

## ARTICLE IX. - PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION

## Sec. 2-514. - Purpose.

The purpose of this article is to prevent the city from taking retaliatory action against a city employee who reports unlawful activity, misfeasance, or malfeasance by any employee of the city or any independent contractor of the city to the appropriate authorities for investigation and corrective action. In order to encourage employees to report such information without fear of reprisal, it shall be the policy of the city to prohibit adverse action against an employee for disclosing such information to an appropriate official.

Recognizing that the State of Florida has adopted its own Whistle-blower's Act in F.S. § 112.3187, et seq., (the State Act), and that the State Act provides for the adoption of local procedures for administrative enforcement, the city intends that this article be interpreted consistently with the State Act, as it may be amended from time to time.

(Ord. No. 2018-4173, § 1, 2-14-18)

## Sec. 2-515. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

*City* shall include all city departments, under the city commission's legislative authority.

*Employee* shall mean a person who performs services for, and is under the control and direction of, the city for wages or other remuneration.

*Independent contractor* shall mean a person, other than a federal, state or local government entity, engaged in any business and who enters into a contract with the city for the provision of goods and services.

*Adverse personnel action* shall mean the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses or raises, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by the city.

All other words or terms used in this article shall have the same meaning as such words and terms have under the Florida Whistle-blower's Act.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-516. - Actions prohibited.

- (a) The city shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this article.
- (b) The city shall not take any adverse action that affects the rights or interests of an employee in retaliation for the employee's disclosure of information under this article.
- (c) The provisions of this article shall not be applicable when an employee discloses information known by the employee to be false.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-517. - Nature of information disclosed.

The information disclosed under this article must include:

- (a) Any violation or suspected violation of any federal, state or local law, rule or regulation committed by an employee of the city or independent contractor of the city which creates and presents a substantial and specific danger to the public's health, safety or welfare; or
- (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee of the city or an independent contractor of the city.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-518. - To whom information disclosed.

- (a) The information disclosed under this article must be disclosed to the city manager, and to such official or officials as the city manager may designate to receive such information on his/her behalf.
- (b) To facilitate the disclosure of information under this article, information may be submitted to the city manager or the city manager's designee:
  - (1) Through a telephone hotline established by the city manager or the city

manager's designee;

- (2) By email;
  - (3) By written and signed correspondence;
  - (4) Through a website established by the city manager or the city manager's designee; or
  - (5) In person to the city manager or the city manager's designee.
- (c) Any information that complies with section 2-517, that is disclosed to the city manager or the city manager's designee, may, at the discretion of the city manager or the city manager's designee, be forwarded to the city's human resources director for investigation. The human resources director shall make a determination whether an investigation is necessary.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-519. - Employees and persons protected.

- (a) This article protects employees who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the city, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse action prohibited by this division; who disclose information to the city manager in accordance with the provisions of section 2-518; or who are otherwise protected by the Florida Whistle-blower's Act. The provisions of this article may not be used by employees while they are under the care, custody, or control of the state or county correctional system, or after their release from the care, custody or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.
- (b) No remedy or other protection under this article applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this article is being sought.
- (c) An employee who provides false information pursuant to this article may be investigated and prosecuted pursuant to Florida law, including, but not limited to, F.S. §§ 837.06 (false official statements); 838.022 (official misconduct); and 837.05 (false reports), as such statutory provisions may be amended from time to time.

- (d) It shall be an affirmative defense to any complaint brought pursuant to this article that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's exercise of rights protected by this article.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-520. - Remedies.

