

FILE NO. 020017

ORDINANCE NO. **29-02**

1 [Expanded Protections for Whistleblowers]

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

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are ~~*strikethrough italics Times New Roman*~~.
13 Board amendment additions are double underlined.
14 Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. Article IV of the San Francisco Campaign and Governmental Conduct Code
17 is hereby amended by amending Section 4.100 to read as follows:

18 SEC. 4.100. FINDINGS. The City and County of San Francisco has a paramount
19 interest in protecting the integrity of its government institutions. To further this interest,
20 individuals should be encouraged to report to the City's Ethics Commission, Controller, District
21 Attorney, City Attorney *and the complainant's department* possible violations of laws, regulations
22 and rules governing the conduct of City officers and employees.

23 This Chapter protects all City officers and employees ~~individuals who file complaints with, or~~
24 ~~provide information to, the Ethics Commission from intimidation, threats, and coercion. This Chapter~~
25 ~~also protects City officers and employees~~ from retaliation ~~or other disciplinary action that is taken~~

1 ~~because the officer or employee filed for filing~~ a complaint with, or provided~~ing~~ information to, the
2 Ethics Commission, Controller, District Attorney, City Attorney ~~or the complainant's department~~
3 about improper government activity by City officers and employees.

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

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

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

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

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

1 that any City department, commission, board, officer or employee report to the Ethics Commission on
2 the referred matter.

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

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

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

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

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

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

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

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

5 SEC. 4.115. PROTECTION OF WHISTLEBLOWERS.

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

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

22 (i) Administrative Complaints. Any City officer or employee, or former City officer or
23 employee, individual who believes he or she has been the subject of ~~intimidation or~~ retaliation in
24 violation of subsection (a) of this Section may file a complaint with the Ethics Commission.
25 The complaint must be filed no later than two years after the date ~~of the retaliation~~ the facts

1 ~~forming the basis for the complaint were discovered or reasonably should have been discovered by the~~
2 ~~complainant.~~

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

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

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

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

1 (c) PENALTIES.

2 (i) Charter Penalties. Any ~~individual~~ City officer or employee who violates subsection (a)
3 of this Section may be subject to administrative penalties pursuant to Charter Section C3.699-
4 13.

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

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

13 (d) RESERVATION OF AUTHORITY.

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


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

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1 (e) NOTICE OF WHISTLEBLOWER PROTECTIONS. The Ethics Commission shall
2 prepare, and each City department shall post a notice of whistleblower protections. The
3 notice shall be posted in a location that is conspicuous and accessible to all employees
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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: 
9 JULIA A. MOLL
Deputy City Attorney



City and County of San Francisco

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

Tails Ordinance

File Number: 020017

Date Passed:

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

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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.

3/15/02

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.