

## CHAPTER 2.24

### REPORTING OFFICIAL MISCONDUCT

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**2.24.010: Purpose:** It is the Policy of the City that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action by City officials and employees. The purpose of this Chapter is to protect employees who make good faith reports to appropriate governmental bodies and to provide remedies for such individuals who are subjected to retaliation for having made such reports. (Ord. 3409, Sec. 1 (part), 1992)

**2.24.020: Definitions:** Unless the context clearly indicates otherwise, definitions in this section apply throughout this Chapter.

(1) "Improper Governmental Action" means any action by a City officer or employee that:

- (a) is undertaken in the performance of the officer or employee's official duties, whether or not the action is within the scope of the employee's employment; and
- (b) is 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; but
- (c) does not include personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, re-employments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining agreements, Civil Service Rules and Regulations or employee policies, alleged labor agreements, violations, reprimands or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59 or 53.18 RCW or RCW 54.04.170 and 54.04.180.

(2) "Retaliatory Action" means: (a) Any adverse change in an employee's employment status or his 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 unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal or any other disciplinary action motivated primarily by desire to punish an employee because he made a good faith complaint of improper governmental action; or (b) Hostile actions by another employee towards an employee that are encouraged by a supervisor or appointed or elected official.

(3) "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

(4) “Good Faith” means honest intention to abstain from taking an advantage of or injuring another and the absence of malice, ill will or other improper or inappropriate motives. (Ord. 3557 Sec. 1, 1994: Ord. 3409, Sec. 1 (part), 1992)

**2.24.030: Improper Governmental Action - Reports - Investigation:**

(1) Every employee has the right to report to an appropriate official information concerning alleged improper governmental action.

(2) Any employee may report improper governmental action to any of the following:

- (a) The Mayor or any Council Member;
- (b) The City Manager;
- (c) The City Attorney;
- (d) A Department Director;
- (e) The Prosecuting Attorney; or
- (f) The Chief of Police.

(3) The employee should submit the report in writing and give appropriate details of the improper governmental action. The employee shall sign the report which shall remain confidential to the extent possible under law.

(4) The official receiving the report may investigate it and respond himself or may refer it to another officer or agency for investigation in appropriate circumstances. In no case will an officer or employee investigate allegations made against himself. If he deems it advisable, he may request the assistance of an outside agency to conduct the investigation, and, in the case of alleged criminal activity, shall enlist the assistance of an appropriate law enforcement agency and either the City Attorney or Prosecuting Attorney as may be appropriate.

(5) The officer investigating the report will normally prepare a written response within 20 days of receiving the complaint. If he is unable to prepare the report within 20 days, he will notify the complaining employee of the delay and the reason therefor. At the conclusion of his investigation, the officer shall make a finding as to whether or not there was improper governmental action and indicate who was responsible for it. If he is unable to make either of these findings, he shall so indicate.

(6) If the investigating officer finds that the report is without merit, he will further attempt to determine if it was made in good faith by the reporting employee and shall make findings accordingly.

(7) Any person aggrieved by the officer’s decision may appeal to the Hearing Examiner. (Ord. 5322 Sec. 3, 2010: Ord. 3589 Sec. 2 (part), 1996: Ord. 3409 Sec. 1 (part), 1992)

**2.24.040: Retaliation - Reports - Investigation:**

(1) It is unlawful for any official or employee to take retaliatory action against another employee.

(2) In order to seek relief, an employee must provide written notice of the charge of retaliatory action to the Hearing Examiner by delivering written notice to the City Clerk specifying both the alleged retaliatory action taken against him and the relief he requests.

(3) The notice must be delivered to the City Clerk no later than 30 days after the alleged retaliatory action. The Clerk shall forward a copy of the complaint to the Department Head of the affected Department, the City Manager, and the City Attorney. They shall investigate the allegations, prepare formal findings and conclusions and take such action as

may be appropriate under the circumstances. If it is alleged that the retaliation was by a Department Head, the Department Head shall not participate other than as a witness.

(4) In the event that the allegations of retaliation are against the City Manager, City Council, or the City Attorney, then the Clerk shall apply to the State Office of Administrative Hearings for an adjudicative proceedings before an Administrative Law Judge in accord with RCW 42.41.040.

(5) In considering the evidence or the course of action to be taken, the burden will be on the employee, as the initiating party, to prove his claim by a preponderance of the evidence. It shall be assumed that the employee provided evidence of improper governmental action in good faith, unless it is shown that at the time of the allegations of improper governmental action were made, the employee knew that the action adverse to him would be taken, or had good reason to believe that it would taken, or that the action taken had previously been taken for legitimate reasons, in which case it shall be presumed that allegations of improper governmental action were not made in good faith.

(6) Except for good cause, a decision, findings and conclusions shall be entered within 45 days of delivery of the written notice.

(7) Any person aggrieved by a decision under this section may appeal to the Hearing Examiner. Decisions by an administrative law judge are reviewed in accord with RCW 42.41. (Ord. 5322 Sec. 4, 2010: Ord. 3589 Sec. 2 (part), 1996: Ord. 3409 Sec. 1 (part), 1992)

**2.24.050: Penalties:** In addition to such personal action as may be warranted, an employee found to have taken retaliatory action against another or to have filed an allegation of official misconduct or retaliation in bad faith, may be assessed a civil penalty not to exceed \$3,000.00 which shall be deposited in the General Fund. (Ord. 3409 Sec. 1 (part), 1992)

**2.24.060: Indemnity - Attorney's Fees:** The provisions of KMC 2.64.200 et seq. have no application to action under this Chapter unless a finding has been made that an employee has acted in bad faith, in which case those provisions protect the victim of bad faith. A prevailing party in a retaliation claim shall be entitled to reasonable attorney's fees. (Ord. 3409 Sec. 1 (part), 1992)