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## Inquiry – Councillor R. Donauer (July 21, 2016) Whistle Blower Policy

### Recommendation

That the Governance and Priorities Committee recommend to City Council that the City Solicitor be directed to draft a Whistleblower Policy.

### Topic and Purpose

The purpose of this report is to provide preliminary information to Committee respecting the possible development of a Whistleblower Policy for City of Saskatoon employees.

### Report Highlights

1. Currently, there is limited whistleblower protection for municipal employees.
2. The Province has identified options for offering whistleblower protection in Saskatchewan for municipal employees.
3. Other Canadian jurisdictions have developed whistleblower bylaws and policies to offer protection to municipal employees.
4. The City of Saskatoon can have a Whistleblower Policy that offers protection similar to other jurisdictions.

### Strategic Goals

This report supports the strategic goals of Continuous Improvement and Quality of Life as it promotes transparency of municipal government and supports City Council in providing good governance to the citizens of Saskatoon.

### Background

At the meeting of City Council held on July 21, 2016, Councillor R. Donauer made the following inquiry:

Would City Solicitor's Office please report on the possible development of a whistle blower 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 information forward 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.

## Report

### Whistleblower Protection in Saskatchewan

Currently, in Saskatchewan, there is very limited whistleblower protection available to municipal employees. Unlike civil service employees, municipal employees are not afforded protection under *The Public Interest Disclosure Act*, which provides a mechanism for the disclosure of wrongdoing in the public service. On the contrary, apart from the very limited protection afforded to municipal employees in the *Criminal Code* and *The Saskatchewan Employment Act*, Saskatchewan municipalities are left to adopt their own policies or bylaws to encourage and regulate the disclosure of wrongdoing in the workplace.

Section 425.1 of the *Criminal Code* was added in 2004. It makes it an offence for an employer, or anyone acting on behalf of an employer, to threaten or retaliate against an employee who is about to provide information or who has already provided information concerning illegal conduct of his or her employer. To invoke the benefit of protection afforded by the *Criminal Code*, disclosure of the wrongdoing must be made to law enforcement officials.

*The Saskatchewan Employment Act*, section 2-42 [previously section 74 of *The Labour Standards Act*] prohibits employers from taking discriminatory action against an employee:

- (a) who reports or proposes to report activity likely to result in an offence to a lawful authority. “Lawful authority” means police or other law enforcement agency and any person directly or indirectly responsible for supervising an employee; or
- (b) who has testified or may be called to testify in an investigation.

There has been minimal judicial consideration of either section 425.1 of the *Criminal Code* or section 2-42, which was introduced in 2013.

### Provincial Involvement

During consultations on *The Municipal Conflict of Interest Amendment Act, 2015* (Bill 186), the provincial government was asked to consider providing whistleblower protection to municipal employees. Initial consultations occurred with representatives from the Saskatchewan Association of Rural Municipalities, the Rural Municipal Administrators’ Association of Saskatchewan and the Urban Municipal Administrators Association of Saskatchewan, and a Consultation Paper was developed. In September, 2016, the City of Saskatoon and the City of Regina were invited to participate in further consultations. To that end, a representative from the City Solicitor’s Office participated

in a conference call wherein various options were discussed, along with the differing challenges faced by urban versus rural municipalities in this area. Neither a consensus nor decision was achieved during the conference call. However, a representative of this Office will continue to participate in any ongoing discussions.

### **Bylaws and Policies Across Canada**

Other jurisdictions across Canada have recognized a need to provide whistleblower protection to municipal employees. Such protection is in the form of bylaws or policies. Similar to Saskatchewan, the respective provincial public interest disclosure legislation of the various provinces does not extend protection to municipal employees. Apart from New Brunswick, it does not appear that other jurisdictions even have the protection afforded by section 2-42 of *The Saskatchewan Employment Act*. In this respect, Saskatchewan municipalities are afforded some better protection than other jurisdictions outside Saskatchewan.

Attachment 1 provides a comparison of the municipal whistleblower protection found in six jurisdictions across Canada.

It appears from a review of these Bylaws and Policies that these jurisdictions have relied on their general bylaw making and corporate powers in establishing whistleblower protection and reporting schemes. Absent explicit legislative authority, the City would have to rely on these similar general powers for establishing similar protections and reporting schemes.

