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WP0177C-ORD
04/27/93

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4526

AN ORDINANCE adopting a Whistleblower policy and procedure for City employees, and adding Chapter 3.80 to the Bellevue City Code.

WHEREAS, the legislature enacted the Local Government Employee Whistleblower Act and authorized local governments to adopt policies and procedures accomplishing the intent of the Act; and

WHEREAS, the City Council desires to adopt policies and procedures encouraging employees to report improper governmental actions and protecting employees who make such a report; now, therefore

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 3.80 is added to the Bellevue City Code to read as follows:

Chapter 3.80 City Whistleblower Policy and Procedures.

Section 2. A new Section 3.80.010 is added to Chapter 3.80 of the Bellevue City Code to read as follows:

3.80.010 Scope

These policies and procedures (collectively, the "Policy") are adopted pursuant to and in accordance with the local Government Whistleblower Protection Act, 1991, Washington Laws, Chapter 44 (the "Act") and are designed specifically to protect such conduct and provide such remedies as are set forth in the Act.

Section 3. A new Section 3.80.020 is added to Chapter 3.80 of the Bellevue City Code to read as follows:

3.80.020 Policy

It is the policy of the City of Bellevue: (1) To encourage the reporting by its employees of improper governmental action taken by City officers or employees, and (2) to protect City employees who have reported improper governmental actions in accordance with this policy.

The City of Bellevue encourages the reporting of improper governmental action taken by any City officers or employees, and the reporting of retaliatory actions for such reporting. The City encourages initial reporting to the City to allow for expeditious resolution of all such

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matters and to minimize any adverse impacts of the improper action. This policy states the City's procedures for reporting improper governmental action and for protecting employees against retaliatory actions.

Section 4. A new Section 3.80.030 is added to Chapter 3.80 of the Bellevue City Code to read as follows:

3.80.030 Definitions

A. As used in this policy, the following terms shall have the meaning indicated:

1. "Improper governmental action" means any action by a City officer or employee:
 - a. That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and
 - b. That (i) is in violation of any federal, state, or local law or rule, (ii) is an abuse of authority with substantial adverse impact to the public interest, (iii) is a substantial and specific danger to the public health or safety, or (iv) is a gross waste of public funds.

"Rule" means any order, directive, or regulation, the violation of which subjects a person to a penalty or administrative sanction.

"Abuse of authority" means intentional misuse of power or position by a public officer or employee for an improper purpose.

"Gross waste" is defined as a significant or recurring intentional misuse of public funds, and does not include unintentional errors.

Improper governmental action does not include personnel actions including, but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of applicable collective bargaining and civil service laws, alleged labor

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agreement violations, reprimands, or any other personnel action taken under authority of state law.

2. "Retaliatory action" means any adverse change in a City employee's employment status or in the terms and conditions of a City employee's employment based on the reporting by the employee of improper governmental actions.
3. "Emergency" means a circumstance that if not immediately changed may cause harm or injury to persons or property.
4. "Good faith" means action taken after a reasonable investigation of facts available to the employee, and after due consideration and with an honestly held belief that there was improper conduct.

Section 5. A new section 3.80.040 is added to Chapter 3.80 of the Bellevue City Code to read as follows:

3.80.040 Procedures

- A. Attached as Appendix A is a list of agencies responsible for enforcing federal, state, and local law and investigating other issues involving improper governmental action. Employees having questions about these agencies or other procedures for reporting improper governmental action are encouraged to contact their supervisor or such other person as may be designated by their supervisor.
- B. City employees who obtain knowledge of facts demonstrating improper governmental actions should raise the issue first with their supervisor, the City Manager, the City Manager's designee, or the appropriate governmental agency responsible for investigating such improper action as listed in the attached Appendix A. If requested by the supervisor, the City Manager, or the City Manager's designee, the employee shall submit a written report to the City stating in detail the basis for the employee's belief that an improper governmental action has occurred.
- C. In the case of an emergency, the employee may report the improper governmental action directly to a person or entity who is not the person's supervisor, the City Manager, the City Manager's designee, or a government agency listed in the attached Appendix A. In all other cases, the employee must

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first follow the reporting procedure outlined in paragraph 2.0 above.

