

CONSENT CALENDAR

June 6, 2023

To: Honorable Mayor and Members of the City Council

From: Auditor Jenny Wong (Author), Mayor Jesse Arreguin (Co-Sponsor), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Kate Harrison (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor)

Subject: Berkeley City Auditor Whistleblower Program

RECOMMENDATION

Adopt a resolution to support and endorse the City Auditor's plan to implement a Whistleblower Program. Consistent with the implementation plan, the City Auditor is currently requesting authorization to hire one additional Audit Manager.

FISCAL IMPACTS OF RECOMMENDATION

The fully burden costs for a full time Audit Manager is between \$219,629 and \$287,525. Initial costs associated with hiring an Audit Manager are offset by salary savings within the Auditor's budget, resulting in no net increase to the Fiscal Years 2023 and 2024 Adopted Budget. The ongoing costs of increased personnel, as well as other resources required to effectively implement a Whistleblower Program, will be presented to Council as part of the Fiscal Year 2025-2026 budget.

A whistleblower program could reduce the financial impacts associated with undetected fraud in the City. The City Auditor shall explore options for expanding the general fund budget to support start-up and ongoing costs, which will vary based on the City's desired level of service. Budget expansions would come from the general fund, as hotline operations will be overseen by the City Auditor.

CURRENT SITUATION AND ITS EFFECTS

Currently, there is no formal avenue available to Berkeley residents to report concerns regarding City fraud, waste, and/or abuse. While City employees can file claims of fraud, waste, and/or abuse to a hotline or Ethics Committee managed by Human Resources, the current structure lacks independence. Without an independent body to oversee this process, employees may be hesitant to come forward.

BACKGROUND

State legislation encourages cities to specifically focus on fraud, waste, and/or misuse of city resources through whistleblower programs led by City Auditors. In 2009, California Government Code Section 53087.6 went into effect, which enabled local government auditors to establish whistleblower programs and to provide whistleblower protections. Local auditors are authorized under Section 53087.6 to create whistleblower programs with the approval of their respective legislative bodies, and have discretion in how to operate their programs. The code

does not authorize an Ethics Committee or Human Resources to manage whistleblower complaints.

California cities have established whistleblower programs including Oakland, San Francisco, Sacramento, San Diego, and Long Beach, with information publicly available. Each city has a webpage where people can find information such as how to submit a complaint, and what happens to a complaint once submitted.

A whistleblower program could significantly reduce costs associated with fraud and increase the City's accountability for taxpayer money. The Association of Certified Fraud Examiners' (ACFE) 2020 Report to the Nations on Occupational Fraud and Abuse maintains that a typical organization is estimated to lose 5 percent of its annual revenues to fraud.¹ If City losses due to fraud align with these estimates, fraud may have cost the City as much as \$21.4 million in revenue per year from 2012 to 2021. The City's actual loss due to fraud is unknown; however, the longer fraud remains undetected, the greater the financial losses.

ENVIRONMENTAL SUSTAINABILITY

Opportunities to lessen environmental impacts could result from detection of fraud, waste, or misuse in Berkeley government.

RATIONALE FOR RECOMMENDATION

The Auditor's Office is uniquely positioned to manage a whistleblower program. The Berkeley City Auditor maintains a level of structural independence well-suited for a whistleblower program, as they are elected by the public and do not report to the City Manager or Council. The City Auditor is well-positioned due to their role in providing objective information on the operations of government programs, assisting managers in carrying out their responsibilities, and helping ensure full accountability to the public, among other reasons.

The addition of an Audit Manager position within the City Auditor's Office would allow the Auditor to devote resources to begin implementing a Whistleblower Program.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Resolution

2: City Auditor's Whistleblower Program Implementation Plan

¹<https://acfe-public.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf>, pages 4 and 14

RESOLUTION NO. ##,###-N.S.

BERKELEY CITY AUDITOR WHISTLEBLOWER PROGRAM

WHEREAS, it is critical for the City of Berkeley to implement a Whistleblower Program to aid in identifying, reducing, and preventing fraud, waste, and abuse of City resources.

WHEREAS, The Auditor's Office is uniquely positioned to manage a whistleblower program due to the independence of the office.

WHEREAS, California Government Code Section 53087.6 enables local government auditors to establish whistleblower programs and to provide whistleblower protections with the approval of their respective legislative bodies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley to adopt a resolution to support and endorse the City Auditor's plan to implement a Whistleblower Program, which will establish an independent mechanism for employees and the public to report complaints of fraud, waste, and abuse of city resources and resources for the Auditor to respond to alleged complaints.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorized the City Auditor to hire one Audit Manager to oversee the Whistleblower Program.

Berkeley City Auditor Whistleblower Program Implementation Plan

		Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
Activity	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch	
	Hire Whistleblower Program Manager	Determine appropriate methods and platforms for whistleblower reporting	Design a process for responding to and referring complaints	Develop written procedures and educational material	Receive and respond to complaints according to established procedures	
	Determine funding needed for remaining steps of the implementation plan and ongoing operations	Design intake forms and procedures	Obtain necessary access rights to data systems for investigations	Disseminate educational materials	Develop mechanisms for ongoing assessments of program effectiveness including the development of metrics to benchmark across time or against similar organizations	
Outcome	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch	
	Staff and funding secured to successfully manage program	Multiple channels for employees and outside parties to report complaints 24 hours a day, 365 days of the year	Ability to prioritize, investigate, refer, and follow up on complaints received	Potential whistleblowers understand how the program works, why it is important, and how they will be supported	A more accountable Berkeley government through the prevention and investigation of suspected fraud, waste, and abuse.	

