



## CITY OF VANCOUVER

### ADMINISTRATIVE REPORT

Report Date: April 30, 2008  
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Meeting Date: May 15, 2008

TO: Standing Committee on Planning and Environment  
FROM: Mike Zora, General Manager - Human Resource Services  
SUBJECT: Whistleblowing Policy

#### RECOMMENDATION

- A. THAT Council adopt in principle the Whistleblowing - Reporting, Investigation and Protection Policy attached to this report dated April 30, 2008.
- B. THAT Council refer the proposed Whistleblowing - Reporting, Investigation and Protection Policy to the Vancouver Police Board, Vancouver Public Library Board, Britannia Community Services Society and Ray-Cam Cooperative Association and encourage them to adopt it as policy and inform Council within a period of six months.

#### CITY MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

#### COUNCIL POLICY

There is no applicable Council policy.

#### PURPOSE

This report is submitted to Council to obtain approval of a proposed Whistleblowing Policy.

## BACKGROUND

At the Regular Meeting following the Standing Committee on Planning and Environment held on July 20, 2006 Council considered the Report of the Roles, Relationships and Responsibilities Committee and the recommendations put forward by that Committee. At that time, Council adopted in principle the Code of Conduct put forward by the Review Committee with some changes to the wording of five subsections. In addition, Council adopted the following motion regarding a whistleblower policy for the City:

THAT the following motion be referred to the City Manager and Human Resources Department as a stand alone item independent of the Triple R Review:

“THAT Council request the City Manager implement at the City of Vancouver a Whistleblower policy similar to the one adopted by the City of Surrey, by December 31, 2006. The City Manager should also ensure that the policy is implemented at the Vancouver Park Board, Britannia and Ray-Cam Community Centres and other Civic Boards. The policy and its implementation should be done with full consultation with all civic unions and employee associations.”

In addition, one of the recommendations made by Mediator Foley and approved by Council as part of the 2007 contract negotiations with CUPE 15 and CUPE 1004, was the development of a Whistleblower policy.

## DISCUSSION

As requested by Council, staff have developed a draft whistleblower policy. All civic unions were provided a copy of the draft policy and given the opportunity to provide feedback. Additionally, there have been several consultation meetings held with CUPE 15 and CUPE 1004 to discuss and review various drafts of the proposed policy in order to address any concerns they might have had. The parties have agreed to review the operation of the proposed policy one year from the date of its implementation.

The proposed policy “Whistleblowing - Reporting, Investigation and Protection Policy” is attached for Council’s review as Appendix A.

The policy includes the three major components which are included as a best practice in corporate whistleblower policies: 1) reporting of serious misconduct, 2) investigation of reports of serious misconduct and 3) whistleblower protection for employees reporting serious misconduct.

The policy addresses serious misconduct as currently there are no formally established mechanisms for reporting this kind of behaviour, which if unreported is likely to adversely impact the City’s delivery of services, reputation and public confidence.

Specifically, as drafted the policy includes the following key principles:

- supports a culture that reflects the mission of the City of Vancouver by fostering the principles of corporate integrity, accountability, responsiveness and effectiveness;

- establishes a reporting process for serious misconduct which includes alternate contacts for reporting concerns;
- ensures the confidentiality of those involved including the employee reporting serious misconduct, witnesses and respondents;
- protects those reporting serious misconduct in good faith from retaliation;
- discourages abuse of the policy through false, frivolous or malicious complaints;
- ensures all serious misconduct reported is thoroughly investigated; and
- includes a review of the investigation to ensure steps are taken to address the underlying causes so as to mitigate the risk of further occurrences.

The proposed policy enables employees to report serious misconduct without fear of retaliation. It is a clear statement of the City's commitment that if any serious misconduct is reported it will be thoroughly investigated and remedied.

Public service is a public trust, and as an organization entrusted with public funds, it is critical that every City employee be committed to the highest standards of ethical behaviour. It is in this spirit that the policy has been developed.

#### **FINANCIAL IMPLICATIONS**

There are no immediate financial implications.

#### **CONCLUSION**

In July 2006 Council considered the Report of the Roles, Relationships and Responsibilities Committee and the recommendations put forward by that Committee. At that time it was requested that staff bring forward a whistleblowing policy for Council's consideration.

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# CITY OF VANCOUVER CORPORATE POLICY

SUBJECT: Whistleblowing - Reporting, Investigation and Protection	
CATEGORY: Employment	POLICY NUMBER: Number

## PURPOSE

This policy sets out guidelines for the reporting and investigation of serious misconduct where there are no procedures in place for doing so, and provides protection from retaliation to those who report serious misconduct in good faith. Reporting serious misconduct in good faith is also referred to as whistleblowing.

