



City of Lebanon  
New Hampshire

## ADMINISTRATIVE POLICIES & PROCEDURES COMPLAINTS & INVESTIGATIONS

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<i>Approved by:</i>	DocuSigned by: 12/2/2020		

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Shawn Mulholland

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### Section 1.0: Purpose

The purpose of this policy is to outline the procedures for receiving, investigating and processing complaints regarding City personnel and officials.

### Section 2.0: Scope

This policy applies to all City personnel under the authority of the City Manager. The policy also applies to City officials not under the authority of the City Manager regarding reporting only.

### Section 3.0: Definitions

**3.1 Internal Review** is an independent review process in which case the reviewer can review an investigation and the conclusions drawn from it by the person originally adjudicating the matter.

**3.2 Internal Investigation** is a formal inquiry to determine whether policies or regulatory practices have been violated. Internal investigations may be conducted by outside contracted parties.

**3.3 City Official** is a person who is elected to a position in City government or appointed by the City Council, City Manager or any other Board/Commission/Committee that has the power to appoint persons to positions in City government.

**3.4 City Employee** is a person who works for the City and in return is compensated financially.

**3.5 Complaint** an expression of concern, discontent, dissatisfaction, faultfinding; something that is the cause or subject of protest or outcry; a formal allegation against a party.

**3.6 Informal Complaint** is a complaint that is not of a serious nature, is not a serious violation of department or city policies, is not believed to be serious by the citizen filing the complaint.



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**3.7 Formal Complaint** is a complaint that in which the complainant indicated a desire to file a formal complaint against a City employee or City official. The department head or City Manager deem the complaint to be serious violation of City or department policy or would constitute a violation of law

#### **Section 4.0: Policy Detail**

It is the policy of the City of Lebanon to encourage people to bring forward concerns regarding misconduct by City personnel and officials. The process will be as efficient, easily accessible and transparent as possible. All City staff shall cooperate fully with reviews and investigations regarding complaints. It is expected that City officials who are not under the authority of the City Manager will fully cooperate with reviews and investigations regarding complaints.

#### **Section 5.0: Procedures**

##### **5.1 Receiving a Complaint**

###### **5.1.1 Complaint Means of Filing**

City staff shall immediately receive complaints of misconduct whether received by email, text, social media, letter, telephone or in person. The staff member receiving the complaint shall forward the complaint to their respective department head. If the complaint is regarding a department head the complaint shall be filed with the City Manager. Persons filing complaints against City employees or City officials may file the complaint directly with the City Manager.

###### **5.1.2 Complaints Involving Library Personnel**

Complaints involving Library personnel will follow the same process however if the complaint involves the Library Director, the City Manager will report the complaint to the Library Trustees.



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#### 5.1.3 Complaints Involving Elected and Appointed Officials

Complaints involving City Officials whether elected or appointed who are not under the authority of or appointed by the City Manager shall be forwarded to the City Council for further action. Complaints involving a City Councilor shall be forwarded to the Mayor. If the complaint involves the Mayor the City Manager shall coordinate a meeting of the City Council to address the complaint.

#### 5.1.4 Complaints Involving the City Manager

Complaints involving the City Manager shall be forwarded to the Mayor for further action. The Mayor with approval of the City Council may request assistance from the Deputy City Manager and/or legal counsel to investigate the complaint.

#### 5.1.5 Receiving Complaints Through the Anonymous Hotline

The City operates an anonymous hotline for reporting waste, fraud and abuse. The procedures regarding the use of the Anonymous Hotline shall be as outlined in **ADM-111 ANONYMOUS HOTLINE POLICY** to the extent that it is not inconsistent with this policy.

#### 5.1.6 Receiving Complaints Involving EEO, Sexual Harassment and Hostile Work Environments

Complaints involving Equal Employment Opportunity, Sexual Harassment and Hostile Work Environments shall follow the policy as outline in **ADM-123 ANTI-HARASSMENT, EEO AND SEXUAL HARASSMENT** to the extent it is not inconsistent with this policy.

