

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
LeeAnn Pelham, Executive Director, Ethics Commission
George Gascón, District Attorney, Office of the District Attorney
Jon Givner, Deputy City Attorney, Office of the City Attorney
Micki Callahan, Director, Department of Human Resources

FROM:  Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: April 10, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Breed on April 3, 2018:

File No. 180317

Ordinance amending the Campaign and Governmental Conduct Code to provide additional retaliation protections for whistleblowers, establish retaliation protections for City contractors, increase the remedies available for whistleblowers who have suffered retaliation, and establish greater confidentiality protections for whistleblowers' identities.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Todd Rydstrom, Office of the Controller
Kyle Kundert, Ethics Commission
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney
Susan Gard, Department of Human Resources
Carol Isen, Department of Human Resources

1 [Campaign and Governmental Conduct Code - Expanding Whistleblower Protections]

2
3 **Ordinance amending the Campaign and Governmental Conduct Code to provide**
4 **additional retaliation protections for whistleblowers, establish retaliation protections**
5 **for City contractors, increase the remedies available for whistleblowers who have**
6 **suffered retaliation, and establish greater confidentiality protections for**
7 **whistleblowers' identities.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
17 revising Sections 4.100, 4.105, 4.107, 4.110, 4.115, and 4.120, and adding a new Section
18 4.117, to read as follows:

19 **SEC. 4.100. FINDINGS.**

20 The City and County of San Francisco ("City") has a paramount interest in protecting
21 the integrity of its government institutions. To further this interest, individuals should be
22 encouraged to report ~~to the City's Ethics Commission, Controller, District Attorney, City Attorney~~
23 ~~and the complainant's department~~ possible violations of laws, regulations, and rules governing
24 the conduct of City officers and employees, City contractors, and employees of City contractors.

25 This Chapter 1 fulfills the Charter's requirements for two City programs relating to
whistleblowers, as required by Charter Appendix Section F1.107. First, as required by the Charter, the
Office of the Controller has authority to receive and investigate whistleblower complaints concerning

1 deficiencies in the quality and delivery of City government services, wasteful and inefficient City
2 government practices, misuse of City funds, and improper activities by City officers, employees, and
3 contractors.

4 Second, as required by the Charter, this ordinance protects the confidentiality of
5 whistleblowers, and protects City officers and employees from retaliation for filing whistleblower
6 complaints or providing assistance with the investigation of such complaints. As set forth in this
7 Chapter 1, the Ethics Commission has primary responsibility for ensuring such protections.

8 ~~This Chapter protects all City officers and employees from retaliation for filing a complaint~~
9 ~~with, or providing information to, the Ethics Commission, Controller, District Attorney, City Attorney~~
10 ~~or complainant's department about improper government activity by City officers and employees.~~

11 ~~This Chapter ensures that complaints that do not allege a violation of law over which the Ethics~~
12 ~~Commission or Controller has jurisdiction are directed to the appropriate agency for investigation and~~
13 ~~possible disciplinary or enforcement action.~~

14 ~~Finally, this Chapter implements Charter Appendix Section F1.107. Section F1.107 directs the~~
15 ~~Controller, as City Services Auditor, to administer a whistleblower program and investigate reports of~~
16 ~~complaints concerning the misuse of City funds, improper activities by City officers and employees,~~
17 ~~deficiencies in the quality and delivery of government services, and wasteful and inefficient City~~
18 ~~government practices.~~

19 **SEC. 4.105. COMPLAINTS ~~OF IMPROPER GOVERNMENT ACTIVITY;~~**
20 **INVESTIGATION PROCEDURES; REFERRAL TO OTHER AGENCIES.**

21 (a) COMPLAINTS. Any person may file a complaint for investigation with the Office of
22 the Controller's Whistleblower Program, Ethics Commission, Controller, District Attorney, or City
23 Attorney, or a written complaint with the complainant's department alleging that a City officer or
24 employee has engaged in improper government activity, misused City funds, caused deficiencies
25 in the quality and delivery of government services or engaged in wasteful and inefficient government

1 practices, or that a City contractor or employee of a City contractor has engaged in unlawful activity in
2 connection with a City contract. by: violating local campaign finance, lobbying, conflicts of interest or
3 governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City
4 resources; creating a specified and substantial danger to public health or safety by failing to perform
5 duties required by the officer or employee's City position; or abusing his or her City position to
6 advance a private interest.

