

Subchapter III Reporting—Whistleblower Protection

4.20.800 Policy—purpose

It is the purpose of this ordinance to:

- A. Encourage City employees to report in good faith assertions of improper governmental action and to provide employees with a clear process for making reports;
- B. Provide City employees protection from retaliatory action for making a good faith report or being perceived as making a report, or cooperating or being perceived as cooperating in any subsequent inquiry or investigation;
- C. Provide for an independent investigation of reports to inform the operation of City government and promote the public confidence;
- D. Provide for an independent investigation and determination of alleged retaliation;
- E. Provide an administrative forum in which to address the harm caused by retaliatory behavior;
- F. Provide for the assessment of penalties against individuals who retaliate against a City employee;
- G. Adopt a whistleblower program to comply with RCW 42.41, Local Government Whistleblower Protection; and
- H. In adopting this subchapter do nothing to diminish employee rights under any collective bargaining agreement.

(Ord. 124362 , § 1, 2013; Ord. 117039 , § 1(part), 1994; Ord. 116368 , § 90, 1992; Ord. 116005 , § 9, 1991; Ord. 115464 § 1(part), 1990.)

4.20.805 Definitions

As used in Sections 4.20.800 through 4.20.880, the following terms are defined as follows:

"Adverse change" includes, but is not limited to: denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes or changes in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either is in opposition to the employee's expressed wish; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; reduction in pay; denial of promotion; transfer or reassignment; demotion, suspension, or dismissal or other disciplinary action; a supervisor or superior who behaves in, or encourages coworkers to behave in, a hostile manner toward the employee; issuance of or attempt to enforce any nondisclosure policy or agreement in a manner inconsistent with prior practice; or any other significant unfavorable action that is inconsistent compared to actions taken before the employee engaged in action protected by this Chapter 4.20, or compared to other employees who have not engaged in action protected by this Chapter 4.20.

"City agency" means any department, office, board, commission, or committee of the City, or any subdivision thereof, but excludes public corporations and ad hoc advisory committees.

"City employee" or "employee" means every individual who is, or was at the time actions under this chapter were taken, appointed to a position of employment in any City agency, whether in a permanent, temporary, or intermittent position.

"City officer" means every individual elected or appointed to an office in any City agency, whether such individual is paid or unpaid.

"Commission" means the Seattle Ethics and Elections Commission.

"Cooperating employee" means a City employee who:

1. In good faith makes a report of alleged improper governmental action pursuant to Section 4.20.810;
2. Is perceived by the City as having reported pursuant to this Chapter 4.20, but who in fact, did not report;
3. In good faith provides information in connection with an inquiry or investigation of a report or testifies in any proceeding resulting from a report; or
4. Is perceived by the employer as providing information in connection with an inquiry or investigation of a report made pursuant to this Chapter 4.20, but who in fact has not done so.

"Executive Director" means the Executive Director of the Seattle Ethics and Elections Commission.

"Good faith" means the individual reporting or providing information has a reasonable basis in fact for reporting or providing the information.

"Gross waste of public funds or resources" means to spend or use funds or resources, or to allow the use of any funds or resources, in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation. The term "gross waste of public funds or resources" also includes the non-collection of a debt or other obligation owed the City when the non-collection is done in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

"Improper governmental action"

1. Improper governmental action means any action by an employee that is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of employment, that:
 - a. Violates any federal, state, county or City statute, ordinance, or rule;
 - b. Creates a substantial or specific risk of serious injury, illness, peril, or loss, that is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation;
 - c. Results in a gross waste of public funds or resources; or
 - d. Prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless disclosure is legally prohibited. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinion or technical findings.
2. Improper governmental action excludes:
 - a. 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 chapters 41.08 , 41.12 , 41.14 , 41.56 , 41.59 , or 53.18 RCW or RCW 54.04.170 or 54.04.180 .

- b. A properly authorized City policy, reasonable expenditure, or activity merely because an employee dissents from the City policy or considers the expenditure unwise.

"Interested parties" means the cooperating employee who alleges retaliatory action, the relevant agency, the Executive Director, and the individual employee the Executive Director alleges to have retaliated.

