



**TOWN OF DEWEY  
BEACH**

[www.townofdeweybeach.com](http://www.townofdeweybeach.com)

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To: All Town Commissioners

From: Mr. Scott Koenig, P.E.  
Town Manager

Date: August 31, 2018

Attached is a draft Whistleblower Protection Policy that I have created using various source documents (see attachments #1 - #5). The draft policy was sent to our Auditor and Town Solicitor for comment. I have spoken with both and tried to incorporate their verbal comments into the draft where I felt appropriate. I am seeking approval of this policy at the September 14, 2018 Commissioner's meeting.

sdk/SDK

## **DRAFT Whistleblower Protection Policy**

The Town of Dewey Beach requires commissioners, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the Town of Dewey Beach, we must practice honesty and integrity in fulfilling our responsibilities and comply with applicable laws and regulations.

### **Reporting Responsibility**

This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns internally, in a timely manner, so that the Town of Dewey Beach can address and correct inappropriate conduct and actions. It is the responsibility of all commissioners, officers, employees and volunteers to report concerns about violations of the Town of Dewey Beach's Code of Conduct or suspected violations of law or regulations that govern the Town of Dewey Beach's operations.

### **No Retaliation**

It is contrary to the values of the Town of Dewey Beach for anyone to retaliate against any commissioner, officer, employee or volunteer who in good faith reports an ethics violation, or a suspected violation of law, such as a complaint of discrimination, or suspected fraud, or suspected violation any regulation governing the operations of the Town of Dewey Beach. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment.

### **Reporting Procedure**

The Town of Dewey Beach has an open-door policy and suggests that employees share their questions, concerns, suggestions or complaints with their 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 Town Manager directly. Supervisors and managers are required to report complaints or concerns in a timely manner about suspected ethical and legal violations in writing to the Town of Dewey Beach's Town Manager, who has the responsibility to investigate all reported complaints. Employees with concerns or complaints may also submit their concerns in writing directly to their supervisor or the Town Manager. If a concern or a complaint involves the Town Manager, the concern or complaint can be referred directly to the Mayor and/or the Town Commissioners. The town also has Human Resources Consultant on retainer to assist with inquiries, if necessary.

*stronger language*

## **Compliance Officer**

*Town manager is the compliance officer*

The Town of Dewey Beach's Town Manager is responsible for ensuring that all complaints about unethical or illegal conduct are investigated and resolved. The Compliance Officer will advise the Town Commissioners of all complaints and their resolution and will report at least annually to the Audit Committee on compliance activity relating to accounting or alleged financial improprieties.

## **Accounting and Auditing Matters**

The Town of Dewey Beach's Town Manager shall immediately notify the Audit Committee of any concerns or complaint regarding corporate accounting practices, internal controls or auditing and work with the committee until the matter is resolved.

## **Acting in Good Faith**

Anyone filing a written complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense and may result in discipline up to and including dismissal from the volunteer position or termination of employment. Such conduct may also give rise to other actions including civil lawsuits.

## **Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Disclosure of violations or suspected violations to individuals not involved in the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including termination of employment. Such conduct may also give rise to other actions, including civil lawsuits.

## **Handling of Reported Violations**

The Town of Dewey Beach's Town Manager will notify the person who submitted a complaint and acknowledge receipt of the reported violation or suspected violation. All reports will be promptly investigated, and appropriate corrective action will be taken if warranted by the investigation.

Town of Dewey Beach  
105 Rodney Avenue  
Dewey Beach, DE 19971

Policy Approved by the Town Commissions on

\_\_\_\_\_  
Town Manager

\_\_\_\_\_  
Mayor



**NATIONAL COUNCIL OF  
NONPROFITS**

National voice. State focus. Local impact.

## **Sample Whistleblower Protection Policy**

{Organization's name} requires directors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the {Organization's name}, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.

### **Reporting Responsibility**

This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns internally so that {Organization's name} can address and correct inappropriate conduct and actions. It is the responsibility of all board members, officers, employees and volunteers to report concerns about violations of {Organization's name}'s code of ethics or suspected violations of law or regulations that govern {Organization's name}'s operations.

### **No Retaliation**

It is contrary to the values of {Organization's name} for anyone to retaliate against any board member, officer, employee or volunteer who in good faith reports an ethics violation, or a suspected violation of law, such as a complaint of discrimination, or suspected fraud, or suspected violation of any regulation governing the operations of {Organization's name}. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment.

### **Reporting Procedure**

{Organization's name} has an open door policy and suggests that employees share their questions, concerns, suggestions or complaints with their 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 [insert here another title, such as Executive Director, or a board member, if the organization is very small and involving the board would be appropriate]. Supervisors and managers are required to report complaints or concerns about suspected ethical and legal violations in writing to the {Organization's name}'s [Compliance Officer] [or designated employee or board member], who has the responsibility to investigate all reported complaints. Employees with concerns or complaints may also submit their concerns in writing directly to their supervisor or the Executive Director or the organization's Compliance Officer [or other designated person].

