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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

February 14, 2008

HONORABLE CITY COUNCIL
CITY OF OAKLAND

**RE: AN ORDINANCE PROHIBITING RETALIATION AGAINST EMPLOYEES
WHO ACT AS WHISTLEBLOWERS**

Dear Members of the Council:

As elected officials of the City of Oakland we believe it is our responsibility to encourage and grow a culture of transparency and accountability, so that citizens may have faith in the integrity, openness, competence, and fairness of their government. One of the foundational cornerstones to creating a culture of transparency and accountability is to both welcome and protect whistleblowing by City employees. A whistleblower is an employee who discloses information that they reasonably believe is evidence of illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health and safety. In the government environment 40% of fraud is detected through tips from employees and the public¹. Affording this protection to whistleblowers reinforces that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.

SUMMARY

This chapter protects City officers and employees against retaliation for Whistleblowing. Whistleblowing is defined as filing a complaint with or providing information to the City Auditor which, if true, would constitute: a work-related violation by City officer or employee of any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of authority; specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office or position or of City resources for personal gain. To the extent permitted by law, this chapter also protects the identity of anyone reporting information about an improper governmental action unless the employee waives that confidentiality in writing.

¹ 2006 Report of the Association of Certified Fraud Examiners on Occupational Fraud.

Complaints of retaliation will be investigated by the City Auditor unless the complaint involves the Office of the City Auditor, at which time the City Attorney would be responsible for conducting the investigation. Penalties will include disciplinary action up to and including discharge and civil penalties not to exceed \$5,000. The complaint must be filed no later than 180 days after the date of the retaliation.

FISCAL IMPACT

Additional resources in the Office of the City Auditor will be required to investigate increased whistleblower tips and to process complaints of retaliation from whistleblowers. Addressing waste and misuse of public resources in the City of Oakland will result in greater efficacy of City operations and increased fiscal accountability. The actual amount of City resources that will be saved by this ordinance is not quantifiable at this time, however encouraging whistleblowing should result in a cost to savings ratio of no less than 4 to 1. For example in the first year of operation the City of Los Angeles Controller's Hotline resolved 383 cases which identified millions in potential savings due to waste, mismanagement and fraud.

BACKGROUND

City residents and businesses rely upon the City of Oakland to provide many important services like maintenance and cleaning of streets and parks, police and emergency services, recreation programs and business services, all of which directly affect the quality of life in Oakland. Recognizing the budgetary limits the City often faces, preservation and enhancement of such services can be achieved only by ensuring that City resources are utilized in an efficient, cost-effective manner, and that government waste and abuse are minimized.

City employees are generally those who best understand how the City operates and the most aware of wasteful, unethical or illegal behavior within the City government. However, City employees are usually concerned that if they blow the whistle they will be subject to many forms of retaliation, including discrimination, harassment, intimidation, alienation, and in some cases even termination. Unfortunately, these concerns are not unfounded, as many whistleblowers in other organizations have been the subject of retaliation in the past as a result of their disclosures. Reassurance that City officials will protect whistleblowers from retaliation, and that legal safeguards are in place, will create an environment where employees feel that disclosing their concerns is acceptable and encouraged.

Encouraging whistle-blowing is an important management practice to create an environment where waste, fraud, or mismanagement issues are detected early and promptly addressed. Furthermore, whistleblower programs can also act as a means of collecting employee concerns, improving internal communication, collecting information regarding emerging issues before they become crises, and therefore enhancing the organization's overall system of internal controls.

Similar Whistleblower Protection ordinances have been adopted by several Cities including San Francisco, Los Angeles and Seattle as well as the University of California and the State of California.

The former City Auditor initiated a Good Government (Whistleblower) Program. The program's intent was to be a fair, neutral and confidential process through which employees and citizens could file complaints of wrong doing, dereliction of duty and improper behavior. Upon taking Office, the current City Auditor found that the program did not have adequate policies and procedures to afford the necessary level of assurance that claims would be properly evaluated and investigated. Additionally, the former program afforded no protection for whistleblowers, which gravely concerned the City Auditor. The Office of City Auditor is currently reorganizing this Whistleblower Program based upon best practices of other municipal audit organizations, and this ordinance is a fundamental piece of that process.

The City's Public Ethics Commission will continue to address complaints pertaining to the laws over which that Commission has jurisdiction, which include the Oakland Campaign Reform Act, Oakland Sunshine Ordinance, Limited Public Financing Act, Code of Conduct for City Officials, Conflict of Interest regulations, Lobbyist Registration Act, and Oakland False Endorsement In Campaign Literature Act.

Proposed Legislation

This chapter protects City officers and employees against retaliation for Whistleblowing. Whistleblowing is defined as filing a complaint with or providing information to the City Auditor which, if true, would constitute: a work-related violation by City officer or employee of any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of authority; specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office or position or of City resources for personal gain. To the extent permitted by law, this chapter also protects the identity of anyone reporting information about an improper governmental action unless the employee waives that confidentiality in writing.

