

**EXECUTIVE ORDER NO. 9 -17**

**WHISTLEBLOWER PROTECTIONS**

**WHEREAS**, the citizens of Philadelphia have bestowed a public trust on their government and must have confidence in the scrupulous stewardship of public resources; and

**WHEREAS**, allegations of waste or other official wrongdoing that occur within the Executive and Administrative Branch that would, if proven true, undermine the stewardship of public resources, must be swiftly investigated and resolved; and

**WHEREAS**, City officers and employees, and employees of City contractors and subcontractors, should be strongly encouraged to report what they in good faith believe to be instances of waste or other official wrongdoing; and

**WHEREAS**, such individuals have a right to be protected from both the threat and the reality of retaliation for making such reports;

**NOW, THEREFORE**, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

**SECTION 1. Definitions.**

For purposes of this Executive Order, the following definitions shall apply:

- (a) *Adverse Employment Action.* A significant change in employment status that adversely affects the terms and conditions of employment, including, but not limited to, dismissal, suspension, demotion, transfer or reassignment that is not lateral or upward in nature, unsatisfactory performance evaluation, or denial of any objectively desirable promotion, transfer, or significant benefit.

- (b) *Appropriate Authority.* The Inspector General of the City of Philadelphia, an official superior of the officer or employee, or an Integrity Officer designated as the liaison to the Inspector General within a City department, office or agency, pursuant to Section 11 of Executive Order 7-14.
- (c) *Covered Contractor.* A person who is a party to a contract with a City Department, office or agency for the rendering of services or delivery of goods; also includes subcontractors of such City contractors.
- (d) *Good faith report.* A report of official wrongdoing or waste, to an appropriate authority as defined in this Executive Order, which is made without malice or consideration of personal benefit, and which the person making the report has reasonable cause to believe is true based on his or her experience, job duties, and knowledge of the subject matter on which the report is based.
- (e) *Inspector General.* An independent office within the Executive and Administrative Branch created to investigate and resolve instances or patterns of fraud, waste, corruption or abuse of office related to the operations of City government or those who transact business with the City or receive financial benefits from the City. The duties of the Inspector General are set forth in Executive Order 7-14.
- (f) *City Officer or Employee.* The Mayor or any individual appointed to a position in the Executive and Administrative Branch of the City including, but not limited to, members of agencies, boards and commissions who serve at the pleasure of the Mayor, irrespective of whether their members serve full-time or intermittently, or with or without compensation.

- (g) *Obstruct*. To prevent or attempt to prevent an action intended or undertaken by another.
- (h) *Official superior*. Any City officer or employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of another officer's or employee's official duties or those of any other official superior of the officer or employee. An officer or employee is considered to be the subordinate of any of his/her official superiors. For purpose of this Executive Order, the term "official superior" shall also include the Mayor.
- (i) *Official Wrongdoing*. Conduct by a City officer or employee or by an officer or employee of a covered contractor, in the course or scope of City employment or performance of a City contract, that constitutes a non-technical violation of a federal, state or local statute, ordinance or regulation, or of a code of conduct or ethics designed to protect the interests of the public or the City.
- (j) *Person*. A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.
- (k) *Retaliate*. To take any adverse employment action, as defined in this Executive Order, toward any City officer or employee, or officer or employee of a covered contractor, as a direct result of the officer or employee's good faith report of official wrongdoing or waste or the officer's or employee's providing information or testimony in good faith in connection with an investigation or hearing into a report to an appropriate authority of official wrongdoing or waste.

- (l) *Waste*. Conduct or omissions by a City officer, employee, or covered contractor which results in an actual and substantial abuse, misappropriation, misuse or loss of public funds or resources.
- (m) *Whistleblower*. A person who makes a good faith report of official wrongdoing or waste, orally or in writing, to an appropriate authority.

**SECTION 2. Protection of City Officers and Employees against Obstruction of Reporting of Official Wrongdoing or Waste, and from Retaliation.**

- (a) No City officer or employee shall use or threaten to use any official authority or influence to:
  - (1) Obstruct any other City officer or employee from making a good faith report of official wrongdoing or waste; or
  - (2) Obstruct any other City officer or employee from, in good faith, providing information to, or testifying in connection with, an investigation, hearing or inquiry into reports to an appropriate authority of official wrongdoing or waste; or
  - (3) Retaliate against another City officer or employee, as defined in this Executive Order.
- (b) Any person seeking relief under this section must first provide written notice to the head of the City department, office, agency, board or commission of the officer or employee involved in an alleged obstructive or retaliatory action, without unjustified delay after the person becomes aware of facts giving rise to the claim of obstructive or retaliatory action. The notice shall specify in detail the facts and circumstances that

constitute the alleged obstructive or retaliatory action. Upon receiving this notice, the head of the department, office, agency, board or commission shall investigate the allegations and take all necessary and appropriate actions to remedy any obstructive or retaliatory action.

- (c) If the alleged obstructive or retaliatory action involves the head of the City officer's or employee's department, office, agency, board or commission, written notice shall be provided to the Cabinet member who oversees that department, office, agency, board or commission. If the alleged obstructive or retaliatory action involves the officer's or employee's Cabinet member, written notice shall be provided to the Mayor's Chief of Staff or to the Inspector General. If such action involves the Mayor, written notice shall be provided to the Inspector General. Upon receiving this notice, the Cabinet member, Chief of Staff, or Inspector General, as appropriate, shall investigate the allegations and take all necessary and appropriate actions to remedy any obstructive or retaliatory action.
- (d) The department, office, agency, board or commission head, or other higher-ranking City officer shall, in addition to investigating complaints of alleged obstructive or retaliatory action and taking appropriate action to resolve them, provide written notice of all such reports, and the investigation conducted and action taken in response, to the Inspector General.
- (e) The complainant shall report any violation of Section 2(a) that cannot be adequately remediated as provided in Section 2(b) and (c) directly to the Inspector General. If the Inspector General, following investigation, determines that a violation occurred, he/she may recommend appropriate remedial or disciplinary action. Recommendations of the

Inspector General shall be in writing, and consistent with all applicable employment laws, departmental and Administrative Board Rules, Civil Service Regulations and Collective Bargaining Agreements.