### **Compliance Officer [or other title that is appropriate for your organization]**

The {Organization's name}'s [Compliance Officer] is responsible for ensuring that all complaints about unethical or illegal conduct are investigated and resolved. The Compliance Officer will advise the [Executive Director and/or the Board of Directors] of all complaints and their resolution and will report at least annually to the [Treasurer/Chair of the Finance Committee/Audit Committee] on compliance activity relating to accounting or alleged financial improprieties.

### **Accounting and Auditing Matters**

The {Organization's name}'s [Compliance Officer] shall immediately notify the Audit Committee/Finance Committee of any concerns or complaint regarding corporate accounting practices, internal controls or auditing and work with the committee until the matter is resolved.

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This information is for educational and informational purposes only and should not be considered legal or other professional advice for specific matters. Prior to adopting this sample document for their own use, nonprofits should seek the advice of their own professional advisors.

### **Acting in Good Faith**

Anyone filing a written complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

### **Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

### **Handling of Reported Violations**

The {Organization's name}'s [Compliance Officer] will notify the person who submitted a complaint and acknowledge receipt of the reported violation or suspected violation. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

**Compliance Officer:** \* {Note: The Compliance Officer may be a board member, the Executive Director, or a third party designated by the organization to receive, investigate and respond to complaints.}

{Name}

{Title/Organization}

{Contact information}

Policy approved by the Board of Directors on {Date}.

## Sample Whistleblower Policy

State regulatory requirements for establishing whistleblower reporting programs and for the protection of employees from retaliatory actions should be considered in developing and implementing whistleblower policies such as the example that follows.

### ABC Organization Whistleblower Policy

#### General

The ABC Organization Code of Conduct (hereinafter referred to as the Code) requires directors, other volunteers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the organization must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

The objectives of the ABC Organization Whistleblower Policy are to establish policies and procedures for:

- The submission of concerns regarding questionable accounting or auditing matters by employees, directors, officers and other stakeholders of the organization, on a confidential and anonymous basis.
- The receipt, retention, and treatment of complaints received by the organization regarding accounting, internal controls or auditing matters.
- The protection of directors, volunteers and employees reporting concerns from retaliatory actions.

#### Reporting Responsibility

Each director, volunteer, and employee of ABC Organization has an obligation to report in accordance with this Whistleblower Policy (a) questionable or improper accounting or auditing matters, and (b) violations and suspected violations of ABC Organization's Code (hereinafter collectively referred to as Concerns).

#### Authority of Audit Committee

All reported Concerns will be forwarded to the Audit Committee in accordance with the procedures set forth herein. The Audit Committee shall be responsible for investigating, and making appropriate recommendations to the Board of Directors, with respect to all reported Concerns.

### **No Retaliation**

This Whistleblower Policy is intended to encourage and enable directors, volunteers, and employees to raise Concerns with the Organization for investigation and appropriate action. With this goal in mind, no director, volunteer, or employee who, in good faith, reports a Concern shall be subject to retaliation or, in the case of an employee, adverse employment consequences. Moreover, a volunteer or employee who retaliates against someone who has reported a Concern in good faith is subject to discipline up to and including dismissal from volunteer position or termination of employment.

### **Reporting Concerns**

#### **Employees**

Employees should first discuss their Concern with their immediate supervisor. If, after speaking with his or her supervisor, the individual continues to have reasonable grounds to believe the Concern is valid, the individual should report the Concern to the Director of Human Resources. In addition, if the individual is uncomfortable speaking with his or her supervisor, or the supervisor is a subject of the Concern, the individual should report his or her Concern directly to the Director of Human Resources.

If the Concern was reported verbally to the Director of Human Resources, the reporting individual, with assistance from the Director of Human Resources, shall reduce the Concern to writing. The Director of Human Resources is required to promptly report the Concern to the Chair of the Audit Committee, who has specific and exclusive responsibility to investigate all Concerns. If the Director of Human Resources, for any reason, does not promptly forward the Concern to the Audit Committee, the reporting individual should directly report the Concern to the Chair of the Audit Committee. Contact information for the Chair of the Audit Committee may be obtained through the Human Resources Department. Concerns may also be submitted anonymously. Such anonymous Concerns should be in writing and sent directly to the Chair of the Audit Committee.

#### **Directors and Other Volunteers**

Directors and other volunteers should submit Concerns in writing directly to the Chair of the Audit Committee. Contact information for the Chair of the Audit Committee may be obtained from the Chief Financial Officer.

