

## APPROVAL REPORT

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# Whistleblower Protection Policy

### ISSUE

The City of Saskatoon has adopted core values that guides how employees conduct themselves when they make choices and decisions in the workplace: courage, integrity, respect, safety, and trust. Fundamental to these values are the ability for City employees to speak up when there are perceived deliberate acts of wrongdoing by their colleagues or managers. As such, how can the City encourage and offer protection to those employees who, in the public interest, want to raise legitimate concerns about such behaviour?

### RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the Draft Whistleblower Protection Policy, contained in Appendix 2 of this report, be approved.

### BACKGROUND

The framework for the protection of whistleblowers first arose in 2016. More specifically, at the July 21, 2016, City Council meeting, Councillor Donauer initiated an inquiry that directed:

Would the City Solicitor's Office please report on the possible development of a whistleblower policy for City of Saskatoon employees. The policy would encourage employees to come forward with information in their possession concerning any activity or behaviour that they deem is inappropriate. The policy would also provide adequate safeguards to ensure that no employee experiences any form of retaliation when bringing forward information in good faith. Please address oversight and transparency of the process. Could City Solicitor's Office please check legislation and policies in other jurisdictions to ensure that our policy, when implemented, is considered a best practice in the country.

In response, the Office of the City Solicitor tabled a report at the April 24, 2017, City Council meeting. The [report](#) offered a review of the legislative framework in Saskatchewan and Canada and summarized approaches used in other Canadian jurisdictions. After considering that report, City Council resolved:

That the City Solicitor be directed to draft a Whistleblower Policy.

At the May 28, 2018, Regular Business meeting of City Council, the City Solicitor tabled a report that included a draft Whistleblower Policy for Council's consideration (the report can be viewed [here](#). Scroll to item 9.11.1 to view the full report).

At the conclusion of its deliberations on this matter, City Council resolved:

That the report of the City Solicitor dated May 28, 2018, be referred to the Administration to engage civic staff and consult employee organizations regarding the proposed policy, and report back to Council or the appropriate committee.

As a result of that direction, the Administration, led by the Human Resources Department, consulted with staff and employee organizations about the contents of the proposed whistleblower protection policy. The delay in reporting back to Council on this issue is threefold:

- Ensuring adequate consultation with employees and employee organizations;
- Restructuring of the Human Resources Department, who have taken the lead on this file; and
- Emergence of the COVID-19 pandemic and the internal resource requirements needed to manage the workplace transitions.

With respect to the stakeholder engagement, drafts of the proposed policy were shared with all City of Saskatoon Directors, the City Solicitor's Office, and all employee organizations (i.e., associations and unions) soliciting feedback. Human Resources followed up with all of the impacted employee organizations to address their concerns and incorporate feedback prior to developing the final draft of the policy. Overall, most of the feedback was positive, noting a few concerns that were given consideration in the final draft of the policy.

## **DISCUSSION/ANALYSIS**

A substantive body of literature and organizational practices have arisen in recent years on the topic of whistleblowing. Generally, some common principles that have emerged from the literature and practices that are fundamental to an effective whistleblowing regime are:

- What is the scope of coverage?
- Are there fair burdens of proof?
- Do potential whistleblowers have confidence in the institutional/ organizational structures?
- Does the system provide adequate protections for whistleblowers?

As described in previous reports to City Council on this topic, cities have taken varied approaches with respect to whistleblowing. Appendix 1 augments these previous reports and summarizes the approaches used in selected jurisdictions. Although there are some similarities, many jurisdictions have tailored their approaches to the legal, institutional, and cultural norms under which they operate. The most consistent approach is to ensure a whistleblowing framework is managed by an independent body, such as a City Auditor.

## **Whistleblower Protection Policy**

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The varying approaches are also summarized in a Government of Saskatchewan publication called, “Guide to Implementing Whistleblowing in Saskatchewan Municipalities.”<sup>1</sup> The intent of this guide is to describe current legislative protection and frameworks in Saskatchewan which may be useful when developing a whistleblower bylaw or policy for staff.

As a result, the draft policy in Appendix 2 is modelled on the principles enunciated in the literature, approaches used in other jurisdictions, the guide produced by Saskatchewan, and most importantly, consultation with internal stakeholders. This means that the policy sets out Council’s general principles based-approach to the issue and then delegates the implementation and process management to the City Manager and the City Internal Auditor, once that person is appointed.

