



## REPORT

Report Date: October 3, 2023  
Contact: Andrew Naklicki  
Contact No.: 604.873.7660  
RTS No.: 15468  
VanRIMS No.: 08-2000-20  
Meeting Date: October 17, 2023  
[Submit comments to Council](#)

TO: Vancouver City Council  
FROM: Chief Human Resources Officer  
SUBJECT: Whistleblower Policy Update

### **RECOMMENDATIONS**

- A. THAT Council approve the revised Whistleblower Policy COUN-010 (formerly ADMIN-002) as provided in Appendix A, including transfer of ownership of the policy to the Auditor General, to be effective January 1, 2024.
- B. THAT Council approve, in principle, consequential amendments to the Auditor General By-law as generally set out in Appendix B, to be effective January 1, 2024.
- C. THAT Council instruct the Director of Legal Services to bring forward for enactment the necessary by-law amendments as generally set out in Appendix B.

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

In May 2008 Council adopted in principle the Whistleblowing – Reporting, Investigation and Protection Policy. This resulted from a request from Council that the City Manager implement a Whistleblower policy similar to the one adopted by the City of Surrey, and a recommendation made by Mediator Foley and approved by Council as part of the 2007 contract negotiations with CUPE 15 and CUPE 1004.

In May 2017 Council directed staff to consult with civic unions regarding a motion calling for recommendations on amendments to the policy. The motion requested that staff review the policy and report back with recommendations to address the following:

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

In October 2017 Council approved amendments to the policy Whistleblowing – Reporting, Investigation and Protection ADMIN-002.

On April 22, 2022 at the Auditor General Committee meeting, the Committee received the Auditor General's report entitled "Whistleblower Study, April 2022." The Auditor General made the following two recommendations:

1. Council should direct City staff to revise the Whistleblower policy so that it addresses complaints coming from sources external to the City.
2. Council should consider whether the City's existing Whistleblower policy should be revised in the context that there are now independent Offices of the Auditor General and Integrity Commissioner.

The Committee in turn approved the following three motions:

- A. THAT the Auditor General Committee recommend to Council to direct City staff to revise the Whistleblower policy so that it addresses complaints coming from sources external to the City and report back to Council before the end of July.
- B. THAT the Auditor General Committee recommend to Council to direct staff to revise the Whistleblower policy so that the Auditor General is delegated responsibility for the intake, assessment and investigation of complaints, making recommendations for corrective action and publicly reporting results, except for complaints involving elected officials, which are to be referred to the Integrity Commissioner.
- C. THAT Auditor General Committee receive the Whistleblower Study for information.

On 21 June 2022 Council approved the Auditor General Committee's recommendations.

### ***CITY MANAGER'S COMMENTS***

The City Manager concurs with the foregoing recommendations.

### ***AUDITOR GENERAL'S COMMENTS***

The Auditor General concurs with the foregoing recommendations.

### ***CONTEXT AND BACKGROUND***

Over the last 15 months, the Chief Human Resources Officer, Legal Services and the Auditor General (the project team) revised the Whistleblower Policy in accordance with the motions approved by the Auditor General Committee during its meeting of April 22, 2022,

and by Council at its meeting of 21 June, 2022.

Additional key components of the review included the following:

#### **Addressing shortcomings in the existing Whistleblower policy**

There was a pre-existing need to revise the Whistleblower Policy, but as a result of the pandemic that review was delayed. For instance, fundamental definitions such as what constitutes “serious misconduct” required updating in the context of the Respectful Workplace Policy and the City’s Code of Conduct Policy, which were introduced subsequent to the last update of the Whistleblower Policy. These shortcomings have been addressed as the Whistleblower Policy has been updated in accordance with Council’s direction. There was also a pre-existing administrative process described for the general public with a confidential means to report incidents of serious misconduct, fraud, waste and wrongdoing. The revised policy now includes complaints from the public.

#### **Knock-on effect on other Council-approved policies**

Initial efforts focussed on updating the Whistleblower Policy in isolation. However, given the impact on other policies it became apparent that the broader policy environment had to be considered to ensure that updates to the Whistleblower Policy do not create unintended conflicts with other existing policies. For instance, much as the Respectful Workplace Policy and the City’s Code of Conduct Policy impacted the Whistleblower Policy, updates to the Whistleblower Policy will similarly impact processes outlined in the other two policies. An updated purpose statement in the revised policy aims to diminish conflicts with other policies and the roles and responsibilities of the City Manager, the Auditor General and the Chief Human Resources Officer have now been clearly defined.

#### **Study of policies in other jurisdictions**

The project team conducted a jurisdictional scan, examining similar policies at six other Canadian municipalities, including Surrey, Calgary, Edmonton, Hamilton, Ottawa, and Toronto, as well as the province’s Public Interest Disclosure Act. The scan showed that municipalities with an Auditor General/City Auditor have that office taking the lead in investigating serious wrongdoing.

#### **Consultation with the City’s bargaining units**

There is a good faith understanding that bargaining units will be consulted prior to the implementation of changes to City policies that impact their members, and provisions of certain collective agreements speak specifically to the City’s Whistleblower policy. On September 6, 2023 the Chief Human Resources Officer met with unions representing City and Board of Park and Recreation employees to review the revisions to the policy. On September 13, 2023 a copy of the draft policy for review was sent to CUPE Local 15, CUPE Local 1004, IAFF Local 18, IBEW Local 123 and IATSE Local 118.

The unions were advised the most significant shift in the policy is the Auditor General’s ability to investigate allegations involving City employees. In those cases, the Auditor General’s office will have its own staff to perform those investigations, OR they will be delegated to the City Manager. Investigations conducted by the Auditor General’s office will be performed in accordance with investigation procedures which are co-created with the CHRO’s office and in accordance with any employee rights under the collective agreements (right to representation). While the Auditor General may make recommendations with

respect to corrective action to address serious misconduct, the Auditor General has no ability to do so with respect to employee discipline; discipline decisions remain solely within the discretion of the City Manager or designate (Chief Human Resources Officer).

