

DECISION/DIRECTION NOTE

Title: Fraud Policy

Date Prepared: December 4, 2019

Report To: Committee of the Whole

Councillor and Role: Councillor Dave Lane - Finance and Administration

Ward: N/A

Decision/Direction Required: Approval of a Fraud Policy.

Discussion – Background and Current Status:

As a result of recommendations from the City Internal Auditor and City's External Auditor, the City committed to developing a comprehensive Fraud Policy (2019), including an anonymous fraud hotline (2020).

This policy incorporates best practices and provides consistent processes for reporting and investigating any suspected act of fraud. It will also ensure the confidentiality of individuals reporting fraud or involved in fraud investigations to the fullest extent possible and will allow anonymous reporting. In addition, the policy includes protections from reprisals for employees who report any suspected fraud in good faith.

Employees who reasonably believe that fraud has occurred will have a duty to notify their manager, senior management, the Office of the City Auditor and/or the fraud hotline (once operational). Other individuals may report suspected acts of fraud via the fraud hotline or directly to the Office of the Internal Auditor. The hotline is expected to be operational in late 2020.

Key Considerations/Implications:

1. **Budget/Financial Implications:** There are not expected to be any net financial changes as a result of the policy.
2. **Partners or Other Stakeholders:** There may be certain circumstances where fraud investigations are referred to third parties and/or law enforcement.
3. **Alignment with Strategic Directions/Adopted Plans:** This policy aligns with the "Sustainable City" strategic direction and is included as an initiative in the related goal (Goal S1 – Be financially responsible and accountable).

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4. Legal or Policy Implications: Fraud investigations may be referred to law enforcement. The Office of the City Solicitor has reviewed and approved the policy.
5. Privacy Implications: Any personal information will be managed in accordance with the City's Privacy Management Policy.
6. Engagement and Communications Considerations: The Office of the City Internal Auditor is working with the Marketing and Office Services Division regarding communications activities for staff and the general public.
7. Human Resource Implications: The policy will be implemented with existing human resources.
8. Procurement Implications: There may be potential procurement implications in the implementation of the hotline.
9. Information Technology Implications: There may be potential IT implications in the implementation of the hotline.
10. Other Implications: Not applicable.

Recommendation: It is recommended that the Council approve the Fraud Policy.

Prepared by/Date: Trina Caines, Policy Analyst / December 4, 2019

Reviewed by/Date: Derek Coffey, DCM, Finance and Administration / December 4, 2019

Approved by/Date: Kevin Breen, City Manager; Elaine Henley, City Clerk, CPC Co-Chair; Roshni Antony, Manager - HR Advisory Services, CPC Co-Chair / December 4, 2019

Attachments:

Fraud Policy (draft)

DRAFT – For Discussion Only

City of St. John’s Corporate and Operational Policy Manual

Policy Title: Fraud Policy	Policy #: 01-01-09 (to be assigned)
Last Revision Date: N/A	Policy Section: Organization > Administration
Policy Sponsor: City Manager	

1. Policy Statement

The purpose of this Policy is to:

- (i) safeguard the assets, funds, and information of the City of St. John’s from fraudulent activity;
- (ii) ensure consistent processes are in place for the detection, reporting, and investigation of any act or suspected act of Fraud;
- (iii) support the City in preventing future Fraud;
- (iv) protect from Reprisal, to the fullest extent possible, Employees who in good faith report suspected Fraud; and
- (v) pursue every reasonable effort to recover any losses resulting from fraudulent activity.

2. Definitions

“**Allegation**” means any verbal or written allegation received by the Office of the City Internal Auditor related to suspected Fraud.

“**Complainant**” means any person making an Allegation.

“**Contractor**” means an individual or company hired to work on behalf of the City of St. John’s for a term of service and who is not considered to be an Employee.

“**Employee**” means any person employed by the City of St. John’s as a permanent, term, part-time, casual, contract, seasonal, temporary, or student worker.

“External Investigator” means an independent, qualified, third party hired to investigate an Allegation.

“Fraud” means an act by a person who, by deceit, falsehood, or other fraudulent means defrauds the City of any property, money, valuable security, or any service, including, but not limited to:

- a) falsification or improper alteration of records or documents;
- b) unauthorized and/or inappropriate use of City resources;
- c) any person who is in a conflict of interest and intentionally fails to declare;
- d) theft, misappropriation, or other fraudulent use of City funds or property;
- e) any type of collusion with vendors;
- f) intention to deceive by the suppression of truth or the suggestion of what is false;
- g) misrepresentation of information; and
- h) any similar or related activity.

“Fraud Hotline” means the reporting system through which any person may anonymously report instances of Fraud by Employees or others.

“Reprisal” means any measure taken or threatened against a person as a result of making or being suspected of making an Allegation or participating in or being suspected of participating in an investigation.

“Respondent” means a person who is the subject of an Allegation.