### **The City of Saskatoon**

The City of Saskatoon has many employee related policies, addressing a variety of employee behaviours, such as the use of alcohol and drugs and acceptable computer use. Implementation of a Whistleblower Policy, as opposed to a bylaw would be consistent with the City's existing approach to the management of employee behaviour.

Key to any Whistleblower Policy will be workable definitions of wrongdoing or misconduct worthy of investigation and retaliation or reprisal. Within this, consideration as to the scope of the Policy and the type of conduct to be addressed by the Policy will be key. In addition, frameworks within which the reporting of inappropriate conduct and within which investigations and disciplinary action shall occur require further examination. Who will be responsible to investigate complaints and administer such a policy in Saskatoon? What types of complaints shall be considered under a Whistleblower Policy as opposed to existing avenues of review? The answers vary depending on jurisdiction. Our Office will, if directed by City Council, further consider the most appropriate approach for the City.

### **Options to the Recommendation**

Rather than direct the drafting and implementation of a Whistleblower Policy, Committee could choose to continue to operate under existing mechanisms with protections afforded under the *Criminal Code* and *The Saskatchewan Employment Act*.

In either event, our Office will continue to participate in any further discussions initiated by the Province in respect of municipal employee whistleblower protection.

### **Communication Plan**

In the event a Whistleblower Policy is introduced, the best approach to rolling out the Policy internally will be discussed with Human Resources. Communications will be consulted about what public message, if any, in respect of the City's commitment to transparency and good governance may be shared.

### **Policy Implications**

Directions to proceed will result in the development of a new City of Saskatoon Policy.

### **Financial Implications**

It is unknown, what if any financial implications might arise. This is likely to depend on the mechanisms for administration and investigation of complaints identified in the Policy.

### **Privacy Implications**

Statements as to the protection of privacy and access to information will need to be considered and included in the Policy.

### **Public Notice**

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

### **Attachment**

1. Municipal Whistleblower Protection – Canadian Jurisdictions.

### **Report Approval**

Written by: Christine G. Bogad, Solicitor, Director of Administrative Law  
Approved by: Patricia Warwick, City Solicitor

| City              | Bylaw or Policy   | Jurisdiction   | Wrongdoing Definition  | Reporting Wrongdoing   | Consequences of Wrongdoing/Retaliation  | Anonymous Complaints/Confidentiality  | Retaliation/Reprisal   |
|-------------------|---|--|--|--|---|---|--|
| City of Vancouver | <p>Policy No. AE-028-02 [2008]</p> <p>Whistleblowing-Reporting, Investigation and Protection</p> <p>Policy intended to supplement existing procedures, not override existing procedures under City policies, collective agreements or legislation</p> | <p>No specific reference</p> <p>Purpose to set our guidelines for reporting and investigation of serious misconduct where no existing procedures</p> | <p>"Serious misconduct" defined by a list of examples</p> <ul style="list-style-type: none"> <li>- Not exhaustive, but includes:                             <ul style="list-style-type: none"> <li>- serious violations of City policies</li> <li>- manipulation of City resources, (ie) fraud, theft, embezzling funds</li> <li>- misappropriation of funds</li> <li>- manipulating City accounts or audit records</li> <li>- actions causing serious harm to persons, public safety, property or the environment</li> <li>- actions exposing City to liability or financial loss</li> <li>- failure to report or rectify actions that may negatively impact City reputation or confidence in City</li> <li>- deliberately concealing the information respecting the above</li> </ul> </li> <li>- All reporting to be done in good faith to invoke protection of policy</li> </ul> | <p>Serious misconduct must be reported in writing</p> <p>General Manager, Human Resources is the "designate" under the Policy responsible for administration of the Policy</p> <p>Reports under the Policy may be redirected to other procedures, at the discretion of the designate, (ie) collective agreement, human rights or occupational health and safety, the appropriate policy agency</p> <p>Rules of procedural fairness apply to the process</p> <p>Investigation may be conducted by designate, assigned to management, an investigation team or a third party</p> | <p>May include discipline up to and including dismissal</p> <p>Disciplinary action may be grieved under the applicable collective agreement</p> | <p>Complaints may be reported on an anonymous basis, at the discretion of the designate</p> <p>All reasonable efforts will be made to maintain confidentiality – information to be shared on a "need to know" basis</p> <p>Personal information to be protected under privacy legislation</p> <p>Breaches of confidentiality constitute serious misconduct under the Policy</p> | <p>Retaliation strictly prohibited, and means against an employee for good faith reporting of serious misconduct or because that person has acted as a witness or participated in an investigation in good faith</p> <p>Retaliation reported to designate, in writing</p> <p>All reporting subject to protection from retaliation whether the complaint is redirected or not</p> |

