

PROPOSED

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO PROCEDURES FOR WHISTLEBLOWER COMPLAINTS AND RETALIATION COMPLAINTS; REPEALING AND REPLACING SECTIONS 19.66 THROUGH 19.68 AND CREATING SECTION 19.69 OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"); PROVIDING PROCEDURES FOR FILING AND INVESTIGATING WHISTLEBLOWER COMPLAINTS AND RETALIATION COMPLAINTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

WHEREAS, Section 3.08 of the Broward County Charter requires that the Board of County Commissioners ("Board") establish protections for all County employees and appointees who report violations of any local, state, or federal law, regulation, policy, or procedure regarding alleged abuse of authority or misuse of public funds, or who report the existence of a substantial and specific danger to the public health, safety, or welfare;

WHEREAS, the Board previously prohibited retaliatory conduct against anyone who acts as a whistleblower and established procedures for handling the reporting and investigation of whistleblower complaints and retaliation complaints; and

WHEREAS, the Board finds it appropriate at this time to update such procedures,
NOW, THEREFORE,

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

Section 1. Sections 19.66 through 19.68 of the Broward County Administrative
Code are hereby repealed in their entirety, and new Sections 19.66 through 19.68 are
hereby created to read as follows:

[Underlining omitted]

19.66. Whistleblower Policy.

(a) It is in the best interests of Broward County that Broward County
employees, independent contractors, and other persons disclose whistleblower
information to Broward County.

(b) The words used in this section, unless otherwise specified, shall have the
same meanings as defined in Section 26-6 of the Broward County Code of Ordinances
("Code").

(c) Broward County employees, and independent contractors and their
employees, shall not be retaliated against as a result of disclosing whistleblower
information to Broward County or to any federal, state, or local governmental authority, or
for participating in an investigation by Broward County or any federal, state, or local
governmental authority concerning whistleblower information.

(d) No Broward County employee shall be discharged, suspended, transferred,
demoted, or subjected to any other adverse personnel action because the employee
acted in good faith by disclosing whistleblower information to Broward County or to any
federal, state, or local governmental authority, or because the employee participated in

an investigation about whistleblower information by Broward County or any federal, state, or local governmental authority.

(e) The following administrative procedures are established for the investigation of whistleblower information, the investigation of adverse personnel actions because of the disclosure of whistleblower information, and the implementation of corrective measures when necessary. These procedures are not a substitute for Broward County's Equal Employment Opportunity complaint procedure or any applicable procedures of the Broward County Procurement Code.

19.67. Procedures for Whistleblower Complaints.

(a) A whistleblower complaint must be submitted in writing to the Professional Standards Section of the Human Resources Division ("Professional Standards") or the Office of the County Auditor, and must include the name of the employee or person submitting the whistleblower complaint, the whistleblower information, as defined in Section 26-6(b) of the Code, and the information required in Section 26-6(c) of the Code. Professional Standards and the Office of the County Auditor shall cooperate to ensure that they are not duplicating efforts.

(b) Professional Standards is designated as the agency to investigate whistleblower complaints, except as stated otherwise herein. If Professional Standards is the subject of the whistleblower complaint, then the County Administrator shall designate an Assistant County Administrator as the individual to investigate the whistleblower complaint, and Professional Standards shall refer the complaint to County Administration. In addition to the foregoing, the Office of the County Auditor may investigate any whistleblower complaint it receives if determined to be appropriate by the County Auditor

or if requested by the County Administrator. The investigating agency will determine if the whistleblower complaint meets the requirements of this section and, if so, will investigate the whistleblower complaint. The County Administrator is authorized to provide additional staff support and other resources as necessary for the investigating agency to conduct the investigation.

(c) If Professional Standards or County Administration is the investigating agency, the agency must forward a written report with investigative findings and conclusions to the County Administrator within ninety (90) days after receiving the whistleblower complaint, unless the County Administrator expressly authorizes, in writing and before the expiration of the ninety (90) days, additional time based on the circumstances of the investigation. If the Office of the County Auditor is the investigating agency, the Office of the County Auditor must provide a written report with its findings to the County Administrator and the applicable County agency within ninety (90) days after receiving the whistleblower complaint, unless the County Auditor authorizes, in writing and before the expiration of the ninety (90) days, additional time based on the circumstances of the investigation.

