

WASHINGTON COUNTY POLICY

REPORTING OF IMPROPER GOVERNMENTAL CONDUCT

I. PURPOSE

It is the purpose of this policy to create an environment that provides the following:

- A. County employees are clearly informed of the opportunities to report concerns and/or complaints of improper governmental conduct;
- B. Reports of improper governmental conduct are fairly and timely investigated and appropriate action taken;
- C. Reporting employees and members of the public are free from retaliation; and
- D. Where appropriate, the reporting employee or members of the public are provided confidentiality.

Pursuant to ORS 659A.221(2), Washington County has authority to provide the below procedures and provisions outlined in this policy.

II. SCOPE

This policy applies to all regular, temporary, classified, unclassified and contract employees, applicants for employment, and specified volunteer positions.

III. POLICY STATEMENT

A guiding principle for Washington County is for all county employees to commit themselves to the highest standards of ethical conduct and to accept full accountability for their actions. In keeping with this guiding principle, Washington County encourages its employees and members of the public to report any known or suspected improper governmental conduct to a responsible County representative.

IV. DEFINITIONS

For the purpose of this policy and procedures the following definitions shall apply:

- A. "*Abuse of Authority*"¹ means to deliberately exceed or make improper use of delegated or inherent authority or to employ it in an illegal manner.
- B. "*Disciplinary action*"¹ means any adverse action, including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

- C. "*Gross waste of funds*"¹ means an expenditure that is significantly out of proportion to the benefit expected to accrue to the County and is more than a debatable expenditure.
- D. "*Improper governmental conduct*" includes conduct or actions of County employees, officials or agents that constitute violations of any federal or state law, rule, or regulation; or mismanagement, gross waste of funds, or abuse of authority or substantial and specific danger to public health and safety resulting from action of the County.
- E. "*Investigating employee or official*" means that employee or official who is in a position of authority, pursuant to this policy and procedure, to investigate a complaint or concern of alleged improper governmental conduct.
- F. "*Mismanagement*"¹ means serious County misconduct having the effect of actually or potentially undermining the County's ability to fulfill its public mission.
- G. "*Reasonably believes is evidence*" means, in addition to other circumstances bearing on the reasonableness of the belief, that the employee has personal knowledge of facts tending to establish the violation of law, rule or regulation, or the existence of mismanagement, abuse of authority, gross waste of funds, or substantial and specific danger to public health or safety.
- H. "*Receiving employee or official*" means, that employee or official who receives through the County's ethics hotline or by any other method, a report, complaint or concern of improper governmental conduct.
- I. "*Reckless disregard for its truth or falsity*" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.
- J. "*Reporting Employee*" means, an employee who reasonably believes they have evidence of improper governmental conduct.
- K. "*Substantial and specific danger*"¹ means a specified risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

V. GENERAL PROVISIONS

A. EMPLOYEE REPORTING PROCEDURES

1. Any County employee who discloses information that the employee reasonably believes is evidence of improper governmental conduct shall not be subjected to or threatened with disciplinary action for the disclosure.
2. In addition to or in lieu of the following reporting procedures, a reporting employee may disclose any allegation, concern, or complaint of improper governmental conduct to the County Auditor, in accordance with the Auditor's responsibilities set forth in the County Charter (Section 46); and/or a reporting employee may report an allegation, concern, or complaint of improper

governmental conduct that may also be a violation of the State Code of Ethics (ORS Chapter 244) to the Oregon Government Ethics Commission.

3. An employee who reasonably believes he or she has evidence of improper governmental conduct shall report it in the following manner:
 - a. First to the employee's supervisor. Where the reporting employee reasonably believes that the improper governmental conduct involves the supervisor or there may not be a fair and impartial investigation or there could be retaliation for reporting the reporting employee shall report the alleged improper governmental conduct directly to his or her department head; if the reporting employee reasonably believes the alleged improper governmental conduct should not be reported to his or her department head for any of the reasons set forth above, the reporting employee shall report the conduct to the County Administrator; and if the reporting employee reasonably believes the improper governmental conduct should not be reported to the County Administrator for any of the reasons set forth above, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners.
 - b. Where the reporting employee reasonably believes there is an imminent likelihood of substantial and specific danger if action is not taken immediately, the reporting employee may report the alleged improper governmental conduct directly to that County employee or official having authority over the matter and not personally involved in the alleged improper governmental conduct.
 - c. Where the alleged improper governmental conduct is believed to have been committed by a county official appointed by the Board of Commissioners, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners.
 - d. Where the alleged improper governmental conduct is believed to have been committed by an elected county official, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners or a non-culpable Board member.
 - e. Where the reporting employee reasonably believes the County Commission has culpability in the alleged improper governmental conduct, the reporting employee may report the conduct to the County Auditor for investigation.

B. INVESTIGATION PROCEDURES

1. The County employee or official receiving the report of improper governmental conduct shall be responsible for creating a log documenting the date, time, and subject matter of any report of improper conduct that is received. A copy of the log shall be provided to the Human Resources Division Manager within five (5) days of receipt of the report. The County employee or official receiving the report shall be responsible for determining,

pursuant to this policy and procedure, the manner in which the allegations of improper governmental conduct will be investigated. Except as otherwise required pursuant to sections V.B.1.b. and V.B.1.c., the investigation shall remain confidential until such time as the written report required under subsection 5.4 is completed.

