



San Francisco Ethics Commission

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Date: November 4, 2024

To: Members of the Ethics Commission

From: Michael Canning, Policy & Legislative Affairs Manager

Re: **AGENDA ITEM 07 – Discussion and possible action on legislation to expand the Controller’s reporting requirements to the Board of Supervisors regarding the conclusion of certain whistleblower investigations.**

Summary and Action Requested

This memo provides information on legislation referred from the Board of Supervisors that would require the Controller’s Whistleblower Program to report to the Board of Supervisors the results of any whistleblower investigations that substantiate wrongdoing by City department heads or elected officials. Staff recommends the Commission consider the proposed legislation presented in **Attachment 1** and vote to approve the ordinance as drafted.

Background

The Controller’s Office administers a Whistleblower Program that allows for potential instances of fraud, waste, and abuse by City officials and people doing business with the City to be reported and investigated by the Controller’s Office. Complaints made through this program may be referred to the Ethics Commission’s Enforcement Division, if the complaint indicates a potential violation of rules enforced by the Ethics Commission. Staff from the Commission’s Enforcement Division and the Controller’s Office meet regularly to review complaints and manage referrals to the Commission.

The Ethics Commission is also responsible for investigating allegations of retaliation taken in response to protected whistleblower activity, per Section 4.117 of the Campaign and Governmental Conduct Code (C&GCC).

Proposed Legislative Amendment

In 2022, Supervisor Ronen introduced the proposed legislation in response to instances in which the Board of Supervisors was first made aware of wrongdoing by senior City officials through the press. Supervisor Ronen’s staff have communicated that the intent of this legislation is to ensure that the Board of Supervisors is informed whenever the Controller’s Office concludes any whistleblower investigation that substantiates wrongdoing by a City department head or elected City officer.

The proposed legislation amends Article IV, Chapter 1 of the C&GCC. Per Section 4.103, as amended earlier year by Proposition D, Article IV, Chapter 1 of the C&GCC can only be amended

by the Board of Supervisors if “the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its member.” Thus, in order for the Board of Supervisors to approve this proposed legislation, the Ethics Commission must first approve the legislation by a four-fifths vote.

This legislation was referred to the Ethics Commission on October 22, with a request from Supervisor Ronen’s office that the Commission consider this legislation at its November meeting. This allowed minimal time for Commission staff to engage with this legislation. However, Staff have reviewed the proposed legislation and communicated with key stakeholders regarding the legislation. Following communications with the Controller’s office, the City Attorney’s office, and the Supervisor Ronen’s office, Staff is confident that the proposed legislation will not negatively impact or disrupt the Commission’s enforcement processes.

Staff were initially concerned this legislation would require the Controller to report on investigations conducted by the Ethics Commission, which could be disruptive to the Commission’s investigations or conflict with the confidentiality provisions of the Charter regarding Commission investigations. However, Staff have confirmed this new reporting requirement would only apply to investigations conducted by the Controller’s office and would not require the Controller to report on Ethics Commission investigations. Staff also confirmed with Supervisor Ronen’s office that this interpretation aligns with the intent of the legislation.

Overall, the legislation should give the Board of Supervisors more direct insight into substantiated complaints investigated by the Controller that involve wrongdoing by department heads and elected officials, while respecting the confidentiality rules of investigations and not disrupting Ethics Commission investigations.

Supervisor Ronen’s staff have confirmed that this legislation has been noticed to bargaining units and a meet and confer with the Municipal Executive’s Association (MEA) has been concluded.

The proposed legislation is included as **Attachment 1** and the legislative digest is included as **Attachment 2**.

Recommended Next Steps

Considering the benefits of the Board having more direct insight into the Controller’s investigations, the limited scope of this legislation, and that it will not impact the Commission’s enforcement processes, Staff recommends the Commission vote to approve the legislation as drafted. Commission approval would allow the Board of Supervisors to move forward with their consideration and potential approval of this legislation.

