

# ATTACHMENT B



<b>Section:</b>	<b>Personnel</b>	<b>07</b>
<b>Subsection:</b>	<b>Labour Relations – General</b>	<b>2660</b>
<b>Title:</b>	<b>Whistleblower</b>	<b>01</b>

## **PURPOSE**

The purpose of this policy is to establish a process that assists individuals to bring forward information, in good faith, about possible Wrongdoing without fear of reprisal.

## **POLICY STATEMENT**

The City encourages employees and elected officials to disclose Wrongdoing in accordance with this policy and without fear of reprisal for doing so in good faith. The City is committed to assessing and investigating Disclosures in an objective, impartial and timely manner in accordance with this policy.

## **DEFINITIONS**

**City:** means the City of Nanaimo.

**Disclosure:** a disclosure of Wrongdoing made by an individual in accordance with this policy.

**Designated Person:** the individual who receives a Disclosure, as set out in the **PROCEDURE** section. The Designated Person is responsible for ensuring the Disclosure is assessed and, in accordance with this policy, investigated.

**Wrongdoing:** means an act or omission that an individual reasonably believes to be:

1. A serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
2. An act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
3. A serious misuse of public funds or public assets;
4. Gross or systemic mismanagement; or
5. Knowingly directing or counselling a person to commit a Wrongdoing described in items (1) to (4) above.

## **SCOPE**

This policy applies to all City employees, as well as the Mayor and Councillors. In the interests of maintaining the integrity and reputation of the City of Nanaimo and all those who work to serve its citizens, all employees and elected officials must cooperate with any investigation by the City under this policy.

This policy does not cover matters for which there are other established processes for reporting, investigating or seeking redress, including:

1. Grievances under an existing collective agreement;
2. Disclosures that are more appropriately addressed under the Respectful Workplace policy, the Code of Conduct policy or any other employment-related policy of the City;
3. Reports of safety hazards or refusal of unsafe work under WorkSafe BC Regulations;
4. Privacy breaches that must be reported under City policy or by law; or
5. Litigation or other proceedings addressed through the Courts or administrative bodies established by statute.

## **RESPONSIBILITIES**

### **Employees**

- Disclose any real or suspected Wrongdoing as provided in the **SCOPE** and **PROCEDURE** sections of this policy.
- Respect the confidentiality of all matters related to a Disclosure, including when providing information related to the Disclosure of another individual. An individual who is considering making a Disclosure may, however, consult with or request advice from a union representative or a City supervisor in relation to the Disclosure.
- Fully cooperate with any investigation under this policy.

### **Designated Persons**

- Receive and handle Disclosures in confidence except as otherwise provided in this policy.
- Involve other Designated Persons when necessary to ensure the timely and appropriate handling of Disclosures.
- Consult the City's legal counsel as they consider necessary to properly administer this policy.
- Maintain accurate records of all steps taken in assessing or investigating a Disclosure, and ensure those records are safely kept where others cannot access them except as otherwise provided in this policy or as required or authorized by law.

### **Mayor, Councillors, the Chief Administrative Officer, Directors and Managers**

- Disclose any real or suspected Wrongdoing through the appropriate channels, as identified under the **SCOPE** and **PROCEDURE** sections of this policy.
- Foster an environment where individuals feel safe disclosing real or suspected Wrongdoing through the appropriate channels.
- Ensure that no retaliatory action is taken against either an individual who files a Disclosure, a Designated Person who receives the Disclosure, or individuals who take part in an assessment or investigation of a Disclosure.
- When required, support and fully cooperate with any investigation under this policy.

## **PROCEDURE**

### **Designated Persons**

The following are designated as the Designated Person, as applicable:

1. A Disclosure made by a City employee must be made to the Chief Administrative Officer, unless the Disclosure directly involves the Chief Administrative Officer, in which case the Disclosure must be made to the Mayor.
2. A Disclosure by an elected official must be made to the Mayor or the Chief Administrative Officer.

The Designated Person receiving a Disclosure has exclusive authority to determine if and when a Disclosure warrants investigation under this policy, and to select an investigator if one is required. The Designated person must not investigate Disclosures that primarily relate to a dispute between an employee and his or her supervisor, regarding the employee's employment.

The Designated Person is the City's point of contact for any investigator hired to investigate a Disclosure. The Designated Person cannot be compelled to share information with other City employees or elected officials, except to provide a timeline for the completion of an investigation and to provide a timeline for the production of the investigator's report.

### **Making A Disclosure**

In order to ensure that Disclosures are accurately captured, given the significance of a Disclosure to all involved, all Disclosures must be made in writing and must contain the following information, to the extent known:

1. A description of the Wrongdoing;
2. The name of the person alleged:
  - a. To have committed the Wrongdoing, or
  - b. To be about to commit the Wrongdoing;
3. The date of the Wrongdoing;
4. Whether information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to that enactment;
5. Whether the Wrongdoing has already been disclosed under this policy or under an enactment of British Columbia or Canada; and
6. If (5) above applies, the name of the person to whom the Disclosure was made and the response, if any, that has been received.

