


BOARD of SUPERVISORS



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## MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller  
Micki Callahan, Director, Department of Human Resources  
LeeAnn Pelham, Executive Director, Ethics Commission  
George Gascón, District Attorney, Office of the District Attorney  
Jeff Adachi, Public Defender, Office of the Public Defender

FROM:  Alisa Somera, Legislative Deputy Director  
Rules Committee

DATE: August 8, 2018

SUBJECT: LEGISLATION REINTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, reintroduced by Supervisor Cohen on July 31, 2018:

**File No. 160689**

**Ordinance amending the Campaign and Governmental Conduct Code to broaden the agencies with which a whistleblower may file a complaint, provide 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](mailto:alisa.somera@sfgov.org).

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

1 [Campaign and Governmental Conduct Code - Expanding Scope of Whistleblower Protection  
2 Ordinance]

3 **Ordinance amending the Campaign and Governmental Conduct Code to broaden the**  
4 **agencies with which a whistleblower may file a complaint, provide retaliation**  
5 **protections for City contractors, increase the remedies available for whistleblowers**  
6 **who have 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 adding or revising Sections 4.100, 4.105, 4.107, 4.110, 4.115, 4.117, and 4.120, to read as  
18 follows:

19 **SEC. 4.100. FINDINGS.**

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

26 This Chapter protects all City officers and employees, City contractors, and employees of  
27 City contractors from retaliation for filing a complaint with, or providing information to, ~~the Ethics~~

1 ~~Commission, Controller, District Attorney, City Attorney or complainant's department~~ any local, State,  
2 or federal government agency, or a supervisory employee at any local, State, or federal government  
3 agency, about improper government activity by City officers and employees, or unlawful activity  
4 by City contractors and their employees in connection with a City contract.

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

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

13 **SEC. 4.105. COMPLAINTS OF IMPROPER GOVERNMENT ACTIVITY;**  
14 **INVESTIGATION PROCEDURES; REFERRAL TO OTHER AGENCIES.**

15 (a) COMPLAINTS. Any person may file a complaint with any City department, or any  
16 supervisory employee at a City department, ~~the Ethics Commission, Controller, District Attorney or~~  
17 ~~City Attorney, or a written complaint with the complainant's department~~ alleging that a City officer or  
18 employee has engaged in improper government activity, or that a City contractor, or employee of  
19 a City contractor, has engaged in unlawful activity in connection with a City contract. ~~by: violating~~  
20 ~~local campaign finance, lobbying, conflicts of interest, or governmental ethics laws, regulations, or~~  
21 ~~rules; violating the California Penal Code by misusing City resources; creating a specified and~~  
22 ~~substantial danger to public health or safety by failing to perform duties required by the officer or~~  
23 ~~employee's City position; or abusing his or her City position to advance a private interest.~~

24 (b) ETHICS COMMISSION COMPLAINT PROCEDURES. The Ethics Commission  
25 shall investigate complaints filed under this Section that allege violations of local campaign

1 finance, lobbying, conflicts of interest, and governmental ethics laws pursuant to the  
2 procedures specified in Charter Section C3.699-13 and the regulations adopted thereunder.  
3 Nothing in this subsection shall preclude the Ethics Commission from referring any matter to  
4 any other City department, commission, board, officer, or employee or to other government  
5 agencies for investigation and possible disciplinary or enforcement action. The Ethics  
6 Commission may require that any City department, commission, board, officer, or employee  
7 report to the Ethics Commission on the referred matter.

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

17 **SEC. 4.107. COMPLAINTS BY CITIZENS AND EMPLOYEES; WHISTLEBLOWER**  
18 **PROGRAM.**

19 (a) WHISTLEBLOWER PROGRAM. The Controller shall administer and publicize a  
20 whistleblower and citizen complaint program for citizens and employees to report the misuse  
21 of City funds, improper activities by City officers and employees, deficiencies in the quality  
22 and delivery of government services, and wasteful and inefficient City government practices.  
23 Subject to subsection (b), ~~the~~ Controller shall investigate and otherwise attempt to resolve  
24 complaints reported to the Whistleblower Program. The Controller shall administer a hotline  
25

1 telephone number and website and publicize the hotline and website through press releases,  
2 public advertising and communications to City employees.

