

Introduced by: Councilmember Dorsey

middle
SHK
Bullock, SNOED, Harry, Scyle, J. R. Casella

Prepared by: Department of Legislative Reference

Date: April 16, 2019

JUDICIARY AND LEGISLATIVE INVESTIGATIONS

Referred to: _____ Committee

Pinkett
Clarke
Perisano

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 19-0377

A RESOLUTION ENTITLED

AN ORDINANCE concerning

Whistleblower Rights and Responsibilities

FOR the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating to whistleblower complaints.

C.V. Law

By repealing and reordaining, with amendments

Article 1 - Mayor, City Council, and Municipal Agencies
Subtitle 8, to be under the amended subtitle designation,

"Subtitle 8. Whistleblower Rights and Responsibilities"

Baltimore City Code
(Edition 2000)

Robert Stokes
Shawn [Signature]
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Edward Dorsey
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****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

Agencies

_____	Baltimore City Public School System	_____	Department of Public Works
_____	Baltimore Development Corporation	_____	Department of Real Estate
_____	City Solicitor	_____	Department of Recreation and Parks
_____	Comptroller's Office	_____	Department of Transportation
_____	Department of Audits	_____	Fire Department
_____	Department of Finance	_____	Health Department
_____	Department of General Services	_____	Mayor's Office of Employment Development
_____	Department of Housing and Community Development	_____	Mayor's Office of Human Services
_____	Department of Human Resources	_____	Mayor's Office of Information Technology
_____	Department of Planning	_____	Office of the Mayor
_____	Other: <i>Office of the Inspector General</i>	_____	Police Department
_____	Other: _____	_____	Other: _____
_____	Other: _____	_____	Other: _____
_____	Board of Estimates	_____	Environmental Control Board
_____	Board of Ethics	_____	Fire & Police Employees' Retirement System
_____	Board of Municipal and Zoning Appeals	_____	Labor Commissioner
_____	Comm. for Historical and Architectural Preservation	_____	Parking Authority Board
_____	Commission on Sustainability	_____	Planning Commission
_____	Employees' Retirement System	_____	Wage Commission
_____	Other: _____	_____	Other: _____
_____	Other: _____	_____	Other: _____
_____	Other: _____	_____	Other: _____

Boards and Commissions

_____	Board of Estimates	_____	Environmental Control Board
_____	Board of Ethics	_____	Fire & Police Employees' Retirement System
_____	Board of Municipal and Zoning Appeals	_____	Labor Commissioner
_____	Comm. for Historical and Architectural Preservation	_____	Parking Authority Board
_____	Commission on Sustainability	_____	Planning Commission
_____	Employees' Retirement System	_____	Wage Commission
_____	Other: _____	_____	Other: _____
_____	Other: _____	_____	Other: _____

CITY OF BALTIMORE
ORDINANCE **19.308**
Council Bill 19-0377

Introduced by: Councilmember Dorsey, Ex Officio Council President Middleton,
Councilmembers Henry, Schleifer, Stokes, Scott, Costello, Pinkett, Cohen, Burnett, Clarke,
Reisinger, Bullock, Sneed
Introduced and read first time: April 22, 2019
Assigned to: Judiciary and Legislative Investigations Committee
Committee Report: Favorable with amendments
Council action: Adopted
Read second time: September 23, 201

AN ORDINANCE CONCERNING

Whistleblower Rights and Responsibilities

1

2 FOR the purpose of prohibiting retaliation against whistleblowers for making covered disclosures;
3 defining certain terms; ~~establishing the Whistleblower Board; providing for the appointment,~~
4 ~~term, and service of Whistleblower Board members; authorizing the Whistleblower Board to~~
5 ~~adopt implementing rules, regulations, and procedures; establishing complaint procedures for~~
6 whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower
7 complaints; ~~detailing remedies and disciplinary action the Whistleblower Board can take~~
8 ~~when ruling on a whistleblower retaliation case; establishing judicial and appellate review;~~
9 requiring training for supervisors and employees; and mandating that the Office of the
10 Inspector General creates an administrative manual to further detail procedures relating
11 whistleblower complaints; and providing for a special effective date.

12 BY repealing and reordaining, with amendments

13 Article 1 - Mayor, City Council, and Municipal Agencies
14 Subtitle 8, to be under the amended subtitle designation,
15 "Subtitle 8. Whistleblower Rights and Responsibilities"
16 Baltimore City Code
17 (Edition 2000)

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

20 Baltimore City Code

21 Article 1. Mayor, City Council, and Municipal Agencies

22 Subtitle 8. ~~[Employee Disclosure Protection]~~ WHISTLEBLOWER RIGHTS AND
23 RESPONSIBILITIES.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 **[§ 8-1. Protected Disclosures.]**

2 *[(a) In general.]*

3 [Unless a disclosure is specifically prohibited by law, rule, regulation, or written policy,
4 an appointing authority may not take or refuse to take a personnel action with respect to
5 any employee or applicant for employment as a reprisal for any disclosure of information
6 which the employee reasonably believes evidences:]

7 [(1) a violation of any law, rule, or regulation;]

8 [(2) gross mismanagement, gross waste of funds, or abuse of authority; or]

9 [(3) a substantial or specific danger to public health or safety.]

10 *[(b) Disclosures to be made to Board of Estimates.]*

11 [An employee shall make his or her disclosure to the Board of Estimates or to its
12 designee.]

13 **[§ 8-2. Personnel Actions.]**

14 [In any personnel action, the affected employee may have the action alleged to be in
15 retaliation for a disclosure investigated by way of a grievance or dismissal appeal.]

16 **[§ 8-3. Prohibited disclosures to be made to Attorney General.]**

17 [Where a disclosure is specifically prohibited by law, rule, regulation, or written policy, an
18 employee may make the disclosure exclusively to the Attorney General of the State of
19 Maryland and shall be entitled to all of the benefits for the state's employee disclosure and
20 confidentiality protection.]

21 ~~§ 8-1. DEFINITIONS.~~

22 ~~(A) IN GENERAL:~~

23 ~~IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

24 ~~(B) AGENCY:~~

25 (1) *IN GENERAL.*

26 "AGENCY" MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL, AUTHORITY,
27 COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT.

28 ~~(2) INCLUSIONS:~~

29 "AGENCY" ALSO INCLUDES:

30 ~~(i) BALTIMORE CITY PARKING AUTHORITY;~~

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- 1 ~~(II) BALTIMORE DEVELOPMENT CORPORATION;~~
2 ~~(III) BALTIMORE POLICE DEPARTMENT;~~
3 ~~(IV) ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY;~~
4 ~~(V) HOUSING AUTHORITY OF BALTIMORE CITY;~~
5 ~~(VI) LOCAL DEVELOPMENT COUNCIL, SOUTH BALTIMORE VIDEO LOTTERY—~~
6 ~~TERMINAL;~~
7 ~~(VII) PIMLICO COMMUNITY DEVELOPMENT AUTHORITY; AND~~
8 ~~(VIII) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT —~~
9 ~~MANAGEMENT AUTHORITY.~~

10 ~~(C) BOARD.~~

11 ~~“BOARD” MEANS THE WHISTLEBLOWER BOARD ESTABLISHED UNDER THIS SUBTITLE.~~

12 ~~(D) COVERED DISCLOSURE.~~

13 ~~(1) IN GENERAL.~~

14 ~~“COVERED DISCLOSURE” MEANS A DISCLOSURE MADE BY AN EMPLOYEE THAT THE~~
15 ~~EMPLOYEE REASONABLY BELIEVES PROVIDES EVIDENCE OF:~~

- 16 ~~(I) FRAUD;~~
17 ~~(II) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;~~
18 ~~(III) A VIOLATION OF LAW; OR~~
19 ~~(IV) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.~~

20 ~~(2) INCLUSIONS.~~

21 ~~“COVERED DISCLOSURE” INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN~~
22 ~~INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.~~

23 ~~(3) EXCLUSIONS.~~

24 ~~“COVERED DISCLOSURE” DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY~~
25 ~~LAW.~~

26 ~~(E) EMPLOYEE.~~

27 ~~“EMPLOYEE” MEANS:~~

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1 ~~(1) ANY CURRENT OR FORMER EMPLOYEE, WHETHER FULL-TIME, PART-TIME,~~
2 ~~SEASONAL, CONTRACTUAL, OR OTHERWISE, OF A CITY AGENCY;~~

3 ~~(2) ANY APPLICANT FOR A POSITION WITH A CITY AGENCY; AND~~

4 ~~(3) ANY MEMBER OF A CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE~~
5 ~~MEMBER IS COMPENSATED.~~

6 ~~(F) PERSONNEL ACTION:~~

7 ~~"PERSONNEL ACTION" MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A~~
8 ~~SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION,~~
9 ~~SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE~~
10 ~~PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO~~
11 ~~TRANSFER, OR FAILURE TO ASSIGN.~~

12 ~~(G) SUPERVISOR:~~

13 ~~"SUPERVISOR" MEANS AN INDIVIDUAL WITH DIRECT OR INDIRECT SUPERVISORY~~
14 ~~AUTHORITY OVER AN EMPLOYEE.~~

15 ~~(H) WHISTLEBLOWER:~~

16 ~~"WHISTLEBLOWER" MEANS AN EMPLOYEE OF BALTIMORE CITY WHO MAKES A COVERED~~
17 ~~DISCLOSURE.~~

18 ~~§§ 8-2 TO 8-3. (RESERVED)~~

19 ~~§ 8-4. BOARD ESTABLISHED.~~

20 ~~(A) IN GENERAL:~~

21 ~~THERE IS A WHISTLEBLOWER BOARD.~~

22 ~~(B) COMPOSITION:~~

23 ~~THE BOARD COMPRISES 3 MEMBERS, OR THEIR RESPECTIVE DESIGNEES:~~

24 ~~(1) THE DIRECTOR OF HUMAN RESOURCES;~~

25 ~~(2) THE LABOR COMMISSIONER; AND~~

26 ~~(3) THE CITY SOLICITOR.~~

27 ~~(C) ALTERNATE:~~

28 ~~IN THE EVENT A BOARD MEMBER OR DESIGNEE IS IMPLICATED IN A WHISTLEBLOWER~~
29 ~~COMPLAINT, THE CITY COUNCIL PRESIDENT OR HIS OR HER COUNCIL MEMBER DESIGNEE~~
30 ~~MUST REPLACE THE BOARD MEMBER OR DESIGNEE IMPLICATED IN THE COMPLAINT.~~

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1 ~~§ 8-5. PURPOSE.~~

2 ~~THE BOARD IS RESPONSIBLE FOR ENCOURAGING THE ELIMINATION OF FRAUD, WASTE, AND~~
3 ~~ILLEGAL ACTIVITY BY PROTECTING WHISTLEBLOWERS.~~

4 ~~§ 8-6. (RESERVED)~~

5 ~~§ 8-7. STAFF.~~

6 ~~IN CONSULTATION WITH THE BOARD, THE INSPECTOR GENERAL MUST ASSIGN STAFF FROM THE~~
7 ~~OFFICE OF THE INSPECTOR GENERAL TO ASSIST THE BOARD.~~

8 ~~§ 8-8. POWERS AND DUTIES OF BOARD.~~

9 ~~THE BOARD IS AUTHORIZED TO:~~

10 ~~(1) ADJUDICATE DISPUTES UNDER THIS SUBTITLE;~~

11 ~~(2) ANALYZE ANY FINDINGS MADE BY THE OFFICE OF THE INSPECTOR GENERAL AS A~~
12 ~~RESULT OF WHISTLEBLOWER COMPLAINTS;~~

13 ~~(3) HOLD HEARINGS TO DETERMINE WHETHER A RETALIATORY PERSONNEL ACTION WAS~~
14 ~~TAKEN AT LEAST IN PART AGAINST A WHISTLEBLOWER BECAUSE OF THE~~
15 ~~WHISTLEBLOWER'S COVERED DISCLOSURE; AND~~

16 ~~(4) DETERMINE WHETHER REMEDIAL ACTION IS NECESSARY.~~

17 ~~§ 8-9. AGENCY COOPERATION.~~

18 ~~AT THE REQUEST OF THE BOARD, ALL CITY OFFICIALS AND AGENCIES MUST COOPERATE WITH~~
19 ~~THE BOARD AND EXTEND THE SERVICES AND FACILITIES THAT THE BOARD REQUIRES.~~

20 ~~§§ 8-10 TO 8-11. (RESERVED)~~

21 ~~§ 8-12. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY ACTION.~~

22 ~~(A) IN GENERAL.~~

23 ~~UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT~~
24 ~~TAKE A RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER.~~

25 ~~(B) EXCEPTIONS.~~

26 ~~THIS SECTION DOES NOT PROHIBIT:~~

27 ~~(1) A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION AGAINST A WHISTLEBLOWER~~
28 ~~IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL ACTION REGARDLESS OF~~
29 ~~WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE; OR~~

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1 ~~(2) AN EMPLOYEE FROM MAKING A DISCLOSURE THAT IS OTHERWISE PROHIBITED BY~~
2 ~~LAW IF THE EMPLOYEE EXCLUSIVELY MADE THE DISCLOSURE TO THE OFFICE OF~~
3 ~~THE MARYLAND ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR THE~~
4 ~~MARYLAND STATE PROSECUTOR.~~

5 ~~§§ 8-13 TO 8-14. {RESERVED}~~

6 ~~§ 8-15. COMPLAINT PROCESS - IN GENERAL.~~

7 ~~(A) FILING COMPLAINT WITH SUPERVISOR.~~

8 ~~(1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR~~
9 ~~MAKING A COVERED DISCLOSURE MAY FILE A WRITTEN COMPLAINT WITH ONE OR~~
10 ~~ANOTHER OF HIS OR HER SUPERVISORS.~~

11 ~~(2) THE COMPLAINT MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER~~
12 ~~KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.~~

13 ~~(B) SUPERVISOR RESPONSIBILITIES.~~

14 ~~(1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE~~
15 ~~SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER~~
16 ~~WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.~~

17 ~~(2) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR~~
18 ~~MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH~~
19 ~~WRITTEN FINDINGS OF THAT INVESTIGATION.~~

20 ~~(C) FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.~~

21 ~~(1) A WHISTLEBLOWER NEED NOT FILE HIS OR HER COMPLAINT WITH A SUPERVISOR AND,~~
22 ~~INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR~~
23 ~~GENERAL IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:~~

