



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 1, 2024

IBA Report Number: 24-05

Follow-Up to Recommendation 7 from Performance Audit of the City's Major Building Acquisition Process

OVERVIEW

Recommendation 7 from the 2021 [Performance Audit of the City's Major Building Acquisition Process](#) report tasked our Office, in consultation with the City Attorney's Office, to develop and bring forward to City Council changes to the San Diego Municipal Code providing an enforcement mechanism to ensure City staff provide Council with complete, material, accurate facts and significant developments relating to real estate acquisitions. After discussions with the City Attorney's Office and City Management regarding several options to address the recommendation, there has been no clear consensus solution.

During the Audit Committee follow-up recommendation meeting on November 15, 2023, our Office agreed to return to the Audit Committee to present potential options and to request further direction. This report provides relevant background on the performance audit, summarizes current law, presents findings from our benchmarking study of other jurisdictions, and details five options our Office has explored, most of which come with associated tradeoffs, including (1) introducing a new misdemeanor, (2) requiring staff attestations, (3) updating conduct codes for City employees, (4) offering staff training, and (5) maintaining the status quo while increasing fraud awareness.

BACKGROUND

The Performance Audit of the City’s Major Building Acquisition Process

In July 2021, the City Auditor’s Office released its *Performance Audit of the City’s Major Building Acquisition Process*. The performance audit focused on a series of City building acquisitions – such as the Civic Center Plaza (acquired in March 2015), 101 Ash Street (acquired in January 2017), and the Housing Navigation Center (acquired in January 2018) – to determine, among other things, whether City oversight mechanisms were sufficient. One of the audit findings stated that “[t]he City does not have an enforcement mechanism in its municipal code to take action if City staff do not provide all material facts to City Council,” in violation of City Charter section 32.1 (see nearby box). To address this finding, the report issued the following recommendation:

City Charter section 32.1 states, “The City Manager and all non-managerial officers of the City shall inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council.”

Recommendation 7: We recommend that the Independent Budget Analyst, in consultation with the City Attorney’s Office, create and bring forward to City Council for approval a section to be added to the San Diego Municipal Code to provide an enforcement mechanism for Charter Section 32.1, to ensure that City staff accurately represent and inform City Council of all material facts or significant developments relating to real estate acquisitions under the jurisdiction of City Council.

The City Auditor’s Office further added that “the current City Charter language is insufficient to deter misleading City Council and lacks enforcement mechanisms outside of the City Administration’s [referred to in this report as City Management] chain of command.”¹ This suggests that the intent of the recommendation is two-fold: (1) to deter City staff from misleading City Council either through concealment of material facts or providing inaccurate information, and (2) developing a mechanism for corrective action that does not primarily rely on City Management. For the purposes of this report, City Management refers to department heads and executive branch leadership, who fall under the direction of the Mayor.

Current Law

Current law provides limited options for the City to take action against a City employee who provides false or incomplete information to the City Council.²

¹ See “Office of the City Auditor’s Comments on the Response from the City Attorney’s Office” (starting on PDF page 112 of the [Performance Audit of the City’s Major Building Acquisition Process](#)) for additional information.

² Under the California False Claims Act, the City Attorney’s Office has the authority to investigate and bring a civil suit against any person found to have knowingly made or used a false statement or document to obtain money or property, as specified, from the City. However, according to the City Attorney’s Office, case law on this issue holds that the California False Claims Act would not authorize a lawsuit against employees of a public agency, acting in the course and scope of their employment, and solely on the agency’s behalf. Hence, the California False Claims Act is not an available legal tool against City employees who provide false information to Council.

First, the Mayor has the “power to appoint and remove all officers and employees in the administrative service of the City under his control” and may authorize department heads, who report to the Mayor, to appoint and remove employees in their respective departments.³ Typically, the authority to remove, suspend, or otherwise discipline a department employee lies with the department head. The disciplinary process looks different for classified and unclassified employees. Classified employees can only be removed for cause, or suspended for cause or for investigation of misconduct.⁴ The department head has primary discretion over disciplinary action following review of specific circumstances and facts.⁵ As a result, should a classified employee be found to have provided false or incomplete information to Council, there is no established criteria or threshold that would make such misconduct a clearly fireable offense. Rather, the department head can evaluate the specific circumstances and use their professional judgement to impose appropriate disciplinary measures, if any. Although there is no mechanism for the City Council to impose disciplinary action against a classified employee within a mayoral department, Council may initiate an investigation into alleged misconduct or inefficiency of a classified employee by filing written charges with the Personnel Director.⁶ Unclassified employees can be removed at any time, with some exceptions.⁷ However, removal or suspension of a City employee working in a mayoral department relies on action from City Management. According to the City Attorney’s Office, due to the separation of powers established in the City Charter, the Council cannot discipline or terminate Mayoral staff or the staff of independent departments.

