

ORDINANCE 2023-07

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, BY CREATING NEW ARTICLES I, GENERAL PROVISIONS; AND II, WHISTLEBLOWER PROVISIONS, OF CHAPTER 50 (PERSONNEL) OF THE CODE OF ORDINANCES TO PROVIDE FOR GENERAL EMPLOYMENT MATTERS INCLUDING A PROCESS FOR INVESTIGATING EMPLOYEE COMPLAINTS AGAINST THE CITY MANAGER AND TO ESTABLISH AN ADMINISTRATIVE PROCEDURE FOR EMPLOYEES AND OTHER PERSONS TO REPORT INSTANCES OF ILLEGALITY, MISMANAGEMENT, MALFEASANCE, WASTE OR FRAUD ON THE PART OF CITY EMPLOYEES, AGENTS OR CONTRACTORS; PROVIDING A PROCEDURE FOR INVESTIGATING SUCH ALLEGATIONS; PROVIDING FOR NON-RETALIATION FOR PERSONS WHO REPORT SUCH INSTANCES; PROVIDING A MANNER FOR ALLEGING RETALIATION TO SEEK REDRESS; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the current City Code does not properly address situations wherein an employment-related complaint is brought against the City Manager other than the procedure for removing the city manager from office as provided in City Charter, Section 5.4, A.; and

WHEREAS, the current City Code does not provide for an avenue by which City employees or vendors may bring to the City's attention allegations of illegality, mismanagement, malfeasance, waste or fraud on the part of City employees or City vendors; and

WHEREAS, Florida Statute § 112.3187, entitled the "Whistle-blower's Act," provides certain protections to persons who disclose information regarding illegal or malfeasant conduct on the part of government employees, agents or contractors; and

WHEREAS, subsection (8)(b) of the Act provides for the establishment, by local ordinance, of an administrative procedure to permit disclosure and protect those persons making disclosure from retaliation; and

WHEREAS, the Act provides that where a local government adopts a local ordinance establishing such administrative procedures, that it will have an opportunity to address complaints locally rather than having a complainant proceed directly to court; and

WHEREAS, the Board of Commissioners finds that addressing these matters in the Code of Ordinances will help ensure that the City's employees will have sufficiently detailed methods

to raise such issues, and that standardized procedures are in place for the City to address any such issues; and

WHEREAS, the City Attorney has reviewed best practices and has recommended the provisions contained in this Ordinance to provide the policy specificity the Board of Commissioners desires; and

WHEREAS, the Board of Commissioners finds that it is in the best interests of the City to adopt the policy provisions set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of City of Madeira Beach, Florida, that:

SECTION 1. A new Article I of Chapter 50 (Personnel), entitled General Provisions, is hereby created as follows:

Article I – General Provisions

Sec. 50-1. – Policy and procedures.

The Board of Commissioners will adopt a personnel policy and procedures manual from time to time by ordinance, which shall be codified in the Code of Ordinances and kept on file in the city clerk's office.

Sec. 50-2. Complaints against the city manager.

- (a) Notwithstanding any personnel policy or code provision to the contrary, any employee of the city who desires to make a personnel-related complaint (other than a whistleblower complaint addressed in article II of this chapter) against the city manager shall communicate that complaint in writing directly to the city's mayor. In the event any such complaint is directed to the city manager, the city attorney, the city's human resources staff, or any other managerial official of the city, that official shall refrain from taking any action regarding the complaint but shall instead immediately convey the complaint to the mayor.
- (b) Upon receiving such complaint, the mayor will confer with the city attorney to obtain such counsel as the mayor deems necessary. The mayor shall then ensure that the complaint is investigated without the involvement in any way of the city manager, except that the city manager will be required to fully cooperate with any investigatory efforts made, including being interviewed regarding the complaint.
- (c) The mayor may either investigate the complaint him or herself or, if the nature of the complaint is factually complex or may involve the violation of state or federal employment laws, the mayor may assign the city attorney to perform the investigation or may use budgeted city funds to retain a qualified third party individual or firm to conduct the investigation.

