RESOLUTION NO. 10-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE BENICIA WHISTLEBLOWER POLICY

WHEREAS, the City of Benicia strives to conduct all its activities in a responsible, legal, and accountable manner; and

WHEREAS, in furtherance of these goals, the City Council wishes to adopt a policy encouraging all employees of the City of Benicia; and any elected officials, commissioners, citizens, contractors or any others to report activities that may be fraudulent, unethical, dangerous to City employees or the public, or conducted in violation of the law, and to ensure that anyone who reports such activities under this policy will be protected from retaliation.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby adopt the Benicia Whistleblower Policy attached hereto as Exhibit A.

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On motion of Council Member **Ioakimedes**, seconded by Council Member **Campbell**, the above Resolution is introduced and passed by the City Council of the City of Benicia at a regular meeting of the Council held on the 15th day of June, 2010 and adopted by the following vote:

Ayes: **Council Members Campbell, Ioakimedes, Schwartzman and Mayor Patterson**

Noes: **None**

Absent: **Council Member Hughes**

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Exhibit A

WHISTLEBLOWER POLICY

The City of Benicia strives to conduct all its activities in a responsible, legal and accountable manner. In furtherance of this goal, all City of Benicia employees are encouraged to report either orally or in writing to their immediate supervisor, or alternate line of authority as hereafter described, all information of activity by a City of Benicia department or employee that may constitute:

- A violation of federal or state law or city ordinance
- Financial fraud
- Substantial or specific danger to the employee's or public's health and safety
- Unethical business conduct and practices

Any City of Benicia employee who, in good faith, reports such incidents as described above will be protected from threats or retaliation, discharge, or other types of discrimination, including but not limited to, compensation or terms and conditions of employment that are directly related to the disclosure of such reports. In addition, no employee may be adversely affected because the employee refused to carry out a directive, which in fact, constitutes fraud or is a violation of federal or state law.

Insofar as possible, the identity of the whistleblower will remain confidential. However, the City of Benicia reserves the right to disclose the identity of the whistleblower if, in the City of Benicia's absolute discretion, the identity may have to be disclosed to conduct a thorough investigation, to comply with applicable laws and/or to provide accused individuals their legal rights of defense.

Any employee who wants to report information of alleged improper activity or unlawful activity as described above should contact his or her immediate supervisor, or the supervisor's manager. If the employee is uncomfortable for any reason addressing such concerns to their supervisor or the manager of such supervisor, the employee may contact the City Manager, Administrative Services Director or City Attorney. The contact information is provided below. Employees are encouraged to provide as much specific information as possible including names, dates, places, and events that took place, the employee's perception of why the incident(s) may be a violation, and what action the employee recommends be taken. Employees will receive a reply to their report within twenty business days or as soon as practicable thereafter.

Elected officials, commissioners, citizens, contractors or any others are also encouraged to report such alleged improper activity or unlawful activity in accordance with this policy.

Contacts:

City Manager, Administrative Services Director and City Attorney
250 East L Street, Benicia, California 94510
707-746-4200 (City Manager & Administrative Services Director) 707-746-4216 (City Attorney)

The Division of Labor Standards Enforcement believes that the sample posting below meets the requirements of Labor Code Section 1102.8(a). This document must be printed to 8.5 x 11 inch paper with margins no larger than one-half inch in order to conform to the statutory requirement that the lettering be larger than size 14 point type.

WHISTLEBLOWERS ARE PROTECTED

It is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating a state or federal statute, or violating or not complying with a state or federal rule or regulation.

Who is protected?

Pursuant to California Labor Code Section 1102.5, employees are the protected class of individuals. "Employee" means any person employed by an employer, private or public, including, but not limited to, individuals employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California. [California Labor Code Section 1106]

What is a whistleblower?

A "whistleblower" is an employee who discloses information to a government or law enforcement agency 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 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.

What protections are afforded to whistleblowers?

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 his or her rights as a whistleblower in any former employment.

Under California Labor Code Section 98.6, if an employer retaliates against a whistleblower, the employer may be required to reinstate the employee's employment and work benefits, pay lost wages, and take other steps necessary to comply with the law.

How to report improper acts

If you have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees, **call the California State Attorney General's Whistleblower Hotline at 1-800-952-5225**. The Attorney General will refer your call to the appropriate government authority for review and possible investigation.