According to the City Attorney’s Office, there are no clear legal repercussions established in the San Diego City Charter for violating section 32.1, but there could be other legal mechanisms depending on the specific facts of the alleged employee misconduct. For instance, if a City employee withholds or falsifies information in pursuit of another, more serious crime, the City Charter gives authority to the City Attorney’s Office to “prosecute for all offenses against the ordinances of the City and for such offenses against the law of the State”.⁸ The District Attorney and City Attorney have concurrent jurisdiction to prosecute individuals charged with misdemeanors under State law that occur within the City limits.⁹ Therefore, if a City employee violated City or State laws as a result of, or in connection to, misleading or concealing information from the Council, the City Attorney and potentially the District Attorney could pursue criminal charges.

The City Attorney’s Office has indicated additional research is needed to determine whether classified employees would fall under the definition of “all non-managerial officers of the City” as referenced in Charter section 32.1.

³ As per City Charter section 29.

⁴ As per City Charter section 129.

⁵ Under City Charter section 128, the Civil Service Commission is responsible for investigating any charges, or causing charges to be investigated, of misconduct or inefficiency against any officer or employee and reporting the findings to the appropriate appointing authority. The City Council, the Civil Service Commission, the City Manager (i.e., the Mayor), the Personnel Director, or any persons designated by them, may file a written charge with the Personnel Director.

⁶ As per City Charter section 128.

⁷ As per City Charter section 30, with the one exception being for Deputy City Attorneys.

⁸ As per City Charter section 40.

⁹ As per City Charter section 40.1.

FISCAL AND POLICY DISCUSSION

Although Recommendation 7 was issued July 2021, the status of the recommendation remains pending due to challenges identifying a clear policy solution that City Management, the City Attorney's Office, the City Auditor's Office, and our Office can agree on. Hence, our Office is requesting Audit Committee policy direction on next steps. To assist in the discussion, this section first summarizes findings from our benchmark study of other cities and states, and then presents five options describing associated benefits and limitations.

Benchmarking of Other Cities and States

Our Office conducted a benchmark study and identified relevant laws that make providing false statements or claims to the governing body a misdemeanor in a sample consisting of three states (Georgia, Washington, and California) and three cities (Santa Monica, California; Chicago, Illinois, and Los Angeles, California) across the country. The results of this benchmarking can be found in Attachment 1. We additionally reached out to nine cities/counties to inquire about relevant laws that set penalties for City staff who withhold information or provide false information to Council and received responses from three cities and one county.¹⁰ In our benchmarking, we identified three main groupings:

- 1) False statements or claims are deemed misdemeanors, but this is largely aimed at *external parties*:** We identified three states and one city that made providing false statements or claims to the respective government a misdemeanor – this includes the states of California, Georgia, and Washington, as well as the city of Santa Monica. However, these laws largely pertain to facts and information provided by outside parties engaging with the city or state, and not to employees of the state or city themselves.

The city of Chicago did not establish a misdemeanor but did set in its municipal code minimum and maximum civil penalties if an individual knowingly makes a false statement of material fact to the city. Based on information shared by the Chicago Department of Law, the municipal code section also largely pertains to external parties conducting business with the city and has never been used in the context of city staff providing information to city council.

- 2) City management has authority to discipline employees:** In the cities of Reno, Nevada and Santa Fe, New Mexico, the city manager is responsible for supervising city staff, including conducting investigations of alleged wrongdoing and, if an allegation is substantiated, disciplining the employee. Representatives from the city of Fairbanks, Alaska shared that there could be set disciplinary procedures and policies when an employee withholds information or lies to Council, but the specific actions depend on whether an employee is classified or unclassified.
- 3) Other approaches related to false statements:** The county of Miami-Dade, Florida and City of Los Angeles used slightly different approaches. The county of Miami-Dade, Florida has a Citizens' Bill of Rights, which states, "No County or municipal official or employee

¹⁰ Out of the nine cities/counties contacted, four provided responses, including Reno, NV; Miami, FL; Santa Fe, NM; and Fairbanks, AK.

shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.” Enforcement is left to the Commission on Ethics and Public Trust, which has the authority to impose penalties. Citizens may also bring a cause of action in the courts to enforce this provision in the Citizens’ Bill of Rights. As another example, the City of Los Angeles Municipal Code requires City departments and appointed offices to report matters involving potential fraud, waste, or abuse to the Ethics Commission and Controller’s Office. Under the Los Angeles Municipal Code section 20.60.4, *fraud* is defined, as follows:

Any intentional act or omission designed to deprive the City of its resources to which the individual or person is not entitled, including but not limited to making false statements or submitting false documents, withholding or misrepresenting material facts, bribery, or unauthorized disclosure of confidential procurement documents.

Our benchmarking shows that, generally, consequences of City staff failing to meet disclosure requirements are handled through employee disciplinary practices, and the instances where false statements or claims are deemed misdemeanors or have set civil penalties are primarily attempts to deter wrongdoing from parties *external* to the government, and not city or state staff themselves.

Options for Audit Committee Consideration

This section presents five options for Audit Committee consideration and describes associated benefits and then limitations for each option. In evaluating the options before the Audit Committee, our Office considered the following three factors:

- 1) **Feasibility** meaning whether the option could be implemented without significant challenges, including major opposition from a key stakeholder;
- 2) **Deterrence Effectiveness/Enforceability** since enforcement and the certainty of an individual committing wrongdoing being caught are critical to ensure that a deterrent is effective;¹¹ and
- 3) **Establishes Mechanism Outside of City Management** since a major shortcoming identified by the City Auditor’s Office is that, under current law, disciplinary action is only taken through City Management’s chain of command.

Additionally, notable implementation steps are also included in the discussion below, including meet and confer requirements and Municipal Code amendments.

¹¹ Based on a [2016 factsheet](#) from National Institute of Justice, which is part of the U.S. Department of Justice, “[t]he certainty of being caught is a vastly more powerful deterrent than the punishment... Police deter crime by increasing the perception that criminals will be caught and punished...Increasing the severity of punishment does little to deter crime.”

Option 1: Make violations of City Charter section 32.1 a misdemeanor, modeled after the Improper Influence Clause

The City Auditor's Office suggested modeling an enforcement mechanism after the Improper Influence Clause,¹² which would make a violation of City Charter section 32.1 a misdemeanor.¹³ This approach would signal the values of the City and reinforce expectations that City staff provide complete and material information to fully inform Council decision-making. This option would also establish a separate mechanism outside of City Management for punishing a City employee who violates Charter section 32.1, presumably by authorizing the City Attorney's Office to pursue criminal misdemeanor charges for such violations. However, the City Attorney's Office would have sole discretion over whether to file criminal charges.

Creating a new misdemeanor poses challenges due to limited feasibility and effectiveness as a deterrent. Regarding feasibility, City Attorney's Office noted, "it is unlikely that an enforcement mechanism could be crafted in the Municipal Code in a manner that is enforceable and would survive a 'vague and ambiguous' challenge from any alleged violator...In sum, Recommendation 7 is neither feasible to implement nor productive." To the extent that making violations of Charter section 32.1 a misdemeanor is not enforceable and the likelihood of punishment is low, this option would not serve as an effective deterrent. Additionally, as previously mentioned, the City Attorney's Office already has the authority under current law to pursue charges for existing crimes violating City or State laws within the City boundaries. Lastly, although this option creates an enforcement mechanism separate from City Management, the City Attorney's Office (or if referred, the District Attorney) would have the sole discretion to pursue misdemeanor charges if the Municipal Code were amended to allow such charges.

From an implementation perspective, this option would not be subject to meet and confer with the recognized labor organizations, as it falls under the City's policing power granted in the California Constitution.¹⁴ Although not likely subject to meet and confer, recognized labor organizations may nevertheless have strong concerns with this approach. City Council would also need take action to amend the Municipal Code to establish a new misdemeanor.

The Audit Committee may wish to further discuss the following questions regarding this option:

- To what extent would this option be effective, if, according to the City Attorney's Office, it is unlikely to be enforced due to its ambiguity?

¹² The Improper Influence Clause (San Diego Municipal Code section 22.0709(b)) states, "It shall be unlawful for any elected official, officer, or employee of the City, or anyone acting under their direction, to take any action to coerce or fraudulently influence, manipulate, or mislead any auditor of the City, including the City Auditor, or any staff member of such auditor, in the conduct of an audit with the specific intent of obstructing such audit or rendering any report of such audit materially misleading."