Representatives from Supervisor Ronen’s office will be available during the Commission’s November meeting to discuss the legislation and respond to questions from the Commission on this matter.

Attachments:

Attachment 1: Legislation Requiring Expanded Reporting for Controller's Whistleblower Program (File# 221072)

Attachment 2: Legislative Digest on Whistleblower Program Legislation (File# 221072)

ATTACHMENT 1

1 [Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by
Senior City Officers in Whistleblower Investigations]

2
3 **Ordinance amending the Campaign and Governmental Conduct Code to require the**
4 **Controller’s Whistleblower Program to report to the Board of Supervisors regarding the**
5 **results of whistleblower investigations that substantiate wrongdoing by City**
6 **department heads and elected officials.**

7
8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
17 revising Sections, 4.100, 4.107, 4.110, and 4.120, to read as follows:

18 **SEC. 4.100. FINDINGS.**

19 The City and County of San Francisco (“City”) has a paramount interest in protecting
20 the integrity of its government institutions. To further this interest, individuals should be
21 encouraged to report possible violations of laws, regulations, and rules governing the conduct
22 of City officers and employees, City contractors, and employees of City contractors.

23 This Chapter 1 fulfills the Charter’s requirements for two City programs relating to
24 whistleblowers, as required by Charter Appendix Section F1.107. First, as required by the
25 Charter, the Office of the Controller has authority to receive and investigate whistleblower

1 complaints concerning deficiencies in the quality and delivery of City government services,
2 wasteful and inefficient City government practices, misuse of City funds, and improper
3 activities by City officers, employees, and contractors.

4 Second, as required by the Charter, this ~~ordinance~~ Chapter protects the confidentiality
5 of whistleblowers, and protects City officers and employees from retaliation for filing
6 whistleblower complaints or providing assistance with the investigation of such complaints. As
7 set forth in this Chapter 1, the Ethics Commission has primary responsibility for ensuring such
8 protections.

9 Third, consistent with the Charter responsibilities to maintain the confidentiality of
10 whistleblowers, this Chapter requires the Controller to report to the Board of Supervisors the results of
11 any investigation that concludes that a City department head or elected official engaged in misconduct,
12 as specified in this Chapter 1. The Controller may only report to the Board of Supervisors the results
13 of a whistleblower investigation that has concluded, except as provided in Charter Section 3.105.

14
15 **SEC. 4.107. COMPLAINTS BY CITIZENS AND EMPLOYEES; WHISTLEBLOWER**
16 **PROGRAM.**

17 (a) WHISTLEBLOWER PROGRAM. The Controller shall administer and publicize a
18 whistleblower and citizen complaint program for citizens and employees to report the misuse
19 of City funds, improper government activities by City officers and employees, deficiencies in
20 the quality and delivery of government services, and wasteful and inefficient City government
21 practices. Subject to subsection (b), the Controller shall investigate and otherwise attempt to
22 resolve complaints reported to the Whistleblower Program. The Controller shall administer a
23 hotline telephone number and website and publicize the hotline and website through press
24 releases, public advertising, and communications to City employees.

1 (b) REFERRAL OF CERTAIN COMPLAINTS. The Controller shall refer the following
2 complaints as set forth in this subsection (b):

3 (1) Those which another City agency is required by federal, state, or local law
4 to adjudicate: To that agency;

5 (2) Those which may be resolved through a grievance mechanism established
6 by collective bargaining agreement or contract: To the official or agency designated in the
7 agreement or contract;

8 (3) Those which involve allegations of conduct which may constitute a violation
9 of criminal law: To the District Attorney or other appropriate law enforcement agency;

10 (4) Those which are subject to an existing, ongoing investigation by the District
11 Attorney, City Attorney, or Ethics Commission, where the applicable official or Commission
12 states in writing that investigation by the Controller would substantially impede or delay his,
13 her, or its own investigation of the matter: To the investigating office; and

14 (5) Those which allege conduct that may constitute a violation of local
15 campaign finance, lobbying, conflict of interest, or governmental ethics laws, regulations, or
16 rules: To the Ethics Commission and the City Attorney.

