

ORDINANCE NO. 263

A ORDINANCE OF THE CITY OF BRIER, WASHINGTON, ADDING A NEW SECTION TO TITLE 2 OF THE BRIER MUNICIPAL CODE, ADMINISTRATION AND PERSONNEL, TO BE KNOWN AS SECTION 2.84 "REPORTING IMPROPER GOVERNMENTAL ACTION AND PROTECTING EMPLOYEES AGAINST RETALIATION"; MAKING PROVISIONS FOR PROCEDURES FOR REPORTING IMPROPER GOVERNMENTAL ACTION AND PROVIDING PROTECTIONS FOR EMPLOYEES AGAINST RETALIATION

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WHEREAS, by action of the State Legislature, local government agencies are to institute procedures for reporting improper governmental action and protection against persons who report improper action from retaliation; and,

WHEREAS, the City Council of the City of Brier finds that the public health, safety, and welfare are better protected by instituting a procedure for reporting improper governmental action and protecting employees against retaliation; now, therefore

THE CITY COUNCIL OF THE CITY OF BRIER, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. There is hereby added to the administrative and personnel section of the Brier Municipal Code, Section 2.84, the following provisions for reporting improper governmental action and protecting employees against retaliation. Section 2.84 shall be titled "Reporting Improper Governmental Action and Protecting Employees Against Retaliation."

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

Section 3. Definitions. As used in this policy, the following terms shall have the meanings indicated:

1. "Improper governmental action" means any action by a City officer or employee:
  - a. 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

- b. 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 proper personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil service laws, alleged violations of labor agreements or reprimands.

2. "Retaliatory action" means any adverse change in the terms and conditions of a City of Brier employee's employment.
3. "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.
4. "Employee" means any person appointed to any position with the City under any provision of the personnel ordinance of the City whether part-time or fulltime, temporary or contract hire.

Section 4. Procedures for Reporting. City 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 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 City Administrator or such other person as may be designated by the Mayor 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 City Administrator or the Mayor's designee, as the case may be, shall take prompt action to assist the City in properly investigating 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 reasonably 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 summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

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

City employees who fail to make a good-faith attempt to follow the City of Brier's procedures in reporting improper governmental action shall not receive the protections provided by the City of Brier in these procedures.

Section 5. Protection Against Retaliatory Actions. City 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.

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

If the employee's supervisor, the City Administrator, or the Mayor'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 Council that:

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

City employees shall provide a copy of their written charge to the City Administrator no later than thirty (3) days after the occurrence of the alleged retaliatory action. The City shall respond within thirty (30) days to the charge of retaliatory action.

After receiving either the response of the City or thirty days after the delivery of the charge to the City, 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 City manager within the earlier fifteen (15) days of delivery of the City's response to the charge of retaliatory action, or forty-five (45) days of delivery of the charge of retaliation to the City for response.

Upon receipt of request for hearing, the City 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, 4224 Sixth SE  
Rowe Six, Bldg. 1  
Lacey, WA 98504-2488  
(206) 459-6353

or make arrangements for appointment of a private professional quasijudicial hearings officer. The City will consider any recommendation provided by the hearings officer that the retaliatory individual be suspended with or without pay, or dismissed.

Section 6. Responsibilities. The Mayor is responsible for implementing the City of Brier'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.

Section 7. If any part or portion of this ordinance is declared invalid for any reason, such declaration of invalidity shall not affect any remaining part or portions. Nothing in this ordinance shall supersede or replace any provisions related to personnel action, including actions that may be taken under applicable Civil Service regulations. This ordinance shall take effect after passage, posting and publication as required by law.

APPROVED:

  
MAYOR WAYNE E. KASKE

ATTESTED:

*Norma Wilds*  
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CITY CLERK

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