ADMINISTRATIVE DIRECTIVE

REPORTING WRONGFUL CONDUCT, MISMANAGEMENT AND ADMINISTRATIVE COMPLAINTS	NUMBER 2.02-4	PAGE 1 of 7
	EFFECTIVE DATE June 6, 2012	

I. PURPOSE

It is the intent of the City Manager, in accord with his/her general supervision and direction of the administrative operation of the city, to establish procedures for an employee or a member of the public to report or disclose information of alleged wrongful conduct, mismanagement, abuse of authority, accident or safety violations, fraud, waste, abuse, or criminal conduct on the part of a public official or city employee(s) to a public body or to a designated city official; to prescribe protocols for administrative inquiries and investigations relating to such reports; and to prohibit retaliatory action against an employee for such a report or disclosure of information consistent with the Tucson Code, Administrative Directives, "whistleblower" regulations and departmental orders.

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 or file an Administrative Complaint in accordance with this directive. It is a prohibited personnel practice for a supervisory employee to retaliate against an employee because the employee filed a Wrongful Conduct or Administrative Complaint against a public official or city employee(s).

III. DEFINITIONS

A. **Adverse Personnel Action** – Unsatisfactory overall performance evaluation, disciplinary action (including written reprimand, suspension without pay, involuntary transfer or reassignment, disciplinary probation or termination), withholding of an appropriate salary adjustment, or other significant change in duties or responsibilities which is inconsistent with the employee's salary or classification.

B. **Administrative Complaint** – A written complaint, made by a member of the public or by an employee, alleging mismanagement, abuse of authority, accident and/or safety violation, fraud, waste, wrongful conduct or criminal conduct by a public official or city employee.

C. **Complainant** – Member of the public or employee filing the wrongful conduct or administrative complaint.

D. **Complaint Database** – Administrative Complaints and Wrongful Conduct Complaints will be entered into a database maintained in the Office of Equal Opportunity Programs (OEOP). The database will track complaints and their final resolution.

E. **Designated City Official, Public Official, or Public Agency** – The City Manager, Deputy and Assistant City Managers, Mayor, Council Members, City Clerk, City Attorney, Pima County Attorney, Arizona Attorney General, city department directors, 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 personal 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 following preliminary review by OEOP and/or the City Attorney's Office.

H. **Layoff** - Elimination of an employee's position by reason of a shortage of funds or work or material changes in duties or organization.

I. **Mismanagement** - A gross deviation from acceptable and recognized management practices, the disclosure of which would be of public interest and concern as 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** ordinarily included within this definition, unless the allegation states a violation by a supervisory employee of city ordinance, administrative directive, charter provision, or state or federal law.

J. **Respondent** - Employee, Department, or city official alleged to have engaged in wrongful conduct or conduct that is the basis for an administrative compliant.

K. **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 city official, public official or public agency.

L. **Supervisory Employee** - Any supervisor, superintendent, division director, department director, or other employee who has influence over personnel actions, including disciplinary action.

M. **Wrongful Conduct** - Mismanagement, gross waste of monies or an abuse of authority, or violation of any Administrative Directive or 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. An employee or member of the public reasonably believing he or she has evidence of wrongful conduct committed by a public official or other city employee(s) who wants to report that wrongful conduct, or file an Administrative Complaint, should report such allegations to the City Manager's Office (Attention: City Manager), Tucson Police Department, Office of Internal Affairs or other designated city official, public official, or public agency (see definitions). Written administrative complaints and allegations of wrongful conduct that are reported to the City Manager's Office, Mayor's Office,

Council Members, or other city officials shall be forwarded immediately to OEOP for evaluation and review in consultation with the City Attorney and entry into the complaint database. Department directors shall notify OEOP of any Administrative or Wrongful Conduct Complaint filed with their department prior to initiating an investigation to ensure entry into the database.

B. Notwithstanding the provisions set out in sub-section A above, complainants should attempt to resolve matters at the lowest level (appropriate to the circumstances) utilizing internal departmental policies or the department director's office. Department directors are responsible for promptly addressing any Administrative Complaint brought to them; 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 is to be referred to OEOP to be evaluated and assigned for appropriate disposition. If the investigation is completed internally, the Department director shall notify OEOP of the results of the investigation and forward their recommendation/resolution to the City Manager. Department directors must notify OEOP of any Administrative Complaints filed within their department to ensure entry into the complaint database.

C. Administrative Complaints and allegations 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 days 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 Administrative and Wrongful Conduct Complaints shall be reviewed by OEOP in consultation with the City Attorney to determine whether the allegations, if substantiated, constitute wrongful conduct or provide the basis for an Administrative Complaint as defined by this Administrative Directive. Upon review, if it is determined that the allegations, even if substantiated, do not constitute wrongful conduct or the basis of an Administrative Complaint, the complaint will be dismissed.

Within fifteen (15) days of receipt the complaint will be acknowledged by a letter from OEOP 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) 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 OEOP, in consultation with the City Attorney, 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, OEOP). Some investigations may involve multiple departments and/or require an investigative team with duties assigned appropriate to the nature of the inquiry.

B. Once an Administrative or Wrongful Conduct Complaint is assigned for investigation, a copy of the complaint will be forwarded to the director of the implicated department. Any individual accused of wrongful conduct or conduct forming the basis of an Administrative Complaint (the Respondent), except for allegations of a criminal nature, will be given a copy of the complaint and provided an opportunity to respond to the allegations in writing. The response shall be forwarded to the assigned investigator and become part of the investigative file.