17 Where the conduct that is the subject of the complaint may violate criminal law and any
18 civil or administrative law, statute, ordinance, or regulation, the Controller may take action on
19 the noncriminal aspects of the matter under this Section 4.107 even if a referral has been
20 made to another agency under this subsection (b).

21 If a complaint is referred under this subsection (b), the Controller shall inform the
22 complainant of the appropriate procedure for the resolution of the complaint.

23 Within 60 days of receiving a complaint for investigation under this subsection (b), or at any
24 other time as the Controller may specify, the agency receiving the complaint shall report to the
25 Controller in writing the results of the agency's investigation and any action that the agency has taken.

1 (c) TRACKING AND INVESTIGATION. The Controller shall receive, track, and
2 investigate complaints made or referred to the Whistleblower Program. The investigation may
3 include all steps that the Controller deems appropriate, including the review of the complaint
4 and any documentary or other evidence provided with it, the gathering of any other relevant
5 documents from any City department or other source, and interviews of the complainant and
6 other persons with relevant information.

7 (d) INFORMATION PROVIDED UNDER PENALTY OF PERJURY. In those instances
8 in which the Controller deems it appropriate, the Controller may require that persons making
9 complaints or providing information swear to the truth of their statements by taking an oath
10 administered by the Controller, or an agent of the Controller, or through written declarations
11 made under penalty of perjury under the laws of the State of California.

12 (e) REFERRAL AND RECOMMENDATION BY CONTROLLER. *In addition to*
13 *complaints referred to departments under subsection (b) of this Section 4.107,* ~~the~~ Controller may
14 refer the complaint to a City department for investigation, either before conducting an initial
15 investigation or after doing so, and may recommend that a City department take specific
16 action based on the Controller's initial investigation. Within 60 days of receiving a complaint
17 for investigation or a recommendation by the Controller for specific action under this subsection
18 (e), or such other time as the Controller shall specify, the City department shall report to the
19 Controller in writing the results of the department's investigation and any action that the
20 department has taken in response to a recommendation by the Controller that the department
21 take specific action.

22 (f) REPORT BY DEPARTMENT AND FURTHER ACTION BY CONTROLLER. If the
23 Controller has recommended that a City department take disciplinary or other corrective
24 action that the department has declined to take, the department shall report to the Controller
25 its reasons for failing to do so within the time frame that the Controller specifies for reporting

1 on its investigation of the complaint. If the Controller determines that the department's
2 reasons are inadequate and that further investigation may be appropriate, the Controller may
3 refer the matter to the Mayor, City Attorney, or District Attorney, or to any officer or agency
4 that has jurisdiction over the matter.

5 (g) RESPONSIBILITY OF DEPARTMENTS. The department head shall be
6 responsible for compliance by his or her department with these duties. If department staff fail
7 to comply with the duties to investigate complaints referred by the Controller and to make the
8 reports required by this Section 4.107, the Controller shall notify the department head. If the
9 department head fails to take action to obtain the department's compliance with these duties,
10 the Controller may refer the matter to the Mayor, City Attorney, or District Attorney or to any
11 officer or agency that has jurisdiction over the matter.

12
13 **SEC. 4.110. DEFINITIONS.**

14 For purposes of this Chapter 1, the following words and phrases shall have the
15 following meanings:

16 "City" or "City agency" shall mean the City and County of San Francisco, its
17 departments, commissions, task forces, committees, and boards.

18 "Complainant's department" includes the complainant's supervisor, the executive
19 director or highest ranking officer in the complainant's department, and the board or
20 commission overseeing the complainant's department.

