



500 West Big Beaver  
Troy, MI 48084  
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J-02f

## CITY COUNCIL AGENDA ITEM

Date: September 19, 2019

To: Honorable Mayor and Troy City Council Members

From: Mark F. Miller, City Manager  
Lori Grigg Bluhm, City Attorney  
Robert J. Bruner, Assistant City Manager

Subject: City Council Investigation

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Since receiving the Plante & Moran (Plante Moran) report in July, the City Council has deliberated regarding whether or not to initiate an investigation pursuant to Section 4.8 of the City Charter. Specifically, the City Council has considered whether or not to initiate an investigation to “explore whether or not any member of Troy City Council played a role in creating the ‘Culture of Complicity’ that enabled former Troy City Manager Brian Kischnick’s wrongdoings and crimes.” At its September 9, 2019 meeting, the City Council took no action on this item but requested City staff contact Plante Moran to clarify what was meant by “culture of complicity” and the “tone at the top.”

As requested, Michelle McHale of Plante Moran was asked to provide additional input. She stated the report speaks for itself and confirmed Plante Moran’s interview notes and other work product would not be released. She also expressed doubts about the value of conducting additional interviews. If interviewed, she cautioned City employees should not be recorded since this would likely discourage candid responses. She also expressed concern that recorded interviews could lead to second-guessing of the investigative techniques. Although not encouraged, she indicated that Plante Moran could also conduct additional interviews, and the cost would be comparable to those provided by Attorney Nancy Vayda Dembinski.

Ms. McHale was also apprised of the September 12, 2019 email (attached) to all City employees reminding them of the City’s revised whistleblower protection policy and procedure for reporting violations. City employees may report violations at any time. They do not need to wait for the City Council or anyone else to initiate an investigation.

Rather than further investigating the past, Ms. McHale suggested the City look forward. Plante Moran’s report included an Internal Control Recommendation Log (“Control Log”) with seventeen recommendations to strengthen the City’s internal controls. A team of senior City staff has been assigned to evaluate each recommendation and their suggestions will be presented to City Council for its consideration. Plante Moran’s Control Log included three observations regarding ethics and compliance:

5. The City lacked a process where employees could report policy and legal breaches without fear of retaliation.
6. The overall tone at the top encouraged individuals in positions of authority to influence subordinates.



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7. The City's response to poor behavior/choices when they were made known often reinforced the wrongdoer's actions, from the employee perspective, since sufficient corrective action was seldom taken.

Plante Moran's recommendations for addressing the risks associated with all three observations were nearly identical, "We highly encourage the City to review the tone at the top to ensure all members of management and oversight uphold values of honesty, integrity, and ethics, which will encourage employees to uphold the same values."

The Executive Summary of the Plante Moran report states, "Tone at the Top: A culture of complicity plagued the City that allowed behaviors not in the best interest of the City to continue." The Definitions and General Principles of Internal Controls section of the Plante Moran report includes "Key general principles of successful internal controls programs" and the first general principle is "Tone at the Top – When the tone set by management upholds honesty, integrity and ethics, employees are more likely to uphold those same values".

In addition, Plante Moran provided an article from the Association of Certified Fraud Examiners (ACFE) regarding the Tone at the Top. The article defines tone at the top as follows:

*Tone at the top refers to the ethical atmosphere that is created in the workplace by the organization's leadership. Whatever tone management sets will have a trickle-down effect on employees of the company. If the tone set by managers upholds ethics and integrity, employees will be more inclined to uphold those same values. However, if upper management appears unconcerned with ethics and focuses solely on the bottom line, employees will be more prone to commit fraud because they feel that ethical conduct is not a focus or priority within the organization. Employees pay close attention to the behavior and actions of their bosses, and they follow their lead. In short, employees will do what they witness their bosses doing.*

The Analysis section of the Plante Moran report included the following:

### *D1. Tone at the Top – A Culture of Complicity*

As previously stated, **when the tone set by management upholds honesty, integrity and ethics, employees are more likely to uphold those same values.** The tone at the top has a significant impact on the choices employees make regarding ethics, compliance and integrity. It is critical that the tone at the top values ethics, compliance and integrity and, as just as important, that consequences are enforced when employees do not uphold/display those values.

Overall, it appears there was a *culture of complicity*, in that, many people knew BK was violating policy (and potentially the law), but they were complicit in their actions due to the tone established by BK and Council.



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It is our understanding multiple whistleblowers raised concerns about BK's activity during our scope period. Further, the Lange Report (issued in 2016) identified and described multiple instances of unethical and/or non-compliant behavior displayed by BK. This information was communicated to Council for them to take corrective actions.

It was represented to us in our interviews that Council enforced minimal, if any, consequences against BK in response to his documented wrongdoing. Employees interpreted this inaction as Council's approval of BK's behavior. This tone established by the top conveyed to employees that BK was, quote, "protected." The apparent poor tone at the top, combined with BK's and, at times, other Officials' aggressive behavior (to include screaming so loud it could be heard through the walls in other rooms) left many personnel to feel their employment was at risk if they questioned and/or "went against" BK. Some behavior was so aggressive employees even kept notes detailing these encounters.

This section quotes the Lange Report to provide an example of how the tone at the top trickled down and resulted in City employees other than the former City Manager making poor decisions. The former Financial Services Director took no action to prevent the former City Manager from making questionable purchases at City expense. The Plante Moran reports states the former Financial Services Director "demonstrated these poor decisions were a reflection of his perception of the tone Council established."