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| City of Toronto | <p>The Toronto Public Service Bylaw (in force December 31, 2015)</p> <p>Chapter 192, Public Service, Toronto Municipal Code</p> <p>Policy intended to address matters of public interest for which are no existing procedures</p> <p>Not override existing procedures under collective agreements or City policies, (ie) health and safety, human rights and anti-harassment</p> | <p>No specific reference</p> <p>Purpose to facilitate disclosure of wrongdoing contrary to public interest and protect from reprisal, employees who report in good faith</p> | <p>"Wrongdoing" means serious actions that are contrary to the public interest and includes:</p> <ul style="list-style-type: none"> <li>-fraud</li> <li>-theft of City assets</li> <li>-waste, (ie) mismanagement of City resources or assets in contravention of City policy or Council direction</li> <li>-violations of City conflict of interest provisions</li> <li>-breach of public trust</li> </ul> <p>All reporting to be done in good faith to invoke protection of policy</p> | <p>Method to disclose wrongdoing not specified</p> <p>Reports of wrongdoing may be made to managers, division heads or the Auditor General's Office</p> <p>The Auditor General is responsible for general administration of the Policy</p> <p>The Auditor General's Office responsibilities include:</p> <ul style="list-style-type: none"> <li>-investigating or referring responsibility to the City Manager or designate</li> <li>-referring allegations that do not constitute wrongdoing to appropriate City officials or Accountability Officer for appropriate action</li> </ul> <p>Rules of procedural fairness apply to the process</p> | <p>May include discipline up to and including dismissal as determined by the City Manager, in consultation with the City Solicitor and the Executive Director of Human Resources</p> <p>Disciplinary action may be grieved under the applicable collective agreement</p> | <p>Complaints may be reported on an anonymous basis, however, reprisal protection not guaranteed where cannot confirm identity</p> <p>All reasonable efforts will be made to maintain confidentiality – information to be shared on a "need to know" basis</p> <p>Breaches of confidentiality subject to legal action or disciplinary action up to and including dismissal</p> <p>Free unrestricted access to City records, employees and premises within scope of investigation</p> | <p>"Reprisal" means any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or cooperating in an investigation into alleged wrongdoing, and includes:</p> <ul style="list-style-type: none"> <li>-disciplinary or other punitive measures that adversely affect working conditions</li> <li>-demotion, suspension or termination of the employee</li> <li>-intimidation or harassment of the employee</li> </ul> <p>Reprisal reported to Executive Director of HR, City Manager or Auditor General and investigated by Auditor General</p> |

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| City of Calgary | <p>Policy No. CC026</p> <p>Whistleblower Policy</p> <p>Effective Date: May 28, 2007</p> | <p>No specific reference</p> <p>Intent of Policy to provide overarching guidance to augment existing corporate policies and establish additional mechanisms to ensure consistent, systemic and corporate wide processes in place</p> | <p>"Wrongdoing" means harmful or inappropriate conduct, and includes:</p> <ul style="list-style-type: none"> <li>-theft or fraudulent activity (misappropriation or misuse of funds)</li> <li>-breach of the code of conduct</li> <li>-malfeasance as defined in the Labour Relations Policy</li> </ul> <p>"Waste" refers to misuse, and/or inefficient use of City of Calgary resources</p> <p>"Matters of Public Concern" means danger to public health or safety and abuse of authority</p> <p>All reporting to be done in good faith to invoke protection of policy</p> <p>The Whistleblower Program is not designed to address activism or challenges to the appropriateness of Council policy decisions</p> | <p>Allegations of waste or potential wrongdoing to be reported as per the City of Calgary's Administration Policy</p> <p>Where an employee fears reprisals or the nature of the allegation precludes reporting within the administration, concerns can be reported to the City Auditor under this Policy</p> <p>The Auditor's Office is responsible for general administration of the Policy</p> <p>Method to disclose wrongdoing not specified</p> <p>Reports under the Policy may be redirected where not within mandate of Whistleblower Program, (ie) appropriate police agency or Integrity Commissioner</p> <p>Rules of procedural fairness apply</p> | <p>May include discipline up to and including dismissal</p> <p>Disciplinary action to be taken by management in conformance with the City of Calgary Labour Relations Policy and applicable provisions of any collective agreement</p> <p>City will make all reasonable effort, including court ordered restitution to pursue the recovery of losses</p> | <p>Complaints may be reported on an anonymous basis, however, reprisal protection not guaranteed where cannot confirm identity</p> <p>Reporting channels include an anonymous hotline</p> <p>Reports of retaliation to be made to Auditor's Office</p> <p>All reasonable efforts will be made to maintain confidentiality – information to be shared on a "need to know" basis</p> <p>All whistleblower investigations subject to privacy legislation</p> | <p>"Reporter" protection provided where has knowledge of activity considered as waste or wrongdoing and reports activity in good faith</p> <p>Reasonable efforts made to maintain confidentiality of the reporter</p> <p>"Retaliation" or "reprisal" not specifically defined</p> |