This policy is intended to supplement existing procedures at the City of Vancouver ("the City") whereby employees may already raise matters of serious concern. It is part of an integrated framework of existing policies and procedures developed to foster a culture that reflects our mission of creating a great city of communities which cares about its people, its environment and opportunities to live, work and prosper.

## SCOPE

This policy applies to all City and Parks and Recreation Board staff.

All employees have a responsibility to report serious violations of City policies or procedures, as well as any other misconduct which may be seriously detrimental to the City's interests, or which amounts to serious misconduct in itself. Examples of serious misconduct are set out in Schedule "A" to this policy.

This policy is not intended to override or replace existing reporting processes provided for under City policies, collective agreements or legislation and does not create an independent reporting requirement where other reporting processes exist. Reports made under this policy may be redirected where other more appropriate procedures are applicable such as:

- a) Grievance procedures (see applicable collective agreement)
- b) Equal Employment Opportunity (EEO)/human rights complaint procedures related to harassment or human rights violations(see human rights legislation and applicable City policies)
- c) Procedures for reporting safety concerns (see Workers' Compensation Act and Health & Safety Policy)

However, the protection for reporting in good faith of alleged serious misconduct (see 5.0 - Whistleblower Protection against Retaliation) applies in all cases regardless of the City policy or process under which the report was made.

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**POLICY STATEMENTS****1 General**

- 1.1 The City is committed to the principles of integrity, accountability, responsibility, leadership, respect, and openness.
- 1.2 Staff are to act in a way that enhances public confidence in the City and to fulfill their duty to act honestly and exercise reasonable care and diligence.
- 1.3 Staff have a responsibility to report instances of serious misconduct.

**2 Roles & Responsibilities**

- 2.1 **City Manager:** The City Manager is responsible for overseeing this policy. The City Manager is to appoint the General Manager, Human Resources as the Designate responsible for the day-to-day administration and stewardship of the policy. The City Manager will report serious misconduct issues to Council as appropriate. The City Manager will execute the roles and responsibilities of the Designate should alleged serious misconduct involve the Designate.
- 2.2 **Designate:** The General Manager, Human Resources receives in confidence all reports of alleged serious misconduct unless the City Manager or General Manager as Designate is alleged to be involved. The Designate is responsible for overseeing the investigation of allegations of serious misconduct and/or retaliation for the reporting of serious misconduct. The Designate is responsible for assigning investigations to the most appropriate party, notifying the appropriate parties of investigations and outcomes, reporting to the City Manager, and ensuring the confidential retention of investigation documentation in accordance with the City's Corporate Records and Information Management Policy and the requirements of the *Freedom of Information and Protection of Privacy Act*.
- 2.3 **Director of Legal Services/City Council:** In the event an allegation of serious misconduct involves City Manager the matter will be dealt with in-camera by City Council who will determine and assign responsibility for the investigation and disposition of the matter in conjunction with the Director of Legal Services.
- 2.4 **General Managers/ Department Heads/ Managers/ Supervisors:** Any level of manager or supervisor receiving a report of alleged serious misconduct from an employee is to promptly forward it in an impartial and strictly confidential manner to the Designate with a copy to the General Manager whose area of responsibility is involved unless the alleged misconduct may involve or have been condoned by the General Manager.
- 2.5 **Staff:** Staff are to report alleged instances of serious misconduct in good faith to their supervisor, manager, General Manager or directly to the Designate. Should the alleged serious misconduct involve the Designate, staff should report the misconduct to the City Manager, or should the alleged serious misconduct involve the City Manager, staff should report the misconduct to the Director of Legal Services for referral to City Council as outlined in section 2.3 above.

### 3 Reporting of Serious Misconduct

- 3.1 Acting in Good Faith:** Reports of serious misconduct are a serious matter. Staff reporting alleged serious misconduct are to act in good faith and have reasonable grounds for believing the report to be true.

Where staff come forward to report their own serious misconduct under this policy, they will not be exempt from discipline appropriate to the serious misconduct; however, such reporting will be given appropriate consideration as a mitigating factor and these instances will be dealt with on an individual basis in accordance with this policy.

**3.2 False or Frivolous Reports:**

Knowingly making false allegations or making allegations in a malicious manner will be viewed as serious misconduct.

Reports that are found to be frivolous, false, malicious or in bad faith will be dealt with in accordance with this policy.

