

CITY OF TUMWATER

POLICY MANUAL – PART 1: PERSONNEL POLICIES

SECTION 8

EMPLOYEE CODE OF ETHICS AND POLICY FOR REPORTING IMPROPER
GOVERNMENTAL ACTION AND PROTECTING EMPLOYEES AGAINST
RETALIATION (WHISTLE BLOWER)

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8.01 Purpose

- A. The city finds that the proper operation of government requires that employees be independent, impartial, and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; and that the public have confidence in the integrity of its government. Accordingly, it is the purpose of this policy to establish ethical standards of conduct for all employees of the city; to set forth those acts that are incompatible with such standards; to require disclosure by such employees of private financial or other interests in matters affecting the city; and to provide effective means for enforcement thereof. This policy is not to be construed so as to impair the ability of city employees to participate in ceremonial, representational or informational functions in the pursuit of their official duties.
- B. This policy shall be liberally construed in favor of protecting the public's interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for city employees.
- C. This policy shall be interpreted and applied to allow inadvertent minor violations to be corrected and cured without disciplinary action and in conformance with the spirit and purpose of this policy.

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8.02 Policy Statement

It is the policy of the City of Tumwater (1) to encourage reporting by its employees of improper governmental action taken by City of Tumwater officers or employees and (2) to protect City of Tumwater employees who have reported improper governmental actions in accordance with the City of Tumwater's policies and procedure(s).

8.03 Definitions

As used in this policy, the following terms shall have the meanings indicated:

- A. "City agency" means every department or any subdivision thereof.
- B. "City employee" means every position of employment in any city agency.
- C. "Immediate family" means:
 - 1. A spouse or domestic partner;
 - 2. Any dependent parent, parent-in-law, child or son-in-law or daughter-in-law; or
 - 3. Any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the city employee.
- D. "Person" means individual, association, corporation, or other legal entity.
- E. "Improper governmental action" means any action by a City of Tumwater employee:
 - 1. That is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment; and

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8.03 Definitions

2. 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" does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil service laws, alleged violations of labor agreements or reprimands.

- F. "Retaliatory action" means any adverse change in the terms and conditions of a City of Tumwater employee's employment.
- G. "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

8.04 Prohibited Conduct

No current city employee shall:

- A. Disqualification From Acting On City Business.
 1. Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the employee's independence of judgment or action in the performance of official duties and fail to disqualify him or herself from official action in those instances where conflict occurs;

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2. Have a financial or other private interest, direct or indirect, personally or through a member of his or her immediate family, in any matter upon which the employee is required to act in the discharge of his or her official duties, and fail to disqualify himself or herself from acting or participating;
3. Fail to disqualify himself or herself from acting on any transaction which involves the city and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership;
4. Have a financial or other private interest, direct or indirect, personally or through a member of his or her immediate family, in any contract or transaction to which the city or any city agency may be a party, and fails to disclose such interest to the appropriate city authority prior to the formation of the contract or the time the city or city agency enters into the transaction; provided, that this paragraph shall not apply to any contract awarded through the public bid process in accordance with applicable law.

B. Improper Use Of Official Position.

1. Use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the employee, rather than primarily for the benefit of the city; or to achieve a private gain or an exemption from duty or responsibility for the employee or any other person;

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2. Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any city funds or city property, for a purpose which is, or to a reasonable person would appear to be, for other than a city purpose; provided, that nothing shall prevent the private use of city property which is available on equal terms to the public generally (such as the use of library books or tennis courts), the use of city property in accordance with city policy for the conduct of official city business (such as the use of a city automobile), if in fact the property is used appropriately; or the use of city property for participation of the city in activities of associations of governments or governmental officials;
3. Except in the course of official duties, assist any person in any city transaction where such city employee's assistance is, or to a reasonable person would appear to be, enhanced by that employee's position with the city; provided that this subsection shall not apply to: any employee appearing on his or her own behalf or representing himself or herself as to any matter in which he or she has a proprietary interest, if not otherwise prohibited by ordinance;
4. Regardless of prior disclosure thereof, have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in a business entity doing or seeking to do business with the city, and influence or attempt to influence the selection of, or the conduct of business with, such business entity by the city.

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C. Accept Gifts or Loans.

