

ORDINANCE No.

111039

Law Department

COUNCIL BILL No.

110042

City of Seattle

AN ORDINANCE relating to "whistleblower" reporting and protection; amending the City's whistleblower protection program in response to the enactment of Chapter 42.41 RCW; amending Sections 4.20.800, 4.20.810, 4.20.820, 4.20.830, 4.20.840, and 4.20.850 of the Seattle Municipal Code, and adding a new Section 4.20.860 in connection therewith.

DATE		WEEKS	
11/10/92	11/10/92	11/10/92	11/10/92
11/17/92	11/17/92	11/17/92	11/17/92
11/24/92	11/24/92	11/24/92	11/24/92
12/1/92	12/1/92	12/1/92	12/1/92
12/8/92	12/8/92	12/8/92	12/8/92
12/15/92	12/15/92	12/15/92	12/15/92
12/22/92	12/22/92	12/22/92	12/22/92
12/29/92	12/29/92	12/29/92	12/29/92
1/5/93	1/5/93	1/5/93	1/5/93
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12/28/93	12/28/93	12/28/93	12/28/93

to which was referred the above Ordinance, and report that we have completed our review of the Ordinance.

Page 2 of 10

Full Council

Tom Thibault

9  
12  
Law Department

4.20.860 in connection therewith. City of Seattle--Legislative Department

Date Reported and Adopted

REPORT OF COMMITTEE

FINANCE BUDGET MANAGEMENT & PERSONNEL

to which was referred the within Council Bill No. 110042  
report that we have considered the same and respectfully recommend that the same:

PASS 2-0 (TW M.L.)

Full Council vote 8-0 House out of Chamber

Tom Threlkoff

Committee Chair

WEEKS
FINANCE BUDGET MANAGEMENT & PERSONNEL COMMITTEE
Meeting: FEB / 89
FEB / 10
FEB / 15
Meeting: FEB / 15
Meeting: FEB / 15
Meeting: FEB / 15

ORDINANCE 117039

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2  
3 AN ORDINANCE relating to "whistleblower" reporting and pro-  
4 tection; amending the City's whistleblower protection  
5 program in response to the enactment of Chapter 42.41 RCW;  
6 amending Sections 4.20.800, 4.20.810, 4.20.820, 4.20.830,  
7 4.20.840, and 4.20.850 of the Seattle Municipal Code, and  
8 adding a new Section 4.20.860 in connection therewith.

9  
10 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

11 Section 1. Subchapter III of Chapter 4.20 of the Seattle  
12 Municipal Code (Sections 4.20.800 through 4.20.850) is amended  
13 as follows:

14 **4.20.800 Policy -- Purpose.**

15 Unless prohibited by State law, City employees are  
16 encouraged to report on improper governmental action to the  
17 appropriate City or other government official, depending on the  
18 nature of the improper governmental action. (~~the Executive~~  
19 ~~Director of the Seattle Ethics and Elections Commission, the~~  
20 ~~Mayor, the City Council and/or State Auditor; police misconduct~~  
21 ~~to the Police Department's Internal Investigation Section; and~~  
22 ~~violations of the Code of Judicial Conduct by Municipal Court~~  
23 ~~judges to the Washington State Judicial Conduct Commission.))~~

24 To assist such reporting and to implement Sections 42.41.030 and  
25 42.41.040 of the Revised Code of Washington ("RCW"), Sections  
26 4.20.800 through (~~4.20.830~~) 4.20.860 provide City employees a  
27 process for reporting improper governmental action and protec-  
28 tion from (~~interference and~~) retaliatory action for reporting  
and cooperating in the investigation and/or prosecution of  
improper governmental action (~~and/or disclosing such action to~~  
~~news media~~) in good faith in accordance with this subchapter.

**4.20.810 Reporting improper governmental action --  
Employee protection.**

A. Right. Every City (~~officer or~~) employee shall have  
the right to report, in good faith and in accordance with this  
subchapter, to ((an auditing)) a City official, another govern-

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1 ment official or a member of the public, information concerning  
2 an improper governmental action.

3 B. Limitations.

4 1. This section does not authorize a City (~~officer~~  
5 ~~or~~) employee to report information that is subject (~~to~~) an  
6 applicable privilege against disclosure at law (e.g., RCW  
7 5.60.060 privileged communications), unless waived, or to make  
8 disclosure where prohibited at law. The only purpose of this  
9 subchapter is to protect and encourage employees who know or in  
10 good faith believe improper governmental action has occurred to  
11 report those actions in good faith and in accordance with this  
12 subchapter.