¹³ For misdemeanors, sentencing would be left to the discretion of a judge, but the maximum punishment for a misdemeanor is up to six months in jail and/or up to a \$1,000 fine.

¹⁴ As per California State Constitution, Article XI, section 7, based on discussions with the Human Resources Department.

- Would the intent of the City Auditor’s recommendations be satisfied if the City Attorney’s Office (or, if applicable, District Attorney’s Office) declined to file a criminal case due to the potential of a vague and ambiguous challenge?
- Who would be held responsible if City staff received direction from a superior to omit material information or provide inaccurate information?
- The materiality of facts and significant developments that an alleged violator may have omitted can be subjective, since two individuals can have different opinions about which facts and developments are most material and relevant. Under what circumstances would omitting facts from Council be considered a crime?
- Would the misdemeanor apply exclusively to City staff regarding real estate acquisitions, given the original focus of the audit? Would it apply to parties external to the City, which is more aligned with practices from benchmarked cities?
- Would the potential for this option to be used capriciously exist, such that there could be unintended consequences to other City staff or general morale? In other words, if a colleague were prosecuted for a misdemeanor in violation of Charter section 32.1, would that dampen morale and make it more likely for staff to leave, potentially contributing to City staffing challenges?

Option 2: Require staff attestation on staff reports

Another option is requiring staff attestation that all facts and significant developments included in a staff report concerning a real estate acquisition are complete, material, and accurate. Staff attestation could provide a helpful checkpoint for staff to evaluate whether all necessary facts and details are included on a staff report, potentially improving the quality of staff reports and information shared with Council.

Nevertheless, this option also has downsides, including feasibility issues, low likelihood of meaningfully deterring wrongdoing, and continued reliance on City Management to take disciplinary action. City Management raised concerns that requiring staff attestations could have negative effects on work culture, potentially creating adversarial conditions and implying that City staff cannot be trusted. City Management also expressed practical concerns related to which staff would be required to sign attestations, since multiple individuals are usually involved in creating staff reports. City Management consider the currently required department head and City Management approval of staff reports as an assurance that staff representation of facts to Council is accurate. Additionally, staff attestation may not be the most effective deterrent since individuals who are motivated to knowingly provide false information or withhold significant details may also not hesitate to falsely attest to the completeness and accuracy of a staff report. Furthermore, the repercussions to false attestation are not clear. If punishment relies on City Management to act, the option results in outcomes no different than the status quo.

For implementation, meet and confer with recognized labor organizations would most likely be required, since there would be changes to terms and conditions of employment, such that classified staff could face discipline based on information provided (or not provided) in a staff report. According to the City Attorney’s Office, changes to the Municipal Code would likely be required to implement staff attestations, as staff reports fall under the Mayor’s purview for his employees.

The City Attorney's Office has suggested that this approach could also pose potential separation of powers issues.

Our Office suggests the Audit Committee consider the following key questions regarding staff attestation:

- Is there a practical difference between the currently required management sign-off mechanism and staff attestation?
- Would attestation be required from staff and/or department management on each staff report or only those specific to real estate acquisitions?
- What if department management makes changes to a staff report that staff do not ultimately agree with – who would be responsible for attestation under this circumstance?
- If this option is implemented, how would false attestations be investigated? How would corrective action be determined?

Option 3: Update the City Employee Code of Conduct

The Audit Committee could consider whether existing employee codes of conduct should be updated to reflect expectations for City staff under Charter section 32.1.¹⁵ Various policies and regulations establish expectations and standards for City employee behavior, including Administrative Regulation 95.60 ([AR 95.60](#)), Personnel Manual [Index G-1](#), and Rules of the Civil Service Commission [Rule XI](#)¹⁶. The City also maintains an Employee Code of Conduct [Handbook](#) that compiles various regulations, policies, and procedures relevant to City employees. Although such policies and regulations detail specific prohibitions and requirements on a broad range of topics, expectations for providing accurate, material, and complete information to Council are not explicitly stated. For instance, AR 95.60 has a general statement of ethical behavior under section 4.1.1, which states “[i]t is the responsibility of all City of San Diego employees to engage in ethical behavior and practices,” and includes a general legal reference to the City Charter, but there are no specific references to employee obligations to Council.

