

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller

FROM: Victor Young, Assistant Clerk

A handwritten signature in cursive script that reads "Victor Young".

DATE: October 26, 2022

SUBJECT: LEGISLATION INTRODUCED

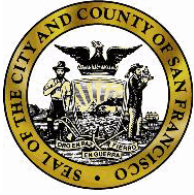
The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 221072

Ordinance amending the Campaign and Governmental Conduct Code to require the Controller's Whistleblower Program to report to the Board of Supervisors regarding the results of whistleblower investigations that substantiate wrongdoing by City department heads and elected officials.

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: victor.young@sfgov.org.

cc: Todd Rydstrom, Controller's Office



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 221072 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by Senior City Officers in Whistleblower Investigations **Date Introduced:** 10/18/2022

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Campaign and Governmental Conduct Code to require the Controller’s Whistleblower Program to report to the Board of Supervisors regarding the results of whistleblower investigations that substantiate wrongdoing by City department heads and elected officials.

Sponsors: Ronen; Peskin,
Walton and Chan

History of Legislative File 221072

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	10/18/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	11/17/2022	

1 [Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by
2 Senior City Officers in Whistleblower Investigations]

3 **Ordinance amending the Campaign and Governmental Conduct Code to require the**
4 **Controller’s Whistleblower Program to report to the Board of Supervisors regarding the**
5 **results of whistleblower investigations that substantiate wrongdoing by City**
6 **department heads and elected officials.**

7
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, 4.107, 4.110, and 4.120, to read as follows:

18 **SEC. 4.100. FINDINGS.**

19 The City and County of San Francisco (“City”) has a paramount interest in protecting
20 the integrity of its government institutions. To further this interest, individuals should be
21 encouraged to report possible violations of laws, regulations, and rules governing the conduct
22 of City officers and employees, City contractors, and employees of City contractors.

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

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

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

9 Third, consistent with the Charter responsibilities to maintain the confidentiality of
10 whistleblowers, this Chapter requires the Controller to report to the Board of Supervisors the results of
11 any investigation that concludes that a City department head or elected official engaged in misconduct,
12 as specified in this Chapter 1.

13
14 **SEC. 4.107. COMPLAINTS BY CITIZENS AND EMPLOYEES; WHISTLEBLOWER**
15 **PROGRAM.**

16 (a) WHISTLEBLOWER PROGRAM. The Controller shall administer and publicize a
17 whistleblower and citizen complaint program for citizens and employees to report the misuse
18 of City funds, improper government activities by City officers and employees, deficiencies in
19 the quality and delivery of government services, and wasteful and inefficient City government
20 practices. Subject to subsection (b), the Controller shall investigate and otherwise attempt to
21 resolve complaints reported to the Whistleblower Program. The Controller shall administer a
22 hotline telephone number and website and publicize the hotline and website through press
23 releases, public advertising, and communications to City employees.

24 (b) REFERRAL OF CERTAIN COMPLAINTS. The Controller shall refer the following
25 complaints as set forth in this subsection (b):

1 (1) Those which another City agency is required by federal, state, or local law to
2 adjudicate: To that agency;

3 (2) Those which may be resolved through a grievance mechanism established by
4 collective bargaining agreement or contract: To the official or agency designated in the
5 agreement or contract;

6 (3) Those which involve allegations of conduct which may constitute a violation of
7 criminal law: To the District Attorney or other appropriate law enforcement agency;

8 (4) Those which are subject to an existing, ongoing investigation by the District
9 Attorney, City Attorney, or Ethics Commission, where the applicable official or Commission
10 states in writing that investigation by the Controller would substantially impede or delay his,
11 her, or its own investigation of the matter: To the investigating office; and

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

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

19 If a complaint is referred under this subsection (b), the Controller shall inform the
20 complainant of the appropriate procedure for the resolution of the complaint.

21 Within 60 days of receiving a complaint for investigation under this subsection (b), or at any
22 other time as the Controller may specify, the agency receiving the complaint shall report to the
23 Controller in writing the results of the agency's investigation and any action that the agency has taken.

24 (c) TRACKING AND INVESTIGATION. The Controller shall receive, track, and
25 investigate complaints made or referred to the Whistleblower Program. The investigation may

1 include all steps that the Controller deems appropriate, including the review of the complaint
2 and any documentary or other evidence provided with it, the gathering of any other relevant
3 documents from any City department or other source, and interviews of the complainant and
4 other persons with relevant information.