24 ~~(i) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED~~
25 ~~DISCLOSURE; OR~~

26 ~~(ii) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE~~
27 ~~OTHERWISE COMPLICIT IN THE RETALIATORY ACTION TAKEN AGAINST THE~~
28 ~~WHISTLEBLOWER.~~

29 ~~(2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS~~
30 ~~SUBSECTION MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER~~
31 ~~KNEW OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY ACTION.~~

32 ~~(D) FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.~~

33 ~~(1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE~~
34 ~~WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:~~

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1 ~~(I) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE~~
2 ~~WHISTLEBLOWER WITH WRITTEN FINDINGS OF HER OR HIS INVESTIGATION; OR~~

3 ~~(II) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN~~
4 ~~FINDINGS.~~

5 ~~(2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS~~
6 ~~SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE~~
7 ~~SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.~~

8 ~~(3) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF~~
9 ~~THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR~~
10 ~~PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S~~
11 ~~INVESTIGATION.~~

12 ~~(E) CONFIDENTIALITY.~~

13 ~~THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT~~
14 ~~PRACTICABLE AND PERMITTED BY LAW.~~

15 ~~§ 8-16. COMPLAINT INVESTIGATION — OFFICE OF THE INSPECTOR GENERAL.~~

16 ~~(A) NOTICE OF RECEIPT OF COMPLAINT.~~

17 ~~WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT UNDER § 8-15(C) OR~~
18 ~~(D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE~~
19 ~~WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.~~

20 ~~(B) COMPLETING INVESTIGATION.~~

21 ~~WITHIN 60 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT, THE OFFICE OF THE~~
22 ~~INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND PRESENT ITS FINDINGS TO~~
23 ~~THE WHISTLEBLOWER BOARD.~~

24 ~~(C) EXTENSION FOR COMPLETING INVESTIGATION.~~

25 ~~ON A FINDING OF GOOD CAUSE, THE BOARD MAY APPROVE AN EXTENSION FOR~~
26 ~~COMPLETING THE INVESTIGATION.~~

27 ~~§ 8-17. HEARING PROCEDURES.~~

28 ~~(A) WHISTLEBLOWER'S CASE.~~

29 ~~THE WHISTLEBLOWER MUST MAKE A PRIMA FACIE CASE BY ESTABLISHING THROUGH A~~
30 ~~PREPONDERANCE OF THE EVIDENCE THAT HIS OR HER COVERED DISCLOSURE WAS A~~
31 ~~CONTRIBUTING FACTOR IN THE SUPERVISOR'S TAKING THE PERSONNEL ACTION.~~

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1 ~~(B) SHOWING BY SUPERVISOR.~~

2 ONCE THE WHISTLEBLOWER HAS MADE A PRIMA FACIE CASE, THE SUPERVISOR HAS THE
3 BURDEN OF PROOF TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT HE OR
4 SHE WOULD HAVE TAKEN THE PERSONNEL ACTION EVEN IF THE WHISTLEBLOWER HAD NOT
5 MADE THE COVERED DISCLOSURE.

6 ~~(C) REPRESENTATION.~~

7 BOTH THE WHISTLEBLOWER AND THE SUPERVISOR MAY BE REPRESENTED AT A HEARING
8 BY COUNSEL.

9 ~~§ 8-18. RULES AND REGULATIONS.~~

10 ~~(A) IN GENERAL.~~

11 THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS
12 SUBTITLE.

13 ~~(B) FILING WITH LEGISLATIVE REFERENCE.~~

14 A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF
15 LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

16 ~~(C) POSTED TO INSPECTOR GENERAL'S WEBSITE.~~

17 A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE
18 POSTED ON THE INSPECTOR GENERAL'S WEBSITE.

19 ~~§ 8-19. REMEDIATION BY THE BOARD.~~

20 ~~(A) IN GENERAL.~~

21 IF THE BOARD DECIDES TO TAKE REMEDIAL ACTION, THE BOARD MAY:

- 22 (1) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE REMEDIES FOR
23 THE WHISTLEBLOWER;
- 24 (2) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND DECLINE TO PROVIDE
25 REMEDIES FOR THE WHISTLEBLOWER; OR
- 26 (3) DECLINE TO DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE
27 REMEDIES FOR THE WHISTLEBLOWER.

28 ~~(B) POSSIBLE DISCIPLINARY ACTION.~~

29 THE DISCIPLINARY ACTION THAT THE BOARD MAY TAKE AGAINST A PERSON FOR
30 RETALIATION AGAINST A WHISTLEBLOWER INCLUDES:

- 31 (1) A REPRIMAND;

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1 ~~(2) DEMOTION; OR~~

2 ~~(3) TERMINATION;~~

3 ~~(C) POSSIBLE REMEDIES.~~

4 THE REMEDIES THAT THE BOARD MAY PROVIDE TO A WHISTLEBLOWER INCLUDES:

5 ~~(1) REINSTATEMENT TO THE STATUS THAT THE WHISTLEBLOWER WOULD HAVE HAD~~
6 ~~BUT FOR THE RETALIATION; OR~~

7 ~~(2) ANY BACKPAY, WITH INTEREST; OR~~

8 ~~(3) BOTH.~~

9 ~~§ 8-20. JUDICIAL AND APPELLATE REVIEW.~~

10 ~~(A) JUDICIAL REVIEW.~~

11 ANY PERSON AGGRIEVED BY AN ORDER OF THE BOARD MAY SEEK JUDICIAL REVIEW OF
12 THAT ORDER BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE
13 WITH THE MARYLAND RULES OF PROCEDURE.

14 ~~(B) APPELLATE REVIEW.~~

15 ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE
16 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
17 PROCEDURE.

18 ~~§ 8-21. OTHER REMEDIES NOT AFFECTED.~~

19 NOTHING IN THIS SUBTITLE AFFECTS:

20 ~~(1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;~~

21 ~~(2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW~~
22 ~~OR CONTRACT; OR~~

23 ~~(3) ANY OTHER REMEDY PROVIDED BY LAW.~~

24 ~~§§ 8-22 TO 8-23. {RESERVED}~~

25 ~~§ 8-24. TRAINING.~~

26 THE OFFICE OF THE INSPECTOR GENERAL, WITH ASSISTANCE FROM THE LAW DEPARTMENT
27 AND THE DEPARTMENT OF HUMAN RESOURCES, MUST CONDUCT TRAININGS REGARDING THIS
28 SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND RESPONSIBILITIES.

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1 ~~§ 8-25. ADMINISTRATIVE MANUAL.~~

2 ~~THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT~~
3 ~~OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF~~
4 ~~COMPLAINTS UNDER THIS SUBTITLE.~~

5 § 8-1. DEFINITIONS.

6 (A) IN GENERAL.

7 IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

8 (B) AFFILIATED ENTITY.

9 “AFFILIATED ENTITY” REFERS TO THE FOLLOWING ENTITIES:

10 (1) BALTIMORE CITY PARKING AUTHORITY;

11 (2) BALTIMORE DEVELOPMENT CORPORATION; AND

12 (3) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT MANAGEMENT
13 AUTHORITY.

14 (C) AGENCY.

15 “AGENCY” MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL, AUTHORITY,
16 COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT OR OF ANY AFFILIATED
17 ENTITY.

18 (D) COVERED DISCLOSURE.

19 (1) IN GENERAL.

20 “COVERED DISCLOSURE” MEANS A DISCLOSURE:

21 (I) MADE BY AN EMPLOYEE;

22 (II) CONCERNING ACTIONS ARISING WITHIN THE BALTIMORE CITY GOVERNMENT;

23 (III) INITIALLY MADE TO ONE OR ANOTHER OF AN EMPLOYEE’S SUPERVISORS OR TO
24 THE INSPECTOR GENERAL; AND

25 (IV) THAT THE EMPLOYEE REASONABLY BELIEVES TO BE EVIDENCE OF:

26 (A) FRAUD;

27 (B) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;

28 (C) A VIOLATION OF LAW; OR

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1 (D) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR
2 SECURITY.

3 (2) INCLUSIONS.

4 “COVERED DISCLOSURE” INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN
5 INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.

6 (3) EXCLUSIONS.

7 “COVERED DISCLOSURE” DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY
8 LAW.

9 (E) EMPLOYEE.

10 “EMPLOYEE” MEANS AN EMPLOYEE OF A CITY AGENCY, WHETHER EMPLOYED FULL-TIME,
11 PART-TIME, SEASONAL, CONTRACTUAL, OR OTHERWISE, INCLUDING ANY MEMBER OF A
12 CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE MEMBER IS COMPENSATED.

13 (F) PERSONNEL ACTION.

14 “PERSONNEL ACTION” MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A
15 SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION,
16 SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE
17 PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO
18 TRANSFER, OR FAILURE TO ASSIGN.

19 (G) SUPERVISOR.

20 “SUPERVISOR” MEANS ANY INDIVIDUAL WHO DIRECTLY OR INDIRECTLY OVERSEES THE
21 WORK OF AN EMPLOYEE WHO FILES A COMPLAINT PURSUANT TO THIS SUBTITLE.

22 (H) WHISTLEBLOWER.

23 “WHISTLEBLOWER” MEANS AN EMPLOYEE WHO MAKES A COVERED DISCLOSURE.

24 § 8-2. {RESERVED}

25 § 8-3. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY PERSONNEL ACTION.

26 (A) IN GENERAL.

27 UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT
28 TAKE RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER FOR MAKING A
29 COVERED DISCLOSURE.

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1 (B) EXCEPTIONS.

2 THIS SECTION DOES NOT PROHIBIT A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION
3 AGAINST A WHISTLEBLOWER IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL
4 ACTION REGARDLESS OF WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE.

5 § 8-4. {RESERVED}

6 § 8-5. SCOPE OF COMPLAINT PROCEDURES.

7 (A) IN GENERAL.

8 THIS COMPLAINT PROCEDURES PROVISIONS IN § 8-6 ET SEQ. OF THIS SUBTITLE DO NOT
9 APPLY TO ANY NON-PROBATIONARY MEMBER OF THE CIVIL SERVICE WHO HAS BEEN
10 DISCHARGED FROM THE CIVIL SERVICE, REDUCED IN PAY OR POSITION, OR SUSPENDED FOR
11 LONGER THAN 30 DAYS.

12 (B) JURISDICTION OF CIVIL SERVICE COMMISSION.

13 (1) THE CIVIL SERVICE COMMISSION HAS JURISDICTION OVER PERSONNEL ACTIONS
14 DESCRIBED IN SUBSECTION (A) OF THIS SECTION, AS PROVIDED IN CITY CHARTER
15 ARTICLE VII §§ 94 THROUGH 104.

16 (2) ON THE CIVIL SERVICE COMMISSION'S REQUEST, THE OFFICE OF THE INSPECTOR
17 GENERAL MAY INVESTIGATE ALLEGATIONS MADE TO THE CIVIL SERVICE COMMISSION
18 REGARDING RETALIATORY PERSONNEL ACTIONS AND PROVIDE THE OFFICE'S FINDINGS
19 TO THE COMMISSION AT OR BEFORE A COMMISSION HEARING TO THE EXTENT
20 PERMITTED BY ARTICLE X OF THE CHARTER OF BALTIMORE CITY. THE INSPECTOR
21 GENERAL'S FINDINGS SHALL STATE WHETHER THE INSPECTOR GENERAL BELIEVES THE
22 PERSONNEL ACTIONS WERE IN VIOLATION OF § 8-3 OF THIS SUBTITLE.

23 (C) CIVIL SERVICE COMMISSION FINDINGS.

24 (1) DURING A CIVIL SERVICE COMMISSION HEARING, THE COMMISSION MAY FIND THAT
25 THE PERSONNEL ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION VIOLATES §
26 8-3 OF THIS SUBTITLE.

27 (2) IF THE COMMISSION FINDS THAT THE PERSONNEL ACTION DESCRIBED IN SUBSECTION
28 (A) OF THIS SECTION VIOLATES § 8-3 OF THIS SUBTITLE, THIS FINDING MAY BE
29 CONSIDERED BY THE COMMISSION IN DISPOSING OF THE MATTER BEFORE IT.

30 § 8-6. COMPLAINT PROCESS.

31 (A) FILING COMPLAINT WITH SUPERVISOR.

32 (1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR
33 MAKING A COVERED DISCLOSURE SHALL FILE A WRITTEN COMPLAINT WITH HIS OR HER
34 SUPERVISOR.

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1 (2) THE COMPLAINT MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER
2 KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.

3 (B) SUPERVISOR RESPONSIBILITIES.

4 (1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE
5 SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER
6 WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.

7 (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE
8 SUPERVISOR WHO RECEIVED THE COMPLAINT MUST NOTIFY THE AGENCY HEAD OR THE
9 APPROPRIATE APPOINTING AUTHORITY TO THE COMPLAINT.

10 (3) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR
11 MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH
12 WRITTEN FINDINGS, AS WELL AS THE AGENCY HEAD OR THE APPROPRIATE APPOINTING
13 AUTHORITY.

14 (C) FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.

15 (1) A WHISTLEBLOWER NEED NOT FILE THE INITIAL COMPLAINT WITH A SUPERVISOR AND,
16 INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR
17 GENERAL, IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:

18 (I) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED
19 DISCLOSURE; OR

20 (II) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE
21 OTHERWISE COMPLICIT IN THE RETALIATORY PERSONNEL ACTION TAKEN
22 AGAINST THE WHISTLEBLOWER.

23 (2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS
24 SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER KNEW
25 OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY PERSONNEL
26 ACTION.

27 (D) FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.

28 (1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE
29 WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:

30 (I) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE
31 WHISTLEBLOWER WITH WRITTEN FINDINGS OF THE SUPERVISOR'S
32 INVESTIGATION; OR

33 (II) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN
34 FINDINGS.

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1 (2) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS
2 SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE
3 SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.

4 (3) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF THIS
5 SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR PRESENTED
6 THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S
7 INVESTIGATION.

8 (E) CONFIDENTIALITY.

9 THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT
10 PERMITTED BY LAW.

11 § 8-7. COMPLAINT INVESTIGATION BY INSPECTOR GENERAL.

12 (A) NOTICE OF RECEIPT OF COMPLAINT.

13 WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT OR APPEAL UNDER §
14 8-6(C) OR (D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE
15 WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S OR APPEAL'S RECEIPT.

16 (B) COMPLETING INVESTIGATION.