- (f) Within 30 days of receiving the Inspector General's recommendation, the appointing authority shall submit a written report to the Inspector General detailing any action taken or plan to correct violations confirmed by the investigation. The Inspector General may review the appointing authority's report of action taken and, if the Inspector General considers it to be inadequate, so advise the Cabinet member who oversees the appointing authority and, if necessary, the Mayor and the City Solicitor.

**SECTION 3. Protection of Officers and Employees of Covered City Contractors against Obstruction of Reporting of Official Wrongdoing or Waste, and from Retaliation.**

- (a) No City officer or employee, and no official or employee of a covered contractor, shall:
- (1) Obstruct any official or employee of a covered contractor from making a good faith report of official wrongdoing or waste; or
  - (2) Obstruct any official or employee of a covered contractor from, in good faith, providing information to, or testifying in connection with, an investigation, hearing or inquiry into reports to an appropriate authority of official wrongdoing or waste; or
  - (3) Retaliate against an official or employee of a covered contractor, as defined in this Executive Order.
- (b) Any person seeking relief under this section must first provide written notice to the supervising official or employee of the covered contractor, or, as appropriate, to the

head of the City department, office, agency, board or commission of the City officer or employee involved in an alleged obstructive or retaliatory action, without unjustified delay after the person becomes aware of facts giving rise to the claim of obstructive or retaliatory action. The notice shall specify in detail the facts and circumstances that constitute the alleged obstructive or retaliatory action. Upon receiving this notice, the supervising official of the covered contractor or the head of the City department, office, agency, board or commission shall investigate the allegations and take all necessary and appropriate actions to remedy any obstructive or retaliatory action.

- (c) If the alleged obstructive or retaliatory action involves the head of the City officer's or employee's department, office, agency, board or commission, written notice shall be provided to the Cabinet member who oversees that department, office, agency, board or commission. If the alleged obstructive or retaliatory action involves the officer's or employee's Cabinet member, written notice shall be provided to the Mayor's Chief of Staff or to the Inspector General. If such action involves the Mayor, written notice shall be provided to the Inspector General. Upon receiving this notice, the Cabinet member, Chief of Staff, or Inspector General, as appropriate, shall investigate the allegations and take all necessary and appropriate actions to remedy any obstructive or retaliatory action.
- (d) The covered contractor or the department, agency, office, board or commission head or other higher-ranking City officer shall, in addition to investigating complaints of alleged obstructive or retaliatory action and taking appropriate action to resolve them, provide

written notice of all such reports, and the investigation conducted and action taken in response, to the Inspector General.

- (e) The complainant shall report any violation of Section 3(a) that cannot be adequately remediated as provided in Section 3(b) and (c) directly to the Inspector General. If the Inspector General, following investigation, determines that a violation occurred, he/she may recommend appropriate remedial action toward the covered contractor officer or employee. The Inspector General may also, where appropriate, recommend disciplinary action as to any city officer or employee found to have violated Section 3(a). In addition, the Inspector General may recommend contract remedies as to any contractor entity found to have committed a violation of this Executive Order, up to and including debarment. Recommendations of the Inspector General shall be in writing, and consistent with all applicable employment laws, departmental and Administrative Board Rules, Civil Service Regulations and Collective Bargaining Agreements.
- (f) Within 30 days of receiving the Inspector General's recommendation, the appointing authority shall submit a written report to the Inspector General detailing any action taken or plan to correct violations confirmed by the investigation. The Inspector General may review the appointing authority's report of action taken and, if the Inspector General considers it to be inadequate, so advise the Cabinet member who oversees the appointing authority and, if necessary, the Mayor and the City Solicitor.

#### **SECTION 4. Office of the Inspector General Jurisdiction.**

This Executive Order incorporates by reference the jurisdiction and authority of the Office of the Inspector General as set forth in Executive Order 7-14.

**SECTION 5. Conformance with Other Laws.**

Nothing in this Executive Order shall be deemed to:

- (a) Supersede or supplant provisions under § 20-606 (1)(j) that prohibit retaliation against a City officer for filing a complaint with or providing information to the Philadelphia Board of Ethics or for testifying in any Board proceeding; or
- (b) Limit the rights of any City officer or employee, or officer or employee of a covered contractor, with regard to seeking judicial review; or
- (c) Conflict with state law regarding whistleblowers, including the Act of Dec. 12, 1986, No. 169, P.L. 1559 (43 P.S. § 1421, *et seq.*); or
- (d) Conflict with or supersede the Regulations of the Civil Service Commission, the Administrative Board Rules, or procedures provided under any applicable Collective Bargaining Agreement.

**SECTION 6. Dissemination of Executive Order.**

All departments, offices and agencies of the Executive and Administrative Branch shall post and maintain, in one or more prominent locations accessible to officers and employees of the department, office or agency, a notice of the rights and protections afforded to City officers and employees under this Executive Order.

Further, all covered contractors shall be required by their contracts to post notice of these rights and protections in a location accessible to their employees.

**SECTION 7. Effective Date.**

This Order shall take effect immediately.

11/13/17  
Date

James F. Kenney  
James F. Kenney, Mayor