

FILE NO.

ORDINANCE NO.

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

Formatted: Font color: Text 1

Ordinance amending the Campaign and Governmental Conduct Code to broaden the agencies with which a whistleblower may file a complaint about unlawful retaliation, provide retaliation protections for City contractors, increase the remedies available for whistleblowers who have suffered retaliation, and establish greater confidentiality protections for whistleblowers' identities.

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

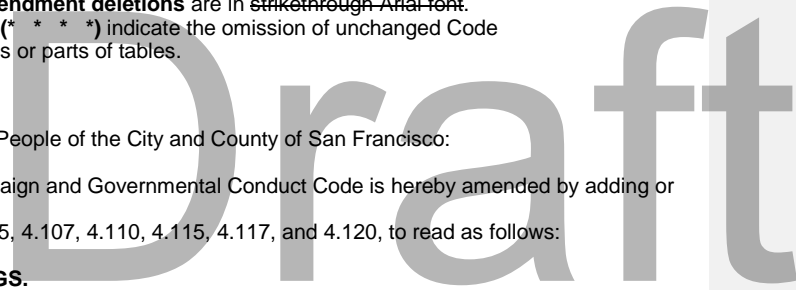
Be it ordained by the People of the City and County of San Francisco:

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

**SEC. 4.100. FINDINGS.**

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

This Chapter sets forth the requirements for two programs within the City and County of San Francisco. Through the for the City's Whistleblower Program, the Office of the Controller implements Charter Appendix Section F1.107 by investigating complaints concerning deficiencies in the quality and delivery of City government services, wasteful and inefficient City government practices, misuse of



1 ~~City government funds, and improper activities by City government officers and employees. and~~  
2 ~~protects all City officers and employees;~~

3 ~~If a City employee or contractor is retaliated against for filing a complaint with the~~  
4 ~~Whistleblower Program or reporting improper government activity to a supervisor, this Chapter allows~~  
5 ~~the Ethics Commission ~~City contractors, and employees of City contractors~~ to investigate and punish~~  
6 ~~those who improperly retaliated against the employee or contractor for exercising her rights under this~~  
7 ~~Ordinance. ~~from retaliation for reporting filing a complaint with, or providing information to, the Ethics~~~~  
8 ~~Commission, Controller, District Attorney, City Attorney or complainant's department ~~any local, State,~~~~  
9 ~~or federal government agency, or a supervisory employee at any local, State, or federal government~~  
10 ~~agency, about improper government activity by City officers and employees, or unlawful activity by City~~  
11 ~~contractors and their employees in connection with a City contract.~~

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

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

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

22 (a) COMPLAINTS. Any person may file a complaint ~~with any City department, or any~~  
23 ~~supervisory employee at a City department, the Office of the Controller's Whistleblower Program, the~~  
24 ~~Ethics Commission, Controller, District Attorney, or City Attorney, or a written complaint with the~~  
25 ~~complainant's department~~ alleging that a City officer or employee has engaged in improper

Formatted: Font color: Text 1

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

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

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

24 **SEC. 4.107. COMPLAINTS BY CITIZENS AND EMPLOYEES; WHISTLEBLOWER**  
25 **PROGRAM.**

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

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

11 (i1) Those which another City agency is required by federal, state, or local law to  
12 adjudicate: To that agency;

13 (ii2) Those which may be resolved through a grievance mechanism established by  
14 collective bargaining agreement or contract: To the official or agency designated in the agreement or  
15 contract;

16 (iii3) Those which involve allegations of conduct which may constitute a violation of  
17 criminal law: To the District Attorney or other appropriate law enforcement agency;

18 (iv4) Those which are subject to an existing, ongoing investigation by the District  
19 Attorney, City Attorney, or Ethics Commission, where the applicable official or Commission states in  
20 writing that investigation by the Controller would substantially impede or delay his, her, or its own  
21 investigation of the matter: To the investigating office; and

22 (v5) Those which allege conduct that may constitute a violation of local campaign  
23 finance, lobbying, conflict of interest, or governmental ethics laws, regulations, or rules: ~~To~~ the Ethics  
24 Commission and the City Attorney.

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

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

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

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

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

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

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

15 **SEC. 4.110. DEFINITIONS.**

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

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

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

23 ~~"Deficiencies in the quality and delivery of government services" shall mean a fault,~~  
24 ~~shortcoming, or inadequacy in the performance of a service, or the failure to perform a service, when~~  
25 ~~performance is required under any law, regulation, or policy, or under a City contract or grant.~~

1 "Improper government activity" shall mean violating violations of any federal, state, or local  
2 law, regulation, or rule including but not limited to, campaign finance, lobbying, conflicts of interest, or  
3 governmental ethics laws, regulations, or rules; causing the gross waste, fraud, or abuse of City  
4 resources; or actions which creating create a specified and substantial danger to public health or  
5 safety by the failure of City officers or employees to perform duties required by the officer or  
6 employee's City their position; or abusing his or her City position to advance a private interest.

7 "Improper governmental activity" does not include personnel actionsdecisions with which the employee  
8 disagrees, for which other remedies exist.

