

**CITY OF BALTIMORE
COUNCIL BILL 21-0093
(First Reader)**

Introduced by: Councilmembers Dorsey, Burnett, Cohen, Ramos

At the request of: The Administration

Introduced and read first time: June 8, 2021

Assigned to: Rules and Legislative Oversight Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance, Office of the Inspector General, Department of Human Resources, City Administrator

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Revising Whistleblower Rights and Responsibilities**

3 FOR the purpose of updating Article 1, Subtitle 8 {Whistleblower Rights and Responsibilities} of
4 the City Code to define certain terms; requiring a whistleblower to report their complaint to
5 their agency's personnel officer or to the Office of the Inspector General if the whistleblower
6 has a reasonable and articulable belief that the personnel officer cannot competently
7 investigate the covered disclosure; requiring the Office of the Inspector General to give
8 written notice of investigation or a notice of declination to the whistleblower within 30 days
9 of receipt of the complaint; requiring the Office of the Inspector General, if initiating an
10 investigation, to send a Memorandum of Protected Activity to the whistleblower's
11 supervisor; requiring the Office of the Inspector General to provide recommendations for
12 action in the Office's written findings of an investigation and to give the written findings to
13 the City Administrator, the agency head, and the whistleblower; requiring the City
14 Administrator to hold a meeting with the agency head and the Inspector General to discuss
15 the recommendations within a certain amount of time; providing possible remedies in case of
16 a violation of this subtitle; and conforming and clarifying related provisions.

17 BY repealing and re-ordaining, with amendments

18 Article 1 - Mayor, City Council, and Municipal Agencies
19 Sections 8-1, 8-6, 8-7
20 Baltimore City Code
21 (Edition 2000)

22 BY re-numbering current

23 Article 1 - Mayor, City Council, and Municipal Agencies
24 Sections 8-8, 8-9, 8-10, 8-11, 8-12, 8-13, respectively
25 to be new
26 Sections 8-9, 8-10, 8-11, 8-12, 8-13, 8-14, respectively
27 Baltimore City Code
28 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 21-0093

1 BY adding
2 Article 1 - Mayor, City Council, and Municipal Agencies
3 Section 8-8
4 Baltimore City Code
5 (Edition 2000)

6 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
7 Laws of Baltimore City read as follows:

8 **Baltimore City Code**

9 **Article 1. Mayor, City Council, and Municipal Agencies**

10 **Subtitle 8. Whistleblower Rights and Responsibilities**

11 **§ 8-1. Definitions.**

12 (a) *In general.*

13 In this subtitle, the following words have the meanings indicated.

14 (B) *ABUSE OF AUTHORITY.*

15 “ABUSE OF AUTHORITY” MEANS THE ARBITRARY OR CAPRICIOUS EXERCISE OF POWER BY A
16 CITY OFFICIAL OR EMPLOYEE THAT ADVERSELY AFFECTS THE RIGHTS OF ANY PERSON OR
17 THAT RESULTS IN PERSONAL GAIN OR ADVANTAGE TO THE CITY OFFICIAL OR EMPLOYEE
18 OR TO PREFERRED OTHER INDIVIDUALS.

19 (C) [(b)] *Affiliated entity.*

20 . . .

21 (D) [(c)] *Agency.*

22 . . .

23 (E) [(d)] *Covered disclosure.*

24 (1) *In general.*

25 “Covered disclosure” means a disclosure:

26 (i) made by an employee;

27 (ii) concerning actions arising within the Baltimore City government;

28 (iii) initially made to [one or another of an employee’s supervisors] A PERSONNEL
29 OFFICER or to the Inspector General; and

Council Bill 21-0093

1 (iv) that the employee reasonably believes to be evidence of:

2 A. fraud;

3 B. gross misuse or waste of public resources;

4 C. [a violation of law; or] ABUSE OF AUTHORITY;

5 D. [a substantial and specific threat to health, safety, or security.] A
6 VIOLATION OF LAW; OR

7 E. A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.

8 (F) [(e)] *Employee*.

9 . . .

10 (G) *NOTICE OF DECLINATION*.

11 “NOTICE OF DECLINATION” MEANS THE NOTICE SENT BY THE OFFICE OF THE INSPECTOR
12 GENERAL THAT INFORMS THE WHISTLEBLOWER THEIR COMPLAINT IS INSUFFICIENT FOR
13 THE OFFICE OF THE INSPECTOR GENERAL TO INVESTIGATE.

14 (H) *NOTICE OF INVESTIGATION*.

15 “NOTICE OF INVESTIGATION” MEANS THE NOTICE SENT BY THE OFFICE OF THE INSPECTOR
16 GENERAL THAT INFORMS THE WHISTLEBLOWER THE OFFICE OF THE INSPECTOR GENERAL
17 WILL BE INITIATING A WHISTLEBLOWER INVESTIGATION BASED ON THE COMPLAINT.

18 (I) [(f)] *Personnel action*.

