

**CITY OF NEWPORT BEACH  
FINANCE COMMITTEE STAFF REPORT**

December 12, 2011

**TO:** HONORABLE CHAIRMAN AND MEMBERS OF THE COMMITTEE

**FROM:** Finance Department  
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**SUBJECT: FRAUD/ETHICS POLICY**

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**SUMMARY**

A finding from the FY 2009 financial statement audit was a recommendation to develop a formal, written fraud/ethics policy for employees to report suspected fraud, violation of City policy, or other unethical conduct.

**DISCUSSION:**

As reported at the Finance Committee meeting of March 7, 2011, staff began researching and developing a fraud/ethics policy in response to auditor recommendation.

Auditor Recommendation

We suggest that the City implement an effective reporting mechanism for fraud and other unethical conduct. Internal reporting channels, such as hotlines for anonymous tips, or a clearly defined reporting protocol (what to report, who to report to, etc.), are among the recommended reporting systems. Reporting to a party outside the department in question has been found to be effective in encouraging such communications.

Staff concurs with this recommendation and would like to implement an Ethics/Fraud policy to guide employees in reporting instances of suspected fraud, theft or abuse, violations of City policy or other unethical conduct.

The primary purpose of a Fraud/Ethics policy is to:

- a) Set the tone at the top identifying that fraud will not be tolerated and employees will not get in trouble for whistle blowing.
- b) Identify the procedures for reporting fraud.

Published as an administrative procedure, the fraud/ethics policy outlines reporting procedures to clearly communicate the process for employees to report suspected fraud, violations of City policy, or other unethical conduct.

Staff drafted and circulated the policy for review to the City Attorney's office and Human Resources Department. Although an anonymous tip hotline would have some advantages, there was some concern about the ongoing administration and the cost of this service.

As proposed, the policy would be included in the next Employee Policy manual revision.

Prepared by:

/s/ Dan Matusiewicz

Dan Matusiewicz  
Deputy Finance Director

Attachments:        Fraud/Ethics Policy

## **FRAUD/ETHICS POLICY**

The City of Newport Beach (“City”) is committed to protecting its assets against the risk of theft, loss or misuse. Accordingly, it is the policy of the City of Newport Beach to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City and, when appropriate, to pursue legal remedies available under the law.

### PURPOSE

This policy is established to ensure employees are aware of the following:

1. Acts that are considered to be fraudulent;
2. Procedures for reporting suspected fraudulent acts;
3. Steps to be taken when fraud or other related dishonest activities are suspected; and
4. Consequences to expect when a dishonest act is reported.

Further, this policy underscores management’s responsibility for instituting and maintaining a system of internal controls to prevent and detect fraud, misrepresentations and other irregularities, and to be alert for any indications of such misconduct.

### APPLICABILITY OF POLICY

This policy applies to any individual who receives payment for services rendered to the City or compensation from the City (any full- or part-time employee), and also applies to any volunteer who provides services to the City through an official arrangement with the City or a City Department.

### DEFINITIONS

1. **Fraud** – the intentional false representation or concealment of material fact for the purpose of personal gain for oneself or others; or inducing another to act similarly. Fraud and other similar irregularities include, but are not limited to:
  - a. Submitting a claim for reimbursement of expenses that are not job-related or authorized by the current City Travel Policy Statement F-8, applicable administrative policies or governing law.
  - b. Forgery or unauthorized alteration of documents (including, but not limited to payment requests; checks, promissory notes, timesheets, independent contractor agreements, purchase orders, budgets, etc.).

- c. Theft or misappropriation of City assets (including, but not limited to funds, securities, supplies, furniture, equipment, etc.).
  - d. Improprieties in handling or reporting of money transactions.
  - e. Authorizing or receiving payment for goods not received or services not performed.
  - f. Computer-related activity involving unauthorized alteration, destruction, duplication, forgery, or manipulation of data or misuse of City-owned software, equipment as is otherwise described by section 3.9 of the Employee policy manual (Communications Equipment and Systems Policy).
  - g. Misrepresentation or falsification of records or information on documents (including, but not limited to payment requests; checks; promissory notes; timesheets; independent contractor agreements, purchase orders, budgets, etc.).
  - h. Any apparent violation of Federal, State, or local laws related to dishonest activities or fraud.
  - i. Seeking or accepting anything of material value from those doing business with the City including vendors, consultants, contractors, lessees, applicants, and grantees. The Employee Policy Manual, Section 3.4 determines materiality.
  - j. Filing a false worker's compensation claim to receive medical treatment and/or benefits or aiding and abetting a fellow City employee in the same.
2. Employee – In this context, employee refers to any individual or group of individuals who receive compensation, either full- or part-time, from the City of Newport Beach. The term also includes any volunteer who provides services to the City through an official arrangement with the City or a City organization, as well as consultants, vendors, contractors, outside agencies and/or any other parties with a business relationship with the City of Newport Beach.
3. Management – In this context, management refers to any administrator, manager, director, supervisor, or other individual who manages or supervises funds or other resources, including human resources.

