ADMINISTRATIVE DIRECTIVE

RIGHT TO REPORT WRONGFUL CONDUCT PROCEDURES AND ANTI-RETALIATION PROVISIONS	NUMBER 2.02-4	PAGE 1 of 7
	EFFECTIVE DATE November 21, 2017	

I. PURPOSE

This AD sets forth procedures for an employee or a member of the public to report or disclose mismanagement, abuse of authority, accidents or safety violations, fraud, waste, abuse, or criminal conduct on the part of any public official(s) or city employee(s).

II. POLICY

City employees or any member of the public may report alleged wrongful conduct they reasonably believe was committed by a city official or employee. No supervisor or any employee shall retaliate, intimidate, or harass another employee who has filed a Wrongful Conduct complaint, or who participates in an investigation of any public official(s) or city employee(s).

III. DEFINITIONS

A. **Adverse Personnel Action** - Disciplinary action including written reprimand, suspension without pay, involuntary transfer or reassignment, discharge, withholding of an appropriate salary adjustment, or other significant change in duties or responsibilities that is inconsistent with the employee's salary or classification.

B. **Complainant** - Member of the public or employee filing the wrongful conduct complaint.

C. **Complaint Database** - A database that tracks wrongful conduct complaints and their final resolution.

D. **Criminal Allegation** - An accusation that an individual has committed an act or omitted to do something, which is punishable by law.

E. **Designated City Official, Public Official or Public Agency** - The Mayor, Council Members, City Manager, Deputy and Assistant City Manager, City Clerk, City Attorney, City Department Directors, County Attorney, State Attorney General, or a federal, state or local law enforcement agency.

F. **Employee** - All City employees of any status or classification, including elected officials, persons appointed to an elected official's staff, or individuals appointed to a position in city government by a majority of the governing body.

G. **Investigator** – The City Manager, any member of the City Manager's Staff, any representative of a department or agency assigned to investigate a complaint.

H. **Mismanagement** – A gross deviation from acceptable and recognized management practices, the disclosure of which would be of public interest and concern, or a matter(s) in which the public could reasonably be expected to take interest.

Allegations critical of management's legitimate discretionary decisions and business judgments regarding intra-departmental affairs or private grievances regarding discipline, performance, wages and other routine employment matters are **not** included within this definition, unless the allegation rises to the level of wrongful conduct.

I. **Respondent** – Employee, Department, or City Official alleged to have engaged in wrongful conduct.

J. **Retaliation** – Any adverse personnel action, layoff, and/or change in the terms and conditions of employment in response to an employee's allegation of wrongful conduct to a designated supervisor, City Official, public official, or public agency.

K. **Supervisory Employee** – Any supervisor, superintendent, division director/administrator, department director or other employee who has influence over personnel actions, including disciplinary action.

L. **Wrongful Conduct** – Mismanagement, gross waste of monies, or an abuse of authority, or violation of any law on the part of any city official(s) or city employee(s) that is reasonably believed to be of public concern.

IV. REPORTING WRONGFUL CONDUCT AND ADMINISTRATIVE COMPLAINTS

A. Reports of wrongful conduct submitted to any designated City Official shall be forwarded immediately to the City Manager's Office, entered into a database by the Office of Equal Opportunity Programs (OEOP) and referred to the appropriate entity for investigation.

B. Reports of wrongful conduct submitted to Department Directors shall be promptly addressed. If the investigation is completed internally, the Department Director shall notify the City Manager's Office of the results of the investigation. If a preliminary review reveals that the complaint cannot be resolved internally or it becomes apparent during an investigation that the department requires assistance, the complaint shall be referred to the City Manager's Office for evaluation and assigned for investigation.

C. Reports of wrongful conduct shall be in writing and shall include the following information:

1. The date of the report.

2. The name of the individual making the report.

3. The nature of the alleged violation(s).

4. The date or range of dates on which the alleged violation(s) occurred; complaints must be filed within 90 calendar days of the date complainant became aware of the alleged violation(s).

5. The name of the public official(s) or other city employee(s) who is/are the subject of the allegations [the Respondent(s)].

D. All submitted wrongful conduct complaints shall be reviewed by the City Manager's Office in consultation with the City Attorney, if necessary to determine whether the allegations, if substantiated, constitute wrongful conduct as defined by the AD. Upon review, if it is determined that the allegations, even if substantiated, do not constitute wrongful conduct, the complaint will be dismissed.

