearance or in fact be auditing their own work or making management decisions, Government Auditing Standards currently include requirements for careful consideration regarding when and how to conduct non audit services.

The Auditor shall perform any other non audit services required by the City Charter under Sections 61 and 65. In compliance with these sections, the Auditor reviews, countersigns, numbers, and registers all city agreements (contracts) after the City Manager or designee has signed. The Auditor is authorized to examine or review all City payments and payrolls before issuance and no payment may be made against any City contract until that contract is registered by the Auditor; the Auditor and the City Manager are co-signers on all City checks. Responsibility for performing municipal accounting and non-payroll payment (accounts payable) functions have been delegated to the Finance Department; however, the Auditor may review selected items before payment is approved. The Auditor also directs a Payroll Audit division, responsible for certain centralized payroll functions of the City's decentralized payroll system.

#### **2.24.060 Audit schedule.**

A. As required by Charter, before the beginning of each fiscal year, the Auditor shall consult with the Mayor, City Council, and City Manager regarding the selection of audit entities, and shall prepare a one to five year audit schedule for presentation to the Council. The schedule shall include the proposed plan for audits of departments, offices, boards, activities, subcontractors and agencies for the period. This schedule may be amended during the period as the Auditor may initiate and conduct any other audit deemed necessary. The City Manager and the Auditor are strongly urged to coordinate and communicate in cases where both may be required to or have

authority to audit, in order to maximize audit coverage and eliminate duplication of effort, as required by Government Auditing Standards.

B. Since, by Charter, the Mayor is charged with the employment and oversight of the certified public accountants who conduct the City's annual financial statement attest function audit, the Mayor and Auditor are also urged to coordinate regarding this audit. Under current law, the financial statement auditors and certain other external auditors are also required to follow Government Auditing Standards, and required to coordinate with the independent City Auditor.

#### **2.24.070 Access to employees, contractors, taxpayers, records and property.**

A. All officers and employees of the City of Berkeley, including those of the Berkeley Rent Board and the Berkeley Public Library, shall furnish the Auditor with unrestricted access to employees, information and records (including automated data) within their custody regarding powers, duties, activities, organization, property, financial transactions and methods of business required by the Auditor to conduct an audit or otherwise perform audit duties and non audit services. In addition, they shall provide access for the Auditor to inspect all property, equipment, and facilities within their custody. The aforementioned shall also apply to the Berkeley Housing Authority and the Berkeley Redevelopment Agency, so long as those agencies received City funding or in-kind services and the requests for information are related to the City funding or services provided.

B. All agreements with outside contractors and subcontractors shall, in addition to access provided to the City generally, provide for Auditor access to all financial and performance related records, property, and equipment purchased in whole or in part with governmental funds and facilities or to records relevant to the performance of the contract. Any agreements which, by their nature, would not require audit services, may delete such right to audit clause only upon approval of the Auditor or vote of the City Council.

C. All references in the Berkeley Municipal Code to the rights of the City Manager and designees in audit, investigation, and inspection related to the collection of revenues such as fees and taxes shall also be construed to include the rights and authorities of the Auditor to perform such audits and inspections.

D. As required by Government Auditing Standards, the Auditor shall not publicly disclose any information received during an audit that is considered proprietary in nature (confidential) by any local, state or federal law or regulation.

#### **2.24.080 Agency response.**

A final draft of each audit report will be forwarded to the audited agency for review and comment before it is released. The Auditor will take these comments into account in finalizing the report, and will include the views provided by the City Manager (or agency director) in the final report to the City Council.

#### **2.24.090 Audit reports.**

Each audit will result in a written report containing relevant background information, findings, and recommendations and shall communicate results to the appropriate officials. The Auditor shall include in the audit reports:

A. A statement that the audit was performed in accordance with Government Auditing Standards;

B. A statement of the significant audit findings, including a statement of the underlying cause, evaluative criteria used, and the current and prospective significance of the findings;

C. A statement of response submitted by the audited agency, board or agency relevant to the audit findings including, if possible, a concise statement of the corrective actions previously taken or contemplated as a result of the audit findings and a time table for their accomplishment; and

D. Recommendations for additional necessary or desirable action.

#### **2.24.100 Audit follow-up.**

The Auditor may: a) follow-up on audit recommendations as practical to determine if the City Manager is implementing corrective action; and b) request periodic status reports from audited entities regarding actions taken to address reported deficiencies and audit recommendations.

#### **2.24.110 Right to retain contract auditors, consultants and experts; Cooperation with City Manager.**

A. The Auditor may obtain the services of Certified Public Accountants, qualified management consultants, or other professional experts necessary to perform the Auditor's duties within the Auditor's budget approved by the City Council. These expenses may be included in the Auditor's annual budget as part of the published annual audit plan, or may be substituted in case of position vacancies if needed to complete the audit plan on schedule. An audit that is performed by contract must be conducted by persons who have no financial interests in the affairs of the governmental unit or its officers. The use of such contracts will follow the City's normal contracting procedures.

B. The City Manager is urged to provide the Auditor with timely information about contemplated required or elective audits, or similar consulting engagements to be performed by other external auditors, so that all auditors may comply with Government Auditing Standards concerning the coordination of audit work, and sharing of information regarding internal control concerns, and to avoid duplication of effort and ensure effective audit coverage. The Mayor is also urged to provide such information and opportunities for coordination with the public accounting firm selected for the City's annual financial statement audits. The Auditor may assist with the selection or oversight of this audit if requested to do so.

#### **2.24.120 Quality assurance reviews.**

A. As required by Government Auditing Standards, the audit activities of the Auditor's office shall be subject to a quality review in accordance with applicable government auditing standards by a professional, nonpartisan objective group utilizing guidelines endorsed by recognized local standard setting bodies such as the national Association of Local Government Auditors or the federal Government Accountability Office (GAO). A copy of the written report of this independent review shall be placed on the City Council agenda for information.

B. The quality review will use applicable government auditing standards to evaluate the quality of audit effort and reporting. Specific quality review areas shall include staff qualifications, adequacy of planning and supervision, sufficiency of work paper preparation and evidence, and the adequacy of systems for reviewing internal controls, fraud and abuse, program compliance, and automated systems. The government shall reimburse costs of the quality review from funds budgeted in the Auditor's budget or other in-kind support.

Section 3. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.