"Report" means:

1. Reporting any assertion of improper government action to the Executive Director including reporting violations of the Ethics and Elections Codes;
2. Reporting any assertion of improper government action to an employee's supervisor, manager, officer, or appointing authority or director;
3. Reporting any assertion of sexual harassment to the employee's supervisor, Equal Employment Officer, agency head, or other government official as set out in the City's procedure for reporting sexual harassment complaints;
4. Reporting alleged violations of the Fair Employment Practices ordinance or the Health Insurance Portability and Accountability Act (HIPAA) to the Office for Civil Rights;
5. Reporting alleged misconduct by Seattle Police Department personnel to the City of Seattle Office of Police Accountability;
6. With respect to the Seattle Police Department, including the Office of Police Accountability, reporting any assertion of improper government action to the Office of Inspector General for Public Safety;
7. Reporting alleged violations of the Code of Judicial Conduct to the Washington State Commission on Judicial Conduct;
8. Reporting alleged violations of criminal laws to any law enforcement agency;
9. Reporting when the employee believes in good faith that a crime is about to be committed, to any law enforcement agency, agency head, manager, or supervisor;
10. Reporting if an employee is, in good faith, seeking advice, counsel, or opinion on their rights and responsibilities under this Subchapter III to determine whether to make a report under this Chapter 4.20;
11. Reporting outside of City government if 30 days have passed since the employee made a written report pursuant to this Chapter 4.20; or
12. Reporting in an emergency, to any person who has the ability to address the danger or risk, where the employee believes in good faith that there is a substantial and specific danger or risk of serious injury, illness, peril, or loss to any person. No emergency under this subsection 12 exists where prompt attention and reporting under this Subchapter III by the employee could have avoided the perceived need to report immediately.

"Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," means to make, or use one's authority to make, an adverse change in a cooperating employee's employment status or terms and conditions of employment where the employee's status as a cooperating employee was a contributing factor in the decision making process except as provided for in subsection 4.20.870.B.

(Ord. No. 126184 , § 1, 2020; Ord. 124362 , § 2, 2013)

4.20.810 Employee rights, responsibilities and limitations

A. Rights

1. Every employee shall have the right to report in good faith pursuant to this subchapter an assertion of improper governmental action and shall be free from retaliation.
2. The identity of a cooperating employee shall be kept confidential and shall not be disclosed unless such disclosure is required under applicable law or the employee in writing waives confidentiality.

B. Responsibilities

1. An employee may not disclose information when disclosure is prohibited under the law (e.g., RCW 5.60.060 privileged communications).
2. An employee who reports his or her own improper governmental action will not be free from discipline or termination under Section 4.04.230 or 4.08.100 if his or her improper action would be cause for discipline or termination.

C. Prohibitions

No City agency, officer or employee shall retaliate against any cooperating employee.

(Ord. 124362 , § 3, 2013; Ord. 118392 § 20, 1996; Ord. 117039 , § 1(part), 1994; Ord. 116368 , § 91, 1992; Ord. 116005 , § 10, 1991; Ord. 115464 § 1(part), 1990.)

4.20.830 Reports to the Executive Director

The following applies to any report of improper governmental action made to the Executive Director.

- A. Reports. A report of improper governmental action should be made within 12 months of when a reasonable person similarly situated to the reporting employee would have become aware of the occurrence. The Executive Director may initiate an inquiry of an occurrence falling outside of this time limitation if he or she believes that doing so is in the public interest.
- B. Inquiry. Within 14 days after receiving an assertion of alleged improper governmental action, the Executive Director shall conduct a confidential preliminary inquiry to determine if the facts as asserted would constitute improper governmental action. The Executive Director shall communicate the results to the reporting individual along with the actions, if any, that will be taken. If, after a preliminary inquiry, the Executive Director determines that the facts as asserted would constitute improper governmental action, the Executive Director shall make a mandatory or discretionary referral, or may open an investigation.
- C. Mandatory and discretionary referral
 1. Mandatory referral. The Executive Director shall refer an employee making the following allegations as follows:
 - a. Sexual harassment to any management representative, the Seattle Office for Civil Rights, Equal Employment Opportunity Commission, the Washington Human Rights Commission, or other governmental official as set out in the City's adopted procedure for reporting sexual harassment complaints;
 - b. Violations of the Fair Employment Practices ordinance to the Office for Civil Rights;
 - c. Allegations regarding misconduct by Seattle Police Department personnel to the Seattle Police Office of Professional Accountability; or