3 (b) REFERRAL OF CERTAIN COMPLAINTS. The Controller shall refer the following  
4 complaints as set forth in this Section:

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

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

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

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

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

20 Where the conduct that is the subject of the complaint may violate criminal law and any  
21 civil or administrative law, statute, ordinance, or regulation, the Controller may take action on  
22 the noncriminal aspects of the matter under this Section even if a referral has been made to  
23 another agency under this Section.

24 If a complaint is referred under this Section, the Controller shall inform the complainant  
25 of the appropriate procedure for the resolution of the complaint.

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

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

12 (e) REFERRAL AND RECOMMENDATION BY CONTROLLER. The Controller may  
13 refer the complaint to a City department for investigation, either before conducting an initial  
14 investigation or after doing so, and may recommend that a City department take specific  
15 action based on the Controller's initial investigation. Within 60 days of receiving a complaint  
16 for investigation or a recommendation by the Controller for specific action, or such other time  
17 as the Controller shall specify, the City department shall report to the Controller in writing the  
18 results of the department's investigation and any action that the department has taken in  
19 response to a recommendation by the Controller that the department 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 timeframe 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 that  
2 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, 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 **SEC. 4.110. DEFINITIONS.**

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

13 ~~(a) The term "City" shall mean~~ the City and County of San Francisco, its departments,  
14 commissions and boards.

15 ~~(b) The term "Complainant's department" includes the complainant's supervisor, the~~  
16 executive director or highest ranking officer in the complainant's department, and the board or  
17 commission overseeing the complainant's department.

18 "Improper government activity" shall mean violating local campaign finance, lobbying,  
19 conflicts of interest, or governmental ethics laws, regulations, or rules; causing the gross waste, fraud,  
20 or abuse of City resources; creating a specified and substantial danger to public health or safety by  
21 failing to perform duties required by the officer or employee's City position; or abusing his or her City  
22 position to advance a private interest.

23 ~~(c) The term "Preliminary investigation" shall be limited to, but need not include: review~~  
24 of the complaint and any documentary evidence provided with the complaint; interview of the  
25 complainant; interview of the respondent, counsel to respondent and any witnesses who

1 voluntarily agree to be interviewed for this purpose; review of any relevant public documents  
2 and documents provided voluntarily to the Commission.

3 “Unlawful activity” shall mean violating local campaign finance, lobbying, conflicts of interest,  
4 or governmental ethics laws, regulations, or rules; causing the gross waste, fraud, or abuse of City  
5 resources; or creating a specified and substantial danger to public health or safety by failing to  
6 perform duties imposed by a City contract.

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

8 (a) RETALIATION PROHIBITED. No City officer or employee may terminate, demote,  
9 suspend, or take other similar adverse employment action against any City officer or  
10 employee because the officer or employee has in good faith ~~(1~~†~~)~~ filed a complaint with any  
11 local, State, or federal government agency, including any supervisory employee at any local, State, or  
12 federal government agency, the Ethics Commission, Controller, District Attorney or City Attorney, or a  
13 written complaint with the complainant's department, alleging that a City officer or employee  
14 engaged in improper government activity ~~by: violating local campaign finance, lobbying, conflicts~~  
15 ~~of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by~~  
16 ~~misusing City resources; creating a specified and substantial danger to public health or safety by~~  
17 ~~failing to perform duties required by the officer or employee's City position; or abusing his or her City~~  
18 ~~position to advance a private interest, (ii) filed a complaint with the Controller's Whistleblower~~  
19 ~~Program, (2) filed a complaint with any local, State, or federal government agency, including any~~  
20 ~~supervisory employee at any local, State, or federal government agency, alleging that a City~~  
21 ~~contractor, or employee of a City contractor, engaged in unlawful activity, or (3~~##~~)~~ provided any  
22 information in connection with or otherwise cooperated with any investigation conducted under  
23 this Chapter.

24 (b) COMPLAINTS OF RETALIATION FOR HAVING FILED A COMPLAINT  
25 ALLEGING IMPROPER GOVERNMENT ACTIVITY.