Within fifteen (15) business days of receipt, the complaint will be acknowledged by a letter from the City Manager's Office stating that the complaint was received and reviewed and advise whether or not an investigation will commence as well as the justification for an investigation.

Within fifteen (15) business days of dismissal of a complaint or completion of an investigation, the complainant shall be notified in writing of the results.

V. INVESTIGATIVE PROCEDURE

A. After the initial review, the City Manager's Office will designate the city department(s) to conduct the investigation (e.g., Human Resources, Tucson Police, Finance, Budget and Internal Audit, City Manager's Office, involved Department). Some investigations may involve multiple departments and/or require an investigative team with duties assigned appropriate to the nature of the inquiry.

B. When a Wrongful Conduct Complaint is assigned to a department for investigation, a copy of the complaint will be forwarded to the director of that department. Any individual accused of wrongful conduct (the Respondent), except for allegations of a criminal nature, will be given notice of the complaint and provided an opportunity to respond to the allegations in writing or by interview at the discretion of the investigator. The Respondent will be given a copy of the Notice of Administrative Investigation form prior to any interview.

C. Wrongful Conduct investigations shall be completed within 90 calendar days or as soon as practicable.

The Department Director will review the completed investigative package and determine the appropriate disposition and recommended actions. The City Manager or his/her designee (Deputy City Manager or Assistant City Manager) shall review the investigative package and recommendations and will either concur with or modify the

recommended disposition. The City Manager's determination is final. A copy of the final decision shall be provided to the complainant and respondent.

A complaint shall be disposed of with one of the following determinations:

1. **Unfounded** - The employee did not commit the alleged violations(s), or the actions taken were consistent with City of Tucson ADs or Department Policy.

2. **Not Sustained** - An investigation could not determine whether the alleged actions and/or violations did or did not occur.

3. **Sustained** - An investigation conducted into the initial allegations established one or more allegation, or the investigation establishes other wrongful conduct.

4. **Dismissal/No Investigation** - A review of the allegations by the City Manager's Office did not find sufficient factual basis to conduct an investigation.

Complaints that are sustained may result in the imposition of discipline, up to and including discharge.

D. **Access to Records** - To carry out their responsibilities, investigators must have timely and unrestricted access to any copies of, all records, reports, investigations, audits, reviews, documents, papers or any other materials relevant to the allegations. Assigned investigators will coordinate with the City Attorney's Office to ensure that records are properly obtained and maintained.

E. **Employee Participation** - All City of Tucson employees are required to cooperate with investigators during wrongful conduct investigations. Employees will be allowed the right to representation during an investigative interview at their discretion. The role of the representative is one of an observer only. The employee may tape-record the interview after providing notification to the investigator. The representative may not interrupt or interject during the interview.

1. Employees are required to truthfully give all pertinent facts and information on any matters under investigation by the City of Tucson.

2. Employees have the responsibility to bring to the attention of the investigator any evidence or witness information he/she believe is relevant to the investigation.

3. Employees may not discuss or communicate in any manner (written, verbal or electronic), an administrative investigation with any unauthorized person.

4. Any employee found in violation of this section shall be subject to disciplinary action, up to and including discharge.

VI. INVESTIGATIVE RESPONSIBILITIES

A. Departmental Investigations

1. Department Directors remain responsible for investigation of complaints regarding employee misconduct and/or operational issues within their respective departments. The following are some examples of routine departmental investigations:

   a. Employee misconduct involving violations of City ADs, unsafe conduct, reasonable suspicion of on-duty drug/alcohol use.

   b. Department operational issues including policies, procedures or work rules, assignments and methods of operation.

2. During any departmental investigation, if any suggestion of criminal activity is discovered, the department shall suspend its investigation and refer the matter to the Tucson Police Department, advising the City Manager's Office and the City Attorney of its actions.

B. Specialized Investigations

1. **Tucson Police Department (TPD)** – Complaints alleging criminal activity will be referred to TPD. This includes but is not limited to theft of city property, theft of cash, materials, supplies, and equipment; misuse of payroll for overpayment of wages or theft of services; personal use of City supplies and equipment; personal use of City service contracts.

2. **Central Safety Services (CSS)** – Safety complaints alleging serious risk of harm. Complaints alleging serious risk of harm and safety issues will be referred to Central Safety Services for investigation and resolution in accordance with A.D. 3.04-4 Serious Accident Review Committee.