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- d. Allegations of violations of the Code of Judicial Conduct to the Washington State Commission on Judicial Conduct.
2. Discretionary referral. The Executive Director may refer a report to the chief elected official of the branch of government named in the allegation or to other governmental agencies the Executive Director believes better suited to investigate the allegation.
 - a. When the Executive Director makes a discretionary referral pursuant to this chapter, the cooperating employee shall be notified before the referral is made.
 - b. Within 60 days of a discretionary referral being made by the Executive Director, the City official or agency head receiving the referral shall personally or through their designated representative, respond to the Executive Director with the agency's plan to investigate and/or resolve the concern. If the Executive Director does not receive an agency's plan or, if within a reasonable time the agency does not complete the plan, the Executive Director may alert the Mayor and the City Council.
- D. Investigation
1. The Executive Director shall investigate alleged violations of the Elections Code according to Section 2.04.070 and the Ethics and Election Commission's Administrative Rules; alleged violations of the Ethics Code according to Section 4.16.090 and the Ethics and Election Commission's Administrative Rules; and, alleged violations of the Lobbying Code according to Chapter 2.06 and the Ethics and Election Commission's Administrative Rules.
 2. Investigations of improper governmental action that do not assert violations of the Ethics, Election or Lobbying Code shall be completed within a period of six months. If an investigation cannot be completed within that time the Executive Director must inform the employee who reported the concern as to the reason why and estimate the completion date of the investigation.
 3. Completion and Reports. Upon completion of the investigation, the Executive Director shall issue a report summarizing the facts and determining whether there is reasonable cause to believe that improper governmental action occurred.
 4. If the Executive Director determines there is reasonable cause to believe an improper governmental action has occurred, the Executive Director shall report the nature and details of the activity to the reporting employee; the head of the agency with responsibility for the action; and, if an agency head is implicated, to the Mayor and City Council, and such other governmental officials or agencies as the Executive Director deems appropriate.
- E. Response by the City agency. The head of the agency in which the conduct took place, or their designated representative, shall report to the Executive Director within 60 days what action was taken to address the conduct. The Executive Director shall report the resolution to the reporting employee. If the Executive Director determines that satisfactory action to follow up the report is not being taken, the Executive Director shall report his or her determination to the Mayor and the City Council.
- F. Closure. The Executive Director may close an inquiry or investigation at any time he or she determines that no further action is warranted and shall so notify the reporting employee.
- G. Decisions of the Executive Director under this section are not appealable to the Ethics and Elections Commission.

(Ord. 124362 , § 5, 2013; Ord. 117039 , § 1(part), 1994; Ord. 116368 , § 92, 1992; Ord. 116005 , § 11, 1991; Ord. 115464 § 1(part), 1990.)

4.20.860 Retaliation

A. Complaint—alleging retaliation

1. Timeliness. In order to seek relief, an employee who believes he or she has been the subject of retaliation must file a signed written complaint within 180 days of when they reasonably should have known that an occurrence alleged to constitute retaliation occurred.
2. Place of filing. The complaint shall be filed with the Executive Director.
3. Contents of the complaint. The complaint alleging retaliation must state:
 - a. The adverse change or changes alleged to be retaliation and the date or dates it occurred;
 - b. The person or persons responsible for the adverse change or changes;
 - c. The conduct undertaken or the conduct perceived to have been undertaken by the employee that establishes the employee as a cooperating employee;
 - d. The relief the employee is requesting;
 - e. If the protected conduct is based on an employee's report to a person other than the Executive Director, some independent evidence that a report was made on a specific date and some evidence of its content; and
 - f. Whether the complainant has filed an action in any other forum based upon the same conduct.

B. Initial determination

1. The Executive Director shall make an initial determination as to the sufficiency of the complaint within 14 days.
2. If the Executive Director finds the complaint to be insufficient, he or she shall dismiss the complaint and give notice to the employee. The employee may re-submit the complaint within the 180-day filing period. The time in which the Executive Director is considering the sufficiency of the complaint is not included in the 180 day time frame.
3. The Executive Director shall find the complaint sufficient if the complaint asserts facts that, if true, would show:
 - a. the employee is a cooperating employee;
 - b. the employee was subjected to an adverse change or changes that occurred within the prescribed time period; and
 - c. the employee's protected conduct reasonably appears to have been a contributing factor.
4. The Executive Director shall not dismiss a complaint as insufficient because it fails to include all required information so long as it substantially satisfies the informational requirements.

C. Investigation of sufficient complaints

1. The Executive Director may choose not to investigate a complaint if the matter is being pursued in another forum.
2. If the matter is not before another forum or if the Executive Director decides to pursue a matter even though it is before another forum, the Executive Director shall investigate sufficient complaints and endeavor to complete the investigation in 90 days. If the investigation is not completed within 90 days, the Executive Director shall inform the interested parties of the date the investigation is expected to be completed.