An anonymous Disclosure may be made under this policy.

### **Duty of Good Faith**

A Disclosure must not be made in bad faith, including by making a malicious, or wilfully false or misleading, Disclosure. Further, anyone who participates in an investigation must do so in good faith.

### **Process After A Disclosure**

The Designated Person receiving a Disclosure will assess whether to investigate the matters disclosed in it. The Designated Person may decline to investigate, or may stop an investigation into, a Disclosure if the Designated Person is of the opinion that:

1. The Disclosure does not provide adequate details about the Wrongdoing, or does not disclose a Wrongdoing;
2. The Disclosure is frivolous or vexatious, or has been made in bad faith;

3. The Disclosure has not been made by a person entitled to disclose under this policy;
4. The Disclosure does not deal with a Wrongdoing;
5. The investigation of the Disclosure would serve no useful purpose or could not reasonably be conducted because of the length of time that has elapsed between the date when the subject matter of the Disclosure arose and the date the Disclosure was made;
6. The Disclosure relates solely to a public policy decision or to one of the matters identified in the **SCOPE** section of this policy; or
7. The Disclosure is being, or already has been, appropriately investigated.

Further, the Designated Person may suspend or stop an investigation if the Designated Person:

1. Is of the opinion that the investigation may compromise another investigation;
2. Becomes aware that the alleged Wrongdoing that is being investigated is also being investigated for the possible prosecution of an offence; or
3. Is of the opinion that an offence under any enactment of British Columbia or Canada may have been committed.

If the Designated Person does not investigate, or if an investigation is suspended or stopped, the Designated Person must notify the individual who made the Disclosure, unless doing so could compromise an investigation of any kind. This requirement does not apply if the Disclosure was made anonymously.

The Designated Person may consult, on a confidential basis, with senior-level staff, Human Resources staff and/or the City's legal counsel to determine an appropriate course of action to properly address a Disclosure.

In deciding whether to investigate a Disclosure, or to suspend or stop an investigation, the Designated Person will, in an expeditious, fair and proportionate manner as appropriate in the circumstances, assess the Disclosure and all information received in relation to it.

## **Outcomes**

The Designated Person is responsible for ensuring that investigation outcomes are reported to the following:

1. The Chief Administrative Officer and Director of Human Resources, if the Disclosure involves employee Wrongdoing;
2. The Mayor, if the Disclosure involves a Councillor or the Chief Administrative Officer;
3. Council, excluding the Mayor, and the Chief Administrative Officer if the Disclosure involves the Mayor.

The reportable outcomes may include:

1. Findings of fact, including whether a Wrongdoing was committed;
2. Whether a determination was made to refer the issue to the police or another entity;
3. Potential employment consequences for any individual involved in the Wrongdoing; and
4. Potential policy changes that should be considered to protect the City against similar Wrongdoing in the future.

The person or persons receiving the report from the Designated Person will be responsible for determining the City's course of action, in consultation with the City's legal counsel if required. The City may take disciplinary action, up to and including termination, against any individual who is found to have either:

1. Engaged in Wrongdoing, as determined after an investigation;
2. Made a Disclosure in bad faith; or
3. Taken a measure of reprisal, or threatened reprisal, against an individual in relation to the individual's disclosure or participation in an investigation.

For certainty, an employee who makes a Disclosure respecting their own Wrongdoing is not exempt from disciplinary action, although the self-reporting will be considered as a mitigating factor in determining any appropriate disciplinary action in the circumstances.

### **Reprisals**

A person must not take any of the following measures of reprisal against an individual, or counsel or direct that any of the following measures of reprisal be taken against an individual, solely because the individual has, in good faith, sought advice about making a Disclosure, made a Disclosure or cooperated with an investigation under this policy:

1. A disciplinary measure;
2. A demotion;
3. A termination of employment;
4. Any measure that adversely affects the employee's employment or working conditions;
5. In the case of an elected official, a censure by the City's Mayor and Council; or
6. A threat to take any of the measures referred to in (1) to (5) above.

### **Confidentiality**

All information collected during the course of an assessment or an investigation (including the identities of those who have made a Disclosure and those who are involved in the reporting, assessment and investigation processes) will be treated as confidential except as is necessary to properly conduct the assessment or investigation, to make a referral as set out in this policy, to report investigation outcomes, to take corrective action, or in accordance with or required by law including the *Freedom of Information and Protection of Privacy Act*.

### **RELATED DOCUMENTS**

Code of Conduct policy  
City of Nanaimo/CUPE Local 401 collective agreement  
City of Nanaimo/IAFF Local 905 collective agreement

### **PAST REVISIONS**

This policy replaces the Reporting Serious Misconduct policy.

Date: 201X-XXX-XX Approved by: