



Office of the City Manager

November 2, 2016

To: All City Employees

From: Dee Williams-Ridley, City Manager

Re: NEW WORKPLACE POLICY: PROTECTION OF WHISTLEBLOWERS –
RETALIATION PROHIBITED

The City of Berkeley is committed to maintaining a workplace with fair policies and high ethical standards. In furtherance of these core City values, we cannot tolerate fraud, abuse or misuse of public resources or other misconduct in the workplace. In order to confirm the City's shared commitment to fair policies and high ethical standards, I am issuing the attached City of Berkeley Policy "Protection of Whistleblowers – Retaliation Prohibited".

This new Policy supplements state and federal law, which also provide employees with protections for whistleblower activities. The City's Whistleblowers Policy encourages employees to report improper activity and protects City employees from retaliation if they make a good faith report of misconduct (including reports of workplace discrimination or harassment) or participate in an investigation into a complaint.

The Whistleblower Policy is effective immediately. It will also be posted on the City's website. I encourage all employees to read the policy thoroughly. If you have any questions regarding the policy, please contact Sarah Reynoso, Director of Human Resources at ext. 6807 or sreynoso@cityofberkeley.info

cc: Jovan Grogan, Deputy City Manager
Sarah Reynoso, Director of Human Resources
Kristy van Herick, Assistant City Attorney
Mark Zembsch, Deputy City Attorney



Office of the City Manager

PROTECTION OF WHISTLEBLOWERS – RETALIATION PROHIBITED

Purpose

It is important that the City of Berkeley (“City”) foster and maintain a fair and legal workplace with high ethical standard of conduct in all activities. To further that goal, all City officers (including all elected and appointed officials) and all employees (collectively, “City Officers and Employees”) are encouraged to report good faith suspicions of misconduct and misuse of City property or resources by City Officers and Employees, contractors and vendors. Accordingly, to encourage and effectuate such reports, it is the policy of the City of Berkeley to prohibit taking any adverse employment action because an individual made a good faith report or participated in an investigation into a complaint of an alleged violation of City policy or state or federal law, or misuse of City property or resources.

Policy

It is the policy of the City that all City Officers and Employees are encouraged to report good faith suspicions of misconduct and misuse of City property or resources by City Officers and Employees, contractors and vendors. Accordingly, all City Officers and Employees are protected from retaliation for filing a complaint with, or providing information to, the City Manager, the Deputy City Manager, the City Auditor, the Equal Employment Opportunity & Diversity Officer, the City Attorney, a Department Director, or a Department Deputy Director about improper government activity by City Officers and Employees. Such a complaint is “a Whistleblower Complaint”, and individuals who make such complaints or participate in an investigation are “Whistleblowers”. Any employee determined to have retaliated against a Whistleblower will be subject to disciplinary action, up to and including termination.

Any current or former City Officer or Employee who believes s/he has been the subject of retaliation for filing, or participating in, a Whistleblower Complaint may file a complaint with the Human Resources Department, which shall investigate or refer the complaint. This policy is intended to describe the City’s policies and procedures for reporting improper governmental activities and protecting whistleblowers. This policy is in addition to and does not supplant whistleblower protections and procedures provided under state and federal laws.

Definitions

"Retaliation" is the termination, demotion, suspension, or other similar adverse employment action taken against any City Officer or Employee for having in good faith participated in any of the following protected activities:

- Filing a Whistleblower Complaint with the City Manager, the Deputy City Manager, the City Auditor, the Equal Employment Opportunity & Diversity Officer, the City Attorney, a Department Director, or a Department Deputy Director alleging that a City Officer or Employee engaged in "improper governmental activity" (specifically defined below); or
- Cooperating with an investigation of a Whistleblower Complaint.

"Improper governmental activity" includes the following:

- Violating federal law, state law, or City policy that prohibits workplace harassment, discrimination and retaliation;
- Theft, misuse of, or misappropriation of City resources, property, information, assets or funds, or an attempt to do any of the same;
- Violating any City policy regarding misuse of City resources;
- Intentional falsification of records (including failure to disclose material facts or making false or misleading entries or statements with the intent to deceive on any City document or other official document, report, or form, including but not limited to City financial records and environmental regulatory reporting) or the willful and unauthorized destruction or mutilation of any City document or other official document, report, or form, including City financial records;
- Forgery or intentional unauthorized alteration of a City document or other official document, application, report, or form including but not limited to City financial documents;
- Improprieties in the handling or reporting of financial transactions involving the City;
- Authorizing or receiving payment by the City for goods not received or services not performed;
- Creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer or employee's City position; or
- Abusing his or her City position to advance a private interest.

In order to establish retaliation, a complaint must demonstrate by a preponderance of the evidence that the complainant's engagement in the protected activity was a "substantial motivating factor for the adverse employment action." The employer may rebut this claim if it demonstrates by a preponderance of the evidence that it would have taken the same

employment action irrespective of the complainant's participation in the protected activity.

However, this Policy does not prohibit the City from taking adverse action for legitimate, non-discriminatory reasons that are unrelated to the disclosure. Such legitimate or non-discriminatory actions may include discipline for a legal cause or refusing to hire/promote/transfer or to take any other legitimate personnel action based on inadequate qualifications or poor performance reviews.

What protections are provided to a Whistleblower?

A City Officer or Employee is protected from adverse employment action because of filing a Whistleblower Complaint as defined above, or because of cooperating with an investigation of such a complaint.

Will the identity of the Whistleblower remain confidential?

To the extent possible, the identity of the whistleblower will remain confidential. However, the City reserves the right to disclose the identity of the Whistleblower, if the identity may have to be disclosed to conduct a thorough investigation, to comply with applicable laws or to provide individuals their legal rights or defense.

How (and when) does an employee report an allegation of retaliation in violation of this policy?

An individual who believes that s/he suffered an adverse employment action because of a complaint they filed as described above, or because they cooperated with such an investigation, must file a complaint with the Human Resources Department promptly, preferably within 30 days of the date of the alleged adverse employment action, but in any event no later than 180 calendar days after the date the alleged act occurred. It is strongly recommended that the employee speak with the City's Equal Employment Opportunity & Diversity Officer ("EEO Officer") in order to determine whether the matter complained about is covered by this policy. If it is not so covered, the EEO Officer will refer the employee to the most appropriate agency.

To speak with the EEO Officer, individuals should please call (510) 981-6811 or email EEOfficer@cityofberkeley.info

By _____
Dee Williams-Ridley, City Manager

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