“Senior Management” means City Manager, City Clerk, City Solicitor, City Internal Auditor, all Deputy City Managers, and all Directors.

3. Policy Requirements

3.1 Fraud Reporting

- a) Any Employee who reasonably believes that Fraud has occurred has a duty to notify their manager, Senior Management, the Office of the City Internal Auditor, and/or the Fraud Hotline. Employees who report suspected Fraud in good faith shall be protected from Reprisal.

- b) Any other person who is aware that suspected Fraud may have occurred may make an Allegation via the Fraud Hotline or directly to the Office of the City Internal Auditor.
- c) Any person may report suspected Fraud anonymously.
- d) Any person suspected of fraudulent activity shall not be confronted prior to the commencement of any investigation, unless the Allegations received are considered to be urgent (e.g., threat of violence, physical harm, or business interruption).

3.2 Confidentiality

- a) The identity of persons involved in an investigation, including the identity of a person alleging Fraud and the identity of a person alleged to have committed Fraud, shall be protected to the fullest extent possible.
- b) The Office of the City Internal Auditor, Members of Council, and/or Employees aware of or participating in a Fraud investigation shall treat all information received confidentially. Investigation information shall not be disclosed or discussed with anyone other than those who have a legitimate need to know and such disclosures shall be restricted to what must be disclosed to ensure a thorough, effective, and complete investigation or as otherwise required by law.

3.3 Fraud Investigation

- a) All Allegations received shall be appropriately investigated if there are reasonable grounds to believe Fraud has occurred.
- b) Allegations shall not be investigated if the City Internal Auditor, using their discretion, is of the opinion that:
 - i. the Allegation does not provide adequate particulars about the Fraud to properly conduct an investigation;
 - ii. so much time has elapsed between the date when the subject matter of the Allegation arose and the date when the Allegation was made that investigating it would not serve a useful purpose; and/or
 - iii. there is another valid reason for not investigating the disclosure.
- c) Where, in the opinion of the City Internal Auditor, the Allegation has no reasonable prospect of being substantiated, the City Internal Auditor may dismiss the Allegation. For formal, written Allegations by an

identified Complainant, the Complainant shall be provided with notice of the dismissal.

- d) On receipt of an Allegation of Fraud, the City Internal Auditor shall take immediate action to prevent the theft, alteration, or destruction of relevant evidence, including any records. The evidence shall be adequately secured by management Employees when requested by the City Internal Auditor.
- e) The City Internal Auditor shall advise the appropriate managers and/or departments of the investigation, including, but not limited to the Manager, Corporate Risk and Recovery.
- f) The City Internal Auditor shall coordinate the investigation with the Department of Human Resources and/or the Office of the City Solicitor where an Allegation involves an Employee.
- g) The City Internal Auditor may delegate responsibility for the investigation of suspected Fraud to appropriate departmental management depending on the nature and scope of the suspected Fraud. For delegated investigations, departmental management shall periodically report on the status of any ongoing investigation of alleged wrongdoing to the City Internal Auditor and shall report the outcome of the investigation to the City Internal Auditor.
- h) If the Allegation is being made against the City Internal Auditor or a member of the City Internal Auditor's office, the Allegation may be filed with the Director of Human Resources.
- i) The Respondent shall be provided an opportunity to respond to an Allegation as part of the investigation.
- j) The Office of the City Internal Auditor shall conduct investigations in accordance with best practices.
- k) The Office of the City Internal Auditor may make recommendations to the City Manager in order to minimize future Fraud risk.
- l) Decisions to prosecute or refer investigation results to the Royal Newfoundland Constabulary or other regulatory agencies for independent investigation shall be made via a consultative process among the City Internal Auditor, City Manager, City Solicitor, and the Director of Human Resources.

3.4 Reprisal Protection

- a) No person shall take a Reprisal against an Employee because the Employee:

- i. has sought information or advice about making a disclosure about Fraud;
 - ii. has made a disclosure about Fraud in good faith;
 - iii. has acted in compliance with the Fraud policy;
 - iv. has initiated or co-operated in an investigation or other process related to a Fraud-related Allegation;
 - v. has appeared as a witness, given evidence, or participated in any proceeding relating to a Fraud-related Allegation, or is required to do so;
 - vi. has alleged or reported a Reprisal; or
 - vii. is suspected of any of the above actions.
- b) Examples of Reprisal may include, but are not limited to:
- i. disciplinary measures;
 - ii. demotion of the Employee;
 - iii. suspension of the Employee;
 - iv. termination of the Employee;
 - v. intimidation or harassment of the Employee;
 - vi. any punitive measure that adversely affects the employment or working conditions of the Employee; and/or
 - vii. directing or counselling someone to commit a Reprisal.
- c) An Employee who believes that they are the subject of a Reprisal following an Allegation may notify the Office of the City Internal Auditor.
- d) Where a manager is informed or becomes aware of possible Reprisals against an Employee as a result of an Allegation under this policy, the manager shall inform the Office of the City Internal Auditor.
- e) The Office of the City Internal Auditor shall investigate any instances of Reprisal reported to them.
- f) The City shall protect and support Employees who report in good faith any suspected Fraud. The City Manager, in consultation with the Director of Human Resources and the City Solicitor, shall determine and take appropriate action to stop, reverse, or remedy a Reprisal against an Employee.

