

**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.

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[§ 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 fo 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;

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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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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 **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.