

**CITY OF STANWOOD
Stanwood, Washington**

RESOLUTION 2015-19

**A RESOLUTION OF THE CITY OF STANWOOD, WASHINGTON
REPEALING THE CITY'S PERSONNEL POLICY SECTION 307 –
REPORTING IMPROPER GOVERNMENTAL ACTION AND
ADOPTING A NEW SECTION 307 – REPORTING IMPROPER
GOVERNMENTAL ACTION**

WHEREAS, on May 28, 2009, the city council approved by motion a Personnel Policy Manual: and

WHEREAS, on June 13, 2013 the city council adopted Resolution 2013-06 amending the Personnel Policy Manual Section 901 – Vacation Leave, to reflect the city's current practice, Section 902 – Sick Leave, to comply with the Family Care Act, and Section 604.1 – Payroll Draws, to reflect current city practice; and

WHEREAS, on December 11, 2014 the city council adopted Resolution 2014-21 amending the Personnel Policy Manual Section 604 - Paydays and Section 604.1 - Draws in order to change scheduled pay and draw dates; and

WHEREAS, the city's Personnel Policy Manual Section 307 – Reporting Improper Government Action, in its current form, may not meet the level of specificity as required by Chapter 42.41 RCW Local Government Whistleblower Protection; and

WHEREAS, it is the city council's intention to repeal current Section 307 – Reporting Improper Governmental Action and to adopt a new Section 307 – Reporting Improper Government Action to reflect a specific policy consistent with Chapter 42.41 RCW.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STANWOOD AS FOLLOWS:

Section 307 – Reporting Improper Governmental Action, of the City's Personnel Policy Manual, is hereby repealed and a new Personnel Policy Manual Section 307 – Reporting Improper Governmental Action is adopted to read as follows:

Section 307 – Reporting Improper Government Action

~~The City recognizes and supports the right of every employee to report, and to be protected from retaliation for reporting alleged improper governmental action. Improper governmental action is action by a City official or employee that is undertaken in the performance of their duties that violates law, abuses their authority, is a danger to the public health or safety, or is a gross waste of public funds. It generally does not include personnel actions.~~

Employee Responsibility

~~If an employee suspects improper governmental action, they should report it immediately, preferably in writing, to their Department Head or designee, or the City Administrator or designee. The City encourages employees to exhaust internal procedures. Employees can also report directly to outside agencies responsible for investigation and enforcement of the law they believe has been violated.~~

City Responsibility

~~The recipient of the report will either investigate the report or refer the report to a qualified neutral person for investigation. The employee's identity will be kept confidential to the extent practicable and allowed by law.~~

Non-retaliation

~~State law protects employees from retaliation or disciplinary action for reporting improper governmental action in good faith. State law requires that employees come forward with allegations of retaliation within thirty (30) days of an occurrence of retaliation. If the employee is dissatisfied with the City's internal procedure for investigating or resolving a claim of retaliation, the employee may proceed to request a hearing before an administrative law judge.~~

In compliance with Local Government Whistleblower Protection, Chapter 42.41 RCW, this policy is adopted to encourage employees to disclose any improper governmental action taken by city officials or employees without fear of retaliation. This policy also safeguards legitimate employer interests by encouraging complaints to be made first to the City, with a process provided for speedy dispute resolution.

Improper Governmental Action is any action by a city officer or employee that is 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, is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to public health or safety, or is a gross waste of public funds.

Improper Governmental Action does not include personnel actions (hiring, firing, complaints, promotions, reassignment, for example). In addition, employees are not free to disclose matters that would affect a person's right to legally protected confidential communications.

City employees who become aware of improper governmental action shall follow the procedure set forth below:

- Bring the matter to the attention of his/her supervisor, if non-involved, in writing, stating in detail the basis for the employee's belief that an improper action has occurred. This should be done as soon as the employee becomes aware of the improper action but not later than thirty (30) days from the date of occurrence..

- Where the employee believes the improper action involves their supervisor, the employee may raise the issue directly with their Department Director, the City Administrator, or the Mayor. Where the employee believes the improper action involves the Mayor, the employee may raise the issue with the City Attorney.
- The Mayor or his/her designee, as the case may be, shall promptly investigate the report of improper government action. The investigation shall be completed within thirty (30) days of the employee's report. The employee shall be advised of the results of the investigation with the exception that personnel actions taken as a result of the investigation may be kept confidential.