19 “Personnel action” means an act or omission by a supervisor that has a significant adverse
20 impact on an employee, including dismissal, demotion, suspension, punitive transfer or
21 assignment, disciplinary action, negative performance evaluation, failure to appoint,
22 failure to promote, failure to transfer, or failure to assign.

23 (J) *PERSONNEL OFFICER*.

24 “PERSONNEL OFFICER” MEANS AN EMPLOYEE OF THE AGENCY ASSOCIATED WITH THE
25 COMPLAINT WHO IS RESPONSIBLE FOR ADMINISTERING PERSONNEL FUNCTIONS.

26 (K) [(g)] *Supervisor*.

27 “Supervisor” means any individual who directly or indirectly oversees the work of an
28 employee who files a complaint pursuant to this subtitle.

29 (L) [(h)] *Whistleblower*.

30 “Whistleblower” means an employee who makes a covered disclosure.

Council Bill 21-0093

1 § 8-6. Complaint process.

2 (a) *Filing complaint with [supervisor] HUMAN RESOURCES.*

3 (1) A whistleblower who believes he or she has been retaliated against for making a
4 covered disclosure shall file a written complaint with [his or her supervisor] THE
5 PERSONNEL OFFICER.

6 (2) The complaint must be filed in 30 days from when the whistleblower knew or
7 reasonably should have known about the violation.

8 (b) *[Supervisor] PERSONNEL OFFICER responsibilities.*

9 (1) Within 5 business days after receiving a complaint under this section, the [supervisor]
10 PERSONNEL OFFICER who received the complaint must give the whistleblower written
11 notice of the complaint's receipt.

12 (2) Within 10 business days after receiving a complaint under this section, the
13 [supervisor] PERSONNEL OFFICER who received the complaint must notify the agency
14 head or the appropriate appointing authority [associated with the complaint] OF THE
15 AGENCY to the complaint.

16 (3) Within 60 business after the supervisor received the complaint, the [supervisor]
17 PERSONNEL OFFICER must conduct an investigation and provide written findings to the
18 whistleblower and to the agency head or the appropriate appointing authority of the
19 agency.

20 (c) *Filing [initial] A complaint with Inspector General.*

21 [(1) A whistleblower need not file the initial complaint with a supervisor and, instead,
22 may file the complaint directly with the Office of the Inspector General, if the
23 whistleblower reasonably believes that:

24 (i) all of the whistleblower's supervisors are implicated by the covered disclosure; or

25 (ii) all of the whistleblower's supervisors took part in or were otherwise complicit in
26 the retaliatory personnel action taken against the whistleblower.

27 (2) A complaint filed with the Inspector General under paragraph (1) of this subsection
28 must be filed within 30 days from when the whistleblower knew or should reasonably
29 have known about the retaliatory personnel action.]

30 A WHISTLEBLOWER MAY CHOOSE TO FILE A COVERED DISCLOSURE DIRECTLY WITH THE
31 OFFICE OF THE INSPECTOR GENERAL IF THE WHISTLEBLOWER POSSESSES A REASONABLE
32 AND ARTICULABLE BELIEF THAT ANY PERSONNEL OFFICER CANNOT COMPETENTLY
33 INVESTIGATE THE COVERED DISCLOSURE DUE TO A CONFLICT OF INTEREST OR OTHER
34 SPECIFIED REASON.

Council Bill 21-0093

1 (D) *TIMING OF THE COMPLAINT.*

2 (1) A WHISTLEBLOWER MUST FILE A COMPLAINT WITHIN 30 CALENDAR DAYS, BY CLOSE OF
3 BUSINESS ON THE 30TH DAY, FROM WHEN THE WHISTLEBLOWER KNEW OR SHOULD
4 HAVE REASONABLY KNOWN OF THE RETALIATION.

5 (2) IF THE 30TH DAY FALLS ON A WEEKEND OR HOLIDAY OR IF CITY OFFICES ARE CLOSED
6 FOR AN EMERGENCY, THE NEXT BUSINESS DAY WHEN CITY OFFICES ARE OPEN SHALL
7 COUNT AS THE FINAL DAY TO FILE A COMPLAINT BY CLOSE OF BUSINESS.

8 [(e) *Confidentiality.*]

9 [The identity of the whistleblower must be kept confidential to the extent permitted by
10 law.]

11 (E) *ETHICAL REQUIREMENTS.*

12 WHEN MAKING A COVERED DISCLOSURE THE WHISTLEBLOWER:

13 (1) MUST ACT IN GOOD FAITH;

14 (2) MUST MAKE REASONABLE EFFORTS TO VERIFY ALL INFORMATION; AND

15 (3) MAY NOT KNOWINGLY REPORT FALSE INFORMATION OR ALLEGATIONS TO THE
16 OFFICE OF THE INSPECTOR GENERAL.

17 (F) [(d)] *Filing with Inspector General as appeal from [supervisor] PERSONNEL OFFICER.*

18 (1) If the whistleblower initially filed a complaint with a [supervisor] PERSONNEL
19 OFFICER, the whistleblower may appeal to the Inspector General if:

20 (i) the [supervisor] PERSONNEL OFFICER who received the complaint failed to provide
21 the whistleblower with written findings of the [supervisor's] PERSONNEL
22 OFFICER'S investigation; or

23 (ii) the whistleblower does not agree with the [supervisor's] PERSONNEL OFFICER'S
24 written findings.