3. **Budget and Internal Audit** – Complaints alleging misuse of cash, financial resources and timekeeping. Complaints alleging improper financial controls will be referred to the Budget and Internal Audit Director for review, findings and recommendations. This includes but is not limited to misuse of City resources or cash controls, misuse of City finance systems including procurement processes, misuse of timekeeping equipment and/or time worked records in accordance with A.D. 2.01-15, Reporting Time Worked and Employee Leaves.

4. **Office of Equal Opportunity Programs (OEOP)** – Complaints alleging discrimination in violation of City, State or Federal anti-discrimination laws. All

complaints alleging discrimination, harassment or sexual harassment, including allegations of failure to accommodate under the Americans with Disabilities Act (ADA) and violations of the Equal Pay Act (EPA) will be referred to the Office of Equal Opportunity Programs (OEOP) in accordance with A.D. 2.05-8, Discrimination/Harassment Policy.

5. **Human Resources** - Complaints alleging violations of the Fair Labor Standards Act (FLSA) or alleging violations of the Family Medical Leave Act (FMLA) will be referred to Human Resources.

VII. COMPLAINT OF RETALIATION

A. If an employee believes that an adverse personnel action (see Definitions Section III. A) taken against him/her is the result of the employee's report of, or cooperation in, a wrongful conduct complaint as described in this AD, the employee may make a written complaint of retaliation to the Director of the Office of Equal Opportunity Programs or City Attorney within thirty (30) calendar days of the effective date of the personnel action. The complaint shall include the following information:

1. The adverse personnel action.

2. The date of the adverse personnel action.

3. The supervisory employee(s) responsible for the alleged intimidation, harassment or adverse personnel action.

4. The reason(s) the employee believes the adverse personnel action was retaliation rather than a result of the employee's job performance or inappropriate work conduct.

The office that receives a complaint of retaliation shall immediately notify the Director of Human Resources the Office of Equal Opportunity Programs, the City Manager, and the City Attorney.

B. The Director of the Office of Equal Opportunity Programs (OEOP) or designee will investigate the complaint of retaliation and shall determine whether retaliation occurred as a result of the employee's reporting wrongful conduct. It is **not** retaliation if the adverse personnel action was imposed for legitimate reasons. The Director of the Office of Equal Opportunity Programs will send a completed investigative report and recommendations to the City Manager.

C. If retaliation has occurred, the City Manager shall direct that the personnel action be reversed and that any lost pay and/or benefits be returned to the employee. If the person alleging retaliation is still a City employee, the retaliatory action shall be reversed by the appointing authority. An appointing authority may reverse an adverse personnel action

against an employee without interfering with the appellate jurisdiction of the Civil Service Commission. If the person is no longer a City employee due to discharge or layoff, a recommendation shall be made to the City Attorney's Office and Director of Human Resources that the action be overturned. The recommendation shall state that the employee's discharge was without just cause or the layoff was pre-textual and not because of reorganization or shortage of funds or work.

D. Any supervisory employee found to have knowingly retaliated against an employee shall be subject to disciplinary action, up to and including discharge.

E. No employee shall harass, intimidate, coerce or threaten any other employee who has made a Wrongful Conduct complaint or participated in an investigation of a Wrongful Conduct complaint. Employees found to have engaged in such behavior shall be subject to disciplinary action, up to and including discharge.

F. Any written complaint of retaliatory disciplinary action of a suspension of more than 10 working days, reduction in pay or position, discharge and/or layoff, regardless of either the City Manager's or the Office of Equal Opportunity Programs Director's investigation and determination, may also be appealed to the Civil Service Commission of the City of Tucson, in accordance with the Civil Service Rules.

Appendices

City of Tucson Wrongful Conduct Complaint Form

References

AD 2.02-4 – Right to Report Wrongful Conduct Procedures and Anti-Retaliation Provisions
http://intranet.tucson.az.administrative-directives-forms

AD 2.01-15 Reporting Time Worked and Employee Leaves
AD 2.05-2 Reasonable Accommodation of Applicants and Employees with Disabilities
AD 2.05-8 Discrimination/Harassment Policy
AD 3.04-4 Serious Accident Review Committee
Civil Service Rules

Review Responsibility and Frequency

The Deputy City Manager or City Manager designee, Director of the Office of Equal Opportunity Programs, and City Attorney will review this directive as needed.

Authorized

City Manager
Michael J. Ortega

1/8/18
Date