



## ADMINISTRATIVE REPORT

Report Date: October 17, 2017  
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Meeting Date: October 31, 2017

TO: Vancouver City Council

FROM: Andrew Naklicki, Chief Human Resources Officer

SUBJECT: AE-028-02 Policy Review - Whistleblowing - Reporting, Investigation and Protection

### ***RECOMMENDATION***

THAT City Council approve the amendments to the City of Vancouver's Corporate Policy: "Whistleblowing - Reporting, Investigation and Protection", as outlined in the draft policy appended to this report.

### ***REPORT SUMMARY***

On May 2, 2017, Council directed staff to consult with civic unions regarding a motion calling for recommendations on amendments to the City of Vancouver's Corporate Policy: "Whistleblowing - Reporting, Investigation and Protection" (the "Policy"). This report is intended to update Council on the feedback received from union representatives as well as other research conducted by staff regarding similar whistleblower protections implemented by other local and senior governments.

The original motion requested that staff review the Policy and report back with recommendations to address the following:

1. Include protection of the public interest as the primary purpose of the whistleblower protection of city staff;
2. Provide independent oversight and investigation of alleged wrongdoings;
3. Enable and protect anonymity if a whistleblower so chooses to be anonymous;
4. Ensure City staff who in good faith report wrongdoing are protected from reprisal to the fullest extent possible including actions to reverse or remedy a reprisal.

### ***COUNCIL AUTHORITY/PREVIOUS DECISIONS***

The current Policy was approved by Council in 2008

### ***CITY MANAGER'S/GENERAL MANAGER'S COMMENTS***

The City Manager supports the recommendation of the Chief Human Resources Officer.

### ***REPORT***

#### ***Background/Context***

The Policy applies to all City and Board of Parks and Recreation staff and provided a mechanism for staff to report alleged misconduct. The City has established a clear expectation for business activities to be conducted in a transparent and cost effective manner and the Whistleblowing policy is one means by which staff may report serious misconduct.

#### ***Strategic Analysis***

Staff have now completed a review which included an examination of the following municipal, provincial and federal policies, regulations and statutes that provide whistleblower protections:

- City of Toronto (By-Law Chapter 192)  
Disclosure of Wrongdoing and Reprisal Protection Provisions
- City of Surrey (Corporate Report C010)  
Serious Complaints Policy
- City of Calgary (Policy # AC2007-26)  
Whistle-blower Policy
- BC Whistleblowers Protection Act, 2015
- Provincial Health Services Authority (Policy # AB 620)  
Safe Reporting (formerly Whistleblower)
- Public Servants Disclosure Protection Act (S.C. 2005, c. 46)

Staff have also consulted with the following civic unions and associations regarding the existing Policy and proposed amendments:

- Canadian Union of Public Employees (CUPE) Local 15
- Canadian Union of Public Employees (CUPE) Local 1004
- International Association of Fire Fighters (IAFF) Local 18

- International Brotherhood of Electrical Workers (IBEW) Local 213
- International Alliance of Theatrical Stage Employees (IATSE) Local 891
- Vancouver Exempt Staff Association (VESA)

The union and staff associations noted above were all provided with a copy of Council's Motion on Notice 'Increasing Whistleblower Protection for Vancouver City Staff'. Additionally, staff either met or corresponded with the representatives of each party to solicit input on:

- members' experience reporting a complaint or concerns under the City's Whistleblowing Policy;
- their perspective as to whether the policy currently provides adequate anonymity and protection for members who want to report a complaint or concern, and;
- other comments or feedback about the policy or associated investigation process

Findings and recommendations with respect to each component of the motion are as follows:

1. Include protection of the public interest as the primary purpose of the whistleblower protection of city staff

**Policy Review**

Although none included an explicit reference to 'public interest', four of the six policies considered in the review incorporated language in the overarching purpose related to public trust and confidence and matters found to be unlawful, dangerous to the public or injurious to the public. However, several of those comparator policies did not include any language to illustrate the types of conduct that whistleblower policies are intended to capture. The City of Vancouver policy provides robust language in this respect i.e.; *"actions likely to cause serious harm to person, public safety, property or the environment"* and *"actions resulting in the City being exposed to liability or financial loss"*.

**Consultation with Representative Employee Organizations**

This item did not generate any specific comments or feedback from the aforementioned groups.

**Recommendation**

In order to be clear that the intent of the policy is to protect public interest, the Purpose section of City of Vancouver Whistleblowing policy could be amended to include the underlined sentence:

*The purpose of this policy is to facilitate the disclosure of wrongdoing that is contrary to public interest. The 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.*

## 2. Provide independent oversight and investigation of alleged wrongdoings

### Policy Review

The Cities of Surrey and Calgary were found to be the closest comparators to the City of Vancouver in terms of size and structure. Both cities process complaints in a manner consistent with the City of Vancouver insofar as complaints are received and investigated by senior city officials. With respect to the City of Vancouver's process, complainants who are dissatisfied with any aspect of the handling of a complaint have the statutory option to escalate such concern to the BC Ombudsperson as an independent oversight authority.