- D. City employees who fail to make a good faith attempt to follow this policy in reporting improper governmental action shall not receive the protections provided under this policy or the Act. Employees who make false reports may be subject to the disciplinary procedures in the City Personnel Code.
- E. The supervisor, the City Manager, or the City Manager's designee, as the case may be, shall take prompt action to assist the City in properly investigating the report of improper governmental action. City officers, administrators, supervisors, and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under the law, unless the employee authorizes the disclosure of his or her identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of the summary of the results of the investigation, except personnel actions taken as a result of the investigation may be kept confidential.
- F. City officials, administrators, supervisors and employees are prohibited from taking retaliatory action against the City employee because he or she has in good faith reported an improper governmental action in accordance with this policy.
- G. Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their supervisor, the City Manager, or the City Manager's designee. City officials, administrators and supervisors shall take appropriate action to investigate and address complaints of retaliation. If the supervisor, the City Manager, or the City Manager's designee, as the case may be, does not satisfactorily resolve a City employee's complaint that he or she has been retaliated against in violation of this policy, the City employee may obtain protection under this policy by providing, in accordance with Paragraph H below, a written notice to the Bellevue City Council specifying the alleged retaliatory action, and the relief requested.
- H. City employees shall provide written notice given under Paragraph G by delivery of such notice to the City Clerk no later than 30 days after the occurrence of the alleged retaliatory action with a copy to the City Manager. The City

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shall respond within 30 days to the charge of retaliatory action.

- I. After receiving the response of the City or 30 days after the delivery of the written notice to the City Manager, the City employee may request a hearing before the Bellevue Hearing Officer to establish that a retaliatory action occurred and to obtain appropriate relief provided by law. An employee seeking a hearing must deliver the request for hearing to the City Manager within the earlier of either 15 days of delivery of the City's response to the charge of retaliatory action, or 45 days of delivery of the written notice given under Paragraph H to the City Manager.
- J. Upon receipt of a request for hearing, the City shall apply within five working days to the Office of the Bellevue Hearing Officer designated pursuant to BCC 3.79 for an adjudicative proceeding. The City may provide legal representation for the City employee charged with retaliatory action in accordance with the requirements and exclusions of BCC Chapter 3.81. The employee complaining of retaliation must prove his or her claim by a preponderance of the evidence in the hearing. The Hearing Officer will issue a final decision no later than 45 days after the date the request for hearing is delivered to the City Manager, unless an extension of time is granted. The Hearing Officer has the authority to grant the employee reinstatement to his or her job position, with or without back pay. The Hearing Officer may award costs and reasonable attorneys' fees to the prevailing party. In addition to these remedies, the Hearing Officer may impose a civil penalty personally upon the retaliator of up to \$3,000. The final decision of the Hearing Officer is subject to judicial review under the arbitrary and capricious standard, by filing a petition for writ of certiorari with the Superior Court of King County within 10 days of the date of the decision.

The City will consider any recommendation provided by the Hearing Officer that the retaliator be suspended with or without pay, or dismissed.

- K. The City Manager or the City Manager's designee is responsible for implementing the City's policies and procedures: (1) for reporting improper governmental actions, and (2) for protecting employees against retaliatory actions. This includes insuring that this policy is permanently posted where all employees will have reasonable access to it and that this policy is made

available to any employee upon request. The City will, to the extent it considers practical, provide training and education on the Whistleblower Policy. City supervisors and administrators are responsible for insuring that this policy is fully implemented within their areas of responsibility. Violations of this policy may result in appropriate disciplinary action, up to and including dismissal.

L. This policy shall apply to improper governmental action occurring on or after January 1, 1993.

Section 6. This ordinance shall take effect and be in force five (5) days after its passage and legal publication.

PASSED by the City Council this 10th day of May, 1993, and signed in authentication of its passage this 10th day of May, 1993.

(SEAL)


Cary Bozeman, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


David E. Kahn, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk

Published May 14, 1993

APPENDIX A

List of Agencies

Following is a list of agencies responsible for enforcing federal, state and local laws and investigating other issues involving improper governmental action. Employees having questions about these agencies or the procedures for reporting improper governmental action are encouraged to contact their supervisor or the City Manager.

CITY OF SEATTLE

Seattle Health Center
Chemical and Physical Hazards Line
172 - 20th Street
Seattle, WA
(206) 296-4692

CITY OF BELLEVUE

Bellevue City Attorney
11511 Main Street
Bellevue, WA
(206) 455-6829

Bellevue City Prosecutor
11511 Main Street
Bellevue, WA
(206) 455-6829

KING COUNTY

King County Ombudsman (General Complaints)
213 King County Court House
Seattle, WA 98104
(206) 296-3452

King County Environmental Division
Code Enforcement
(206) 296-6680

King County Health Center
Chemical and Physical Hazards Line
(206) 296-4692

King County Prosecuting Attorney
King County Court House
Seattle, WA

Criminal Division, (206) 296-9000
Fraud Division, (206) 296-9010
Civil Division, (206) 296-9015

King County Health Services Hazardous Waste

110 Prefontaine Place South
Seattle, WA 98104
(206) 296-3995

Puget Sound Air Pollution Agency
(206) 296-7330

STATE OF WASHINGTON

Attorney General's Office
Fair Practices Division
2000 Bank of California Center
900 Fourth Avenue
Seattle, WA
(206) 464-6684