While Lange did not specifically recommend terminating the former City Manager's employment, he stated, "If the Manager is to stay, in my opinion, City Council should, at a minimum, establish strict monitoring of the Manager's compliance with the Charter, the Code, Administrative Memoranda and municipal spending guidelines in the future." The City Council approved a media statement on July 27, 2016. It stated the "initial complaint" raised several concerns but the statement included only one consequence: The City Manager had "agreed" to assume "financial responsibility" of "approximately \$1000." As a result, the Detroit News published an article titled, "Troy city manager won't be disciplined after scrutiny" later the same day.

The statement also said, "City Council will closely monitor the progress on each of the strategies we adopted on March 14, 2016, which include the 'Review city ordinances to address outdated policies and explore the need for new ordinances.'" The City Council attempted to monitor the former City Manager in the months immediately following the Lange report. However, the monitoring seemed to end on August 7, 2017 when the City Council approved a new 5-year employment agreement (effective as of July 1, 2017) with the former City Manager. Based on public records, there is no evidence the City Council engaged in monitoring the former City Manager and/or evaluating his performance again before terminating his employment on March 11, 2018.

In summary, multiple whistleblowers reported the former City Manager's policy violations. The Lange Report documented those policy violations and communicated them to the City Council. The City Council imposed what Plante Moran called "minimal, if any, consequences" on the former City Manager. This created an atmosphere where the City Council and upper management appeared unconcerned with ethical conduct. City employees interpreted the City Council's inaction as approval of the former City Manager's behavior.

## Bob Bruner

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**From:** Bob Bruner  
**Sent:** Thursday, September 12, 2019 12:15 PM  
**To:** Everybody  
**Subject:** Whistleblower Protection Policy - Reporting of Violations

The purpose of this email is to remind City employees of the City's whistleblower protection policy and procedure for reporting violations.

Plante Moran presented the findings of its forensic accounting investigation to City Council on July 17, 2019. The reports includes the phrase "culture of complicity" several times including, "Overall, it appears there was a culture of complicity, in that, many people knew BK [former City Manager Brian Kischnick] was violating policy (and potentially the law), but they were complicit in their actions due to the tone established by BK and Council."

Since then, the City Council has been deliberating regarding whether or not to initiate an investigation pursuant to Section 4.8 of the City Charter. Specifically, the City Council has considered whether or not to initiate an investigation to "explore whether or not any member of Troy City Council played a role in creating the 'Culture of Complicity' that enabled former Troy City Manager Brian Kischnick's wrongdoings and crimes."

The City's procedure for reporting alleged violations includes violations committed by the elective officers of the City (the six (6) members of council and the Mayor); the administrative officers of the City (the City Manager, Attorney, Clerk, Treasurer, Assessor, Police and Fire Chiefs, etc.), and any other City employee. You may report such violations at any time. You do not need to wait for the City Council or anyone else to initiate an investigation.

The reporting procedure is simple: You have the right and are encouraged to disclose and discuss the matter with your immediate supervisor or any other supervisor up to and including the City Manager, the Human Resource Director or the City Attorney. You have the right to report any alleged violations by the City Manager to the City Attorney and you have the right to report any alleged violations by the City Attorney to the City Manager. Alternatively, you have the right to report alleged violations directly to a member of the City Council or the entire City Council. Any member of the City Council receiving a report of an alleged violation must provide the report to the entire City Council within two business days.

It is the City's policy to protect those who report alleged violations from retaliation. You may not be discharged, threatened, or otherwise discriminated against regarding your compensation, terms, conditions, location, or privileges of employment for reporting an alleged violation unless you knowingly submit a false report. Nor may you be discharged, threatened, or otherwise discriminated against regarding your compensation, terms, conditions, location, or privileges of employment for participating in an investigation of an alleged violation.

Please review the City's Whistleblower Protection Policy and procedure for reporting violations or contact a supervisor if you have any questions. The policy and procedure is outlined in Administrative Memo 1-P-3 and can be found on the City's intranet at Y:\AdministrativeMemos\1-P-3.pdf.



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**City of Troy**  
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**Control Log**

#	Priority	Observations	Possible Risk	Recommendations
5	High	The City lacked a process where employees could report policy and legal breaches without fear of retaliation.	City employees were discouraged from reporting potential violations and inappropriate behavior of individuals in positions of authority. This can/did create a "toxic" environment that is highly susceptible to abuse at all levels.	<p>The City amended the Whistleblower policy in August of 2017 thereby allowing complaints to be made to the City Manager, City Attorney, or directly to City Council as appropriate.</p> <p>We highly encourage the City to review the tone at the top to ensure all members of management and oversight uphold values of honesty, integrity, and ethics, which will encourage employees to uphold the same values.</p>
6	High	The overall tone at the top encouraged individuals in positions of authority to influence subordinates.	Management could/did use their position to adversely influence behavior that was not in the best interest of the City.	<p>Training, combined with appropriate mechanisms to report issues, is ideal to promote awareness. We highly encourage the City to review the tone at the top to ensure all members of management and oversight uphold the same values of honesty, integrity, and ethics, which will encourage employees to uphold the same values.</p>
7	High	The City's response to poor behavior/choices when they were made known often reinforced the wrongdoer's actions, from the employee perspective, since sufficient corrective action was seldom taken.	Given the response, behaviors continued that were not in the best interest of the City.	<p>We highly encourage the City to review the tone at the top to ensure all members of management and oversight uphold values of honesty, integrity, and ethics which will encourage employees to uphold the same values. Further, a zero tolerance policy should be established, involving (enforced) consequences for non-compliance.</p>