

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 21-0093

Introduced by: Councilmembers Dorsey, Burnett, Cohen, Ramos

At the request of: The Administration

Introduced and read first time: June 8, 2021

Assigned to: Rules and Legislative Oversight Committee

Committee Report: Favorable

Council action: Adopted

Read second time: October 4, 2021

AN ORDINANCE CONCERNING

Revising Whistleblower Rights and Responsibilities

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

BY repealing and re-ordaining, with amendments

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

BY re-numbering current

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

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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BY adding
Article 1 - Mayor, City Council, and Municipal Agencies
Section 8-8
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. Whistleblower Rights and Responsibilities

§ 8-1. Definitions.

(a) *In general.*

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

(B) *ABUSE OF AUTHORITY.*

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

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

...

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

...

(E) [(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] A PERSONNEL
OFFICER or to the Inspector General; and

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(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] ABUSE OF AUTHORITY;

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

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

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

...

(G) *NOTICE OF DECLINATION*.

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

(H) *NOTICE OF INVESTIGATION*.

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

(I) [(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.

(J) *PERSONNEL OFFICER*.

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

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

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

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

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

§ 8-6. Complaint process.

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

(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] THE PERSONNEL OFFICER.

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

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

(1) Within 5 business days after receiving a complaint under this section, the [supervisor] PERSONNEL OFFICER 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] PERSONNEL OFFICER who received the complaint must notify the agency head or the appropriate appointing authority [associated with the complaint] OF THE AGENCY to the complaint.

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

(c) *Filing [initial] A 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.]

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

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(D) *TIMING OF THE COMPLAINT.*

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

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

[(e) *Confidentiality.*]

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

(E) *ETHICAL REQUIREMENTS.*

WHEN MAKING A COVERED DISCLOSURE THE WHISTLEBLOWER:

(1) MUST ACT IN GOOD FAITH;

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

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

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

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

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

(ii) the whistleblower does not agree with the [supervisor's] PERSONNEL OFFICER'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.]

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(2) AN APPEAL FILED WITH THE INSPECTOR GENERAL UNDER EITHER PARAGRAPH (1)(I) OR PARAGRAPH (1)(II) OF THIS SUBSECTION MUST BE FILED WITHIN 30 DAYS FROM WHEN THE PERSONNEL OFFICER SHOULD HAVE PRESENTED OR ACTUALLY PRESENTED THE WHISTLEBLOWER WITH THE WRITTEN FINDINGS OF THE PERSONNEL OFFICER'S INVESTIGATION.

§ 8-7. 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)] (F) 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.] INITIATING AN 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.]

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

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

(c) COMPLETING INVESTIGATION.

(1) PRESENTATION OF WRITTEN FINDINGS.

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

(I) THE CITY ADMINISTRATOR;

(II) THE RELEVANT AGENCY HEAD; AND

(III) THE WHISTLEBLOWER.

(2) REQUIRED MEETING.

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

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§ 8-8. REMEDIES.

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

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

(2) REQUIRE THE RELEVANT SUPERVISOR TO:

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

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

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

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

§ 8-9. [§ 8-8.] {Reserved}

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

...

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

...

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

...

§ 8-13. [§ 8-12.] Training.

...

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

...

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 30th day after the date it is enacted.

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Certified as duly passed this 18 day of October, 2021



President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this 18 day of October, 2021



Chief Clerk

Approved this _____ day of _____, 20____

Mayor, Baltimore City