9.3 REPORTING IMPROPER GOVERNMENTAL ACTION

General Policy:

In compliance with the Local Government Employee Whistleblower Protection Act, RCW 42.41.050, this policy is created to encourage employees to disclose any improper governmental action taken by city officials or employees without fear of retaliation. This policy also safeguards legitimate employer interests by encouraging complaints to be made first to the City, with a process provided for speedy dispute resolution.

Key Definitions:

Improper Governmental Action: any action by a city officer or employee that is:

1. undertaken in the performance of the official's or employee's official duties, whether or not the action is within the scope of the employee's employment, and

2. in violation of any federal, state or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

3. "improper governmental action" does not include personnel actions (hiring, firing, complaints, promotions, reassignment, for example). In addition, employees are not free to disclose matters that would affect a person's right to legally protected confidential communications.

Retaliatory Action: any material adverse change in the terms and conditions of an employee's employment. "Retaliatory action" means: (a) Any adverse change in a City employee’s employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unwarranted and unsubstantiated unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

Emergency: a circumstance that if not immediately changed may cause damage to persons or property.

Procedure for Reporting Improper Governmental Action: City employees who become aware of improper governmental action should follow this procedure:
(1) Bring the matter to the attention of his/her supervisor, if non-involved, in writing, stating in detail the basis for the employee's belief that an improper action has occurred. This should be done as soon as the employee becomes aware of the improper action.

(2) Where the employee believes the improper action involves the supervisor, the employee may raise the issue directly with the Mayor.

(3) The Mayor or his/her designee, as the case may be, shall promptly investigate the report of improper government action. After the investigation is completed (within thirty (30) days of the employee's report), the employee shall be advised of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

(4) The Mayor will promptly advise the Council of the existence of a report of improper governmental action. This advice will be provided in a manner that conforms with State law and protects the identity of the whistleblower and the accused person(s) until such time as the required investigation is completed. Such information shall remain confidential as may be required by law.

(5) Where the employee believes the improper action involves the Mayor, the employee may raise the issue directly with the Mayor Pro Tem who will act on behalf of the City Council. In such cases, the Mayor Pro tem and the Council will also follow the policies and procedures set forth in this Policy.

An employee who fails to make a good faith effort to follow this policy shall not be entitled to the protection of this policy against retaliation, pursuant to RCW 42.41.030.

In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, the employee may bypass the above procedure and report the improper action directly to the appropriate government agency responsible for investigating the improper action.

Employees may report information about improper governmental action directly to an outside agency if the employee reasonably believes that an adequate investigation was not undertaken by the City to determine whether an improper government action occurred, or that insufficient action was taken by the City to address the improper action or that for other reasons the improper action is likely to recur.

That outside agency may be:
**The Washington State Auditor’s Office:**
Insurance Building
Capitol Campus
302 Sid Snyder Avenue SW
Olympia, Washington 98504-0021
(360) 902-0370
https://www.sao.wa.gov/EN/Audits/Whistleblower/Pages/default.aspx

Or

**The Island County Prosecuting Attorney:**
Law and Justice Building
101 NE Sixth Street
Coupeville, Washington, 98239
P.O. Box 5000
Coupeville, WA 98239
Telephone: 360.679.7363 | Fax: 360.240.5566

**Protection Against Retaliation:** It is unlawful for a local government to take retaliatory action because an employee, in good faith, provided information that improper government action occurred. Employees who believe they have been retaliated against for reporting an improper government action should follow this procedure:

Procedure for Seeking Relief Against Retaliation:

1. Employees must provide a written complaint to the supervisor within thirty (30) days of the occurrence of the alleged retaliatory action. If the supervisor is involved, the notice should go to the Mayor. If the Mayor is involved, the notice should go to the Mayor Pro Tem for the Council. The written charge shall specify the alleged retaliatory action and the relief requested.

2. In all cases wherein a claim of retaliation is filed, the Mayor (or Mayor Pro Tem) shall promptly so advise the Council of that fact; protecting the identity of the whistleblower and the accused as may be required by law.

3. The Mayor (or Mayor Pro Tem in cases when the Mayor is involved) shall investigate the complaint and respond in writing within thirty (30) days of receipt of the written charge.

4. After receiving the City's response, the employee may request a hearing before a state administrative law judge (ALJ) to establish that a retaliatory action occurred and to obtain appropriate relief under the law. The request for hearing must be delivered within the earlier of either fifteen (15) days of receipt of the City's response to the charge of retaliatory action or forty-
five (45) days of receipt of the charge of retaliation to the Mayor for
response.

Within five (5) working days of receipt of a request for hearing the City
shall apply to the State Office of Administrative Hearing's for an
adjudicative proceeding before an administrative law judge. At the
hearing, the employee must prove that a retaliatory action occurred by a
preponderance of the evidence in the hearing. The ALJ will issue a final
decision not later than forty-five (45) days after the date of the request for
hearing, unless an extension is granted.

Policy Implementation: The Mayor (or designee) is responsible for implementing these
policies and procedures. This includes posting the policy on the City bulletin board,
making the policy available to any employee upon request, and providing the policy to all
newly hired employees. Officers, managers and supervisors are responsible for ensuring
the procedures are fully implemented within their areas of responsibility.

Violations of this policy and these procedures may result in appropriate disciplinary
action, up to and including dismissal.