

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AMENDING CHAPTER 50 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA CREATING ARTICLE III. *EMPLOYEE PROTECTION WHISTLEBLOWER ACT.*, SECS. 50-100 - 50-120 TO ESTABLISH AND CODIFY AN EMPLOYEE WHISTLEBLOWER PROTECTION ACT FOR THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in June 2024, after receiving numerous complaints and reports of alleged misconduct, the 2025 Spring Term Monroe County Grand Jury initiated an extensive investigation resulting in "*A total of seven (7) criminal indictments, charging thirteen (13) felony offenses, the majority related to/in connection with their public/official employment with the City of Key West.*"; and

WHEREAS, the Grand Jury issued its Final Report both documenting the findings of its investigations which led to the seven (7) criminal indictments and also recommending specific actions be taken by the City in an effort to deter this type of misconduct by City employees in the future as well as provide greater transparency for its employees and the citizens being served by the City; and

WHEREAS, one recommendation contained in the Final Report called for the City to establish a robust whistleblower protection policy and procedure to encourage City employees, residents and vendors to come forward without fear of losing their employment or face intimidation, threats or retaliation; and

WHEREAS, it is the desire of this Commission to establish an employee whistleblower protection program for the City of Key West, Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

SECTION 1: That Chapter 50. *Personnel Policy*, is hereby amended to create Article III. *Employee Protection Whistleblower Act.*, Secs. 50-100 through 50-120 in its entirety as follows**:

"CHAPTER 50. PERSONNEL POLICY

ARTICLE III. EMPLOYEE PROTECTION WHISTLEBLOWER ACT

Sec. 50-100. Legislative findings and purpose.

The city commission finds that it is in the best interests of the city to ensure that employees who have knowledge of unlawful activity, misfeasance or malfeasance by the city or independent contractors report such knowledge 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 or agency and to award such employees when the information they disclose leads to the city's recovery of public funds.

Recognizing that the state has adopted its own Whistleblower Act, F.S. § 112.3187 et seq. and that the state act provides for the adoption of local procedures for administrative enforcement, the commission intends that this chapter be interpreted consistently with the state act, as it may from time to time be amended.

Sec. 50-101. Definitions.

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

Adverse personnel action means the discharge, suspension, transfer or demotion of any employee or the withholding of bonuses, 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.

City means and includes all City of Key West, Florida, departments under the city commission's legislative authority.

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

Independent contractor means a person, other than a federal, state or local government entity, engaged in any business and who enters into a contract with the city.

Manager means the city manager.

All other words or terms used in this chapter shall have the same meaning as such words and terms have under the state Whistleblower Act (F.S. § 112.3187 et seq.).

Sec. 50-102. 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 chapter.
- (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 chapter.
- (c) The provisions of this chapter shall not be applicable when an employee discloses information known by the employee to be false.

Sec. 50-103. Nature of information disclosed.

The information disclosed under this chapter must include:

- (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 which creates and presents a substantial and specific danger to the public's health, safety or welfare; or
- (2) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee or agent of the city or an independent contractor.

Sec. 50-104. To whom the information must be disclosed.

- (a) As a part of the city's administrative process, the information disclosed under this chapter must be disclosed to the city manager,

or in the case where the city manager is the person being complained of, to the city's inspector general.

- (b) Within a reasonable time after receiving a complaint, not to exceed thirty (30) days, the city manager or the city's inspector general, in the case where the city manager is the subject of the complaint, shall acknowledge receipt of the complaint and thereafter, the city attorney may conduct an informal fact finding regarding any allegations under this section, only to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under F.S. § 112.3187, has occurred, is occurring, or is to be taken. No finding by the city attorney shall be binding on the city manager or a subsequent impartial review board. The city attorney shall have the discretion to the release any informal findings.
- (c) Within forty-five days (45) days, unless extended by the city manager or the city's inspector general (where the city manager is the subject of the complaint), for good cause, a three (3) person impartial committee shall be assembled by the city manager or the city's inspector general (when the city manager is the subject of the complaint) consisting of:

 - i) A resident of the city;
 - ii) A city department head that is not a part of the department that is the subject of the complaint; and
 - iii) A city employee that is not a part of the department that is the subject of the complaint.

