

ORDINANCE NO. 17,949

**AN ORDINANCE ADOPTING A WHISTLEBLOWER PROTECTION POLICY
FOR THE CITY OF PEORIA, ILLINOIS**

WHEREAS, the City of Peoria (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2-1, provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and

WHEREAS, the Illinois General Assembly enacted Public Act 101-00652, known as the SAFE-T Act amending the Illinois Public Officer Prohibited Activities Act by adding a new section at 50 ILCS 105/4.1; and

WHEREAS, 50 ILCS 105/4.1 prohibits a unit of local government, or any agent or representative of a unit of local government, from retaliating against an employee or contractor who reports an improper governmental action as defined under 50 ILCS 105/4.1; cooperates with an investigation by an auditing official related to a report of improper governmental action; or, testifies in a proceeding or prosecution arising out of an improper governmental action.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Peoria, Illinois as follows:

Section 1. The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. The Whistleblower Protection Policy, attached hereto and incorporated herein as Exhibit A to this Ordinance, is hereby adopted.

Section 3. All ordinances, resolutions and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 4. If any provision of this Ordinance or application thereof to any person or circumstances is declared to be invalid, such invalidity shall not affect the other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 5. The Clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This ordinance shall be in full force and effect after its passage and publication in accordance with 65 ILCS 5/1-2-4.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this 22nd day of
February, 2022.

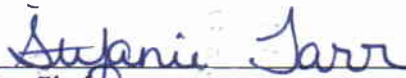
AYES:	<u>10</u>
NAYS:	<u>0</u>
ABSTENTIONS:	<u>0</u>
ABSENT:	<u>1</u>

APPROVED:



Mayor

ATTEST:



City Clerk

EXAMINED AND APPROVED:



Interim Corporation Counsel

Whistleblower Protection Policy

I. Purpose

The City of Peoria (“City”) provides whistleblower protections in two important areas: confidentiality and against retaliation. The confidentiality of a whistleblower will be maintained to the extent allowable by law, however, an identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. A whistleblower may also waive confidentiality in writing. The City will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblowers who believe they are being retaliated against must submit a written report to the Auditing Official within 60 days of gaining knowledge of the retaliatory action. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

II. Definitions

- a) **Whistleblower** means an employee, as defined in Section II of this policy, of the City who:
1. Reports an improper governmental action as defined under 50 ILCS 105/4.1 (Section 4.1);
 2. Cooperates with an investigation by an Auditing Official related to a report of improper governmental action; or,
 3. Testifies in a proceeding or prosecution arising out of an improper governmental action.
- b) **Auditing Official** means any elected, appointed or employed individual, by whatever name, in the City whose duties may include: receiving, registering and investigating complaints and information concerning misconduct, inefficiency and waste within the City; investigating the performance of officers, employees, functions and programs; and, promoting economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the City.
- The Auditing Official shall be Mary Ann Stalcup, Human Resources Director.
- c) **Employee** means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time and intermittent workers. Employee also includes members of appointed boards or commissions, including but not limited to the Advisory Committee on Police Community Relations, Fair Employment Commission, Fair Housing Commission, Fire and Police Commission, Fireman’s Pension Fund Board of Trustees, Fire Department Foreign Fire Tax Board, Liquor Commission, Planning/Zoning Commission, Police Pension Fund Board, Public Arts Advisory Commission, Zoning Board of Appeals, whether paid or unpaid. Employee also includes persons who have been terminated because of any report or complaint submitted under Section 4.1.

- d) **Improper governmental action** means any action by an employee of the City; an appointed member of a board, commission or committee; or, an elected official of the City that is undertaken in violation of a federal or state law or local ordinance; is an abuse of authority; violates the public's trust or expectation of their conduct; is of substantial and specific danger to the public's health or safety; or, is a gross waste of public funds. The action need not be within the scope of the employee's, elected official's, board member's, commission member's or committee member's official duties to be subject to a claim of "improper governmental action."
1. Improper governmental action *does not include* the City's personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands or violations of collective bargaining agreements, except to the extent that the action amounts to retaliation.
- e) **Retaliate, retaliation or retaliatory action** means any adverse change in an employee's employment status or the terms and conditions of employment that results from an employee's protected activity under Section 4.1. Retaliatory action includes, but is not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or, other disciplinary action made because of an employee's protected activity under Section 4.1.

III. Duties of an Auditing Official

Each Auditing Official shall establish written processes and procedures consistent with the terms of this policy and best practices for investigations for managing complaints filed under Section 4.1. (The written process and procedure for investigation of complaints under this policy is hereby attached as Exhibit A-1). Each Auditing Official shall have available a written form whereby an employee can file their complaint. (The Complaint Form is hereby attached as Exhibit A-2). Each Auditing Official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures, and all other provisions of Section 4.1.

