

RESOLUTION R- 3776

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
KIRKLAND ADOPTING A POLICY FOR REPORTING  
IMPROPER GOVERNMENTAL ACTION AND PROTECTING CITY  
EMPLOYEES AGAINST RETALIATION

Whereas, Chapter 44, Laws of Washington  
1992, the Local Government Employee  
Whistleblower Act, requires local governments to  
enact specific policies and procedures for  
employee reporting of improper governmental  
actions and for protecting local government  
employees against retaliation; and

Whereas, it is the policy of the City of  
Kirkland to encourage reporting by its employees  
of improper governmental action taken by City  
officers or employees and to protect City  
employees who make good faith reports of  
improper governmental action in accordance with  
established City policies and procedures; and,

Whereas, the policy appended hereto for  
reporting improper governmental action and  
protecting employees against retaliation meets  
the intent of the Local Government Employee  
Whistleblower Act,

Now, Therefore, be it resolved by the City  
Council of the City of Kirkland as follows:

Section 1. The City Council hereby adopts  
and the City Manager is hereby authorized and  
directed to execute the administrative policy  
for reporting improper governmental action and  
protecting employees against retaliation  
appended hereto as Exhibit A.

Section 2. The City Manager is authorized  
to issue rules, procedures, interpretations,  
instructions and directions pertaining to the  
implementation of the appended administrative  
policy.

Passed by majority vote of the Kirkland  
City Council in regular, open meeting this 24th  
day of November, 1992.

## CITY OF KIRKLAND, WASHINGTON

ADMINISTRATIVE POLICY

AP NUMBER \_\_\_\_\_

SUBJECT:

FUNCTION: Personnel

Reporting Improper Governmental  
Action and Protecting Employees  
Against Retaliation

Effective Date: Draft

1. Purpose.

It is the policy of the City (1) to encourage reporting by its employees, to the extent not prohibited by law, of improper governmental action taken by City officers or employees and (2) to protect City employees who make good faith reports of improper governmental actions in accordance with the City's policies and procedure(s).

2. Definitions.

As used in this policy, the following terms shall have the meanings 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, (iii) is of substantial and specific danger to the public health or safety or (iv) is a gross waste of public funds.

"Improper governmental action" excludes 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, reprimands or other disciplinary actions, violations of collective bargaining or civil service laws, or alleged violations of labor agreements.

A properly authorized City program or activity does not become an "improper governmental action" because an employee dissents from the City policy or considers the expenditures unwise.

(2) "Retaliatory action" means action taken in reprisal for a City employee's action protected under this Policy and may include, but is not limited to: denial of adequate staff to perform duties; frequent and undesirable office changes, refusal to assign meaningful work; unwarranted and unjustified transfer, reassignment, reduction in pay, denial of promotion, or unsatisfactory performance evaluations, or unwarranted and unsubstantiated dismissal, demotion, suspension, reprimand or other unwarranted and unsubstantiated disciplinary action.

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

### 3. Procedures for Reporting.

#### A. Reporting to City.

City employees who become aware of improper governmental actions should raise the issue first with their supervisor. If requested by the supervisor, the employee shall submit a written report to the supervisor, or to some person designated by the supervisor, stating in detail the basis for the employee's belief that an improper governmental action has occurred. Where the employee reasonably believes the improper governmental action involves his or her supervisor, the employee may raise the issue directly with the City Manager or such other person as may be designated by the City Manager to receive reports of improper governmental action.

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 report the improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action.

#### B. Investigation by City.

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 and employees involved in the investigation shall keep the identity of the reporting

employee confidential to the extent possible under 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 a summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

C. Reporting to Other Agencies.

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

D. Protections Limited

City employees who fail to make a good faith attempt to follow the City's procedures in reporting improper governmental action shall not receive the protections provided by the City in these procedures.

