

CITY OF FIRCREST

RESOLUTION NO. 494

1 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
2 FIRCREST, WASHINGTON, ADOPTING AN EMPLOYEE
3 WHISTLEBLOWER PROTECTION POLICY AS REQUIRED BY
CHAPTER 44, 1992 LAWS OF THE STATE OF WASHINGTON.

4 WHEREAS, the State of Washington has adopted the Local Government
5 Employee Whistleblower Act, Chapter 44, 1992 Laws of the State of Washington
(RCW 42.41), and

6 WHEREAS, the City of Fircrest desires to formally adopt a whistleblower
7 policy pursuant to the requirements of said act,

8 NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
9 THE CITY OF FIRCREST THAT:

10 Section 1. Purpose. The purpose of this policy, pursuant to the Local
11 Government Employee Whistleblower Act, is to: 1) encourage reporting by City of
12 Fircrest employees of improper governmental action taken by City of Fircrest
13 officers or employees, 2) protect City of Fircrest employees who have reported, in
good faith, improper governmental actions in accordance with City of Fircrest's
policies and procedures, 3) act as a safeguard for legitimate employer interests, and
4) provide for speedy dispute resolution.

14 Section 2. Definitions. Unless the context clearly requires otherwise, the
15 definitions in this section shall apply throughout this chapter.

16 1. (a). Improper governmental action. "Improper governmental action" means
17 any action by a City of Fircrest officer or employee:

18 (i) That is undertaken in the performance of the officer's or employee's
19 official duties, whether or not the action is within the scope of the employee's
employment; and

20 (ii) That is in violation of any federal, state, or local law or rule, is an abuse
21 of authority, is of substantial and specific danger to the public health or safety or is
a gross waste of public funds.

22 (b) "Improper governmental action" does not include personnel actions,
23 including but not limited to: employee grievances, complaints, appointments,
24 promotions, transfers, assignments, reassignments, reinstatements, restorations,
25 reemployments, performance evaluations, reductions in pay, dismissals, suspensions,
26 demotions, violations of collective bargaining or civil service laws, alleged violations
of labor agreements, reprimands, or any action that may be taken under chapter
41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

27 2. Retaliatory Action. A "retaliatory action" means any adverse change in a
28 City of Fircrest employee's employment status, or the terms and conditions of
29 employment including denial of adequate staff to perform duties, frequent staff
30 changes, frequent and undesirable office changes, refusal to assign meaningful work,
unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance
31 evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion,
suspension, dismissal, or any other disciplinary action.

32 3. Emergency. "Emergency" means a circumstance that if not immediately
changed may cause damage to persons or property.

1 **Section 3. Statements of Policy.** The City of Fircrest strives to conduct its
2 business with the utmost integrity and in strict accordance with all applicable federal,
3 state and local law. Accordingly, employees are encouraged to bring to the
4 attention of the City any improper actions of City officials and employees. The City
5 will not retaliate against any employee who makes such a disclosure in good faith
6 and in accordance with the procedures set forth in this policy.

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8 Improper actions are actions undertaken by an officer or employee in the
9 performance of his or her official duties which (a) are in violation of any federal,
10 state or local law, (b) constitute an abuse of authority, (c) create a substantial and
11 specific danger to public health or safety, or (d) grossly waste public funds.
12 Improper actions do not include common personnel actions, such as the processing
13 of grievances, decisions regarding hiring, promotion, firing and other discipline, or
14 alleged violations of collective bargaining agreements, employment contracts or
15 policies or procedures set forth in the City's personnel policy and procedure manual.

16 **Section 4. Procedures.** 1. Misconduct can often be corrected most
17 expeditiously if handled internally. Accordingly, an employee who has a good faith
18 concern that improper action has occurred or is about to occur, must first raise that
19 concern with the City. Specifically, the employee must submit his or her concerns
20 and related information ("complaint") in writing to the City Manager. In the event
21 that the complaint concerns the City Manager, the complaint shall be submitted to
22 such other person(s) as previously designated by the City Manager and confirmed
23 by the City Council. In the event that the complaint concerns a minority member
24 or members of the City Council, the complaint shall be submitted to the entire City
25 Council. In the event that the complaint concerns a majority of the members of the
26 City Council, the complaint shall be submitted to the Pierce County Prosecutor. The
27 identity of a reporting employee will be kept confidential to the fullest extent
28 possible under law, unless the reporting employee provides written authorization for
29 disclosure. The employee may report under this policy through a union business
30 representative or attorney.