1           (~~1~~) **Administrative Complaints.** Any city officer or employee, or former city  
2 officer or employee, who believes he or she has been the subject of retaliation in violation of  
3 ~~§~~subsection (a) of this Section 4.115 may file a complaint with the Ethics Commission. The  
4 complaint must be filed no later than two years after the date of the alleged retaliation.

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

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

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

1 that the complainant's engagement in activity protected under § subsection (a) was a  
2 substantial motivating factor for the adverse employment action. The *employer respondent* may  
3 rebut this claim if it demonstrates by a preponderance of the evidence that it would have taken  
4 the same employment action irrespective of the complainant's participation in protected  
5 activity.

6 (c) PENALTIES AND REMEDIES.

7 (1) ~~Charter~~ Administrative Penalties. Any City officer or employee who violates  
8 § subsection (a) of this Section 4.115 may be subject to administrative penalties pursuant to  
9 Charter Section C3.699-13.

10 (2) **Discipline by Appointing Authority**. Any City officer or employee who  
11 violates § subsection (a) of this Section 4.115 shall be subject to disciplinary action up to and  
12 including dismissal by his or her appointing authority. If no disciplinary action is taken by the  
13 appointing authority, the Ethics Commission may refer the matter to the Civil Service  
14 Commission for action pursuant to Charter Section A8.341.

15 (3) **Civil Penalties**. Any City officer or employee who violates § subsection (a)  
16 of this Section 4.115 may be personally liable in a civil action authorized under § subsection  
17 (b)(2) of this Section for a civil penalty not to exceed ~~\$5,000~~ \$10,000. The Ethics Commission  
18 may adjust annually by regulation the penalties imposed by this subsection (c)(3) to reflect the change  
19 in the California Consumer Price Index for that year, provided that such adjustments shall be rounded  
20 off to the nearest \$100.

21 (4) Redress for Retaliatory Employment Action. Following an administrative hearing  
22 and after making a finding that an adverse employment action has been taken for purposes of  
23 retaliation, the Ethics Commission may, subject to the Charter's budgetary and employment provisions,  
24 order the cancellation of the retaliatory termination, demotion, suspension or other adverse  
25 employment action.

1 (d) RESERVATION OF AUTHORITY.

2 (~~1~~) **Civil Service Commission.** Nothing in this Section 4.115 shall interfere  
3 with the powers granted to the Civil Service Commission by the *San Francisco* Charter.

4 (~~2~~) **Appointing Authority.** Nothing in this Section 4.115 shall interfere with the  
5 power of an appointing officer, manager, or supervisor to take action with respect to any City  
6 officer or employee, provided that the appointing officer, manager, or supervisor reasonably  
7 believes that such action is justified on facts separate and apart from the fact that the officer  
8 or employee filed a complaint with any local, State, or federal government agency, including any  
9 supervisory employee at a local, State, or federal government agency, alleging that a City officer or  
10 employee engaged in improper government activity, or cooperated with any investigation conducted  
11 under this Chapter, an Ethics Commission investigation of such complaint; or filed a complaint with or  
12 provided information to the Controller, District Attorney, City Attorney or the complainant's  
13 department.

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

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

18 (a) RETALIATION PROHIBITED. No City officer or employee may take steps to terminate a  
19 contract with a City contractor, refuse to use a City contractor for contracted services, request that a  
20 City contractor terminate, demote, or suspend one of its employees, or take other similar adverse  
21 action against any City contractor or employee of a City contractor because the contractor or the  
22 contractor's employee (1) filed a complaint with any local, State, or federal government agency,  
23 including any supervisory employee at any local, State, or federal government agency, alleging that a  
24 City officer or employee engaged in improper government activity, (2) filed a complaint with any local,  
25 State, or federal government agency, including any supervisory employee at any local, State, or federal

1 government agency, alleging that another City contractor, or employee of another City contractor,  
2 engaged in unlawful activity, or (3) provided any information in connection with or otherwise  
3 cooperated with any investigation conducted under this Chapter.

4 (b) COMPLAINTS OF RETALIATION FOR HAVING FILED A COMPLAINT ALLEGING  
5 IMPROPER GOVERNMENT ACTIVITY OR UNLAWFUL ACTIVITY.