17 THE OFFICE OF THE INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND, WITHIN
18 150 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT OR APPEAL, PRESENT ITS WRITTEN
19 FINDINGS TO THE HEAD OF THE AGENCY FOR WHICH THE WHISTLEBLOWER WORKS OR THE
20 APPROPRIATE APPOINTING AUTHORITY AND THE WHISTLEBLOWER INVOLVED IN THE
21 COMPLAINT OR APPEAL.

22 § 8-8. {RESERVED}

23 § 8-9. RULES AND REGULATIONS.

24 (A) IN GENERAL.

25 THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS
26 SUBTITLE.

27 (B) FILING WITH LEGISLATIVE REFERENCE.

28 A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF
29 LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

30 (C) POSTED TO INSPECTOR GENERAL'S WEBSITE.

31 A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE
32 POSTED ON THE OFFICE OF THE INSPECTOR GENERAL'S WEBSITE.

Council Bill 19-0377

1 § 8-10. JUDICIAL AND APPELLATE REVIEW.

2 (A) JUDICIAL REVIEW.

3 ANY PERSON AGGRIEVED BY A FINAL ACTION UNDER THIS SUBTITLE MAY SEEK JUDICIAL
4 REVIEW OF THAT ACTION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN
5 ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

6 (B) APPELLATE REVIEW.

7 ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE
8 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
9 PROCEDURE.

10 § 8-11. OTHER REMEDIES NOT AFFECTED.

11 NOTHING IN THIS SUBTITLE AFFECTS:

12 (1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;

13 (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW
14 OR CONTRACT; OR

15 (3) ANY OTHER REMEDY PROVIDED BY LAW.

16 § 8-12. TRAINING.

17 THE DEPARTMENT OF HUMAN RESOURCES, WITH THE ASSISTANCE OF THE OFFICE OF THE
18 INSPECTOR GENERAL AND THE LAW DEPARTMENT, MUST CONDUCT TRAININGS REGARDING
19 THIS SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND
20 RESPONSIBILITIES.

21 § 8-13. ADMINISTRATIVE MANUAL.

22 THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT
23 OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF
24 COMPLAINTS UNDER THIS SUBTITLE.


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

28 SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 60th
29 day after the date it is enacted.

Council Bill 19-0377

OCT 07 2019

Certified as duly passed this _____ day of _____, 20__

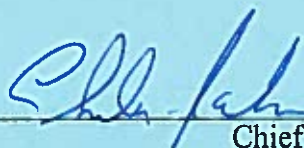


President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

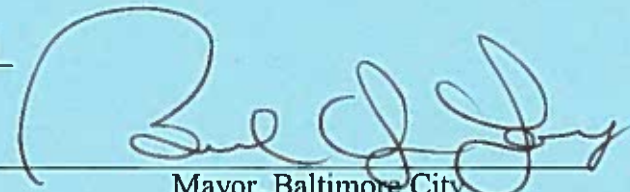
OCT 07 2019

this _____ day of _____, 20__



Chief Clerk

Approved this 23rd day of Oct., 2019



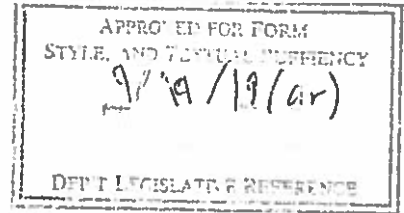
Mayor, Baltimore City

Approved For Form and Legal Sufficiency

This 17th Day of October 2019.



Chief Solicitor



AMENDMENTS TO THE COMMITTEE AMENDMENTS TO COUNCIL BILL 19-0377
(1st Reader Copy, as amended)

By: Councilmember Dorsey
{To be offered on the Council Floor}

Amendment No. 1

In Committee Amendment No. 2, on page 3 of the Committee Amendments, in § 8-3(b), in the first line after “(B) EXCEPTIONS.”, strike the colon; and, in the following line, strike the paragraph designation “(1)”; and, in the fifth line, strike beginning with the semicolon down through and including “GENERAL” in the third line of page 4.

Amendment No. 2

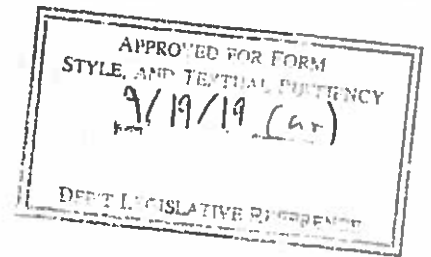
In Committee Amendment No. 2, on page 4 of the Committee Amendments, in § 8-5(c), in the third line of paragraph (2), strike beginning with “AS” down through and including “§ (100)(A)(5)” in the last line of that paragraph and substitute “IN DISPOSING OF THE MATTER BEFORE IT”.

Amendment No. 3

In Committee Amendment No. 2, on page 8 of the Committee Amendments, in § 8-12, in the first line of that section, strike beginning with “THE OFFICE” down through and including “RESOURCES” in the second line of that section, and substitute “THE DEPARTMENT OF HUMAN RESOURCES, WITH THE ASSISTANCE OF THE OFFICE OF THE INSPECTOR GENERAL AND THE LAW DEPARTMENT”.

ADOPTED

AMENDMENTS TO COUNCIL BILL 19-0377
(1st Reader Copy)



By: Judiciary and Legislative Investigations Committee

Amendment No. 1

On page 1, strike beginning with “establishing” in line 4 down through the semicolon in line 6; and on the same page, strike beginning with “detailing” in line 8 down through the first semicolon in line 9; and on the same page, in line 10, strike “and”; and on the same page, in line 12, before the period, insert “; and providing for a special effective date”.

Amendment No. 2

On pages 2 through 10, strike beginning with “§ 8-1” in line 21, on page 2, down through the period in line 4, on page 10, and substitute:

“§ 8-1. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) AFFILIATED ENTITY.

“AFFILIATED ENTITY” REFERS TO THE FOLLOWING ENTITIES:

(1) BALTIMORE CITY PARKING AUTHORITY;

(2) BALTIMORE DEVELOPMENT CORPORATION; AND

(3) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT
MANAGEMENT AUTHORITY.

(C) AGENCY.

“AGENCY” MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL,
AUTHORITY, COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT OR OF
ANY AFFILIATED ENTITY.

ADOPTED

(D) COVERED DISCLOSURE.

(1) IN GENERAL.

“COVERED DISCLOSURE” MEANS A DISCLOSURE:

(I) MADE BY AN EMPLOYEE;

(II) CONCERNING ACTIONS ARISING WITHIN THE BALTIMORE CITY GOVERNMENT;

(III) INITIALLY MADE TO ONE OR ANOTHER OF AN EMPLOYEE’S SUPERVISORS OR TO THE INSPECTOR GENERAL; AND

(IV) THAT THE EMPLOYEE REASONABLY BELIEVES TO BE EVIDENCE OF:

(A) FRAUD;

(B) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;

(C) A VIOLATION OF LAW; OR

(D) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.

(2) INCLUSIONS.

“COVERED DISCLOSURE” INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.

(3) EXCLUSIONS.

“COVERED DISCLOSURE” DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY LAW.

(E) EMPLOYEE.

“EMPLOYEE” MEANS AN EMPLOYEE OF A CITY AGENCY, WHETHER EMPLOYED FULL-TIME, PART-TIME, SEASONAL, CONTRACTUAL, OR OTHERWISE, INCLUDING ANY MEMBER OF A CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE MEMBER IS COMPENSATED.

(F) PERSONNEL ACTION.

“PERSONNEL ACTION” MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION, SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO TRANSFER, OR FAILURE TO ASSIGN.

(G) SUPERVISOR.

“SUPERVISOR” MEANS ANY INDIVIDUAL WHO DIRECTLY OR INDIRECTLY OVERSEES THE WORK OF AN EMPLOYEE WHO FILES A COMPLAINT PURSUANT TO THIS SUBTITLE.

(H) WHISTLEBLOWER.

“WHISTLEBLOWER” MEANS AN EMPLOYEE WHO MAKES A COVERED DISCLOSURE.

§ 8-2. {RESERVED}

§ 8-3. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY PERSONNEL ACTION.

(A) IN GENERAL.

UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT TAKE RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER FOR MAKING A COVERED DISCLOSURE.

(B) EXCEPTIONS.

THIS SECTION DOES NOT PROHIBIT:

(1) A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION AGAINST A WHISTLEBLOWER IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL ACTION REGARDLESS OF WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE; OR

(2) AN EMPLOYEE FROM MAKING A DISCLOSURE THAT IS OTHERWISE PROHIBITED BY LAW IF THE EMPLOYEE EXCLUSIVELY MAKES THAT DISCLOSURE TO THE:

(i) OFFICE OF THE MARYLAND ATTORNEY GENERAL;

(II) OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY;

(III) OFFICE OF THE MARYLAND STATE PROSECUTOR; OR

(IV) BALTIMORE CITY OFFICE OF THE INSPECTOR GENERAL.

§ 8-4. {RESERVED}

§ 8-5. SCOPE OF COMPLAINT PROCEDURES.

(A) IN GENERAL.

THIS COMPLAINT PROCEDURES PROVISIONS IN § 8-6 ET SEQ. OF THIS SUBTITLE DO NOT APPLY TO ANY NON-PROBATIONARY MEMBER OF THE CIVIL SERVICE WHO HAS BEEN DISCHARGED FROM THE CIVIL SERVICE, REDUCED IN PAY OR POSITION, OR SUSPENDED FOR LONGER THAN 30 DAYS.

(B) JURISDICTION OF CIVIL SERVICE COMMISSION.

(1) THE CIVIL SERVICE COMMISSION HAS JURISDICTION OVER PERSONNEL ACTIONS DESCRIBED IN SUBSECTION (A) OF THIS SECTION, AS PROVIDED IN CITY CHARTER ARTICLE VII §§ 94 THROUGH 104.

(2) ON THE CIVIL SERVICE COMMISSION'S REQUEST, THE OFFICE OF THE INSPECTOR GENERAL MAY INVESTIGATE ALLEGATIONS MADE TO THE CIVIL SERVICE COMMISSION REGARDING RETALIATORY PERSONNEL ACTIONS AND PROVIDE THE OFFICE'S FINDINGS TO THE COMMISSION AT OR BEFORE A COMMISSION HEARING TO THE EXTENT PERMITTED BY ARTICLE X OF THE CHARTER OF BALTIMORE CITY. THE INSPECTOR GENERAL'S FINDINGS SHALL STATE WHETHER THE INSPECTOR GENERAL BELIEVES THE PERSONNEL ACTIONS WERE IN VIOLATION OF § 8-3 OF THIS SUBTITLE.

(C) CIVIL SERVICE COMMISSION FINDINGS.

(1) DURING A CIVIL SERVICE COMMISSION HEARING, THE COMMISSION MAY FIND THAT THE PERSONNEL ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION VIOLATES § 8-3 OF THIS SUBTITLE.

(2) IF THE COMMISSION FINDS THAT THE PERSONNEL ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION VIOLATES § 8-3 OF THIS SUBTITLE, THIS FINDING MAY BE CONSIDERED BY THE COMMISSION AS PRIMA FACIE EVIDENCE OF A VIOLATION OF "THE INTENT AND SPIRIT" OF THIS CHARTER WITHIN THE MEANING OF CITY CHARTER ARTICLE VII, § 95(F) AND § 100(A)(5).

§ 8-6. COMPLAINT PROCESS.

(A) FILING COMPLAINT WITH SUPERVISOR.

- (1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR MAKING A COVERED DISCLOSURE SHALL FILE A WRITTEN COMPLAINT WITH HIS OR HER SUPERVISOR.
- (2) THE COMPLAINT MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.

(B) SUPERVISOR RESPONSIBILITIES.

- (1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.
- (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST NOTIFY THE AGENCY HEAD OR THE APPROPRIATE APPOINTING AUTHORITY TO THE COMPLAINT.
- (3) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS, AS WELL AS THE AGENCY HEAD OR THE APPROPRIATE APPOINTING AUTHORITY.

(C) FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.

- (1) A WHISTLEBLOWER NEED NOT FILE THE INITIAL COMPLAINT WITH A SUPERVISOR AND, INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR GENERAL, IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:
 - (i) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED DISCLOSURE; OR
 - (ii) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE OTHERWISE COMPLICIT IN THE RETALIATORY PERSONNEL ACTION TAKEN AGAINST THE WHISTLEBLOWER.

(2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY PERSONNEL ACTION.

(D) FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.

(1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:

(i) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS OF THE SUPERVISOR'S INVESTIGATION; OR

(ii) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN FINDINGS.

(2) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.

(3) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S INVESTIGATION.

(E) CONFIDENTIALITY.

THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT PERMITTED BY LAW.

§ 8-7. COMPLAINT INVESTIGATION BY INSPECTOR GENERAL.

(A) NOTICE OF RECEIPT OF COMPLAINT.

WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT OR APPEAL UNDER § 8-6(C) OR (D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S OR APPEAL'S RECEIPT.

(B) COMPLETING INVESTIGATION.

THE OFFICE OF THE INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND, WITHIN 150 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT OR APPEAL, PRESENT ITS WRITTEN FINDINGS TO THE HEAD OF THE AGENCY FOR WHICH THE WHISTLEBLOWER WORKS OR THE APPROPRIATE APPOINTING AUTHORITY AND THE WHISTLEBLOWER INVOLVED IN THE COMPLAINT OR APPEAL.

§ 8-8. {RESERVED}

§ 8-9. RULES AND REGULATIONS.

(A) IN GENERAL.

THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) FILING WITH LEGISLATIVE REFERENCE.

A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

(C) POSTED TO INSPECTOR GENERAL'S WEBSITE.

A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE POSTED ON THE OFFICE OF THE INSPECTOR GENERAL'S WEBSITE.

§ 8-10. JUDICIAL AND APPELLATE REVIEW.

(A) JUDICIAL REVIEW.

ANY PERSON AGGRIEVED BY A FINAL ACTION UNDER THIS SUBTITLE MAY SEEK JUDICIAL REVIEW OF THAT ACTION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

(B) APPELLATE REVIEW.

ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

§ 8-11. OTHER REMEDIES NOT AFFECTED.

NOTHING IN THIS SUBTITLE AFFECTS:

- (1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;
- (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW OR CONTRACT; OR
- (3) ANY OTHER REMEDY PROVIDED BY LAW.

§ 8-12. TRAINING.

