

PROPOSED

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO WHISTLEBLOWER COMPLAINTS; REPEALING AND REPLACING SECTION 26-6 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); CREATING DEFINITIONS; PROHIBITING RETALIATION; CREATING PROCEDURES FOR WHISTLEBLOWER COMPLAINTS AND RETALIATION COMPLAINTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Section 112.3187, Florida Statutes, authorizes the Broward County Board of County Commissioners ("Board") to establish an ordinance for investigating whistleblower complaints and retaliation complaints; and

WHEREAS, the Board previously established procedures for handling the investigation of whistleblower complaints and retaliation complaints and seeks to update such procedures,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Section 26-6 of the Broward County Code of Ordinances is hereby repealed in its entirety, and a new Section 26-6 is hereby created to read as follows:

21 [Underlining omitted]

22 **Sec. 26-6. Whistleblower Provisions.**

23 (a) *Legislative Intent.* It is the intent of the Broward County Board of County
24 Commissioners to prevent retaliatory action against an employee who reports to an
25 appropriate agency any suspected violation of law by Broward County, or by its
26 independent contractors, that creates a substantial and specific danger to public health,
27 safety, or welfare. It is further the intent of the Board to prevent Broward County and its
28 independent contractors from taking retaliatory action against an employee or other
29 person who discloses whistleblower information to an appropriate agency alleging
30 improper use of governmental office, gross waste of funds, or any other abuse or gross
31 neglect of duty on the part of an agency, public officer, or employee of Broward County
32 or its independent contractors.

33 (b) *Definitions.* As used in this section, unless otherwise specified, the following
34 terms shall have the following meanings:

35 *Adverse personnel action* means the discharge, suspension, transfer, demotion,
36 withholding of a bonus, reduction in salary or benefits, or any other adverse action taken
37 against an employee or person within the terms and conditions of employment by
38 Broward County or its independent contractors.

39 *Board* means the Board of County Commissioners of Broward County.

40 *Broward County or County* means the political subdivision of the State of Florida,
41 and includes any official, officer, department, division, or office of Broward County
42 government, as well as any board or committee established by the Board or by the County
43 Administrator.

44 *Employee* means an individual who performs services for, and is under the control
45 and direction of, Broward County, and who receives wages or other remuneration for such
46 performance, or an individual who has applied for a compensated position of employment
47 with Broward County.

48 *Gross mismanagement* means a continuous pattern of (1) managerial abuses,
49 (2) wrongful or arbitrary and capricious actions, or (3) fraudulent or criminal conduct, that
50 may have a substantial adverse economic impact.

51 *Independent contractor* means a person or entity, other than a federal, state, or
52 local government entity, that is under contract with Broward County to provide goods or
53 services.

54 *Malfeasance* means an intentional or willful action in violation of established law,
55 rule, or regulation that demonstrates a substantial disregard of Broward County's or an
56 independent contractor's interests, duties, or obligations to the public.

57 *Misfeasance* means an improper or wrongful action by an employee or person that
58 shows a substantial disregard of Broward County's or an independent contractor's
59 interests, duties, or obligations to the public.

60 *Person* means any natural person, corporation, firm, joint venture, or other entity,
61 other than a federal, state, or local government entity or an employee of Broward County.

62 *Whistleblower information* means information regarding: (1) any violation or
63 suspected violation of any federal, state, or local law, rule, or regulation committed by an
64 employee or agent of Broward County, or by an independent contractor, that creates and
65 presents a substantial and specific danger to public health, safety, or welfare; or (2) any
66 act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste

67 of public funds, or gross neglect of duty, committed by an employee or agent of Broward
68 County, or by an independent contractor of Broward County.

69 (c) *Disclosing Whistleblower Information.* Whistleblower information disclosed
70 under this section: (1) must be disclosed to the County Administrator or designee, or to
71 the County Auditor, and may also be disclosed as referenced in (e)1.d. or (e)1.e. below;
72 (2) must be disclosed pursuant to the procedures established in Chapter 19, Part X of the
73 Broward County Administrative Code, including Section 19.67 thereof; and (3) must
74 identify the individual(s) and action(s) at issue.

75 (d) *Actions Prohibited.* Neither Broward County nor any independent contractor
76 of Broward County shall take any adverse personnel action against an employee or other
77 person in retaliation for the employee's or the person's disclosure of whistleblower
78 information to Broward County or to any federal, state, or local governmental authority.
79 The provisions of this section shall not apply when the employee or other person discloses
80 information known by the employee or person to be false or a misrepresentation.