4. Protection Against Retaliatory Actions.

A. Retaliation prohibited.

No City officer or employee shall take retaliatory action against any employee on account of any activity protected by this Policy. City officials and employees are prohibited from retaliating against a City employee because he or she (1) has in good faith reported an improper governmental action in accordance with these policies and procedures, (2) cooperated in an investigation by the City related to improper governmental action, or (3) testified in a proceeding arising out of an improper governmental action.

B. Reporting retaliation to City.

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 and supervisors shall take appropriate action to investigate and address complaints of retaliation.

C. Notification to City Council.

If the employee's 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 seek protection under this policy and pursuant to state law by delivering, no later than thirty (30) days after the occurrence of the alleged retaliatory action, a written notice to the City Council that:

- a. Specifies the alleged retaliatory action
- and
- b. Specifies the relief requested.

Delivery to the City Clerk shall constitute delivery to the City Council.

D. Copy of Retaliation Charge to be Provided to City Manager, Time for City Response.

City employees shall provide a copy of their written retaliation charge to the City Manager concurrent with delivery to the City Clerk. The City shall respond within thirty (30) days to the charge of retaliatory action.

E. Request for hearing before City Hearing Examiner.

After receiving either the response of the City or thirty (30) days after the delivery of the charge to the City Manager, the City employee may request a hearing before the City Hearing Examiner to determine whether a retaliatory action occurred and to obtain appropriate relief provided by law. To obtain a hearing, the employee must deliver the request for hearing to the City Manager within the earlier of either fifteen (15) days of delivery of the City's response to the charge of retaliatory action, or forty-five (45) days of delivery of the charge of retaliation to the City for response.

Within five (5) working days of receipt of a proper request for hearing, the City Manager shall advise the City Hearing Examiner to schedule a hearing of the retaliation charge and request for relief.

F. Hearing Provisions.

(1) The employee, as the initiating party, has the burden of proving his or her claim by a preponderance of the evidence.

(2) The Hearing Examiner shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than thirty (30) days after the date the hearing was closed. The Hearing Examiner may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

(3) Relief that may be granted by the Hearing Examiner consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The Hearing Examiner may award costs and reasonable attorneys' fees to the prevailing party.

(4) If a determination is made that retaliatory action has been taken against the employee, the Hearing Examiner may, in addition to any other remedy, recommend to the City Manager that any person found to have retaliated against the employee be suspended with or without pay or dismissed or receive other appropriate discipline; provided, however, any final disciplinary decision shall be made by the City Manager.

(5) The final decision of the Hearing Examiner is subject to judicial review under RCW 7.16.030 et seq. Relief ordered by the Hearing Examiner may be enforced by petition to superior court.

(6) Except as otherwise provided in this policy, the hearing shall be conducted according to the rules and procedures of the City Hearing Examiner.

##### **5. Responsibilities.**

The City Manager is responsible for implementing the City's policies and procedures (1) for reporting improper governmental action and (2) for protecting employees against retaliatory actions. This includes ensuring that this policy and these procedures (1) are permanently posted where all employees will have reasonable access to them, (2) are made available to any employee upon request and (3) are provided 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.

6. 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 the City Manager.

**City of Kirkland**

City Attorney  
505 Market  
Kirkland, WA 98083  
(206) 822-2288

**King County**

King County Ombudsman  
(General Complaints)  
213 King County Courthouse  
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 Courthouse  
Seattle, WA 98104  
Criminal Division  
(206) 296-9000  
Fraud Division  
(206) 296-9010  
Civil Division  
(206) 296-9015

King County Health  
Services Hazardous  
Waste  
110 Prefontaine Place S  
Seattle, WA 98104  
(206) 296-3995

Puget Sound Air Pollution  
Control Agency  
(206) 296-7330

**State of Washington**  
Attorney General's Office  
Fair Practices Division  
2000 Bank of California  
Center  
9800 Fourth Ave  
Seattle, WA  
(206) 464-6684

APPROVED BY: \_\_\_\_\_  
City Manager

Signed in authentication thereof this 24th  
day of November, 1992.

  
\_\_\_\_\_  
MAYOR

Attest:

  
\_\_\_\_\_  
City Clerk  
city92\whistle\ryp rmm