Regarding benefits to this approach, if Charter section 32.1 were referenced in employee conduct codes or the associated handbook, the expectation for City employees to provide complete, material facts to Council would be more clear. Including references to Charter section 32.1 in employee conduct codes or the handbook could also better inform fact finding investigations of City policies and procedures in the existing disciplinary process. According to the Human Resources Department, modifying AR 95.60 to specify that City staff are expected to comply with Charter section 32.1 is likely not necessary, given that the City Charter is already referenced in AR 95.60, but Charter section 32.1 *could* be expressly added to the Employee Code of Conduct Handbook for greater emphasis and clarity.

On the downside, this option could have limitations as a deterrent, and it ultimately does not establish an enforcement mechanism outside City Management. This option may be challenging

¹⁵ As previously mentioned, the City Attorney's Office has indicated that additional research is needed to determine whether classified employees are included under Charter section 32.1.

¹⁶ Starting PDF page 97.

to enforce, as, similar to previous options, the City does not always know when Charter section 32.1 might be violated, and an employee willing to knowingly withhold or falsify information may be undeterred by the employee code of conduct or associated guidance. Lastly, instead of establishing an enforcement mechanism outside of City Management, this option primarily works through the existing disciplinary process available to City Management.

The implementation process varies depending on whether AR 95.60 or the Employee Code of Conduct Handbook is amended. Because such changes could impact the civil service disciplinary process, modifying AR 95.60 to incorporate employee responsibilities under Charter section 32.1 could trigger meet and confer if represented employees are determined to be impacted. We note that updating the Employee Code of Conduct Handbook would likely not be subject to meet and confer, as the handbook is a compilation of existing policies and is developed as a collaborative effort.

In considering this option, the Audit Committee may wish to consider the following questions:

- What would be the practical benefits of updating the City employee codes of conduct or associated handbook regarding Charter section 32.1?
- Would the future risk of withholding material information from Council be lower under this option compared to the status quo?

Option 4: Offer staff training related to Charter section 32.1

Developing additional staff training to reinforce the expectation of providing complete and accurate facts and significant developments could improve the quality of staff reports and better inform Council decision-making. This approach could focus on preventative measures by emphasizing the importance of providing complete and accurate facts to Council and potentially deter staff from withholding material information by reminding staff of possible repercussions. The training could also include promotion of the City Auditor's existing fraud hotline in the event staff is aware of omission of significant facts in staff reports. This option could be pursued alone or alongside this report's first or second option to educate City staff on any new measures that take effect. Additional staff training would also be relatively easy to develop and implement compared to other options. This option would require identifying an appropriate department to develop new staff training or incorporate into an existing training the expectations related to Charter section 32.1. This may include the Human Resources Department or the Mayor's Docket Office, both of which already provide staff trainings, or the Council's Director of Legislative Affairs.

However, improved staff training could also have limited benefits, since training may not offer a deterrent or an enforcement mechanism outside of City Management. Similar to staff attestation, staff training might not be an effective deterrent, and corrective action would still rely on City Management. Given the varied nature of Council items, staff training could be specifically developed for staff likely to deal with real estate acquisitions.

The Audit Committee may wish to explore the following questions regarding staff training:

- Which department would be most appropriate to develop and provide such staff training?

- Which types of staff should be targeted for additional staff training?
- Should such training be mandatory for specific staff? If so, we note that mandatory trainings would likely be subject to meet and confer.
- Are there core concepts such staff training should cover?
- Are there additional considerations that might make such staff training a more effective deterrent?
















Option 5: Maintain status quo

The last option is to maintain the status quo. As stated in the City Auditor’s Office’s [Recommendation Follow-Up Report Ending December 31, 2021](#), the City Attorney’s Office started adding the following language to Council resolutions and ordinances as an alternative to other options explored by the City Attorney’s Office: “WHEREAS, the Office of the City Attorney has drafted this [resolution / ordinance] based on the information provided by City staff, with the understanding that this information is complete, true, and accurate.” According to the City Auditor’s Office, “This new language in resolutions and ordinances is an improvement, but likely does not address the risk as fully as attestations or penalties.” That noted, the Audit Committee might find that none of the various options meet *all* of the audit’s criteria: acting as an effective deterrent against future wrongdoing, feasible implementation without notable challenges, and establishing an enforcement mechanism outside of City Management. Additionally, the authority that City Management currently maintains over supervision, investigation, and disciplining of City staff is consistent with our benchmarking study, which found that most cities generally would use existing disciplinary procedures if their staff were to withhold or provide false information to Council. Furthermore, if a City employee allegedly breaks the law, the case could be referred to law enforcement, the City Attorney’s Office, or the District Attorney’s Office.