13 2. Except in cases of emergency where the employee  
14 believes in good faith that substantial damage to persons or  
15 property will result unless a report is made immediately to a  
16 person or entity who is not the appropriate auditing official  
17 listed in subsection 4.20.850A, an employee shall, before making  
18 a report to a person who is not the appropriate auditing offi-  
19 cial, first make a written report of the improper governmental  
20 action to the appropriate auditing official. No emergency under  
21 this subsection exists where prompt attention and reporting  
22 under this subchapter by the employee could have avoided the  
23 perceived need to report immediately to a person not the appro-  
24 priate auditing official.

25 An employee making a written report as required by this  
26 subsection is encouraged to wait at least thirty (30) days from  
27 receipt of the written report by the appropriate auditing offi-  
28 cial 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

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1 her improper action would be cause for discipline.

2 C. ~~((Interference Prohibited))~~ Employee Protections and  
3 Protected Conduct

4 1. ~~((No City employee shall be subject to discipline~~  
5 ~~or discrimination or retaliation with respect to his or her~~  
6 ~~compensation, terms, conditions, or privileges of employment~~  
7 ~~because he or she (or another acting pursuant to his or her~~  
8 ~~request)+))~~ The following conduct by employees is protected if  
9 carried out in good faith under this subchapter:

10 a. Reporting sexual harassment to the employee's  
11 supervisor, EEO officer, department head, or other government  
12 official as set out in the City's adopted procedure for report-  
13 ing sexual harassment complaints; reporting violations of the  
14 Fair Employment Practices ordinance to the Human Rights Depart-  
15 ment; reporting police misconduct to the Police Department's  
16 Internal Investigation Section; reporting violations of the Code  
17 of Judicial Conduct by Municipal Court judges to the Washington  
18 State Commission on Judicial Conduct; reporting violations of  
19 criminal laws to the appropriate county prosecuting attorney;  
20 and reporting violations of the Elections Code or the Ethics  
21 Code, and any actions for which no other appropriate recipient  
22 of a report is listed in this subsection, to the Executive  
23 Director of the Seattle Ethics and Elections Commission;  
24 ~~((Reports to the Executive Director of the Seattle Ethics and~~  
25 ~~Elections Commission, the State Auditor, and/or, as to judicial~~  
26 ~~conduct, the Washington State Judicial Conduct Commission, or as~~  
27 ~~to police misconduct, the Police Department's Internal Investi-~~  
28 ~~gations section, as the case may be (called the "auditing~~  
~~official"), another government official or a member of the~~  
~~public, any "improper governmental action";))~~

b. ~~((Cooperates))~~ Cooperating in an investigation  
by an "auditing official" related to "improper governmental  
action"; and/or

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1 c. ~~((Testifies))~~ Testifying in a proceeding or  
2 prosecution arising out of an "improper governmental action."

3 ~~((2. No City officer or employee shall directly or in-  
4 directly use or attempt to use his or her official authority or  
5 influence for the purpose of intimidating, threatening,  
6 coercing, commanding, influencing, or attempting to intimidate,  
7 threaten, coerce, command, or influence any individual for the  
8 purpose of interfering with an employee's (a) reporting of  
9 information of "improper governmental action" to an auditing  
10 official, another government official or a member of the public,  
11 (b) cooperating in an investigation, or (c) testifying in a  
12 proceeding arising therefrom.))~~

13 ~~((D. Retaliation Prohibited.))~~ 2. No City officer or  
14 employee shall retaliate against any employee ~~((on account of an  
15 activity protected by this section))~~ because that employee pro-  
16 ceeded or is proceeding in good faith in accordance with this  
17 subchapter.

18 ~~((E.))~~ D. Penalty. Any City officer or employee who  
19 ~~((shall))~~ engages in ~~((interference or in))~~ prohibited retalia-  
20 tory action~~((7))~~ is subject to discipline by suspension without  
21 pay, demotion or discharge ~~((and 7))~~ or, pursuant to Section  
22 4.20.840, a civil fine up to Five Hundred Dollars (\$500.00), or  
23 both discipline and a fine.

24 F. Annual Restatement. Upon entering City service and at  
25 least once each year thereafter, every City officer and employee  
26 shall receive a written summary of this chapter, the procedures  
27 for reporting improper governmental actions to auditing offi-  
28 cials, ~~((other government officials, or members of the public,))~~  
the procedures for obtaining the protections extended, and the  
prohibition against ~~((interference or))~~ retaliation in this  
section. The Executive Director of the Ethics and Elections  
Commission shall ensure that such summaries are distributed and

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1 that copies are posted where all employees will have reasonable  
2 access to them.