### **Policy Revisions: Highlights**

In addition to addressing the Council motion the project team took the opportunity to conduct a thorough review of the Whistleblower Policy while considering the recent review of the Respect in the Workplace Policy and the ongoing review of the Code of Conduct. The result is a policy which clearly defines the conduct investigated under the policy as well as the responsibilities of City management and the Auditor General and describes protection for whistleblowers as well as confidentiality provisions.

Recommended amendments with respect to each component of Council's motion are as follows:

- 1. The Council motion directed staff to revise the Whistleblower policy so that it addresses complaints coming from sources external to the City and report back to Council before the end of July.**

The revised policy makes the following references to **complaints from the public/external sources**:

- Members of the public are encouraged to report instances of serious wrongdoing and may do so through the Whistleblower Program.
  - Anyone reporting serious wrongdoing may remain anonymous. However, in some cases, an investigation may not be possible unless the source of the information is identifiable. The Auditor General will make a preliminary determination as to whether an anonymous report can be properly investigated. In doing so, they will consider 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.
- 2. The Council motion directed staff to revise the Whistleblower policy so that the Auditor General is delegated responsibility for the intake, assessment and investigation of complaints, making recommendations for corrective action and publicly reporting results, except for complaints involving elected officials, which are to be referred to the Integrity Commissioner.**

Effective January 1, 2024 the Auditor General will be the **Policy Owner** and primary lead for the updated Whistleblower program. Some of the Auditor General's responsibilities under the policy include:

- Establishing the Whistleblower Program to facilitate the reporting of serious wrongdoing;
- Initial assessment of allegations and determination of whether or not the alleged conduct could constitute serious wrongdoing;
- Referring allegations that do not constitute serious wrongdoing to the City Manager for investigation;

- Investigating reports of serious wrongdoing or delegating to the City Manager;
- Advising other departments/agencies as required (ie. Criminal activity);
- On an annual basis, the Auditor General will submit a summary of reports of serious wrongdoing made under this policy and outcomes of subsequent investigations to City Council.

The City Manager's responsibilities have been amended to include the following:

- Taking reasonable steps to encourage employees and members of the public to report serious wrongdoing;
- Investigating, or designating responsibility to investigate, reports of serious wrongdoing as referred by the Auditor General;
- Reporting the results of investigations of serious wrongdoing to the Auditor General;
- Reviewing and assessing any recommendations for corrective action made by the Auditor General and ensuring appropriate action is taken.

Finally, the scope of the policy has been updated to confirm the policy does not apply to allegations regarding the Mayor or City Councilors, which are to be referred to the Integrity Commissioner.

**In addition to the amendments made to address the Council motion, the project team proposes the following updates:**

3. The revised policy has a redefined **purpose** focusing on the reporting and investigation of allegations of serious wrongdoing only, providing protection from retaliation to those who report serious wrongdoing in good faith. The policy does not address matters that are dealt with through existing procedures.
4. The revised policy clearly defines **serious wrongdoing** as follows:
  - Financial act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
  - Serious misuse or mismanagement of public funds or assets, including but not limited to fraud or waste;
  - A conflict of interest that results or is likely to result in profit, payment or compensation to the employee(s);
  - Instructing or encouraging another employee to commit serious wrongdoing; and,
  - Deliberately concealing information relating to any of the above.

The previous policy did not clearly define serious wrongdoing. A definition is important to delineate responsibilities under the policy. Specifically, this definition provides a clear guide for the Auditor General when assessing whether or not conduct constitutes serious wrongdoing.

5. The revised policy includes updated language addressing whistleblower protection and confidentiality. Where possible and applicable, the project team took this opportunity to ensure consistency with other recently updated policies (ie. Respect in the Workplace Policy).

**Amendments to the Auditor General By-law No. 12816 (“By-law”)**

The proposed amendments to the By-law create alignment with the amended Whistleblower policy, reducing the likelihood that the By-law will require future amendments in the event of revisions to the policy – see the new Section 3.4.1 (which replaces Section 6 in its entirety).

The proposed amendments also protect against potential conflicts between the Auditor General’s general duties with respect to reports, recommendations and confidentiality, and those under the policy – see the new Sections 3.16 and 4.7(e).

Lastly, the proposed amendments provide greater clarity with respect to the application of City bylaw and policies of general application to City staff to the Office of Auditor General and remove unnecessary references to specific policies (some of which are being replaced, such as the Human Rights & Harassment policy and the Respectful Workplace policy).

***FINANCIAL IMPLICATIONS***

Council approved incremental funding in the Auditor General’s 2023 budget request for two positions to staff the whistleblowing function. There are no additional financial implications.

***LEGAL IMPLICATIONS***

The proposed amendments are authorized by the *Vancouver Charter*.

\* \* \* \* \*

**APPENDIX A – Whistleblower Policy****Corporate Policy**

<b>POLICY TITLE</b>	Whistleblower Policy
<b>CATEGORY</b>	Council
<b>POLICY NUMBER</b>	COUN-010 (formerly ADMIN-002)
<b>POLICY OWNER</b>	Auditor General
<b>ACCESS</b>	Public

**PURPOSE**

The purpose of this policy is to set out guidelines for the reporting and investigation of allegations of serious wrongdoing, and to provide protection from retaliation to those who report serious wrongdoing in good faith. Reporting serious wrongdoing in good faith is also referred to as whistleblowing.

This policy does not address matters that are dealt with through existing procedures, established through collective agreements or other employee policies such as but not limited to, health and safety, respectful and harassment free workplace, misconduct (that does not constitute serious wrongdoing as defined in this policy), and discrimination on grounds protected under the Human Rights Code.

Nothing in this policy is meant to conflict with the City's obligation to its employees under its various collective agreements, employment contracts, or other City policies.

**SCOPE**

All City and Vancouver Board of Parks and Recreation employees.

This policy applies to City contractors, consultants and volunteers to the extent that it addresses how they may be investigated for serious wrongdoing.

This policy does not apply to allegations regarding the Mayor or City Councilors, which are to be referred to the Integrity Commissioner.