State Auditor's Office
Legislative Building
P.O. Box 40021
Olympia, WA 98504-0021
(206) 753-5280

State Department of Ecology
3190 - 160th S.E.
Bellevue, WA 98008-5852
(206) 649-7000

Human Rights Commission
402 Evergreen Plaza Bldg., FJ-41
711 South Capitol Way
Olympia, WA 98504-2490

State Department of Health
Health Consumer Assistance
P.O. Box 4789
Olympia, WA 98504-7891
800-525-0127

Department of Labor & Industries
300 West Harrison, Room 201
Seattle, WA
(206) 281-5400

State Liquor Control Board
Enforcement Office
2101 Sixth Avenue
Seattle, WA
(206) 464-6094

Department of Natural Resources
P.O. Box 68
Enumclaw, WA 98022
(206) 825-1631

Puget Sound Water Quality Authority
P.O. Box 40900
Olympia, WA 98504
(206) 493-9300

Department of Social and Health
Services
Special Investigation Office
5200 Southcenter Blvd., Suite 23
Tukwila, WA
(206) 764-4048

Fraud Complaints
800-562-6025

UNITED STATES

Department of Agriculture
Office of Inspector General
915 Second Avenue
Seattle, WA

Supervisor Auditor
(206) 553-8290

Supervisor Special Agent
Investigation
(206) 553-8286

Alcohol Tobacco & Firearms
Criminal Enforcement
915 Second Avenue
Seattle, WA
(206) 553-4485

U.S. Attorney
800 Fifth Avenue
Seattle, WA
(206) 553-7970

Department of Commerce
Office of Inspector General

Office of Audits
915 Second Avenue
Seattle, WA
(206) 553-0801

Government Accounting Office
Fraud Hot Line, 800-424-5454

Consumer Product Safety Commission
Hot line
800-638-2772

U.S. Customs Service
Office of Enforcement
909 First Avenue
Seattle, WA
(206) 553-7531

U.S. Department of Education
Office of Inspector General
915 Second Avenue
Seattle, WA

Audits
(206) 553-0657

Investigations
(206) 553-1482

Environmental Protection Agency
Criminal Investigations
1200 Sixth Avenue
Seattle, WA
(206) 553-8306

Equal Employment Opportunity Commission
2815 Second, Suite 500
Seattle, WA
(206) 553-0968

Federal Emergency Management Agency
130 - 228th Street S.W.
Bothell, WA
(206) 487-4600

Federal Trade Commission
915 Second Avenue
Seattle, WA
(206) 553-4656

General Services Administration
915 Second Avenue
Seattle, WA

Office of Inspector General
Audits (206) 931-7650 Investigations (206) 931-7654

Law Enforcement
(206) 553-0290

Department of Health & Human Services
Food & Drug Administration
22201 - 23rd Drive S.E.
Bothell, WA

Trade Complaints
(206) 483-4949

Office of the Regional Secretary
General Counsel's Office, Inspector
General

Audits (206) 553-0452 Investigations (206) 553-0229

Department of Housing and Urban
Development
Office of Counsel
1321 Second Avenue
Seattle, WA
(206) 553-4976

Office of Inspector General

Audits (206) 553-0270 Investigations (206) 553-0272

Interstate Commerce Commission
915 Second Avenue, Room 1894
Seattle, WA 98174
(206) 553-5421

Department of Interior
U.S. Fish & Wildlife Services
Division of Law Enforcement
121 - 107th N.E.
Bellevue, WA
(206) 553-5543

Department of Justice
Drug Enforcement Administration
220 West Mercer, Suite 300
Seattle, WA
(206) 553-5443

Department of Labor
Occupational Safety & Health (OSHA)
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212
(206) 553-5930

Office of Inspector General

Audits
1111 Third Avenue, Suite 780
Seattle, WA 98101-3212
(206) 553-4880

Investigations
1111 Third Avenue, Suite 785
Seattle, WA 98101-3212

Office of Women's Bureau
1111 Third Avenue, Suite 885
Seattle, WA 98101-3212

Mine Safety & Health Administration
117 - 107th N.E.
Bellevue, WA
(206) 553-7037

National Transportation Safety Board
19518 Pacific Highway South
Seattle, WA
(206) 764-3782

Nuclear Regulatory Commission
510-975-0200

Securities and Exchange Commission
915 Second Avenue
Seattle, WA 98174
(206) 553-7990

Department of Transportation
Office of Inspector General
915 Second Avenue
Seattle, WA 98178
(206) 553-5720

Department of Treasury
Bureau of Alcohol, Tobacco & Firearms
Law Enforcement Division
915 Second Avenue, Room 806
Seattle, WA 98174

Department of Veterans Affairs
Office of Inspector General
915 Second Avenue
Seattle, WA 98174

Fraud/Waste/Abuse Hot Line
800-488-8244