Even under the status quo, there could be some measures taken to discourage future violations of Charter section 32.1 by raising the visibility of this issue. For instance, the City could draw from the example set by the City of Los Angeles and promote existing processes to detect fraud, waste, and abuse. Given difficulties in knowing when material facts and significant developments are withheld or distorted, promoting the City Auditor’s existing fraud hotline and whistleblower protections could encourage City employees with knowledge of improper behavior to report issues if, or when, they arise. In instances where department management directs City staff to distort or conceal information on a staff report, such resources outside of City Management are valuable. Furthermore, Los Angeles developed Fraud Awareness Training that is required for all full-time City employees; the City could explore developing and offering similar staff trainings to raise awareness around fraud detection and available resources. The City Auditor’s Office could also consider modifying their definition of *fraud* to explicitly include “making false statements or submitting false documents, withholding or misrepresenting material facts” following the definition used by Los Angeles. Additionally, Human Resources Department noted that employee performance plans typically include language setting expectations that City employees are to be truthful and provide accurate information. The Committee could encourage City Management to ensure such statements are included in performance plans for department staff and include clear examples of information that should be provided to the City Council in staff reports.

Summary Table of Options

Below, we provide a table summarizing the options being presented to the Audit Committee for consideration:


	Feasibility	Deterrence Effectiveness	Mechanism Outside of City Administration
Option 1: Make violations of City Charter section 32.1 a misdemeanor			
Option 2: Require staff attestation on staff reports			
Option 3: Update the City Employee Code of Conduct			
Option 4: Offer staff training on Charter section 32.1			
Option 5: Maintain status quo			

CONCLUSION

As the City is not omniscient, it will not always know when a violation of Charter section 32.1 occurs. This remains an underlying limitation to any enforcement mechanism or action taken in response to Recommendation 7 from the *Performance Audit of the City’s Major Building Acquisition Process* report. However, providing complete, accurate, material facts and significant developments to Council is paramount to informed decision-making. In this report, our Office summarizes a benchmark study of ten state and local governments, and found that City staff failing to disclose material information is generally handled through employee disciplinary procedures. The report presents five options for the Audit Committee to evaluate and provide feedback on based on three criteria: ease of implementation, effectiveness as a deterrent, and establishing an enforcement mechanism outside of City Management. The options presented include (1) introducing a new misdemeanor, (2) requiring staff attestations, (3) updating conduct codes for City employees, (4) offering staff training, and (5) maintaining the status quo with added focus on fraud awareness. Among these options, only introducing a new misdemeanor would establish an enforcement mechanism outside of City Management, but this approach comes with notable downsides regarding feasibility and limitations as an effective deterrent, specifically due to legal ambiguity and the lack of enforceability. Only three options – updating City employee conduct codes (or associated handbook), offering staff training, and maintaining the status quo – appear to be easily feasible, but they do not provide an enforcement mechanism outside of City Management, nor is it clear they effectively deter future misconduct.

Recognizing that a new enforcement mechanism is challenging to implement, the Audit Committee may wish to further explore options that may effectively reduce risk of future violations of Charter section 32.1 without creating a new misdemeanor. For example, the City has options to better inform City staff of obligations to Council and to promote fraud awareness and whistleblower protections. Given the compelling interest the City has in deterring future misconduct related to Charter section 32.1, our Office looks forward to the Audit Committee's feedback and is ready to assist with any next steps.

In the process of developing this report, our Office worked with the City Attorney's Office, the Compliance Department, the Human Resources Department, and the Mayor's Docket Office. We thank all offices and departments for answering our questions and providing feedback on our report.



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Attachment 1: Benchmarking of Laws Regarding False Statements and Claims

Attachment 1: Benchmarking of Laws Regarding False Statements and Claims

Government	Code Reference	Excerpt	Past Contexts, if available
United States Federal Government	18 U.S. Code § 1001	<p>Statements or entries generally Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully— (1)falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2)makes any materially false, fictitious, or fraudulent statement or representation; or (3)makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.</p>	Wide-ranging
United States Federal Government	31 U.S. Code §3729	<p>False Claims Subject to paragraph (2), any person who— (A)knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B)knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (C)conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G); (D)has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property; (E)is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true; (F)knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or (G)knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, <i>(continued next page)</i></p>	False Claims law applies to administrative matters such as claims for payment, procurement, personnel and employment issues, etc.