3 **4.20.820 Confidentiality.**

4 To the extent allowed by law, the identity of an employee  
5 reporting information about an improper governmental action  
6 shall be kept confidential unless ~~((a))~~ the employee in  
7 writing waives confidentiality. ~~((or (b) the disclosure of the~~  
8 ~~informant's identity is necessary for the prosecution of an~~  
9 ~~action arising out of the "improper government action.")~~

9 **4.20.830 Investigation.**

10 **A. Referral or Retention.** The Executive Director of the  
11 Ethics and Elections Commission, upon receiving a report alleg-  
12 ing improper governmental action, shall refer the complainant to  
13 the appropriate auditing official listed in subsection 4.20.850A  
14 if the Executive Director is not the appropriate auditing  
15 official. If the Executive Director is the appropriate auditing  
16 official, and the report alleges a violation of the Elections  
17 Code or the Code of Ethics, the Executive Director shall handle  
18 that allegation according to the ordinances and rules applicable  
19 to the code alleged to have been violated. If the Executive  
20 Director is the appropriate auditing official and the report  
21 alleges improper governmental action that does not fall within  
22 the prohibitions of the Ethics Code or the Elections Code, the  
23 Executive Director may refer the report to the chief elected  
24 official of the branch of government implicated in the allega-  
25 tion, who shall ensure that the appropriate officer or agency  
26 responds to the complainant in writing within thirty (30) days  
27 of receipt of the report by the appropriate auditing official,  
28 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

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1 may conduct an investigation. The procedures in subsections  
2 4.20.830B through E shall apply only to the Executive Director  
3 of the Ethics and Elections Commission when he or she is in-  
4 vestigating an improper governmental action that does not fall  
5 within the prohibitions of the Ethics Code or the Elections Code  
6 and that should not have been referred to another auditing  
7 official under the first sentence of this subsection; other  
8 auditing officials investigating allegations of improper  
9 governmental action appropriately referred to them are not bound  
10 by these procedures.

11 B. Executive Director's Investigation. ~~((A. Authority~~  
12 ~~—Powers.))~~ At any stage in an investigation of an alleged  
13 "improper governmental action" ~~((whether reported by an~~  
14 ~~employee or uncovered by office staff))~~, the Executive Director  
15 of the Seattle Ethics and Elections Commission may issue  
16 subpoenas, administer oaths, examine witnesses, compel the  
17 production of documents or other evidence, enlist the assistance  
18 of the City Attorney, the City Auditor, or the Chief of Police,  
19 refer the matter to the State Auditor or law enforcement  
20 authorities, and/or issue reports, each as deemed appropriate.

21 ~~((B. Preliminary Investigation.))~~ Within thirty (30) days  
22 after receiving information about an "improper governmental  
23 action" from a City ~~((officer or))~~ employee, the Executive  
24 Director shall conduct a preliminary investigation, and ~~((upon))~~  
25 provide the complainant with a written report of the general  
26 status of the investigation which may include matters for  
27 further research or inquiry.

28 C. Completion and Reports. Upon completion of the  
29 ~~((preliminary))~~ investigation, the Executive Director shall  
30 notify the ~~((informant))~~ complainant in writing of any deter-  
31 minations made, ~~((and/or as to matters for further research or~~  
32 inquiry, the general status of the investigation. C.

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1 ~~Investigation Reports.~~) If the Executive Director determines  
2 that an improper governmental action has occurred, the Executive  
3 Director shall report the nature and details of the activity to  
4 the ~~((informant)) complainant~~; to the head of the department  
5 with responsibility for the action; and if a department head is  
6 implicated, to the Mayor and City Council; and to such other  
7 governmental officials or agencies as the Executive Director  
8 deems appropriate. If satisfactory action to follow up the  
9 report is not being taken within a reasonable time, the Execu-  
10 tive Director shall report his or her determination to the Mayor  
11 and advise the City Council.

12 D. Closure. The Executive Director may close an investi-  
13 gation at any time he or she determines that no further action  
14 is warranted and shall so notify the ~~((informant)) complainant~~.