- (d) Once the complaint has been investigated, a written report summarizing the complaint, the investigation's findings, and making any recommendations as to the resolution of the complaint shall be provided by the mayor to the city manager and the members of the board of commissioners. The board of commissioners shall have the ultimate authority as to what, if any actions shall be taken to address the complaint. At the meeting where the board of commissioners considers the investigatory report, the city manager shall be afforded the opportunity to address the commission, in person or in writing, providing any such additional information or argument as the city manager may desire to make.
- (e) Nothing herein shall be interpreted as prohibiting an employee from filing administrative charges with any state or federal agency with jurisdiction to receive the employee's complaint.
- (f) The term "personnel-related complaint" as used in this section shall mean any complaint alleging that the city manager him or herself has directly engaged in unlawful discrimination or unlawful retaliation towards the employee, or has directly violated the employee's constitutional rights. The city manager's mere review and upholding of a disciplinary decision shall not be the basis of a personnel-related complaint unless the complaining employee alleges that the city manager's decision to uphold the decision was an act of unlawful discrimination or unlawful retaliation against the employee, or a violation the employee's constitutional rights.

SECTION 2. A new Article II of Chapter 50 (Personnel) of the Madeira Beach City Code, entitled Whistle-blower Provisions, is hereby created as follows:

Article II – Whistleblower Provisions

Sec. 50-20. Procedure for disclosing certain information.

- (a) An employee, independent contractor working for the city, or employee of an independent contractor working for the city, who has information concerning the following categories is required to disclose that information to the city manager or, if the allegation is against the manager, then to the city attorney (both of whom are designated as the appropriate local officials for receiving whistleblower disclosures per Florida Statute § 112.3187(6)):
 - (1) Any violation or suspected violation of any federal, state, or local law, rule or regulation committed by an employee or agent 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.
 - (2) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of the city or independent contractor of the city.

- (b) Pursuant to Florida Statutes § 112.3187(7), to receive statutory whistleblower protection, the information must be disclosed on the employee's, contractor's or employee of a contractor's own initiative, be in writing, and be signed by the employee or person making the disclosure.

Sec. 50-21. Procedure for investigating disclosures.

- (a) Once a disclosure has been made, the city manager shall confer with the mayor to determine whether any investigation is warranted and, if so, an appropriate course of investigation of the disclosure, in light of the specifics of the disclosure, the laws and regulations which may apply, the complexity or sophistication of the matters involved in the disclosure, whether criminal violations may be present, and any other relevant factors. Should the city manager be the subject of a disclosure, then the city attorney shall confer with the mayor on a proper course of action.
- (b) The level of formality and documentation of any investigation of disclosures made may vary depending on the nature and severity of the disclosure. In any event, the members of the board of commissioners shall be kept updated as appropriate on the progress of any investigation to the extent allowed by applicable confidentiality laws and records exemptions.
- (c) Once a determination has been made with respect to how any investigation will proceed, such investigation will be conducted in an expeditious manner. The city manager or city attorney, as the case may be, shall make any criminal or regulatory referrals, recommend modified policies to the board of commissioners, or take any other actions which are deemed necessary as a result of the investigation. Criminal or regulatory referrals may be made even before the investigation is concluded if doing so will prevent or reduce a substantial and specific danger to the public's health, safety, or welfare, will avoid the expiration of any criminal statute of limitations, or where the severity of any criminal allegation is such that a law enforcement referral must promptly be made.
- (d) Notwithstanding any of the foregoing, while the city manager may determine that it is in the city's best interests to defer an internal investigation pending resolution of any external criminal or regulatory referral, the city reserves the right to make its own independent determination as to any whistleblower disclosure with respect to the application of the city's own contractual agreements, codes and policies.

Sec. 50-22. Retaliation prohibited.

Neither the city manager, nor an independent contractor of the city, nor any managerial personnel working under either, shall dismiss, discipline, or take any other adverse employment action against any of their respective employees because such employee(s) disclosed, in good faith, information categorized in § 50-20. Neither the city manager, nor any managerial personnel working under the city manager, shall take any adverse regulatory or contractual action that affects

the rights or interests of an independent contractor or employee of an independent contractor for having disclosed, in good faith, information categorized in § 50-20.

Sec. 5-23. Persons protected.