21 "Deficiencies in the quality and delivery of government services" shall mean the failure
22 to perform a service, when performance is required under any law, regulation or policy, or
23 under a City contract or grant.

24 "Department head" shall mean any department head who is required to file a Statement of
25 Economic Interests as set forth in Section 3.1-103(b)(1) of this Code.

1 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
2 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

3 “Improper government activity” shall mean violation of any federal, state, or local law,
4 regulation, or rule, including but not limited to laws, regulations, or rules governing campaign
5 finance, conflicts of interest, or governmental ethics laws; or action which creates a danger to
6 public health or safety by the failure of City officers or employees to perform duties required
7 by their positions. “Improper government activity” does not include employment actions for
8 which other remedies exist.

9 “Misuse of City funds” shall mean any use of City funds for purposes outside of those
10 directed by the City.

11 “Preliminary investigation” shall be limited to, but need not include all of the following:
12 review of the complaint and any documentary evidence provided with the complaint; interview
13 of the complainant; interview of the respondent, counsel to respondent and any witnesses
14 who voluntarily agree to be interviewed for this purpose; review of any relevant public
15 documents and documents provided voluntarily to the Commission.

16 “Supervisor” shall mean any individual having the authority, on behalf of the City, to
17 hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other
18 employees, or the responsibility to routinely direct them, to adjust their grievances, or to
19 effectively recommend such action, if, in connection with the foregoing, the exercise of that
20 authority is not merely routine or clerical, but requires the use of independent judgment.

21 “Unlawful activity” shall mean violations of any federal, state or local law, regulation or
22 rule including but not limited to those laws, regulations or rules governing campaign finance,
23 conflicts of interest or governmental ethics laws; or actions which create a danger to public
24 health or safety by the failure of City officers or employees to perform duties imposed by a
25 City contract.

1 "Wasteful and inefficient City government practices" shall mean the expenditure of City
2 funds that could be eliminated without harming public health or safety, or reducing the quality
3 of government services..
4

5 **SEC. 4.120. CONFIDENTIALITY.**

6 (a) WHISTLEBLOWER IDENTITY. City officers and employees shall treat as
7 confidential the identity of any person who files a complaint as set forth in Section 4.105(a). A
8 complainant may voluntarily disclose his or her identity.

9 (b) COMPLAINTS AND INVESTIGATIONS. City officers and employees shall treat as
10 confidential complaints filed under Sections 4.105, 4.115, and 4.117, and related information,
11 including but not limited to materials gathered and prepared in the course of investigating
12 such complaints, and deliberations regarding such complaints.

13 (c) PENALTIES. Except as provided in subsection (d), violations of subsections (a) and
14 (b) may be subject to the administrative proceedings and penalties set forth in Charter Section
15 C3.699-13, in addition to disciplinary action up to and including dismissal by his or her
16 appointing authority.

17 (d) EXCEPTIONS.

18 (1) **Conduct of Investigations.** Nothing in this Section 4.120 shall preclude the
19 Controller's Office, Ethics Commission, District Attorney, and City Attorney from disclosing the
20 identity of an individual or other information to the extent necessary to conduct its
21 investigation.

22 (2) **Legal Proceedings.** Nothing in this Section 4.120 shall preclude City officers
23 and employees from disclosing the identity of an individual or other information relating to a
24 complaint to the extent required by the rules governing an administrative or court proceeding.
25

1 (3) **Referrals.** Nothing in this Section 4.120 shall preclude the Ethics
2 Commission or Controller from referring any matter to any other City department, commission,
3 board, officer, or employee, or to other government agencies, for investigation and possible
4 disciplinary or enforcement action.

