

AN ORDINANCE NO. 2004-1

To amend and reordain Chapter 2 of the Code of the City of Richmond (1993) by adding therein in Article III a new Division 5.1 containing numbered 2-138.1 through 2-138.6, concerning disclosure by employees of misconduct and the protection of employees from retaliation for the disclosure of what the employee believes constitutes such misconduct.

Patron – Mr. Loupassi, Mr. Grimm, and Mr. Pantele

Approved as to form and legality
by the City Attorney

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THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 2 of the Code of the City of Richmond (1993) be and is hereby amended and reordained by adding therein in Article III a new Division 5.1 containing numbered 2-138.1 through 2-138.6, as follows:

DIVISION 5.1.

EMPLOYEE DISCLOSURE OF MISCONDUCT

AND PROTECTION FROM RETALIATION.

Sec. 2–138.1. Purpose and applicability; policy.

(a) This division sets forth the policy of the City concerning employee disclosure of misconduct and the protection of employees from retaliation for disclosing what the

employee believes evidences certain unlawful, wasteful or hazardous practices. This policy is applicable to all employees of the City.

(b) The City is committed to operating legally and ethically at all times. Therefore, employees are required to report violations of laws, regulations, and policies that they either observe or reasonably suspect. Failure to report a known violation shall result in disciplinary action.

(c) It is the policy of the City that common sense and sound business judgment is the key to determining whether conduct complies with ethical and legal standards. All City employees encountering a situation that may involve fraud, misuse of property or theft such that they feel uncomfortable or unsure, are required to ask:

- (1) Whether the conduct is legal;
- (2) Whether the parties are being fair and honest; and
- (3) Whether the conduct is in the best interest of the City or its citizens.

If the answer to any of the preceding questions is in the negative, the employees have a duty to report the potentially unlawful or wrongful conduct or to request additional information.

(d) It is also the policy of the City that any employee shall be free without fear of retaliation to make known allegations of alleged misconduct existing within the City that he reasonably believes evidences:

- (1) An abuse of authority, gross misconduct, or gross waste of money;
- (2) Embezzlement of or fraud involving City funds;
- (3) A substantial and specific danger to public health or safety; or
- (4) A violation of law.

No retaliation of any kind shall be tolerated against an employee who makes a good faith report of any known or suspected violation, even if further investigation finds the report to be erroneous. In particular, no officer or employee of the City shall take or refuse to take any personnel action as retaliation against an employee who discloses information regarding misconduct under this policy or who, following such disclosure, seeks a remedy provided under this policy or any other law, rule or regulation.

(e) To the extent possible, reports of misconduct shall be kept anonymous when requested by the reporting individual. Every effort shall be made to preserve the confidentiality of the report of misconduct.

(f) Alleged acts of retaliation shall be investigated by the Office of the City Manager or its designee.

(g) Any employee found to have known of misconduct but failed to report shall be subject to disciplinary action.

(h) Any employee who purposely makes a false report of an alleged violation shall be subject to disciplinary action and may be subject to other legal action.

Sec. 2-138.2. Procedure for disclosure.

(a) An employee shall disclose all relevant information regarding evidenced misconduct to the City Auditor or his designee in a signed written document within six months (6) months of the day on which he knew or reasonably should have known of the misconduct. He may also contact the Office of the City Auditor by way of the Audit Hot Line and follow the procedures for the Audit Hot Line. The City Auditor shall publicize the telephone number or numbers for the Audit Hot Line and the procedures for the Audit Hot Line.

(b) The City Auditor or his designee shall consider the disclosure and take whatever action he determines to be appropriate under the law and circumstances of the disclosure.

(c) In the case of disclosure of misconduct involving State funds, the City Manager, or any City Council member or constitutional officer, the City Auditor shall refer the disclosure to the Auditor of Public Accounts and the Virginia State Police as required by state law.

(d) If the disclosure of misconduct results in recovery by the City of \$50,000 or more, the City shall pay a reward of \$1,000 to the employee who discloses the misconduct as provided in this section.

Sec. 2-138.3. Complaints of retaliation as a result of disclosure.

(a) If an employee believes that he has been retaliated against in the form of an adverse personnel action for disclosing information regarding misconduct under this policy, he may file a written complaint requesting an appropriate remedy with the City Manager or his designee within twenty (20) days after he knew or reasonably should have known of the adverse personnel action, whichever is later.

