

RESOLUTION NO. 2016-74

RESOLUTION ADOPTING POLICY AMENDING CURRENT EMPLOYEE HANDBOOK TO INCLUDE PROTECTION FROM RETALIATION FOR EMPLOYEES REPORTING IMPROPER OR UNLAWFUL CONDUCT

WHEREAS, the 2016 Legislature of the State of Oregon passed HB 4067 amending Oregon Revised Statutes 659A.200, 659A.203, and 659A.885 providing further protections for Public Employees from retaliation due to a good faith reporting of improper or unlawful conduct; and

WHEREAS, the new law requires employers to produce a policy that delineates the new law and the City Council has adopted an Employee Handbook that will contain the provisions of the new law, along with other employment policies; and

WHEREAS, regulations were recently promulgated requiring this addition be done by employers by January 1, 2017; and the City Council must comply with State Statute and adopting this resolution will attain such compliance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: The City Council hereby approves and provides for "Whistleblower" protection policy as outlined in the attached Exhibit A.

Section 2: Resolution No. 2016-25 is hereby amended to incorporate into Chapter 1 of the current Employee Handbook the policy as outlined in Exhibit A.

Section 3: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 12th day of December, 2016.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 12th day of December, 2016.



Peter B. Truax, Mayor

The following policy amends the current Employee Handbook adopted by Resolution 2016-25 and will be incorporated into Chapter 1 – Introduction of the current Employee Handbook in the next revision.

1.6 Open Door Policy

The City of Forest Grove's Open Door Policy is based on our belief that open, honest communication between managers and employees should be a common business practice. The City of Forest Grove's managers and supervisors are responsible for creating a work environment where employee input is welcomed, and where issues are surfaced early and shared without the fear of retaliation (when the employee provides the input in good faith).

If you have a complaint, suggestion, or question about your job, working conditions, or the treatment you are receiving from anyone in the City, please raise them first with your immediate supervisor. If you are not satisfied with the response from your immediate supervisor, or if your issue involves your immediate supervisor, please talk to the Human Resources Manager or designee.

1.7 Reporting Improper or Unlawful Conduct – No Retaliation

Employees may report reasonable concerns about the City of Forest Grove's compliance with any law, regulation or policy, using one of the methods identified in this policy. The City of Forest Grove will not retaliate against employees who disclose information that the employee reasonably believes is evidence of:

- A violation of any federal, Oregon, or local law, rules or regulations by the City of Forest Grove;
- Mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health resulting from action of the City of Forest Grove;
- A substantial and specific danger to public health and safety resulting from actions of the City of Forest Grove ;
or
- The fact that a recipient of government services is subject to a felony or misdemeanor arrest warrant.

Further, in accordance with Oregon Law, the City of Forest Grove will not prohibit an employee from discussing the activities of a public body or a person authorized to act on behalf of a public body with a member of the Legislative Assembly, legislative committee staff acting under direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision, or an elected auditor of a city, county or metropolitan service district.

Employee Reporting Options

In addition to the City of Forest Grove's Open Door Policy (see section 1.6), employees who wish to report potential improper or unlawful conduct should first talk to his or her supervisor. If you are not comfortable speaking with your supervisor, or you are not satisfied with your supervisor's response, you are encouraged to speak with the Human Resources Manager or designee. Supervisors and manager are required to inform the Human Resources Manager or designee about reports of improper or unlawful conduct they receive from employees.

Reports of unlawful or improper conduct will be kept confidential to the extent allowed by law and consistent with the need to conduct an impartial and efficient investigation.

If the City of Forest Grove were to prohibit, discipline, or threaten to discipline an employee for engaging in an activity described above, the employee may file a complaint with the Oregon Bureau of Labor and Industries or bring a civil action in court to secure all remedies provided for under Oregon Law.