#### **Handling Reported Violations**

The Audit Committee shall address all reported Concerns. The Chair of the Audit Committee shall immediately notify the Audit Committee, the President, the Executive Director and Chief Operating Officer of any such report. The Chair of the Audit Committee will notify the sender and acknowledge receipt of the Concern within five business days, if possible. It will not be possible to acknowledge receipt of anonymously submitted Concerns.

All reports will be promptly investigated by the Audit Committee, and appropriate corrective action will be recommended to the Board of Directors, if warranted by the investigation. In addition, action taken must include a conclusion and/or follow-up with the complainant for complete closure of the Concern.

The Audit Committee has the authority to retain outside legal counsel, accountants, private investigators, or any other resource deemed necessary to conduct a full and complete investigation of the allegations.

### **Acting in Good Faith**

Anyone reporting a Concern must act in good faith and have reasonable grounds for believing the information disclosed indicates improper accounting or auditing practice, or a violation of the Codes. The act of making allegations that prove to be unsubstantiated, and that prove to have been made maliciously, recklessly, or with the foreknowledge that the allegations are false, will be viewed as a serious disciplinary offense and may result in discipline up to and including dismissal from the volunteer position or termination of employment. Such conduct may also give rise to other actions including civil lawsuits.

### **Confidentiality**

Reports of Concerns, and investigations pertaining thereto, shall be kept confidential to the extent possible, consistent with the need to conduct adequate investigation.

Disclosure of reports of Concerns to individuals not involved in the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including termination of employment. Such conduct may also give rise to other actions, including civil lawsuits.



## BEST PRACTICE

# Whistleblowing

### BACKGROUND:

Statement on Auditing Standards (SAS) No. 112, *Communicating Internal Control Related Matters Identified in an Audit*, emphasizes the need for governments to have a financial reporting system in place that is sufficient to provide reasonable assurance that management can prepare financial statements in conformity with generally accepted accounting principles (GAAP). To meet that objective, a financial reporting system must be designed to detect not only material fraud or abuse, but also any questionable accounting or auditing practices that could jeopardize the integrity of financial reporting. SAS No. 112 instructs independent auditors that inadequate "anti-fraud programs and controls" constitute, at a minimum, a *significant deficiency* that would need to be reported.

In most cases, potential instances of fraud or abuse and questionable accounting or auditing practices come to the attention of responsible parties thanks to employees or citizens who become aware of such practices. Governments can and should take practical steps to encourage and facilitate such reporting.

### RECOMMENDATION:

GFOA recommends that every government establish policies and procedures to encourage and facilitate the reporting of fraud or abuse and questionable accounting or auditing practices. At a minimum, a government should do all of the following:

- Formally approve, and widely distribute and publicize an ethics policy that can serve as a practical basis for identifying potential instances of fraud or abuse and questionable accounting or auditing practices.
- Establish practical mechanisms (e.g., hot line) to permit the *confidential, anonymous reporting* of concerns about fraud or abuse and questionable accounting or auditing practices to the appropriate responsible parties.<sup>1</sup>
- A government should regularly publicize the availability of these mechanisms and encourage individuals who may have relevant information to provide it to the government.
- Since ensuring or enhancing confidentiality can significantly increase costs, consider minimizing those costs by providing a separate reporting mechanism for employees, who typically desire greater assurance of confidentiality than do outside parties. In this regard, a government may wish to explore the possibility of engaging the services of an outside vendor to receive complaints from employees. The use of an outside vendor offers a number of potential advantages, including the following:
  - Employees may be more readily persuaded of the confidentiality of their calls if they are made directly to a party outside the government.
  - Vendors may be able to provide extended hours of service, thus avoiding the need to place a call during regular working hours (i.e., while the employee is still at work).

- Train those answering calls from the general public to recognize calls that are reporting fraud or abuse and direct them appropriately to ensure that reports of instances of fraud or abuse by outside parties receive the appropriate disposition even when they are not made through the mechanism established for that purpose.
- Make internal auditors (or their equivalent) responsible for the mechanisms used to report instances of potential fraud or abuse and questionable accounting or auditing practices. Emphasize that they should take whatever steps are necessary to satisfy themselves that a given complaint is without merit before disposing of it. Further, they also should document the disposition of each complaint received so it can be reviewed by the audit committee.
- Have the audit committee, as part of its evaluation of the government's internal control framework, examine the documentation of how complaints were handled to satisfy itself that the mechanisms for reporting instances of potential fraud or abuse, and questionable accounting or auditing practices are in place and working satisfactorily.

**Notes:**

<sup>1</sup>While providing mechanisms to promote the reporting of fraud is an important element of an overall fraud prevention program there are other elements necessary for a complete program that are outside the scope of this recommended practice.

