

From: j.johnson@lebanonil.org
Sent: Wednesday, August 25, 2021 2:55 PM
To: mmcginley@sandbergphoenix.com; mayor@lebanonil.org
Subject: Fwd: Long's review of, and comments on, proposed "Policy on Suspected Misconduct"
Attachments: Policy on Suspected Misconduct (with Long's seven comments)(01-11-2021).docx

Good afternoon!

Sorry, I didn't get this over to you yesterday. This is the fraud policy I was talking about Monday night.

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Sent: Thursday, July 29, 2021 11:45 AM
To: 'Mayor Wright' <mayor@lebanonil.org>
Cc: 'j.johnson@lebanonil.org' <j.johnson@lebanonil.org>
Subject: FW: Long's review of, and comments on, proposed "Policy on Suspected Misconduct"

This is the Policy that I was talking about yesterday. There are questions that have to be answered on the Audit for the GATA that we had to answer no to last year. Jen Johnson and I were trying to get in place the policies that would allow us to answer yes on the GATA audit for this year. Please see attached draft that did not go forward.

Thanks,
Michele

Michele Davis
City Accountant

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From: John Long
Sent: Monday, January 11, 2021 1:39 PM
To: clerk@lebanonil.org
Cc: accountant@lebanonil.org; Mayor <mayor@lebanonil.org>
Subject: Long's review of, and comments on, proposed "Policy on Suspected Misconduct"

Luanne:

This is in response to your emails to me on December 30, 2020, and December 9, 2020, concerning the proposed "Policy on Suspected Misconduct" that Alderperson Jenn Johnson had supplied to the city. Rich had also sent me a copy on November 16, 2020.

Attached is a copy of the proposed "Policy on Suspected Misconduct" that I have reviewed, and in which I have made seven comments on the text.

I thought that the text of the proposed "Policy on Suspected Misconduct" read well. My comments pose questions, the answers to which should clarify the meaning of the text at various points.

When I receive the answers to those questions, I will draft a final version of the "Policy on Suspected Misconduct" for inclusion in the *City of Lebanon Personnel Policy* as an attachment.

JohnLong

ATTACHMENT 3 – POLICY ON SUSPECTED MISCONDUCT

Introduction

This policy communicates the actions to be taken for suspected misconduct committed, encountered, or observed by employees and volunteers.

Like all municipalities, the City of Lebanon faces many risks associated with fraud, abuse, and other forms of misconduct. The impact of these acts collectively referred to as misconduct throughout this policy, may include, but not be limited to:

- Financial losses and liabilities.
- Loss of current and future revenue.
- Negative publicity and damage to the City's good public image.
- Loss of employees and difficulty in attracting new personnel.
- Deterioration of employee morale.
- Harm to relationships with citizens, vendors, bankers, and subcontractors.
- Litigation and related costs of investigations, etc.

Our City is committed to establishing and maintaining a work environment of the highest ethical standards. Achievement of this goal requires the cooperation and assistance of every employee and volunteer at all levels within the City.

Definitions

For purposes of this policy, misconduct includes, but is not limited to:

1. Actions that violate the City's Code of Conduct (and any underlying policies) or any of the accounting and financial policies.
2. Fraud (see below).
3. Forgery or alteration of checks, bank drafts, documents or other records (including electronic records).
4. Destruction, alteration, mutilation, or concealment of any document or record with the intent to obstruct or influence an investigation, or potential investigation, carried out by a department or agency of the federal government or by the City in connection with this policy.
5. Disclosure to any external party of proprietary information or confidential personal information obtained in connection with employment with or service to the City.

Commented [JL1]: The previous Attachment 3 to the Personnel Policy has been deleted, thus leaving that slot open for the insertion of the "Policy on Suspected Misconduct" into the Personnel Policy. Would the City Council prefer to identify the "Policy of Suspected Misconduct" as Attachment 3 or as a new Attachment 8 that is to be added to the existing Attachments 1 through 7?

Commented [JL2]: What precisely is the "City's Code of Conduct"? Does this refer to all of the Personnel Policy, part of the Personnel Policy, or any other written standards of conduct? If so, we should exactly what comprises the "City's Code of Conduct."

6. Unauthorized personal or other inappropriate (non-business) use of equipment, assets, services, personnel, or other resources.
7. Acts that violate federal, state, or local laws or regulations.
8. Accepting or seeking anything of material value from contractors, vendors, or persons providing goods or services to the City.
9. Impropriety of the handling or reporting of money in financial transactions.
10. Failure to report known instances of misconduct in accordance with the reporting responsibilities described herein (including tolerance by supervisory employees of misconduct of subordinates).

Fraud is further defined to include, but not be limited to:

- Theft, embezzlement, or other misappropriation of assets (including assets of or intended for the City, as well as those of our citizens, subcontractors, vendors, contractors, suppliers, and others with whom the City has a business relationship).
- Intentional misstatements in the City's records, including intentional misstatements of accounting records or financial statements.
- Authorizing or receiving payment for goods not received or services not performed.
- Authorizing or receiving payments for hours not worked.
- Forgery or alteration of documents, including but not limited to checks, timesheets, contracts, purchase orders, receiving reports.

The City of Lebanon prohibits each of the preceding acts of misconduct on the part of employees, officers, volunteers, and others responsible for carrying out the City's activities.

