[Expanded Protections for Whistleblowers]

Ordinance amending Sections 4.100, 4.105, 4.110 and 4.115 of the San Francisco Campaign and Governmental Conduct Code to: provide protection to whistleblowers who file a complaint with the Controller, District Attorney or City Attorney or a written complaint with the complainant's department regarding improper government activity by a City officer or employee; provide a list of the types of complaints of improper government activity; clarify that protections for whistleblowers apply only when the whistleblower is subject to certain adverse employment actions; and require that the Ethics Commission prepare and all City departments post a notice about protections for whistleblowers.

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

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

Section 1. Article IV of the San Francisco Campaign and Governmental Conduct Code is hereby amended by amending Section 4.100 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 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.

This Chapter protects all City officers and employees individuals who file complaints with, or provide information to, the Ethics Commission from intimidation, threats, and coercion. This Chapter also protects City officers and employees from retaliation or other disciplinary action that is taken
because the officer or employee filed for filing a complaint with, or provided information to, the Ethics Commission, Controller, District Attorney, City Attorney or the complainant’s department about improper government activity by City officers and employees.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 4.115. PROTECTION OF WHISTLEBLOWERS.

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

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

(i) Administrative Complaints. Any City officer or employee, or former City officer or
employee, individual who believes he or she has been the subject of intimidation or
retaliation in violation of subsection (a) of this Section may file a complaint with the Ethics Commission.
The complaint must be filed no later than two years after the date of the retaliation the facts
forming the basis for the complaint were discovered or reasonably should have been discovered by the 
complainant.

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

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

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

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

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

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

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

(d) RESERVATION OF AUTHORITY.

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

(ii) Appointing Authority. Nothing in this Section shall interfere with the power of an appointing officer, manager, or supervisor to take action with respect to any City officer, employee or applicant for City employment, provided that the appointing officer, manager, or supervisor reasonably believes that such action is justified on facts separate and apart from the fact that the officer, employee or applicant filed a complaint with, or participated in or cooperated with, an Ethics Commission investigation or proceeding of such complaint; or filed a complaint with or provided information to the Controller, District Attorney, City Attorney or the complainant's department.

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

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

By:  JULIA A. MOLL
Deputy City Attorney
Ordinance amending Sections 4.100, 4.105, 4.110 and 4.115 of the San Francisco Campaign and Governmental Conduct Code to: provide protection to whistleblowers who file a complaint with the Controller, District Attorney or City Attorney or a written complaint with the complainant's department regarding improper government activity by a City officer or employee; provide a list of the types of complaints of improper government activity; clarify that protections for whistleblowers apply only when the whistleblower is subject to certain adverse employment actions; and require that the Ethics Commission prepare and all City departments post a notice about protections for whistleblowers.

February 25, 2002 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

February 25, 2002 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 10 - Ammiano, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee
Absent: 1 - Daly

March 4, 2002 Board of Supervisors — FINALLY PASSED
Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee
I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 4, 2002 by the Board of Supervisors of the City and County of San Francisco.