7 (b) ETHICS COMMISSION COMPLAINT PROCEDURES. The Ethics Commission
8 shall investigate complaints filed under this Section 4.105 that allege contain potential violations
9 of local campaign finance, lobbying, conflicts of interest, and governmental ethics laws
10 pursuant to the procedures specified in Charter Section C3.699-13 and the regulations
11 adopted thereunder. Nothing in this subsection (b) shall preclude the Ethics Commission from
12 referring any matter to any other City department, commission, board, officer, or employee or
13 to other government agencies for investigation and possible disciplinary or enforcement
14 action. The Ethics Commission may require that any City department, commission, board,
15 officer, or employee report to the Ethics Commission on the referred matter.

16 (c) REFERRAL. The Ethics Commission shall refer complaints that do not allege a
17 violation of law, regulation or rule that is within the Ethics Commission's jurisdiction to the
18 appropriate agency for investigation and possible disciplinary or enforcement action. The
19 Commission may conduct preliminary investigations into such complaints to determine
20 whether the complaint contains sufficient information to warrant referral. The Ethics
21 Commission may require that any City department, commission, board, officer or employee to
22 provide a written report regarding the department's investigation and any action that the department
23 has taken in response to the Ethics Commission's referral within a time-frame that the Ethics
24 Commission shall specify. report to the Ethics Commission on the referred matter.
25

1 **SEC. 4.107. COMPLAINTS BY CITIZENS AND EMPLOYEES; WHISTLEBLOWER**
2 **PROGRAM.**

3 (a) WHISTLEBLOWER PROGRAM. The Controller shall administer and publicize a
4 whistleblower and citizen complaint program for citizens and employees to report the misuse
5 of City funds, improper *government* activities by City officers and employees, deficiencies in the
6 quality and delivery of government services, and wasteful and inefficient City government
7 practices. *Subject to subsection (b),* ~~the~~ Controller shall investigate and otherwise attempt to
8 resolve complaints reported to the Whistleblower Program. The Controller shall administer a
9 hotline telephone number and website and publicize the hotline and website through press
10 releases, public advertising, and communications to City employees.

11 (b) REFERRAL OF CERTAIN COMPLAINTS. The Controller shall refer the following
12 complaints as set forth in this *subSection (b)*:

13 ~~(i)~~ *(1)* Those which another City agency is required by federal, state, or local law
14 to adjudicate: To that agency;

15 ~~(ii)~~ *(2)* Those which may be resolved through a grievance mechanism
16 established by collective bargaining agreement or contract: To the official or agency
17 designated in the agreement or contract;

18 ~~(iii)~~ *(3)* Those which involve allegations of conduct which may constitute a
19 violation of criminal law: To the District Attorney or other appropriate law enforcement
20 agency;

21 ~~(iv)~~ *(4)* Those which are subject to an existing, ongoing investigation by the
22 District Attorney, City Attorney, or Ethics Commission, where the applicable official or
23 Commission states in writing that investigation by the Controller would substantially impede or
24 delay his, her, or its own investigation of the matter: To the investigating office; and
25

1 (4) ~~(5)~~ Those which allege conduct that may constitute a violation of local
2 campaign finance, lobbying, conflict of interest, or governmental ethics laws, regulations, or rules:
3 ~~To~~ the Ethics Commission and the City Attorney.

4 Where the conduct that is the subject of the complaint may violate criminal law
5 and any civil or administrative law, statute, ordinance, or regulation, the Controller may take
6 action on the noncriminal aspects of the matter under this Section 4.107 even if a referral has
7 been made to another agency under this subSection (b).

8 If a complaint is referred under this subSection (b), the Controller shall inform
9 the complainant of the appropriate procedure for the resolution of the complaint.

10 (c) TRACKING AND INVESTIGATION. The Controller shall receive, track, and
11 investigate complaints made or referred to the Whistleblower Program. The investigation may
12 include all steps that the Controller deems appropriate, including the review of the complaint
13 and any documentary or other evidence provided with it, the gathering of any other relevant
14 documents from any City department or other source, and interviews of the complainant and
15 other persons with relevant information.

16 (d) INFORMATION PROVIDED UNDER PENALTY OF PERJURY. In those instances
17 in which the Controller deems it appropriate, the Controller may require that persons making
18 complaints or providing information swear to the truth of their statements by taking an oath
19 administered by the Controller, or an agent of the Controller, or through written declarations
20 made under penalty of perjury under the laws of the State of California.

21 (e) REFERRAL AND RECOMMENDATION BY CONTROLLER. The Controller may
22 refer the complaint to a City department for investigation, either before conducting an initial
23 investigation or after doing so, and may recommend that a City department take specific
24 action based on the Controller's initial investigation. Within 60 days of receiving a complaint
25 for investigation or a recommendation by the Controller for specific action, or such other time

1 as the Controller shall specify, the City department shall report to the Controller in writing the
2 results of the department's investigation and any action that the department has taken in
3 response to a recommendation by the Controller that the department take specific action.

4 (f) REPORT BY DEPARTMENT AND FURTHER ACTION BY CONTROLLER. If the
5 Controller has recommended that a City department take disciplinary or other corrective
6 action that the department has declined to take, the department shall report to the Controller
7 its reasons for failing to do so within the ~~timeframe~~ time frame that the Controller specifies for
8 reporting on its investigation of the complaint. If the Controller determines that the
9 department's reasons are inadequate and that further investigation may be appropriate, the
10 Controller may refer the matter to the Mayor, City Attorney, or District Attorney, or to any
11 officer or agency that has jurisdiction over the matter.

12 (g) RESPONSIBILITY OF DEPARTMENTS. The department head shall be
13 responsible for compliance by his or her department with these duties. If department staff fail
14 to comply with the duties to investigate complaints referred by the Controller and to make the
15 reports required by this Section 4.107, the Controller shall notify the department head. If the
16 department head fails to take action to obtain the department's compliance with these duties,
17 the Controller may refer the matter to the Mayor, City Attorney, or District Attorney, or to any
18 officer or agency that has jurisdiction over the matter.

19 **SEC. 4.110. DEFINITIONS.**

20 For purposes of this Chapter I, the following words and phrases shall have the
21 following meanings:

22 ~~(a)~~ The term "City" or "City agency" shall means the City and County of San Francisco,
23 its departments, commissions, task forces, committees, and boards.

1 ~~(b)~~ The term "eComplainant's department" includes the complainant's supervisor, the
2 executive director or highest ranking officer in the complainant's department, and the board or
3 commission overseeing the complainant's department.

4 "Deficiencies in the quality and delivery of government services" shall mean the failure to
5 perform a service, when performance is required under any law, regulation or policy, or under a City
6 contract or grant.

7 "Improper government activity" shall mean violation of any federal, state, or local law,
8 regulation, or rule, including but not limited to laws, regulations, or rules governing campaign finance,
9 conflicts of interest, or governmental ethics laws; or action which creates a danger to public health or
10 safety by the failure of City officers or employees to perform duties required by their positions.

11 "Improper government activity" does not include employment actions for which other remedies exist.

12 "Misuse of City funds" shall mean any use of City funds for purposes outside of those directed
13 by the City.

14 ~~(e)~~ The term "pPreliminary investigation" shall be limited to, but need not include all of
15 the following: review of the complaint and any documentary evidence provided with the
16 complaint; interview of the complainant; interview of the respondent, counsel to respondent
17 and any witnesses who voluntarily agree to be interviewed for this purpose; review of any
18 relevant public documents and documents provided voluntarily to the Commission.

19 "Supervisor" shall mean any individual having the authority, on behalf of the City, to hire,
20 transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees, or the
21 responsibility to routinely direct them, to adjust their grievances, or to effectively recommend such
22 action, if, in connection with the foregoing, the exercise of that authority is not merely routine or
23 clerical, but requires the use of independent judgment.

24 "Unlawful activity" shall mean violations of any federal, state or local law, regulation or rule
25 including but not limited to those laws, regulations or rules governing campaign finance, conflicts of

1 interest or governmental ethics laws; or actions which create a danger to public health or safety by the
2 failure of City officers or employees to perform duties imposed by a City contract.

