

## **Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct<sup>1</sup>**

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, harassment, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

### **I. Intake**

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct shall be documented, to include:
  - i. Date received
  - ii. Reporter's name and contact information, if known (and whether reporter requests confidentiality)
  - iii. Subject of the report including contact information, if known
  - iv. Date(s) of improper conduct
  - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
  - vi. Identity of other potential witnesses<sup>1</sup>
  - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**
  - i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.<sup>2</sup> Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.
  - ii. If the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.
  - iii. If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.
- c. **Initiation of Investigation:** Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training<sup>3</sup> and authority

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<sup>1</sup> Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB?

<sup>2</sup> There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends.

<sup>3</sup> TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is

to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed, they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records?

## II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
  - i. Contact the HR department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.
  - ii. Obtain organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.
  - iii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
- c. **Interviews:**<sup>4</sup>
  - i. Start with fact witnesses
  - ii. Assure witnesses you will work to protect their identity if they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
  - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.
  - iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
  - v. Ask every witness to identify any other possible witnesses or relevant documents.

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presently required for allegations of harassment) and skills training appropriate to the nature of the allegations. Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

<sup>4</sup> If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Counsel policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- vi. When you Interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City’s prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
  - vii. Create a record of each interview and place the interview record in the case management system.
- d. **Status update:**
- i. When you have reached a preliminary decision on disposition, speak with the subject’s immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
  - ii. Provide status update to source of allegation and subject at least every 30 days.

**III. Report. The report should:**

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors.

**IV. Disposition**

- a. Complete within 60 days of receipt of allegation.
- b. Conduct closure meeting with source of allegation and subject of the investigation.

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<sup>i</sup> Sources:

US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs  
 Performance Audit of the City of Long Beach Ethics Program  
 LA City Ethics Commission website  
 Oakland Ethics Commission website  
 Sacramento Ethics Commission website  
 Institute for Local Government Ethics and Transparency  
 ALI  
 ECI  
 SCCE Handling Anonymous Report  
 ComplianceCosmos.org  
 (iSight for reports: [www.i-sight.com](http://www.i-sight.com).)