**DEFINITIONS**

**Employee:** Anyone employed by the City, including full-time, part-time, temporary, auxiliary or casual employees, unionized or exempt.

**Fraud:** Deception intended to result in financial or personal gain, including but not limited to, bribes, misappropriating funds, breach of trust, theft, misdirecting or misuse of funds or assets, manipulating

City accounting or audit records or destroying accounting or audit-related records except as otherwise permitted by the City policy.

**Good faith:** Based on reasonable belief/grounds, and not made with malicious intent, self-interest and/or in support of a political agenda.

**Retaliation:** Any action or threat of action directed at a person that does or would adversely affect them because they are or might be involved in a report or complaint under this policy. Retaliation also includes directing or counselling someone to commit a retaliatory act.

**Waste:** Mismanagement of City resources or assets in a willful, intentional or negligent manner, including mismanagement of City resources or assets contrary to a City policy or direction by Council.

**Whistleblower Program:** A program managed by the Auditor General's office and supported by the City Manager to receive concerns reported by City employees or members of the public regarding serious wrongdoing.

**Serious Wrongdoing:**

- Financial act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- Serious misuse or mismanagement of public funds or assets, including but not limited to fraud or waste;
- A conflict of interest that results or is likely to result, directly or indirectly, in profit, payment or compensation to the employee(s);
- Instructing or encouraging another employee to commit serious wrongdoing; and
- Deliberately concealing information relating to any of the above.

## 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 Employees 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 Employees and members of the public are encouraged to report serious wrongdoing.
- 1.4 Protection for reporting in good faith of serious wrongdoing applies in all cases regardless of the City policy or process under which the report was made.
- 1.5 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.
- 1.6 Any future amendments to this policy proposed to Council by either the Auditor General or the City Manager must be approved by both the Auditor General and City Manager.

### 2. ROLES & RESPONSIBILITIES

**Auditor General:** The Auditor General is responsible for:

- Establishing the Whistleblower Program to facilitate the reporting of serious wrongdoing;



- The preliminary assessment of all reports received including a determination of whether or not the alleged conduct could, on its face, constitute serious wrongdoing;
- Where required by law, or where the Auditor General considers it appropriate to do so, referring reports of allegations that do not, on their face, constitute serious wrongdoing to the City Manager for investigation and appropriate action;
- Informing persons who report allegations that do not, on their face, constitute serious wrongdoing of the appropriate City department to whom the allegations should be reported;
- Informing the City Manager of reports of serious wrongdoing in a timely manner;
- Investigating reports of serious wrongdoing alleged to have been committed by a City employee, in accordance with the process guide established for such investigations in agreement with the City Manager and Chief Human Resources Officer, or delegating such investigations to the City Manager;
- Investigating serious wrongdoing alleged to have been committed by anyone other than a City employee (such as a City contractor, consultant, or volunteer), or delegating such investigations to the City Manager;
- Maintaining oversight of procedural fairness of any investigations conducted into serious wrongdoing as per this policy;
- Where the serious wrongdoing alleged could materially affect the financial position of the City or the integrity of the City's system of internal controls, advising the City Manager and the Chief Financial Officer immediately;
- Where the serious wrongdoing alleged could constitute a criminal offence, where applicable, reporting the matter to the appropriate police agency; and
- In circumstances where it appears there may have been violations of other municipal, provincial or federal laws, advising the appropriate enforcement agency.

**City Manager:** The City Manager is responsible for:

- Taking reasonable steps to encourage employees and members of the public to report serious wrongdoing;
- Investigating, or designating responsibility to investigate, reports of serious wrongdoing as referred by the Auditor General, in accordance with the process guide established for such investigations in agreement with the City Manager and Chief Human Resources Officer;
- Reporting the results of investigations of serious wrongdoing to the Auditor General; and
- Reviewing and assessing any recommendations for corrective action made by the Auditor General and ensuring appropriate action is taken.

**Director of Legal Services and City Solicitor:** In the event an allegation of serious wrongdoing, breached confidentiality, or retaliation or reprisal, involves the Auditor General, the City Manager, a member of the Auditor General's staff, or a staff member of the City Manager's Office, the allegation will be brought forward to City Council, in-camera, by the Director of Legal Services. City Council will assign responsibility for the investigation and disposition of the matter, in consultation with the Director of Legal Services.

**General Managers/ Department Heads/ Managers/ Supervisors:** Any level of manager or supervisor receiving a report of serious wrongdoing from an employee or member of the public is to promptly forward it in a confidential manner to the Auditor General.

**City employees:**

- Reporting serious wrongdoing in good faith to their supervisor, manager, General Manager or through the Whistleblower Program; and
- Participating in investigations in good faith.

**3. REPORTING SERIOUS WRONGDOING**

- 3.1 City employees have a responsibility to report instances of serious wrongdoing in good faith.
- 3.2 Members of the public are encouraged to report instances of serious wrongdoing and may do so through the Whistleblower Program.
- 3.3 Anyone reporting serious wrongdoing may remain anonymous. However, in some cases, an investigation may not be possible unless the source of the information is identifiable. The Auditor General will make a preliminary determination as to whether a report made on an anonymous basis can be properly investigated. In doing so, they will consider all of the circumstances, including the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.
- 3.4 Employees who knowingly make false reports or make allegations of serious wrongdoing other than in good faith, may be subject to discipline up to and including dismissal as determined by the City Manager in consultation with the Chief Human Resources Officer.

**4. WHISTLEBLOWER PROTECTION AGAINST RETALIATION**

- 4.1 It is a violation of this policy to retaliate against another person for:
- making a report in good faith;
  - participating in an investigation;
  - supporting someone to make a report; or
  - carrying out their responsibilities under this policy.
- 4.2 Anyone who experiences retaliation as set out above can make a report under this policy by submitting a written report to the Auditor General who will refer the allegation to the City Manager or designate for investigation.
- 4.3 Anyone who reports serious wrongdoing in good faith, participates in an investigation, supports someone to make a report, or carries out responsibilities under this policy, is entitled to protection against retaliation. However, protection against retaliation cannot be effectively provided by the City to members of the public or employees who choose to keep their identity anonymous when making a report.
- 4.4 Where the City Manager or designate determines that retaliation occurred, appropriate corrective action and/or disciplinary action may be taken. Any acts of retaliation by an employee may result in discipline up to and including termination of employment.