Additional Protection for Reporting Employees

Oregon law provides that, in some circumstances, an employee who discloses a good faith and objectively reasonable belief of the City of Forest Grove's violation of law will have an "affirmative defense" to any civil or criminal charges related to the disclosure. For this defense to apply, the disclosure must relate to the conduct of a coworker or supervisor acting within the course and scope of his or her employment. The disclosure must have been made to either: (1) a state or federal regulatory agency; (2) a law enforcement agency; (3) a manager with the City of Forest Grove; or (4) an Oregon-licensed attorney who represents the employee making the report/disclosure.

The defense also only applies in situations where the information disclosed was lawfully accessed by the reporting employee.

Policy Against Retaliation

The City of Forest Grove will not retaliate against employees who make reports or disclosures of information of the type described above when the employee reasonably believes he or she is disclosing information about conduct that is improper or unlawful.

In addition, the City of Forest Grove prohibits retaliation against an employee because he or she participates in good faith in any investigation or proceeding resulting from a report made pursuant to this policy. Further, no City of Forest Grove employee will be adversely affected because they refused to carry out a directive that constitutes fraud or is a violation of local, Oregon, federal or other applicable laws and regulations. The City of Forest Grove may take disciplinary action (up to and including termination of employment) against an employee who has engaged in retaliatory conduct in violation of this policy.

This policy is not intended to protect an employee from the consequences of his or her own misconduct or inadequate performance simply by reporting the misconduct or inadequate performance. Furthermore, an employee is not entitled to protections under this policy if the City of Forest Grove determines that the report was known to be false, or information was disclosed with reckless disregard for its truth or falsity. If such a determination is made, an employee may be subject to discipline up to and including termination of employment.

Amendment Acknowledgement Form

By signing below I acknowledge that I have received a copy of this amendment to current Employee Handbook, that was adopted by City Council Resolution 2016-25 on April 11, 2016. I understand that the Handbook contains important information about the City's policies, work rules and my benefits. I also understand that the Handbook outlines my responsibilities as an employee of the City. I also understand that I have the responsibility to read and understand the information in the Handbook and this amendment, and to ask my supervisor for clarification of any information I do not understand.

Employee Signature

Date

Print Employee's Name

Department



CITY RECORDER USE ONLY:
AGENDA ITEM #: 4.A.
MEETING DATE: 12/12/16
FINAL ACTION: Approved
Reso 2016-74

CITY COUNCIL STAFF REPORT

TO: City Council

FROM: Jesse VanderZanden, City Manager

MEETING DATE: December 12, 2016

PROJECT TEAM: Brenda Camilli, Human Resources Manager

SUBJECT TITLE: RESOLUTION ADOPTING POLICY AMENDING CURRENT EMPLOYEE HANDBOOK TO INCLUDE PROTECTION FROM RETALIATION FOR EMPLOYEES REPORTING IMPROPER OR UNLAWFUL CONDUCT

ACTION REQUESTED: Ordinance Order X Resolution Motion Informational
X all that apply

ISSUE STATEMENT:

The 2016 Legislature of the State of Oregon passed HB 4067 amending Oregon Revised Statutes 659A.200, 659A.203, and 659A.885 effective January 1, 2017; providing further protections for Public Employees from retaliation due to a good faith reporting of improper or unlawful conduct and requiring employers to produce a policy that delineates the rights and remedies found in the law.

Oregon's "Whistleblowers Law" requires that employers produce a policy implementing the law; which will need to be incorporated into the City's current Employee Handbook. This resolution will amend the Employee Handbook to meet legislative requirements and the policy will be incorporated into the next revision of the Employee Handbook. The attached policy is based on a template produced by City-County Insurance Services (CIS) and has been reviewed by the City's attorney.

FISCAL IMPACT:

There is no known financial impact.

STAFF RECOMMENDATION: Staff recommends the City Council adopt the attached resolution.

ATTACHMENT(s):

Exhibit A – Proposed amendment to the Employee Handbook