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

11  
12 (e) ~~The term~~ "Preliminary investigation" shall be limited to, but need not include: review of  
13 the complaint and any documentary evidence provided with the complaint; interview of the  
14 complainant; interview of the respondent, counsel to respondent and any witnesses who voluntarily  
15 agree to be interviewed for this purpose; review of any relevant public documents and documents  
16 provided voluntarily to the Commission.

17 "Supervisor" ~~or "Supervisory employee"~~ shall mean any individual having the authority, in the  
18 interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, ~~assign~~, reward, or  
19 discipline other employees, or the responsibility to routinely direct them, or to adjust their grievances,  
20 or effectively to recommend that action, if, in connection with the foregoing, the exercise of that  
21 authority is not of a merely routine or clerical nature, but requires the use of independent judgment.<sup>1</sup>

22 "Unlawful activity" shall mean violating violations of violations of any federal, state, or local law,  
23 regulation, or rule including but not limited to local campaign finance, lobbying, conflicts of interest, or  
24 \_\_\_\_\_

25 <sup>1</sup> Source: California Government Code § 12926(t).

1 ~~governmental ethics laws, regulations, or rules; causing the gross waste, fraud, or abuse of City~~  
2 ~~resources; or creating actions which create a specified and substantial danger to public health or~~  
3 ~~safety by failing the failure of City officers or employees to perform duties imposed by a City contract.~~

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

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 employee  
10 because the officer or employee has in good faith (1) ~~filed a complaint with~~ made a report to -any local,  
11 ~~State, or federal government supervisory employees supervisor within a City or filed a complaint with the~~  
12 Ethics Commission, Controller, District Attorney, City Attorney, or the complainant's department  
13 ~~agency, including any supervisory employee at any local, State, or federal government agency, the~~  
14 ~~Ethics Commission, Controller, District Attorney or City Attorney, or a written complaint with the~~  
15 ~~complainant's department,~~ alleging that a City officer or employee engaged in improper government  
16 activity, misused City funds, caused deficiencies in the quality and delivery of government services, or  
17 engaged in wasteful and inefficient government practices ~~by: violating local campaign finance,~~  
18 ~~lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California~~  
19 ~~Penal Code by misusing City resources; creating a specified and substantial danger to public health or~~  
20 ~~safety by failing to perform duties required by the officer or employee's City position; or abusing his or~~  
21 ~~her City position to advance a private interest, (ii) filed a complaint with the Controller's Whistleblower~~  
22 ~~Program, (2) filed a complaint with made a report to any local, State, or federal government agency,~~  
23 ~~including any supervisory employees supervisor at any local, State, or federal government City agency,~~  
24 or filed a complaint with the Ethics Commission, Controller, District Attorney, or City Attorney, y,  
25 alleging that a City contractor, or employee of a City contractor, engaged in unlawful activity, misused



1 City funds, caused deficiencies in the quality and delivery of government services, or engaged in  
2 wasteful and inefficient government practices or ~~(3#)~~ provided any information in connection with or  
3 otherwise cooperated with any investigation conducted under this Chapter.

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

6 ~~(i1)~~ **Administrative Complaints.** Any ~~city-City~~ officer or employee, or former ~~city-City~~  
7 officer or employee, who believes he or she has been the subject of retaliation in violation of  
8 ~~§~~subsection (a) of this Section 4.115 may file a complaint with the Ethics Commission. The complaint  
9 must be filed no later than two years after the date of the alleged retaliation.

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

23 ~~(#2)~~ **Civil Complaints.** Any City officer or employee who believes he or she has been  
24 the subject of retaliation in violation of ~~§~~subsection (a) of this Section 4.115 may bring a civil action  
25

1 against the City officer or employee who committed the violation. Such action must be filed no later  
2 than two years after the date of the retaliation.

3 **(#3) Burden of Establishing Retaliation.** In order to establish that retaliation  
4 occurred under this Section 4.115, a complainant in a civil action must demonstrate, or the Ethics  
5 Commission in an administrative proceeding must determine, by a preponderance of the evidence that  
6 the complainant's engagement in activity protected under ~~§~~subsection (a) was a substantial motivating  
7 factor for the adverse employment action. The ~~employer~~ respondent may rebut this claim if it  
8 demonstrates by a preponderance of the evidence that it would have taken the same employment  
9 action irrespective of the complainant's participation in protected activity.

10 **(4) Duty to Report.** ~~Supervisors who receive reports of alleged retaliation. Supervisors~~  
11 ~~who receive complaints of retaliation under this Chapter must keep the complaint information~~  
12 ~~confidential and immediately report assist the complainant with filing a complaint with the Ethics~~  
13 ~~Commission. Supervisors who fail to comply with this section are report complaints of retaliation are~~  
14 ~~subject to the penalties and remedies set forth in Section (c)(2) of Section 4.115.~~

15 (c) PENALTIES AND REMEDIES.

16 **(i1) Charter Administrative Penalties.** Any City officer or employee who violates  
17 ~~§~~subsection (a) of this Section 4.115 may be subject to administrative penalties pursuant to Charter  
18 Section C3.699-13.

