
MEMORANDUM

TO: COMMISSIONERS
FROM: KATE FLACK
SUBJECT: PROPOSED AMENDMENT TO SMC 4.20.800 ET SEQ - WHISTLEBLOWER PROTECTION CODE
DATE: OCTOBER 28, 2010

Summary:

This second informational packet proposes a few straightforward changes to the Whistleblower Protection Code section that address the staff response to an allegation. Currently this is SMC 4.20.830 – Investigations.

Investigations:

➤ Time limitation:

Currently SMC 4.20.830 allows an employee to report an improper governmental action at any time, regardless of when the improper governmental conduct occurred.

Employees generally report concerns regarding governmental behavior close in time to the action. Some employees, however, will wait an inordinate amount of time to report. That makes investigation difficult, at best, and depending on the outcome of the investigation, can delay a department's corrective action.

The proposed amendment requires City employees to report improper governmental actions within 24 months of its occurrence, *in order for the report to be investigated by SEEC staff*. This amendment does not affect any of the other departments, agencies or commissions to which a whistleblower may report.¹

The State of Washington investigates reports made within a year of the improper governmental action.²

➤ Discretionary Referral:

The Executive Director currently has discretion under SMC 4.20.830 to refer Whistleblower reports that do not involve the Ethics or Elections Codes to “the chief elected official of the branch of government implicated in the allegation.”³ This limits the ability of the Executive Director to refer a report directly to a person who may have the power, staff and interest to correct this issue raised by the Whistleblower, e.g. the head of a City department.

¹ E.g. the Seattle Office for Civil Rights, SPD Office of Professional Accountability (OPA); King County Prosecuting Attorney, and the Washington State Commission on Judicial Conduct.

² RCW 42.40.040 (1)(a)

³ SMC 4.20.830

The proposed amendment inserts three changes:

1. Inserts requirements that a) the whistleblower be notified of the referral and, b) absent written consent by the whistleblower, the referral may not identify the whistleblower;
2. Allows the Executive Director to refer to an outside agency that he/she believes is appropriate, e.g. the State Auditor's Office, or to the head of a City department, and
3. Requires the City department or elected City official receiving the referral to report back to the Executive Director within thirty (30) days as to what actions were taken to resolve the whistleblower report.

The State of Washington similarly allows the State Auditor (who oversees the State Whistleblower program) to refer reports to state agencies while keeping the identity of the whistleblower confidential. The State statute requires the receiving agency to report back within sixty (60) days.⁴

➤ Timeline for Investigations

The proposed amendment articulates a timeline for investigation of Whistleblower reports while incorporating the existing procedures.

- Within thirty days of receiving the initial Whistleblower report, an inquiry must be finalized;
- If the Executive Director finds reasonable cause that improper acts that warrant an investigation, the Executive Director may then proceed with an investigation;⁵
- Investigations under the Whistleblower Code shall be completed within six (6) months of the original whistleblower report.

This timeline is longer than that under the State statute, which requires all Whistleblower complaints to be investigated within sixty (60) days of receipt.

⁴ RCW 42.40.040(5)(d).

⁵ If the allegations are violations of the Ethics or Elections Code, using the procedures and rules of those ordinances.