3 “Wasteful and inefficient City government practices” shall mean the expenditure of City funds
4 that could be eliminated without harming public health or safety, or reducing the quality of government
5 services.

6 **SEC. 4.115. PROTECTION OF WHISTLEBLOWERS - CITY EMPLOYEES.**

7 (a) RETALIATION PROHIBITED. No City officer or employee may terminate, demote,
8 suspend, or take other similar adverse employment action against any City officer or
9 employee because the officer or employee has in good faith:

10 ~~(i) (1) filed a complaint as set forth in Section 4.105(a); with the Ethics Commission,~~
11 ~~Controller, District Attorney or City Attorney, or a written complaint with the complainant's~~
12 ~~department, alleging that a City officer or employee engaged in improper government activity by:~~
13 ~~violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws;~~
14 ~~regulations or rules; violating the California Penal Code by misusing City resources; creating a~~
15 ~~specified and substantial danger to public health or safety by failing to perform duties required by the~~
16 ~~officer or employee's City position; or abusing his or her City position to advance a private interest, (ii)~~
17 ~~filed a complaint with the Controller's Whistleblower Program, or~~

18 ~~(2) attempted to file a complaint through the procedures set forth in Section 4.105(a)~~
19 ~~but, in good faith, did not file the complaint with the appropriate City department or official; or~~

20 ~~(iii) (3) provided any information in connection with or otherwise cooperated with~~
21 ~~any investigation conducted under this Chapter 1.~~

22 (b) COMPLAINTS OF RETALIATION ~~FOR HAVING FILED A COMPLAINT ALLEGING~~
23 ~~IMPROPER GOVERNMENT ACTIVITY.~~

24 ~~(i) (1) **Administrative Complaints.** Any city City officer or employee, or former~~
25 ~~city City officer or employee, who believes he or she has been the subject of retaliation in~~

1 violation of §subsection (a) of this Section 4.115 may file a complaint with the Ethics
2 Commission. The complaint must be filed no later than two years after the date of the alleged
3 retaliation.

4 The Ethics Commission shall investigate complaints of violations of §subsection
5 (a) of this Section 4.115 pursuant to the procedures specified in ~~San Francisco~~ Charter Section
6 C3.699-13 and the regulations adopted thereunder. The Ethics Commission may decline to
7 investigate complaints alleging violations of §subsection (a) if it determines that the same or
8 similar allegations are pending with or have been finally resolved by another administrative or
9 judicial body. Nothing in this §subsection (b)(1) shall preclude the Ethics Commission from
10 referring any matter to any other City department, commission, board, officer, or employee, or
11 to other government agencies for investigation and possible disciplinary or enforcement
12 action. The Ethics Commission may refer matters to the Department of Human Resources
13 with a recommendation. The Ethics Commission may require ~~that~~ any City department,
14 ~~commission, board, officer or employee~~ to provide a written report regarding the department's
15 investigation and any action that the department has taken in response to the Ethics Commission's
16 referral within a time frame that the Ethics Commission shall specify. ~~report to the Ethics Commission~~
17 ~~on the referred matter.~~

18 ~~(ii)~~ (2) **Civil Complaints.** Any City officer or employee who believes he or she
19 has been the subject of retaliation in violation of §subsection (a) of this Section 4.115 may
20 bring a civil action against the City officer or employee who committed the violation. Such
21 action must be filed no later than two years after the date of the retaliation.

22 ~~(iii)~~ (3) **Burden of Establishing Retaliation.** In order to establish under this
23 Section 4.115 that retaliation occurred under this Section, a complainant in a civil action must
24 demonstrate, or the Ethics Commission in an administrative proceeding must determine, by a
25 preponderance of the evidence, that the complainant's engagement in activity protected under

1 Subsection (a) was a substantial motivating factor for the adverse employment action. The
2 ~~employer~~ respondent may rebut this claim if ~~it~~ the respondent demonstrates by a preponderance
3 of the evidence that he, she, or it would have taken the same employment action irrespective of
4 the complainant's participation in protected activity.