**3.3 Process for Reporting Serious Misconduct:**

- Staff aware of serious misconduct have a responsibility to report it either to their supervisor, manager, General Manager or directly to the Designate.
- Should the alleged serious misconduct involve the Designate, staff should report the misconduct to the City Manager, or should the alleged serious misconduct involve the City Manager, staff should report the misconduct to the Director of Legal Services.
- Staff are to report serious misconduct in writing (see "Schedule B: Form for Reporting Serious Misconduct"). Where an employee reports serious misconduct to his or her supervisor/manager verbally, the supervisor/manager receiving the report must document the discussion, confirm its accuracy with the employee and promptly forward the report in an impartial and strictly confidential manner to the Designate with a copy to the General Manager whose area of responsibility is involved unless the alleged misconduct involves the General Manager.

### 4 Confidentiality

- 4.1** The Designate will make every reasonable effort to provide confidentiality to those reporting serious misconduct. Staff making a report under this policy are encouraged to provide their name in confidence when doing so which permits for follow-up questions and clarification if necessary. Investigation may not be possible unless the source of the information is identifiable. The Designate may investigate a report made on an anonymous basis and will determine whether to do so in light of all of the circumstances, including the seriousness of the issue raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.
- 4.2** Investigations will be carried out in a manner that limits disclosure of the report and allegations on a "need to know" basis. Information about a report

of serious misconduct will only be disclosed to those responsible for investigating and/or addressing the report. Reports will be made to the City Manager as identified under 7.0 - Retention and Documentation of Investigations.

- 4.3 Confidentiality extends to all records relating to reports, including but not limited to meetings, interviews and investigation results. Personal information, including the identity of the person reporting the alleged serious misconduct, will be protected in accordance with the *Freedom of Information and Protection of Privacy Act*. Individuals making a report, investigators, witnesses and individuals against whom a report has been made are expected to maintain confidentiality. Breaches of confidentiality may be regarded as serious misconduct and will be treated accordingly.
- 4.4 Although the Designate will take all reasonable steps to protect the identity of the individual reporting the serious misconduct, information collected and retained may be required to be released by law including release required in court proceedings, arbitration or other legal proceedings.

## 5 Whistleblower Protection against Retaliation

- 5.1 **Forms of Retaliation:** Any form of retaliation, discrimination or reprisal against an employee because that person reported serious misconduct in good faith or because that person acted as a witness or otherwise participated in an investigation in good faith will be considered a serious violation of this policy. Such retaliatory actions are themselves serious misconduct and may result in discipline up to and including dismissal.
- 5.2 **Reporting Retaliation:** If an employee believes that they have been subjected to retaliation as set out above, that person may submit a written report to the Designate who will ensure the allegation is appropriately investigated.

## 6 Investigations

- 6.1 **Investigation Process:** The Designate has primary responsibility for investigating allegations of serious misconduct. The Designate will review and assess the seriousness of all reports promptly and determine the manner in which the report will be investigated. This determination will not be influenced by the position or length of service of the employee(s) accused of serious misconduct. At the Designate's discretion an investigation may be carried out by the Designate directly, assigned to management in the area affected, assigned to an investigative team, assigned to an independent third-party or re-directed to a more appropriate existing process. Where the City Manager or the Director of Legal Services (in conjunction with City Council) is executing the roles and responsibilities of the Designate, they will determine, based on the circumstances, the appropriate party to investigate the allegation of serious misconduct which may include the Director of Legal Services, an independent third-party or other appropriate party.
- 6.2 **Material Financial Concerns:** If upon initial assessment it appears that the concern raised could materially affect the financial position of the City or the integrity of the City's system of internal controls, the Designate will advise

the City Manager and Director of Finance. The Designate will notify the Director, Risk Management of the amount of any potential loss for insurance purposes. The City will make every reasonable effort to pursue the recovery of City losses from the offender or other appropriate sources.

- 6.3 Criminal Activity and Other Illegal Conduct:** In circumstances where it appears that a criminal act may have occurred, the Designate may report the matter to the appropriate police agency. In circumstances where it appears that there may have been violations of other laws, the Designate may advise the appropriate enforcement agency.
- 6.4 Acknowledging Reports:** Within ten working days of a report being received, the Designate (or City Manager or Director of Legal Services assuming the role of the Designate per sections 2.1 & 2.3) will respond in writing to the employee making the report acknowledging that the allegation of serious misconduct has been received. Subject to legal constraints, the Designate will also inform the employee making the report at the conclusion of any investigation. The Designate may not be able to disclose the precise action being taken where doing so would be contrary to *Freedom of Information and Protection of Privacy Act* or other requirements for confidentiality.
- 6.5 Opportunity to Respond to Allegations:** In all but exceptional circumstances, individuals accused of serious misconduct will be given an opportunity to know and respond to the allegations made.
- 6.7 Consequences of Serious Misconduct:** Consequences for employees found guilty of serious misconduct may include discipline up to and including dismissal.