C. An Administrative Complaint or Wrongful Conduct investigation shall be completed within 90 working days. The complainant shall be interviewed and the interview included in the investigative package.

The investigator shall send the completed investigation and a recommendation for disposition to OEOP. OEOP and/or the department director will review the complete investigative package and recommendation; following this review the investigative package and any additional recommendation(s) will be sent to the City Manager. The City Manager shall review the investigative package and recommendations and then determine disposition of the complaint. [***option b:*** The 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. The allegation(s) is/are sustained.
2. The allegation(s) is/are not sustained.
3. The allegation(s) is/are partially sustained.
4. The allegation(s) is/are unfounded.

Complaints that are partially or wholly sustained may result in the imposition of discipline, up to and including termination.

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

VI. INVESTIGATIVE RESPONSIBILITIES

A. Departmental Investigations

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

    a. Employee misconduct involving violations of City Administrative Directives, 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 their investigation and refer the matter to TPD, advising OEOP and the City Attorney of their actions.

3. Departmental investigations that may result in discipline up to and including termination require consultation with Human Resources and the City Attorney.

B. Specialized Investigations

1. **Tucson Police Department (TPD) - Complaints alleging criminal activity.** 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 or services; personal use of City supplies and equipment; personal use of City service contracts. A copy of the complaint shall also be forwarded to the City Attorney.

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 Chief Financial Officer 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, including allegations of failure to accommodate under the Americans with Disabilities Act (ADA) will be referred to OEOP in accordance with A.D. 2.05-8. Complaints alleging violations of the Equal Pay Act (EPA) will be referred to OEOP.

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.

   Examples:

   a. Interfering with FMLA; retaliation for use of FMLA.
   b. Failing to pay overtime; failing to pay overtime at the appropriate rate.

VII. COMPLAINT OF RETALIATION

A. If an employee believes that an adverse personnel action (see Definitions Section II (A)) or layoff taken against him/her is the result of the employee's report of wrongful conduct or Administrative Complaint as described in this directive, the employee may make a written complaint to the Director of Human Resources 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 or layoff.
   2. The date of the adverse personnel action.
   3. The supervisory employee(s) responsible for the adverse personnel action or layoff.
   4. The reason(s) the employee feels the adverse personnel action or layoff was retaliation rather than a result of the employee's job performance or inappropriate work conduct.

   Upon receipt of such a complaint the Director of Human Resources shall immediately notify the City Manager, OEOP and the City Attorney.

B. The Director of Human Resources 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 or layoff was imposed for legitimate reasons. The Director of Human Resources will send a completed investigative report to OEOP. OEOP shall forward the report and recommendations to the City Manager for further review and/or action. The City Manager's decision is final. If retaliation has occurred, steps shall be taken by the City Manager to ensure that the personnel action is reversed and that lost pay and benefits be returned to the

employee. If the person alleging retaliation is still in the city's employ, 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 termination or layoff, a recommendation shall be made to the Civil Service Commission of the City of Tucson that the action be overturned. The recommendation shall state that the employee's termination was without just cause or that the layoff was pre-textual and not because of reorganization or shortage of funds or work.

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

D. Any written complaint of retaliatory disciplinary action of a suspension of more than ten working days, reduction in pay or position, discharge, and layoff, including pre-textual layoff regardless of either the City Manager's or the Human Resource Director's investigation and determination, may also be appealed to the Civil Service Commission of the City of Tucson.

E. Notwithstanding any other part of this directive, retaliation shall not be found if the adverse personnel action or layoff was justified by legitimate reasons.

Attachments City of Tucson Wrongful Conduct Complaint Form

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

Review Responsibility and Frequency The Deputy City Manager or City Manager designee, Director of Human Resources, City Attorney and Director of the Office of Equal Opportunity Programs will review this directive annually, based on date of publication.

Authorized

City Manager

6-7-12
Date

Complaint Tracking #:_____ Date Received:_____
Assigned to:_____

CITY OF TUCSON
WRONGFUL CONDUCT COMPLAINT FORM

In accordance with Administrative Directive #2.02-4, employees and members of the public who reasonably believe or have evidence of wrongful conduct on the part of a public official or city employee are encouraged to report such allegations to the City Manager's Office or other designated city official. Wrongful conduct is defined as 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 employees(s) that is reasonably believed to be of public concern.

Complaints must be filed within 90 calendar days of the date you became aware of the alleged violation.

I. Complainant Information:

Name:_____

Home Address:_____City/State/Zip:_____

Home Phone#:_____Alternate Phone#:_____

FOR CITY EMPLOYEES

Current Job Title:_____ Department:_____

II. Please describe the nature of your allegation, providing as much supporting detail as possible including the date and/or time frame within which the violation(s) occurred.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

III. NAME, ADDRESS AND TELEPHONE NUMBER OF ANY PERSON(S) WHO HAVE DIRECT KNOWLEDGE OF THE EVENTS LISTED ABOVE:

Name:_____

Address:_____ City/State/Zip:_____

Telephone#:_____ Alternate#:_____

Name:_____

Address:_____ City/State/Zip:_____

Telephone#:_____ Alternate#:_____

Name:_____

Address:_____ City/State/Zip:_____

Telephone#:_____ Alternate#:_____

Name:_____

Address:_____ City/State/Zip:_____

Telephone#:_____ Alternate#:_____

Signature:_____ Date:_____