31 2. The City shall have ten (10) working days to address the complaint raised
32 by the reporting employee and provide the reporting employee with a written
response which identifies the alleged improper action at issue, describes the scope
and findings of the investigation, states what, if any, action will be taken against the
offending officer(s) and/or employee(s), and explains why such action is appropriate.

 3. If the reporting employee is not satisfied with the investigation and/or
resolution of the complaint, the reporting employee may request reconsideration in
writing within five (5) working days of receipt of the City's written response.
Written requests for reconsideration must be submitted to the City Manager or
designee and must identify the specific elements of the City's investigation or written
response which the reporting employee finds unsatisfactory. The City has three (3)
working days to advise the reporting employee in writing whether reconsideration
will be granted. Any reconsideration will be limited to examination of the specific
issues raised by the reporting party in his or her written request. The City will have
five (5) working days from the date reconsideration is granted to complete its
additional investigation and provide the employee with a written response.

 4. If a reporting employee is still dissatisfied with the City's investigation or
response, the reporting employee may disclose the complaint to an outside agency
or organization for further review. Reporting employees may disclose complaints
to outside agencies only after fully exhausting the reporting and reconsideration
procedures set forth in this policy. All reporting employees must strictly follow this
policy. Employees who comply with the policy shall not be subject to discipline or
other retaliatory actions for reporting, disclosure, or other activities subject to the
policy.

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5. Deviation from the reporting and reconsideration policy is permitted only in those rare cases where the reporting employee can show that persons or property will be damaged if the alleged improper conduct is not immediately addressed. In the case of an emergency, where the employee has reasonable cause to believe that damage to persons or personal property may result if immediate action is not taken, the employee may report the improper governmental action directly to the appropriate agency with responsibility for investigating the improper action.

6. Reporting employees who, after exhausting the internal reporting and reconsideration procedures, choose to continue to pursue their complaints should consider contacting one or more of the following organizations: Office of the Attorney General; Office of the State Auditor; or, the Office of Pierce County Prosecutor.

7. All City personnel are prohibited from taking any adverse employment action against an employee who registers a complaint in good faith with a public body in accordance with this policy. If an employee believes there has been retaliation for reporting improper actions in accordance with this policy, the employee may seek redress as follows:

- A. The employee must provide written notice of the charge of retaliatory action to the City Manager or designee within thirty (30) days of the date the alleged retaliatory action occurred. The notice must describe the alleged retaliatory action and the persons allegedly involved, and identify the relief requested.
- B. The City Manager or designee must respond to the charge in writing within thirty (30) days of its submission. The response must: Identify the alleged retaliatory action and persons involved; identify the relief requested; describe the investigation conducted; state and explain the disposition of the charge; and identify the relief, if any, that is being granted and explain why the relief is appropriate.
- C. The charging party is entitled to a hearing if he or she so chooses. However, the hearing must be requested in writing within fifteen (15) days of delivery of the City's written response to the charge or, if the City fails to respond within the allotted thirty (30) day period, within fifteen (15) days of the last day upon which the City could have responded.
- D. Within five (5) working days of receipt of a timely request for hearing, the City shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge.
- E. Unless the administrative law judge extends the period, the judge shall issue a final decision no later than forty-five (45) days after the date the timely request for hearing was delivered to the City. The administrative law judge's decision is subject to court review.

Section 5. Duties and Responsibilities of City Manager. The City Manager is responsible for implementing the City of Fircrest's policies and procedures hereunder. The City Manager shall ensure that this policy is permanently posted in a place where all employees will have reasonable access to it. A copy of this policy shall be made available to any person upon request, and distributed to all current and future City employees. This policy shall also be amended into the City of Fircrest Personnel Policies and Procedures Manual.

APPROVED AND ADOPTED this 22nd day of December 1992
at a regularly scheduled meeting of the City Council of the City of Fircrest.

APPROVED:

Stephen M. Shelton
MAYOR

ATTEST:

Susan Clough
City Clerk

APPROVED AS TO FORM:

Kathleen L. Longford
City Attorney

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