It is understood that union staff may grieve any disciplinary action under the applicable collective agreement.

## 7 Retention and Documentation of Investigations

The Designate will document the results of each investigation in a confidential report. If an investigation determines that serious misconduct has occurred, the Designate will immediately report the details and any action taken to the City Manager.

A summary of reports made under this policy and outcomes of subsequent investigations will be submitted annually to the City Manager and to City Council.

## 8 Mitigation of Further Risk

The City Manager will conduct a review of each investigation report where serious misconduct was found to have occurred and will assign responsibility to ensure steps are taken to address underlying causes and to then take appropriate actions to mitigate the risk of further occurrences.

## 9 Media

Concerns regarding serious misconduct may have a significant impact on the City's legitimate interests. Staff have a responsibility to use the internal whistleblowing



reporting process when they have such concerns. Matters covered by this policy are considered confidential and breaches of that confidentiality, including making public statements or disclosing information to the media, will be dealt with in accordance with this policy.

**10 Federal or Provincial Legislation**

In the event that any portion of this policy is inconsistent with a binding City collective agreement or federal or provincial legislation, that portion and only that portion of the policy will have no application to the extent of that inconsistency. All other portions of the policy will continue in full force and effect.

**RELATED POLICIES**

<u>AE-002-03</u>	Code of Conduct
<u>AG-002-01</u>	Harassment - Complaints
	Corporate Records and Information Management

**APPROVAL HISTORY**

ISSUED BY:	APPROVED BY:	DATE: yyyy/mm/dd
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## **Schedule A: Examples of Serious Misconduct**

The following are examples of serious misconduct that should be reported pursuant to this policy:

- serious violations of the Code of Conduct and other City policies;
- manipulation of City resources for any illegal, improper or unethical purpose including fraud, theft, embezzling funds, or accepting kickbacks or bribes;
- misappropriating funds, misdirecting or misuse of funds, assets or corporate information;
- manipulating City accounting or audit records or destroying any accounting or audit-related records except as otherwise permitted by the City's Corporate Records and Information Management policy;
- actions likely to cause serious harm to persons, public safety, property or the environment;
- actions resulting in the City being exposed to liability or financial loss;
- failure to take reasonable steps to report and/or rectify actions that may impact negatively on the City's reputation resulting in the public losing confidence in the organization's ability to deliver services;
- deliberately concealing information relating to any of the above.

It should be noted that the above are examples only and are not an exhaustive list of what amounts to serious misconduct.

## Schedule B: Form for Reporting Serious Misconduct

This form should be completed by anyone aware of serious misconduct and forwarded to the appropriate individual as outlined in Section 3.3 - Process for Reporting Serious Misconduct of this policy.

**TO BE COMPLETED BY INDIVIDUAL RAISING CONCERN**

SUMMARY OF INCIDENT (include dates, times, individuals involved):

I hereby declare that I am raising this concern in good faith and have reasonable grounds to believe the information above is accurate and true.

Signature (optional): \_\_\_\_\_ Date: \_\_\_\_\_

Date Submitted to Supervisor/Manager/Department Head/GM (if applicable): \_\_\_\_\_

Date Submitted to Designate: \_\_\_\_\_

**TO BE COMPLETED BY DESIGNATE**

ACTION TAKEN:

Designate Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The above information is collected in accordance with the *Vancouver Charter* and the *Freedom of Information and Protection of Privacy Act*. It is collected for purposes set out in the policy Whistleblowing – Reporting, Investigation and Protection. Questions about the collection of this information may be directed to the Manager, Corporate Information & Privacy, 453 West 12th Avenue, (604) 873-7999.

## **Summary: Whistleblowing Policies in BC and other Canadian Municipalities**

In development of the City of Vancouver's Whistleblowing Policy, the policies of other Canadian municipalities and local organizations were reviewed.

### **City of Kelowna:**

The City of Kelowna has implemented a "Whistle Blower Policy" with the purpose of providing employees and citizens a mechanism by which they can raise concerns free from discrimination, retaliation or harassment.

Under the policy, concerns may be reported to an employee's supervisor, the Director of HR or the City Manager. The Director of HR working with other appropriate Directors on investigations is responsible for day-to-day administration of this policy with the City Manager having overall responsibility for this policy.

