
INTEROFFICE MEMORANDUM

TO: COMMISSION
FROM: SEEC STAFF
SUBJECT: WHISTLEBLOWER ORDINANCE
DATE: 11/29/2012

SUMMARY:

Discussions surrounding amendments to the 1990 Whistleblower Code have been ongoing for several months. In the first quarter of 2011, staff had several meetings to discuss the then current draft. Meetings were held with Councilmember Burgess, legislative staff, members of the Law department and Labor coalition members.

The primary goal is to create a clear ordinance accessible to our diverse workplace while retaining the ordinance's emphasis of its two original concepts - institutional reform through employee reports of improper governmental actions will lead to a better performing government, and, employees who step forward to initiate inquiry into governmental performance should be encouraged and protected.

Recognizing that a whistleblower program is only as effective as the protections it offers, the draft ordinance provides an independent screening and investigation mechanism to determine the validity of a retaliation complaint. Recognizing the breadth of possible harms suffered by whistleblowers, the proposal incorporates a variety of methods to address those harms, including mediated settlement, the traditional administrative hearing and for the most complicated cases, a private civil action.

MAJOR CHANGES:

- Redefinition of those employees covered by the ordinance: "Cooperating Employee:"
- Allows reporting directly to the Executive Director in all circumstances;
- Allows reporting directly to a member of an employee's management chain;
- Independent screening and investigation of retaliation claims by the Executive Director;
- Administrative adjudication is under the guidance of the Executive Director;
- Settlement provisions to try to avoid administrative or civil action;

- Administrative hearings are done by the Hearing Examiner
- The burden of proof shifts to the agency to show a legitimate reason for actions involving a Cooperating Employee; and,
- Amends Ethics Code to prohibit retaliation by individual employees and provide sanctions for a violation.

Initial Issues for discussion:

- Comments by Council:
 - Definition of “Cooperating Employee;” and,
 - The burden shifting process in the administrative hearing.
- Should employees who report their own misconduct be protected from retaliation?
- Should an ordinance give an employee a right to sue in Superior Court or should employees be constrained to administrative remedies?
- How do we prevent duplication with other administrative entities and also protect employees for reporting concerns surrounding discrimination, improper personnel decisions, etc?
- How do we best educate and inform employees about the ordinance?