



FRAUD, WASTE, ABUSE & MISUSE POLICY

PM-78-05

Section: 78-00, EMPLOYEE CONDUCT

PURPOSE AND SCOPE

This policy establishes guidelines for preventing Fraud, Waste, Abuse, Misuse and for responding to allegations of embezzlement, theft, misappropriations of public funds or property, and other types of fraudulent activity related to the business of the City of Memphis, hereinafter called "City." For the purposes of this policy, the following classes of individuals will be hereinafter referred to as "employee(s)":

- City employees (regular, contingent, seasonal, or grant-funded)
- Elected officials
- Contractors and subcontractors
- Any other person(s) or organization(s) engaging in business on behalf of the City

This policy applies to all employees and is administered by the Office of the City Auditor, Executive Division.

POLICY

The City is committed to upholding the public trust; therefore, all employees are expected to support this policy by avoiding behaviors and actions that could be perceived as fraudulent activity. Participation in any form of fraudulent activity involving the willful, deliberate, or negligent misuse of the City's resources or assets shall be prohibited.

In observance of this policy, as in other business conduct, there is no substitute for sound professional judgment. Each employee should apply this policy with common sense and the attitude of seeking full compliance with the letter and spirit of the rules presented herein. The absence of specific guidelines, practice, or instruction covering a situation does not relieve an employee from exercising the highest ethical standards applicable to the circumstances. If an employee is concerned about a questionable situation that might arise, that employee should immediately consult management.

DEFINITIONS

Abuse – Behavior that is deficient or improper when compared to behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes the misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate.



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Fraud – Any intentional act by one or more individuals (including management, those charged with governance, employees or third parties) involving the use of deception that violates a law or the public trust to obtain an unjust or illegal advantage.

Misuse – The excessive or improper use of something, or the employment of something in a manner contrary to the natural or legal rules for its use. The intentional destruction, diversion, manipulation, misapplication, maltreatment of resources owned or operated by the City.

Waste – The act of using or expending resources carelessly, extravagantly, or to no purpose. Relates primarily to mismanagement, inappropriate actions, and inadequate oversight.

Additional definitions of terms relating to fraud, waste, abuse and misuse include:

Irregularity – An inaccuracy, mistake, or occurrence outside normal patterns. Can be either intentional (fraud) or unintentional (error).

Occupational fraud – The use of one's occupation for personal gain through the deliberate misuse or misapplication of the City's resources or assets.

Official misconduct – A public servant who commits an offense with intent to obtain a benefit or to harm another, intentionally or knowingly by:

- Committing an act relating to his/her office or employment that constitutes an unauthorized exercise of official power;
- Committing an act under color of office or employment that exceeds his/her official power;
- Refraining from performing a duty that is imposed by law or that is clearly inherent in the nature of his/her office or employment;
- Violating a law relating to his/her office or employment; or
- Receiving any benefit not otherwise authorized by law.

Unlawful conduct – theft, forgery, credit card fraud, or any other act of unlawful taking, waste, or abuse.

RESPONSIBILITIES

Employees are required to accept assigned job responsibilities, adhere to rules of conduct at all times, and shall not commit criminal or illegal acts against the City, other employees, or the public at large. Additionally, any employee who suspects or detects fraudulent activity must immediately report it to their supervisor, manager, Division Director, or the City Auditor.



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If reporting to a supervisor, manager, Division Director, or City Auditor is not possible or desired, the employee should report the suspected activity directly to the whistleblower hotline. Refer to the **Reporting Procedure** section of this policy for more details.

Employees are required to provide necessary assistance, cooperation and support to enable the City Auditor and pertinent parties to properly investigate suspected fraudulent activity. Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.

Management is responsible for initiating measures to prevent and detect fraudulent activity, misappropriations and other irregularities. Management should also report observed or suspected fraudulent activity directly to the City Auditor.

The City Auditor has the primary responsibility for the investigation of all suspected fraudulent acts as defined in this policy. The City Auditor will coordinate with Human Resources, Legal, and pertinent personnel from the affected areas, both internal and external. As warranted, the City Auditor will make referrals to the appropriate law enforcement and/or regulatory agencies to facilitate appropriate criminal investigation and prosecution.

ACTIONS CONSTITUTING FRAUD, WASTE, ABUSE, MISUSE

For purposes of this policy, fraudulent activity may include, but not be limited to:

- Any dishonest or fraudulent act
- Any act of embezzlement, theft, misappropriation or fiscal irregularities
- Misuse or misreporting of paid work time or paid time off
- Violations of laws, regulations, policies or procedures
- Inappropriate use of City assets (funds, supplies, records, furniture, fixtures, equipment, or other assets)
- Destruction or disappearance of City assets
- Impropriety in the handling or reporting of money or financial transactions
- Payments of fictitious employees
- Official misconduct involving public money, property or services
- Forgery, alteration, unauthorized negotiation or presentment of a check, warrant, bank draft, or any other financial document of the City or its affiliates, including electronic transfer of funds
- Forgery or intentional and inappropriate alteration of any document (time and attendance records, travel expense reports, etc.) or account of the City or its affiliates
- Disclosing to other parties the confidential activities engaged in or contemplated by the City