25 [(2) An appeal filed with the Inspector General under paragraph (1)(i) of this subsection
26 must be filed within 30 days from the date by which the supervisor had to respond to
27 the whistleblower.

28 (3) An appeal filed with the Inspector General under paragraph (1)(ii) of this subsection
29 must be filed within 30 days from when the supervisor presented the whistleblower
30 with the written findings of the supervisor's investigation.]

31 (2) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER EITHER PARAGRAPH (1)(I) OR
32 PARAGRAPH (1)(II) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN
33 THE PERSONNEL OFFICER SHOULD HAVE PRESENTED OR ACTUALLY PRESENTED THE

Council Bill 21-0093

1 WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE PERSONNEL OFFICER'S
2 INVESTIGATION.

3 **§ 8-7. Investigation by Inspector General.**

4 (a) *Notice of receipt of complaint.*

5 Within 5 business days after receiving a written complaint or appeal under § 8-6(c) or
6 [(d)] (F) of this subtitle, the Office of the Inspector General must give the whistleblower
7 written notice of the complaint's or appeal's receipt.

8 (b) [*Completing investigation.*] *INITIATING AN INVESTIGATION.*

9 [The Office of the Inspector General must conduct an investigation and, within 150 days
10 after the Office received the complaint or appeal, present its written findings to the head
11 of the agency for which the whistleblower works or the appropriate appointing authority
12 and the whistleblower involved in the complaint or appeal.]

13 (1) WITHIN 30 CALENDAR DAYS OF RECEIVING A COMPLAINT, THE OFFICE OF THE
14 INSPECTOR GENERAL SHALL PROVIDE THE WHISTLEBLOWER WITH A WRITTEN NOTICE
15 OF INVESTIGATION OR A NOTICE OF DECLINATION DEPENDING ON THE TIMING AND
16 LEGAL SUFFICIENCY OF THE COMPLAINT.

17 (2) IF INITIATING AN INVESTIGATION, THE OFFICE OF THE INSPECTOR GENERAL SHALL
18 SEND A MEMORANDUM OF PROTECTED ACTIVITY TO THE WHISTLEBLOWER'S
19 SUPERVISOR.

20 (c) *COMPLETING INVESTIGATION.*

21 (1) *PRESENTATION OF WRITTEN FINDINGS.*

22 WITHIN 150 DAYS OF RECEIPT OF THE COMPLAINT THE OFFICE OF THE INSPECTOR
23 GENERAL WILL PRESENT ITS WRITTEN FINDINGS, INCLUDING RECOMMENDATIONS FOR
24 ACTION BASED ON THE INVESTIGATION, TO:

25 (I) THE CITY ADMINISTRATOR;

26 (II) THE RELEVANT AGENCY HEAD; AND

27 (III) THE WHISTLEBLOWER.

28 (2) *REQUIRED MEETING.*

29 WITHIN 14 DAYS OF RECEIPT OF THE OFFICE OF THE INSPECTOR GENERAL'S WRITTEN
30 FINDINGS, THE CITY ADMINISTRATOR MUST MEET WITH THE RELEVANT AGENCY HEAD
31 AND THE INSPECTOR GENERAL TO DISCUSS THE RECOMMENDATIONS INCLUDED IN THE
32 WRITTEN FINDINGS.

Council Bill 21-0093

1 **§ 8-8. REMEDIES.**

2 TO REMEDY ANY VIOLATION OF THIS SUBTITLE, AN AGENCY HEAD MAY:

3 (1) ORDER THE REMOVAL OF DETRIMENTAL INFORMATION IN THE WHISTLEBLOWER’S
4 EMPLOYMENT RECORD PUT THERE DUE TO RETALIATION RELATED TO THE COMPLAINT;

5 (2) REQUIRE THE RELEVANT SUPERVISOR TO:

6 (I) HIRE, PROMOTE, OR REINSTATE THE WHISTLEBLOWER;

7 (II) END THE WHISTLEBLOWER’S SUSPENSION FROM EMPLOYMENT; OR

8 (III) AWARD THE WHISTLEBLOWER BACK PAY TO THE DATE OF THE VIOLATION; OR

9 (3) PROVIDE ANY OTHER REMEDY CONSISTENT WITH THE AGENCY’S MISSION.

10 **§ 8-9. [§ 8-8.] {Reserved}**

11 **§ 8-10. [§ 8-9.] Rules and regulations.**

12 ...

13 **§ 8-11. [§ 8-10.] Judicial and appellate review.**

14 ...

15 **§ 8-12. [§ 8-11.] Other remedies not affected.**

16 ...

17 **§ 8-13. [§ 8-12.] Training.**

18 ...

19 **§ 8-14. [§ 8-13.] Administrative manual.**

20 ...

21 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
22 are not law and may not be considered to have been enacted as a part of this or any prior
23 Ordinance.

24 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
25 after the date it is enacted.