**5. CONFIDENTIALITY**

- 5.1 Confidentiality in investigations is critical to maintaining their integrity. Confidentiality,

as described below, extends to all information provided orally or in writing, meetings, interviews, and investigation results/reports.

5.2 Persons who make reports of serious wrongdoing, those who are the subject of investigations, and persons who may be a witness in an investigation process are expected to keep confidential the subject matter of the report, the identities of other persons involved in the report, and any information they learn through the investigation process. However, this does not prevent them from obtaining advice or support from Union representatives and professional advisors (lawyers, doctors, counsellors, etc.).

5.3 The persons involved in or responsible for performing investigations into serious wrongdoing, are also expected to keep confidential all information collected in the course of an investigation and will limit disclosure of such information to that which is necessary to investigate the reports, and report out on the results of such investigations as well as any corrective recommendations or actions required.

5.4 There are limits to confidentiality within an investigation process. Disclosure of investigation-related information within the investigation process will be restricted to what must be disclosed to ensure a thorough, effective and complete investigation, or as otherwise required by law.

5.5 Breaches of confidentiality may be subject to legal action and/or, with respect to employees, disciplinary action up to and including termination of employment.

## **6. INVESTIGATIONS**

6.1 All reports of serious wrongdoing made in good faith will be assessed and investigated in accordance with the process guide established for such investigations by the Auditor General, the City Manager and Chief Human Resources Officer. However, allegations that are plainly without merit, or, where the circumstances are such that a meaningful investigation will not be possible, may not be investigated, at the discretion of the Auditor General.

6.2 Where an investigation is conducted, any person alleged to have engaged in serious wrongdoing will be advised of the allegations, and provided an opportunity to respond to the allegations made against them. Exceptions may be made where the person responsible for the investigation determines that such disclosure would be harmful to the person against whom the allegations are made.

## **7. DOCUMENT RETENTION AND REPORTING RESULTS**

7.1 Information collected and retained in the course of an investigation into serious wrongdoing shall be kept by the Auditor General in a confidential file separate from any employee's personnel file. Documentation which outlines disciplinary action shall be placed on an employee's personnel file by Human Resources.

7.2 Information collected in the course of an investigation into alleged serious wrongdoing may be disclosed if required by law, including release required in court proceedings, arbitration or other legal proceedings.

- 7.3 All investigations and reports are subject to applicable privacy legislation. Personal information shall be protected in accordance with the *Freedom of Information and Protection of Privacy Act*.
- 7.4 The report and supporting documents of any investigations into serious wrongdoing referred by the Auditor General and conducted by the City Manager or designate will be provided to the Auditor General for filing and retention.
- 7.5 If an investigation performed by the Auditor General determines that serious wrongdoing has occurred, the Auditor General will provide the investigation report to the City Manager, including recommendations for corrective action (excluding employee discipline).
- 7.6 If an investigation performed by the City Manager or designate determines that serious wrongdoing has occurred, the City Manager will provide the investigation report to the Auditor General and seek recommendations for corrective action (excluding employee discipline).
- 7.7 The City Manager will inform the Auditor General of all corrective action taken with respect to substantiated serious wrongdoing (excluding employee discipline).
- 7.8 On an annual basis, the Auditor General will submit a summary of reports of serious wrongdoing made under this policy and outcomes of subsequent investigations to City Council.

## REFERENCES AND RELATED POLICIES

ADMIN - 050                      Respect in the Workplace Policy  
AE – 028 – 01                    Code of Conduct

## APPROVAL AND REVIEW HISTORY

<b>Version 1 approved by:</b>	Departmental General Manager	5/15/2008
	Council	5/15/2008
<b>Version 2 approved by:</b>	Departmental General Manager	10/5/2017
	Council	10/31/2017
<b>Version 3 approved by:</b>	Auditor General	9/14/2023
	Council	10/17/2023

**Next review date:**        1/1/2025

**APPENDIX B – Draft By-law****BY-LAW NO. \_\_\_\_\_****A By-law to amend the Auditor General By-law No. 12816  
regarding miscellaneous amendments**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Auditor General By-law.
2. Council strikes out the Table of Contents and substitutes a new Table of Contents as set out in Appendix A attached to this by-law.
3. Council strikes the definition of “Code of Conduct” from section 1.2.
4. Council inserts a new subsection 3.4.1 as follows:

“3.4.1 The Auditor General is authorized to fulfill the responsibilities assigned to the Auditor General under the City’s policy entitled “Whistleblowing – Reporting, Investigation and Protection”, as amended or replaced from time to time (the “Whistleblower Policy”).”.
5. Council renumbers sections 3.16 through 3.19 as sections 3.17 through 3.20 and inserts a new section 3.16 as follows:

“3.16 Despite Sections 3.11 to 3.15, reporting concerning investigations of serious wrongdoing under the Whistleblower Policy shall be in accordance with that policy.”
6. Council strikes section 4.7 and replaces it as follows:

“4.7 Subject to Section 4.6, the persons required to maintain confidentiality under Section 4.6 will not communicate information to another person in respect of any matter described in Section 4.6 except as may be required,

  - (a) in connection with the administration of this By-law, including reports made by the Auditor General, or with any proceedings under this By-law,
  - (b) under the Freedom of Information and Protection of Privacy Act,
  - (c) under the *Criminal Code* (Canada),
  - (d) under any other applicable law; or
  - (e) in accordance with the Whistleblower Policy.”.
  7. Council strikes section 5.6 and replaces it as follows:

**“City policies apply to Office**

5.6 Subject to Section 5.7 below, all City by-laws and policies of general application to City staff apply to the office of the Auditor General.”.

8. Council strikes sections 6 and replaces it as follows:

**“SECTION 6  
RECORDS RETENTION**

**Independent management of records**

6.1 The Auditor General has the exclusive authority and responsibility to manage the Audit Records of the Office in an independent manner.