5 (4) Duty to Assist with Retaliation Complaints. Supervisors who receive a complaint
6 alleging retaliation under this Chapter 1 must keep the complaint confidential and immediately assist
7 the complainant by referring the complainant to the Ethics Commission and documenting the referral
8 in writing. Documentation must include the date and time of the referral and that the complaint was
9 about retaliation. Supervisors who fail to comply with this subsection (b) are subject to the penalties
10 and remedies set forth in subsection (c).

11 (c) PENALTIES AND REMEDIES.

12 ~~(i)~~ (1) ~~Charter~~ Administrative Penalties. Any City officer or employee who
13 violates Subsection (a) of this Section 4.115 may be subject to administrative penalties
14 pursuant to Charter Section C3.699-13.

15 (2) Redress for Retaliatory Employment Action. Following an administrative hearing
16 and after making a finding that an adverse employment action has been taken for purposes of
17 retaliation, the Ethics Commission may, subject to the Charter's budgetary and civil service provisions,
18 recommend the cancellation of the retaliatory termination, demotion, suspension or other adverse
19 employment action.

20 ~~(ii)~~ (3) **Discipline by Appointing Authority**. Any City officer or employee who
21 violates Subsections (a) or (b)(4) of this Section 4.115 shall be subject to disciplinary action up
22 to and including dismissal by his or her appointing authority. If no disciplinary action is taken
23 by the appointing authority, the Ethics Commission may refer the matter to the Civil Service
24 Commission for action pursuant to Charter Section A8.341.

1 ~~(iii)~~ (4) Civil Penalties. Any City officer or employee who violates ~~S~~subsection
2 (a) of this Section 4.115 may be personally liable in a civil action authorized under ~~Subsection~~
3 ~~(b)(ii)~~ subsection (b)(2) of this Section for a civil penalty not to exceed ~~\$5,000~~ \$10,000.

4 (d) RESERVATION OF AUTHORITY.

5 ~~(i)~~ (1) Civil Service Commission. Nothing in this Section 4.115 shall interfere
6 with the powers granted to the Civil Service Commission by the *San Francisco* Charter.

7 ~~(ii)~~ (2) Appointing Authority. Nothing in this Section 4.115 shall interfere with
8 the power of an appointing officer, manager, or supervisor to take action with respect to any
9 City officer or employee, provided that the appointing officer, manager, or supervisor
10 reasonably believes that such action is justified on facts separate and apart from the fact that
11 the officer or employee filed a complaint as set forth in Section 4.105(a), attempted to file such a
12 complaint in good faith, or cooperated with an investigation of such a complaint. ~~filed a complaint~~
13 ~~with, or cooperated with, an Ethics Commission investigation of such complaint; or filed a complaint~~
14 ~~with or provided information to the Controller, District Attorney, City Attorney or the complainant's~~
15 ~~department.~~

16 (e) NOTICE OF WHISTLEBLOWER PROTECTIONS. The Controller shall prepare,
17 and each City department shall post a notice of whistleblower protections. The notice shall be
18 posted in a location that is conspicuous and accessible to all employees.

19 (f) WHISTLEBLOWER PROTECTION AWARENESS TRAINING.

20 (1) The Controller, in collaboration with the Ethics Commission, shall prepare, and all
21 City departments shall distribute, materials to publicize and promote whistleblower protections as part
22 of each department's new hire training programs.

23 (2) The Ethics Commission, in collaboration with the Controller and Department of
24 Human Resources, shall prepare, and all City departments shall distribute, materials to publicize and
25 promote supervisors' responsibilities under this Chapter 1. In addition, the Department of Human

1 Resources, in collaboration with the Controller and Ethics Commission, shall prepare web-based
2 training for supervisors regarding their responsibilities under this Chapter 1, which shall be
3 implemented by January 1, 2019. This training must be provided to all City supervisors annually by
4 April of each year thereafter.