Complaints of retaliation will be investigated by the City Auditor unless the complaint involves the Office of the City Auditor, at which time the City Attorney would be responsible for conducting the investigation. Penalties will include disciplinary action up to and including discharge and civil penalties not to exceed \$5,000. The complaint must be filed no later than 180 days after the date of the retaliation.

SUSTAINABLE OPPORTUNITIES

Economic: Encouraging whistleblowing will help to ensure that City resources are utilized in an efficient, cost-effective manner, and that government waste and abuse are minimized, ultimately saving City funds and resources while improving the quality of government.

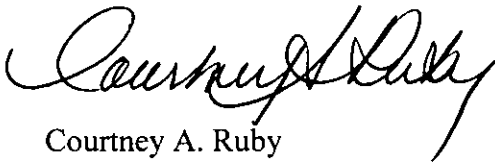
Environmental: Encouraging whistleblowing will help to ensure that there are more City resources available to provide environmental services in the City of Oakland, and will also save resources.

Social Equity: Encouraging whistleblowing will help to ensure that there are more City resources available to provide services to all Oakland residents.


ACTION REQUESTED OF THE CITY COUNCIL

Adopt the attached Ordinance creating a whistleblower protection ordinance for the City of Oakland.

Respectfully submitted,



Courtney A. Ruby
CITY AUDITOR



Ignacio De La Fuente
COUNCIL PRESIDENT

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

**ORDINANCE PROHIBITING RETALIATION AGAINST EMPLOYEES
WHO ACT AS WHISTLEBLOWERS**

WHEREAS, the City of Oakland is committed to rooting out waste, fraud and abuse and to maintaining the highest standards of behavior by its officials and employees; and

WHEREAS, the City Auditor maintains a Whistleblower Program for the purpose of receiving individual complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City funds, and improper activities by City officers and employees; and

WHEREAS, the City of Oakland has an interest in protecting the integrity of the City Auditor's Whistleblower Program and City government employees are encouraged to participate in the City Auditor's Whistleblower Program; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

- Section 1 Title and Purpose
- Section 2 Whistleblower Defined
- Section 3 Whistleblower Identity
- Section 4 Retaliation Prohibited
- Section 5 Administrative Complaint of Retaliation
- Section 6 Retaliation Defined
- Section 7 City Defined
- Section 8 Burden of Establishing Retaliation
- Section 9 Discipline
- Section 10 Civil Penalties

SECTION 1. TITLE AND PURPOSE. This Chapter shall be known as the Whistleblower Ordinance. The purpose of this Ordinance is to protect all City government employees who act as Whistleblowers from retaliation.

SECTION 2: WHISTLEBLOWER DEFINED. Whistleblower is defined as an officer or employee who reports or otherwise brings to the attention of the City Auditor any information which, if true, would constitute one of the following: a work-related violation by a City officer or employee of any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of

authority; a specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office, position or resources for personal gain.

SECTION 3. WHISTLEBLOWER IDENTITY. To the extent permitted by law, the identity of anyone reporting information to the City Auditor about an improper governmental action shall be treated as confidential unless the employee waives his or her confidentiality in writing.

SECTION 4. RETALIATION PROHIBITED. No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a Whistleblower.

No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to cause any adverse employment action as a reprisal against a City officer or employee who acts as a Whistleblower in good faith and with reasonable belief that improper conduct has occurred.

SECTION 5. ADMINISTRATIVE COMPLAINT OF RETALIATION. Any officer or employee who believes that he or she has been subject to an adverse employment action as a result of being a whistleblower may file a complaint of retaliation with the City Auditor within 180 days of the alleged misconduct. The City Auditor shall thereupon investigate the complaint. If the Office of the City Auditor is named in the complaint, the complaint shall be directed to the City Attorney for investigation. The investigation of a retaliation complaint should be completed in eight (8) weeks or less, absent extraordinary circumstances. Any reports regarding retaliation are confidential and not subject to disclosure.

SECTION 6. RETALIATION DEFINED. Retaliation is defined as any adverse employment action, including discharge, discipline or demotion.

SECTION 7. CITY DEFINED. City is defined as the City of Oakland, its agencies, departments, boards and commissions.

SECTION 8. BURDEN OF ESTABLISHING RETALIATION. In order to establish retaliation, a complainant must demonstrate by a preponderance of the evidence that the complainant's participation in the City Auditor's Whistleblower Program was a substantial motivating factor in the adverse employment action. The supervisor or manager may rebut this claim if he or she demonstrates by a preponderance of the evidence that he or she would have taken the same employment action irrespective of the complainant's participation in the City Auditor's Whistleblower Program.

SECTION 9. DISCIPLINE. Any manager, supervisor or employee of the City of Oakland who knowingly engages in conduct prohibited by this Ordinance shall be disciplined, up to and including discharge.

SECTION 10. CIVIL PENALTIES. Any manager, supervisor or employee of the City of Oakland who believes that he or she has been the subject of retaliation in violation of this Ordinance may bring a civil action against the City officer or employee who committed the violation. The civil

penalty for such a violation shall not exceed five thousand dollars (\$5,000.00). Such action must be filed no later than one year after the date the manager, supervisor or employee files a complaint of retaliation with the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and
 PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____