Attachment 1

<p>United States Federal Government</p>	<p>31 U.S. Code §3729 (cont.)</p>	<p>is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410 [1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.</p>	
<p>State of Georgia</p>	<p>Ga. Code § 16-10-20</p>	<p>False statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.</p>	<p>Information provided to law enforcement officers (<i>Sneiderman v. State</i>, 336 Ga. App. 153)</p>
<p>State of Washington</p>	<p>RCW §9A.76.175</p>	<p>Making a false or misleading statement to a public servant A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.</p>	<p>Information provided to law enforcement officers (<i>State v. Thomas</i>, 103 Wn. App. 800)</p>
<p>State of California</p>	<p>CA Gov Code §§12650-12656</p>	<p>False Claims Actions (a) Any person who commits any of the following enumerated acts in this subdivision shall have violated this article and shall be liable to the state or to the political subdivision for three times the amount of damages that the state or political subdivision sustains because of the act of that person. A person who commits any of the following enumerated acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Section 5, 104 Stat. 891, note following 28 U.S.C. Section 2461. (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim. (3) Conspires to commit a violation of this subdivision.</p>	<p>Wide-ranging, includes Medicaid/Medi-Cal fraud</p>

	<p>(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property.</p> <p>(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used.</p> <p>(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.</p> <p>(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or to any political subdivision, or knowingly conceals or knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or to any political subdivision.</p> <p>(8) Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.</p> <p>(b) Notwithstanding subdivision (a), the c</p>	
<p>County of Miami-Dade, Florida</p> <p>Citizens' Bill of Rights</p>	<p>Citizens' Bill of Rights This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to ensure to all persons fair and equitable treatment, the following rights are guaranteed... <i>Truth in Government.</i> No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public... <i>Remedies for Violations.</i> A citizen may bring a cause of action alleging a violation of this Article filed in the Dade County Circuit Court pursuant to its general equity jurisdiction and if successful, shall be entitled to recover costs as fixed by the Court. The Commission on Ethics and Public Trust may also enforce the provisions of this Article and may impose any penalty authorized by County Code not otherwise prohibited by a collective bargaining agreement, for a violation of this Article. Any penalty imposed by the Commission on Ethics and Public Trust pursuant to this subsection may be enforced in the Miami-Dade County Circuit Court.</p>	<p>Unknown</p>

Attachment 1

<p>City of Santa Monica</p>	<p>SMMC § 4.08.820</p>	<p>False statements Any person who knowingly makes a false, misleading, or fraudulent material statement or representation in any matter within the jurisdiction of the City shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars per violation, or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment.</p>	<p>Originally passed to address property owners and home-sharing hosts lying on official city forms¹⁷</p>
<p>City of Chicago</p>	<p>MCC §1-21-010</p>	<p>False statements (a) Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly makes a false statement of material fact to the city in connection with any application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees. The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code.</p>	<p>Unknown, but largely outward facing for those engaging with the city for different purposes¹⁸</p>
<p>City of Los Angeles</p>	<p>LACC §20.60.4</p>	<p>Reporting Requirements Except as prohibited by applicable law, City departments and appointed offices are required to report matters involving potential fraud, waste, or abuse within 10 days of discovery of the information that reasonably indicates that the matter involves fraud, waste or abuse. City departments shall concurrently report the information to the Unit and the Ethics Commission for investigation or appropriate action.</p> <p>For purposes of this Section, the following definitions apply:</p> <p>Abuse: The improper use of City resources in a manner contrary to law or City policy or the improper use of one's position for private gain or advantage for themselves or any other person where not otherwise lawful.</p> <p>Fraud: Any intentional act or omission designed to deprive the City of its resources to which the individual or person is not entitled, including but not limited to making false statements or submitting false documents, withholding or misrepresenting material facts, bribery, or unauthorized disclosure of confidential procurement documents.</p>	<p>Reporting requirements for City staff</p>

¹⁷ Additional information available [here](#).

¹⁸ Email correspondent received from the City of Chicago Department of Law, January 16, 2024.

Attachment 1

Waste: The extravagant or excessive expenditure of City funds above and beyond the level that is reasonably required to meet the needs of the City or the consumption or use of City resources that is not knowingly authorized.