

MEMORANDUM

DATE: December 31, 1992
TO: All Employees
FROM: Mayor Hrdlicka *M.H.*
SUBJECT: POLICY ON REPORTING IMPROPER GOVERNMENTAL
ACTION AND PROTECTING EMPLOYEES AGAINST RETALIATION

It is the policy of the City of Lynnwood that every employee has the right and obligation to report to the appropriate person information concerning alleged improper governmental actions and the right to do so free from retaliatory action. City officials and employees are prohibited from taking retaliatory action against any City employee because he or she reported in good faith an improper governmental action in accordance with the policies and procedures set forth herein. Therefore, it is the City's policy to:

1. Encourage City employees to report improper governmental actions taken by City officers or employees; and
2. Protect City employees who have reported improper governmental actions in accordance with the City's policies and procedures.

PROCEDURES

A. Definitions. As used in these policies and procedures, the following terms shall be defined as indicated:

1. "Improper governmental action" means any action by a City officer or employee undertaken in the performance of the officers or employees' official duties, whether or not within the scope of the employee's employment that is in violation of any 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. "Improper governmental action" does not include personnel actions.

2. "Retaliatory action" means any adverse change in an 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 unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action.

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

B. Procedures for Reporting Improper Action. City employees who become aware of improper governmental action shall submit a written report of such to that employee's supervisor. If the supervisor is the subject of the report, then the report shall be made to the Mayor or the Personnel Coordinator. In addition, an employee may report improper governmental action to the Snohomish County Prosecuting Attorney, or the State Attorney General's office, Fair Practices Division. The addresses of the County Prosecuting Attorney and the State Attorney General's Office, Fair Practices Division, are attached hereto. Except in the case of an emergency, before an employee provides information of an improper governmental action to a person who is not a public official or a person listed in the City's policy, the employee shall submit a written report to the Mayor or the Personnel Coordinator. If the Mayor or Personnel Coordinator is the subject of the report, then the report shall be made to whichever is not the subject of the report. An employee who fails to make a good faith attempt to follow this policy shall not receive the protection of the state whistleblower law. The supervisor, the Mayor or the Personnel Coordinator, as the case may be shall promptly investigate the report of improper governmental action. City officers and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under law, unless the employee authorized the disclosure of his or her identity in writing. Following the completion of an investigation, the employee reporting the alleged, improper governmental action shall be advised of the results of the investigation and any actions taken by the supervisor, the Mayor or the Personnel Coordinator with respect to such report. However, any personnel actions taken as a result of the investigation may be kept confidential.

C. Dissemination of City Policies and Procedures. A copy of this document containing the City's policies and procedures for reporting alleged improper governmental action and to protect City employees reporting such shall be provided to all existing and new City employees and a copy of this resolution shall be permanently posted in a place or places at City facilities where all employees will have reasonable access to it. In addition, this Policy shall be made available to any employee upon request.

D. Procedures to Obtain Protection for Retaliatory Actions. An employee who believes he/she has been the subject of retaliatory action for reporting improper governmental action shall obtain relief as follows:

1. Provide the Mayor or the Personnel Coordinator a written notice of the charge of retaliatory action specifying (a) the alleged retaliatory action, and (b) the relief requested, no

later than thirty (30) days after the occurrence of the alleged retaliatory action. The City shall respond to the charge and request for relief within thirty (30) days.

2. Within fifteen days of the delivery of the response, or within fifteen days of the last day on which the City is to respond, the employee may request a hearing to establish that a retaliatory action occurred and to obtain relief.

3. Within five working days of receipt of the request for hearing, the City shall apply to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge:

Office of Administrative Hearing
PO Box 42488, 4224 Sixth SE
Rowe Six, Building 1
Lacey, Wa. 98504-2488
(206) 459-6353

The employee must prove his or her claim by a preponderance of the evidence. The administrative law judge shall issue a final decision no later than forty five (45) days after the date the request for hearing was delivered to the City. The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to Superior Court.

4. The administrative law judge may grant the following relief:

- a. Reinstatement with or without back pay;
- b. Injunctive relief to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action;
- c. Costs and reasonable attorneys' fees to the prevailing party; and
- d. The imposition of a civil penalty personally upon the retaliator of up to three thousand dollars (\$3,000.00) payable by each person found to have retaliated against the employee, and a recommendation to the City that any person found to have retaliated against the employee be suspended with or without pay or dismissed.

RESPONSIBILITIES

The Personnel Coordinator is responsible for implementing the City of Lynnwood's policies and procedures for reporting improper

governmental action and for protecting employees against retaliatory actions. This includes ensuring that this policy and these procedures are:

A. Are permanently posted, where all employees will have reasonable access to them; and

B. Are made available to any employee upon request; and

C. 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. Violation of this policy and these procedures will result in appropriate disciplinary action, up to and including dismissal.

Snohomish County Prosecuting Attorney
Snohomish County Courthouse
3000 Rockefeller Ave.
Everett, Wa. 98201
Civil Division 388-6330
Criminal Division 388-3333

Attorney General's Office
Fair Practices Division
900 Fourth Ave. Suite 2000
Seattle, Wa. 98164
464-6684