The Auditing Official must provide each employee a written summary or a complete copy of Section 4.1 upon commencement of employment and at least once each year of employment. (A copy of 50 ILCS 105/4.1 is hereby attached as Exhibit A-3). At the same time, the employee shall also receive a copy of the written processes and procedures for reporting improper governmental actions from the applicable Auditing Official.

Auditing Officials may reinstate, reimburse for lost wages or expenses incurred, promote or provide some other form of restitution.

In instances where an Auditing Official determines that restitution will not suffice, the Auditing Official may make their investigation findings available for the purposes of aiding in that employee's, or the employee's attorneys, effort to make the employee whole.

Auditing Officials are responsible for reading the full context of Section 4.1 and complying with all requirements.

IV. Duties of an Employee

All reports of illegal and dishonest activities will be promptly submitted to the Auditing Official who is responsible for investigating and coordinating corrective action.

If an employee has knowledge of, or a concern of, improper governmental action, the employee shall make a written report of the activity to the Auditing Official. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; a designated Auditing Official is charged with these responsibilities.

V. Defend Trade Secrets Act Compliance:

"Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and, (ii) solely for the purpose of reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and, (B) does not disclose the trade secret, except pursuant to court order." (18 U.S.C. § 1833).

VI. Employee Acknowledgment

Employees are required to sign a written acknowledgement that they have received, read and understand this Policy, and to submit that acknowledgement to the Auditing Official or other designated official of the City. The form that follows on page four of this policy will satisfy this requirement upon receipt.

Employee Acknowledgement of Whistleblower Protection Policy

I confirm that I have received, read and understand the "Whistleblower Protection Policy" for employees of the City of Peoria.

I understand that as an employee, it is my responsibility to abide by this Policy. If I have questions about the Policy, I understand it is my responsibility to seek clarification from my Department Head, the Auditing Official or the Legal Department.

Print Name: _____

Employee Signature: _____

Date: _____

RETALIATION AGAINST A WHISTLEBLOWER COMPLAINT FORM

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____

EMAIL ADDRESS: _____

PERSONS YOU BELIEVE HAVE RETALIATED AGAINST YOU: _____

GIVE SPECIFIC DETAILS OF WHY YOU BELIEVE YOU HAVE BEEN RETALIATED

AGAINST: (attach additional pages if necessary) _____

DATES OF RETALIATION: _____

NAMES AND CONTACT INFORMATION OF ANY WITNESSES: _____

DATE: _____ SIGNATURE: _____

Submit this form to Mary Ann Stalcup, Human Resources Director at mstalcup@peoriagov.org

(50 ILCS 105/4.1)

Sec. 4.1. Retaliation against a whistleblower.

(a) It is prohibited for a unit of local government, any agent or representative of a unit of local government, or another employee to retaliate against an employee or contractor who:

(1) reports an improper governmental action under this Section;

(2) cooperates with an investigation by an auditing official related to a report of improper governmental action; or

(3) testifies in a proceeding or prosecution arising out of an improper governmental action.

(b) To invoke the protections of this Section, an employee shall make a written report of improper governmental action to the appropriate auditing official. An employee who believes he or she has been retaliated against in violation of this Section must submit a written report to the auditing official within 60 days of gaining knowledge of the retaliatory action. If the auditing official is the individual doing the improper governmental action, then a report under this subsection may be submitted to any State's Attorney.

(c) Each auditing official shall establish written processes and procedures for managing complaints filed under this Section, and each auditing official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures. If an auditing official concludes that an improper governmental action has taken place or concludes that the relevant unit of local government, department, agency, or supervisory officials have hindered the auditing official's investigation into the report, the auditing official shall notify in writing the chief executive of the unit of local government and any other individual or entity the auditing official deems necessary in the circumstances.

(d) An auditing official may transfer a report of improper governmental action to another auditing official for investigation if an auditing official deems it appropriate, including, but not limited to, the appropriate State's Attorney.

(e) To the extent allowed by law, the identity of an employee reporting information about an improper governmental action shall be kept confidential unless the employee waives confidentiality in writing. Auditing officials may take reasonable measures to protect employees who reasonably believe they may be subject to bodily harm for reporting improper government action.

(f) The following remedies are available to employees subjected to adverse actions for reporting improper government action:

(1) Auditing officials may reinstate, reimburse for lost wages or expenses incurred, promote, or provide some other form of restitution.

(2) In instances where an auditing official determines that restitution will not suffice, the auditing official may make his or her investigation findings available for the purposes of aiding in that employee or

the employee's attorney's effort to make the employee whole.