19.68. Procedures for Retaliation Complaints.

(a) Within sixty (60) days after an alleged adverse personnel action, a Broward County employee protected under Section 26-6(e) of the Code may file a written complaint of retaliation with Professional Standards setting forth with specificity the facts that qualify the employee for protection under Section 26-6 of the Code and that constitute the adverse personnel action.

89 (b) Within ninety (90) days after receipt of a written complaint of retaliation,
90 Professional Standards will conduct an initial investigation of the complaint and issue a
91 written report to the County Administrator, unless the County Administrator expressly
92 authorizes, in writing and before the applicable deadline, additional time in increments of
93 not more than sixty (60) days based on the circumstances of the investigation.

94 (c) After completion of the written report by Professional Standards, the
95 retaliation complaint and the written report will be referred to be heard by a review panel
96 consisting of three (3) individuals appointed by the County Administrator. Unless
97 otherwise stated herein, the panel will consist of (i) the Deputy County Administrator or
98 an Assistant County Administrator, and (ii) two (2) Department Directors or Deputy
99 Department Directors; if the full panel cannot be appointed due to unavailability of the
100 referenced personnel, the County Administrator shall appoint County employees as
101 replacement panel members. Any employee or person who is a subject of the complaint
102 or investigation, was personally involved in the complaint or investigation, or is in the
103 chain of command of any employee or person involved in the complaint or investigation,
104 will not be appointed to the review panel, and the County Administrator shall appoint
105 another employee as a replacement panel member.

106 (d) Within thirty (30) days after the referral of Professional Standards' report to
107 the review panel and upon reasonable notice to the complainant and Professional
108 Standards, the panel shall convene to conduct a review. At the review, the panel shall
109 consider the complaint, the report by Professional Standards, and such other information
110 as it may determine relevant to determine if there was a prohibited adverse personnel
111 action. Within thirty (30) days after the review, the panel shall provide written findings of

fact and conclusions of law, and a copy of all records reviewed by the panel, to the County Administrator. Within thirty (30) days after receipt of the panel's written findings, the County Administrator shall render a final decision.

Section 2. Section 19.69 of the Broward County Administrative Code is hereby created to read as follows:

[Underlining omitted]

19.69. Relief for Retaliation Complaints.

(a) In any case in which the County Administrator finds an employee or person was retaliated against, the County Administrator may award any or all of the following relief, as applicable and appropriate:

- (1) Refer the matter for appropriate disciplinary action, if a Broward County employee committed or participated in the retaliation;
- (2) Reinstatement the employee to the same position held before the adverse personnel action was commenced, or to an equivalent position;
- (3) Compensate the employee for lost wages and benefits caused by the adverse personnel action;
- (4) Provide any other relief deemed by the County Administrator under the circumstances, if the person was an applicant for employment with the County; or
- (5) Sanction an independent contractor in one (1) or more of the following ways:
 - a. Direct the Director of Purchasing to suspend or debar the independent contractor in accordance with the applicable procedures of the County;

b. To the extent permitted by the applicable contract, suspend payment to the independent contractor until the retaliation is cured to the satisfaction of the County Administrator; or

c. Terminate any Broward County contract with the independent contractor for cause or for convenience.

(b) Any Broward County employee who files a whistleblower or retaliation complaint based upon information known by the employee to be false or a misrepresentation, or who is a party to the violation(s) complained of, will be subject to disciplinary action.

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

Section 3. Severability.

If any portion of this Administrative Code Resolution 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 Administrative Code Resolution. If any court determines that this Administrative Code Resolution, 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 Administrative Code Resolution to any other individual, group, entity, property, or circumstance.

Section 4. Inclusion in the Broward County Administrative Code.

It is the intention of the Board of County Commissioners that the provisions of this Administrative Code Resolution become part of the Broward County Administrative Code as of the effective date. The sections of this Administrative Code Resolution may be

158 renumbered or relettered and the word "resolution" may be changed to "section," "article,"
159 or such other appropriate word or phrase to the extent necessary in order to accomplish
160 such intention.

161 Section 5. Effective Date.

162 This Administrative Code Resolution is effective upon adoption.

ADOPTED this day of , 2023. **PROPOSED**

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

By: /s/ Adam M. Katzman 01/12/2023
Adam M. Katzman (date)
Senior Assistant County Attorney

By: /s/ René D. Harrod 01/12/2023
René D. Harrod (date)
Chief Deputy County Attorney

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