(b) All complaints filed under this section shall include, at a minimum, the following:

- (1) The name and work address of the complainant;
- (2) The name and title of the each City officer or employee against whom the complaint is made;
- (3) The specific type of each adverse personnel action taken;
- (4) The specific date on which each adverse personnel action was taken;
- (5) A clear and concise statement of the facts that form the basis of the complaint;

(6) A clear and concise statement of the complainant's explanation of how his previous disclosure of misconduct is related to the adverse personnel action; and

(7) A clear and concise statement of the remedy sought by the complainant.

(c) For purposes of this division, an adverse personnel action shall be defined as actions including, but not necessarily limited to, the following:

(1) a disciplinary suspension;

(2) a decision not to promote;

(3) a decision not to grant a salary increase;

(4) a termination;

(5) an involuntary demotion;

(6) rejection during probation;

(7) a performance evaluation in which the employee's performance is generally evaluated as unsatisfactory;

(8) an involuntary resignation;

(9) an involuntary retirement;

(10) an involuntary reassignment to a position with demonstrably less responsibility or status as the one held prior to the reassignment; or

(11) an unfavorable change in the general terms and conditions of employment.

Sec. 2-138.4. Determination regarding the complaint.

(a) Within sixty (60) calendar days of receipt of the complaint the City Manager or his designee (i) shall consider the written complaint, (ii) shall conduct an investigation which, in his judgment, is consistent with the circumstances of the complaint and disclosure, and (iii) shall provide the complainant with a determination regarding the complaint.

(b) The determination shall be in writing and shall include the findings of fact, the conclusions of the investigation and, if applicable, a specific and timely remedy consistent with the findings.

(c) For purposes of this division, a remedy may include back pay, promotion, reinstatement, reassignment, removal of detrimental material from institutional files, a written correction of institutional records, appointment, a change in the terms and conditions of employment, or any other action considered by the City Manager or his designee to be consistent with the findings. If the City Manager or his designee determines that an employee has been retaliated against for his prior disclosure of misconduct, the City Manager or his designee shall immediately initiate the appropriate disciplinary or legal action consistent with the circumstances of the complaint and the disclosure against the perpetrator of the retaliation. The City Manager or his designee shall report the results of such action to the City Auditor.

Sec. 2-138.5. Administrative appeal of determination.

(a) If the complainant disagrees with the determination issued by the City Manager or his designee or if the determination is not issued within sixty (60) days, then the complainant may request that the matter be considered at a hearing conducted by the City's Personnel Board. The complainant shall submit his request in writing to the Secretary of the Personnel Board within fifteen (15) calendar days from the date on which the City Manager or his designee issued or should have issued the determination.

(b) The Personnel Board shall conduct a hearing pursuant to the request within forty-five (45) calendar days of the receipt of the request by the Secretary of the Personnel Board. At the complainant's sole option, the complainant may be represented by legal counsel of his choice and at his sole cost at the hearing. The Personnel Board shall issue and distribute a written

decision to all parties within forty-five (45) calendar days from the hearing date. The Personnel Board's decision shall include (i) a finding of facts based upon the evidence and arguments presented at the hearing and upon any post-hearing briefs, (ii) a discussion of the facts, (iii) the conclusions drawn from the finding of facts, and (iv) a remedy consistent with those conclusions. The Personnel Board shall have no power to alter, amend or otherwise affect any City law, rule, regulation, policy or procedure.

Sec. 2-138.6. Judicial appeal of determination.

A complainant who does not prevail in the hearing described in section 2-138.5 of this Code may appeal this decision to the Circuit Court of the City of Richmond for review. The complainant's petition for appeal shall set forth the alleged illegality of the action of the Personnel Board and the grounds thereof. The petition shall be filed within thirty (30) calendar days of the complainant's receipt of the Personnel Board's decision as provided in section 2-138.5 of this Code. The complainant shall also deliver a copy of the petition to the Secretary of the Personnel Board, who shall file with the Circuit Court copy of the records and documents considered by the Personnel Board. The Circuit Court shall review the record, documents and other materials filed by the Secretary of the Personnel Board. The Circuit Court may reverse or modify the decision of the Personnel Board, in whole or in part, if it finds upon review that the decision of the Personnel Board is contrary to law or that his decision is arbitrary and constitutes an abuse of discretion, or the Circuit Court may affirm the decision of the Personnel Board .

§ 2. This ordinance shall be in force and effect upon adoption.