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

10 (e) REFERRAL AND RECOMMENDATION BY CONTROLLER. In addition to
11 complaints referred to departments under subsection (b) of this Section 4.107, ~~the~~ Controller may
12 refer the complaint to a City department for investigation, either before conducting an initial
13 investigation or after doing so, and may recommend that a City department take specific
14 action based on the Controller's initial investigation. Within 60 days of receiving a complaint
15 for investigation or a recommendation by the Controller for specific action under this subsection
16 (e), or such other time as the Controller shall specify, the City department shall report to the
17 Controller in writing the results of the department's investigation and any action that the
18 department has taken in response to a recommendation by the Controller that the department
19 take specific action.

20 (f) REPORT BY DEPARTMENT AND FURTHER ACTION BY CONTROLLER. If the
21 Controller has recommended that a City department take disciplinary or other corrective
22 action that the department has declined to take, the department shall report to the Controller
23 its reasons for failing to do so within the time frame that the Controller specifies for reporting
24 on its investigation of the complaint. If the Controller determines that the department's
25 reasons are inadequate and that further investigation may be appropriate, the Controller may

1 refer the matter to the Mayor, City Attorney, or District Attorney, or to any officer or agency
2 that has jurisdiction over the matter.

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

10
11 **SEC. 4.110. DEFINITIONS.**

12 For purposes of this Chapter 1, the following words and phrases shall have the
13 following meanings:

14 "City" or "City agency" shall mean the City and County of San Francisco, its
15 departments, commissions, task forces, committees, and boards.

16 "Complainant's department" includes the complainant's supervisor, the executive
17 director or highest ranking officer in the complainant's department, and the board or
18 commission overseeing the complainant's department.

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

22 "Department head" shall mean any department head who is required to file a Statement of
23 Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

24 "Elected official" shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
25 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

1 “Improper government activity” shall mean violation of any federal, state, or local law,
2 regulation, or rule, including but not limited to laws, regulations, or rules governing campaign
3 finance, conflicts of interest, or governmental ethics laws; or action which creates a danger to
4 public health or safety by the failure of City officers or employees to perform duties required
5 by their positions. “Improper government activity” does not include employment actions for
6 which other remedies exist.

7 “Misuse of City funds” shall mean any use of City funds for purposes outside of those
8 directed by the City.

9 “Preliminary investigation” shall be limited to, but need not include all of the following:
10 review of the complaint and any documentary evidence provided with the complaint; interview
11 of the complainant; interview of the respondent, counsel to respondent and any witnesses
12 who voluntarily agree to *be* interviewed for this purpose; review of any relevant public
13 documents and documents provided voluntarily to the Commission.

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

19 “Unlawful activity” shall mean violations of any federal, state or local law, regulation or
20 rule including but not limited to those laws, regulations or rules governing campaign finance,
21 conflicts of interest or governmental ethics laws; or actions which create a danger to public
22 health or safety by the failure of City officers or employees to perform duties imposed by a
23 City contract.

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

4
5 **SEC. 4.120. CONFIDENTIALITY.**

6 (a) WHISTLEBLOWER IDENTITY. City officers and employees shall treat as
7 confidential the identity of any person who files a complaint as set forth in Section 4.105(a). A
8 complainant may voluntarily disclose his or her identity.

9 (b) COMPLAINTS AND INVESTIGATIONS. City officers and employees shall treat as
10 confidential complaints filed under Sections 4.105, 4.115, and 4.117, and related information,
11 including but not limited to materials gathered and prepared in the course of investigating
12 such complaints, and deliberations regarding such complaints.

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

17 (d) EXCEPTIONS.

18 (1) **Conduct of Investigations.** Nothing in this Section 4.120 shall preclude the
19 Controller’s Office, Ethics Commission, District Attorney, and City Attorney from disclosing the
20 identity of an individual or other information to the extent necessary to conduct its
21 investigation.

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

1 (3) **Referrals.** Nothing in this Section 4.120 shall preclude the Ethics
2 Commission or Controller from referring any matter to any other City department, commission,
3 board, officer, or employee, or to other government agencies, for investigation and possible
4 disciplinary or enforcement action.

