

# City of Mission Viejo

## Personnel Policy

**Subject:** WHISTLEBLOWER PROCEDURES AND PROTECTION

**Statement of Intent:**

To establish procedures governing reporting and investigating allegations of suspected wrongdoing in accordance with California Labor Code Section 1102.5 and the City of Mission Viejo Municipal Code chapter 2.90 "Protected Employee Disclosures". This policy shall be applicable to all employees of the City of Mission Viejo.

**Policy:**

1. The City of Mission Viejo is committed to protecting employees from interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy.
2. Current Federal and State law provide protections to employees to prevent retaliation or other "on the job" discrimination from being imposed upon any employee who discloses information to any government or law enforcement agency in the circumstances recited in California Labor Code Section 1102.5. However, these protections do not extend to local legislative enactments of the City Council. Therefore, Municipal Code Chapter 2.90 is cumulative with California Labor Code Section 1102.5 and extends the same protections to employees that disclose information to a government or law enforcement agency arising from concerns regarding adherence, or lack thereof, to local legislative enactments of the City Council of the City of Mission Viejo.
3. Protection afforded under this policy is not intended to prohibit supervisors from taking action, including disciplinary action, in the usual scope of their duties and based on valid performance-related factors.

**Definitions:**

1. Protected Disclosure – Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) intentional wrongdoing or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
2. Good Faith – Information concerning potential wrongdoing is disclosed in "good faith" when an individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.
3. Baseless Allegations – Allegations made with reckless disregard for their truth or falsity. Employees making such allegations may be subject to disciplinary action

by the City, and/or legal claims by individuals accused of such conduct.

4. **Illegal Order** – Any directive to violate an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.
5. **Interference** – Direct or indirect use of authority to obstruct an individual’s right to make a protected disclosure.
6. **Official Authority or Influence** – Promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.
7. **Whistleblower** – A person or entity making a protected disclosure is commonly referred to as a Whistleblower. A Whistleblower may be a City employee, an applicant for employment, a vendor, a contractor, or the general public. The Whistleblower’s role is a reporting party. They are not investigators, or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.
8. **Wrongdoing** – The deliberate act of fraudulent or dishonest conduct, malfeasance, or other inappropriate actions by an employee, elected official, or representative/agent of the City of Mission Viejo, with the intention of obtaining an unauthorized benefit. Examples of such conduct include, but are not limited to:
  - a. Forgery or alteration of official documents;
  - b. Unauthorized alteration or manipulation of computer files of the City;
  - c. Fraudulent financial reporting;
  - d. Pursuit of a benefit or advantage in violation of the City’s Ethics Policies;
  - e. Misappropriation or misuse of the City’s resources, including but not limited to, its funds, supplies, or other assets;
  - f. Authorizing or receiving compensation for goods or services not performed;
  - g. Authorizing or receiving compensation for hours not worked;
  - h. Violating an official policy of the City of Mission Viejo; or
  - i. Violating public law, rule, or regulation while in the course of performing one’s official duties as an employee, officer, or representative/agent of the City.

### **How to Report Allegations:**

1. It is possible you may suspect that a fellow employee or any other person affiliated with the City of Mission Viejo has engaged in questionable conduct involving financial improprieties, misuse of the City’s assets, or other fraudulent,

dishonest, or illegal conduct detrimental to the interests of the City of Mission Viejo. This misconduct may include outright theft (of equipment or cash), fraudulent expense reports, misstatements of any accounts to any manager or to the City's auditors, or even a conflict of interest that may result in financial harm or public discredit to the City of Mission Viejo. The City encourages you to report such questionable conduct.

2. An employee may make such reports either confidentially or anonymously. A verbal or written confidential report can be made to any of the following City executives at any time:
  - a. the City Manager,
  - b. the City Attorney,
  - c. the Assistant City Manager;
  - d. any Department Head; or
  - e. any member of the Human Resources Division.
3. If you prefer to make a report anonymously, you may do so by U.S. Mail or by calling the Ethics Hotline at 844-316-6614.
4. If you choose to use U.S. Mail, please send your correspondence to the attention of any of the designated individuals listed above. Please write the statement "To be opened only by the addressee" on the outside of your envelope. Our internal mail handling procedures will require any such envelope to be delivered promptly to the addressee unopened.
5. In addition, an Ethics Hotline has been implemented to provide any employee or member of the public with a simple risk-free way to anonymously and confidentially report activities that may involve illegal, unethical, or otherwise inappropriate activity or behavior. The hotline is available during normal business hours and is answered by a member of the City Attorney's firm.
6. If an employee believes in good faith that disclosing information to a City of Mission Viejo representative pursuant to the above section would likely subject him/her to adverse personnel action, the employee may instead disclose the information to the appropriate law enforcement agency, if applicable. Examples of "law enforcement" agencies include, but are not limited to, [the State of California Department of Industrial Relations](#), [California Department of Fair Employment and Housing](#), and [the Orange County District Attorney](#).
7. An employee who intends to act as a whistleblower shall exercise a high level of care so as not to make a baseless allegation.
8. Managers, supervisory employees, and Human Resources Division employees shall promptly report to the City Manager and/or City Attorney any allegations of suspected wrongdoing whether received as a protected disclosure, reported by their subordinates in the ordinary course of performing their duties, or discovered

in the course of performing their own duties.

