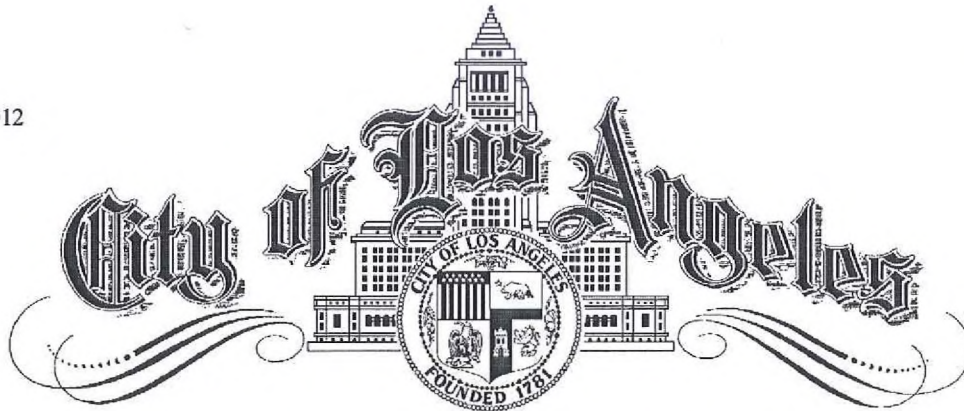


City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org/atty



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 2 - 0 4 0 3
DEC 1 2 2012

REPORT RE:

**DRAFT ORDINANCE TO AMEND THE LOS ANGELES ADMINISTRATIVE CODE
TO REQUIRE DEPARTMENT REPORTING OF FRAUD, WASTE AND ABUSE
AND EMPLOYEE FRAUD AWARENESS TRAINING**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration, approved as to form and legality, a draft ordinance regarding the reporting of Fraud, Waste and Abuse and employee training requirements relative to such reporting. This draft ordinance was transmitted pursuant to Council Rule 38 to the Controller, City Ethics Commission, and Los Angeles Police Department (LAPD).

Summary of Ordinance

This ordinance would add new provisions to the Los Angeles Administrative Code to require departments to report fraud, waste, and abuse to the Controller, City Ethics Commission, and LAPD. The ordinance includes definitions of these three terms for purposes of the reporting requirement. The definitions used here are not identical to those provided regarding criminal or civil culpability under the Penal Code or Code of Civil Procedure for fraud or waste (Code of Civil Procedure Section 526a), but rather are somewhat more expansive. The definition of abuse encompasses much of what is prohibited by Section 49.5.5 of the City Ethics Ordinance. However, the definitions are intended to be as objective as possible to ensure departments know what is expected in this regard. The Ethics Commission staff identified investigations they conduct as areas

where at least the Ethics Commission and LAPD would be barred from providing reports to other departments. Accordingly, the ordinance provides a limited exception to reporting to the Controller, Ethics Commission, and LAPD where a department or office is prohibited from doing so by applicable law.

The ordinance also requires that employees receive fraud awareness training provided by the Unit. It is our understanding that this training will be provided on-line.

Issues Relating to Required Reporting of Fraud, Waste and Abuse

During the Council hearing on this proposal, there was some discussion of the ability to discipline employees who fail to report matters covered by the ordinance. As requested, the draft ordinance provides that departments, rather than individual employees, have the responsibility to report fraud, waste, and abuse to the Controller, Ethics Commission, and LAPD. Therefore, General Managers would have the most direct obligation to report such matters. However, the imposition of discipline for an employee's failure to report fraud, waste or abuse might require meeting and conferring regarding the impact of that action, given that the imposition would be a change in the terms and conditions of employment.