5 (4) **Reporting on Certain Substantiated Complaints.** *To the extent feasible without*
6 *waiving attorney-client privilege or attorney work-product privilege, the Controller shall report to the*
7 *Board of Supervisors the results of any investigation that concludes that a Department head or Elected*
8 *official engaged in Improper government activity, Misuse of City funds, or Unlawful activity, or directly*
9 *caused Deficiencies in the quality and delivery of government services or Wasteful and inefficient City*
10 *government practices. Such report shall be prepared so as to protect the confidentiality of the identity*
11 *of any person who files a complaint or provides testimony, and it shall not include information that*
12 *alone or in combination with other information could be used to identify such complainant or witness.*

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

18
19 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
23
24
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ _____
7 JON GIVNER
8 Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by Senior City Officers in Whistleblower Investigations]

Ordinance amending the Campaign and Governmental Conduct Code to require the Controller's Whistleblower Program to report to the Board of Supervisors regarding the results of whistleblower investigations that substantiate wrongdoing by City department heads and elected officials.

Existing Law

The City Charter authorizes the Controller to operate a whistleblower program to receive and investigate complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City funds, and improper activities by City officers and employees. The Campaign and Governmental Conduct Code fleshes out these Charter authorities and responsibilities. When the Controller receives a whistleblower complaint, the Controller may investigate, taking all steps the Controller deems appropriate.

If another City agency (such as the City Attorney, District Attorney, or Department of Human resources) is required by law to handle a particular type of complaint, the Charter requires the Controller to refer the complaint to that agency. The Controller generally refers to these mandatory referrals as "Charter referrals." The Controller also sometimes refers other complaints to a City department for investigation, either after or without initial investigation. City departments that receive these non-Charter referrals are required to report to the Controller the results of their investigations and any actions the department has taken, all within 60 days of receiving a complaint for investigation or a recommendation for specific action.

The Administrative Code provides that the whistleblower program's investigations must remain confidential, with limited exceptions. But existing law does not address whether or under what circumstances the whistleblower program may release substantiated complaints regarding elected officials or department heads.

Amendments to Current Law

The proposed ordinance would require the Controller to report to the Board of Supervisors the result of any investigation where the Controller concludes that a department head or elected official engaged in improper or unlawful activities, misused City funds, directly caused deficiencies in the quality and delivery of government services, or directly caused wasteful and inefficient government practices. The report could not reveal the identity of any person who files a complaint or provides testimony, and could not include information protected by attorney-client privilege or attorney work product protections.

FILE NO. 221072

The proposed ordinance also would require departments that receive Charter referrals from the Controller's whistleblower program to report to the Controller in writing the results of the agency's investigation and any action that the agency has taken within 60 days after receiving the referral or in another timeframe requested by the Controller's Office.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning: "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Ronen

Subject:

Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by Senior City Officers in Whistleblower Investigations

The text is listed:

Ordinance amending the Campaign and Governmental Conduct Code to require the Controller's Whistleblower Program to report to the Board of Supervisors regarding the results of whistleblower investigations that substantiate wrongdoing by City department heads and elected officials.

Signature of Sponsoring Supervisor: /s/ Hillary Ronen

For Clerk's Use Only

From: [Lerma, Santiago \(BOS\)](#)
To: [Ronen, Hillary](#); [BOS Legislation, \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Walton, Shamann \(BOS\)](#); [Gee, Natalie \(BOS\)](#)
Subject: Ordinance requiring disclosure of substantiated whistleblower investigations
Date: Tuesday, October 18, 2022 3:40:10 PM
Attachments: [01630191.DOCX](#)
[01628834.DOCX](#)
[Introduction Form- Whistleblower legislation .docx](#)

Dear Clerk,

Please see attached legislation, legislative digest, and introduction form for the ordinance requiring disclosure of substantiated whistleblower complaints when department directors and elected officials are implicated.

/s/ Hillary Ronen

Please see the e-signature in place of the wet signature.

Santiago Lerma

From: [Givner, Jon \(CAT\)](#)
To: [Peskin, Aaron \(BOS\)](#); [Ronen, Hillary](#); [BOS Legislation, \(BOS\)](#); [Lerma, Santiago \(BOS\)](#)
Cc: [Mchugh, Eileen \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Walton, Shamann \(BOS\)](#); [Gee, Natalie \(BOS\)](#)
Subject: RE: Ordinance requiring disclosure of substantiated whistleblower investigations
Date: Tuesday, October 18, 2022 3:52:37 PM
Attachments: [image004.png](#)

Lisa, I approve this ordinance as to form.