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| City of St. John's | <p>Whistleblower Protection Bylaw</p> <p>Bylaw No. 1552</p> <p>Passed February 27, 2012</p> | <p>General reference to the powers vested in the City under the <i>City of St. John's Act</i>, RSNL 1990, c. C-17</p> <p>Purpose of the Bylaw to:</p> <ul style="list-style-type: none"> <li>-facilitate disclosure and investigation of significant and serious matters in relation to City employees that is potentially unlawful, dangerous to public or injurious to public interest</li> <li>-protect persons who make disclosures</li> </ul> | <p>"Wrongdoing" means:</p> <ul style="list-style-type: none"> <li>-act or omission constituting an offence under legislation, including a municipal bylaw</li> <li>-act or omission that creates substantial and specific danger to life, health or safety of persons, or to environment</li> <li>-gross mismanagement of public funds or assets</li> <li>-knowingly directing or counselling a violation as described above</li> </ul> <p>All reporting to be done in good faith to invoke protection of Bylaw</p> | <p>Disclosure must be made in writing to the City Manager who is also responsible for investigations</p> <p>Obligation to report does not relieve of obligation to disclose under any other Act or regulation</p> <p>Rules of procedural fairness and natural justice are specifically ensured</p> <p>Investigator may not investigate or cease an investigation where:</p> <ul style="list-style-type: none"> <li>-subject matter more appropriately dealt with through other avenue</li> <li>-disclosure is frivolous or vexatious</li> <li>-has been delay in disclosure</li> <li>-disclosure relates to balanced and informed decision making process on public policy or operational issue</li> <li>-inadequate particulars provided</li> </ul> | <p>Any person who contravenes the Bylaw is guilty of an offence and liable on summary conviction to a fine as provided for in the <i>City of St. John's Act</i></p> <p>In addition to the Bylaw penalty, persons in contravention of the Bylaw are also subject to disciplinary action, up to and including termination of employment</p> | <p>Whether complaints may be made anonymously not specified, but name of person making disclosure not required as part of reporting</p> <p>Bylaw does not authorize disclosure of:</p> <ul style="list-style-type: none"> <li>- information protected by privacy legislation</li> <li>-information subject to restriction by or under other legislation, provincial or federal</li> <li>-information protected by solicitor-client privilege</li> </ul> <p>Persons reporting disclosure are required to take reasonable precautions to ensure only information required is disclosed</p> | <p>"Reprisal" not specifically defined, but protection afforded where in good faith:</p> <ul style="list-style-type: none"> <li>-sought advice about making disclosure</li> <li>-made a disclosure</li> <li>-cooperated in investigation under Bylaw</li> </ul> |



