

1 [Expanded Protections for Whistleblowers]

2 **Ordinance amending Sections 4.100, 4.105, 4.110 and 4.115 of the San Francisco**
3 **Campaign and Governmental Conduct Code to: provide protection to whistleblowers**
4 **who file a written complaint with the complainant’s department regarding improper**
5 **government activity by a City officer or employee; provide a list of the types of**
6 **complaints of improper government activity; and clarify that protections for**
7 **whistleblowers apply only when the whistleblower is subject to certain adverse**
8 **employment actions.**

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10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Article IV of the San Francisco Campaign and Governmental Conduct Code
16 is hereby amended by amending Section 4.100 to read as follows:

17 SEC. 4.100. FINDINGS. The City and County of San Francisco has a paramount
18 interest in protecting the integrity of its government institutions. To further this interest,
19 individuals should be encouraged to report to the City’s Ethics Commission and the
20 complainant’s department possible violations of laws, regulations and rules governing the
21 conduct of City officers and employees.

22 This Chapter protects all City officers and employees ~~individuals who file complaints with, or~~
23 ~~provide information to, the Ethics Commission from intimidation, threats, and coercion. This Chapter~~
24 ~~also protects City officers and employees~~ from retaliation ~~or other disciplinary action that is taken~~
25 ~~because the officer or employee filed for filing~~ a complaint with, or provided ing information to, the

1 Ethics Commission or the complainant's department about improper government activity by City
2 officers and employees.

3 Finally, this Chapter ensures that complaints that do not allege a violation of law,
4 regulation, or rule over which the Ethics Commission has jurisdiction are directed to the
5 appropriate agency for investigation and possible disciplinary or enforcement action.

6 Section 2. Article IV of the San Francisco Campaign and Governmental Conduct Code
7 is hereby amended by amending Section 4.105 to read as follows:

8 SEC. 4.105. COMPLAINTS OF IMPROPER GOVERNMENT ACTIVITY; COMPLAINT
9 INVESTIGATION PROCEDURES; REFERRAL TO OTHER AGENCIES.

10 (a) COMPLAINTS. Any person ~~Individuals~~ may file a complaint with the Ethics
11 Commission or a written complaint with the complainant's department alleging that a City officer or
12 employee has engaged in improper government activity by: violating local campaign finance,
13 lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the
14 California Penal Code by misusing City resources; creating a specified and substantial danger to
15 public health or safety by failing to perform duties required by the officer or employee's City position;
16 or abusing his or her City position to advance a private interest. ~~complaints regarding the conduct of~~
17 ~~City officers and employees.~~

18 (b) ETHICS COMMISSION COMPLAINT PROCEDURES. The Ethics Commission
19 shall investigate complaints filed under this Section that allege violations of local campaign
20 finance, lobbying, conflicts of interest and governmental ethics laws pursuant to the
21 procedures specified in Charter Section C3.699-13 and the regulations adopted thereunder.
22 Nothing in this subsection shall preclude the Ethics Commission from referring any matter to any other
23 City department, commission, board, officer or employee, or to other government agencies for
24 investigation and possible disciplinary or enforcement action. The Ethics Commission may require
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1 that any City department, commission, board, officer or employee report to the Ethics Commission on
2 the referred matter.

3 (c) REFERRAL. The Ethics Commission shall refer ~~complaints~~ that do not allege a
4 violation of law, regulation or rule that is within the Ethics Commission's jurisdiction ~~shall be~~
5 ~~directed~~ to the appropriate agency for investigation and possible disciplinary or enforcement
6 action. The Commission may conduct preliminary investigations into such complaints to
7 determine whether the complaint contains sufficient information to warrant referral. The Ethics
8 Commission may require that any City department, commission, board, officer or employee report to
9 the Ethics Commission on the referred matter. ~~Nothing in this Section shall preclude the Ethics~~
10 ~~Commission from referring any matter to any other City department, commission, board, officer or~~
11 ~~employee, or to other government agencies for investigation and possible disciplinary or enforcement~~
12 ~~action.~~

13 Section 3. Article IV of the San Francisco Campaign and Governmental Conduct Code
14 is hereby amended by amending Section 4.110 to read as follows:

15 SEC. 4.110. DEFINITIONS. For purposes of this Chapter, the following words and
16 phrases shall have the following meanings:

17 (a) The term "City" means the City and County of San Francisco, its departments,
18 commissions and boards.

19 (b) The term "complainant's department" includes the complainant's supervisor, the
20 executive director or highest ranking officer in the complainant's department, and the board or
21 commission overseeing the complainant's department.

22 (c) ~~(b)~~ The term "preliminary investigation" shall be limited to, but need not include:
23 review of the complaint and any documentary evidence provided with the complaint; interview
24 of the complainant; interview of the respondent, counsel to respondent, and any witnesses
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1 who voluntarily agree to be interviewed for this purpose; review of any relevant public
2 documents and documents provided voluntarily to the Commission.