Jon

Jon Givner (he/him)
Deputy City Attorney
Office of City Attorney David Chiu
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102
phone: (415) 554-4694 [Email preferred.]
www.sfcityattorney.org

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>
Sent: Tuesday, October 18, 2022 3:51 PM
To: Ronen, Hillary (BOS) <hillary.ronen@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Lerma, Santiago (BOS) <santiago.lerma@sfgov.org>; Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>
Cc: Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Subject: Re: Ordinance requiring disclosure of substantiated whistleblower investigations

Confirmed.

Aaron

From: Ronen, Hillary <hillary.ronen@sfgov.org>
Sent: Tuesday, October 18, 2022 3:50:31 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Lerma, Santiago (BOS) <santiago.lerma@sfgov.org>; GIVNER, JON (CAT) <Jon.Givner@sfcityatty.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>
Cc: Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Subject: RE: Ordinance requiring disclosure of substantiated whistleblower investigations

And please note Supervisor Peskin has cosponsored this legislation (he's copied here).

Hillary

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>

Sent: Tuesday, October 18, 2022 3:46 PM

To: Lerma, Santiago (BOS) <santiago.lerma@sfgov.org>; GIVNER, JON (CAT) <Jon.Givner@sfcityatty.org>

Cc: Ronen, Hillary <hillary.ronen@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Gee, Natalie (BOS) <natalie.gee@sfgov.org>

Subject: RE: Ordinance requiring disclosure of substantiated whistleblower investigations

Hello,

We are seeking the approval of Deputy City Attorney Jon Givner for use of his electronic signature and approval as to form. Kindly confirm that the attached ordinance is approved as to form, and the /s/ next to his name in the signature line of the ordinance has the same effect as his signature, by reply of this email.

Thank you.

Lisa Lew

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

From: Lerma, Santiago (BOS) <santiago.lerma@sfgov.org>

Sent: Tuesday, October 18, 2022 3:40 PM

To: Ronen, Hillary <hillary.ronen@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>;

Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Gee, Natalie (BOS) <natalie.gee@sfgov.org>

Subject: Ordinance requiring disclosure of substantiated whistleblower investigations

Dear Clerk,

Please see attached legislation, legislative digest, and introduction form for the ordinance requiring disclosure of substantiated whistleblower complaints when department directors and elected officials are implicated.

/s/ Hillary Ronen

Please see the e-signature in place of the wet signature.

Santiago Lerma

1 [Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by
2 Senior City Officers in Whistleblower Investigations]

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23 releases, public advertising, and communications to City employees.

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4 collective bargaining agreement or contract: To the official or agency designated in the
5 agreement or contract;

6 (3) Those which involve allegations of conduct which may constitute a violation of
7 criminal law: To the District Attorney or other appropriate law enforcement agency;

8 (4) Those which are subject to an existing, ongoing investigation by the District
9 Attorney, City Attorney, or Ethics Commission, where the applicable official or Commission
10 states in writing that investigation by the Controller would substantially impede or delay his,
11 her, or its own investigation of the matter: To the investigating office; and

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

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

19 If a complaint is referred under this subsection (b), the Controller shall inform the
20 complainant of the appropriate procedure for the resolution of the complaint.

21 Within 60 days of receiving a complaint for investigation under this subsection (b), or at any
22 other time as the Controller may specify, the agency receiving the complaint shall report to the
23 Controller in writing the results of the agency's investigation and any action that the agency has taken.

24 (c) TRACKING AND INVESTIGATION. The Controller shall receive, track, and
25 investigate complaints made or referred to the Whistleblower Program. The investigation may

1 include all steps that the Controller deems appropriate, including the review of the complaint
2 and any documentary or other evidence provided with it, the gathering of any other relevant
3 documents from any City department or other source, and interviews of the complainant and
4 other persons with relevant information.

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

10 (e) REFERRAL AND RECOMMENDATION BY CONTROLLER. In addition to
11 complaints referred to departments under subsection (b) of this Section 4.107, ~~T~~he Controller may
12 refer the complaint to a City department for investigation, either before conducting an initial
13 investigation or after doing so, and may recommend that a City department take specific
14 action based on the Controller's initial investigation. Within 60 days of receiving a complaint
15 for investigation or a recommendation by the Controller for specific action under this subsection
16 (e), or such other time as the Controller shall specify, the City department shall report to the
17 Controller in writing the results of the department's investigation and any action that the
18 department has taken in response to a recommendation by the Controller that the department
19 take specific action.