- (a) Any employee protected by this article, who has the right to file an appeal of an adverse personnel action pursuant to article IV of the Related Special Acts, shall be further granted those additional right(s) to have a hearing officer appointed to consider the issue of whether the adverse personnel action was in violation of this article. To invoke the jurisdiction of the hearing officer, the employee must submit an appeal within 60 days after the action prohibited by this article with the city's human resources director. The director shall refer the appeal to a hearing officer selected by the city attorney's office. The hearing officer may be paid a fee for his/her services, but shall not be deemed to be a city official or employee. The hearing officer shall conduct a hearing after notice to the complainant and the city department involved. The hearing shall be conducted in accordance with the procedures applicable to hearings under such civil service procedures, except as may be provided herein. A subpoena may be issued by the hearing officer, at the request of an interested party, in order to procure the attendance of witnesses and the production of records at such hearing. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within 60 days of the human resources director's receipt of the complaint, except that the director shall have the authority to extend such time for reasonable cause.
- (b) Any employee protected by this article, who does not have the right to file an appeal pursuant to article IV of the Related Special Acts, may file a written complaint within 60 days after the action prohibited by this article with the city's human resources director. The director shall refer the complaint to a hearing officer selected by the city attorney's office. The hearing officer may be paid a fee for his/her services, but shall not be deemed to be a city official or employee. The hearing officer shall conduct a hearing after notice to the complainant and the city department involved. The hearing shall be conducted in accordance with those procedures applicable to hearings held pursuant to section 62-64, except as may be provided herein. A subpoena may be issued by the hearing officer, at the

request of an interested party in order to procure the attendance of witnesses and the production of records at such hearing. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within 60 days of the human resources director's receipt of the complaint, except that the director shall have the authority to extend such time for reasonable cause.

- (c) (1) For those employees that the city manager has the authority under the Charter to appoint and remove the hearing officer shall transmit his/her findings of facts, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city manager or the city manager's designee for a final decision. The city manager or the city manager's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city manager or the city manager's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.
- (2) For those employees that the city attorney has the authority under the Charter to appoint and remove the hearing officer shall transmit his/her findings of fact, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city attorney or the city attorney's designee for a final decision. The city attorney or the city attorney's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city attorney or the city attorney's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.
- (3) For those employees that the city clerk has the authority under the Charter to appoint and remove, the hearing officer shall transmit his/her findings of fact, conclusions of law, and any recommendations, together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the city clerk or the city clerk's designee for a final decision. The city clerk or the city clerk's designee may sustain, reverse, or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee

filed a frivolous complaint in bad faith, the hearing examiner may recommend and the city clerk or the city clerk's designee may direct the employee to pay the costs of the hearing, including the city's attorney's fees.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-521. - Relief.

In any case brought under this article in which the city manager or city manager's designee finds that the employee has been discharged, disciplined, or subjected to other adverse personnel action in violation of this article, the city manager or city manager's designee may:

- (a) Reinstatement the employee to the same position held before the adverse action was commenced or to an equivalent position, or award reasonable front pay as alternative relief.
- (b) Reinstatement the employee's fringe benefits and seniority rights, as appropriate.
- (c) Compensate the employee, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.
- (d) Authorize the reimbursement of the employee's reasonable attorney's fees and costs after entry of a final decision by the city in favor of the employee, which is based upon clear and convincing evidence of adverse personnel action resulting from the disclosure of information set forth in this article, provided no civil action is subsequently filed by the employee under the Florida Whistle-blower Act regarding the claim brought under this article.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-522. - Existing rights.

This article shall not be construed to diminish the rights, privileges or remedies of any employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies provided by F.S. § 447.401, and as such section maybe amended from time to time, shall also apply to complaints under this article.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-523. - Retroactive application.

Notwithstanding the requirements of section 2-520, employees who have filed whistleblowing complaints in state or federal court as of the date this article is enacted shall have the right to file a complaint and receive a hearing in accordance with the terms of this article.

(Ord. No. 2018-4173, § 1, 2-14-18)

Sec. 2-524. - Confidentiality of information and individuals disclosing information.

The city intends for the protections of state law to be afforded to any individual who discloses information in compliance with this article to the local officials set forth in this article. The identity of such individuals, and certain information, shall be confidential and exempt from the provisions of the public records laws to the fullest extent permitted by, and in accordance with the law including, but not limited to, the confidentiality requirements and exemptions set forth in F.S. §§ 119.0713 and 112.3188, as such sections may be amended from time to time.

(Ord. No. 2018-4173, § 1, 2-14-18)