POLICY 903 - WHISTLEBLOWER PROTECTION

Policy:

The City of Oak Harbor, in compliance with the Local Government Employee Whistleblower Protection Act, RCW 42.41.050, encourages employees to disclose improper governmental action by City officials or employees. This policy safeguards legitimate employer interests by encouraging complaints to be made first to the City and protects employees who act in good faith from retaliation.

Comments:

1. **Improper Governmental Action.** Any action by a City officer or employee that is:
   a. 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
   b. In violation of any federal, state or local law or rule, an abuse of authority, a substantial and specific danger to the public health or safety, or a gross waste of public funds.

   Improper governmental action does not include personnel actions, such as hiring, firing, promotions and reassignment.

2. **Procedure for Reporting Improper Governmental Action.** City employees who become aware of improper governmental action should follow this procedure:
   a. Bring the matter to the attention of their Department Head in writing, describing in detail the improper governmental action. This should be done as soon as the employee becomes aware of the improper action.
   b. If the employee believes the improper governmental action involves their Department Head, he or she may raise the issue directly with the Mayor and/or City Administrator.
   c. The Mayor or City Administrator or his/her designee shall promptly investigate the report of improper governmental 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.

3. An employee who acts a good faith and provides information in accordance with this policy shall be protected against retaliation, pursuant to RCW 42.41.030. Factors used to determine an employee’s good faith include, for example, how promptly the employee reported the conduct in question and whether the employee stands to gain or benefit from the report.

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

5. Employees may also report improper governmental action directly to an outside agency if the employee reasonably believes an adequate investigation was not undertaken by the City, or insufficient action was taken by the City to address the improper action, or for other reasons the improper action is likely to recur.
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6. Employees who believe they have been retaliated against for reporting improper government action in good faith should follow this procedure:

a. Employees must report the alleged retaliatory action in writing to the Department Head within thirty (30) days. If the Department Head is involved, the notice should go to the Mayor or City Administrator. The written report should specify the alleged retaliatory action and the relief requested.

b. The Mayor or City Administrator shall investigate the complaint and respond, in writing, within thirty (30) days of receipt of the written charge.

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

d. Within five (5) working days of receipt of a request for hearing, the City shall apply to the State Office of Administrative Hearings for an adjudicative proceeding before an ALJ. The employee must prove in the hearing that a retaliatory action occurred by a preponderance of the evidence. 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.

7. Policy Implementation. The Director of Human Resources is responsible for implementing these policies and procedures. This includes:

a. Posting the policy on the City bulletin board;

b. Ensuring the policy is made available to any employee upon request;

c. Providing the policy to all newly hired employees.

8. Officers and Department Heads are responsible for ensuring the procedures are fully implemented within his/her areas of responsibility.

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