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

24 **(#3) Civil Penalties.** Any City officer or employee who violates ~~§~~subsection (a) of this  
25 Section 4.115 may be personally liable in a civil action authorized under ~~§~~subsection (b)(#2) of this

Formatted: Font color: Text 1

Formatted: Font color: Text 1

Formatted: Font color: Text 1

1 Section for a civil penalty not to exceed ~~\$5,000~~ \$10,000. The Ethics Commission may adjust annually  
2 by regulation the penalties imposed by this subsection (c)(3) to reflect the change in the California  
3 Consumer Price Index for that year, provided that such adjustments shall be rounded off to the nearest  
4 \$100.

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

10 (d) RESERVATION OF AUTHORITY.

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

13 **(#2) Appointing Authority.** Nothing in this Section 4.115 shall interfere with the power  
14 of an appointing officer, manager, or supervisor to take action with respect to any City officer or  
15 employee, provided that the appointing officer, manager, or supervisor reasonably believes that such  
16 action is justified on facts separate and apart from the fact that the officer or employee filed a  
17 complaint with any local, State, or federal government agency, including any supervisory  
18 employeesupervisor ~~at a local, State, or federal government agency, alleging that a City officer or~~  
19 employee engaged in improper government activity, or cooperated with any investigation conducted  
20 under this Chapter, an Ethics Commission investigation of such complaint, or filed a complaint with or  
21 provided information to the Controller, District Attorney, City Attorney or the complainant's department.

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

25 **(f) WHISTLEBLOWER PROTECTION AWARENESS TRAINING**

Formatted: Font color: Text 1

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

4           (2) The Ethics Commission, Controller, and Department of Human Resources shall  
5 collaborate to ensure that whistleblower **protection information and training is developed and**  
6 **implemented for all employees** ~~by~~ **beginning on** January 1, 2018. ~~The training must be provided to all~~  
7 ~~employees on a recurring basis.~~

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

9           (a) RETALIATION PROHIBITED. No City officer or employee may take steps to terminate a  
10 contract with a City contractor; refuse to use a City contractor for contracted services; request that a  
11 City contractor terminate, demote, or suspend one of its employees; or take other similar adverse  
12 action against any City contractor or employee of a City contractor because the contractor or the  
13 contractor's employee (1) filed a complaint with any ~~supervisory employees~~ **supervisor** within a local,  
14 State, or federal City agency, including any supervisory employee at any local, State, or federal  
15 government agency, alleging that a City officer or employee engaged in improper government activity,  
16 misused City funds, caused deficiencies in the quality and delivery of government services, or  
17 engaged in wasteful and inefficient government practices (2) filed a complaint with any ~~supervisory~~  
18 ~~supervisor employee~~ **supervisor** within a local, State, or federal government City agency, including any  
19 supervisory employee at any local, State, or federal government agency, alleging that another City  
20 contractor or employee of another City contractor engaged in unlawful activity, misused City funds,  
21 caused deficiencies in the quality and delivery of government services, or engaged in wasteful and  
22 inefficient government practices or (3) provided any information in connection with or otherwise  
23 cooperated with any investigation conducted under this Chapter.

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

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

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

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

23           (c) **PENALTIES AND REMEDIES.**  
24  
25

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

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

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

12 **SEC. 4.120. CONFIDENTIALITY.**

13 (a) WHISTLEBLOWER IDENTITY. City officers and employees shall treat as confidential the  
14 Any individual who files a complaint under Section 4.105 of this Chapter may elect to have his or her  
15 identity kept confidential as provided by of any person who makes a complaint to a supervisor, the  
16 Office of the Controller, Ethics Commission, District Attorney, City Attorney, or department pursuant to  
17 this Chapter as required by Charter Section C3.699-13(a). ~~Such election must be made at the time~~  
18 the complaint is filed.

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

24 (c) PENALTIES FOR DISCLOSURE OF WHISTLEBLOWER IDENTITY. Except as provided  
25 in subsection (d), any City officer or employee who discloses the identity of any complainant with the

Commented [BJ(1)]: Tanya said the Charter requires the Ordinance to give whistleblowers the option to keep their identity confidential, but this is our Charter Section, and it doesn't give us the option. It says investigations "shall" be kept confidential. I recommend we eliminate this confusion and require identity to be kept confidentially.

Formatted: Font color: Text 1

Formatted: Font color: Text 1

Formatted: Font color: Text 1

1 knowledge that the complainant ~~elected~~ wanted to keep his or her identity confidential may be subject  
2 to the administrative proceedings and penalties set forth in Charter Section C3.699-13 in addition to  
3 disciplinary action up to and including dismissal by his or her appointing authority. ~~A complainant may~~  
4 voluntarily disclose her identity.

5 ~~(e)~~(d) EXCEPTIONS.

6 (i1) Conduct of Investigations. Nothing in this Section shall preclude the Ethics  
7 Commission from disclosing the identity of an individual or other information to the extent necessary to  
8 conduct its investigation.

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

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

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

24 APPROVED AS TO FORM:  
25 DENNIS J. HERRERA, City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

By: \_\_\_\_\_  
ANDREW SHEN  
Deputy City Attorney

n:\legana\as2016\1600739\01107429.docx

Draft