## PROCEDURES

1. A suspected fraudulent incident or practice observed by or made known to an employee must be reported. Employees can report wrongdoing in a safe and confidential manner, and without fear of retaliation. In no case is the employee required to confront the

person who is the source of the complaint, before notifying a supervisor or a management employee as follows:

- a. If an employee is aware of any fraudulent acts (as defined above), the employee is encouraged to discuss his or her complaint with his or her immediate supervisor.
  - b. If an employee believes he or she is unable to discuss the complaint with his or her immediate supervisor or if his or her immediate supervisor is the source of the concern, the employee shall make the report to the next higher level of management including the Department Director. (Examples of reasons why an employee may not feel able to speak with the immediate supervisor may include, but are not limited to: the supervisor is engaged in the misconduct; or the employee perceives that the supervisor condones the wrongdoing or is ignoring the problem).
  - c. If neither of the above alternatives is satisfactory the employee should immediately contact the Human Resources Department and the Office of the City Attorney.
2. Employees shall not be retaliated against for reporting fraudulent acts.
- The City retains the right to take any appropriate disciplinary action within the law and applicable rules and regulations against an employee who knowingly files a false report of a violation of this policy.

#### KEY RESPONSIBILITY AREAS

Manager or Management refers to any administrator, manager, director, supervisor, or other individual who manages or supervises City funds or other resources, including human resources.

1. City Duty to Investigate: The Human Resources Department and City Attorney's Office will confer and make a determination whether further investigation regarding any suspected acts of fraud, misappropriation, or other similar irregularity is warranted.
2. Managers are responsible for being alert to, and reporting fraudulent or related dishonest activities in their areas of responsibility.
  - a. Each manager should be familiar with the types of improprieties that might occur in his or her area and be alert for any indication that improper activity, misappropriation, or dishonest activity exists or existed in his or her area.

- b. When an improper activity is detected or suspected, or when a manager receives a report of suspected activity from an employee, the manager shall promptly inform his or her Department Director, who shall notify the Human Resources Director or his or her designee.
- c. Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.

## INVESTIGATIONS

1. The Human Resources Department shall designate an individual or department the responsibility to conduct an investigation. Depending on the kind of fraudulent act, departments such as the Police Department, Finance, Human Resources or the City Attorney could be delegated the responsibility to conduct an investigation.
2. Except for the Police Department, the management staff receiving the initial report should not attempt to conduct individual investigations, interviews, or interrogations. Management staff shall provide all relevant information regarding the matter to the Department Director and the Human Resources Director or his or her designee and shall cooperate fully with any investigation of the matter by giving full and unrestricted access to all necessary records and personnel shall be granted to the individual conducting the investigation.
3. In dealing with suspected dishonest or fraudulent activities, great care must be taken. Therefore, management should avoid the following:
  - a. Incorrect accusations.
  - b. Alerting suspected individuals that an investigation is underway.
  - c. Treating employees unfairly.
  - d. Making statements that could lead to claims of false accusations or other offenses.
4. In handling dishonest or fraudulent activities, management has the responsibility to:
  - a. Make no contact with the suspected individual to determine facts or demand restitution unless specifically directed to do so by the Human Resources Director or his or her designee. Under no circumstances should there be any reference to "what you did," "the crime," "the fraud," "the misappropriation," etc.

- b. Avoid discussing the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the Human Resources Department.
  - c. Avoid discussing with anyone inside the City other than employees who have a need to know such as the City Manager, City Attorney, or law enforcement personnel.
  - d. Direct all inquiries from the suspected individual, or his or her representative, to the Human Resources Department unless otherwise directed. All inquiries by an attorney of the suspected individual should be directed to the City Attorney. All inquiries from the media should be directed to the Public Information Manager.
  - e. If it is determined that an employee has committed a fraudulent act, the manager shall cooperate with the Human Resources Department in taking appropriate corrective and disciplinary action, up to and including dismissal, in accordance with current Personnel Rules, policies and other applicable laws.
  - f. The Human Resources Department, following review of investigation results, will take appropriate action regarding employee misconduct. Disciplinary action may include referral of the case to the District Attorney's Office for possible prosecution.
5. The City will pursue every reasonable effort, including court ordered restitution, to obtain recovery of the City losses from the offender.