#### 5.1.7 Serious Incident Reporting



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This policy does not supersede the reporting of Serious Incidents as outlined in **ADM-103 INCIDENT REPORT**. ADM-103 further defines timelines for report of incidents. This policy compliments ADM-103.

#### **5.1.8 Receiving Complaints Regarding Ethics Violations**

Complaints regarding violations of the Ethics Policy shall be handled in accordance with the provisions of **ADM-108 ETHICS** to the extent it is not inconsistent with this policy.

#### **5.1.9 Duty to Report**

All City staff under the authority of the City Manager shall report incidents when they have evidence of or reasonable suspicion that a City employee or official may have attempted or actually committed a crime. The reporting requirement relates to activities in the performance of their function as a City employee or official or there is a tangible relationship to those functions.

**5.1.9.1 Department Policies.** Reports under this section shall be made in accordance with respective written department policies in those departments that have written policies. Department policies shall not be repugnant to the provisions of this policy.

**5.1.9.2 Timing of Notification.** Notwithstanding the provisions of policy **ADM-103 Incident Report**, any allegations of misconduct by a City employee or official that would or may constitute a crime shall be reported to the City Manager within 24 hours. City staff must notify their respective department head when they become aware of evidence of or a have a reasonable suspicion that a City employee or official may have attempted or actually committed a crime in the performance of their function as a City employee or official or there is a tangible relationship to those functions. Department heads shall report such incidents to the City Manager as indicated above.

**5.1.9.3 Exceptions.** The only exception to this reporting requirement is when the following circumstances exist;



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1. The reporting employee is working with a federal, state, county or local law enforcement agency investigating the allegations of activities described in this policy that would require reporting. And,
2. The risk of compromising the investigation by complying with the reporting requirements in this policy is reasonable and articulable. And,
3. The law enforcement agency conducting the investigation has specifically requested the employee having such knowledge, not to report the incident in accordance with this policy.

**5.1.9.4 Failure to Report** incidents in accordance with this section may result in disciplinary action up to and including termination of employment.

#### **5.1.10 Protection of Reporting Parties**

Persons filing complaints against City employees or City officials shall not be harassed, abused, intimidated, threatened or otherwise discriminated against by any City employee or City official. City employees are further protected regarding the filing of complaints or participating in investigations through provisions of RSA 275-E Whistleblowers' Protection Act. There are additional protections for City employees under federal law, see references in Section 6 below.

#### **5.2 Review and Investigation of Complaints**

##### **5.2.1 Authority and Responsibility to Investigate**

The authority and responsibility for investigating violations of City policies is placed on the department of the employee involved in the first instance. Department Heads have the authority and responsibility to ensure investigations or complaints alleging violations of City policy are conducted. Some departments may have formal policies regarding how internal investigations are conducted and how those investigations are reviewed.



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Complaints regarding department heads shall be forwarded to the City Manager's Office. Complaints against department heads shall not be investigated by departments, only the City Manager's Office will investigate these complaints.

**5.2.1.1 City Manager Authority.** The City Manager reserves the authority to conduct an independent review of internal investigations conducted by departments. Further, the City Manager may intervene and take over the investigation of any complaint regarding a violation of City policy to conduct an independent investigation. This provision does not apply to complaints involving the City Manager.

**5.2.1.2 Complaints involving allegations of criminal conduct.**

Complaints alleging actions by City employees or officials that would constitute a crime shall be reported to the appropriate law enforcement agency having jurisdiction. When the complaint involves allegations of criminal conduct, the internal investigation may have to be delayed until the outcome of a criminal investigation and prosecution. Decisions regarding the delaying of internal investigations in these circumstances shall be made with the City Manager, the law enforcement agency conducting the investigation and the agency with prosecutorial jurisdiction.

