

CITY OF SEATTLE WHISTLEBLOWER PROTECTION CODE
SMC 4.20.800 - 860

Seattle Municipal Code

Title 4 - PERSONNEL

Chapter 4.20 - Compensation and Working Conditions Generally

Subchapter III - Reporting -- Whistleblower Protection

4.20.800 Policy -- Purpose.

Unless prohibited by state law, City employees are encouraged to report on improper governmental action to the appropriate City or other government official, depending on the nature of the improper governmental action. To assist such reporting and to implement Sections 42.41.030 and 42.41.040 of the Revised Code of Washington ("RCW"), Sections 4.20.800 through 4.20.860 provide City employees a process for reporting improper governmental action and protection from retaliatory action for reporting and cooperating in the investigation and/or prosecution of improper governmental action in good faith in accordance with this subchapter.

(Ord. 117039 Section 1(part), 1994; Ord. 116368 Section 90, 1992; Ord. 116005 Section 9, 1991; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.810 Reporting improper governmental action -- Employee protection.

A. **Right.** Every City employee shall have the right to report, in good faith and in accordance with this subchapter, to a City official, another government official or a member of the public, information concerning an improper governmental action.

B. Limitations.

1. This section does not authorize a City employee to report information that is subject to an applicable privilege against disclosure at law (e.g., RCW 5.60.060 privileged communications), unless waived, or to make disclosure where prohibited at law. The only purpose of this subchapter is to protect and encourage employees who know or in good faith believe improper governmental action has occurred to report those actions in good faith and in accordance with this subchapter.
2. Except in cases of emergency where the employee believes in good faith that substantial damage to persons or property will result unless a report is made immediately to a person or entity who is not the appropriate auditing official listed in Section 4.20.850 A, an employee shall, before making a report to a person who is not the appropriate auditing official, first make a written report of the improper governmental action to the appropriate auditing official. No emergency under this subsection exists where prompt attention and reporting under this subchapter by the employee could have avoided the perceived need to report immediately to a person not the appropriate auditing official.

An employee making a written report as required by this subsection is encouraged to wait at least thirty (30) days from receipt of the written report by the appropriate auditing official before reporting the improper governmental action to a person who is not an appropriate auditing official.

3. An employee's reporting of his or her own improper action does not grant an employee immunity from discipline or termination under Section 4.04.230 or 4.08.100 insofar as his or her improper action would be cause for discipline.

C. Employee Protections and Protected Conduct.

1. The following conduct by employees is protected if carried out in good faith under this subchapter:
 - a. Reporting sexual harassment to the employee's supervisor, EEO officer, department head, or other government official as set out in the City's adopted procedure for reporting

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sexual harassment complaints; reporting violations of the Fair Employment Practices ordinance to the Office for Civil Rights; reporting police misconduct to the Police Department's Internal Investigation Section; reporting violations of the Code of Judicial Conduct by Municipal Court judges to the Washington State Commission on Judicial Conduct; reporting violations of criminal laws to the appropriate county prosecuting attorney; and reporting violations of the Elections Code or the Ethics Code, and any actions for which no other appropriate recipient of a report is listed in this subsection, to the Executive Director of the Seattle Ethics and Elections Commission;

- b. Cooperating in an investigation by an "auditing official" related to "improper governmental action"; and/or
- c. Testifying in a proceeding or prosecution arising out of an "improper governmental action."

2. No City officer or employee shall retaliate against any employee because that employee proceeded or is proceeding in good faith in accordance with this subchapter.

D. Penalty. Any City officer or employee who engages in prohibited retaliatory action is subject to discipline by suspension without pay, demotion or discharge or, pursuant to Section 4.20.840, a civil fine up to Five Hundred Dollars (\$500.00), or both discipline and a fine.

E. Annual Restatement. Upon entering City service and at least once each year thereafter, every City officer and employee shall receive a written summary of this chapter, the procedures for reporting improper governmental actions to auditing officials, the procedures for obtaining the protections extended, and the prohibition against retaliation in this section. The Executive Director of the Ethics and Elections Commission shall ensure that such summaries are distributed and that copies are posted where all employees will have reasonable access to them.

(Ord. [118392](#) Section 20, 1996; Ord. 117039 Section 1(part), 1994; Ord. 116368 Section 91, 1992; Ord. 116005 Section 10, 1991; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.820 Confidentiality.

To the extent allowed by law, the identity of an employee reporting information about an improper governmental action shall be kept confidential unless the employee in writing waives confidentiality.

(Ord. 117039 Section 1(part), 1994; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.830 Investigation.

A. Referral or Retention. The Executive Director of the Ethics and Elections Commission, upon receiving a report alleging improper governmental action, shall refer the complainant to the appropriate auditing official listed in Section 4.20.850 A if the Executive Director is not the appropriate auditing official. If the Executive Director is the appropriate auditing official, and the report alleges a violation of the Elections Code or the Code of Ethics, the Executive Director shall handle that allegation according to the ordinances and rules applicable to the code alleged to have been violated. If the Executive Director is the appropriate auditing official and the report alleges improper governmental action that does not fall within the prohibitions of the Ethics Code or the Elections Code, the Executive Director may refer the report to the chief elected official of the branch of government implicated in the allegation, who shall ensure that the appropriate officer or agency responds to the complainant in writing within thirty (30) days of receipt of the report by the appropriate auditing official, with a copy of the response to the Executive Director. If the Executive Director does not refer the report to another official, or if the other official's response is not timely or satisfactory to the Executive Director, the Executive Director may conduct an investigation. The procedures in subsections B through E of Section 4.20.830 shall apply only to the Executive Director of the Ethics and Elections Commission when he or she is investigating an improper governmental action that does not fall within the prohibitions of the Ethics Code or the Elections Code and that should

not have been referred to another auditing official under the first sentence of this subsection; other auditing officials investigating allegations of improper governmental action appropriately referred to them are not bound by these procedures.