An employee who fails to make a good faith attempt to follow this policy shall not be entitled to the protection of the policy against retaliation, pursuant to RCW 42.41.030.

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 bypass the above procedure and report the improper action directly to the appropriate government agency responsible for investigating improper action. For the purposes of this section, an emergency is a circumstance that if not immediately changed may cause damage to persons or property.

Employees may report information about improper governmental action directly to an outside agency if the employee reasonably believes that an adequate investigation was not undertaken by the City to determine whether an improper government action occurred, or that insufficient action was taken by the City to address the improper action or that for other reasons the improper action is likely to recur. Outside agencies to which reports may be directed include:

Snohomish County Prosecuting Attorney
M/S 504
Everett, WA 98201
(425) 388-3333

Washington State Auditor
Capital Campus
P.O. Box 40021
Olympia, WA 98504
(360) 902-0370

Washington State Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504
(360) 753-6200

If the above-listed agencies do not appear to be appropriate in light of the nature of the improper action to be reported, contact information for other state and county agencies may be obtained via the following link: <http://access.wa.gov/agency/agency.aspx>

It is unlawful for a local government to take retaliatory action because an employee, in good faith, provided information that improper government action occurred. Retaliatory Action is any material adverse change in the terms and conditions of an employee's employment.

Employees who believe they have been retaliated against for reporting an improper government action should follow the procedure set forth below:

- a) Employees must provide a written complaint to the supervisor within thirty (30) days of the occurrence of the alleged retaliatory action. If the supervisor is involved, the notice should go to the City Administrator or the Mayor. If the Mayor is involved, the notice should go to the City Attorney. The written charge shall specify the alleged retaliatory action and the relief requested.
- b) The Mayor or his/her designee, as the case may be, shall investigate the complaint and respond in writing within thirty (30) days of receipt of the written charge. Additional time to respond may be necessary depending on the nature and complexity of the complaint.
- c) After receiving the City's response, the employee may request in writing a hearing before a state administrative law judge (ALJ) to establish that a retaliatory action occurred, and to obtain appropriate relief under the law. The request for hearing must be delivered to the City Administrator within the earlier of either fifteen (15) days of employee's receipt of the City's response to the charge of retaliatory action or within forty-five (45) days of receipt by the Mayor of the employee's charge of retaliation. Failure of the employee to timely request a hearing shall be a waiver of the right to a hearing or further appeal.
- d) Within five (5) working days of receipt of a request for hearing, the City Administrator shall apply 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
(800) 558.4857
(360) 664-8721 Fax

- e) At the hearing, the employee must prove that a retaliatory action in violation of Chapter 42.41 RCW occurred by a preponderance of the evidence. The ALJ will issue a written final decision consisting of findings of fact, conclusions of law and judgment no later than forty-five (45) days after the date of the request for hearing, unless an extension is granted.

- f) The ALJ may grant/award the following relief as appropriate:
1. Reinstatement with or without back pay
 2. Relief as may be necessary to return the employee to the position he or she held prior to the retaliatory action and to prevent any recurrence or retaliatory action.
 3. Award cost and reasonable attorney's fees to the prevailing party
 4. Recommend to the City that any city employee found to have retaliated against an employee reporting improper governmental action be disciplined as deemed appropriate by the Mayor.

The Mayor or designee is responsible for implementing these policies and procedures. This includes posting the policy on the City bulletin board, making the policy available to any employee upon request, and providing the policy 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.

BE IT FURTHER RESOLVED:

Section 2 Except as provided above, all other sections of the Personnel Policy Manual remain unchanged and in full force and effect.

Section 3 Severability. The various parts, sections and clauses of this Resolution are hereby declared to be severable. If any part, sentence, paragraph, section of clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Resolution shall not be affected thereby.

Section 4 Effective Date. This Resolution shall take effect on October 22, 2015

PASSED AND APPROVED by the City Council of the City of Stanwood this 22nd day of October, 2015.

CITY OF STANWOOD



Leonard Kelley, Mayor

ATTEST:



Greg Thramer, City Clerk

APPROVED AS TO FORM:



Grant Weed, City Attorney