THE OFFICE OF THE INSPECTOR GENERAL, WITH ASSISTANCE FROM THE LAW DEPARTMENT AND THE DEPARTMENT OF HUMAN RESOURCES, MUST CONDUCT TRAININGS REGARDING THIS SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND RESPONSIBILITIES.

§ 8-13. ADMINISTRATIVE MANUAL.

THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF COMPLAINTS UNDER THIS SUBTITLE.”.

**BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE
VOTING RECORD**

BILL#: CC-19-0377

DATE: 9/17/19

TITLE: Whistleblower Rights and Responsibilities

MOTION BY: Reisinger SECONDED BY: Clarke

FAVORABLE

FAVORABLE WITH AMENDMENTS


UNFAVORABLE

WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Costello, E., Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarke, M., Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bullock, J.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pinkett, L.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reisinger, E.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stokes, R.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTALS	<u>6</u>	<u>0</u>	<u>0</u>	<u>0</u>

CHAIRPERSON: 

COMMITTEE STAFF: Matthew L. Peters, Initials: MLP

F R O M	Name & Title	Quinton Herbert, Director and Chief Human Capital Officer	CITY OF BALTIMORE MEMO	
	Agency Name & Address	Department of Human Resources 7 East Redwood St., Baltimore, MD 21202		
	Subject	CITY COUNCIL BILL #19-0377 / Whistle Blower Law Procedures		

TO: The Honorable Bernard "Jack" Young and
Members of the Baltimore City Council
City Hall, 100 N. Holliday Street, Room 409

DATE: September 13, 2019

Summary of the Bill

Council Bill 19-0377 proposes to create a Whistleblower Board; authorizes that board to create local City-of Baltimore rules, regulations and procedures guiding Whistleblower complaints; authorizes and/or commands a use of Inspector General office to investigate complaints; mandates Citywide training by the IG; and requires the IG to create an administrative manual detailing these new whistleblower complaint procedural requirements.

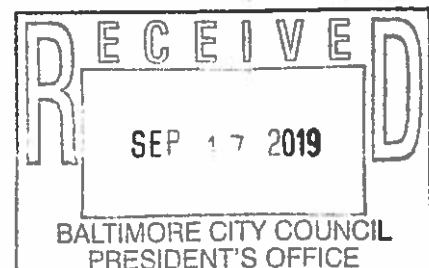
DHR's Recommendation

The Department of Human Resources **supports** City Council Bill 19-0377 with the following proposed amendments:

- Bill §8-1 proposes to include whom are affiliated with the City of Baltimore. §8-1(B) lists a number of agencies that are state or federal entities that may not be subject to the bill including the Baltimore Police Department and the Housing Authority of Baltimore City. Bill §8-1 (G)- Strike and replace with "'Supervisor' means any individual who directly or indirectly oversees the work of an employee who files a complaint under this subtitle."
- Bill § 8-3 (A) add the words "for making a covered disclosure". STRIKE § 8-3(B)(2) in its entirety. An unlawful disclosure to the agencies identified in § 8-3(B)(2) does not make the disclosure legal or protect the employee from making the otherwise illegal disclosure from adverse action. For example, a disclosure that violates the Maryland Public Information Act ("MPIA") would not shield the City or the disclosing employee from a claim from an aggrieved employee. The current language also seemingly conflicts with the language in § 8-3(A).
- Bill § 8-5 (C)(2)- STRIKE "as prima facie evidence of a violation of "the intent and spirit" of this Charter within the meaning of City Charter Article VII, §95(F) and § 100(A)(5)" and REPLACE with "in disposing of the matter before it."
- Bill § 8-7(B) STRIKE "150 days" and REPLACE with "60 days" to provide consistency with the amount of time prescribed for conducting whistleblower investigations within the agencies.
- Bill § 8-12 The Department of Human Resources ("DHR") Office of Learning and Development is tasked with providing training on City of Baltimore Policies and Procedures on an citywide basis. Consequently, DHR with assistance from the OIG and the Law Department, should conduct trainings regarding this subtitle.

Visit our website at www.baltimorecity.gov


Fav w/ Amnds



Council Bill 19-0377 appears to codify a local set of rules and regulations for the City of Baltimore that would prescribe a more particular process for handling Whistleblower complaints within the City's local government. Again DHR supports the bill with the aforementioned modifications.

Visit our website at www.baltimorecity.gov

Robert Cennamo

FROM	NAME & TITLE	Robert Cennamo, Chief	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774		
	SUBJECT	City Council Bill 19-0377: Whistleblower Rights and Responsibilities		

DATE:

TO

The Honorable President and Members of the City Council
City Hall, Room 400

September 13, 2019

Position: Does Not Oppose

City Council Bill 19-0377 proposes prohibiting retaliation against whistleblowers, establishing procedures for filing complaints for retaliation, and authorizing and mandating the Office of the Inspector General to investigate complaints of retaliation filed by whistleblowers.

Background

The central provision of this bill will ensure that employees who disclose fraud, a violation of law, misuse or waste of public resources, or threat to health, safety, or security within city government are protected from retaliatory personnel actions. Providing this protection promotes accountability within City government by making it safer to come forward. Currently, there is no protection for whistleblowers and the City Code that addresses Employee Disclosure Protection does not describe policies or procedures.

Fiscal Impact

It is unclear how many new cases would result from this bill, so the fiscal impact is not definite. However, based on discussion with the OIG, if there were high volumes of cases reported, the workload could require the establishment of a new Whistleblower Investigations Unit with up to additional three FTE agents at a cost of approximately \$300,000 annually, as well as external training for agents and material costs for agents to train City management. If passed, the Department of Finance intends to monitor the volume of complaints before considering appropriating additional resources.

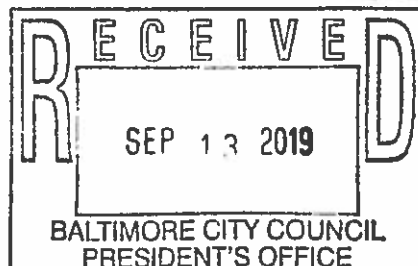
This legislation may encourage employees to report problems, which could ultimately save the City money as misuse and fraud are reported and addressed. However, we are unable to calculate what that number could be considering the unknowns of how many cases may occur and the focus of cases.

Conclusion

The Department of Finance supports the intent of this legislation to protect employees who report misconduct from retaliatory personnel actions. Additionally, the Department believes this bill may result in some savings as reports of fraud and misuse of resources are filed. However, we expect the development of a special Whistleblower Investigations Unit could require additional personnel, dependent on the number of cases that are reported.

For the reasons stated above, the Department of Finance does not oppose City Council Bill 19-0377.

cc: Henry Raymond
Matthew Stegman
Nina Themelis



Does not oppose



18

19

CITY OF BALTIMORE

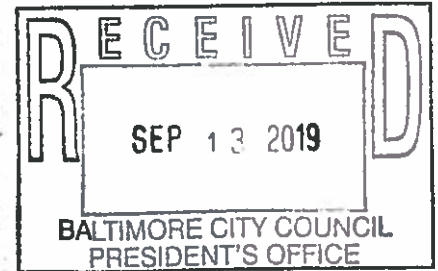
BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

September 13, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 19-0377 – Whistleblower Rights and Responsibilities

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0377, as amended by Councilman Dorsey, dated August 27, 2019, for form and legal sufficiency. The bill prohibits retaliation against whistleblowers for making covered disclosures. It establishes complaint procedures for whistleblowers and authorizes the Office of the Inspector General to investigate whistleblower complaints. The bill establishes judicial and appellate review and requires training for supervisors and employees. It mandates that the Office of the Inspector General create rules and regulations relating whistleblower complaints. The bill also provides for a special effective date.

As an initial matter, the Law Department notes that, as a matter of public policy, no City employee today can suffer a personnel action as a reprisal for disclosing information for any of the following activities: a violation of law or regulation; gross mismanagement; waste of funds; abuse of authority; or for allegations involving substantial or specific danger to public health or safety. *See*, City Code Art. 1, § 8-1. This protection extends to at-will employees who normally can be subject to any personnel action including termination for any reason or for no reason, unless the action is constitutionally barred. *See*, 16B McQuillin Mun. Corp. § 46:80.50 (3d ed.) (“An at-will employee may not be terminated “(1) for refusing to violate the law or any well-established and clear mandate of public policy as expressed in the constitution, statutes, regulations promulgated pursuant to statute, or rules created by a governmental body or (2) for reporting wrongdoing or violations of law to superiors or public authorities”). The current protection, however, does not extend to employees of “affiliated entities,” as that term is defined in the amendments. Nor does the current law expressly provide for the Office of the Inspector General to investigate allegations of employment reprisals - that is, for “whistleblowing - although the Inspector General is authorized today to investigate these matters. *See*, City Charter, Art. X, § 3(b). Council Bill 19-0377 would expand the law to include them.

F

"Affiliated Entities"

While there is no question that the Mayor and City Council may regulate the behavior of City employees, the regulation of employees of an "affiliated entity" are a different matter. The employer-employee relationship in private employment is the product of a contract. *See*, 3 McQuillin Mun. Corp. § 12:1 (3d ed.)(" The employer-employee relationship in public employment is the product of law, —constitutional, legislative and decisional—rather than the product of a contract as in private employment."). Thus, the initial legal concern with the bill is the effect of Article 1, § 10 of the U.S. Constitution, known as the Contract Clause.

The Contract Clause limits the ability of state and local legislation to interfere in the contracts of private parties. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977) ("It long has been established that the Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties."). Legislative interference, however, is situationally permissible. In particular, the Supreme Court holds that state and local governments exercise broad discretion when interfering with contracts between employer and employees. *See e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 393 (1937) ("In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations...." To this end, the Mayor and City Council used police power to lawfully interfere with contractual employment relationships when Baltimore adopted its minimum wage law. *See, City of Baltimore v. Sitnick*, 254 Md. 303, 309-10 (1969) ("We start with the recognition of the general proposition that Baltimore City, as a municipal corporation, had the authority under its police powers to establish by ordinance minimum wage regulations"). With these principles in mind, the Law Department concludes that, through the use of police power, Council Bill 19-0377 can lawfully regulate the private employment relationships that exist in a 501(c)(3) entity such as the Baltimore Development Corporation that is named in the bill.

Turning to the Baltimore City Parking Authority ("BCPA"), this entity is a product of both State and local legislation. State law permits local governments to create parking authorities. Md. Local Govt § 18-104. Moreover, the parking authorities have the powers granted them by local law, consistent with the State enabling act. Md. Local Govt § 18-108. The Mayor and City Council of Baltimore exercised the powers granted by the enabling act and created the Baltimore City Parking Authority, the provisions of which are now found in Article 31, Subtitle 13. That subtitle specifically states that the "Authority is not an agency of the Mayor and City Council of Baltimore, and its officers and employees are not agents or employees of the Mayor and City Council of Baltimore." City Code, Art. 31 § 13-6. Nonetheless, this provision does not bar subsequent local legislation from overturning this prohibition. *See, State v. Graves*, 19 Md 351 (1863) ("The corporation cannot abridge its own legislative powers."). Furthermore, nothing in the State enabling act would prohibit the provisions of Council Bill 19-0377 from taking effect. The Law Department therefore concludes that the bill may lawfully affect the behavior of employees of the Baltimore City Parking Authority.

Like the Baltimore City Parking Authority, the South Baltimore Gateway Community Impact District Management Authority is something of a special case. The Authority is a creature of the City, created pursuant to Article II, § 69 of the City Charter. The delegation of authority found in that section, however, states that the Authority is not an agent of the Mayor and City Council or of the State. Art. II, § 69(e). The ordinance that implements the Charter provision repeats this constraint, stating also that the officers and employees of the Authority are not agents of the City or State. City Code, § 19-5(a). Nonetheless, the Law Department concludes that Council Bill 19-0377 may regulate the Authority's through the exercise of the City's police power. The Authority is not a State entity. The Authority is not a City entity. It is an "other-type" of entity, subject to and regulated by this legislation in the same way a private employer can be regulated by it. The Law Department therefore concludes that the bill may lawfully affect the South Baltimore Gateway Community Impact District Management Authority.

§ 8-9 Rules and Regulations

This section requires the Inspector General to adopt rules and regulations to carry-out this subtitle and file them with the Department of Legislative Reference. As a point of clarity, this provision will allow the IG to establish rules applicable to how whistleblowing must be handled in the agencies affected by the bill.

The Law Department sees no legal obstacles to the passage of this Council Bill 19-0377 and is prepared to approve it for form and legal sufficiency.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Nicholas Blendy, MOGR
Matt Stegman, Mayor's Legislative Liaison
Caylin Young, President's Legislative Director
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Meeting Minutes - Final

Judiciary and Legislative Investigations

Tuesday, September 17, 2019

10:01 AM

Du Burns Council Chamber, 4th floor, City Hall

19-0377

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

Present 6 - Member Eric T. Costello, Member Mary Pat Clarke, Member Leon F. Pinkett III, Member John T. Bullock, Member Edward Reisinger, and Member Robert Stokes Sr.

ITEM SCHEDULED FOR PUBLIC HEARING

19-0377

Whistleblower Rights and Responsibilities

For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

Sponsors: Ryan Dorsey, Sharon Green Middleton, Bill Henry, Isaac "Yitzy" Schleifer, Robert Stokes, Sr., Brandon M. Scott, Eric T. Costello, Leon F. Pinkett, III, Zeke Cohen, Kristerfer Burnett, Mary Pat Clarke, Edward Reisinger, John T. Bullock, Shannon Sneed

A motion was made by Member Reisinger, seconded by Member Clarke, that this Ordinance be Recommended Favorably with Amendment. The motion carried by the following vote:

Yes: 6 - Member Costello, Member Clarke, Member Pinkett III, Member Bullock, Member Reisinger, and Member Stokes Sr.

ADJOURNMENT



HEARING NOTES

Bill: 19-0377

Whistleblower Rights and Responsibilities

Committee: Judiciary and Legislative Investigations
Chaired by: Councilmember Eric T. Costello

Hearing Date: September 17, 2019
Time (Beginning): 10:10 a.m.
Time (Ending): 10:30 a.m.
Location: Clarence "Du" Burns Council Chamber
Total Attendance: Approximately 75 people
Committee Members in Attendance:
Eric Costello Mary Pat Clarke John Bullock
Leon Pinkett Robert Stokes Edward Reisinger

Bill Synopsis in the file? YES NO N/A
Attendance sheet in the file? YES NO N/A
Agency reports read? YES NO N/A
Hearing televised or audio-digitally recorded? YES NO N/A
Certification of advertising/posting notices in the file? YES NO N/A
Evidence of notification to property owners? YES NO N/A
Final vote taken at this hearing? YES NO N/A
Motioned by: Councilmember Reisinger
Seconded by: Councilmember Clarke
Final Vote: Fav. with Amendments

Major Speakers

(This is not an attendance record.)