B. Executive Director's Investigation. At any stage in an investigation of an alleged "improper governmental action," the Executive Director of the Seattle Ethics and Elections Commission may issue subpoenas, administer oaths, examine witnesses, compel the production of documents or other evidence, enlist the assistance of the City Attorney, the City Auditor, or the Chief of Police, refer the matter to the State Auditor or law enforcement authorities, and/or issue reports, each as deemed appropriate.

Within thirty (30) days after receiving information about an "improper governmental action" from a City employee, the Executive Director shall conduct a preliminary investigation, and provide the complainant with a written report of the general status of the investigation which may include matters for further research or inquiry.

C. Completion and Reports. Upon completion of the investigation, the Executive Director shall notify the complainant in writing of any determinations made. If the Executive Director determines that an improper governmental action has occurred, the Executive Director shall report the nature and details of the activity to the complainant; to the head of the department with responsibility for the action; and if a department head is implicated, to the Mayor and City Council; and to such other governmental officials or agencies as the Executive Director deems appropriate. If satisfactory action to follow up the report is not being taken within a reasonable time, the Executive Director shall report his or her determination to the Mayor and advise the City Council.

D. Closure. The Executive Director may close an investigation at any time he or she determines that no further action is warranted and shall so notify the complainant.

E. Decisions of the Executive Director under this section are **not appealable to the Ethics and Elections Commission.**

(Ord. 117039 Section 1(part), 1994; Ord. 116368 Section 92, 1992; Ord. 116005 Section 11, 1991; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.840 Civil penalty.

A violation of subsection C of Section 4.20.810 is a civil offense. A person who is guilty thereof may be punished in the Seattle Municipal Court by a civil fine or forfeiture not to exceed Five Hundred Dollars (\$500.00).

(Ord. 117039 Section 1(part), 1994; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.850 Definitions.

As used in Sections 4.20.800 through 4.20.860, the following terms shall have these meanings:

A. "Auditing official" means, each in connection with a report of improper governmental action within his, her, or its respective jurisdiction, the Executive Director of the Seattle Ethics and Elections Commission; a person to whom sexual harassment was properly reported according to City policy; the Office for Civil Rights; the Washington State Commission on Judicial Conduct; the Police Department's Internal Investigations Section; the county prosecuting attorneys of the State of Washington; and any authorized assistant or representative of any of them in cases within their respective appropriate jurisdictions.

B. "Employee" means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time, and intermittent workers. It also includes members of appointed boards or commissions, whether or not paid.

C. 1. "Improper governmental action" means any action by a City officer or employee that is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment, and:

- a. Violates any state or federal law or rule or City ordinance, and, where applicable, King County ordinances, or
 - b. Constitutes an abuse of authority, or
 - c. Creates a substantial or specific danger to the public health or safety, or
 - d. Results in a gross waste of public funds.
2. "Improper governmental action" excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining, or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.
3. A properly authorized City program or activity does not become an "improper governmental action" because an employee or auditing official dissents from the City policy or considers the expenditures unwise.
- D. "**Retaliate**," and its kindred nouns, "retaliation" and "retaliatory action," mean to make, because of an activity protected under Section 4.20.810, any unwarranted adverse change in an employee's employment status or the terms and conditions of employment including, but not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary action.
- E. "**Executive Director**" means the Executive Director of the Seattle Ethics and Elections Commission.

(Ord. [118392](#) Section 21, 1996; Ord. 117039 Section 1(part), 1994; Ord. 116368 Section 93, 1992; Ord. 116005 Section 12, 1991; Ord. 115464 Section 1(part), 1990.)

SMC 4.20.860 Reporting and adjudicating retaliation.

- A. **Complaint.** In order to seek relief, an employee who believes he or she has been retaliated against in violation of Section 4.20.810 C must file a signed written complaint within thirty (30) days of the occurrence alleged to constitute retaliation. The complaint shall be filed with the Office of the Mayor and must specify the alleged retaliatory action and the relief requested.
- B. **Investigation and Response.** The Mayor's office shall forward the complaint to the head of the executive office or department in which the retaliation is alleged to have occurred, or, at the Mayor's option, to the President of the City Council or the Presiding Judge of the Municipal Court if their respective branches are implicated in the complaint. The head of the department, office, or branch to which the complaint was referred shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint. If the head of an executive office or department is alleged to have retaliated in violation of Section 4.20.810, the Mayor shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint.
- C. **Hearing.** If an employee who has filed a complaint of retaliation under this section is dissatisfied with the response and desires a hearing pursuant to Section 42.41.040 RCW, the employee shall deliver a request for hearing to the Office of the Mayor within the time limitations specified in that section. Within five (5) working days of receipt of the request for hearing, the City shall apply to the state office of administrative hearings for a hearing to be conducted as provided in Section 42.41.040 RCW.

(Ord. 117039 Section 2, 1994.)