County Council of Cuyahoga County, Ohio

Ordinance No. O2020-0002

Sponsored by: **Councilmember Miller**	**An Ordinance** amending Sections 406.01 and 406.02 of the Cuyahoga County Code to clarify contents of the Whistleblower provisions.

WHEREAS, Section 3.09(12) of the Cuyahoga County Charter empowers Council "to establish by ordinance a code of ethics, which shall be in addition to, and not inconsistent with, general law on the subject, which shall guide and inform County officers and employees in the performance of their official duties in a manner that will represent high standards of professionalism and loyalty to the residents of the County and that will avoid conflicts of interest, self-dealing and other violations of the public trust;" and

WHEREAS, the Council determined it was necessary to enact a comprehensive whistleblower policy, which was subsequently codified in Title IV of the Cuyahoga County Code and memorialized in Code Sections 406.01 and 406.02; and

WHEREAS, Council has determined that in the interest of good governance it is necessary to update the County's Code to clarify the rights and responsibilities of employees making a Whistleblower complaint; and,

WHEREAS, it is necessary that this Ordinance, as amended, become immediately effective in order to provide safety and security for employees submitting complaints pursuant to County Code Sections 406.01 and 406.02; and

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Sections 406.01 and 406.02 of the Cuyahoga County Code are hereby amended as follows (additions are marked in bold and underlined; deletions are stricken):

Chapter 406: Whistleblowers

Section 406.0~~2~~**1**: Whistleblower Rights

A. Any person who reasonably believes a violation of any county, state, or federal ethics law, rule, or regulation has occurred, or will occur, may make a whistleblower complaint with a supervisor within the employee's chain of

command, the Agency of Inspector General, or the Department of Human Resources.

B. Elected officials, employees, and board members shall not retaliate against any person who makes a whistleblower complaint pursuant to this Code section.

~~A~~**C**. ~~Pursuant~~**The contents of this section are in addition** to Section 124.341 of the Ohio Revised Code~~, if an appointing authority takes any final disciplinary or retaliatory action against an employee as a result of the employee's having filed a written report or complaint of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, the employee's sole remedy is to file an appeal with the state personnel board of review within the time period prescribed by law~~.

~~B~~**D**. If an**y elected official,** employee**, or board member** believes he or she has been subject to retaliation for ~~having filed~~**making** a complaint of a violation of this title that is not ~~a violation~~reportable under Ohio Revised Code Section 124.341, he or she ~~shall~~**may** report such retaliation to **a supervisor within the employee's chain of command, the Agency of the Inspector General, or** the Department of Human Resources. If an appointing authority**, supervisor,** or the Department of Human Resources takes any ~~final disciplinary or~~retaliatory action against an employee as a result of the employee's having ~~filed~~**made** a report or complaint under this title that is not a violation reportable under Ohio Revised Code Section 124.341, the employee may file an appeal with the Personnel Review Commission. Any complaint giving rise to an alleged retaliatory act must be filed **verbally or** in writing in order for an employee to exercise his or her appeal rights under this paragraph. A complaint ~~filed in writing~~may be ~~submitted~~**made** anonymously; provided however that the employee shall bear the burden of proving that the employee was the source of the anonymous complaint upon appeal. Claims of retaliation heard by the Personnel Review Commission ~~shall be~~**are** appealable to the Court of Common Pleas pursuant to Ohio Revised Code Chapter 2506.

~~C~~**E**. The annual training provided to employees~~, as~~ required ~~in~~**by** Chapter 403 of this code, shall include a notice to employees enumerating their whistleblower rights and responsibilities~~, including the requirement that an employee must submit any initial ethics complaint in writing to properly exercise his or her appeal rights in the event of whistleblower retaliation~~**. The training shall also notify supervisory employees of their responsibility to avoid retaliating against any person who makes a whistleblower complaint pursuant to this section.**

Section 406.0~~1~~**2:** Whistleblower Responsibilities

~~A. Any elected official, employee, or board member who possesses actual knowledge of a violation of this Title shall inform the Inspector General within five days of~~

~~discovering the violation, unless the individual knows the violation has already been reported.~~

~~**B.** Any person who reasonably believes a violation of this Title or of any state or federal ethics law, rule, or regulation has occurred, or will occur, may file a complaint with the Inspector General.~~

~~C~~**A**. No ~~elected official, employee, board member, lobbyist, or contractor~~**person or entity** shall ~~file~~ **make** a complaint ~~with the Inspector General~~ **under this section** that includes information ~~he or she~~**they** know~~s~~ to be false, or which has been ~~submitted~~**made** in bad faith or with reckless disregard for the truth.

~~D. No person shall retaliate against any individual who, in good faith, has filed a written report or expressed in writing his or her intent to report a violation or suspected violation of this Code, whether such retaliation is through threat, coercion, harassment, abuse of authority, or adverse employment action.~~

~~E~~**B**. Any act of retaliation shall be considered a separate violation of this Code. All complaints of retaliation shall be reported to the **Agency of** Inspector General for investigation.

C. Any supervisor who receives a whistleblower complaint shall notify the Agency of Inspector General or Department of Human Resources of the complaint within five (5) business days of receipt.

SECTION 2. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

_____ _____
County Council President Date

_____ _____
County Executive Date

_____ _____
Clerk of Council Date

First Reading/Referred to Committee:
Committee(s) Assigned:

Journal _____
_____, 20__