**5.2.1.3 Procedures for Informal Complaints.** Some informal complaints can be addressed verbally with the complainant and the employees or officials involved. Other informal complaints may require further action. In these cases the following steps should be followed,

1. Complete the complaint form.
2. Conduct necessary interviews appropriate, including employees and gather any other information relevant to the matter.
3. Notify the employee(s) of the allegations and interview the employee(s)
4. Complete a memorandum outlining the complaint and the investigation to include the finding.



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**5.2.1.4 Procedures for Formal Complaints.** Formal complaints will always require documentation as detailed below.

1. Complete the complaint form.
2. Conduct necessary interviews appropriate, including employees and gather any other information relevant to the matter.
3. Notify the employee(s) of the allegations and interview the employee(s)
4. Complete a memorandum outlining the complaint and the investigation to include the finding.
5. Notify the complaint of the results of the complaint.

**5.2.1.5 Procedures for Recording Complaints.** All complaints against City Staff and Officials shall be added into the Guardian tracking software to include supporting documentation.

### 5.2.2 Cooperation Regarding Investigation of Complaints

The employees of the City shall cooperate with internal investigations regarding complaints. Failure to cooperate with investigators is considered insubordination. Employees who fail to cooperate will be subject to disciplinary action up to and including termination of employment.

**5.2.3 Findings of Investigations.** The person assigned to conduct an investigation of a formal and in some cases informal complaint shall at the completion of that investigation make a finding which shall include one of the following determinations;

1. **Sustained-** The complaint is substantiated by the evidence available.
2. **Unfounded-** The complaint on not factual.
3. **Exonerated-** There is evidence to indicate the incident occurred however the actions of the employee were lawful and not contrary to City or department policy.
4. **Not Sustained-** The complaint is unsubstantiated based upon the evidence that is available.



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### **5.3 Records and Documents**

Documents relating to complaints, the investigation of those complaints, findings and recommendations shall be maintained in accordance with records retention schedules under New Hampshire law, administrative rule or the City's record retention policies.

#### **5.3.1 Unfounded, Exonerated and Not Sustained complaints**

Complaints and the related documents regarding the investigation of those complaints in which the finding is Unfounded, Exonerated or Not Sustained shall be filed in a designated location in the City's records management system separate from the personnel files of the persons involved.

#### **5.3.2 Sustained complaints**

Complaints and the related documents regarding the investigation of those complaints in which the finding is Sustained shall be filed in the designated founded complaints file.

#### **5.3.3 Confidentiality**

The investigation of complaints or the conduct of an internal review involving City employees and City officials shall remain confidential. All information and documents regarding complaints and the investigation of those complaints shall remain confidential in accordance with the exemptions as proscribed in RSA 91-A, other related state/federal statutes as may be interpreted by state and federal courts.

### **Section 6.0: References (Charter/Code/State Statues)**

1. City Policy ADM-111 Anonymous Hotline Policy
2. City Policy ADM-123 Anti-Harassment, EEO and Sexual Harassment Policy
3. City Policy ADM-103 Incident Report
4. City Policy ADM-108 Ethics
5. City Policy ADM-114 Records Management
6. State of NH RSA 275-E, Whistleblowers' Protection Act





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7. State of NH RSA 91-A, Right to Know Law
8. Federal 29 CFR 1977, Asbestos Hazard Emergency Response Act, 15 USC 2651
9. Federal 29 CFR 24, Safe Drinking Water Act, 47 USC 300j-9(i)
10. Federal 29 CFR 24, Federal Water Pollution Control Act, 33 USC 1367
11. Federal 29 CFR 24, Solid Waste Disposal Act, 42 USC 6971
12. Federal 29 CFR 24, Clean Air Act, 42 USC 7622
13. Federal 29 CFR 24, Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9610
14. Federal 29 CFR 1984, Affordable Care Act, 29 USC 218c]

### Section 7.0: Policy & Procedure Revision History

	<b>Section</b>	<b>Revisions</b>	<b>Date</b>
Original Adoption	All	Newly created	9/1/2020
Amendment	Body 5.2.1.5	Replace "citizen" with "people" Added Guardian Software entry provisions	1/1/21
Amendment			
Amendment			