

## DUTY TO REPORT UNLAWFUL OR IMPROPER ACTIONS

Policy # **1110**  
Original Effective Date: 01/15/2020  
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Type of Policy: ☒ BOARD ☐ DISTRICT ☐ FIRE ☐ PARKS

### **POLICY**

1110.1 All Cosumnes Community Services District ("District") employees are expected to report observed unlawful or improper actions by a District personnel.

### **PURPOSE AND SCOPE**

1110.2 Employees are expected to disclose waste, fraud, abuse, and corruption by a District official. The District will not tolerate any retaliation against an employee for filing a complaint or report under this rule or for cooperating in an internal or external government investigation. Retaliation is prohibited even if the underlying complaint or report is not substantiated.

1110.3 This policy applies to all District elected officials, executives, employees, interns, volunteers, contractors, vendors, suppliers, members of the public, and other persons who participate in District programs and services.

### **APPLICATION / PROCEDURE**

1110.4 Definitions:

- a. District Personnel: District officer, employee, intern, contractor, vendor, or supplier.
- b. Illegal Order: a directive to violate or assist in violating a federal, state or local law, rule or regulation, or an order to an employee to work or cause others to work in conditions outside of their scope of duty that could unreasonably threaten the health and safety of employees or the public.
- c. Illegal or Improper Activity: an activity by a District personnel undertaken in the performance of that person's duties that is either: (1) a violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of property, fraud, coercion, conversion, abuse of property, or willful omission to perform a duty; or (2) violates District policies, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. Illegal or Improper Activity includes alleged financial, accounting, or audit improprieties and alleged ethical violations by a District personnel.
- d. Protected Disclosure: a good faith communication from a District personnel or law enforcement agencies that discloses information that may be evidence of Illegal or Improper Activity.

- e. Retaliation: an employee or director using or attempting to use his or her official authority or influence over an employee to intimidate, threaten, or coerce any employee in order to interfere with the rights of employees to freely report Illegal or Improper Activity to the District or a law enforcement agency. Retaliation includes, but is not limited to, promising to confer, or conferring any benefit; affecting or threatening to affect any reprisal; or taking or directing others to take, recommend, or approve any personnel action against an employee making a Protected Disclosure including, but not limited to, demotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action including termination.

1110.5 Employees who are unsure whether to report an action are expected to bring the issue to the attention to Human Resources. All information received in connection with this rule is treated as highly sensitive. To the extent possible, confidentiality will be maintained; however, absolute confidentiality cannot be guaranteed.

1110.6 Encouragement of Reporting of Illegal or Improper Activity: District encourages employees and members of the Board to file complaints with the General Manager regarding Illegal Orders or Illegal or Improper Activity or alleged Retaliation. All such complaints shall include specific facts supporting any allegation of Illegal or Improper Activity, or Retaliation, as defined by this policy. Complaints of Illegal or Improper Activity or Retaliation may be made anonymously, but such anonymity may impede the ability of the District to conduct a thorough investigation. If the General Manager is alleged to be involved in the complaint or report, then such complaint shall be filed with District Counsel. If the District Counsel is alleged to be involved in the complaint or report, then such complaint shall be filed with General Manager.

Other allegations with respect to which the District has existing complaint, grievance or appeal procedures as specified in the District's policies should be addressed pursuant to those procedures, such as issues of alleged discrimination or harassment which are processed by the District's Human Resources Division.

1110.7 Investigations of Allegations of Illegal or Improper Activity: The General Manager may request that a person submitting a complaint alleging Illegal or Improper Activity provide their name and contact information and provide the names and contact information for any persons who could help substantiate the claim. However, this information is not required in order to submit a complaint.

Upon receiving a complaint from any employee or member of the Board that an employee or Board member has engaged in an Illegal or Improper Activity, the General Manager will conduct an investigation of the allegations in the complaint. To the extent possible, the District will not disclose the identity of the person filing the complaint, or of any person providing information in confidence regarding the facts in the complaint, unless required by law. The General Manager may disclose the facts in the complaint to a law enforcement agency in the event that an allegation of criminal conduct is contained in the complaint filed with the District.

The General Manager may request the assistance of or delegate the investigation to the District Counsel, Department Head, Division Manager and/or any outside consultant for assistance in evaluating an allegation of Illegal or Improper Activity or conducting an

investigation of Illegal or Improper Activity as authorized by this policy. The General Manager shall investigate the allegations in the complaint and prepare a report of the results of the investigation.

If, upon completion of the investigation, the General Manager finds that a District personnel may have engaged or participated in an Illegal or Improper Activity, the General Manager shall make such findings in the investigative report and include recommended actions to prevent the continuation or recurrence of the Illegal or Improper Activity. Such recommendations may include taking disciplinary action against those employees found to have violated this policy, which action may be taken by the General Manager. The investigative report may also recommend imposing sanctions, including referral to the District Attorney's office, on those Board members found to have violated this policy. In that event the report shall be filed with the Board of Directors which shall comply with the policies of the District in initiating discipline against a member of the Board of Directors. The District shall keep confidential all investigation work product including the investigative report.

1110.8 Whistleblowers: Pursuant to California Labor Code Section 1102.5 (as amended from time to time) the District will comply with Whistleblower regulations.

- a. A "whistleblower" is an employee who discloses information to a government or law enforcement agency, person with authority over the employee, or to another employee with authority to investigate, discover, or correct the violation or noncompliance, or who provides information to or testifies before a public body conducting an investigation, hearing or inquiry, where the employee has reasonable cause to believe that the information discloses:
  1. A violation of a state or federal statute,
  2. A violation or noncompliance with a local, state or federal rule or regulation, or
  3. With reference to employee safety or health, unsafe working conditions or work practices in the employee's employment or place of employment.
- b. A whistleblower can also be an employee who refuses to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation.
- c. Whistleblower Protections
  1. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from being a whistleblower.
  2. An employer may not retaliate against an employee who is a whistleblower.
  3. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

4. An employer may not retaliate against an employee for having exercised their rights as a whistleblower in any former employment.
- d. Violations of these protections will result in disciplinary action, up to and including, termination from District service.
- e. An employee or volunteer who believes they have been subjected to Retaliation as defined and prohibited by this policy shall file a written complaint with the General Manager which specifies the alleged retaliatory conduct and identifies the individuals allegedly engaged in such conduct.

1110.9 This policy does not authorize District personnel to disclose exempt public records or other information required or permitted to be confidential under the law

## **REFERENCES**

- 1110.10 Board Policy, Prohibition Against Workplace Harassment, Discrimination, and Retaliation Policy (1105)
- 1110.11 California Labor Code Section 1102.5