

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 89-22

AN ORDINANCE OF THE CITY OF HOMER CREATING CHAPTER 1.14 OF THE HOMER MUNICIPAL CODE AND PROVIDING PROTECTION FOR PUBLIC EMPLOYEES AND CERTAIN OTHER PERSONS WHO REPORT OR PARTICIPATE IN A PROCEEDING CONNECTED WITH A MATTER OF PUBLIC CONCERN (MUNICIPAL CONTRACTORS AND EMPLOYEES).

THE CITY OF HOMER ORDAINS:

Section 1. That Homer Municipal Code Chapter 1.14 is enacted to read as follows:

CHAPTER 1.14

PROTECTION FOR WHISTLEBLOWERS

Sections:

- 1.14.010 Purpose
- 1.14.020 Definitions.
- 1.14.030 Persons Protected.
- 1.14.040 Limitations to Protections.
- 1.14.050 Relief and Penalties.
- 1.14.060 Relationship to Other Laws.
- 1.14.070 Short Title.

1.14.010 Purpose. The purpose of this act is to encourage reporting of matters of public concern by providing protection for public employees and certain other persons who report or participate in a proceeding connected with a matter of public concern.

1.14.020 Definitions. The following words and phrases, whenever used in this chapter shall be construed as defined in this section unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- a. "Employee" means an incumbent of a position, including an incumbent on leave without pay status (Homer Personnel Regulations 1.8.13) and, for the purposes of this chapter only, also includes a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for the City. Such term in this chapter includes public officials of the City.

b. "Matter of public concern" means:

1. a violation of federal, state or municipal law, regulations or ordinances;
2. a danger to public health or safety;
3. gross mismanagement, a substantial waste of funds, or a clear abuse of authority; or
4. a matter accepted for investigation by the office of the ombudsman under AS 24.55.100 or 24.55.320.

c. "Public body" includes an officer or agency of:

1. the federal government
2. the state;
3. a political subdivision of the state including
 - (i) a municipality;
 - (ii) a school district; and
 - (iii) a rural educational attendance area;
4. a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation; and
5. the University of Alaska.

1.14.030 Persons Protected.

a. The City may not discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

1. the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; or
2. the employee participates in a court action, an investigation, a hearing or an inquiry held by a public body on a matter of public concern.

b. The City may not disqualify an employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to:

1. bid on contracts with the City;
2. receive property under a law of the state or ordinance of the City; or
3. receive any other right, privilege or benefit.

c. The provisions of this chapter do not:

1. require the City to compensate an employee for participation in a court action or in an investigation, hearing or inquiry by a public body;
2. prohibit the City from compensating an employee for participating in a court action or in an investigation, hearing or inquiry by a public body; or
3. authorize the disclosure of information that is legally required to be kept confidential.

d. The City shall post notices and use other appropriate means to inform employees of their protections and obligations under HMC 1.14.010 - 1.14.070.

1.14.040 Limitations to Protections.

a. A person is not entitled to the protections under this chapter unless the person:

1. reasonably believes that the information reported is or is about to become a matter of public concern; and
2. reports the information in good faith.

b. A person is entitled to the protections under this chapter if the matter of public concern:

1. is not the result of conduct by the person seeking protection; or
2. is the result of conduct by the person that was required by the City.

c. An employee initiating a report on a matter of public concern under this chapter shall first submit a written report concerning the matter to the employee's immediate supervisor. However, the employee is not required to submit a report if the employee:

1. reasonably believes that reports to the immediate supervisor will not result in prompt action to remedy the matter of public concern;
2. believes with reasonable certainty that the activity, policy or practice is already known to one or more supervisors;
3. reasonably believes that an emergency is involved; or
4. reasonably fears reprisal or discrimination as a result of disclosure.

1.14.050 Relief and Penalties.

a. A person who alleges a violation of HMC 1.14.030 may bring a civil action and the court may grant appropriate relief. The court may not award punitive damages.

b. A person who violates or attempts to violate HMC 1.14.030 is also liable for a civil fine of not more than \$10,000. The City Attorney may enforce this subsection.

c. A person who attempts to prevent another person from making a report or participating in a matter under HMC 1.14.030(a) with the intent to impede or prevent public inquiry on the matter is liable for a civil fine of not more than \$10,000.

1.14.060 Relationship to Other Laws. The protection and penalties provided in this chapter are in addition to other rights, obligations and protection afforded employees. Nothing in this chapter is intended to repeal, or is to be construed as repealing, any other provision of any other law or ordinance.

1.14.070 Short Title. HMC 1.14.010 - 1.14.070 may be cited as the Homer Whistleblower Ordinance.

PASSED AND APPROVED by the Homer City Council this 25th day of September, 1989.

CITY OF HOMER

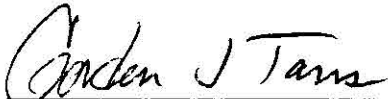

JOHN P. CALHOUN, MAYOR

ATTEST:


PATTI J. WHALIN, CITY CLERK

FIRST READING: 8/28/89
PUBLIC HEARING: 9/11/89
SECOND READING/
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EFFECTIVE DATE: 9/26/89

Reviewed and approved as to form and content:



Gordan J. Tans, City Attorney

Phil C. Shealy, City Manager