The City has previously expressed an expectation that employees report wrongdoing. For instance, the City Code of Ethics first adopted in 1959 encourages those in public service to report improper government activities except where the reporting is expressly unlawful. Additionally, Mayoral Directive No. 7, adopted on July 12, 2006, requires appointees and employees to report potential wrongdoing within the Ethics Commission's jurisdiction to the Commission. LAPD employees have a specific duty to report misconduct of other LAPD employees to their supervisors or to Internal Affairs, which may include at least some aspects of fraud, waste, and abuse. (LAPD Manual, Sections 210.46 and 3/813.05). However, no other current legal obligation mandates that all city employees report fraud, waste and abuse or subjects them to discipline for failure to do so.¹

Accordingly, if the Council decides that the ordinance should require all employees to report fraud, waste, and abuse and for discipline to be imposed for failure to do so, the language of the ordinance would need to specify that employees are so required and further that they may be disciplined for failing to make such a report.

Additionally, it must be noted that employees and officials have whistleblower protections under City and state law when reporting certain wrongdoing. Under Los Angeles Municipal Code Section 49.5.4 of the City's Ethics Ordinance, persons who

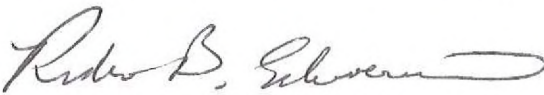
¹ We note that federal employees are required to report fraud, waste and abuse. 5 CFR 2635.101(b)(11). Los Angeles County employees are encouraged to report fraud, waste and abuse, but are not mandated to do so.

threaten or discourage a person for reporting to the Ethics Commission or other appropriate agency "a work-related violation by a City officer or employee of any law or regulation, gross waste of City funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a City official or employee, use of a City office or position or of City resources for personal gain, or a conflict of interest of a City officer or employee" are subject to penalties. Also Labor Code section 1102.5 protects employees from retaliation when reporting violations of federal or state law. Moreover, employees are encouraged to make such reports even if they do so anonymously in order to prevent fear of reprisals.

If you have any questions regarding this matter, please contact Deputy City Attorney Renee Stadel at (213) 978-7100 or Sr. Assistant City Attorney Zna Houston at (213) 978-7140. They or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:RS:pj
Transmittal

cc: City Controller
City Ethics Commission
LAPD

ORDINANCE NO. _____

An ordinance amending the Los Angeles Administrative Code Section 20.60, *et seq.*, regarding the Controller's Fraud, Waste and Abuse Unit to require Department reporting of fraud, waste and abuse and employee fraud awareness training.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Sections 20.60.4, 20.60.5, and 20.60.6 of the Los Angeles Administrative Code are as renumbered 20.60.5, 20.60.7, and 20.60.8, respectively.

Sec. 2. A new Section 20.60.4 is added to the Los Angeles Administrative Code to read as follows:

20.60.4. Reporting Requirements.

Except as prohibited by applicable law, City departments and appointed offices are required to report matters involving potential fraud, waste and abuse of City resources as soon as the information that is known reasonably indicates that the matter involves fraud, waste or abuse. City departments shall concurrently report the information to the Unit, the Ethics Commission and the Police Department for investigation or appropriate action.

For purposes of this Section, the following definitions apply:

Fraud: Any intentional act or omission designed to deprive the City of its resources to which the individual or person is not entitled, including but not limited to making false statements or submitting false documents, withholding or misrepresenting material facts, bribery, or unauthorized disclosure of confidential procurement documents.

Waste: The extravagant or excessive expenditure of City funds above and beyond the level that is reasonably required to meet the needs of the City or the consumption or use of City resources that is not knowingly authorized.

Abuse: The improper use of City resources in a manner contrary to law or City policy or the improper use of one's position for private gain or advantage for themselves or any other person where not otherwise lawful.

Sec. 3. Section 20.6.5 of Los Angeles Administrative Code is amended to read as follows:

City departments and other entities are expected to cooperate with the Unit when requested to do so. This cooperation may take the form of responding to information requests or providing staff support to the Unit on a limited basis as the needs and legal

restrictions of City departments and other entities allow. Staff providing support to the Unit shall treat all information concerning Unit investigations as confidential.

Sec. 4. A new Section 20.60.6 is added to the Los Angeles Administrative Code to read as follows:

20.60.6. Training.

All full-time City employees must participate in periodic Fraud Awareness Training, sponsored or coordinated by the Unit.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  _____
RENEE A. STADEL
Deputy City Attorney

Date 12/12/12

File No. _____