3.5 Special Investigations

For any Allegation made against a Member of Council or Senior Management regarding Fraud, breaching confidentiality, or committing a Reprisal, the City Internal Auditor, in consultation with the City Solicitor,

shall conduct the initial review. Where in their opinion, or their designate(s), the Allegation has no reasonable prospect of being substantiated, they may dismiss the Allegation and provide notice of the dismissal to the Complainant. Otherwise, they shall engage an External Investigator to investigate.

3.6 Office of the City Internal Auditor's Access to Information

Within the scope of an investigation, the Office of the City Internal Auditor shall have:

- a) free and unrestricted access to all City records, Employees, and premises whether owned or rented; and
- b) the authority to examine, copy, or remove all or any portion of the contents of electronic or hard copy files, desks, cabinets, and other City property without prior knowledge or consent of any person who might use or have custody of any such items.

4. Application

This policy applies to (i) all Members of Council; (ii) all City Employees and volunteers, and (iii) all Contractors, sub-contractors, agents, intermediaries, suppliers, agencies, and commissions over which Council has the authority to require City policies be followed.

5. Responsibilities

5.1 The Office of the City Internal Auditor is responsible for:

- a) implementing this policy;
- b) ensuring standard operating procedures are established for investigating, monitoring, and resolving all Allegations received;
- c) operating the Fraud Hotline;
- d) reviewing and investigating Allegations of Fraud, as well as any Allegations of related Reprisals;
- e) securing any evidence related to an Allegation;

- f) upon conclusion of a Fraud investigation, providing recommendations to the City Manager to address any underlying causes and to correct any internal control deficiencies;
- g) referring Allegations that do not constitute Fraud to the appropriate authorities for appropriate action;
- h) monitoring and reviewing policy compliance; and
- i) reporting annually to the Audit Standing Committee information related to Fraud Allegations and investigations conducted during the year, as deemed appropriate.

5.2 All Members of Council and all Employees are responsible for:

- a) complying with this policy;
- b) cooperating with the Office of the City Internal Auditor or designates; the City Manager or designates; other involved Divisions; and/or law enforcement or regulatory agencies during the course of an investigation;
- c) refraining from discussing matters related to Fraud with anyone other than their manager/Senior Management and/or persons assigned to investigate the matter; and
- d) completing any training related to this policy as directed by the Office of the City Internal Auditor.

5.3 All managers who supervise staff are responsible for, in addition to the duties in Section 5.2:

- a) reporting any suspected Fraud reported to them by their Employees to the Office of the City Internal Auditor;
- b) establishing and maintaining a system of internal controls to detect and prevent Fraud;
- c) securing any evidence related to an Allegation, as directed by the City Internal Auditor;
- d) being familiar with the types of Fraud that might occur within their area of responsibility and be alert for any indicators of such conduct;
- e) reviewing any recommendations made by the Office of the City Internal Auditor and ensuring risks are sufficiently mitigated;
- f) ensuring that Employees under their supervision are protected from Reprisals resulting from any aspect of the Fraud policy;

- g) ensuring that Employees under their supervision complete all training related to this policy, as directed by the Office of the City Internal Auditor;
- h) supporting the Office of the City Internal Auditor, any other City divisions, and/or any law enforcement or regulatory agencies in the detection, disclosure, and investigation of Fraud.

5.4 All Senior Management are responsible for, in addition to the duties in sections 5.2 and 5.3:

- a) ensuring this policy is communicated to all Employees in their respective departments/divisions.

6. Approval

- Policy Sponsor: City Manager
- Policy Writer: Policy Analyst
- Date of Approval from
 - Corporate Policy Committee: October 31, 2019
 - Senior Executive Committee:
 - Committee of the Whole:
- Date of Approval from Council:

7. Monitoring and Contravention

The Office of the City Internal Auditor shall monitor the application of this policy.

Any contravention of this policy shall be reported to the Office of the City Internal Auditor, Department of Human Resources, the Office of the City Solicitor, and/or the City Manager for further investigation and appropriate action, which may include, but is not limited to legal action and discipline, up to and including dismissal. This includes, but is not limited to, any substantiated:

- a) Fraud;
- b) Reprisal;
- c) false and/or bad faith Allegations;

- d) false and/or bad faith statements during an investigation; and/or
- e) breach of confidentiality related to the policy.

8. Review Date

Initial Review: 3 years, Subsequent Reviews: 5 years

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