- (a) Pursuant to Florida Statutes § 112.3187(7), any employee, independent contractor working for the city, or employee of an independent contractor working for the city-who discloses information on his or her own initiative and in the manner prescribed in § 50-20(b), is protected from retaliation based on such disclosure.
- (b) Any employee, independent contractor working for the city, or employee of an independent contractor working for the city who is requested to participate in any investigation or hearing concerning a disclosure made pursuant to § 50-20 is also protected from retaliation based on such participation.
- (c) Any person who refuses to participate in any retaliatory actions prohibited by § 50-22 is protected from retaliation for such refusal.
- (d) No person is afforded the protections provided in this article where such person:
 - (1) Knowingly submits an untruthful claim or report;
 - (2) Commits or intentionally participates in committing the violation or suspected violation for which protection from retaliation is being sought;
 - (3) Violates any personnel rule or policy in connection with or related to the subject of the disclosure; or
 - (4) Violates any contractual or regulatory provision applicable to city contracts which are the subject of or related to the disclosure.
- (e) Nothing herein precludes city from taking any personnel, contractual, or other action against any employee, or other person which is predicated upon grounds other than, and would have been taken absent, the employee's or person's disclosure of information under § 50-20.
- (f) The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system, a county sheriff, or a municipal police department after release therefrom, with respect to circumstances that occurred during any period of incarceration.

Sec. 50-24. Procedure for reviewing complaint of retaliation.

- (a) Any complaint of retaliation prohibited under § 50-23 must be filed with human resources or the city manager within 60 days after the alleged retaliatory action. Such complaint

must be submitted in writing, setting forth the facts which constitute the alleged retaliation. Once a retaliation complaint has been received, the city manager shall transmit the complaint, along with all other documentation relevant to the complaint, to the city's civil service commission. Upon hearing the complaint, the civil service commission must make findings of fact and a conclusion as to whether prohibited retaliation has occurred. These findings and conclusions shall be reduced to writing and a copy shall be provided to the complaining party.

- (b) If it is determined that retaliation has occurred, the city manager shall take such actions as would remedy the effects thereof, including reinstatement of the city employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief; reinstatement of the employee's full fringe benefits and seniority rights, as appropriate; compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action. The city manager is authorized to promulgate any forms or procedures, not inconsistent with these provisions, to facilitate the complaint review process.
- (c) Notwithstanding the foregoing, any city employee who is a member of a collective bargaining agreement may elect to pursue any remedy available pursuant to such agreement, however, such employee may not pursue both remedies.

Sec. 50-25. Confidentiality of information.

- (a) Pursuant to Florida Statutes § 112.3188(1), the name or identity of any individual who makes a disclosure in good faith of the kind of information set forth in § 50-20, and in the manner set forth in § 50-21, may not be disclosed, without the written consent of the individual, to anyone other than the appropriate local officials designated in § 50-20(a) and such of their staff as are necessary to investigate the disclosure.
- (b) However, such disclosure is permitted if the designated appropriate local official determines that the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare, or to prevent the imminent commission of a crime, or where the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.
- (c) The foregoing confidentiality and record exemption is applicable so long as the investigation is active, as that term is defined in Florida Statutes § 112.3188(2)(c)(1).
- (d) Pursuant to Florida Statutes § 112.3188(2)(b)-(c), all information received pursuant to § 50-20 by the city's designated appropriate local officials, or information produced or derived from fact-finding or investigations conducted pursuant to § 50-21, is confidential and exempt from public records disclosure. However, such information may be disclosed by the designated appropriate local official if it is determined that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the

public's health, safety, or welfare or to prevent the imminent commission of a crime. Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare, or to prevent the imminent commission of a crime based on the disclosed information.

- (e) Pursuant to Florida Statutes § 112.3188(2)(c)(4), any person who willfully and knowingly discloses information or records made confidential under subsection (a) above commits a misdemeanor of the first degree.

SECTION 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 4. For purposes of codification of any existing section of the Madeira Beach City Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 5. The Codifier shall codify the substantive amendments to the Madeira Beach City Code contained in Sections 1 and 2 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS _____ day of _____, 2023.

John B. Hendricks, Mayor

ATTEST:

Clara VanBlargan, MMC, MSM, City Clerk

PASSED ON FIRST READING: _____

PUBLISHED: _____

PASSED ON SECOND READING: _____