

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2011-0019

Sponsored by: <b>County Executive FitzGerald and Councilmembers Greenspan, Miller, Connally, Brady, Simon, Jones, Gallagher, Germana and Rogers</b>	<b>An Ordinance</b> establishing the Agency of Inspector General and the responsibilities and duties of said Agency, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the County Executive and Council seek to promote honesty and integrity in County government; and,

WHEREAS, the County Executive and Council seek to achieve taxpayer savings by establishing a mechanism to investigate fraud, corruption, waste, abuse, misfeasance, malfeasance, and nonfeasance in the operations of the County Government without interference or pressure by any public official or employee; and,

WHEREAS, Section 2.05 of the County Charter provides:

The County Executive may, at any time and without notice, cause the administrative affairs or the official acts and conduct of any official or employee of any County office, department, or agency over which the Executive has authority to be examined. County Executive, ***or any person appointed by the Executive to conduct such an examination, shall have the same power to take testimony, administer oaths and compel the attendance of witnesses and the production of papers, books and evidence and refer witnesses to the Prosecuting Attorney to be punished for contempt as is conferred upon Council by this Charter.*** Subpoenas may not be issued pursuant to this section except by resolution adopted by a two-thirds vote of Council. (Emphasis added); and,

WHEREAS, Section 3.12 of the County Charter provides:

The Council or any committee of Council may investigate the financial transactions of any office, department or agency of County government and the official acts and conduct of any County official relating to any matter upon which Council is authorized to act. In conducting such investigations, the Council or any such committee may administer oaths and may, by resolution adopted by vote of at least eight members of Council or of the committee of Council, compel the attendance of witnesses and the production of books, papers and other evidence through the issuance of subpoenas. Subpoenas shall be signed by either the President of Council or the chair of the Council

committee seeking a witness's testimony or the production of evidence and shall be served and executed by an officer authorized by law to serve subpoenas and other legal process. In the matter of compelling the attendance of witnesses and the production of evidence, the majority vote of Council, if any, shall take precedence over the vote of a Council committee. If any duly-subpoenaed witness refuses to testify to any facts within the witness's knowledge, or to produce any paper, books, or other evidence in the witness's possession or in the witness's control relating to the matter under inquiry before the Council or any such committee, the Council may refer the matter to the Prosecuting Attorney for the Prosecuting Attorney to cause the witness to be punished as for contempt; and,

WHEREAS, Section 9.02 of the County Charter provides that the Human Resource Commission shall have the authority to ensure compliance "with ethics resolutions or ordinances as passed by the Council"; and,

WHEREAS, Section 3.09(2) of the County Charter provides Council with the power to "establish departments, and divisions and sections within department, under the supervision of the County Executive, *and such boards, agencies, commissions, and authorities, in addition to or as part of those provided for in this Charter*, as the Council determines to be necessary for the efficient administration of the County; and,

WHEREAS, the County Executive and Council deem it necessary to establish the Agency of Inspector General to promote honesty and accountability in County government; and,

WHEREAS, the County Executive and Council seek to have the Agency of Inspector General operate without influence or pressure from public officials or employees; and ,

WHEREAS, the County Executive and Council seek to have the Agency of Inspector General protect the County and taxpayers' interests in a manner that also protects and safeguards the constitutional and civil rights of any person who is the subject of any investigation as well as the constitutional and civil rights of any potential witnesses.

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

**SECTION 1. Definitions.**

As used in this Ordinance,

(a) "**Agency**" shall refer to the Agency of the Cuyahoga County Inspector General established herein.

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

(c) “**Employee**” / “**Employees**” shall mean County employees who operate within the County government established by the Cuyahoga County Charter.

(d) “**Public Official**” / “**Public Officials**” shall mean the public officials of the Cuyahoga County government established by the Cuyahoga County Charter.

(e) “**County Contracts**” All contracts to which the County is a party, excluding collective bargaining contracts and contracts with any other governmental entity.

**SECTION 2. The Cuyahoga County Inspector General Agency.**

(a) *Establishment.* There is hereby established the Agency of Inspector General to be known as the “Cuyahoga County Inspector General.”

(b) *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 Ordinance. 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.

(c) *Investigative Powers and Duties.* The Inspector General is hereby appointed to conduct examinations under Section 2.05 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:

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

(ii) 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 confidential investigative files.

(iii) The Inspector General shall have the powers and rights to investigate all county contracts subject to the limitations set forth in Section 2(d)(iii) of this Ordinance.

(iv) When the Inspector General reasonably believes that a possible violation of any state, federal, or local law, rule, regulation, or policy has taken place, s/he shall notify the appropriate civil, criminal, or administrative agencies in charge with enforcement of said violation. In the case of a possible violation of a rule, regulation, or policy governing a County employee, the Inspector General shall notify the County Executive and the Department of Human Resources.

(v) 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.

(vi) The Inspector General shall prepare and publish semiannual reports (the first of which will cover the period January 1<sup>st</sup> – June 30<sup>th</sup> and will be due in July and the second of which will cover the period July 1<sup>st</sup> – December 31<sup>st</sup> 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. 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. The Inspector General shall simultaneously publish the reports on the Agency's website.

(d) Limitations on the Inspector General's Investigative Powers and Duties.

(i) *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.

(ii) *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.

(iii) *Effect on Contracts.* The enactment of this Ordinance 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 Ordinance, however, shall be subject to the requirements of this Ordinance. In addition to the County's powers to enforce this Ordinance under its home rule powers, this Ordinance, 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 Ordinance, 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.

(e) Inspector General's Budget.

(i) *Initial Budget.* Through the remainder of the year 2011, the Inspector General's budget shall be \$375,000.00.

(ii) *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.

(iii) *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.

(f) 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.

**SECTION 3. Selection, Term, Qualifications, and Removal of Inspector General.**

(a) Incumbent Inspector General. Without regard to the appointment requirements of Section 3(b) herein, and subject to the removal provisions of Section 3(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.

(b) Appointment of Inspector General. The Inspector General shall be appointed by the County Executive for a term of five years subject to confirmation by Council. 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.

(c) Term of Office of Inspector General. The term of the Inspector General shall be for five years.

(d) Qualifications of Inspector General. 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:

(i) A juris doctorate degree from an accredited institution of higher learning; and,

(ii) At least ten years' experience in any one or a combination of the following fields:

1. as a federal, state, or local law enforcement agent/official;
2. as a licensed attorney;
3. as an inspector general, certified public accountant, or internal auditor; or
4. 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. 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 Ordinance, 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 4.** 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. Schron, seconded by Ms. Conwell, the foregoing Ordinance was duly enacted.

Yeas: Germana, Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan, Miller, Brady and Connally

Nays: None

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County Council President

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Date

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County Executive

\_\_\_\_\_  
Date

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Clerk of Council

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Date

First Reading/Referred to Committee: March 8, 2011

Committee(s) Assigned: Rules, Charter Review, Ethics & Council Operations

Additional Sponsorships Requested on the Floor: June 14, 2011

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