Neither the city manager, city attorney or city clerk may serve on the impartial panel that is authorized to handle whistleblower complaints only. The three (3) person impartial personnel panel shall be authorized to investigate allegations, to determine that an investigation is not necessary and/or to make a final determination regarding whether any violation has occurred. The impartial panel may also review rendered actions of management. The impartial panel shall advise the city manager of all necessary resources, including professional expertise, necessary to perform its work.

- (d) The city will consider the administrative process that is set forth herein to be exhausted at such time that the recommendations of the impartial panel are reported to the city manager. However, nothing herein shall prevent matters from being reported to any other authorized agency when otherwise required by law.
- (e) To facilitate the disclosure of information, the city shall establish a whistleblower process, including a form, for receiving confidential whistleblower complaints.

Sec. 50-105. Employees and persons protected.

- (a) This chapter 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 chapter; who disclose information to the city; or who are otherwise protected by the state Whistleblower's Act (F.S. § 112.3187 et seq.). The provisions of this chapter 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 chapter applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this chapter is being sought.
- (c) An employee who provides false information pursuant to this section may be investigated and prosecuted pursuant to state statutes, including, but not limited to, F.S. §§ 837.06, false official statements; F.S. § 838.022, official misconduct; and F.S. § 837.05, false reports.
- (d) It shall be an affirmative defense to any complaint brought pursuant to this chapter 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 chapter.
- (e) The impartial panel set forth in section 50-103 may consider any pattern of conduct by persons making the whistleblower complaint.
- (f) The impartial panel shall conduct a hearing only after notice to the complainant.
- (g) The three (3) person panel may call witnesses, produce records, make findings of fact and conclusions of law and make recommendations for a final decision by the city manager or the city inspector general, in such case where the city manager is the subject of the complaint.

Sec. 50-106. Remedies.

If a complaint is made within sixty (60) days after an alleged prohibited action pursuant to F.S. § 112.3187, a complainant shall have not more than sixty (60) days after receipt of a notice of termination of the investigation by the three (3) person impartial personnel panel

set forth in section 50-103, to file a complaint in an appropriate court with jurisdiction over the matter.

Sec. 50-107. Relief.

In any case brought under this chapter in which the three (3) person impartial panel set forth in section 50-103 finds that the employee has been discharged, disciplined, or subjected to other adverse personnel action in violation of this chapter, the city manager or city manager's designee may:

- (1) Reinstate 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.
- (2) Reinstate the employee's fringe benefits and seniority rights, as appropriate.
- (3) Compensate the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse action.

Sec. 50-108. Existing rights.

This chapter 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 that may exist.

Sec. 50-109. Retroactive application.

Any complaints pending with the city at the time of enactment of this legislation shall have retroactive application as to the process to be followed herein.

Sec. 50-110. Confidentiality of individuals disclosing information.

The city commission intends for the protections of state law to be afforded to any individual who discloses information in compliance with this chapter to the local officials set forth in this chapter. The identity of such individuals 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.

Sec. 50-111. Outreach to employees and mandatory training.

The manager or designee shall provide training regarding this chapter to all new city employees hired after the effective date of the ordinance from which this article is derived as part of the initial city orientation. The city manager or designee shall also provide training regarding this article to all city employees from time to time.

Secs. 50-112 - 50-120 Reserved."

*** At first reading, added language is underlined; deleted language is ~~struck through~~. At second reading, added language is double-underlined and deleted language is ~~double struck through~~.*

Section 4: That all Ordinances or parts of Ordinance of the City of Key West, Florida in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5. That this Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

*** REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK ***

Read and passed on first reading by the City Commission at a meeting held this _____ day of _____, 2025.

Read and passed on final reading by the City Commission at a meeting held this _____ day of _____, 2025.

Authenticated by the Presiding Officer and Clerk of the Commission on the _____ day of _____, 2025.

Filed with the Clerk on _____, 2025.

Mayor Danise Henriquez	_____
Vice Mayor Donald "Donie" Lee	_____
Commissioner Lissette Carey	_____
Commissioner Aaron Castillo	_____
Commissioner Monica Haskell	_____
Commissioner District V	_____
Commissioner Sam Kaufman	_____

DANISE HENRIQUEZ, MAYOR

ATTEST:

KERI O'BRIEN