Robert Cename, Department of Finance
Jason Ingram, Department of Human Resources
Victor Tervalá, Department of Law

Major Issues Discussed

1. Chairman Costello called the hearing to order.

2. Councilman Dorsey explained the bill and the need to update the City's whistleblower protections and policies. He noted that this bill builds on the establishment of an independent Inspector General by ensuring that City employees who report waste, fraud, or abuse will be protected from retaliation.
3. The Department of Finance noted that it does not oppose the bill, but that the costs associated with investigating complaints and the savings from employees making disclosures protected by the bill are uncertain.
4. The Department of Human Resources (DHR) discussed amendments proposed in its written report. Councilman Dorsey responded as follows:
 - a. Several of DHR's proposed amendments are included in his amendments that would be presented to the committee.
 - b. The Inspector General already has training responsibilities laid out in the City Charter, and it makes sense to incorporate whistleblower training into the existing program. DHR will be involved in developing and presenting the training.
 - c. The impact on employee moral when complaining to agency leadership can be different from complaining to the Inspector General, which motivated a shorter timeline in the bill for investigations conducted within agencies.
5. Councilman Dorsey further indicated that he would be open to discussing DHR's concerns and supporting additional amendments on second reader if necessary.
6. Councilman Dorsey noted that he had discussed the bill with the Office of the Inspector General and addressed its concerns in his proposed amendments.
7. The Law Department indicated that the bill with Councilman Dorsey's amendments can be approved for form and legal sufficiency but noted that it would need to review any additional amendments.
8. The Committee considered and adopted Councilman Dorsey's amendments (in file).

Further Study

Was further study requested?

Yes No

If yes, describe.

Councilman Dorsey will meet with the Director of DHR to discuss potential amendments on second reader and send any such amendments to the Law Department for review.

Committee Vote:

E. Costello: **Yea**
M. Clarke: **Yea**
R. Stokes: **Yea**
J. Bullock: **Yea**
L. Pinkett: **Yea**
E. Reisinger: **Yea**

Matthew Peters

Matthew L. Peters, Committee Staff

Date: September 17, 2019

Cc: Bill File
OCS Chrono File

**AMENDMENTS TO COUNCIL BILL 19-0377
(1" Reader Copy)**

By: Councilmember Dorsey
{To be offered to the Judiciary and Legislative Investigations Committee}

Amendment No. 1

On page 1, strike beginning with "establishing" in line 4 down through the semicolon in line 6; and on the same page, strike beginning with "detailing" in line 8 down through the semicolon in line 9; and on the same page, in line 10, strike "and"; and on the same page, in line 12, before the period, insert "; and providing for a special effective date".

Amendment No. 2

On pages 2 through 10, strike beginning with "§ 8-1" in line 21, on page 2, down through the period in line 4, on page 10, and substitute:

"§ 8-1. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) AFFILIATED ENTITY.

"AFFILIATED ENTITY" REFERS TO THE FOLLOWING ENTITIES:

(1) BALTIMORE CITY PARKING AUTHORITY;

(2) BALTIMORE DEVELOPMENT CORPORATION; AND

**(3) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT
MANAGEMENT AUTHORITY.**

(C) AGENCY.

**"AGENCY" MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL,
AUTHORITY, COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT OR OF
ANY AFFILIATED ENTITY.**

(D) COVERED DISCLOSURE.

(1) IN GENERAL.

“COVERED DISCLOSURE” MEANS A DISCLOSURE:

(I) MADE BY AN EMPLOYEE;

(II) CONCERNING ACTIONS ARISING WITHIN THE BALTIMORE CITY GOVERNMENT;

(III) INITIALLY MADE TO ONE OR ANOTHER OF AN EMPLOYEE’S SUPERVISORS OR TO THE INSPECTOR GENERAL; AND

(IV) THAT THE EMPLOYEE REASONABLY BELIEVES TO BE EVIDENCE OF:

(A) FRAUD;

(B) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;

(C) A VIOLATION OF LAW; OR

(D) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.

(2) INCLUSIONS.

“COVERED DISCLOSURE” INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.

(3) EXCLUSIONS.

“COVERED DISCLOSURE” DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY LAW.

(E) EMPLOYEE.

“EMPLOYEE” MEANS AN EMPLOYEE OF A CITY AGENCY, WHETHER EMPLOYED FULL-TIME, PART-TIME, SEASONAL, CONTRACTUAL, OR OTHERWISE, INCLUDING ANY MEMBER OF A CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE MEMBER IS COMPENSATED.

(F) PERSONNEL ACTION.

"PERSONNEL ACTION" MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION, SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO TRANSFER, OR FAILURE TO ASSIGN.

(G) SUPERVISOR.

"SUPERVISOR" MEANS ANY INDIVIDUAL WHO DIRECTLY OR INDIRECTLY OVERSEES THE WORK OF AN EMPLOYEE WHO FILES A COMPLAINT PURSUANT TO THIS SUBTITLE.

(H) WHISTLEBLOWER.

"WHISTLEBLOWER" MEANS AN EMPLOYEE WHO MAKES A COVERED DISCLOSURE.

§ 8-2. {RESERVED}

§ 8-3. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY PERSONNEL ACTION.

(A) IN GENERAL.

UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT TAKE RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER FOR MAKING A COVERED DISCLOSURE.

(B) EXCEPTIONS.

THIS SECTION DOES NOT PROHIBIT:

- (1) A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION AGAINST A WHISTLEBLOWER IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL ACTION REGARDLESS OF WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE; OR
- (2) AN EMPLOYEE FROM MAKING A DISCLOSURE THAT IS OTHERWISE PROHIBITED BY LAW IF THE EMPLOYEE EXCLUSIVELY MAKES THAT DISCLOSURE TO THE:

(I) OFFICE OF THE MARYLAND ATTORNEY GENERAL;

(II) OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY;

(III) OFFICE OF THE MARYLAND STATE PROSECUTOR; OR

(IV) BALTIMORE CITY OFFICE OF THE INSPECTOR GENERAL.

§ 8-4. {RESERVED}

§ 8-5. SCOPE OF COMPLAINT PROCEDURES.

(A) *IN GENERAL.*

THIS COMPLAINT PROCEDURES PROVISIONS IN § 8-6 ET SEQ. OF THIS SUBTITLE DO NOT APPLY TO ANY NON-PROBATIONARY MEMBER OF THE CIVIL SERVICE WHO HAS BEEN DISCHARGED FROM THE CIVIL SERVICE, REDUCED IN PAY OR POSITION, OR SUSPENDED FOR LONGER THAN 30 DAYS.

(B) *JURISDICTION OF CIVIL SERVICE COMMISSION.*

(1) THE CIVIL SERVICE COMMISSION HAS JURISDICTION OVER PERSONNEL ACTIONS DESCRIBED IN SUBSECTION (A) OF THIS SECTION, AS PROVIDED IN CITY CHARTER ARTICLE VII §§ 94 THROUGH 104.

(2) ON THE CIVIL SERVICE COMMISSION'S REQUEST, THE OFFICE OF THE INSPECTOR GENERAL MAY INVESTIGATE ALLEGATIONS MADE TO THE CIVIL SERVICE COMMISSION REGARDING RETALIATORY PERSONNEL ACTIONS AND PROVIDE THE OFFICE'S FINDINGS TO THE COMMISSION AT OR BEFORE A COMMISSION HEARING TO THE EXTENT PERMITTED BY ARTICLE X OF THE CHARTER OF BALTIMORE CITY. THE INSPECTOR GENERAL'S FINDINGS SHALL STATE WHETHER THE INSPECTOR GENERAL BELIEVES THE PERSONNEL ACTIONS WERE IN VIOLATION OF § 8-3 OF THIS SUBTITLE.

(C) *CIVIL SERVICE COMMISSION FINDINGS.*

(1) DURING A CIVIL SERVICE COMMISSION HEARING, THE COMMISSION MAY FIND THAT THE PERSONNEL ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION VIOLATES § 8-3 OF THIS SUBTITLE.

(2) IF THE COMMISSION FINDS THAT THE PERSONNEL ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION VIOLATES § 8-3 OF THIS SUBTITLE, THIS FINDING MAY BE CONSIDERED BY THE COMMISSION AS PRIMA FACIE EVIDENCE OF A VIOLATION OF "THE INTENT AND SPIRIT" OF THIS CHARTER WITHIN THE MEANING OF CITY CHARTER ARTICLE VII, § 95(F) AND § 100(A)(5).

§ 8-6. COMPLAINT PROCESS.

(A) FILING COMPLAINT WITH SUPERVISOR.

- (1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR MAKING A COVERED DISCLOSURE SHALL FILE A WRITTEN COMPLAINT WITH HIS OR HER SUPERVISOR.**
- (2) THE COMPLAINT MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.**

(B) SUPERVISOR RESPONSIBILITIES.

- (1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.**
- (2) WITHIN 10 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST NOTIFY THE AGENCY HEAD OR THE APPROPRIATE APPOINTING AUTHORITY TO THE COMPLAINT.**
- (3) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS, AS WELL AS THE AGENCY HEAD OR THE APPROPRIATE APPOINTING AUTHORITY.**

(C) FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.

- (1) A WHISTLEBLOWER NEED NOT FILE THE INITIAL COMPLAINT WITH A SUPERVISOR AND, INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR GENERAL, IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:**
 - (I) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED DISCLOSURE; OR**
 - (II) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE OTHERWISE COMPLICIT IN THE RETALIATORY PERSONNEL ACTION TAKEN AGAINST THE WHISTLEBLOWER.**

(2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY PERSONNEL ACTION.

(D) *FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.*

(1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:

(I) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS OF THE SUPERVISOR'S INVESTIGATION; OR

(II) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN FINDINGS.

(2) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.

(3) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S INVESTIGATION.

(E) *CONFIDENTIALITY.*

THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT PERMITTED BY LAW.

§ 8-7. COMPLAINT INVESTIGATION BY INSPECTOR GENERAL.

(A) *NOTICE OF RECEIPT OF COMPLAINT.*

WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT OR APPEAL UNDER § 8-6(C) OR (D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S OR APPEAL'S RECEIPT.

(B) COMPLETING INVESTIGATION.

THE OFFICE OF THE INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND, WITHIN 150 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT OR APPEAL, PRESENT ITS WRITTEN FINDINGS TO THE HEAD OF THE AGENCY FOR WHICH THE WHISTLEBLOWER WORKS OR THE APPROPRIATE APPOINTING AUTHORITY AND THE WHISTLEBLOWER INVOLVED IN THE COMPLAINT OR APPEAL.

§ 8-8. {RESERVED}

§ 8-9. RULES AND REGULATIONS.

(A) IN GENERAL.

THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) FILING WITH LEGISLATIVE REFERENCE.

A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

(C) POSTED TO INSPECTOR GENERAL'S WEBSITE.

A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE POSTED ON THE OFFICE OF THE INSPECTOR GENERAL'S WEBSITE.

§ 8-10. JUDICIAL AND APPELLATE REVIEW.

(A) JUDICIAL REVIEW.

ANY PERSON AGGRIEVED BY A FINAL ACTION UNDER THIS SUBTITLE MAY SEEK JUDICIAL REVIEW OF THAT ACTION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

(B) APPELLATE REVIEW.

ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

§ 8-11. OTHER REMEDIES NOT AFFECTED.

NOTHING IN THIS SUBTITLE AFFECTS:

- (1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;**
- (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW OR CONTRACT; OR**
- (3) ANY OTHER REMEDY PROVIDED BY LAW.**

§ 8-12. TRAINING.

THE OFFICE OF THE INSPECTOR GENERAL, WITH ASSISTANCE FROM THE LAW DEPARTMENT AND THE DEPARTMENT OF HUMAN RESOURCES, MUST CONDUCT TRAININGS REGARDING THIS SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND RESPONSIBILITIES.

§ 8-13. ADMINISTRATIVE MANUAL.

THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF COMPLAINTS UNDER THIS SUBTITLE.”.

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Agenda - Final

Judiciary and Legislative Investigations

Tuesday, September 17, 2019

10:01 AM

Du Burns Council Chamber, 4th floor, City Hall

19-0377

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

ITEM SCHEDULED FOR PUBLIC HEARING

19-0377

Whistleblower Rights and Responsibilities

For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

Sponsors:

Ryan Dorsey, Sharon Green Middleton, Bill Henry, Isaac "Yitzy" Schleifer, Robert Stokes, Sr., Brandon M. Scott, Eric T. Costello, Leon F. Pinkett, III, Zeke Cohen, Kristerfer Burnett, Mary Pat Clarke, Edward Reisinger, John T. Bullock, Shannon Sneed

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Minutes - Final

Judiciary and Legislative Investigations

Tuesday, July 9, 2019

10:05 AM

Du Burns Council Chamber, 4th floor, City Hall

19-0377

Rescheduled from 6/18/19

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

Present 4 - Member Eric T. Costello, Member Mary Pat Clarke, Member John T. Bullock, and Member Robert Stokes Sr.

Absent 2 - Member Leon F. Pinkett III, and Member Edward Reisinger

ITEMS SCHEDULED FOR PUBLIC HEARING

19-0377

Whistleblower Rights and Responsibilities

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Sponsors: Ryan Dorsey, Sharon Green Middleton, Bill Henry, Isaac "Yitzy" Schleifer, Robert Stokes, Sr., Brandon M. Scott, Eric T. Costello, Leon F. Pinkett, III, Zeke Cohen, Kristerfer Burnett, Mary Pat Clarke, Edward Reisinger, John T. Bullock, Shannon Sneed

Hearing recessed. The Committee will reconvene to consider the bill at a later date.