81 (e) *Employees and Persons Protected.*

82 (1) This section protects any employee or other person who:

83 a. Discloses whistleblower information on their own initiative in a written
84 and signed complaint to the County Administrator or designee, the
85 Professional Standards Section of the Human Resources Division,
86 or the Office of the County Auditor;

87 b. Participates in an investigation, hearing, or other inquiry conducted
88 by Broward County or any federal, state, or local governmental

- 89 authority concerning whistleblower information disclosed under this
90 section;
- 91 c. Refuses to participate in any adverse personnel action prohibited by
92 this section;
- 93 d. Files a written complaint disclosing whistleblower information to their
94 supervisor or to any of the following: the Chief Inspector General in
95 the Executive Office of the Governor; the employee designated as
96 agency inspector general under Section 112.3189(1), Florida
97 Statutes; or the Florida Office of the Public Counsel; or
- 98 e. Initiates a complaint disclosing whistleblower information through
99 Florida's whistleblower hotline.
- 100 (2) The provisions of this section do not apply to an employee or other person
101 while the employee or other person is under the care, custody, or control of
102 the state correctional system, or after the employee or other person is
103 released from the care, custody, or control of the state correctional system
104 with respect to circumstances that occurred during any period of
105 incarceration.
- 106 (3) No remedy or other protection under this section applies to any employee
107 or person who has committed, or intentionally participated in the
108 commission of, the violation or suspected violation that is the subject of the
109 whistleblower information.
- 110 (f) *Procedures for Receipt and Investigation of Whistleblower Disclosures.* The
111 County Administrator and the County Auditor shall each establish procedures for the

112 receipt and investigation of whistleblower information disclosures from employees,
113 independent contractors, and other persons who meet the requirements stated in this
114 section for disclosure of whistleblower information and shall cooperate to ensure that
115 there is no duplication of efforts with investigations.

116 (g) *Procedures and Remedy for Retaliation Complaint.*

117 (1) The County Administrator shall establish procedures for the investigation
118 and review of employee complaints of adverse personnel actions taken by
119 Broward County in retaliation for the disclosure of whistleblower
120 information.

121 (2) Within sixty (60) days after an alleged adverse personnel action taken by
122 Broward County, an employee may file a written retaliation complaint with
123 the County Administrator's designee setting forth the facts that constitute
124 the adverse personnel action and the applicable disclosure of whistleblower
125 information. Upon receipt of the retaliation complaint, the County
126 Administrator's designee will investigate the complaint and issue a written
127 report. The retaliation complaint and the written report shall be referred to a
128 panel of impartial individuals designated by the County Administrator. The
129 County Administrator shall designate members of Broward County staff to
130 serve on the panel, after confirming that such staff were not personally
131 involved in the case and are not in the chain of command for any of the
132 parties involved. After consideration of the retaliation complaint, the panel
133 must submit its written findings to the County Administrator. The County

134 Administrator shall consider the written findings and any other relevant
135 information and make a final decision on the complaint.

136 (3) The County Administrator is authorized to award any or all of the following
137 relief, as applicable and appropriate, to effectuate the intent of this section:

138 a. Reinstatement of the employee to the same position held before the
139 adverse personnel action was commenced, or to an equivalent
140 position;

141 b. Reinstatement of the employee's full fringe benefits and seniority
142 rights;

143 c. Compensation for lost wages and benefits caused by the adverse
144 personnel action; or

145 d. Regarding applicants for Broward County employment, any relief
146 deemed by the County Administrator to be appropriate under the
147 circumstances.

148 (h) *Defenses*. It shall be a defense to any action brought pursuant to this
149 section that the adverse personnel action was predicated upon one or more grounds other
150 than the employee's or person's exercise of rights protected by this section and would
151 have been taken notwithstanding the employee's or person's exercise of rights protected
152 by this section.

153 (i) *Existing Rights*. This section does not diminish the rights, privileges, or
154 remedies of an employee under any other law or rule or any applicable collective
155 bargaining agreement or employment contract; notwithstanding the foregoing, the
156 election of remedies in Section 447.401, Florida Statutes, applies to this section and to

157 any whistleblower cause of action. This section does not create a private cause of action
158 other than any action that may exist under Section 112.3187, Florida Statutes.

159 Section 2. Severability.

160 If any portion of this Ordinance is determined by any court to be invalid, the invalid
161 portion will be stricken, and such striking will not affect the validity of the remainder of this
162 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
163 legally applied to any individual, group, entity, property, or circumstance, such
164 determination will not affect the applicability of this Ordinance to any other individual,
165 group, entity, property, or circumstance.

166 Section 3. Inclusion in the Broward County Code of Ordinances.

167 It is the intention of the Board of County Commissioners that the provisions of this
168 Ordinance become part of the Broward County Code of Ordinances as of the effective
169 date. The sections of this Ordinance may be renumbered or relettered and the word
170 "ordinance" may be changed to "section," "article," or such other appropriate word or
171 phrase to the extent necessary in order to accomplish such intention.

172 Section 4. Effective Date.

173 This Ordinance is effective as of the date provided by law.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By: /s/ Adam M. Katzman 12/12/2022
Adam M. Katzman (date)
Senior Assistant County Attorney

By: /s/ René D. Harrod 12/12/2022
René D. Harrod (date)
Chief Deputy County Attorney

AMK/jl
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Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.