5 **SEC. 4.117. PROTECTION OF WHISTLEBLOWERS - CITY CONTRACTORS.**

6 (a) RETALIATION PROHIBITED. No City officer or employee may take steps to terminate a
7 contract with a City contractor; refuse to use a City contractor for contracted services; request that a
8 City contractor terminate, demote, or suspend one of its employees; or take other similar adverse
9 action against any City contractor or employee of a City contractor because the contractor or the
10 contractor's employee:

11 (1) filed a complaint with any supervisor within a City agency alleging that a City
12 officer or employee engaged in improper government activity, misused City funds, caused deficiencies
13 in the quality and delivery of government services, or engaged in wasteful and inefficient government
14 practices;

15 (2) filed a complaint with any supervisor within a City agency alleging that another
16 City contractor, or employee of another City contractor, engaged in unlawful activity, misused City
17 funds, caused deficiencies in the quality and delivery of government services or engaged in wasteful
18 and inefficient government practices; or

19 (3) provided any information in connection with or otherwise cooperated with any
20 investigation conducted under this Chapter 1.

21 (b) COMPLAINTS OF RETALIATION.

22 (1) Administrative Complaints. Any City contractor or employee of a City contractor,
23 who believes it, he, or she has been the subject of retaliation in violation of subsection (a) of this
24 Section 4.117 may file a complaint with the Ethics Commission. The complaint must be filed no later
25 than two years after the date of the alleged retaliation.

1 The Ethics Commission shall investigate complaints of violations of subsection (a) of
2 this Section 4.117 pursuant to the procedures specified in Charter Section C3.699-13 and the
3 regulations adopted thereunder. The Ethics Commission may decline to investigate complaints
4 alleging violations of subsection (a) if it determines that the same or similar allegations are pending
5 with or have been finally resolved by another administrative or judicial body. Nothing in this
6 subsection shall preclude the Ethics Commission from referring any matter to any other City
7 department, commission, board, officer, or employee, or to other government agencies for investigation
8 and possible disciplinary or enforcement action. The Ethics Commission may refer matters to the
9 Department of Human Resources with a recommendation. The Ethics Commission may require any
10 City department to provide a written report regarding the department's investigation and any action
11 that the department has taken in response to the Ethics Commission's referral, within a time frame that
12 the Ethics Commission shall specify.

13 (2) **Burden of Establishing Retaliation.** In order to establish that retaliation occurred
14 under this Section 4.117, the Ethics Commission in an administrative proceeding must determine, by a
15 preponderance of the evidence, that the complainant's engagement in activity protected under
16 subsection (a) was a substantial motivating factor for the adverse action. The respondent may rebut
17 this claim if it demonstrates by a preponderance of the evidence that it would have taken the same
18 adverse action irrespective of the complainant's participation in protected activity.

19 (c) **PENALTIES AND REMEDIES.**

20 (1) **Administrative Penalties.** Any City officer or employee who violates subsection (a)
21 of this Section 4.117 may be subject to administrative penalties pursuant to Charter Section C3.699-13.

22 (2) **Redress for Retaliatory Adverse Action.** Following an administrative hearing and
23 after making a finding that an adverse action has been taken for purposes of retaliation, the Ethics
24 Commission may, subject to the Charter's budgetary and contracting provisions, order the cancellation
25 of retaliatory adverse action taken against a City contractor or employee of a City contractor.

1 (3) Discipline by Appointing Authority. Any City officer or employee who violates
2 subsection (a) of this Section 4.117 shall be subject to disciplinary action up to and including dismissal
3 by his or her appointing authority. If no disciplinary action is taken by the appointing authority, the
4 Ethics Commission may refer the matter to the Civil Service Commission for action pursuant to Charter
5 Section A8.341.

6 (d) NOTICE OF WHISTLEBLOWER PROTECTIONS. The Controller shall prepare, and each
7 City department shall post, a notice of the whistleblower protections established by this Section 4.117.
8 City contractors shall distribute the notice of protections to all of their employees.

9 **SEC. 4.120. CONFIDENTIALITY.**

10 (a) WHISTLEBLOWER IDENTITY. City officers and employees shall treat as confidential
11 the identity of any person who files a complaint as set forth in Section 4.105(a). A complainant may
12 voluntarily disclose his or her identity. Any individual who files a complaint under Section 4.105 of
13 this Chapter may elect to have his or her identity kept confidential as provided by Charter Section
14 C3.699-13(a). Such election must be made at the time the complaint is filed.