### Consultation with Representative Employee Organizations

The feedback was limited on this item and included the suggestion for a neutral Ombudsperson being an alternative designate.

### Recommendation

The cost of establishing a dedicated independent oversight function comparable to that of the City of Toronto would be prohibitive for a significantly smaller organization, including the City of Vancouver. That being said, and in order to provide additional guidance to staff, amend Section 2. 'Roles & Responsibilities' of City of Vancouver Whistleblowing policy to include the following language:

*"2.6 Should an employee who brings forward a complaint under the Policy be dissatisfied with the process by which the complaint is handled, she/he may seek independent review of the matter by contacting the BC Office of the Ombudsperson."*

## 3. Enable and protect anonymity if a whistleblower so chooses to be anonymous

### Policy Review

The wording differed between the various policies reviewed, but the intent was found to be the same in that reporters of misconduct are advised they "may" report anonymously, and when reporting in confidence with identification, this information would be protected to the fullest extent possible. It should be noted that the organization may subsequently release confidential information as required pursuant to a Court order or other legal proceeding.

### Consultation with Representative Employee Organizations

Based on discussions with the employee representatives, there is no consensus on this item. Some groups felt that there was no need to change or augment the current language of the policy, while others expressed the view that anonymity may be beneficial to the complainant.

### Recommendation

To provide further clarity on reporting anonymously, amend the Section 4, 4.1 'Confidentiality' of City of Vancouver Whistleblowing policy as follows:

*"The designate will make every reasonable effort to provide confidentiality to those reporting serious misconduct. Staff may remain anonymous when reporting; however, ~~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 the circumstances, including the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from other sources."*

4. Ensure City staff who in good faith report wrongdoing are protected from reprisal to the fullest extent possible including actions to reverse or remedy a reprisal

**Policy Review**

All policies examined, including the City of Vancouver's, contained language to stipulate consequences for person(s) engaging in reprisal/retaliation against an employee for reporting misconduct. However, only the City of Toronto policy has language to remedy a violation.

**Consultation with Representative Employee Organizations**

This item did not generate any specific comments or feedback from the aforementioned groups.

**Recommendation**

The City is not aware of an instance where retaliation or reprisal against an employee reporting misconduct has occurred. However, should an allegation of retaliation be reported in the future, it would be investigated in accordance with the process set out in the policy and, if substantiated, would result in disciplinary action, up to and including termination of employment, for the retaliator. The policy clearly contemplates that retaliatory action is inappropriate and the investigation of the complaint would necessarily include rectification of any consequences for the reporting employee.

***Implications/Related Issues/Risk (if applicable)***

The implementation of the abovementioned recommendations would not require additional financial or human resources and no associated risks have been identified.

**CONCLUSION**

The proposed amendments to the Policy will ensure the intent and principles contained therein, continue to protect employees who bring forward evidence of serious misconduct, and in turn provides the City the opportunity to investigate and mitigate associated risks.

The Chief Human Resources Officer recommends that Vancouver City Council approve the recommendations contained in this report

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## CITY OF VANCOUVER CORPORATE POLICY

SUBJECT: Whistleblowing - Reporting, Investigation and Protection	
CATEGORY: Employment	POLICY NUMBER: AE-028-02

### PURPOSE

The purpose of this policy is to facilitate the disclosure of wrongdoing that is contrary to public interest. The 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.

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### SCOPE

All City and Board of Parks & Recreation staff.

### POLICY STATEMENTS

#### 1 General

- 1.1 The City of Vancouver ("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. Examples of serious misconduct that should be reported pursuant to this policy include but are not limited to:
  - Serious violations of 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 ([AG-002-01](#));

- 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.

1.4 This policy is intended to supplement existing procedures at the City whereby employees may already raise matters of serious concern. 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.

1.5 Reports made under this policy may be redirected where other more appropriate procedures are applicable such as:

- Grievance procedures (see applicable collective agreement)
- Equal Employment Opportunity (EEO)/human rights complaint procedures related to harassment or human rights violations (see human rights legislation and applicable City policies)
- Procedures for reporting safety concerns (see Workers Compensation Act and Occupational Health & Safety Policy [AE-010-02](#))

1.6 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.

## 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 ([AG-002-01](#)) 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 the 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.
- ~~2.5~~ **2.6** Should an employee who brings forward a complaint under the Policy be dissatisfied with the process by which the complaint is handled, she/he may seek independent review of the matter by contacting the BC Office of the Ombudsperson.

### 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 "[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 may remain anonymous when reporting; however, ~~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 the circumstances, including the seriousness of the issues 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 the *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.

**6.6 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.

## REFERENCE

[Form for Reporting Serious Misconduct](#)

## APPROVAL HISTORY

ISSUED BY:	General Manager, Human Resources	APPROVED BY:	Council	DATE:	2008/05/15
ISSUED BY:	Chief Human Resources Officer	APPROVED BY:	Council	DATE:	