- a. The receiving employee or official may elect to investigate the allegations by him or herself; assign the investigation to a subordinate employee or request that the investigation be conducted by the receiving employee's supervisor; request the investigation be conducted by another office, agency, or department in the County; or, as provided in section V.B.1.e., below, utilize the services of an outside agency. Where appropriate, the receiving employee or official may consult with his or her supervisor, the County Auditor, the Office of County Administrator, the Human Resources Division Manager, or the Office of County Counsel in electing how to proceed with an investigation.
 - b. When an investigating employee or official determines during an investigation that fraud or other criminal activity may be occurring or may have occurred, the investigating employee or official shall notify the appropriate law enforcement agency of the potential fraud or other criminal activity.
 - c. When an investigating employee or official determines during an investigation that a violation of any provision of ORS chapter 244 may be occurring or may have occurred, the investigating employee or official shall notify the Oregon Government Ethics Commission of the potential violation.
 - d. Upon providing notice pursuant to sections V.B.1.b. or V.B.1.c. herein, the investigating employee or official may elect to suspend the investigation, pending completion of the referral agency's review of the matter.
 - e. If the receiving employee or official reasonably believes that an investigation of a non-criminal matter cannot be conducted in an impartial, fair or complete manner by him/herself or any office, employee or official in the County, upon approval of the County Administrator, County Counsel or County Board Chairman, the matter may be referred to an outside public agency willing to accept responsibility for the investigation (such as another county's Administrative Office or Office of County Counsel).
 - f. If the County Auditor is the receiving official of a report of improper governmental conduct, the County Auditor may refer the matter to an outside public agency upon his or her own discretion and without prior approval of any County employee or official.
2. Any investigation conducted pursuant to this policy shall be done in a timely, impartial, and fair manner. An employee who is the subject of an investigation

of improper governmental conduct (and therefore may be subject to discipline) may have certain rights afforded pursuant to County Personnel Rules, a collective bargaining agreement and/or state or federal law. The investigating employee or official shall confer with the Office of County Counsel pertaining to such rights.

3. The investigation shall be done in a manner that will not result in any unreasonable embarrassment to the subject(s) of the investigation or any witnesses. All County employees and officials shall cooperate in any investigation performed pursuant to this policy and procedure.
4. The investigating employee or official, upon conclusion of the investigation, shall prepare a written report setting forth the allegations and findings. The investigating employee or official shall present his or her report to the Human Resources Division Manager and the non-culpable County department head having authority over the affairs being investigated; or, in the event the allegations involve a department head, the report shall be presented to the County Administrator; or, in the event the allegations involve the County Administrator, the report shall be presented to the Chairman of the County Board of County Commissioners.

C. RESPONSE TO FINDINGS OF IMPROPER GOVERNMENTAL CONDUCT

1. The non-culpable County authority receiving the investigation findings shall take necessary and appropriate action. Such action may include, but is not limited to, initiating the implementation of discipline, modifying department procedures, and/or presenting the report to the appropriate County employee or official.
2. Should an investigation find that improper governmental conduct has occurred, the reporting employee, upon request, shall be provided with a copy of the written report, except that any personnel action(s) taken as a result of the investigation may be kept confidential. Any information provided to the reporting employee, that may be considered confidential, shall not be publicly disclosed by the employee.
3. Upon completion of the investigation, the written report shall be subject to disclosure as a public record under ORS 192.410 to 192.505 unless an exemption from disclosure set forth in a provision state or federal law applies to the records, except that the identity of the reporting individual or employee shall remain confidential.

D. RESPONSIBILITY OF REPORTING EMPLOYEE / PROTECTION AGAINST RETALIATION / CONFIDENTIALITY

1. County officials and employees are prohibited from retaliating, including the imposition of disciplinary action, against a member of the public or any Washington County employee because he or she has, in good faith, reported improper governmental conduct in accordance with these policies and

procedures. However, reporting employees may be subjected to discipline if the information disclosed by the reporting employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.

2. An employee who believes he or she has been retaliated against for reporting improper governmental conduct should advise their supervisor, the Human Resources Manager or County Administrator. The County official receiving a report of retaliation shall take appropriate action to investigate and address complaints of retaliation. A County employee who has been found to have retaliated against an employee for reporting, in good faith, improper governmental conduct shall be subject to discipline.
3. Notwithstanding the above, any employee who believes he/she has been retaliated against for the reporting of improper government conduct may bring a civil action as provided by ORS 659A.215.
4. The names of employees or other individuals reporting allegations of improper governmental conduct shall be kept confidential unless waived by the subject employee or reporting individual. The County employee receiving the report shall take reasonable steps to maintain confidentiality of the reporting employee. Unless, otherwise required by law:
 - a. The identity of the reporting employee or other reporting individual described in this policy, shall not be disclosed, during the investigation, without the written consent of the reporting employee; and
 - b. No supervisory or management employee of the County shall reveal to an employee accused of improper governmental conduct the identity of the reporting employee or other reporting individual.

E. OTHER OPPORTUNITIES FOR REPORTING

The policy and procedures identified herein are for the purpose of reporting allegations of improper governmental conduct. These procedures are not intended to replace other opportunities for employees to bring complaints or grievances pertaining to their employment. Specifically, County employees maintain their rights pursuant to personnel rules (Article 5) and/or a collective bargaining agreement to appeal imposition of discipline; their right pursuant to personnel rules to appeal County policies or actions (Article 10); and any rights they/may have pursuant to federal and state law to present civil complaints.

¹ *These terms are defined as provided by OAR 839-010-0010. In the event the OAR definitions are changed or modified, the definitions herein shall be considered to likewise change to conform to the OAR unless expressly stated otherwise by the Board.*