(g) A person who engages in prohibited retaliatory action under subsection (a) is subject to the following penalties: a fine of no less than \$500 and no more than \$5,000, suspension without pay, demotion, discharge, civil or criminal prosecution, or any combination of these penalties, as appropriate.

(h) Every employee shall receive a written summary or a complete copy of this Section upon commencement of employment and at least once each year of employment. At the same time, the employee shall also receive a copy of the written processes and procedures for reporting improper governmental actions from the applicable auditing official.

(i) As used in this Section:

"Auditing official" means any elected, appointed, or hired individual, by whatever name, in a unit of local government whose duties are similar to, but not limited to, receiving, registering, and investigating complaints and information concerning misconduct, inefficiency, and waste within the unit of local government; investigating the performance of officers, employees, functions, and programs; and promoting economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the municipality. If a unit of local government does not have an "auditing official", the "auditing official" shall be a State's Attorney of the county in which the unit of local government is located within.

"Employee" means anyone employed by a unit of local government, whether in a permanent or temporary position, including full-time, part-time, and intermittent workers. "Employee" also includes members of appointed boards or commissions, whether or not paid. "Employee" also includes persons who have been terminated because of any report or complaint submitted under this Section.

"Improper governmental action" means any action by a unit of local government employee, an appointed member of a board, commission, or committee, or an elected official of the unit of local government that is undertaken in violation of a federal, State, or unit of local government law or rule; is an abuse of authority; violates the public's trust or expectation of his or her conduct; is of substantial and specific danger to the public's health or safety; or is a gross waste of public funds. The action need not be within the scope of the employee's, elected official's, board member's, commission member's, or committee member's official duties to be subject to a claim of "improper governmental action". "Improper governmental action" does not include a unit of local government personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, or violations of collective bargaining agreements, except to the extent that the action amounts to retaliation.

"Retaliate", "retaliation", or "retaliatory action" means any adverse change in an employee's employment status or the

terms and conditions of employment that results from an employee's protected activity under this Section. "Retaliatory action" includes, but is not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other disciplinary action made because of an employee's protected activity under this Section.

(Source: P.A. 101-652, eff. 7-1-21.)

Whistleblower Protection Policy
Auditing Official
Process and Procedure for Investigation of Complaints

I. Reporting an Improper Governmental Action or Retaliation

- a. If a City employee believes that they have witnessed an improper governmental action, as defined in the City's Whistleblower Protection Policy, the employee must submit a written report of the improper governmental action to the Auditing Official. The City will provide a written form that the employee may, but is not required, to use.
- b. If a City employee believes that they have been retaliated against for reporting improper governmental action, or cooperating in the investigation, or procedure involving an improper government action, the employee must make the report of such alleged retaliation to the Auditing Official within 60 days of the retaliatory action taking place.
- c. The Auditing Official may transfer the complaint to another auditing official, including the State's Attorney, if they determine that it is appropriate.
- d. If the Auditing Official is the subject of the complaint, the employee may file the complaint with the Peoria County State's Attorneys' Office.

II. Investigation of the Complaint

- a. Identify of the Employee
 - i. The Auditing Official will keep the identity of the complainant confidential to the extent allowed by law.
 - ii. The complainant may waive confidentiality in writing to the Auditing Official.
- b. The Auditing Official shall investigate the complaint promptly and thoroughly and conclude whether or not the evidence gathered through such investigation warrants merit of a finding that either an improper governmental action, or retaliation for filing such a complaint or complying with such investigation occurred or did not occur.
- c. The investigation of the Auditing Official may include:
 - i. Interviews of the complainant and witnesses;
 - ii. Interview of governmental officials who may have knowledge about the complaint or may be subject of the complaint;
 - iii. Inspection of documentation relevant to the complaint;
 - iv. Take any other appropriate measure to ensure that the complaint has been thoroughly investigated; and
 - v. Make a determination whether the complaint has merit or whether the complaint does not have merit.

III. Determination and Remedial Action if Necessary

- a. If the Auditing Official determines that the complaint has no merit, they can dismiss the complaint.
- b. If the Auditing Official determines that the complaint has merit, they may take remedial action on behalf of the complainant, including reinstatement, reimbursement for lost wages or expenses, promotion or other remedial action that the Auditing Official deems appropriate. The Auditing Official may also make their investigation finding available to the complainant's attorney if the Auditing Official finds that restitution is not sufficient.
- c. Any person who engages in prohibited retaliation under Section 4.1 of the Public Officers Prohibited Activities Act may also be subject to fines, appropriate employment action, civil or criminal prosecution or any combination of these activities.