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3. All investigations shall be conducted in an objective and impartial manner.
 4. The Executive Director shall at the conclusion of the investigation determine whether there is reasonable cause to believe that retaliation occurred.

D. No reasonable cause found

If the Executive Director finds no reasonable cause to believe that retaliation occurred, the Executive Director shall dismiss the complaint and inform the employee.

E. Reasonable cause found

1. If the Executive Director finds reasonable cause to believe that retaliation occurred, the Executive Director shall issue a written report to the interested parties that shall include a statement of the facts which provide the basis for the finding. The report may also include the identity of the individual employee or employees responsible for the retaliation and recommendations for agency action.
2. The Executive Director may submit a draft including findings and recommendations to the interested parties for review and comment before issuing the final investigative report and determination.

F. Settlement

Within 30 days of the Executive Director's final report finding reasonable cause, and before the filing of a complaint with the Hearing Examiner pursuant to subsection 4.20.865.B, the Director shall determine whether it is feasible to conduct a joint settlement conference with the interested parties to attempt to agree on an appropriate remedy.

1. Interested parties may be represented at a settlement conference by a person of their own choosing.
2. The Executive Director may use the services of the City of Seattle's Alternative Dispute Resolution office or the King County Inter-local Conflict Resolution Group or similar service to aid in determining an appropriate remedy.
3. A settlement may include any terms agreed upon by the parties and not otherwise precluded by law, including the cooperating employee's reasonable attorney fees attributed directly to attendance at the settlement discussion.
4. Any settlement between a City agency and the cooperating employee must include a provision in which the employee releases the City from further liability for acts giving rise to the retaliation complaint.
5. Settlement agreements concerning charges or potential charges of violations of subsection 4.16.070.F are subject to Commission approval.

G. End of settlement discussions

If the Executive Director determines that initiating a joint settlement conference is not feasible or determines that, at any point after such a conference is initiated, it is no longer feasible to reach a joint settlement, the Executive Director shall issue a notice to all interested parties that a settlement is not feasible..

(Ord. 124362 , § 8, 2013; Ord. 117039 , § 2, 1994.)

4.20.865 Enforcement

A. Election of administrative forum

1. Nothing in this subchapter prohibits an employee from filing in any administrative forum or affects the remedies available in that forum.

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2. If after filing a complaint with the Executive Director, the complainant files an action in another forum based upon the same conduct, the complainant shall inform the Executive Director within 15 days.
 3. After discovering or being informed of an action in another forum based upon the same conduct the Executive Director may choose to continue with the proceedings or suspend proceedings until either the other action is completed or the Executive Director determines that another course of action is appropriate.
- B. Filing a complaint with the Hearing Examiner
1. The Executive Director may file a complaint alleging retaliation with the Hearing Examiner. The complaint shall:
 - a. name the interested parties;
 - b. provide a concise statement of the conduct constituting retaliation; and
 - c. contain a request for relief.
 2. All cases are governed by the Hearing Examiner Rules of Practice and Procedure. The Hearing Examiner may promulgate such additional administrative rules as needed.
 3. If the Cooperating Employee is a party to the enforcement action, the employee may choose to be represented by a person of their own choosing.
- C. Proof
1. The burden of proof in any proceeding against an individual employee or employees for retaliating against a Cooperating Employee in violation of subsection 4.16.070.F is with the Executive Director. Retaliation must be shown by a preponderance of the evidence.
 2. The burden of proof in any proceeding before the hearing examiner against an agency is on the agency to prove that no retaliation occurred by showing by a preponderance of the evidence that the cooperating employee's status as a cooperating employee was not a contributing factor in the agency's decision to implement the adverse action against the cooperating employee.
 3. All interested parties may present evidence at the discretion of the Hearing Examiner. The burden is on the cooperating employee to present any evidence of emotional distress.
- D. Findings of the Hearing Examiner
- After hearing the evidence, the Hearing Examiner shall issue written findings of fact and conclusions of law as to whether this sub-chapter was violated.
1. If the Hearing Examiner concludes that an agency retaliated against a cooperating employee in violation of this subchapter:
 - a. The Hearing Examiner may order actual damages and such other relief deemed necessary to effectuate the purpose of this chapter and to secure future compliance, including such relief and action that could be ordered by a court.
 - b. If the cooperating employee proves emotional distress damages, the Hearing Examiner may award the cooperating employee damages. Any award for emotional distress shall not exceed \$20,000.
 - c. The Hearing Examiner may award reasonable attorney fees. Any award for attorneys' fees shall not exceed \$20,000.00.
 - d. The agency shall comply with the provisions of any order granting relief and shall furnish proof of compliance to the Executive Director. In the event that the agency refuses or fails to comply with

the order, or does not seek timely judicial review, the Executive Director shall notify the Mayor, the Council and the City Attorney. The Director may request that the City Attorney seek enforcement of the order in an appropriate court.