**CITY OF BALTIMORE
CITY COUNCIL HEARING ATTENDANCE RECORD**

Committee: Judiciary and Legislative Investigations

Chairperson: Eri

Date: July 9, 2019

Time: 10:05 AM

Place: Clarence "Du" Burns Chambers

Subject: Ordinance - Whistleblower Rights and Responsibilities

PLEASE PRINT

IF YOU WANT TO TESTIFY PLEASE CHECK HERE

FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS
John	Doe	100	North Charles Street	21202	Johndoenbmore@yahoo.com

(*) NOTE: IF YOU ARE COMPENSATED OR INCUR EXPENSES IN CONNECTION WITH THIS BILL, YOU MAY BE REQUIRED BY LAW TO REGISTER WITH THE CITY BOARD OF ETHICS. FOR INFORMATION AND FORMS, CALL OR WRITE: BALTIMORE CITY BOARD OF ETHICS, LEGISLATIVE REFERENCE, 626 CITY HALL, BALTIMORE, MD 21202. TEL: 410-396-4730; FAX: 410-396-8483.



**CITY OF BALTIMORE
CITY COUNCIL HEARING ATTENDANCE RECORD**

Committee: Judiciary and Legislative Investigations Chairperson: Eri
 Date: September 17, 2019 Time: 10:01 AM Place: Clarence "Du" Burns Chambers
 Subject: Ordinance - Whistleblower Rights and Responsibilities

PLEASE PRINT

IF YOU WANT TO TESTIFY PLEASE CHECK HERE

FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS
John	Doe	100	North Charles Street	21202	Johndoenbmore@yahoo.com
Betsy	Amney	1205	STEVENS		
Jamarr	Rayne	17th	7 E Rodward Street	21202	Jamarr.Rayne@balbmoreci
Jason	Ingram	051	E. Redwood #11441	21202	Jason.ingram@balbaltimore
Valerue	Weldon	7	E. Redwood	21202	Valerue.Weldon@balbmoreci

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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



OFFICE OF COUNCIL SERVICES

LARRY F. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

HEARING NOTES

Bill: 19-0377

Whistleblower Rights and Responsibilities

Committee: Judiciary and Legislative Investigations
Chaired by: Councilmember Eric T. Costello

Hearing Date: July 9, 2019
Time (Beginning): 10:35 a.m.
Time (Ending): 10:40 a.m.
Location: Clarence "Du" Burns Council Chamber
Total Attendance: Approximately 20 people
Committee Members in Attendance:
Eric Costello Mary Pat Clarke John Bullock
Robert Stokes

Bill Synopsis in the file? [X] YES [] NO [] N/A
Attendance sheet in the file? [X] YES [] NO [] N/A
Agency reports read? [] YES [X] NO [] N/A
Hearing televised or audio-digitally recorded? [] YES [X] NO [] N/A
Certification of advertising/posting notices in the file? [] YES [] NO [X] N/A
Evidence of notification to property owners? [] YES [] NO [X] N/A
Final vote taken at this hearing? [] YES [X] NO [] N/A
Motioned by: N/A
Seconded by: N/A
Final Vote:

Major Speakers
(This is not an attendance record.)

N/A

Major Issues Discussed

- 1. Chairman Costello called the hearing to order.

2. Councilman Dorsey explained that he has been working with stakeholders to address their concerns with the bill, and requested that the committee recess the hearing to allow more time for that work to conclude.

Further Study

Was further study requested?

Yes No

If yes, describe.

Committee Vote:

E. Costello:
M. Clarke:
R. Stokes:
J. Bullock:
L. Pinkett:
E. Reisinger:

Matthew Peters

Matthew L. Peters, Committee Staff

Date: July 9, 2019

Cc: Bill File
OCS Chrono File

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Agenda - Final

Judiciary and Legislative Investigations

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ITEMS SCHEDULED FOR PUBLIC HEARING

19-0377

Whistleblower Rights and Responsibilities

For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

Sponsors:

Ryan Dorsey, Sharon Green Middleton, Bill Henry, Isaac "Yitzy" Schleifer, Robert Stokes, Sr., Brandon M. Scott, Eric T. Costello, Leon F. Pinkett, III, Zeke Cohen, Kristerfer Burnett, Mary Pat Clarke, Edward Reisinger, John T. Bullock, Shannon Sneed

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

BILL SYNOPSIS

Committee: Judiciary and Legislative Investigations

Bill 19-0377

Whistleblower Rights and Responsibilities

Sponsor: Councilmember Dorsey, et al

Introduced: April 22, 2019

Purpose:

For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

Effective: 60th day after the date it is enacted

Hearing Date/Time/Location: July 9, 2019/10:05 AM/Clarence 'Du' Burns Chamber

AGENCY REPORTS

Office of the Inspector General	
Department of Human Resources	
Department of Finance	
City Solicitor	

ANALYSIS

Current Law

Article 1, Subtitle 8 of the Baltimore City Code prohibits retaliatory personnel action against City employees who disclose information which they reasonably believe evidences: (1) a violation of any law, rule, or regulation; (2) gross mismanagement, gross waste of funds, or abuse of authority; or (3) a substantial or specific danger to public health or safety.

Under the current Subtitle 8, disclosures generally must be made to the Board of Estimates. However, the disclosure must be made exclusively to the Attorney General of Maryland if the disclosure is specifically prohibited by law, regulation, or written policy.

Subtitle 8 further provides for investigation of alleged retaliation by way of grievance or dismissal appeal.

Bill Summary

The bill repeals the existing Article 1, Subtitle 8 of the Baltimore City Code, and replaces it with a new Subtitle 8. The new Subtitle 8 similarly protects City employees from retaliatory personnel action for making covered disclosures. The bill does not prohibit personnel action against an employee if the supervisor would have taken that action regardless of the covered disclosure. An employee is permitted to make a disclosure otherwise prohibited by law if the disclosure is only to the Office of the Maryland Attorney General, the State's Attorney, or the Maryland State Prosecutor.

The bill defines personnel action as an act or omission by a supervisor that has a significant adverse impact on an employee, including dismissal, demotion, suspension, punitive transfer or assignment, disciplinary action, negative performance evaluation, failure to appoint, failure to promote, failure to transfer, or failure to assign. A covered disclosure is a disclosure that the employee reasonably believes provides evidence of fraud; gross misuse or waste of public resources; a violation of law; or a substantial and specific threat to health, safety, or security.

The new Subtitle 8 applies to all City agencies, including all departments, boards, commissions, councils, authorities, committees, offices, and other units of City government. Additionally, the bill specifically identifies the following as within its scope: the Baltimore City Parking Authority; the Baltimore Development Corporation; the Baltimore Police Department; the Enoch Pratt Free Library; the Housing Authority; the Local Development Council, South Baltimore Video Lottery Terminal; the Pimlico Community Development Authority; and the South Baltimore Gateway Community Impact District Management Authority.

The new Subtitle 8 establishes a Whistleblower Board with the authority to adjudicate disputes under the subtitle and to order remedial action when necessary. The Board is composed of the Director of Human Resources, the Labor Commissioner, and the City Solicitor, or their respective designees. If a Board member is implicated in a complaint, the City Council President or a Councilmember designated by the President must replace that Board member.

The new Subtitle 8 also provides a complaint process for employees who believe that they have been retaliated against for making covered disclosures. An employee must generally file their initial complaint with a supervisor within 180 days of when the employee knew or should have known of the violation. However, if an employee reasonably believes that all their supervisors are implicated by the disclosure or complicit in the retaliatory action, they may instead file their initial complaint with the Office of the Inspector General.

A supervisor who receives a complaint is required to investigate and provide the employee with written findings within 60 days. If an employee files their complaint with their supervisor and their supervisor fails to provide them with written findings in the prescribed time or the employee disagrees with their supervisor's written findings, the employee may appeal to the Inspector General. When the Office of the Inspector General receives an initial complaint or an appeal, it must investigate and present its findings to the Whistleblower Board within 60 days unless the Board grants an extension for good cause.

During a hearing before the Board, the employee must make a prima facie case by establishing through a preponderance of the evidence that their covered disclosure was a contributing factor in the supervisor's decision to take the personnel action.¹ If the employee has made their prima facie case, the supervisor has the burden to prove by clear and convincing evidence that they would have taken the personnel action even if the employee had not made the covered disclosure. Both parties may be represented at the hearing by counsel.

If the Board decides to take remedial action, it has the following options: (1) Discipline the supervisor for the retaliation and provide remedies for the employee, (2) Discipline the supervisor for the retaliation and decline to provide remedies for the employee, or (3) Decline to discipline the supervisor for the retaliation and provide remedies for the employee.

¹ The Legal Information Institute at Cornell Law School describes a prima facie case as one "that is sufficiently established by a party's evidence to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party."

Possible discipline for a supervisor found to have retaliated against an employee includes reprimand, demotion, or termination. Possible remedies for an employee include reinstatement to the status they would have had but for the retaliation, back pay with interest, or both reinstatement and back pay.

The new Subtitle 8 further provides for judicial and appellate review of the Board's orders and clarifies that the subtitle does not affect any other remedies available to employees by law or contract. The bill further requires the Office of the Inspector General to adopt rules and regulations to implement its requirements, to conduct training to inform employees and supervisors of their rights and responsibilities, and to create an administrative manual that outlines procedures and other information related to complaints under the subtitle. It also requires that the identity of the whistleblower must be kept confidential to the extent practicable and permitted by law.

ADDITIONAL INFORMATION

Fiscal Note: None

Information Source(s): Baltimore City Code, Legal Information Institute, Bill 19-0377



Analysis by: Matthew L. Peters

Direct Inquiries to: (410) 396-1268

Analysis Date: July 5, 2019

**CITY OF BALTIMORE
COUNCIL BILL 19-0377
(First Reader)**

Introduced by: Councilmember Dorsey, Ex Officio Council President Middleton,
Councilmembers Henry, Schleifer, Stokes, Scott, Costello, Pinkett, Cohen, Burnett, Clarke,
Reisinger, Bullock, Sneed

Introduced and read first time: April 22, 2019

Assigned to: Judiciary and Legislative Investigations Committee

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

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Whistleblower Rights and Responsibilities**

3 FOR the purpose of prohibiting retaliation against whistleblowers for making covered disclosures;
4 defining certain terms; establishing the Whistleblower Board; providing for the appointment,
5 term, and service of Whistleblower Board members; authorizing the Whistleblower Board to
6 adopt implementing rules, regulations, and procedures; establishing complaint procedures for
7 whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower
8 complaints; detailing remedies and disciplinary action the Whistleblower Board can take
9 when ruling on a whistleblower retaliation case; establishing judicial and appellate review;
10 requiring training for supervisors and employees; and mandating that the Office of the
11 Inspector General creates an administrative manual to further detail procedures relating
12 whistleblower complaints.

13 BY repealing and reordaining, with amendments

14 Article 1 - Mayor, City Council, and Municipal Agencies
15 Subtitle 8, to be under the amended subtitle designation,
16 "Subtitle 8. Whistleblower Rights and Responsibilities"
17 Baltimore City Code
18 (Edition 2000)

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

21 **Baltimore City Code**

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

23 **Subtitle 8. [Employee Disclosure Protection] WHISTLEBLOWER RIGHTS AND**
24 **RESPONSIBILITIES.**

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

Council Bill 19-0377

1 **[§ 8-1. Protected Disclosures.]**

2 **[(a) *In general.*]**

3 [Unless a disclosure is specifically prohibited by law, rule, regulation, or written policy,
4 an appointing authority may not take or refuse to take a personnel action with respect to
5 any employee or applicant for employment as a reprisal for any disclosure of information
6 which the employee reasonably believes evidences:]

7 **[(1) a violation of any law, rule, or regulation;]**

8 **[(2) gross mismanagement, gross waste of funds, or abuse of authority; or]**

9 **[(3) a substantial or specific danger to public health or safety.]**

10 **[(b) *Disclosures to be made to Board of Estimates.*]**

11 [An employee shall make his or her disclosure to the Board of Estimates or to its
12 designee.]

13 **[§ 8-2. Personnel Actions.]**

14 [In any personnel action, the affected employee may have the action alleged to be in
15 retaliation for a disclosure investigated by way of a grievance or dismissal appeal.]

16 **[§ 8-3. Prohibited disclosures to be made to Attorney General.]**

17 [Where a disclosure is specifically prohibited by law, rule, regulation, or written policy, an
18 employee may make the disclosure exclusively to the Attorney General of the State of
19 Maryland and shall be entitled to all of the benefits fo the state’s employee disclosure and
20 confidentiality protection.]

21 **§ 8-1. DEFINITIONS.**

22 **(A) *IN GENERAL.***

23 IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

24 **(B) *AGENCY.***

25 **(1) *IN GENERAL.***

26 “AGENCY” MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL, AUTHORITY,
27 COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT.

28 **(2) *INCLUSIONS.***

29 “AGENCY” ALSO INCLUDES:

30 **(i) BALTIMORE CITY PARKING AUTHORITY;**

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- 1 (II) BALTIMORE DEVELOPMENT CORPORATION;
- 2 (III) BALTIMORE POLICE DEPARTMENT;
- 3 (IV) ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY;
- 4 (V) HOUSING AUTHORITY OF BALTIMORE CITY;
- 5 (VI) LOCAL DEVELOPMENT COUNCIL, SOUTH BALTIMORE VIDEO LOTTERY
- 6 TERMINAL;
- 7 (VII) PIMLICO COMMUNITY DEVELOPMENT AUTHORITY; AND
- 8 (VIII) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT
- 9 MANAGEMENT AUTHORITY.

10 (C) *BOARD.*

11 "BOARD" MEANS THE WHISTLEBLOWER BOARD ESTABLISHED UNDER THIS SUBTITLE.

12 (D) *COVERED DISCLOSURE.*

13 (1) *IN GENERAL.*

14 "COVERED DISCLOSURE" MEANS A DISCLOSURE MADE BY AN EMPLOYEE THAT THE
15 EMPLOYEE REASONABLY BELIEVES PROVIDES EVIDENCE OF:

- 16 (I) FRAUD;
- 17 (II) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;
- 18 (III) A VIOLATION OF LAW; OR
- 19 (IV) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.

20 (2) *INCLUSIONS.*

21 "COVERED DISCLOSURE" INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN
22 INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.

23 (3) *EXCLUSIONS.*

24 "COVERED DISCLOSURE" DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY
25 LAW.

26 (E) *EMPLOYEE.*

27 "EMPLOYEE" MEANS:

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1 (1) ANY CURRENT OR FORMER EMPLOYEE, WHETHER FULL-TIME, PART-TIME,
2 SEASONAL, CONTRACTUAL, OR OTHERWISE, OF A CITY AGENCY;

3 (2) ANY APPLICANT FOR A POSITION WITH A CITY AGENCY; AND

4 (3) ANY MEMBER OF A CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE
5 MEMBER IS COMPENSATED.