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- Use or willful unauthorized disclosure of personal identifying and restricted information for a purpose unrelated to City business
- Accepting or seeking anything of material value from vendors, contractors, or other persons in exchange for or to induce favorable consideration concerning services, materials, supplies, equipment or other work provided to the City
Exception: Gifts less than \$50 in value
- Any computer-related activity involving misappropriation of City-owned software, alteration, destruction, forgery, or manipulation of data for fraudulent purposes
- Any similar or related irregularity

OTHER IRREGULARITIES

Irregularities concerning an employee's moral, ethical, or behavioral conduct should be resolved by Division management and Human Resources Office of Equity, Diversity and Inclusion.

CONFIDENTIALITY

In order to protect the reputations of innocent parties, to avoid potential civil liability, and to protect the possibility of recovery, activities associated with ongoing investigations will be discussed with parties affiliated with the City who have a legitimate need to know (parties responsible for the investigation, questioned as part of it, and/or advised of it), and with representatives of law enforcement and/or regulatory agencies.

Any employee informed of an investigation in progress will ensure that strict confidentiality is observed so as not to prejudice the investigation or jeopardize the City's rights and integrity. Any employee found violating this confidentiality will be subject to disciplinary action, up to and including termination.

Employees who suspect fraud, waste, abuse or misuse have a duty to report relevant information and can make the report on a confidential basis to Internal Audit or the whistleblower hotline. Employees should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraudulent activity. Refer to the **Reporting Procedure** section of this policy for more details.

REPORTING PROCEDURE

Employees must exercise professional and mature judgement in reporting suspected fraud, waste, abuse or misuse to avoid wrongful accusations or compromising a potential investigation. The City has established the following methods that allow



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employees to make confidential and anonymous reports of fraud, waste, abuse or misuse:

- Contact the City Auditor at **901-636-6241**. For any reports made after normal business hours, a recorded message may be left.
- Contact the whistleblower hotline at **877-918-2055** or by using the established link at <https://cityofmemphis.alertline.com>.
- Employees desiring to mail or present information in person may do so at the City Auditor's Office, City Hall 125 N. Main, Suite 536, Memphis, TN 38103.

Employees should provide as much information as possible when making a report, including, but not limited to:

- Circumstances of the incident and details describing how the fraudulent activity took place
- Names of all parties involved (employee, vendor, division, department)
- Date(s), time(s), location(s) of the activity that took place
- Descriptions of any evidence or documentation that is available

After reporting the fraudulent activity, all employees must adhere to the following restrictions:

- Do not contact the suspected party to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with any outside party unless specifically asked to do so by Legal or Internal Audit.

In accordance with the Local Government Instances of Fraud Reporting Act, all reports of unlawful conduct or official misconduct made by employees or management shall be reported by the City Auditor, to the Office of the Comptroller of the Treasury within five working days, via Fraud Reporting Form.

RETALIATION

Any act of retaliation, including but not limited to harassment and/or discrimination against an employee reporting suspicion of any fraudulent activity in accordance with this policy shall be prohibited by the City.

POST INVESTIGATION RESULTS AND ACTION

If an investigation results in a recommendation to pursue internal discipline, civil and/or



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criminal fraud proceedings, the recommendation must be reviewed and approved by the Chief Human Resources Officer and the Chief Legal Officer. The Chief Legal Officer will determine whether the recommendation and results of the investigation warrant civil and/or criminal actions. If internal discipline is recommended for City employees, such recommendation will be forwarded to the appropriate Division Director for disciplinary proceedings pursuant to Personnel Manual Policy PM-38-01.

The City will take the necessary steps, including legal action, to recover any losses arising from actual or attempted fraud, waste, abuse or misuse. This may include action against third parties involved in the fraud whose negligence contributed to the fraudulent activity. Employees found to be associated with fraudulent activity will be subject to disciplinary action, up to and including termination and legal prosecution, in accordance with City policies, procedures and applicable laws and regulations.

INTERPRETATION

Interpretation of any legal aspects of this policy will be decided by the Chief Legal Officer. Interpretation of aspects of this policy affecting personnel matters, including discipline and termination, will be decided by the Chief Human Resources Officer or designee.

TRAINING

The City Auditor will provide fraud awareness training to employees as deemed appropriate. The training will clearly communicate expected behaviors of employees, the effects of fraudulent activity, reporting mechanisms, and potential consequences.

REFERENCE CORRESPONDING POLICIES

- SECTION 38-00 DISCIPLINE AND APPEALS
- PM-62-19 WHISTLEBLOWER PROTECTION
- PM-62-21 ELECTRONIC COMMUNICATION POLICY
- PM-78-04 USE OF THE INTERNET, INTERNAL & EXTERNAL ELECTRONIC MAIL & GENERAL USE OF PERSONAL COMPUTERS