2. If the Hearing Examiner finds that one or more employees retaliated against a cooperating employee in violation of subsection 4.16.070.F and this subchapter:
 - a. The Hearing Examiner shall deliver the findings of fact and conclusions of law to the Commission, and may include a recommendation to the Commission as to an appropriate sanction under Section 4.16.100. Only the Commission has the authority to impose a penalty against an individual employee.
 - b. The Hearing Examiner may recommend to the agency that disciplinary action be commenced against an individual employee or employees found to have retaliated.
3. Commission action. The Commission shall accept the Hearing Examiner's Findings of Fact as dispositive. The Commission may impose sanctions as provided by Section 4.16.100 on the employee found to have violated subsection 4.16.070.F.
4. The final order of the Hearing Examiner or the Commission shall include a notice to the parties of the right to obtain judicial review of the order in accordance with applicable law.

(Ord. 124362 , § 9, 2013)

4.20.870 Private cause of action

- A. The cooperating employee may, after filing a timely and sufficient complaint with the Executive Director, pursue a private cause of action under this subchapter if one of the following conditions applies and the private cause of action is filed within 12 months of the condition being met:
 1. The Executive Director has determined not to investigate because the matter is being pursued in another forum; or
 2. the Executive Director has completed an investigation and determined that no reasonable cause exists to believe that retaliation occurred; or
 3. the Executive Director has found that the complaint has reasonable cause, the Executive Director has determined that a joint settlement is not feasible, and the Executive Director provides notice to the parties under subsection 4.20.860.G that he or she has determined a Settlement is not feasible. In no event can a cooperating employee file a private cause of action if 30 days have passed since the Executive Director has filed a complaint with the Hearing Examiner and named the cooperating employee as an interested party.
- B. When adhering to the filing requirements of subsection 4.20.870A, the Cooperating Employee injured by any retaliation in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further retaliation, or to recover the actual damages sustained by the person, or both. Remedies for damages include the cost of suit including reasonable attorneys' fees, without limitation; emotional distress damages not to exceed \$20,000; and any other appropriate remedy authorized by this chapter, without limitation. To prove retaliation in a civil-court action, the cooperating employee has the burden to prove by a preponderance of the evidence that the employee's status as a cooperating employee was a substantial factor in the decision making process that resulted in an adverse action against the cooperating employee.
- C. If the employee files a civil action, the Executive Director shall dismiss any administrative action for relief for that employee in which the charged party is an agency, but may still pursue administrative action against any employee alleged to have violated subsection 4.16.070.F.

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(Ord. 124362 , § 10, 2013)

4.20.875 Investigative powers

At any stage in an inquiry or investigation of an alleged improper governmental action, or the investigation regarding an assertion of retaliation for engaging in conduct protected in this subchapter, the Executive Director may issue subpoenas, administer oaths, examine witnesses, submit written questions to be answered under oath and, compel the production of documents or other evidence. If the subpoenaed party or agency does not respond to the request in a timely manner, the Executive Director may ask for the assistance of the City Attorney to pursue enforcement through order in superior court.

(Ord. 124362 , § 11, 2013)

4.20.880 Annual restatement and training

The Seattle Ethics and Election Commission and the Seattle Department of Human Resources shall, within six months of the effective date of this ordinance, develop and present a plan for adoption by the Seattle Department of Human Resources and the Seattle Ethics and Elections Commission that reaches the following goals ensuring:

- A. City employees attend a Whistleblower Protection Code training offered by the Seattle Ethics and Elections Commission within six months of entering City service;
- B. All City employees who are acting in a management or supervisory capacity at the time this ordinance becomes effective will, within one year of the effective date attend a Whistleblower Protection Code training offered by the Seattle Ethics and Elections Commission;
- C. Every City employee who acts within a supervisory capacity will, within six months of undertaken supervisory responsibilities, attend a Whistleblower Protection Code training offered by the Seattle Ethics and Elections Commission; and
- D. On annual basis each City employee receives a written summary of this chapter as prepared by the Ethics and Elections Commission.

(Ord. 124567 , § 50, 2014; Ord. 124362 , § 12, 2013)