15 (b) COMPLAINTS AND INVESTIGATIONS. City officers and employees shall treat as
16 confidential complaints filed under Sections 4.105, 4.115, and 4.117, and related information,
17 including but not limited to materials gathered and prepared in the course of investigating such
18 complaints, and deliberations regarding such complaints. The Ethics Commission shall treat as
19 confidential complaints made under Section 4.105 of this Chapter, and related information, including
20 but not limited to materials gathered and prepared in the course of investigation of such complaints,
21 and deliberations regarding such complaints, as provided by Charter Section C3.699-13(a).

22 (c) PENALTIES. Except as provided in subsection (d), violations of subsections (a) and (b)
23 may be subject to the administrative proceedings and penalties set forth in Charter Section C3.699-13,
24 in addition to disciplinary action up to and including dismissal by his or her appointing authority.

25 (e) (d) EXCEPTIONS.

1 ~~(i)~~ (1) Conduct of Investigations. Nothing in this Section 4.120 shall preclude the
2 Controller's Office, Ethics Commission, District Attorney, and City Attorney from disclosing the
3 identity of an individual or other information to the extent necessary to conduct its
4 investigation.

5 (2) Legal Proceedings. Nothing in this Section 4.120 shall preclude City officers and
6 employees from disclosing the identity of an individual or other information relating to a complaint to
7 the extent required by the rules governing an administrative or court proceeding.

8 ~~(ii)~~ (3) Referrals. Nothing in this Section 4.120 shall preclude the Ethics
9 Commission from referring any matter to any other City department, commission, board,
10 officer, or employee, or to other government agencies, for investigation and possible
11 disciplinary or enforcement action.

12 Section 2. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the "Note" that appears under
21 the official title of the ordinance.

22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 
25 ANDREW SHEN, Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Expanding Whistleblower Protections]

Ordinance amending the Campaign and Governmental Conduct Code to provide additional retaliation protections for whistleblowers, establish retaliation protections for City contractors, increase the remedies available for whistleblowers who have suffered retaliation, and establish greater confidentiality protections for whistleblowers' identities.

Existing Law

The City's Whistleblower Protection Ordinance ("WPO"), Article IV of the S.F. Campaign & Gov'tal Conduct Code ("C&GC Code"), establishes a framework for the filing of whistleblower complaints and seeks to protect whistleblowers from retaliatory employment actions.

1. Protection of whistleblowers

The WPO prohibits City employees and officers from retaliating – *i.e.*, taking adverse employment action such as termination, demotion, etc. – against whistleblowers who have filed a complaint alleging improper government activity. C&GC Code § 4.115(a).

2. Penalties and remedies

City employees and officers who unlawfully retaliate against whistleblowers are subject to administrative or civil penalties of up to \$5,000 per violation. They are also subject to discipline, up to and including dismissal by his or her appointing authority. *Id.* § 4.115(c).

3. Confidentiality of whistleblowers' identities

Whistleblowers may elect to keep their identities confidential after filing a complaint of improper government activity. *Id.* § 4.120(a). The WPO does not directly provide for any penalties or remedies for unlawful disclosure of a whistleblower's identity; but such disclosure may be actionable pursuant to Campaign and Governmental Conduct Code 3.228.

Amendments to Current Law

1. Protection of whistleblowers

The proposed amendments would protect whistleblowers if they attempted to file a whistleblower complaint but, in good faith, did not file the complaint with the appropriate City department or official. The amendments would also require supervisors to assist their subordinates with the filing of whistleblower retaliation complaints with the Ethics Commission.

The amendments would also protect City contractors and their employees from whistleblower retaliation.

2. Penalties and remedies

The amendments would increase the civil penalties available for whistleblower retaliation from \$5,000 to \$10,000. The amendments would also allow the Ethics Commission to pursue the cancellation of or provide redress for any retaliation against a whistleblower, subject to the Charter's budgetary and employment provisions.

3. Confidentiality of whistleblowers' identities

The amendments provide explicit penalties for disclosure of a whistleblower's confidential identity: any City officer or employee who discloses the identity of any complainant with the knowledge that the complainant elected to keep his or her identity confidential would be subject to administrative penalties of up to \$5,000 per violation.

Background Information

In June 2015, the San Francisco Civil Grand Jury issued a report entitled, "San Francisco's Whistleblower Protection Ordinance Is In Need of Change," addressing potential issues with the WPO. In response to this Civil Grand Jury report, the Ethics Commission developed the amendments proposed by this ordinance.

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