*This best practice was previously titled Encouraging and Facilitating the Reporting of Fraud and Questionable Accounting and Auditing Practices.*

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Town of Dewey Beach, DE  
Wednesday, August 22, 2018

## Chapter 10. Conduct, Code of

### § 10-3. Standards of conduct for officials and employees.

The following standards of conduct shall be applicable to all officials, whether elected or appointed, and all employees of the Town:

- A. No official or employee shall participate on behalf of the Town in the review or disposition of any matter pending before the Town or before a committee or commission thereof in which the official or employee has a personal or private interest; provided, however, that the prohibition set forth herein shall not apply if the person who has official responsibility with respect to the matter requests any person who has a personal or private interest to respond to questions concerning any such matter.
- B. No official or employee shall use his position to secure special privileges or exemptions for himself or herself or others whether for compensation or gratuity.
- C. No official or employee shall solicit, demand, accept or agree to accept from another person anything of a pecuniary value for or because of any official action taken or to be taken or which could be taken or any legal duty to be performed or which could be performed by such official or employee.
- D. No officer or employee, in the course of his/her public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for any individual's favorable treatment by the Town.
- E. In any matter in which an official or employee has a personal or private interest as defined in this § 10-2 of this chapter and there is opportunity for the official or employee to delegate responsibility in the matter to another person and/or abstain from acting, the official or employee shall announce the issue to the Town Manager, or in the case of the Town Manager, Town Commissioner or appointed official, the official shall announce the issue to the Town Commissioners or the commission or board upon which the official serves, and thereafter delegate responsibility in the matter to another person and/or abstain from acting in the matter.
- F. In any matter in which an official or employee has a personal or private interest as defined in this chapter and there is no opportunity or provision for the official or employee to delegate responsibility in the matter to another person and/or abstain from acting, the official or employee shall announce the issue to Town Manager or, in the case of the Town Manager, Town Commissioner or appointed official, the official shall announce the issue to the Town Commissioners or the commission or board upon which the official serves, fully disclose the personal or private interest and explain why it is not possible to delegate responsibility for the matter to another person or to abstain from acting in the matter.
- G. No official or employee shall acquire a financial interest in any private enterprise which such official or employee has reason to believe may be directly involved in decisions to be made by such official or employee in an official capacity on behalf of the Town.
- H. No official or employee shall use such employment or public office to secure special privileges, private advancement or gain for himself or herself or for related persons.
- I. No official or employee shall, beyond the scope of such public office or employment, disclose confidential information gained by reason of such public office or employment nor shall such official or employee use such information for personal gain or benefit, unless such information is requested to be disclosed in

accordance with and is properly discoverable pursuant to the Delaware Freedom of Information Act, 29 Delaware Code, Section 10001 et seq.

- J. No official or employee shall create or cause unwarranted interference with police officials or with civil regulatory investigations or criminal investigations.
- K. All elected officials, candidates for elected office, and appointed officials shall submit to the Town Manager, subject to Freedom of Information Act disclosure, the completed Financial Disclosure Report.<sup>[1]</sup>

[1] *Editor's Note: The Financial Disclosure Report is on file in the Town offices.*

# Financial Disclosure Statement

This Financial Disclosure Statement is required by every official and employee  
(Please Type or Print with Blue Pen)

## Section I. Personal Information

First Name: \_\_\_\_\_ Middle: \_\_\_\_\_ Last: \_\_\_\_\_  
Spouses: \_\_\_\_\_

First Name: \_\_\_\_\_ Middle: \_\_\_\_\_ Last: \_\_\_\_\_

Home Address: \_\_\_\_\_ Telephone Numbers (Optional)  
Home: \_\_\_\_\_  
Business: \_\_\_\_\_

**Provide the following information for yourself, spouse, parents, children and siblings. If none, please indicate NONE in the space provided. If additional space is needed, please use additional forms.**

- A. List the address of any property located within the town of Dewey Beach in which you or a relative have a financial interest (whether held in your name or that of a 3<sup>rd</sup> party, LLC, etc)
- | Address  | Self? | Name of relative holding interest |
|----------|-------|-----------------------------------|
| 1. _____ |       |                                   |
| 2. _____ |       |                                   |
| 3. _____ |       |                                   |
| 4. _____ |       |                                   |
| 5. _____ |       |                                   |

- B. List the name of any business that operates (even partially) in the town of Dewey Beach in which you have a financial interest (including partial). Please include this information for yourself, spouse, parents, children and siblings.

Address	Self?	Name of relative holding interest
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		

## Certification

I hereby certify that this Financial Disclosure Statement contains no willful misstatement of fact or omission of material fact and, together with any and all statements previously submitted in writing, constitutes a full disclosure with respect to all matters required by section 10-4 of the Dewey Beach code to the best of my knowledge

\_\_\_\_\_ Date

\_\_\_\_\_ Signature