6.2 Nothing in this Section 6 will be construed to limit or interfere with the independence of the Office, including without limitation, the independent management and retention of Audit Records for which the Auditor General is responsible.

6.3 The Auditor General may establish any guidelines and policies necessary to the implementation of this Section 6, including without limitation the categorization and definition of the records which are to be classified as Audit Records (and therefore impliedly classified as Non-Audit Records).

**Record retention schedule for Office**

6.4 The Auditor General has the exclusive authority and responsibility to establish and maintain appropriate Audit Record retention schedules for the Audit Records of the Office in accordance with:

- (a) recognized professional auditing standards
- (b) applicable legal requirements (as advised by the City Solicitor) and
- (c) in consultation with the City Clerk and Chief Technology Officer as to the standards generally applied by the City.

6.5 The Auditor General may seek the provision of services, advice or assistance in the creation and implementation of policies and recommendation of retention schedules as required from the City Clerk, Chief Technology Officer, and City Solicitor.

**Record retention and disposition**

6.6 No Audit Record of the Office will be destroyed unless the retention period established for the Audit Record in accordance with Section 6.4 above has expired and no information hold is applied on the Audit Record.

**Non-Audit Records**

6.7 Subject to this Section 6, the Auditor General is responsible for the application

of the City’s general corporate records retention schedules to the Non-Audit Records of the Office, as appropriate.

6.8 A retention schedule set out in the City’s general records retention policies and schedules applies to the Non-Audit Records of the Office.

6.9 Any retention schedule containing an archival review designation for Non-Audit Records of the Office will be deemed to require review by the Auditor General.

**Reporting to Auditor General Committee on record retention schedules**

6.10 The Auditor General will include in the annual report to the Auditor General Committee the creation and any subsequent modification to the Auditor General’s record retention policies, guidelines, and schedules as well as all aspects of its integration with the City’s records retention systems for the Non-Audit Records.”.

9. Council renumber section 8 as section 7.

10. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this                    day of                    , 2023

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**APPENDIX A**

**TABLE OF CONTENTS**

**PREAMBLE**

**SECTION 1  
GENERAL**

- 1.1 Name of By-law**
- 1.2 Definitions**
- 1.3 Table of Contents**
- 1.4 Severability**

**SECTION 2  
AUDITOR GENERAL**

- 2.1 Independence and Accountability**
- 2.4 Selection Process**
- 2.6 Remuneration**
- 2.8 Term**

**SECTION 3  
MANDATE OF THE AUDITOR GENERAL**

- 3.1 Powers, Duties and Limitations of the Auditor General**
- 3.4 Responsibilities**
- 3.7 Additional Powers, Duties and Responsibilities**
- 3.9 Annual Audit Plan**
- 3.11 Annual Reports and Recommendations**
- 3.16 Peer Review**
- 3.19 Mandate Review**

**SECTION 4  
IMPLEMENTATION OF AUDITOR GENERAL MANDATE**

- 4.1 Duty to Furnish Information**
- 4.2 Access to Records**
- 4.4 No Waiver of Privilege**
- 4.5 Power to Examine on Oath**
- 4.6 Duty of Confidentiality**
- 4.8 *Freedom of Information and Protection of Privacy Act***

**SECTION 5  
OFFICE OF THE AUDITOR GENERAL**

- 5.1 Office**
- 5.3 Office Budget**
- 5.6 City Policies Apply to Office**
- 5.8 Office Staff**
- 5.12 External Audit**



**SECTION 6  
RECORDS RETENTION**

- 6.1 Independent Management of Records**
- 6.4 Records Retention Schedule for Office**
- 6.6 Record Retention and Disposition**
- 6.7 Non-Audit Records**
- 6.10 Reporting to Auditor General Committee on Record Retention Schedules**

**SECTION 7  
ENACTMENT**

- 7. Force and Effect**

**APPENDIX C – Redline Version Whistleblower Policy****TABLE OF CONTENTS****PREAMBLE****SECTION 1  
GENERAL**

- 1.1 Name of By-law
- 1.2 Definitions
- 1.3 Table of Contents
- 1.4 Severability

**SECTION 2  
AUDITOR GENERAL**

- 2.1 Independence and Accountability
- 2.4 Selection Process
- 2.6 Remuneration
- 2.8 Term

**SECTION 3  
MANDATE OF THE AUDITOR GENERAL**

- 3.1 Powers, Duties and Limitations of the Auditor General
- 3.4 Responsibilities
- 3.7 Additional Powers, Duties and Responsibilities
- 3.9 Annual Audit Plan
- 3.11 Annual Reports and Recommendations
- 3.16 Peer Review
- 3.198 Mandate Review

**SECTION 4  
IMPLEMENTATION OF AUDITOR GENERAL MANDATE**

- 4.1 Duty to Furnish Information
- 4.2 Access to Records
- 4.4 No Waiver of Privilege
- 4.5 Power to Examine on Oath
- 4.6 Duty of Confidentiality
- 4.8 *Freedom of Information and Protection of Privacy Act*

**SECTION 5  
OFFICE OF THE AUDITOR GENERAL**

- 5.1 Office
- 5.3 Office Budget
- 5.6 City **Corporate Policies** Apply to Office
- 5.8 Office Staff
- 5.12 External Audit

~~SECTION 6  
DISCLOSURE OF WRONGDOING AND RETALIATION/REPRISAL PROTECTION~~

~~6.1 Whistleblowing and Other Policies Apply, but Modified to Office~~

~~6.2 Application of Whistleblowing and Protection Process to Office~~

**SECTION 76  
RECORDS RETENTION**

**67.1 Independent Management of Records**

**67.4 Records Retention Schedule for Office**

**67.6 Record Retention and Disposition**

**67.7 Non-Audit Records**

**67.10 Reporting to Auditor General Committee on Record Retention Schedules**

**SECTION 78 ENACTMENT**

**78. Force and Effect**

## BY-LAW NO. 12816

### A By-law to Establish and Maintain an Independent Office of Auditor General

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts the following:

#### SECTION 1 GENERAL

##### Name of By-law

1.1 The name of this By-law, for citation, is the “Auditor General By-law”.

##### Definitions

1.2 In this By-law:

“Auditor General Committee” means the committee of Council created by Council pursuant to Section 161 of the Vancouver Charter to provide oversight to the Office of the Auditor General, and in any case where the Auditor General Committee has been disbanded or has less than 4 members of Council, and Council resolves to assume the duties of the Auditor General Committee, the “Auditor General Committee” is deemed to be Council meeting as a committee of the whole;

“Audit Record” means a record created by the Office of the Auditor General and classified as an Audit Record by the Auditor General;

“Board” means any of the Vancouver Police Board, Vancouver Public Library Board, or Vancouver Park Board;

“City-Controlled Corporation” means any entity owned or controlled by the City, including without limitation, Pacific National Exhibition, Vancouver Affordable Housing Agency Ltd., and Vancouver Economic Commission;

~~“Code of Conduct” means the policy adopted by Council entitled “Code of Conduct”;~~

“Non-Audit Record” means any record of the Office which is not classified by the Auditor General as an Audit Record;

“Office” or “Office of the Auditor General” means the Auditor General including all staff employed to report directly or indirectly to the Auditor General and, depending on the context, includes the physical premises, records and other appurtenances of the Office; and

“Recruitment Committee” means the committee of Council created by Council pursuant to Section 161 of the Vancouver Charter to recruit the Auditor General, and in any case where the Recruitment Committee has been disbanded or has less than 4 members of Council, and Council resolves to assume the duties of the Recruitment Committee, the “Recruitment Committee” is deemed to be Council meeting as a committee of the whole.

## **Table of Contents**

1.3 The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

### **Severability**

1.4 A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

## **SECTION 2 AUDITOR GENERAL**

### **Independence and accountability**

2.1 The Auditor General will carry out, in an independent manner, the duties and responsibilities of their office as set out in this By-law.

2.2 The Auditor General is accountable only to Council and, although an employee of the City, will not report to or be accountable to City staff.

2.3 All City staff, outside of the Office of the Auditor General, are required to respect and support the independence of the Auditor General and the staff of the Office of the Auditor General.

### **Selection process**

2.4 The selection process for the Auditor General will be conducted by the Recruitment Committee with the support of an external recruitment firm.

2.5 Appointment of the Auditor General will be recommended to Council by the Recruitment Committee.

### **Remuneration**

2.6 Remuneration for the Auditor General will be set by Council based on the remuneration and benefits provided by the City to its General Managers and Deputy City Managers, and the recommendations of the Recruitment Committee.

2.7 The remuneration for the Auditor General will be reviewed at least every 24 months by the Auditor General Committee.

### **Term**

2.8 The Auditor General will be appointed for a non-renewable fixed term of office of 7 years.

2.9 The term of office for the Auditor General may only be modified by a resolution of Council.

## **SECTION 3 MANDATE OF THE AUDITOR GENERAL**

## **Powers, duties and limitations of Auditor General**

3.1 The Auditor General is responsible for assisting Council in holding itself and City administrators accountable for the quality of stewardship over public funds and for achievement of value for money in city operations.

3.2 Despite Section 3.1, the responsibilities of the Auditor General do not include the matters described in Sections 230-232 of the *Vancouver Charter* for which the City's external auditor is responsible.

3.3 The authority of the Auditor General to exercise powers and perform duties under this By-law in relation to:

- (a) a Board, is limited to those powers and duties conferred by that Board on the Auditor General voluntarily,
- (b) a grant recipient, applies in respect of any grants received by the grant recipient directly or indirectly from the City, and pursuant to which there is a grant contract or other legal agreement which authorizes the City to audit the grant recipient.

## **Responsibilities**

3.4 The Auditor General is responsible for carrying out financial (excluding attest), compliance and performance audits of all programs, activities and functions of all City departments, the offices of the Mayor and members of Council, Boards and City-Controlled Corporations.

3.4.1 The Auditor General is authorized to fulfill the responsibilities assigned to the Auditor General under the City's policy entitled "Whistleblowing – Reporting, Investigation and Protection", as amended or replaced from time to time (the "Whistleblower Policy")."

3.5 Despite Section 3.4, the Auditor General may undertake financial (excluding attest), compliance and performance audits and provide recommendations to the applicable Board as well as the Auditor General Committee, but only upon the request of that Board.

3.6 All reports by the Auditor General on City-Controlled Corporations or Boards will be submitted first to that entity's board of directors or trustees prior to submitting the report to the Auditor General Committee.

## **Additional powers, duties and responsibilities**

3.7 The Auditor General will consider undertaking such other duties respecting audit matters as are recommended by Council from time to time but is not required to adopt any such recommendation.

3.8 The Auditor General will immediately report to Council any attempts at interference with the work of the Office of the Auditor General.

### **Annual audit plan**

3.9 The Auditor General will, on or before January 30 of each year (or within 90 days of appointment where the Auditor General is appointed less than 90 days prior to January 30) submit an annual audit plan to Council.

3.10 Only the Auditor general can alter the annual audit plan.

### **Annual reports and recommendations**

3.11 Subject to Sections 3.12 and 3.13, the Auditor General will report annually to Council on the activities and achievements of the Auditor General over the past year.

3.12 Despite Section 3.11, the Auditor General will submit the annual report to the Auditor General Committee for comment prior to submitting the report to Council.

3.13 Despite Section 3.11, the Auditor General will submit any report regarding a City-Controlled Corporation, Board, or grant recipient to the board of directors or trustees of that entity at least 7 days before submitting the report to Council.

3.14 The Office of the Auditor General will report directly to Council (and to the applicable Board or City-Controlled Corporation) on any investigations or inquiries conducted by the Auditor General.

3.15 Where any report by or under the auspices of the Auditor General makes recommendations, such recommendations will include, if feasible:

- (a) suggested City staff member to take responsibility for implementing the recommendations (eg. City Manager or General Manager);
- (b) timelines by which the recommendations should be implemented;
- (c) timelines by which the responsible City manager should report back to Council on progress in implementing the recommendations;
- (d) suggested methodologies for implementing the recommendations; and
- (e) metrics by which the implementation of the recommendations can be measured and tracked.