20 (f) REPORT BY DEPARTMENT AND FURTHER ACTION BY CONTROLLER. If the
21 Controller has recommended that a City department take disciplinary or other corrective
22 action that the department has declined to take, the department shall report to the Controller
23 its reasons for failing to do so within the time frame that the Controller specifies for reporting
24 on its investigation of the complaint. If the Controller determines that the department's
25 reasons are inadequate and that further investigation may be appropriate, the Controller may

1 refer the matter to the Mayor, City Attorney, or District Attorney, or to any officer or agency
2 that has jurisdiction over the matter.

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

10
11 **SEC. 4.110. DEFINITIONS.**

12 For purposes of this Chapter 1, the following words and phrases shall have the
13 following meanings:

14 "City" or "City agency" shall mean the City and County of San Francisco, its
15 departments, commissions, task forces, committees, and boards.

16 "Complainant's department" includes the complainant's supervisor, the executive
17 director or highest ranking officer in the complainant's department, and the board or
18 commission overseeing the complainant's department.

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

22 "Department head" shall mean any department head who is required to file a Statement of
23 Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

24 "Elected official" shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
25 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

1 “Improper government activity” shall mean violation of any federal, state, or local law,
2 regulation, or rule, including but not limited to laws, regulations, or rules governing campaign
3 finance, conflicts of interest, or governmental ethics laws; or action which creates a danger to
4 public health or safety by the failure of City officers or employees to perform duties required
5 by their positions. “Improper government activity” does not include employment actions for
6 which other remedies exist.

7 “Misuse of City funds” shall mean any use of City funds for purposes outside of those
8 directed by the City.

9 “Preliminary investigation” shall be limited to, but need not include all of the following:
10 review of the complaint and any documentary evidence provided with the complaint; interview
11 of the complainant; interview of the respondent, counsel to respondent and any witnesses
12 who voluntarily agree to *be* interviewed for this purpose; review of any relevant public
13 documents and documents provided voluntarily to the Commission.

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

19 “Unlawful activity” shall mean violations of any federal, state or local law, regulation or
20 rule including but not limited to those laws, regulations or rules governing campaign finance,
21 conflicts of interest or governmental ethics laws; or actions which create a danger to public
22 health or safety by the failure of City officers or employees to perform duties imposed by a
23 City contract.

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

4
5 **SEC. 4.120. CONFIDENTIALITY.**

6 (a) WHISTLEBLOWER IDENTITY. City officers and employees shall treat as
7 confidential the identity of any person who files a complaint as set forth in Section 4.105(a). A
8 complainant may voluntarily disclose his or her identity.

9 (b) COMPLAINTS AND INVESTIGATIONS. City officers and employees shall treat as
10 confidential complaints filed under Sections 4.105, 4.115, and 4.117, and related information,
11 including but not limited to materials gathered and prepared in the course of investigating
12 such complaints, and deliberations regarding such complaints.

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

17 (d) EXCEPTIONS.

18 (1) **Conduct of Investigations.** Nothing in this Section 4.120 shall preclude the
19 Controller’s Office, Ethics Commission, District Attorney, and City Attorney from disclosing the
20 identity of an individual or other information to the extent necessary to conduct its
21 investigation.

22 (2) **Legal Proceedings.** Nothing in this Section 4.120 shall preclude City officers
23 and employees from disclosing the identity of an individual or other information relating to a
24 complaint to the extent required by the rules governing an administrative or court proceeding.
25

1 (3) **Referrals.** Nothing in this Section 4.120 shall preclude the Ethics
2 Commission or Controller from referring any matter to any other City department, commission,
3 board, officer, or employee, or to other government agencies, for investigation and possible
4 disciplinary or enforcement action.

5 (4) **Reporting on Certain Substantiated Complaints.** *To the extent feasible without*
6 *waiving attorney-client privilege or attorney work-product privilege, the Controller shall report to the*
7 *Board of Supervisors the results of any investigation that concludes that a Department head or Elected*
8 *official engaged in Improper government activity, Misuse of City funds, or Unlawful activity, or directly*
9 *caused Deficiencies in the quality and delivery of government services or Wasteful and inefficient City*
10 *government practices. Such report shall be prepared so as to protect the confidentiality of the identity*
11 *of any person who files a complaint or provides testimony, and it shall not include information that*
12 *alone or in combination with other information could be used to identify such complainant or witness.*

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

18
19 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
23
24
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ _____
7 JON GIVNER
8 Deputy City Attorney

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