



# TOWN OF ERVING

12 Main Street  
Erving, Massachusetts 01344  
Telephone: (413) 422-2800  
Facsimile: (413) 422-2808  
Email: administrator@erving-ma.gov

ADM-130

## Policy

### Whistleblower Protection Policy

Approved: \_\_\_\_\_

*Select Board Chair, Jacob A. Smith*

Date: November 28, 2022

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#### **.01 Issue Date / Effective Date**

This policy is issued and effective on November 28, 2022.

#### **.02 Purpose**

This policy is adopted pursuant to and in accordance with the Massachusetts Whistleblower Protection Act, 1992, Massachusetts General Laws, Chapter 149, Section 185 (the “Act”) and is designed specifically to protect such conduct and provide such remedies as are set forth in the Act. It is the policy of the Town:

- A. To encourage the reporting by its employees of improper governmental action taken by Erving officials or employees; and
- B. To protect Town employees who have reported improper government actions in accordance with this policy.

#### **.03 Reporting Procedure**

The Town encourages the reporting of allegations of improper governmental action taken by any Town officials or employees and the reporting of any alleged retaliatory actions for such reporting. The Town encourages initial reporting to the Town to allow for expeditious resolution of all such matters and to minimize any adverse impacts of improper action. This policy sets forth Erving’s procedures for reporting alleged improper governmental action and for protecting employees against retaliatory actions.

Erving employees who obtain knowledge of facts demonstrating improper governmental actions should raise the issue first with their Department Head, the Town Administrator, or the appropriate governmental agency responsible for investigating such improper action. If requested by the Department Head or the Town Administrator, the employee shall submit a written report to the Town stating in detail the basis for the employee’s belief that improper governmental action has occurred.

In the case of an emergency, the employee may report the improper governmental action directly to a person or entity that is not the person's Department Head, the Town Administrator or other governmental agency. In all other cases, the employee must first follow the reporting procedure outlined above.

- A. An employee is not required to comply with the above procedure if they:
  - a. Are reasonably certain that the activity, policy, or practice is known to one or more supervisors of the Town and the situation is emergency in nature;
  - b. Reasonably fear physical harm as a result of the disclosure provided; or
  - c. Make the disclosure to a public body for the purpose of providing evidence of what the employee reasonably believes to be a crime.

Erving employees who fail to make a good faith attempt to follow this policy in reporting improper governmental action shall not receive the protections provided under this policy or the Act.

Employees who knowingly make false reports may be subject to disciplinary action, up to and including termination.

#### **.04 Investigation**

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The Department Head or the Town Administrator shall take prompt action to assist the Town in properly investigating the report of improper governmental action. Town officials, Coordinators, Department Heads and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under the law, unless the employee authorizes the disclosure of their identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of the summary of the results of the investigation. Personnel actions taken as a result of the investigation may be kept confidential.

#### **.05 Retaliation**

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Town officials, Department Heads and Town employees are expressly prohibited from taking any retaliatory action against an employee for making a good faith report of an alleged improper governmental action in accordance with this policy or for participating in the Town's investigation into such claim.

Employees who believe that they have been retaliated against for reporting an improper governmental action should immediately advise their Department Head or the Town Administrator. Town officials, and Department Heads, as may be applicable, shall take appropriate action to investigate and address complaints of retaliation.

If the Department Head or the Town Administrator does not satisfactorily resolve an employee's complaint alleging that he or she has been retaliated against in violation of this policy, the employee, in accordance with the Act, may, within two years, institute a civil action in the superior court.

Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be made available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein.

#### **.05 Enforcement**

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The Town Administrator is responsible for implementing Erving's policies and procedures:

- A. for reporting improper governmental actions, and
- B. for protecting employees against retaliatory actions.

Town officials and Department Heads are responsible for ensuring that this policy is fully implemented within their respective areas of responsibility.

Violations of this policy may result in appropriate disciplinary action, up to and including termination.