All reports are taken seriously and are promptly investigated. If, at the conclusion of its investigation, the City of Kelowna determines that a violation of this Policy has occurred, the City will take effective remedial action commensurate with the severity of the offense. This action may include disciplinary action against the accused party, up to and including termination. Reasonable and necessary steps will also be taken to prevent any further violations of policy.

### **City of Prince George:**

The City of Prince George has implemented an "Unethical Conduct Reporting and Employee Protection Policy" to define employees' accountability for following lawful and ethical practices, to provide a process for reporting unethical conduct and to define the City's accountability for investigating and protecting employees.

Responsibility for the oversight of this policy lies with the Director of Corporate Services. The individual who receives the allegation report obtains advice from the Director of Corporate Services concerning the way it should be investigated.

After the investigation is concluded, the investigator prepares a report and submits it to the Director of Corporate Services. Based on the information contained in the report, the Director of Corporate Services assists the investigator to determine what procedural controls should be improved and what disciplinary actions should be taken against the employees involved.

### **City of Surrey:**

The City of Surrey adopted a "Serious Complaints Policy" to provide a process for employees to report any conduct that is not consistent with City policies and by-laws without fear of retaliation or penalization.

Day-to-day administration lies with three Designated Officers, the City Solicitor, GM - Finance & Technology and GM - HR, with Council having overall responsibility for this policy.

The Designated Officers review and assess the seriousness of all Complaints promptly and determine, in consultation with others, if necessary, the manner in which Complaints will be investigated, using internal and/or external resources, and will determine who will lead such investigation.

**City of Edmonton:**

The City of Edmonton has adopted a “Fraud and Misconduct – Reporting, Investigation and Whistleblower Protection Policy” to set out guidelines and responsibilities on reporting and investigating alleged fraud and misconduct, and to offer protection to employees who report allegations in good faith.

Working with the City Auditor the City Manager has overall responsibility for this policy and ensures an appropriate team is assigned to investigate. In addition to being able to report misconduct to various individuals, employees may also use the City’s 24-hour hotline make reports.

**City of Toronto:**

The City of Toronto has implemented a “Fraud and Other Similar Irregularities Policy” which sets out guidelines and responsibilities regarding appropriate actions that must be followed for investigation of fraud and other similar irregularities.

The City Auditor, in consultation with the City Solicitor, has the primary responsibility for the investigation of all activity as defined in this policy. The City of Toronto has also implemented a hotline which may be used to report misconduct.

**City of Ottawa:**

The City of Ottawa has a “Fraud and Waste Hotline Policy” with a purpose of providing a way for employees to report suspected fraud, waste or other inappropriate activities.

At the City of Ottawa, the Auditor General has the overall responsibility for the oversight of the policy and managing the investigation. The City of Ottawa has also implemented a hotline which employees may use.

**City of Calgary:**

In Calgary, the City has introduced a “Whistle-blower Program Integrated Framework” to provide an integrated policy that establishes specific responsibilities regarding the reporting and investigation of allegations.

The City Auditor in consultation with the City Solicitor has primary responsibility for this policy. Employees may report wrongdoing directly to the City Auditor or make use of the City’s hotline.

**BC Hydro:**

As part of their Code of Conduct, BC Hydro has included a procedure for confidential reporting of financial concerns to the Code of Conduct Advisor which outlines a process enabling staff in making confidential disclosures about Code breaches and questionable accounting/auditing practices.

Staff are encouraged to first raise concerns with their own Manager, but may escalate the report to the Code of Conduct Advisor, who forwards any reports to the Audit Service Group to perform a preliminary investigation which is then sent to the Audit & Risk Management Committee. The Chair of the Finance, Audit and Investment Committee has oversight for this policy.

**BCAA:**

BCAA has implemented an “Ethic’s Hotline” for staff to use if they have concerns about issues of an ethical or legal nature.

Staff are encouraged to first raise concerns with their Manager, then to HR or Internal Audit. The hotline is another option staff may choose if they are not comfortable with speaking to one of the previously mentioned parties.

The need for investigation will be assessed by the Manager, Internal Audit and may be conducted by him/her or the HR Director if human resource-related. Oversight for this policy rests with the Manager, Internal Audit.

**ICBC:**

As an appendix to their Code of Ethics, ICBC has implemented an “Anonymous and Confidential Reporting System” to allow for business or ethical concerns to be brought forward.

Again, staff are encouraged to speak to their own Manager or a more senior Manager elsewhere. There is also a hotline available should staff want to utilize it. Reports made to the hotline are routed to appropriate reviewer. Oversight of this policy rests with the Chair of the Audit Committee of the Board.