

**EMPLOYEE APPEALS
PROCEDURES**

PERSONNEL POLICIES AND PROCEDURES

Personnel Policy Adopted by Res.: (N/A)

9.2 Local Government Whistleblower
Procedures

Personnel Procedures Approved: 04/22/2021

1. PURPOSE: It is the practice of the City of Bothell (1) to encourage reporting by its employees of improper governmental action taken by City of Bothell officers or employees and (2) to protect City employees who have reported improper governmental actions in accordance with the City of Bothell's policies and procedures.
2. ORGANIZATIONS AFFECTED: All City Departments.
3. REFERENCES: RCW 42.41 (Chapter 44, Laws of 1992).
4. DEFINITIONS: As used in these procedures, the following terms shall have the meanings indicated:
 - A. "Improper governmental action" means any action by a City of Bothell officer or employee:
 1. 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
 2. That 1) is in violation of any federal, state, or local law or rule, 2) is an abuse of authority, 3) is of substantial and specific danger to the public health or safety or 4) is a gross waste of public funds.

"Improper governmental action" does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, re-employments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil service laws, alleged violations of labor agreements or reprimands.
 - B. "Retaliatory action" means any adverse change in the terms and conditions of a City of Bothell employee's employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, letters of reprimands, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal or any other disciplinary action, or other hostile actions by another employee toward a City employee that are encouraged by a supervisor or senior manager or City official.

- C. "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.
- D. Reporting Procedures.
1. City of Bothell 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. This should be done as soon as the employee becomes aware of the improper action. Allegations of criminal behavior should also be reported to the Police Department. Where the employee reasonably believes the improper governmental action involves his or her supervisor, the employee may raise the issue directly with the Department Director. If the Department Director is involved in the improper governmental action, the employee may raise the issue with the Human Resources Director, Assistant City Manager, City Attorney, or City Manager.
 2. In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, or where the misconduct involves the City Manager, or where the employee has a legal obligation to report (for instance, where child abuse is suspected), the employee may report the improper governmental action directly to the appropriate governmental agency with the responsibility for reporting improper action (See list of agencies). As stated above, the employee may also report an emergency criminal matter to the Police Department or another law enforcement agency. In all other cases, the employee should first advise either the City's Human Resources Director, Assistant City Manager, City Manager, or City Attorney prior to reporting to an outside agency.
 3. The supervisor, the City Manager or the City Manager's designee shall take prompt action to assist the City in properly investigating the report of improper governmental action. The investigation will be conducted by someone who is fair and impartial. Officers and employees involved in the investigation shall keep the identity of reporting employees 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 given a written summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.
 4. After receiving a summary of the results of the investigation, if the employee reasonably believes that 1) an adequate investigation was

not undertaken by the City, 2) insufficient action has been taken by the City to address the improper governmental action, or 3) for other reasons the improper governmental action is likely to recur, then the City employee may report information about improper governmental action directly to the appropriate governmental agency with responsibility for investigating the improper action. The reporting employee shall give the City Manager ten day's notice prior to reporting directly to the appropriate governmental agency.

5. City employees who fail to make a good-faith attempt to follow these procedures in reporting improper governmental action may not receive the protections provided in these procedures.

E. Protection Against Retaliatory Actions.

1. City officials and employees are prohibited from taking retaliatory action against a City employee because he or she has in good faith reported an improper governmental action in accordance with these procedures.
2. Employees who believe that they have been retaliated against for reporting an improper governmental action must provide written notice to his/her supervisor within 30 days of the alleged retaliatory action. If the supervisor is allegedly involved in the retaliation, the written notice should be provided to Human Resources and/or the City Manager. The written notice must specify the alleged retaliatory action and the relief requested. Officials and supervisors shall take appropriate action to investigate and assess complaints of retaliation. Represented employees may elect to pursue such issues through the labor agreement grievance process, in which case the procedures that follow would not apply. The City shall take appropriate action to investigate and address complaints of retaliation. The City must provide the employee a written response to the allegation of retaliation.
3. After 1) receiving: the response of the City Manager or 2) thirty days after the delivery of the charge to the City, the employee may request a hearing before a state administrative law judge (ALJ) to establish that a retaliatory action occurred and to obtain appropriate relief provided by law. An employee seeking a hearing should deliver the request for hearing to the City Manager within the earlier of either fifteen (15) days of delivery of the response to the charge of retaliatory action, or forty-five (45) days of delivery of the charge of retaliation.
4. Upon receipt of request for hearing, the City Manager shall apply within five (5) working days to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge.

Office of Administrative Hearings
P.O. Box 42488
Olympia, WA 98504-2488
360 - 407 - 2700

At the hearing, the employee has the burden of proving the claim by the preponderance of the evidence (more likely than not.) The final decision of the ALJ is subject of judicial review.

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

- F. Implementation. The Human Resources Director is responsible for implementing these policies and procedures. This includes ensuring that 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. Willful violations of these procedures will result in appropriate disciplinary action, up to and including dismissal.

- G. 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 Human Resources Director.

Bothell City Attorney's Office

City Hall
18415 101st Avenue NE
Bothell, WA 98011
425-806-6220

302 Sid Snyder Ave. SW
Olympia WA 98504-0021
866-902-0370

King County Prosecuting Attorney

King County Court House
516 Third Avenue
Seattle, WA 98104
Main Office: 206-296-9000

Department of Transportation

Washington Division Office
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000

Snohomish County Prosecuting Attorney

3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
425-388-3333

Department of Treasury
Internal Revenue Service (Local Office)

915 Second Ave.
Seattle, WA 98174
800-772-1213

State Auditor's Office

Insurance Building
Capitol Campus

Washington State
Department of Labor & Industries

PO Box 44000
Olympia, WA 98504-4000
360-902-5800

Office of the Attorney General

1125 Washington Street SE
PO Box 40100
Olympia, WA. 98504
360-753-6200

State Department of Ecology

3190 160th Ave. SE
Bellevue, WA 98008
425-649-7000

State Department of Health

PO BOX 47877
Olympia, Washington 98504-7877
360-236-4700

**Equal Employment Opportunity
Commission**

Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104-1061
800-669-4000

**Federal Emergency Management
Agency**

Federal Regional Center
130 228th Street SW
Bothell, WA 98021-9796
425-487-4600