5 (4) **Reporting on Certain Substantiated Complaints.** *To the extent feasible without*
6 *waiving attorney-client privilege or attorney work-product privilege, the Controller shall report to the*
7 *Board of Supervisors the results of any investigation that concludes that a Department head or Elected*
8 *official engaged in Improper government activity, Misuse of City funds, or Unlawful activity, or directly*
9 *caused Deficiencies in the quality and delivery of government services or Wasteful and inefficient City*
10 *government practices. Such report shall be prepared so as to protect the confidentiality of the identity*
11 *of any person who files a complaint or provides testimony, and it shall not include information that*
12 *alone or in combination with other information could be used to identify such complainant or witness.*
13 *The Controller may only report to the Board of Supervisors the results of a whistleblower investigation*
14 *that has concluded, except as provided in Charter Section 3.105.*

15
16 Section 3. Requirements for Amendment by the Board of Supervisors.

17 (a) As set forth in Section 4.103 of the Campaign and Governmental Conduct Code,
18 the Board of Supervisors may amend Article IV, Chapter 1 of the Campaign and
19 Governmental Conduct Code, which includes the sections that this ordinance will amend, if:

20 (1) the amendment furthers the purposes of Article IV, Chapter 1 of the
21 Campaign and Governmental Conduct Code;

22 (2) the Ethics Commission approves the amendment in advance of Board of
23 Supervisors approval by at least a four-fifths vote of all its members;

24 (3) the amendment is available for public review at least 30 days before the
25 amendment is considered by the Board of Supervisors or any of its committees; and

1 (4) the Board of Supervisors approves the amendment by at least a two-thirds
2 vote of all its members.

3 (b) At its meeting of _____, the Ethics Commission approved this
4 ordinance by a vote of _____.

5 (c) This ordinance has been available for public review for at least 30 days before
6 consideration by a committee of the Board of Supervisors.

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DAVID CHIU, City Attorney

22 By: _____ /s/
23 JON GIVNER
24 Deputy City Attorney

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ATTACHMENT 2

LEGISLATIVE DIGEST
(Substituted 10/29/24)

[Campaign and Governmental Conduct Code - Reporting on Substantiated Misconduct by Senior City Officers in Whistleblower Investigations]

Ordinance amending the Campaign and Governmental Conduct Code to require the Controller’s Whistleblower Program to report to the Board of Supervisors regarding the results of whistleblower investigations that substantiate wrongdoing by City department heads and elected officials.

Existing Law

The City Charter authorizes the Controller to operate a whistleblower program to receive and investigate complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City funds, and improper activities by City officers and employees. The Campaign and Governmental Conduct Code fleshes out these Charter authorities and responsibilities. When the Controller receives a whistleblower complaint, the Controller may investigate, taking all steps the Controller deems appropriate.

If another City agency (such as the City Attorney, District Attorney, or Department of Human resources) is required by law to handle a particular type of complaint, the Charter requires the Controller to refer the complaint to that agency. The Controller generally refers to these mandatory referrals as “Charter referrals.” The Controller also sometimes refers other complaints to a City department for investigation, either after or without initial investigation. City departments that receive these non-Charter referrals are required to report to the Controller the results of their investigations and any actions the department has taken, all within 60 days of receiving a complaint for investigation or a recommendation for specific action.

The Administrative Code provides that the whistleblower program’s investigations must remain confidential, with limited exceptions. But existing law does not address whether or under what circumstances the whistleblower program may release substantiated complaints regarding elected officials or department heads.

Amendments to Current Law

The proposed ordinance would require the Controller to report to the Board of Supervisors the result of any investigation where the Controller concludes that a department head or elected official engaged in improper or unlawful activities, misused City funds, directly caused deficiencies in the quality and delivery of government services, or directly caused wasteful and inefficient government practices. The report could not reveal the identity of any person who files a complaint or provides testimony, and could not include information protected by attorney-client privilege or attorney work product protections.

FILE NO. 221072

The proposed ordinance also would require departments that receive Charter referrals from the Controller's whistleblower program to report to the Controller in writing the results of the agency's investigation and any action that the agency has taken within 60 days after receiving the referral or in another timeframe requested by the Controller's Office.

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