6 (1) Administrative Complaints. Any City contractor or employee of a City contractor,  
7 that believes it, he or she has been the subject of retaliation in violation of subsection (a) of this Section  
8 4.117 may file a complaint with the Ethics Commission. The complaint must be filed no later than two  
9 years after the date of the alleged retaliation.

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

22 (2) Burden of Establishing Retaliation. In order to establish that retaliation occurred  
23 under this Section 4.117, the Ethics Commission in an administrative proceeding must determine, by a  
24 preponderance of the evidence that the complainant's engagement in activity protected under  
25 subsection (a) was a substantial motivating factor for the adverse action. The respondent may rebut

1 this claim if it demonstrates by a preponderance of the evidence that it would have taken the same  
2 adverse action irrespective of the complainant's participation in protected activity.

3 (c) PENALTIES AND REMEDIES.

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

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

10 (d) NOTICE OF WHISTLEBLOWER PROTECTIONS. The Controller shall prepare, and each  
11 City department shall post a notice of whistleblower protections. The notice shall be posted in a  
12 location that is conspicuous and accessible to City contractors and employees of City contractors.

13 **SEC. 4.120. CONFIDENTIALITY.**

14 (a) WHISTLEBLOWER IDENTITY. Any individual who files a complaint under Section  
15 4.105 of this Chapter may elect to have his or her identity kept confidential as provided by  
16 Charter Section C3.699-13(a). Such election must be made at the time the complaint is filed.

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

22 (c) PENALTIES FOR DISCLOSURE OF WHISTLEBLOWER IDENTITY. Except as  
23 provided in subsection (d), any City officer or employee who discloses the identity of any complainant  
24 with the knowledge that the complainant elected to keep his or her identity confidential may be subject  
25 to the administrative proceedings and penalties set forth in Charter Section C3.699-13.

1            ~~(e)~~(d) EXCEPTIONS.

2            (#1) Conduct of Investigations. Nothing in this Section shall preclude the Ethics  
3 Commission from disclosing the identity of an individual or other information to the extent  
4 necessary to conduct its investigation.


5            (#2) Referrals. Nothing in this Section shall preclude the Ethics Commission  
6 from referring any matter to any other City department, commission, board, officer or  
7 employee, or to other government agencies for investigation and possible disciplinary or  
8 enforcement action.

9  
10           Section 2. Effective Date. This ordinance shall become effective 30 days after  
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
13 of Supervisors overrides the Mayor's veto of the ordinance.

14  
15           Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
19 additions, and Board amendment deletions in accordance with the "Note" that appears under  
20 the official title of the ordinance.

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

23 By: \_\_\_\_\_

24              
25            ANDREW SHEN  
                 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Expanding Scope of Whistleblower Protection Ordinance]

**Ordinance amending the Campaign and Governmental Conduct Code to broaden the agencies with which a whistleblower may file a complaint, provide 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. Where a whistleblower may file a complaint

The WPO provides that any member of the public may file a complaint with the Ethics Commission, Controller, District Attorney, City Attorney or the complainant's department alleging that a City employee or officer engaged in improper government activity. C&GC Code § 4.105(a).

#### 2. 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 with one of the agencies listed above. *Id.* § 4.115(a).

#### 3. 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).

#### 4. 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 upon a person who unlawfully disclosed a whistleblower's identity; but such disclosure may be actionable pursuant to Campaign and Governmental Conduct Code 3.228.

### Amendments to Current Law

#### 1. Where a whistleblower may file a complaint

The proposed amendments broaden the agencies with whom a whistleblower may file a complaint to include any City department, or any supervisory employee at a City department.

#### 2. Protection of whistleblowers

The proposed amendments would protect whistleblowers from retaliation if they filed a complaint with any local, State or federal agency, or a supervisory employee of any local, State or federal agency.

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

#### 3. Penalties and remedies

The amendments would increase the civil penalties available for whistleblower retaliation from \$5,000 to \$10,000, and authorizes the Ethics Commission to adjust these penalties for inflation. The amendments would also provide a new remedy that would allow the Ethics Commission to order the cancellation of or provide redress for any retaliatory adverse action, subject to the Charter's budgetary and employment provisions.

#### 4. 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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