The proposed policy differs from the previous version tabled with City Council in the following ways:

- First, the name of the policy is changed to a Whistleblower Protection Policy. The fundamental point of any whistleblowing policy is to establish a system so that potential whistleblowers have adequate protections to come forward so the title of the policy reflects that intent.
- Second, and given the first point, it prohibits retaliation against employees when an employee has made a disclosure of wrongdoing.
- Third, the policy obligates all employees with supervisory or management responsibilities to ensure that an employee is not subject to reprisal.
- Fourth, the policy includes the structures and a process that will be in place to protect whistleblowers. To that end, the policy enables the creation of a “Whistleblower Protection Program” overseen by the City Internal Auditor. The intent is to provide an independent, objective, and confidential channel for employees and service providers to report suspected wrongdoing. All reports emerging from the process are subject to an appropriate investigation and resolution.

Although the proposed policy is broad in its scope, there are some limitations that should be noted. Specifically, the proposed policy does not, nor should not, address situations that involve:

- personal or personnel issues (e.g.: workplace bullying and harassment);
- a dispute between the employee and the organization (e.g., disagreeing with corporate processes or a dispute regarding vacation time); or
- situations that are reflective of weak management practices, such as a poor supervisor.

These types of issues are properly addressed through other workplace policies, human resource processes, and collective bargaining agreements.

<sup>1</sup> See <https://www.saskatchewan.ca/government/municipal-administration/tools-guides-and-resources/whistleblower-protection-guide> for details.

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It is important to note that the proposed policy does not apply to Members of City Council, directors and employees of the City's controlled corporations (i.e., SaskTel Centre, TCU Place, and Remai Modern) and directors and employees of the City's statutory boards (i.e., Saskatoon Board of Police Commission and the Saskatoon Public Library Board). Allegations of wrongdoing directed at Members of Council are addressed via its Code of Conduct and the City's Integrity Commissioner. The controlled corporations and statutory boards are independent entities who adopt their own policies. However, the City does encourage these bodies to adopt similar policies where appropriate.

It is the intent that the City Internal Auditor's Office will oversee the proposed policy and program. Because the City Internal Auditor will be appointed by Council at a later date, interim measures will be enacted to encourage employees to submit perceived situations of wrongdoing in accordance with the policy. The interim intake process permits a prospective whistleblower to make a complaint to any supervisor, manager, director, or general manager. The enactment of the policy provides the necessary protections for potential whistleblowers to report on a violation of the policy.

To summarize, establishing a whistleblowing framework is the first step. For whistleblowing to work, according to the literature, the culture of an organization needs to support and enable the systems, structures and behaviors through which it can work effectively. The City's organizational values, Code of Conduct, and other related workplace policy measures do this and are complimentary and foundational to the proposed Whistleblower Protection Policy. However, the policy fills a necessary gap by ensuring anonymity for prospective whistleblowers and offering independence from management in making complaints.

## **FINANCIAL IMPLICATIONS**

Approval of this policy will generate some additional costs related to the implementation management of the program. The Administration has executed a "Request for Information" (RFI) through SaskTenders to gather best practice information from various vendors in order to establish an effective whistleblower protection program. The responses to this RFI are to contain the potential costs of operating the program. Based on minimal preliminary research, program costs are estimated to be in a range of \$10,000 - \$20,000 per year to manage. The program is anticipated to be funded by the Internal Audit Program operating budget.

## **OTHER IMPLICATIONS**

The approval of the proposed policy has the potential to generate additional legal and privacy implications. As with any policy that deals with labour-management issues, there are legal implications that can emerge from the policy and its supporting program. The draft policy has undergone review by both the Office of the City Solicitor and employee organizations. Thus, the policy has been drafted in such a way to minimize any potential legal implications resulting from its enactment.

## **Whistleblower Protection Policy**

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The Administration notes that draft policy and its supporting program could generate various privacy implications. However, the program will be reviewed under the organization's Privacy Impact Assessment tool for the purpose of identifying privacy concerns and implementing protective controls.

### **NEXT STEPS**

Subject to the approval of the policy, the Administration will refine the procedures and produce supporting communication documents that explains the policy and working of the whistleblower protection program. The effective date of the proposed policy is September 28, 2020, and an interim program will be launched to support it. A more permanent program will be developed once the City Internal Auditor is appointed by City Council.

### **APPENDICES**

1. Whistleblower Protection Approaches in Selected Jurisdictions
2. Draft Whistleblower Protection Policy

#### **Report Approvals**

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