

County Council of Cuyahoga County, Ohio

Ordinance No. O2020-0002

Sponsored by: Councilmembers Conwell and Miller	An Ordinance amending Sections 406.01 and 406.02 of the Cuyahoga County Code to clarify contents of the Whistleblower provisions; and declaring the necessity that this Ordinance become immediately effective.
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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:

Chapter 406: Whistleblowers

Section 406.01: Whistleblowers Responsibilities

A. Definitions:

1. For purposes of this section, a “whistleblower” is any elected official, employee, or board member of Cuyahoga County, or any person doing business with the County, including persons receiving or seeking services from the County, or any other person who reports any violation of any county, state, or federal law, rule, or regulation, or allegations of fraud, corruption, waste, abuse, misfeasance, and/or malfeasance.
 2. For purposes of this section, a “whistleblower complaint” is a reporting, either written or verbal, of a matter involving allegations enumerated in Section 406.01(A)(1).
 3. For purposes of this section, “retaliation or retaliatory action” is any action taken or threat by an elected official, employee, board member, or appointing authority that would discourage a reasonable person from engaging in an act protected in this Whistleblower Ordinance.
 4. For purposes of this section, a “retaliation complaint” is a written reporting of any disciplinary or retaliatory action taken in response to a whistleblower complaint as defined under this section.
- B. To be afforded all rights and protections as a “whistleblower” under the County Code, whistleblowers must comply with all obligations found herein, including the reporting obligations delineated in County Code Sections 406.01 and 406.02.
- C. Any elected official, employee, or board member who possesses actual knowledge of a violation of this Title shall 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, unless the individual knows the violation has already been reported.
- D. Any employee who reasonably believes a violation of any county, state, or federal 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. Any other person identified in Section 406.01(A)(1) who reasonably believes a violation of any county, state, or federal law, rule, or regulation has occurred, or will occur, may make a whistleblower complaint with the Agency of Inspector General and/or the relevant county department.
- E. Any person who receives a verbal whistleblower complaint shall contemporaneously prepare a written record of the complaint, including the following information:
1. The name of the person taking the complaint,
 2. The name of the complainant, if known, unless if the complainant wishes to remain anonymous,
 3. The date and time that the complaint was received, and
 4. A description of the complaint.

- F. 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. The Department of Human Resources shall notify the Agency of Inspector General of any whistleblower complaints brought to it within five (5) business days of receipt. Any notifications required in this section shall be in writing and shall include the information specified in Section 406.01(D). Upon receipt of a whistleblower complaint, the Agency of Inspector General shall investigate pursuant to Section 204.01(B)(3) of this Code and Article XV of the County Charter.
- G. For enforcement and interpretation of a whistleblower's rights and obligations under this County Code Section, a former employee of Cuyahoga County will be granted protections, including prohibitions against retaliation, for any violations reported within 30 days after separation from the County.
- H. No one shall make a whistleblower or retaliation complaint to the County that includes information he or she knows to be false, or which has been submitted in bad faith or with reckless disregard for the truth.
- I. No person shall retaliate against any individual who, in good faith, has filed a whistleblower complaint whether such retaliation is through threat, coercion, harassment, abuse of authority, or adverse employment action. Any act of retaliation against a whistleblower shall be considered a separate violation of this section.

Section 406.02 Whistleblower Rights

- A. If an appointing authority, supervisor, or the Department of Human Resources takes any retaliatory action against an employee as a result of the employee's having made a whistleblower complaint under this title, the employee's sole and exclusive remedy is to file a written retaliation complaint with the Personnel Review Commission. Any whistleblower complaint giving rise to an alleged retaliatory act must be filed in writing in order for an employee to exercise his or her appeal rights under this paragraph. A whistleblower complaint filed in writing may be submitted anonymously; provided however that the employee shall bear the burden of proving that the employee was the source of the anonymous complaint upon the filing of a retaliation complaint. If the employee files such a retaliation complaint, the Personnel Review Commission shall immediately notify both the employee's appointing authority and the Agency of Inspector General and shall hear the retaliation complaint. The Personnel Review Commissions shall determine if retaliation occurred and may issue any order as is appropriate including, but not limited to, rehiring, reinstatement with back pay, or any other remedy available under general law. Retaliation complaints heard by the Personnel Review Commission are appealable to the Court of Common Pleas pursuant to Ohio Revised Code Chapter 2506.

- B. Any person doing business with the County, including persons receiving or seeking services from the County, or any other person who is neither an elected official, employee, nor a board member, who is retaliated against as a result of that person having made a whistleblower complaint under this title, may file a retaliation complaint with the Agency of the Inspector General.
- C. The initial and annual ethics training provided to employees, as required in Section 403.01 of this Code, shall be designed to strongly motivate employees to report any activity that is contrary to county, state, or federal law, rule, or regulation. The training shall include a notice to employees of whistleblower rights and responsibilities, including the requirement that an employee must have made a whistleblower complaint in order to make a retaliation complaint. The training shall also notify supervisory employees of their responsibility to avoid retaliating against any employee who makes a whistleblower complaint pursuant to Section 406.01 of this Code.

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 Mr. Miller, seconded by Ms. Turner, the foregoing Ordinance was duly enacted.

Yeas: Baker, Miller, Sweeney, Tuma, Gallagher, Turner, Stephens, Simon and Jones

Nays: None

County Council President	Date

County Executive	Date

Clerk of Council	Date

First Reading/Referred to Committee: January 14, 2020
Committee(s) Assigned: Council Operations, Intergovernmental Relations & Public
Transportation

Legislation retained per Resolution No. R2020-0271: December 8, 2020

Legislation Substituted in Committee: January 18, 2022

Legislation Substituted in Committee: March 1, 2022

Committee Report/Second Reading: March 8, 2022

Legislation Referred to Committee: March 8, 2022

Legislation Substituted in Committee: April 5, 2022

[Clerk's Note: Committee Report/Third Reading: April 12, 2022]

Legislation Amended on the Floor: April 26, 2022

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