3.16 Despite Sections 3.11 to 3.15, reporting concerning investigations of serious wrongdoing under the Whistleblower Policy shall be in accordance with that policy.

### **Peer review**

3.17 The Auditor General will undergo an external peer review once every three years to ensure compliance with recognized professional auditing standards.

3.18 The results of the external peer review will be reported to Council through the Auditor General Committee.

## **Mandate review**

3.198 The Auditor General Committee may periodically review the mandate of the Auditor General and then recommend to Council adjustments to the mandate to reflect changing circumstances.

~~3.2049~~ A periodic review of a mandate will include consultation with the incumbent Auditor General, in order to reflect the Auditor General's experience, advice and input.

## **SECTION 4 IMPLEMENTATION OF AUDITOR GENERAL MANDATE**

### **Duty to furnish information**

4.1 Subject to Section 4.3, all City staff are required to, and all City-Controlled Corporations and Boards are requested to, give the Auditor General such information regarding their powers, duties, activities, organization, financial transactions and methods of business as the Auditor General believes to be necessary to perform the duties of the Office under this By-law.

### **Access to records**

4.2 Subject to Section 4.3, the Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the City, City-Controlled Corporations, Boards and grant recipients, as the case may be, that the Auditor General believes to be necessary to perform the duties of the Office under this By-law.

4.3 In the case of Boards and grant recipients, where required, the Auditor General must obtain legal consent for, or the legal right to, access the items listed in Section 4.2.

### **No waiver of privilege**

4.4 Despite Sections 4.1 and 4.2, where a disclosure to the Auditor General under Sections 4.1, 4.2 or 4.3 may constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege, the applicable staff member and Auditor General must consult with the City Solicitor before the information is provided to the Auditor General. The City Solicitor will then take such steps as are considered necessary or appropriate to make the information available to the Auditor General while protecting the privilege or obtaining Council's consent to the waiver of the privilege.

### **Power to request an examination on oath**

4.5 Where the Auditor General considers it necessary or advisable to examine any person under oath, the Auditor General may, in consultation with the City Solicitor, submit a request to do so to Council. If Council agrees to the request, and so resolves to do so, a barrister may then be appointed by the Council pursuant to Section 176 of the *Vancouver Charter*, and the barrister will then complete the investigation and report the results of same to Council and if appropriate, the Auditor General and City Solicitor.



## Duty of confidentiality

4.6 Subject always to the Freedom of Information and Protection of Privacy Act, and all other applicable laws, and in order to allow for the free and unencumbered provision of information to the Auditor General without fear of reprisal, the Auditor General and every person acting under the instructions of the Auditor General must treat as confidential all matters that come to their knowledge in the course of carrying out the mandate of the Auditor General under this By-law.

4.7 Subject to Section 4.6, the persons required to maintain confidentiality under Section 4.6 will not communicate information to another person in respect of any matter described in Section 4.6 except as may be required,

- (f) in connection with the administration of this By-law, including reports made by the Auditor General, or with any proceedings under this By-law, ~~or~~
- (g) under the Freedom of Information and Protection of Privacy Act,
- (h) under the *Criminal Code* (Canada), ~~or~~
- (i) under any other applicable law; or
- (j) in accordance with the Whistleblower Policy.

## Freedom of Information and Protection of Privacy Act

4.8 While this By-law does not take priority over, or supersede, the *Freedom of Information and Protection of Privacy Act*, the Auditor General and all staff working within the Office of the Auditor General will not disclose any records or information which are subject to confidentiality or privilege under this By-law except where required to do so by law under the *Freedom of Information and Protection of Privacy Act* or other applicable laws.

4.9 All third party requests for access to the records of the Office will be managed by the Information and Privacy Officer of the City, in consultation with the City Solicitor and Auditor General as prescribed by the City's *Freedom of Information and Protection of Privacy By-law*.

## SECTION 5 OFFICE OF THE AUDITOR GENERAL

### Office

5.1 The Auditor General is independent of the City administration, subject to the requirements of this By-law.

5.2 The Auditor General has full carriage and control of, and is fully responsible for, the conduct and accountability of the Office of the Auditor General and will manage in compliance with applicable laws as well as such policies of the City that are of general application and do not interfere with the independence of the Office of the Auditor General.

## Office Budget

5.3 The Auditor General is responsible for submitting an annual budget request to the Auditor General Committee which in turn is responsible for:

- (e) conducting such consultations and clarifications with the Auditor General as is considered appropriate by the Auditor General Committee;
- (f) submitting recommendations on the annual budget for the Auditor General to Council; and
- (g) providing regular updates to the City Manager and Director of Finance on the annual budget request process set out above (but for information purposes only) so as to facilitate the incorporation of such financial information into the general corporate budget development process managed by the Director of Finance.

5.4 The Auditor General is not required to submit their budget request to the City Manager or Director of Finance for review, approval or recommendation.

5.5 Subject to Sections 5.3 and 5.4, the Auditor General's budget request will generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used.

## City ~~corporate policies~~ apply to Office

5.6 Subject to Section 5.7 below, ~~all City bylaws and policies of general application to City staff apply to the office of the Auditor General the Auditor General is responsible for ensuring that the Office of the Auditor General complies with all corporate policies of general application to City staff, including without limitation:-~~

- ~~(a) Advertising (AG-010-01);~~
- ~~(b) Alcohol, Controlled Drugs, and Medications Policy (ADMIN-011);~~
- ~~(c) Breastfeeding in the Workplace (ADMIN-030);~~
- ~~(d) Business Meeting and Discretionary Expenses (ADMIN-013);~~
- ~~(e) Capital Budget Policy (ADMIN-005);~~
- ~~(f) Code of Conduct (AE-028-01);~~
- ~~(g) Community Relations – Intercultural and Race Relations (AG-001-01);~~
- ~~(h) Diversity on Advisory Bodies Policy (COUN-004);~~
- ~~(i) Ethical Purchasing Policy (AF-014-01)~~
- ~~(j) Financial Disclosure Act - Requirements (ADMIN-015);~~
- ~~(k) Financial Spending Authority (ADMIN-018);-~~