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| City of Edmonton | Administrative Directive – Fraud & Whistleblower Protection<br><br>Approved: January 19, 2017 | No specific reference<br><br>Purpose of the Directive to provide procedures for the prevention, detection, reporting and investigation of suspected fraud, and for resolving complaints of retaliation<br><br>Separate reporting Procedures for Fraud and Whistleblower Protection accompany the Directive | "Fraud" means an act committed by an individual who, by deceit, falsehood, or other fraudulent means, defrauds or attempts to defraud the City of any property, money or valuable security or any service, involving, but not limited to the use of a dishonest act or omission in an attempt to gain some improper personal benefit or advantage, but can also include the abuse of authority, assigned or entrusted upon an individual by the City, to achieve an improper end<br><br>"Fraud" includes:<br>-theft<br>-bribery, corruption, embezzlement<br>-forgery or alteration<br>-misappropriation<br>-improper handling or reporting of money transactions<br>-violation of public trust or duty<br>-misuse of position for personal gain | All suspected incidents of fraud to be reported orally or in writing (may be anonymous) to:<br>-supervisor<br>-Deputy City Manager<br>-City Manager<br>-City Auditor<br>-Director, Corporate Security<br>-Manager, HR<br>-City's fraud and misconduct hotline<br><br>City Auditor responsible for investigation and administration of Directive<br><br>All reporting to be done in good faith to invoke protection of Bylaw<br><br>Reports of conduct that do not constitute fraud but indicates inappropriate behaviour to be forwarded to the City Manager for appropriate action<br><br>Fraud or other criminal activity to be reported to police agency | May include discipline up to and including termination<br><br>City will make all reasonable effort, including court ordered restitution to pursue the recovery of losses | Complaints to be made in writing within six months<br><br>Retaliation complaints to City Manager who will assign an Independent Reviewer to investigate<br><br>Independent Reviewer (IR) means a Deputy City Manager assigned to review a retaliation complaint, who is not involved in any aspect of the complaint<br><br>Appeals may be made to the City Manager within 30 days<br><br>Details and results of investigations to be kept confidential – information to be shared on a "need to know" basis | "Retaliation" means an oral or written reprimand, suspension, termination, loss of advancement opportunities, change in duties, reduction in pay, change in reporting structure, change in work location, harassment, threats, coercion, interference or intimidation directed at an employee who in good faith makes a report, or participates in an investigation, proceeding, or hearing with respect to a suspected fraud, violation of any City Policy, directive, procedure or any other rule or expectation respecting the conduct of employees |

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| City of Hamilton | <p>Whistleblower Bylaw</p> <p>Bylaw No. 09-227 (in force May 11, 2010)</p> <p>Purpose of Bylaw to maintain and enhance public confidence in City and employees by providing for: -disclosure of serious wrongdoing re City operations by employees -protect employees from reprisals for making disclosures respecting conduct of supervisory and management employees and members of Council</p> | <p>Recitals identify sections 8, 9, and 10 of <i>The Municipal Act</i>, S.O. 2001, c. 25 which describe the City's general authority to pass bylaws, including bylaws respecting the accountability and transparency of the City and its operations, the financial management and public assets of the City, the economic, social and environmental well-being of the City and the protection of persons and property</p> | <p>"Serious wrongdoing" means:</p> <ul style="list-style-type: none"> <li>-contravention of <i>Criminal Code</i> or other legislation, including a bylaw</li> <li>-misappropriation or misuse of City funds or assets</li> <li>-contravention of Employee Code of Conduct that likely to result in profit, payment or compensation</li> <li>-substantial and specific danger or harm to life, health or safety of person</li> <li>-substantial and specific danger or harm to the environment</li> <li>-a reprisal</li> </ul> | <p>Method to disclose wrongdoing not specified</p> <p>Reports of wrongdoing may be made to supervisor/manager, department head or the Director of Audit Services</p> <p>Complainants must identify themselves</p> <p>Director of Audit Services responsible for investigation (or delegation of investigation) and administration of Bylaw</p> <p>All reporting to be done in good faith to invoke protection of Bylaw</p> <p>"Good faith" means an act which is not done trivially, frivolously or vexatiously</p> <p>Disclosures of serious wrongdoing may be redirected to other processes in the discretion of the Director of Audit Services</p> | <p>Bylaw does not impair rights of employee under any law, term or condition of employment or applicable collective agreement</p> <p>Employee protection under Bylaw in addition to any whistleblower or non-reprisal protection of federal or provincial statute</p> <p>May include discipline up to and including dismissal</p> <p>Failure of member of Council to comply with Bylaw may result in complaint, inquiry and penalty under Integrity Commissioner Bylaw</p> | <p>Complainants must identify themselves</p> <p>Bylaw does not permit disregard for legislative obligations respecting the access to or privacy of information</p> | <p>"Reprisal" means the following taken against an employee for making a qualifying disclosure:</p> <ul style="list-style-type: none"> <li>-dismissal, suspension, demotion, discipline, harassment of an employee</li> <li>-denial of a benefit to employee</li> <li>-any 1disadvantage to employee</li> <li>-threat to take any of above noted action</li> </ul> <p>Employees reporting reprisals to make a disclosure of serious wrongdoing</p> |