### **Investigating Allegations**

1. The City Manager and/or the City Attorney shall have authority to commence an investigation. Investigations should be launched only after preliminary consideration that establishes that:
  - a. The allegation, if true, constitutes wrongdoing as defined in this policy and in accordance to the judgment of the City Attorney or City Manager, and either:
    - i. The allegation is accompanied by information specific enough to be investigated; or
    - ii. The allegation has or directly points to corroborating evidence that can be pursued. Such evidence may be testimonial or documentary.
2. The City will exercise reasonable care to keep the whistleblower's identity confidential, unless:
  - a. The whistleblower agrees to disclosure;
  - b. Disclosure is necessary to allow City or law enforcement officials to investigate or respond effectively to the report;
  - c. Disclosure is required by law;
  - d. The person(s) accused of the wrongdoing are entitled to the information as a matter of due process in disciplinary proceedings; or
  - e. The whistleblower self-discloses his/her identity, in which case the City will no longer be obligated to maintain such confidence.
3. The City Manager may delegate conduct of the investigation, including any fact-finding, to City staff, outside consultants, or law enforcement.
4. If criminal activity is detected, consultation with the Orange County Sheriff's Department will determine if law enforcement should take the lead, participate, or initiate a separate investigation.
5. Reasonable care and discretion shall be taken when dealing with suspected wrongdoing to avoid:
  - a. Baseless allegations;
  - b. Premature notice to persons suspected of wrongdoing and/or disclosure of such conduct to others not involved with the investigation; and
  - c. Violation of a person's rights under the law.

### **Roles, Rights, and Responsibilities**

1. Whistleblowers
  - a. Whistleblowers provide initial information related to a reasonable belief that wrongdoing has occurred. The motivation of a whistleblower is irrelevant to the consideration of the validity of the allegations. However,

the intentional filing of a baseless allegation, whether orally or in writing is itself considered to be misconduct which the City has the right to act upon.

- b. Whistleblowers shall refrain from obtaining evidence for which they do not have a right to access. Such improper access may itself be considered wrongdoing.
  - c. Anonymous whistleblowers must provide sufficient corroborating evidence to justify the commencement of an investigation. An investigation of unspecified wrongdoing or broad allegations will not be undertaken without verifiable evidentiary support. Since investigators are unable to interview anonymous whistleblowers, it may be more difficult to evaluate the credibility of the allegations and therefore, less likely to cause an investigation to be initiated.
  - d. Whistleblowers are “reporting parties”, not investigators. They are not to act on their own in conducting any investigative activities, nor do they have a right to participate in any investigative activities other than as requested by investigators.
  - e. A whistleblower’s right to protection from retaliation does not extend immunity for any complicity in the matters that are subject of the allegations or an ensuing investigation.
2. Investigation Participants
- a. City employees who are interviewed, asked to provide information or otherwise participate in an investigation have a duty to fully cooperate with City-authorized investigators.
  - b. Requests for confidentiality by participants will be honored to the extent possible within the legitimate needs of the law and the investigation.
  - c. Participants are entitled to protection from retaliation for having participated in an investigation.
3. Investigation Subjects
- a. A subject is a person who is the focus of the investigative fact-finding either by virtue of an allegation made or evidence gathered during the course of an investigation. The decision to conduct an investigation is not an accusation; it is to be treated as a neutral fact-finding process. The outcome of the investigation may or may not support a conclusion that wrongdoing was committed and, if so, by whom.
  - b. The identity of the subject should be maintained in confidence to the extent possible within the legitimate needs of the law and the investigation.
  - c. Any disciplinary or corrective action initiated against the subject as a result of an investigation pursuant to this policy shall adhere to the City’s Discipline Personnel Policy.

### **No Retaliation or Interference**

1. Employees, elected officials, consultants, contractors, vendors, and representatives/agents of the City of Mission Viejo shall not engage in any

retaliatory personnel action against a whistleblower for:

- a. Providing information;
  - b. Disclosing or threatening to disclose any activity which that person believes to be wrongdoing; or
  - c. Objecting to or refusing to participate in any wrongdoing.
2. If you subsequently believe you have been subjected to retaliation of any kind by any City employee, elected official, consultant, contractor, or vendor, you should immediately report it to either the Human Resources Division, the City Manager, or the City Attorney.
  3. Reports of retaliation will be investigated promptly in a manner intended to protect confidentiality, consistent with a full and fair investigation. The party conducting the investigation will notify you of the results of the investigation.

### **Disclosure and Records**

1. Subject to the confidentiality qualifications noted in this policy and any applicable laws, credible reports of improprieties in accounting, auditing, or other internal control systems and credible reports involving a material financial liability for the City will be disclosed to the City Council by either the City Manager or City Attorney, together with the results of any investigation and corrective actions taken by the City Manager or City Attorney.
2. The City Manager and/or City Attorney shall retain all documents related to the reporting, investigation, and enforcement of this policy, as a result of wrongdoing, or of the retaliation of an employee that made such a report, in accordance with the City's record retention policy and applicable law.

### **Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

Implemented: June 16, 2014. (Reviewed by City Council – June 16, 2014 – Resolution No. 14-31.)