1. No employee may ask for or receive, directly or indirectly, any compensation, gift, gratuity, or thing of value, or promise thereof, for performing or for omitting or deferring the performance of any official duty, action by the City other than the compensation, costs or fees provided by law; except that the following shall be allowed:
 - a) Unsolicited flowers, plants, and floral arrangements;
 - b) Unsolicited advertising or promotional items of nominal value, such as pens and notepads;
 - c) Unsolicited token or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
 - d) Unsolicited food items given to a department when the contents are shared among employees and the public;
 - e) Unsolicited items received for the purpose of evaluation or review provided the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the City;
 - f) Information material, publications, or subscriptions related to the recipient's performance of official duties;
 - g) Food and beverages consumed at hosted receptions where attendance is related to official duties;
 - h) Meals, beverages, and lodging associated with retreats or other meetings where the official serves as a representative, designee or is otherwise assigned to another organization or entity from the City of Tumwater;

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- i) Travel costs, lodging, and tuition costs associated with City sanctioned training or education when not provided by a private entity under contract with the City;
- j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization and other officials or employees of similar agencies are in attendance;
- k) Unsolicited gifts from dignitaries from another city or other jurisdiction that are intended to be personal in nature;
- l) Campaign contributions according to RCW 42.17; and
- m) Unsolicited gifts with an aggregate economic value of \$50.00 or less from a single source in a calendar year received either directly or indirectly by the official or employee.

D. Disclose Privileged Information.

- 1. Disclose or use any privileged or proprietary information gained by reason of his or her official position for the immediate or anticipated personal gain or benefit of the employee or any other person or entity; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request.

E. Hold Financial or Beneficial Interest in City Transaction.

- 1. Regardless of prior disclosure thereof hold or acquire a beneficial interest, direct or indirect, personally or through a member of his or her immediate family, in any contract which, in whole or in part, is, or which may be, made by, through, or under the supervision of such employee; or accept, directly or indirectly, any compensation, gratuity, or reward in connection with such contract from any other person or entity beneficially interested therein.

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8.05 Prohibited Conduct After Leaving City

- A. No former employee shall, during the period of one (1) year after leaving city office or employment:
1. Disclose or use any privileged or proprietary information gained by reason of his/her city employment for his/her gain or anticipated gain, or for the gain or anticipated gain of any person, unless the information is a matter of public knowledge or is available to the public on request;
 2. Assist any person in proceedings involving the agency of the city with which he/she was previously employed, involving a matter in which he or she was officially involved, participated or acted in the course of duty;
 3. Represent any person as an advocate in any matter in which the former employee was officially involved while a city employee;
 4. Participate as a competitor in any competitive selection process for a city contract in which he or she assisted the city in determining the project or work to be done or the process to be used.
- B. The prohibitions of Sections 8.5 A2 and 8.5 A3 shall not apply to former employees acting on behalf of a governmental agency unless such assistance or representation is adverse to the interest of the city.

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8.06 Procedures for Reporting Improper Governmental Actions

City of Tumwater 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 Administrative Services Director or such other person as may be designated by the Administrative Services Director 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.

The supervisor, the Administrative Services Director or the Administrative Services Director's designee, as the case may be, shall take prompt action to assist the City of Tumwater in properly investigating the report of improper governmental action. City of Tumwater 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 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.

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

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8.06 Procedures for Reporting Improper Governmental Actions

City of Tumwater 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.

8.07 Complaints, Investigations, Review and Enforcement

- A. Any person may file a complaint alleging a violation of this policy, as set forth in Section 8.06 Procedures For Reporting.
- B. The complaint shall be in writing and shall, except as described in section C below, be signed by the complainant. The written complaint should state the nature of the alleged violation(s), the date(s), time and place of each occurrence, and name of the person(s) charged with the violation(s). The complaint shall be filed with the Administrative Services Director who shall provide a copy to the person charged with a violation. The complainant shall provide the Administrative Services Director with all available documentation or other evidence to demonstrate a reason for believing that a violation has occurred.
- C. This policy is intended to protect employees who choose to come forward in good faith with complaints about governmental actions and conduct of City of Tumwater employees.

Anonymous complaints have the potential to subject the person who is the subject of the complaint to an investigation that may, at the least, cause stress and embarrassment, and may, at most, result in discipline or termination of employment. The City is reluctant to begin an investigation based on an anonymous complaint due to the fact that evidence will be difficult to obtain and verify, and it will be impossible to assess the complainant's credibility. Complainants and whistleblowers have protection from retaliation under City policy, and a thorough investigation of such complaints is the City's goal. It is not possible to conduct a thorough investigation when a complainant remains anonymous. Therefore, the City reserves the right to decline to investigate any complaint that is provided anonymously.

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If a complaint is received anonymously it shall be referred to the City Attorney for a recommendation on the processing of the complaint. Upon review of the complaint, the City Attorney will recommend to the City Administrator either that the complaint has no merit or that it should be investigated. Such a recommendation will be made within ten (10) days of receipt of the complaint, if possible. Upon receipt of the City Attorney's recommendation, the City administrator shall make the final determination on whether or not to refer the matter to the Administrative Services Director for investigation.