Reporting Responsibilities

All employees, officers, and volunteers are responsible for immediately reporting suspected misconduct to their Department Head, Mayor or Alderperson. When Department Heads have received a report of suspected misconduct, they must immediately report such acts to the Mayor or Alderperson.

Whistleblower Protection

The City will consider any reprisal against a reporting individual an act of misconduct subject to disciplinary procedures. A "reporting individual" is one who, in good faith, reported a suspected act of misconduct in accordance with this policy, or provided to a law enforcement officer any truthful information relating to the commission or possible commission of a federal offense or any other possible violation of the City's Code of Conduct.

Investigative Responsibilities

Due to the sensitive nature of suspected misconduct, Department Heads should not, under any circumstances, perform any investigative procedures.

The Mayor and/or Alderpersons have the primary responsibility for investigating suspected misconduct involving employees below the Mayor. The ~~XXXXXX~~ shall provide a summary of all investigative work to the Mayor.

Commented [JL3]: What official or employee should "provide a summary of all investigative work to the Mayor"? Will the identity of this person vary, depending on the department in which the employee to be investigated works?

Investigation into suspected misconduct will be performed without regard to the suspected individual's position, length of service, or relationship with the City.

In fulfilling its investigative responsibilities, the Mayor shall have the authority to seek the advice and/or contract for the services of outside firms, including but not limited to law firms, CPA firms, forensic accountants and investigators, etc.

The Mayor shall have free and unrestricted access to all City's records and premises, whether owned or rented, at all times. They shall also have the authority to examine, copy, and remove all or any portion of the contents (in paper or electronic form) of filing cabinets, storage facilities, desks, credenzas and computers without prior knowledge or consent of any individual who might use or have custody of any such items or facilities when it is within the scope of an investigation into suspected misconduct or related follow-up procedures.

The existence, the status, or results of investigations into suspected misconduct shall not be disclosed or discussed with any individual other than those with a legitimate need to know in order to perform their duties and fulfill their responsibilities effectively.

Protection of Records – Federal Matters

The City of Lebanon prohibits the knowing destruction, alteration, mutilation, or concealment of any record, document, or tangible object with the intent to obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States government, or in relation to or contemplation of any such matter or case.

Violations of this policy will be considered violations of the City's Code of Ethics and subject to the investigative, reporting, and disclosure procedures described earlier in this Policy on Suspected Misconduct.

Commented [JL4]: What is the City's Code of Ethics, and where may it be found in writing?

Disciplinary Action

Based on the results of investigations into allegations of misconduct, disciplinary action may be taken against violators. Disciplinary action shall be coordinated with appropriate representatives from the [????]. The seriousness of misconduct will be considered in determining appropriate disciplinary action, which may include:

- Reprimand
- Probation
- Suspension
- Demotion
- Termination
- Reimbursement of losses or damages
- Referral for criminal prosecution or civil action

This listing of possible disciplinary actions is for information purposes only and does not bind the City to follow any particular policy or procedure.

Confidentiality

The Department Heads, Mayor and Alderpersons will treat all information received confidentially. Any employee who suspects dishonest or fraudulent activity will notify the Department Head or Mayor immediately and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraudulent act (see Reporting Procedures section above).

Great care must be taken in the investigation of suspected improprieties or irregularities so as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way. Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct and to protect the City from potential civil liability.

An employee who discovers or suspects fraudulent activity may remain anonymous. All inquiries concerning the activity under investigation from the suspected individual(s), his or her attorney or representative(s), or any other inquirer should be directed to the Mayor or legal counsel. No information concerning the status of an investigation will be given out. The proper response to any inquiry is "I am not at liberty to discuss this matter." Under no circumstances should any reference be made to "the allegation," "the crime," "the fraud," "the forgery," "the misappropriation," or any other specific reference.

Commented [JL5]: Is this blank intended to refer to the various union locals that exist among the city's employees? If so, we should name the union locals specifically.

The reporting individual should be informed of the following:

1. Do not contact the suspected individual in an effort to determine facts or demand restitution.
2. Do not discuss the case, facts, suspicions, or allegations with anyone unless specifically asked to do so by the Mayor or legal counsel.

Disclosure to Outside Parties

Allegations of and information related to allegations of suspected misconduct shall not be disclosed to third parties except under the provisions described in this policy (such as disclosure to outside investigators hired by the City in an investigation).

However, all known frauds involving the Mayor, or members of the Council, as well as all material frauds involving employees below the senior management level, shall be disclosed by the Accountant to the City's external auditors.

The City will disclose, in a timely manner, in writing to Federal awarding agencies all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a Federal award. **(200.113 Mandatory disclosures)**

Fraud Prevention Training for Staff

The above policies on suspected misconduct will be communicated with all employees, officers, volunteers, and others responsible for carrying out the City's activities on an annual basis.

Commented [JL6]: The wording of this sentence implies that the Accountant should not disclose, to the City's external auditors, material frauds involving employees at the senior management level. Such a provision would be absurd. What is this sentence trying to say about officials' and employees' duties to disclose material frauds to the City's external auditors?

Commented [JL7]: To what authority does this citation refer? Is it a citation to a federal regulation, or to a Personnel Policy of St. Clair County? If the former, perhaps the citation should be retained, with a more complete citation to the federal authority. If the latter, the citation would not be relevant and, so, should be deleted.