6 (F) *PERSONNEL ACTION.*

7 "PERSONNEL ACTION" MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A
8 SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION,
9 SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE
10 PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO
11 TRANSFER, OR FAILURE TO ASSIGN.

12 (G) *SUPERVISOR.*

13 "SUPERVISOR" MEANS AN INDIVIDUAL WITH DIRECT OR INDIRECT SUPERVISORY
14 AUTHORITY OVER AN EMPLOYEE.

15 (H) *WHISTLEBLOWER.*

16 "WHISTLEBLOWER" MEANS AN EMPLOYEE OF BALTIMORE CITY WHO MAKES A COVERED
17 DISCLOSURE.

18 §§ 8-2 TO 8-3. {RESERVED}

19 § 8-4. BOARD ESTABLISHED.

20 (A) *IN GENERAL.*

21 THERE IS A WHISTLEBLOWER BOARD.

22 (B) *COMPOSITION.*

23 THE BOARD COMPRISES 3 MEMBERS, OR THEIR RESPECTIVE DESIGNEES:

24 (1) THE DIRECTOR OF HUMAN RESOURCES;

25 (2) THE LABOR COMMISSIONER; AND

26 (3) THE CITY SOLICITOR.

27 (C) *ALTERNATE.*

28 IN THE EVENT A BOARD MEMBER OR DESIGNEE IS IMPLICATED IN A WHISTLEBLOWER
29 COMPLAINT, THE CITY COUNCIL PRESIDENT OR HIS OR HER COUNCILMEMBER DESIGNEE
30 MUST REPLACE THE BOARD MEMBER OR DESIGNEE IMPLICATED IN THE COMPLAINT.

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1 **§ 8-5. PURPOSE.**

2 THE BOARD IS RESPONSIBLE FOR ENCOURAGING THE ELIMINATION OF FRAUD, WASTE, AND
3 ILLEGAL ACTIVITY BY PROTECTING WHISTLEBLOWERS.

4 **§ 8-6. {RESERVED}**

5 **§ 8-7. STAFF.**

6 IN CONSULTATION WITH THE BOARD, THE INSPECTOR GENERAL MUST ASSIGN STAFF FROM THE
7 OFFICE OF THE INSPECTOR GENERAL TO ASSIST THE BOARD.

8 **§ 8-8. POWERS AND DUTIES OF BOARD.**

9 THE BOARD IS AUTHORIZED TO:

10 (1) ADJUDICATE DISPUTES UNDER THIS SUBTITLE;

11 (2) ANALYZE ANY FINDINGS MADE BY THE OFFICE OF THE INSPECTOR GENERAL AS A
12 RESULT OF WHISTLEBLOWER COMPLAINTS;

13 (3) HOLD HEARINGS TO DETERMINE WHETHER A RETALIATORY PERSONNEL ACTION WAS
14 TAKEN AT LEAST IN PART AGAINST A WHISTLEBLOWER BECAUSE OF THE
15 WHISTLEBLOWER'S COVERED DISCLOSURE; AND

16 (4) DETERMINE WHETHER REMEDIAL ACTION IS NECESSARY.

17 **§ 8-9. AGENCY COOPERATION.**

18 AT THE REQUEST OF THE BOARD, ALL CITY OFFICIALS AND AGENCIES MUST COOPERATE WITH
19 THE BOARD AND EXTEND THE SERVICES AND FACILITIES THAT THE BOARD REQUIRES.

20 **§§ 8-10 TO 8-11. {RESERVED}**

21 **§ 8-12. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY ACTION.**

22 (A) *IN GENERAL.*

23 UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT
24 TAKE A RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER.

25 (B) *EXCEPTIONS.*

26 THIS SECTION DOES NOT PROHIBIT:

27 (1) A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION AGAINST A WHISTLEBLOWER
28 IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL ACTION REGARDLESS OF
29 WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE; OR

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(2) AN EMPLOYEE FROM MAKING A DISCLOSURE THAT IS OTHERWISE PROHIBITED BY LAW IF THE EMPLOYEE EXCLUSIVELY MADE THE DISCLOSURE TO THE OFFICE OF THE MARYLAND ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR THE MARYLAND STATE PROSECUTOR.

§§ 8-13 TO 8-14. *{RESERVED}*

§ 8-15. COMPLAINT PROCESS - IN GENERAL.

(A) *FILING COMPLAINT WITH SUPERVISOR.*

(1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR MAKING A COVERED DISCLOSURE MAY FILE A WRITTEN COMPLAINT WITH ONE OR ANOTHER OF HIS OR HER SUPERVISORS.

(2) THE COMPLAINT MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.

(B) *SUPERVISOR RESPONSIBILITIES.*

(1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.

(2) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS OF THAT INVESTIGATION.

(C) *FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.*

(1) A WHISTLEBLOWER NEED NOT FILE HIS OR HER COMPLAINT WITH A SUPERVISOR AND, INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR GENERAL IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:

(I) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED DISCLOSURE; OR

(II) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE OTHERWISE COMPLICIT IN THE RETALIATORY ACTION TAKEN AGAINST THE WHISTLEBLOWER.

(2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY ACTION.

(D) *FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.*

(1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:

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1 (I) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE
2 WHISTLEBLOWER WITH WRITTEN FINDINGS OF HER OR HIS INVESTIGATION; OR

3 (II) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN
4 FINDINGS.

5 (2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS
6 SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE
7 SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.

8 (3) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF
9 THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR
10 PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S
11 INVESTIGATION.

12 (E) *CONFIDENTIALITY.*

13 THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT
14 PRACTICABLE AND PERMITTED BY LAW.

15 **§ 8-16. COMPLAINT INVESTIGATION – OFFICE OF THE INSPECTOR GENERAL.**

16 (A) *NOTICE OF RECEIPT OF COMPLAINT.*

17 WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT UNDER § 8-15(C) OR
18 (D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE
19 WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.

20 (B) *COMPLETING INVESTIGATION.*

21 WITHIN 60 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT, THE OFFICE OF THE
22 INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND PRESENT ITS FINDINGS TO
23 THE WHISTLEBLOWER BOARD.

24 (C) *EXTENSION FOR COMPLETING INVESTIGATION.*

25 ON A FINDING OF GOOD CAUSE, THE BOARD MAY APPROVE AN EXTENSION FOR
26 COMPLETING THE INVESTIGATION.

27 **§ 8-17. HEARING PROCEDURES.**

28 (A) *WHISTLEBLOWER'S CASE.*

29 THE WHISTLEBLOWER MUST MAKE A PRIMA FACIE CASE BY ESTABLISHING THROUGH A
30 PREPONDERANCE OF THE EVIDENCE THAT HIS OR HER COVERED DISCLOSURE WAS A
31 CONTRIBUTING FACTOR IN THE SUPERVISOR'S TAKING THE PERSONNEL ACTION.

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1 (B) *SHOWING BY SUPERVISOR.*

2 ONCE THE WHISTLEBLOWER HAS MADE A PRIMA FACIE CASE, THE SUPERVISOR HAS THE
3 BURDEN OF PROOF TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT HE OR
4 SHE WOULD HAVE TAKEN THE PERSONNEL ACTION EVEN IF THE WHISTLEBLOWER HAD NOT
5 MADE THE COVERED DISCLOSURE.

6 (C) *REPRESENTATION.*

7 BOTH THE WHISTLEBLOWER AND THE SUPERVISOR MAY BE REPRESENTED AT A HEARING
8 BY COUNSEL.

9 **§ 8-18. RULES AND REGULATIONS.**

10 (A) *IN GENERAL.*

11 THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS
12 SUBTITLE.

13 (B) *FILING WITH LEGISLATIVE REFERENCE.*

14 A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF
15 LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

16 (C) *POSTED TO INSPECTOR GENERAL'S WEBSITE.*

17 A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE
18 POSTED ON THE INSPECTOR GENERAL'S WEBSITE.

19 **§ 8-19. REMEDIATION BY THE BOARD.**

20 (A) *IN GENERAL.*

21 IF THE BOARD DECIDES TO TAKE REMEDIAL ACTION, THE BOARD MAY:

22 (1) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE REMEDIES FOR
23 THE WHISTLEBLOWER;

24 (2) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND DECLINE TO PROVIDE
25 REMEDIES FOR THE WHISTLEBLOWER; OR

26 (3) DECLINE TO DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE
27 REMEDIES FOR THE WHISTLEBLOWER.

28 (B) *POSSIBLE DISCIPLINARY ACTION.*

29 THE DISCIPLINARY ACTION THAT THE BOARD MAY TAKE AGAINST A PERSON FOR
30 RETALIATION AGAINST A WHISTLEBLOWER INCLUDES:

31 (1) A REPRIMAND;

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1 (2) DEMOTION; OR

2 (3) TERMINATION.

3 (C) *POSSIBLE REMEDIES.*

4 THE REMEDIES THAT THE BOARD MAY PROVIDE TO A WHISTLEBLOWER INCLUDES:

5 (1) REINSTATEMENT TO THE STATUS THAT THE WHISTLEBLOWER WOULD HAVE HAD
6 BUT FOR THE RETALIATION; OR

7 (2) ANY BACKPAY, WITH INTEREST; OR

8 (3) BOTH.

9 § 8-20. JUDICIAL AND APPELLATE REVIEW.

10 (A) *JUDICIAL REVIEW.*

11 ANY PERSON AGGRIEVED BY AN ORDER OF THE BOARD MAY SEEK JUDICIAL REVIEW OF
12 THAT ORDER BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE
13 WITH THE MARYLAND RULES OF PROCEDURE.

14 (B) *APPELLATE REVIEW.*

15 ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE
16 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
17 PROCEDURE.

18 § 8-21. OTHER REMEDIES NOT AFFECTED.

19 NOTHING IN THIS SUBTITLE AFFECTS:

20 (1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;

21 (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW
22 OR CONTRACT; OR

23 (3) ANY OTHER REMEDY PROVIDED BY LAW.

24 §§ 8-22 TO 8-23. *{RESERVED}*

25 § 8-24. TRAINING.

26 THE OFFICE OF THE INSPECTOR GENERAL, WITH ASSISTANCE FROM THE LAW DEPARTMENT
27 AND THE DEPARTMENT OF HUMAN RESOURCES, MUST CONDUCT TRAININGS REGARDING THIS
28 SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND RESPONSIBILITIES.

Council Bill 19-0377

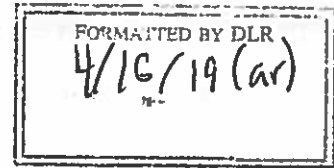
1 **§ 8-25. ADMINISTRATIVE MANUAL.**

2 **THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT**
3 **OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF**
4 **COMPLAINTS UNDER THIS SUBTITLE.**

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

8 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 60th
9 day after the date it is enacted.

INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL _____



Introduced by: Councilmember Dorsey

A BILL ENTITLED

AN ORDINANCE concerning

Whistleblower Rights and Responsibilities

FOR the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

BY repealing and reordaining, with amendments

Article 1 - Mayor, City Council, and Municipal Agencies
Subtitle 8, to be under the amended subtitle designation,
"Subtitle 8. Whistleblower Rights and Responsibilities"
Baltimore City Code
(Edition 2000)

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

Baltimore City Code

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 8. [Employee Disclosure Protection] WHISTLEBLOWER RIGHTS AND RESPONSIBILITIES.

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

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

[§ 8-1. Protected Disclosures.]

[(a) *In general.*]

[Unless a disclosure is specifically prohibited by law, rule, regulation, or written policy, an appointing authority may not take or refuse to take a personnel action with respect to any employee or applicant for employment as a reprisal for any disclosure of information which the employee reasonably believes evidences:]

[(1) a violation of any law, rule, or regulation;]

[(2) gross mismanagement, gross waste of funds, or abuse of authority; or]

[(3) a substantial or specific danger to public health or safety.]

[(b) *Disclosures to be made to Board of Estimates.*]

[An employee shall make his or her disclosure to the Board of Estimates or to its designee.]

[§ 8-2. Personnel Actions.]

[In any personnel action, the affected employee may have the action alleged to be in retaliation for a disclosure investigated by way of a grievance or dismissal appeal.]

[§ 8-3. Prohibited disclosures to be made to Attorney General.]

[Where a disclosure is specifically prohibited by law, rule, regulation, or written policy, an employee may make the disclosure exclusively to the Attorney General of the State of Maryland and shall be entitled to all of the benefits for the state's employee disclosure and confidentiality protection.]

§ 8-1. DEFINITIONS.

(A) *IN GENERAL.*

IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) *AGENCY.*

(1) *IN GENERAL.*

“AGENCY” MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL, AUTHORITY, COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT.

(2) *INCLUSIONS.*

“AGENCY” ALSO INCLUDES:

(I) BALTIMORE CITY PARKING AUTHORITY;

(II) BALTIMORE DEVELOPMENT CORPORATION;

(III) BALTIMORE POLICE DEPARTMENT;

- (IV) ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY;
- (V) HOUSING AUTHORITY OF BALTIMORE CITY;
- (VI) LOCAL DEVELOPMENT COUNCIL, SOUTH BALTIMORE VIDEO LOTTERY TERMINAL;
- (VII) PIMLICO COMMUNITY DEVELOPMENT AUTHORITY; AND
- (VIII) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT MANAGEMENT AUTHORITY.

(C) *BOARD.*

“BOARD” MEANS THE WHISTLEBLOWER BOARD ESTABLISHED UNDER THIS SUBTITLE.

(D) *COVERED DISCLOSURE.*

(1) *IN GENERAL.*

“COVERED DISCLOSURE” MEANS A DISCLOSURE MADE BY AN EMPLOYEE THAT THE EMPLOYEE REASONABLY BELIEVES PROVIDES EVIDENCE OF:

- (I) FRAUD;
- (II) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES;
- (III) A VIOLATION OF LAW; OR
- (IV) A SUBSTANTIAL AND SPECIFIC THREAT TO HEALTH, SAFETY, OR SECURITY.

(2) *INCLUSIONS.*

“COVERED DISCLOSURE” INCLUDES A DISCLOSURE MADE DURING PARTICIPATION IN AN INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL.

