

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. CB11-0743  
COMMITTEE OF REFERENCE:  
GOVERNMENT AND FINANCE

**A B I L L**

**For an ordinance amending Section 2-107(d) of Chapter 2, Article VII of the Revised Municipal Code, pertaining to Whistleblower Protection, to afford protection against retaliation for employees who report “official misconduct” that is intended or planned as well as misconduct that has occurred.**

**NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** Section 2-107(d) of Chapter 2, Article VII of the Revised Municipal Code, pertaining to Whistleblower Protection, is hereby amended by adding the language underlined, as follows:

**Sec. 2-107. Definitions**

As used in this Article VII:

(a) *“Appropriate reporting authority”* means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the City and County, including, by way of example:

- (1) The mayor and members of the mayor’s cabinet;
- (2) The city council, any committee of the city council, and individual members of the city council;
- (3) The auditor and the audit committee;
- (4) The board of ethics;
- (5) The district attorney and other law enforcement agencies; or
- (6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.

(b) *“Adverse employment action”* means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation,

1 withholding of work, denial of any compensation or benefit, layoff, or threat of any  
2 such discipline or penalty.

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4 (c) “*Employee*” means any employee of the City and County of Denver within  
5 the meaning of § 1.2.11 of the charter.

6  
7 (d) “*Official misconduct*” means any act or omission that is committed,  
8 intended, or planned by any officer or employee of the City and County that  
9 constitutes:

10  
11 (1) A violation of law;

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13 (2) A violation of any applicable rule, regulation or executive order;

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15 (3) A violation of the code of ethics as codified in article IV of this chapter 2,  
16 or any other applicable ethical rules and standards;

17  
18 (4) The misuse, misallocation, mismanagement or waste of any city funds  
19 or other city assets; or

20  
21 (5) An abuse of official authority.

22  
23 (e) “*Supervisor*” means any person who is authorized to recommend or to  
24 impose any adverse employment action upon an employee.

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26 **Sec. 2-108. Retaliation prohibited.**

27 (a) Except as provided in subsection (b) of this section, no supervisor shall  
28 impose or threaten to impose any adverse employment action upon an employee on  
29 account of the employee’s disclosure of information about any official misconduct to  
30 any person.

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32 (b) The protections afforded by this Article VII shall not apply to any  
33 employee:

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35 (1) Who discloses information that the employee knows to be false or who  
36 discloses information without regard for the truth or falsity thereof;

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38 (2) Who discloses information in a manner prohibited by law including, by way of  
39 example, information that is prescribed as being confidential by law; or

40  
41 (3) Who otherwise discloses information in bad faith.

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43 (c) It shall be the obligation of an employee who wishes to disclose information

1 under the protection of this Article VII to make a good faith effort to provide to an  
2 appropriate reporting authority the information to be disclosed prior to the time of its  
3 disclosure. The protection of this Article VII shall not extend to reports of official  
4 misconduct that are made anonymously.  
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6 COMMITTEE APPROVAL DATE: November 30, 2011.

7 MAYOR-COUNCIL DATE: December 6, 2011.

8 PASSED BY THE COUNCIL \_\_\_\_\_ 2011

9 \_\_\_\_\_ - PRESIDENT

10 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2011

11 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
12 EX-OFFICIO CLERK OF THE  
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2011 \_\_\_\_\_ 2011

15 PREPARED BY: Helen Eckardt Berkman, Assistant City Attorney, December 8, 2011

16 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
17 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
18 ordinance.  
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20 Douglas J. Friednash, City Attorney

21 BY: \_\_\_\_\_, Assistant City Attorney DATE: December 8, 2011