3 Section 4. Article IV of the San Francisco Campaign and Governmental Conduct Code
4 is hereby amended by amending Section 4.115 to read as follows:

5 SEC. 4.115. PROTECTION OF WHISTLEBLOWERS.

6 (a) ~~INTIMIDATION AND~~ RETALIATION PROHIBITED. No City officer or employee
7 may terminate, demote, suspend or take other similar adverse employment action ~~intimidate, threaten,~~
8 ~~coerce, or interfere with any individual because that individual has filed a complaint with, or is~~
9 ~~participating in or cooperating with an investigation or proceeding of, the Ethics Commission. No City~~
10 ~~officer or employee may discipline or otherwise retaliate~~ against any City officer, or employee ~~or~~
11 ~~applicant for City employment~~ because the officer, or employee, ~~or applicant~~ has in good faith
12 filed a complaint with the Ethics Commission, or a written complaint with the complainant's
13 department, alleging that a City officer or employee engaged in improper government activity by:
14 violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws,
15 regulations or rules; violating the California Penal Code by misusing City resources; creating a
16 specified and substantial danger to public health or safety by failing to perform duties required by the
17 officer or employee's City position; or abusing his or her City position to advance a private interest, or
18 ~~participated~~ or cooperated with an investigation of such complaint. ~~or other proceeding of the~~
19 ~~Ethics Commission.~~

20 (b) COMPLAINTS OF ~~INTIMIDATION OR~~ RETALIATION FOR HAVING FILED A
21 COMPLAINT ALLEGING IMPROPER GOVERNMENT ACTIVITY.

22 (i) Administrative Complaints. Any City officer or employee, or former City officer or
23 employee, individual who believes he or she has been the subject of ~~intimidation or~~ retaliation in
24 violation of subsection (a) of this Section may file a complaint with the Ethics Commission.
25 The complaint must be filed no later than two years after the date of the retaliation ~~the facts~~

1 ~~forming the basis for the complaint were discovered or reasonably should have been discovered by the~~
2 ~~complainant.~~

3 The Ethics Commission shall investigate complaints of violations of subsection (a) of
4 this Section pursuant to the procedures specified in San Francisco Charter Section C3.699-13
5 and the regulations adopted thereunder. The Ethics Commission may decline to investigate
6 complaints alleging violations of subsection (a) if it determines that the same or similar allegations are
7 pending with or have been finally resolved by another administrative or judicial body.

8 Nothing in this subsection shall preclude the Ethics Commission from referring any matter to
9 any other City department, commission, board, officer or employee, or to other government
10 agencies for investigation and possible disciplinary or enforcement action. The Ethics
11 Commission may refer matters to the Department of Human Resources with a recommendation
12 concerning reinstatement, restitution and discipline. The Ethics Commission may require that any City
13 department, commission, board, officer or employee report to the Ethics Commission on the referred
14 matter.

15 (ii) Civil Complaints. Any City officer or employee who believes he or she has been
16 the subject of ~~intimidation or~~ retaliation in violation of subsection (a) of this Section may bring a
17 civil action against the City officer or employee who committed the violation. Such action
18 must be filed no later than two years after the date of the retaliation ~~the facts forming the basis for~~
19 ~~the complaint were discovered or reasonably should have been discovered by the complainant.~~

20 (iii) Burden of Establishing Retaliation. In order to establish retaliation under this Section, a
21 complainant must demonstrate by a preponderance of the evidence that the complainant's engagement
22 in activity protected under subsection (a) was a substantial motivating factor for the adverse
23 employment action. The employer may rebut this claim if it demonstrates by a preponderance of the
24 evidence that it would have taken the same employment action irrespective of the complainant's
25 participation in protected activity.

1 (c) PENALTIES.

2 (i) Charter Penalties. Any ~~individual~~ City officer or employee who violates subsection (a)
3 of this Section may be subject to administrative penalties pursuant to Charter Section C3.699-
4 13.

5 (ii) Discipline by Appointing Authority. Any City officer or employee who violates
6 subsection (a) of this Section shall be subject to disciplinary action up to and including
7 dismissal by his or her appointing authority. If no disciplinary action is taken by the appointing
8 authority, the Ethics Commission may refer the matter to the Civil Service Commission for
9 action pursuant to Charter Section A8.341.

10 (iii) Civil Penalties. Any City officer or employee who violates subsection (a) of this
11 Section may be personally liable in a civil action authorized under subsection (b)(ii) of this
12 Section for a civil penalty not to exceed \$5,000.

13 (d) RESERVATION OF AUTHORITY.

14 (i) Civil Service Commission. Nothing in this Section shall interfere with the powers
15 granted to the Civil Service Commission by the San Francisco Charter.

16 (ii) Appointing Authority. Nothing in this Section shall interfere with the power of an
17 appointing officer, manager, or supervisor to take action with respect to any City officer, or
18 employee ~~or applicant for City employment~~, provided that the appointing officer, manager, or
19 supervisor reasonably believes that such action is justified on facts separate and apart from
20 the fact that the officer, or employee ~~or applicant~~ filed a complaint with, or ~~participated in or~~

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1 cooperated with, an Ethics Commission investigation ~~or proceeding of such complaint; or filed a~~
2 complaint with or provided information to the complainant's department.

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4 APPROVED AS TO FORM:
5 LOUISE H. RENNE, City Attorney

6 By: _____
7 JULIA A. MOLL
8 Deputy City Attorney

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