- ~~(l) — Human Rights Harassment (AE-002-05);~~
- ~~(m) — Media Relations (AG-009-01);~~
- ~~(n) — Occupational Health and Safety (ADMIN-021);~~
- ~~(o) — Operating Budget Policy (ADMIN-004);~~
- ~~(p) — Privacy Policy (ADMIN-029);~~
- ~~(q) — Procurement Policy (ADMIN-008);~~
- ~~(r) — Respectful Workplace (AE-002-06);~~
- ~~(s) — Social Media (AG-009-02);~~
- ~~(t) — Sponsorship Policy (COUN-029);~~
- ~~(u) — Travel (ADMIN-026);~~
- ~~(v) — Whistleblowing Reporting, Investigation and Protection (ADMIN-002); and~~
- ~~(w) — any amendments or replacements to the above, as well as any other City by laws or policies of general application to City employees adopted by Council, from time to time.~~

5.7 Despite Section 5.6 above, where the Auditor General considers a particular section of a policy does or might interfere with the Auditor General's ability to perform, in an independent manner, the functions assigned to the Office of Auditor General by this By-law, a submission on same must be made to the Auditor General Committee which will in turn submit its recommendations on the issue to Council for decision.

### **Office staff**

5.8 The Auditor General is responsible for the application of the City's employment-related policies to their staff with necessary modifications to reflect the independent nature of these functions.

5.9 The Auditor General will work with the City Manager, the General Manager of Human Resources, and the City Solicitor in areas where there is a staffing issue involving corporate responsibility or liability.

5.10 The Auditor General has the exclusive authority (on behalf of the City, as the employer) to appoint, promote, demote, suspend and dismiss all Auditor General staff, subject to the provisions of any City employment-related policies applicable to employees of the City.

5.11 Subject to Sections 5.8 and 5.9, the Auditor General has the exclusive authority, with respect to the Office of Auditor General to:

- (a) create the positions and compensation levels for Auditor General staff, within the Council-approved annual budget for the Office, and generally within the City's salary

structure, having regard for comparable compensation levels for City staff for purposes of internal equity, and

- (b) modify, delete, or add to those positions and modify compensation levels from time to time and at any time, as the Auditor General sees fit in order to better implement the mandate of the Office.

### External audit

5.12 The operations of the Office of the Auditor General will be included in the scope of the annual attest audit of the City, which is conducted by an external auditor appointed by and reporting to Council.

5.13 The Office will undergo an annual compliance audit by an external auditor appointed by and reporting to Council.

## ~~SECTION 6 DISCLOSURE OF WRONGDOING AND RETALIATION/REPRISAL PROTECTION~~

### ~~Whistleblowing and other policies apply, but modified to office~~

~~6.1 The City's employment-related policies, including Whistleblowing—Reporting, Investigation, and Protection, will apply to the Office of the Auditor General.~~

### ~~Application of whistleblowing and protection process to Office~~

~~6.2 The policy entitled “Whistleblowing—Reporting, Investigation, and Protection” is now deemed to apply to the Office of the Auditor General by making the following changes (but only when the policy is being applied to the Office):~~

- ~~(a) references to “City Manager” and “General Manager” are deemed to be to the “Auditor General”; and~~
- ~~(b) references to “Staff” are deemed to include staff of the Auditor General as well the Auditor General.~~

~~6.3 Where it is alleged that the Auditor General or their staff has committed serious misconduct as defined in the Whistleblowing policy, improperly breached confidentiality, or engaged in retaliation or reprisal, the City Solicitor may elect to appoint a third party investigator to investigate and report on the matter, but in any event the findings will be reported to City Council by the City Solicitor or third party investigator, as applicable.~~

## **SECTION 67**

### **RECORDS RETENTION**

#### **Independent management of records**

67.1 The Auditor General has the exclusive authority and responsibility to manage the Audit Records of the Office in an independent manner.

67.2 Nothing in this Section 67 will be construed to limit or interfere with the independence of the Office, including without limitation, the independent management and retention of Audit Records for which the Auditor General is responsible.

67.3 The Auditor General may establish any guidelines and policies necessary to the implementation of this Section 67, including without limitation the categorization and definition of the records which are to be classified as Audit Records (and therefore impliedly classified as Non-Audit Records).

#### **Record retention schedule for Office**

67.4 The Auditor General has the exclusive authority and responsibility to establish and maintain appropriate Audit Record retention schedules for the Audit Records of the Office in accordance with:

- (d) recognized professional auditing standards
- (e) applicable legal requirements (as advised by the City Solicitor) and
- (f) in consultation with the City Clerk and Chief Technology Officer as to the standards generally applied by the City.

67.5 The Auditor General may seek the provision of services, advice or assistance in the creation and implementation of policies and recommendation of retention schedules as required from the City Clerk, Chief Technology Officer, and City Solicitor.

#### **Record retention and disposition**

67.6 No Audit Record of the Office will be destroyed unless the retention period established for the Audit Record in accordance with Section 67.4 above has expired and no information hold is applied on the Audit Record.

#### **Non-Audit Records**

67.7 Subject to this Section 67, the Auditor General is responsible for the application of the City's general corporate records retention schedules to the Non-Audit Records of the Office, as appropriate.

67.8 A retention schedule set out in the City's general records retention policies and schedules applies to the Non-Audit Records of the Office.

67.9 Any retention schedule containing an archival review designation for Non-Audit Records of the Office will be deemed to require review by the Auditor General.

### **Reporting to Auditor General Committee on record retention schedules**

67.10 The Auditor General will include in the annual report to the Auditor General Committee the creation and any subsequent modification to the Auditor General's record retention policies, guidelines, and schedules as well as all aspects of its integration with the City's records retention systems for the Non-Audit Records.

## **SECTION 78 ENACTMENT**

### **Force and effect**

78. This By-law is to come into force and take effect on the date of its enactment.