- D. Within thirty (30) days after receipt of a complaint, the Administrative Services Director or another person appointed by the City Administrator shall conduct a preliminary investigation. If the City Administrator, City Attorney or Administrative Services Director are implicated in the complaint, the Mayor will determine who will conduct the City's investigation. Criminal allegations will be referred to the proper law enforcement agency.

- E. If the Administrative Services Director determines, after preliminary investigation, that there are no reasonable grounds to believe that a violation has occurred, the Administrative Services Director shall advise the City Administrator to dismiss the complaint. If the City Administrator does so dismiss the complaint, he or she shall do so in writing, setting forth the facts and provisions of law upon which the dismissal is based, and shall provide a copy of the written dismissal to the complainant, to the person charged with the violation and to the Administrative Services Director.

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8.07 Complaints, Investigations, Review and Enforcement

- F. The Administrative Services Director shall refer a complaint to the City Administrator for action after his or her preliminary investigation, unless the City Administrator has dismissed the complaint; the Administrative Services Director requests from the City Administrator more time to conduct an investigation; the Administrative Services Director has determined that the violation was inadvertent and minor and was or is being satisfactorily corrected and cured: or with respect to a knowing or material violation, the Administrative Services Director recommends to the City Administrator a settlement.

- G. Within thirty (30) days from the date the Administrative Services Director refers a complaint to the City Administrator for review, the City Administrator shall issue a written determination stating whether the policy has been violated and setting forth the facts and the provisions of law upon which this determination is based. A copy of said determination shall be delivered to the complainant, to the person charged with the violation, to the Administrative Services Director and, where appropriate, to the person's superior.

- H. If the City Administrator determines that an employee has violated the provisions of this policy, the City Administrator may subject the employee to disciplinary action. In addition to any other penalty herein or otherwise provided by law, a violation shall be cause for suspension, discharge, or removal from employment, or such other disciplinary action as may, by the appropriate city authority, be deemed necessary and proper, and consistent with personnel ordinances and rules; provided, that this section shall not derogate from employee rights under any collective bargaining agreement or city personnel ordinance, or rules promulgated thereunto.

8.08 Protection Against Retaliatory Actions

City of Tumwater officials and employees are prohibited from taking retaliatory action against an employee because he or she has in good faith reported an improper governmental action in accordance with these policies and procedures.

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8.08 Protection Against Retaliatory Actions

Employees who believe that they have been retaliated against for reporting an improper governmental action should advise in writing their supervisor, the Administrative Services Director or the Administrative Services Director's designee. City of Tumwater officials and supervisors shall take appropriate action to investigate and address complaints of retaliation.

If the employee's supervisor, the Administrative Services Director, or the Administrative Services Director's designee, as the case may be, does not satisfactorily resolve an employee's complaint that he or she has been retaliated against in violation of this policy, the employee may obtain protection under this policy and pursuant to state law by providing a written notice to the City of Tumwater's City Council that:

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

City of Tumwater employees shall provide a copy of their written charge to the manager no later than thirty (30) days after the occurrence of the alleged retaliatory action. The City of Tumwater shall respond within thirty (30) days to the written charge of retaliatory action.

After receiving either the response of the City of Tumwater or thirty days after the delivery of the charge to the City of Tumwater, the employee may request a hearing before a state administrative law judge 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 manager within the earlier of either fifteen (15) days of delivery of the City of Tumwater's response to the charge of retaliatory action, or forty-five (45) days of delivery of the charge of retaliation to the City of Tumwater for response.

Upon receipt of request for hearing, the City of Tumwater shall apply within five (5) working days to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge:

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Office of Administrative Hearings
PO Box 42488, 4224 Sixth S.E.
Rowe Six, Building 1
Lacey, WA 98504-2488
(360) 459-6353

The City of Tumwater will consider any recommendation provided by the administrative law judge that the retaliator be suspended with or without pay, or dismissed.

8.09 Responsibilities

The Administrative Services Director is responsible for implementing the City of Tumwater'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.

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8.10 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 Administrative Services Director.

City of Tumwater

City Attorney
555 Israel Road SW
Tumwater, WA 98501
(360) 754-4121

Thurston County

Prosecuting Attorney's Office
Thurston County Courthouse
Building #2
2000 Lakeridge Drive
Olympia, WA 98502
(360) 786-5540

State of Washington

Office of the Attorney General
Antitrust Division
900 Fourth Avenue, Suite 2000
MS TB 14
Seattle, WA 98164-1012
(206) 464-7744

or

Office of the Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

State Auditor's Office

Attn: ED
PO Box 40021
Olympia, WA 98504-0021
(360) 902-0370

State Department of Ecology

Mailing Address:
PO Box 47775
Olympia, WA 98504-7775

Physical Address:
300 Desmond Drive
Lacey, WA 98503
(360) 407-6300

State Department of Health

Health Consumer Assistance
PO Box 4789
Olympia, WA 98504-7891
(800) 525-0127

Human Rights Commission

711 South Capitol Way, #402
PO Box 42490
Olympia, WA 98504-2490
(360) 753-6770 or (800) 233-3247

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8.10 List of Agencies

UNITED STATES

Department of Labor & Industries

Mailing Address:

PO Box 44850
Olympia, WA 98504-4850

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501-5414
(360) 902-5799

Liquor Control Board

3000 Pacific Avenue SE
Olympia, WA 98504-3080
(360) 664-1600

Department of Natural Resources

1111 Washington Street SE
PO Box 47000
Olympia, WA 98504-7000
(360) 902-1000

**Puget Sound Water Quality Action
Team**

PO Box 40900
Olympia, WA 98504
(360) 407-7300

Dept. of Social & Health Services

Director's Office
4450 10th Avenue SE
Mail Stop 45840
Lacey, WA 98503
(360) 902-8400

Department of Agriculture

Office of Inspector General
75 Hawthorne Street, Suite 200
San Francisco, CA 94105-3920
(415) 744-2851

**Bureau of Alcohol, Tobacco &
Firearms**

Seattle Field Division
915 2nd Avenue, Room 790
Seattle, WA 98174-1093
(206) 389-5800

Attorney's Office

1201 Pacific Avenue, Suite 700
Tacoma, WA 98402-4305
(253) 428-3800

Department of Commerce

Office of Inspector General
915 Second Avenue
Room 3062
Seattle, WA 98174
(206) 220-7970

**Consumer Product Safety
Commission**

1301 Clay Street, Suite 610-N
Oakland, CA 94612-5217
(510) 637-4050

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Customs Service

8337 NE Alderwood Road, Room 200
Portland, OR 97220

Mailing Address:

P.O. Box 55700
Portland, OR 97238-5700
(503) 326-7625

Department of Education

Jackson Federal Building
915 2nd Avenue, Room 3362
Seattle, WA 98174-1099
(206) 220-7800

Environmental Protection Agency

1200 Sixth Avenue
Seattle, WA 98101
(206) 553-1200

**Equal Employment Opportunity
Commission**

Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104-1061
(206) 220-6883 or (800) 669-4000
Seattle, WA
(206) 220-6883; (800) 368-9331

**Federal Emergency Management
Agency**

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

Federal Trade Commission

2896 Federal Building
915 Second Avenue
Seattle, WA 98174
(877) 382-4357

General Services Administration

400 15th Street SW
Auburn, WA 98001
(253) 931-7500

Dept. of Health & Human Services

1200 Sixth Avenue, Room 1930
Seattle, WA 98101
(206) 553-1049

Housing and Urban Development

Seattle Federal Office Building
909 First Avenue, Suite 200
Seattle, WA 98104-1000
(206) 220-5101 or (877) 741-3281

Department of Interior

Western WA Fish and Wildlife
510 Desmond Drive SE, Suite 102
Lacey, Washington 98503
(360) 753-9440

Department of Justice

Drug Enforcement Administration
400 2nd Avenue West
Seattle, WA 98119
(206) 553-5443

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Department of Labor

Occupational Safety & Health (OSHA)
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212
(206) 553-5930

Office of Inspector General Audits

1111 Third Avenue, Suite 780
Seattle, WA 98101-3212
(206) 553-4880

Office of Women's Bureau

1111 Third Avenue, Suite 885
Seattle, WA 98101-3212
(206) 553-1534

Mine Safety & Health Admin.

3633 136th Place, SE, Room 206
Bellevue, WA 98006
(206) 553-7037

Nuclear Regulatory Commission

Region IV
611 Ryan Plaza, Suite 400
Arlington, TX 76011-8064
(800) 695-7403

**Securities and Exchange Commission
Pacific Regional District Office**

44 Montgomery Street, Suite 1100
San Francisco, CA 94104
(415) 705-2500

Social Security

402 Yaeger Way SW
Olympia, WA 98502
(800) 772-1213

**Department of Transportation
Washington Division Office**

711 South Capitol Way, Suite 501
Mail Stop: 40943
Olympia, WA 98501
(360) 753-9480

**National Transportation Safety
Board**

19518 Pacific Highway South
Suite 201
Seattle, WA 98188
(206) 870-2200

**Department of Treasury
Internal Revenue Service (Local
Office)**

404 Legion Way
Olympia, WA 98501
(360) 570-5410

**Department of Treasury
Financial Management Service**

San Francisco Financial Center
P.O. Box 193858
San Francisco, CA 94119
(415) 817-7300

**Department of Veterans Affairs
Veterans Benefits Administration**

Federal Building
915 2nd Avenue
Seattle, WA 98174
(800) 827-1000

Veterans Health Administration

4916 Center Street, Suite E
Tacoma, WA 98409
(253) 565-7038