(3) *EXCLUSIONS.*

“COVERED DISCLOSURE” DOES NOT INCLUDE A DISCLOSURE THAT IS PROHIBITED BY LAW.

(E) *EMPLOYEE.*

“EMPLOYEE” MEANS:

- (1) ANY CURRENT OR FORMER EMPLOYEE, WHETHER FULL-TIME, PART-TIME, SEASONAL, CONTRACTUAL, OR OTHERWISE, OF A CITY AGENCY;
- (2) ANY APPLICANT FOR A POSITION WITH A CITY AGENCY; AND
- (3) ANY MEMBER OF A CITY BOARD OR COMMISSION, REGARDLESS OF WHETHER THE MEMBER IS COMPENSATED.

(F) *PERSONNEL ACTION.*

“PERSONNEL ACTION” MEANS AN ACT OR OMISSION BY A SUPERVISOR THAT HAS A SIGNIFICANT ADVERSE IMPACT ON AN EMPLOYEE, INCLUDING DISMISSAL, DEMOTION, SUSPENSION, PUNITIVE TRANSFER OR ASSIGNMENT, DISCIPLINARY ACTION, NEGATIVE PERFORMANCE EVALUATION, FAILURE TO APPOINT, FAILURE TO PROMOTE, FAILURE TO TRANSFER, OR FAILURE TO ASSIGN.

(G) *SUPERVISOR.*

“SUPERVISOR” MEANS AN INDIVIDUAL WITH DIRECT OR INDIRECT SUPERVISORY AUTHORITY OVER AN EMPLOYEE.

(H) *WHISTLEBLOWER.*

“WHISTLEBLOWER” MEANS AN EMPLOYEE OF BALTIMORE CITY WHO MAKES A COVERED DISCLOSURE.

§§ 8-2 TO 8-3. *{RESERVED}*

§ 8-4. **BOARD ESTABLISHED.**

(A) *IN GENERAL.*

THERE IS A WHISTLEBLOWER BOARD.

(B) *COMPOSITION.*

THE BOARD COMPRISES 3 MEMBERS, OR THEIR RESPECTIVE DESIGNEES:

- (1) THE DIRECTOR OF HUMAN RESOURCES;
- (2) THE LABOR COMMISSIONER; AND
- (3) THE CITY SOLICITOR.

(C) *ALTERNATE.*

IN THE EVENT A BOARD MEMBER OR DESIGNEE IS IMPLICATED IN A WHISTLEBLOWER COMPLAINT, THE CITY COUNCIL PRESIDENT OR HIS OR HER COUNCILMEMBER DESIGNEE MUST REPLACE THE BOARD MEMBER OR DESIGNEE IMPLICATED IN THE COMPLAINT.

§ 8-5. **PURPOSE.**

THE BOARD IS RESPONSIBLE FOR ENCOURAGING THE ELIMINATION OF FRAUD, WASTE, AND ILLEGAL ACTIVITY BY PROTECTING WHISTLEBLOWERS.

§ 8-6. *{RESERVED}*

§ 8-7. **STAFF.**

IN CONSULTATION WITH THE BOARD, THE INSPECTOR GENERAL MUST ASSIGN STAFF FROM THE OFFICE OF THE INSPECTOR GENERAL TO ASSIST THE BOARD.

§ 8-8. POWERS AND DUTIES OF BOARD.

THE BOARD IS AUTHORIZED TO:

- (1) ADJUDICATE DISPUTES UNDER THIS SUBTITLE;
- (2) ANALYZE ANY FINDINGS MADE BY THE OFFICE OF THE INSPECTOR GENERAL AS A RESULT OF WHISTLEBLOWER COMPLAINTS;
- (3) HOLD HEARINGS TO DETERMINE WHETHER A RETALIATORY PERSONNEL ACTION WAS TAKEN AT LEAST IN PART AGAINST A WHISTLEBLOWER BECAUSE OF THE WHISTLEBLOWER'S COVERED DISCLOSURE; AND
- (4) DETERMINE WHETHER REMEDIAL ACTION IS NECESSARY.

§ 8-9. AGENCY COOPERATION.

AT THE REQUEST OF THE BOARD, ALL CITY OFFICIALS AND AGENCIES MUST COOPERATE WITH THE BOARD AND EXTEND THE SERVICES AND FACILITIES THAT THE BOARD REQUIRES.

§§ 8-10 TO 8-11. {RESERVED}

§ 8-12. WHISTLEBLOWER PROTECTION AGAINST RETALIATORY ACTION.

(A) IN GENERAL.

UNLESS A DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, A SUPERVISOR MAY NOT TAKE A RETALIATORY PERSONNEL ACTION AGAINST A WHISTLEBLOWER.

(B) EXCEPTIONS.

THIS SECTION DOES NOT PROHIBIT:

- (1) A SUPERVISOR FROM TAKING ANY PERSONNEL ACTION AGAINST A WHISTLEBLOWER IF THE SUPERVISOR WOULD HAVE TAKEN THE PERSONNEL ACTION REGARDLESS OF WHETHER THE EMPLOYEE MADE THE COVERED DISCLOSURE; OR
- (2) AN EMPLOYEE FROM MAKING A DISCLOSURE THAT IS OTHERWISE PROHIBITED BY LAW IF THE EMPLOYEE EXCLUSIVELY MADE THE DISCLOSURE TO THE OFFICE OF THE MARYLAND ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR THE MARYLAND STATE PROSECUTOR.

§§ 8-13 TO 8-14. {RESERVED}

§ 8-15. COMPLAINT PROCESS - IN GENERAL.

(A) FILING COMPLAINT WITH SUPERVISOR.

- (1) A WHISTLEBLOWER WHO BELIEVES HE OR SHE HAS BEEN RETALIATED AGAINST FOR MAKING A COVERED DISCLOSURE MAY FILE A WRITTEN COMPLAINT WITH ONE OR ANOTHER OF HIS OR HER SUPERVISORS.
- (2) THE COMPLAINT MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR REASONABLY SHOULD HAVE KNOWN ABOUT THE VIOLATION.

(B) SUPERVISOR RESPONSIBILITIES.

- (1) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER THIS SECTION, THE SUPERVISOR WHO RECEIVED THE COMPLAINT MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.
- (2) WITHIN 60 DAYS AFTER THE SUPERVISOR RECEIVED THE COMPLAINT, THE SUPERVISOR MUST CONDUCT AN INVESTIGATION AND PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS OF THAT INVESTIGATION.

(C) FILING INITIAL COMPLAINT WITH INSPECTOR GENERAL.

- (1) A WHISTLEBLOWER NEED NOT FILE HIS OR HER COMPLAINT WITH A SUPERVISOR AND, INSTEAD, MAY FILE THE COMPLAINT DIRECTLY WITH THE OFFICE OF THE INSPECTOR GENERAL IF THE WHISTLEBLOWER REASONABLY BELIEVES THAT:
 - (I) ALL OF THE WHISTLEBLOWER'S SUPERVISORS ARE IMPLICATED BY THE COVERED DISCLOSURE; OR
 - (II) ALL OF THE WHISTLEBLOWER'S SUPERVISORS TOOK PART IN OR WERE OTHERWISE COMPLICIT IN THE RETALIATORY ACTION TAKEN AGAINST THE WHISTLEBLOWER.
- (2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE FILED WITHIN 180 DAYS FROM WHEN THE WHISTLEBLOWER KNEW OR SHOULD REASONABLY HAVE KNOWN ABOUT THE RETALIATORY ACTION.

(D) FILING WITH INSPECTOR GENERAL AS APPEAL FROM SUPERVISOR.

- (1) IF THE WHISTLEBLOWER INITIALLY FILED A COMPLAINT WITH A SUPERVISOR, THE WHISTLEBLOWER MAY APPEAL TO THE INSPECTOR GENERAL IF:
 - (I) THE SUPERVISOR WHO RECEIVED THE COMPLAINT FAILED TO PROVIDE THE WHISTLEBLOWER WITH WRITTEN FINDINGS OF HER OR HIS INVESTIGATION; OR
 - (II) THE WHISTLEBLOWER DOES NOT AGREE WITH THE SUPERVISOR'S WRITTEN FINDINGS.
- (2) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM THE DATE BY WHICH THE SUPERVISOR HAD TO RESPOND TO THE WHISTLEBLOWER.
- (3) A COMPLAINT FILED WITH THE INSPECTOR GENERAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE SUPERVISOR PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE SUPERVISOR'S INVESTIGATION.

(E) CONFIDENTIALITY.

THE IDENTITY OF THE WHISTLEBLOWER MUST BE KEPT CONFIDENTIAL TO THE EXTENT PRACTICABLE AND PERMITTED BY LAW.

§ 8-16. COMPLAINT INVESTIGATION – OFFICE OF THE INSPECTOR GENERAL.

(A) NOTICE OF RECEIPT OF COMPLAINT.

WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN COMPLAINT UNDER § 8-15(C) OR (D) OF THIS SUBTITLE, THE OFFICE OF THE INSPECTOR GENERAL MUST GIVE THE WHISTLEBLOWER WRITTEN NOTICE OF THE COMPLAINT'S RECEIPT.

(B) COMPLETING INVESTIGATION.

WITHIN 60 DAYS AFTER THE OFFICE RECEIVED THE COMPLAINT, THE OFFICE OF THE INSPECTOR GENERAL MUST CONDUCT AN INVESTIGATION AND PRESENT ITS FINDINGS TO THE WHISTLEBLOWER BOARD.

(C) EXTENSION FOR COMPLETING INVESTIGATION.

ON A FINDING OF GOOD CAUSE, THE BOARD MAY APPROVE AN EXTENSION FOR COMPLETING THE INVESTIGATION.

§ 8-17. HEARING PROCEDURES.

(A) WHISTLEBLOWER'S CASE.

THE WHISTLEBLOWER MUST MAKE A PRIMA FACIE CASE BY ESTABLISHING THROUGH A PREPONDERANCE OF THE EVIDENCE THAT HIS OR HER COVERED DISCLOSURE WAS A CONTRIBUTING FACTOR IN THE SUPERVISOR'S TAKING THE PERSONNEL ACTION.

(B) SHOWING BY SUPERVISOR.

ONCE THE WHISTLEBLOWER HAS MADE A PRIMA FACIE CASE, THE SUPERVISOR HAS THE BURDEN OF PROOF TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE WOULD HAVE TAKEN THE PERSONNEL ACTION EVEN IF THE WHISTLEBLOWER HAD NOT MADE THE COVERED DISCLOSURE.

(C) REPRESENTATION.

BOTH THE WHISTLEBLOWER AND THE SUPERVISOR MAY BE REPRESENTED AT A HEARING BY COUNSEL.

§ 8-18. RULES AND REGULATIONS.

(A) IN GENERAL.

THE INSPECTOR GENERAL MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) FILING WITH LEGISLATIVE REFERENCE.

A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

(C) *POSTED TO INSPECTOR GENERAL'S WEBSITE.*

A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE POSTED ON THE INSPECTOR GENERAL'S WEBSITE.

§ 8-19. REMEDIATION BY THE BOARD.

(A) *IN GENERAL.*

IF THE BOARD DECIDES TO TAKE REMEDIAL ACTION, THE BOARD MAY:

- (1) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE REMEDIES FOR THE WHISTLEBLOWER;
- (2) DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND DECLINE TO PROVIDE REMEDIES FOR THE WHISTLEBLOWER; OR
- (3) DECLINE TO DISCIPLINE THE SUPERVISOR FOR THE RETALIATION AND PROVIDE REMEDIES FOR THE WHISTLEBLOWER.

(B) *POSSIBLE DISCIPLINARY ACTION.*

THE DISCIPLINARY ACTION THAT THE BOARD MAY TAKE AGAINST A PERSON FOR RETALIATION AGAINST A WHISTLEBLOWER INCLUDES:

- (1) A REPRIMAND;
- (2) DEMOTION; OR
- (3) TERMINATION.

(C) *POSSIBLE REMEDIES.*

THE REMEDIES THAT THE BOARD MAY PROVIDE TO A WHISTLEBLOWER INCLUDES:

- (1) REINSTATEMENT TO THE STATUS THAT THE WHISTLEBLOWER WOULD HAVE HAD BUT FOR THE RETALIATION; OR
- (2) ANY BACKPAY, WITH INTEREST; OR
- (3) BOTH.

§ 8-20. JUDICIAL AND APPELLATE REVIEW.

(A) *JUDICIAL REVIEW.*

ANY PERSON AGGRIEVED BY AN ORDER OF THE BOARD MAY SEEK JUDICIAL REVIEW OF THAT ORDER BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

(B) APPELLATE REVIEW.

ANY PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

§ 8-21. OTHER REMEDIES NOT AFFECTED.

NOTHING IN THIS SUBTITLE AFFECTS:

- (1) ANY ACTION FOR DEFAMATION OR INVASION OF PRIVACY;
- (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES PROVIDED BY LAW OR CONTRACT; OR
- (3) ANY OTHER REMEDY PROVIDED BY LAW.

§§ 8-22 TO 8-23. {RESERVED}

§ 8-24. TRAINING.

THE OFFICE OF THE INSPECTOR GENERAL, WITH ASSISTANCE FROM THE LAW DEPARTMENT AND THE DEPARTMENT OF HUMAN RESOURCES, MUST CONDUCT TRAININGS REGARDING THIS SUBTITLE TO INFORM EMPLOYEES AND SUPERVISORS OF THEIR RIGHTS AND RESPONSIBILITIES.

§ 8-25. ADMINISTRATIVE MANUAL.

THE OFFICE OF THE INSPECTOR GENERAL MUST CREATE AN ADMINISTRATIVE MANUAL THAT OUTLINES PROCEDURES AND OTHER INFORMATION RELATIVE TO THE HANDLING OF COMPLAINTS UNDER THIS SUBTITLE.

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

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 60th day after the date it is enacted.

ACTION BY THE CITY COUNCIL

FIRST READING (INTRODUCTION) _____ APR 22 2019

PUBLIC HEARING HELD ON Sept. 17, 2019 / July 9, 2019 _____ 20

COMMITTEE REPORT AS OF Sept. 23, 2019 _____ 20

_____ FAVORABLE _____ UNFAVORABLE FAVORABLE AS AMENDED _____ WITHOUT RECOMMENDATION

C. V. [Signature]

Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

SEP 23 2019

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing. _____ 20

THIRD READING _____ OCT 07 2019

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) _____ 20

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) _____ 20

WITHDRAWAL _____ 20

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

President

Chief Clerk

