

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 Section 26-6 of the Broward County Code of Ordinances is hereby repealed in its entirety, and a new Section 26-6 is hereby created to read as follows:

[Underlining omitted]

Sec. 26-6. Whistleblower Provisions.

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

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

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

Board means the Board of County Commissioners of Broward County.

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

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

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

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

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

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

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

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

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

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

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

(e) *Employees and Persons Protected.*

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

- a. Discloses whistleblower information on their own initiative in a written and signed complaint to the County Administrator or designee, the Professional Standards Section of the Human Resources Division, or the Office of the County Auditor;
- b. Participates in an investigation, hearing, or other inquiry conducted by Broward County or any federal, state, or local governmental

authority concerning whistleblower information disclosed under this section;

c. Refuses to participate in any adverse personnel action prohibited by this section;

d. Files a written complaint disclosing whistleblower information to their supervisor or to any of the following: the Chief Inspector General in the Executive Office of the Governor; the employee designated as agency inspector general under Section 112.3189(1), Florida Statutes; or the Florida Office of the Public Counsel; or

e. Initiates a complaint disclosing whistleblower information through Florida's whistleblower hotline.

(2) The provisions of this section do not apply to an employee or other person while the employee or other person is under the care, custody, or control of the state correctional system, or after the employee or other person is released from the care, custody, or control of the state correctional system with respect to circumstances that occurred during any period of incarceration.

(3) No remedy or other protection under this section applies to any employee or person who has committed, or intentionally participated in the commission of, the violation or suspected violation that is the subject of the whistleblower information.

(f) *Procedures for Receipt and Investigation of Whistleblower Disclosures.* The County Administrator and the County Auditor shall each establish procedures for the

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. Severability.

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

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

It is the intention of the Board of County Commissioners that the provisions of this Ordinance become part of the Broward County Code of Ordinances as of the effective date. The sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or 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
Whistleblower Ordinance
12/12/2022
613687_5

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