15 E. ~~((Rules and Procedures. The Seattle Ethics and  
16 Elections Commission may promulgate rules for implementing this  
17 chapter. The rules shall be promulgated in accordance with the  
18 Administrative Code, Seattle Municipal Code Chapter 3.02, and in  
19 consultation with the City Council Finance Committee.))  
20 Decisions of the Executive Director under this section are not  
21 appealable to the Ethics and Elections Commission.~~

22 **4.20.840 Civil penalty.**

23 A violation of subsection~~((s))~~ C ~~((and D))~~ of Section  
24 4.20.810 is a civil offense. A person who is guilty thereof may  
25 be punished in the Seattle Municipal ~~((Code))~~ Court by a civil  
26 fine or forfeiture not to exceed Five Hundred Dollars (\$500.00).

27 **4.20.850 Definitions.**

28 As used in Sections 4.20.800 through ~~((4.20.840))~~ 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

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1 Ethics and Elections Commission(~~(, the Washington State~~  
2 ~~Auditor)~~); a person to whom sexual harassment was properly  
3 reported according to City policy; the Human Rights Department;  
4 ((or) the Washington State Commission on Judicial Conduct  
5 ((Commission)); ((as to police misconduct,)) the Police Depart-  
6 ment's Internal Investigations Section; the county prosecuting  
7 attorneys of the State of Washington; and any authorized  
8 assistant or representative of any of them in cases within their  
respective appropriate jurisdictions.

9 B. "Employee" means anyone employed by the City, whether  
10 in a permanent or temporary position, including full-time, part-  
11 time, and intermittent workers. It also includes members of  
12 appointed boards or commissions, whether or not paid(~~(, and for~~  
13 ~~purposes of Sections 4.20.800 through 4.20.840 only, volunteers~~  
14 ~~on assignment)).~~

15 C. 1. "Improper governmental action" means any action  
16 ((or proposed action, which is related to an employee's per-  
17 formance of his or her duties or comes to his or her knowledge  
18 in that capacity,)) by a City officer or employee that is under-  
19 taken in the performance of the officer's or employee's official  
20 duties, whether or not the action is within the scope of employ-  
ment, and:

- 21 a. Violates any State or federal law or rule or  
22 City ordinance, and, where applicable, King County ordinances,  
23 or  
24 b. Constitutes an abuse of authority, or  
25 c. Creates a substantial or specific danger to  
26 the public health or safety, or  
27 d. Results in a gross waste of public funds.

28 2. "Improper governmental action" excludes personnel  
actions, including but not limited to: employee grievances,  
complaints, appointments, promotions, transfers, assignments,

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1 reassignments, reinstatements, restorations, re-employments,  
2 performance evaluations, reductions in pay, dismissals,  
3 suspensions, demotions, reprimands, violations of collective  
4 bargaining or civil service laws, or alleged violations of  
5 agreements with labor organizations under collective bargaining,  
6 or any action that may be taken under chapter 41.08, 41.12,  
7 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and  
8 54.04.180.

9 3. A properly authorized City program or activity  
10 does not become an "improper governmental action" because an  
11 employee or auditing official dissents from the City policy or  
12 considers the expenditures unwise.

13 D. "Retaliate," and its kindred nouns, "retaliation" and  
14 "retaliatory action," mean to ~~((take action (or action taken,~~  
15 ~~respectively) directly or indirectly on account of, or with~~  
16 ~~motivation from, the City employee's action protected under~~  
17 ~~Section 4.20.810 . With an individual, it includes)) make,  
18 because of an activity protected under section 4.20.810, any  
19 unwarranted adverse change in an employee's employment status or  
20 the terms and conditions of employment including, but ~~((is))~~ not  
21 limited to, ~~((assignment of additional duties;))~~ denial of ade-  
22 quate staff to perform duties; frequent staff changes; frequent  
23 ~~((or))~~ and undesirable office changes, refusal to assign  
24 meaningful work; ~~((harassment, excessive supervision or other~~  
25 ~~discriminatory treatment of the employee; unwarranted and))~~  
26 unsubstantiated letters of reprimand or unsatisfactory per-  
27 formance evaluations; demotion, reduction in pay; denial of  
28 promotion; transfer or reassignment; ~~((and))~~ suspension or  
dismissal; or other unwarranted disciplinary action.~~

E. ~~(("Use of official authority or influence" means and~~  
includes ~~taking, directing others to take, recommending,~~  
processing, or approving any personnel action such as an

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1 ~~appointment, promotion, transfer, assignment, reassignment,~~  
2 ~~reinstatement, restoration, re-employment, performance~~  
3 ~~evaluation or any other disciplinary action.)~~ "Executive  
4 Director" means the Executive Director of the Seattle Ethics and  
5 Elections Commission.

6 Section 2. There is added to Subchapter III of Chapter  
7 4.20 of the Seattle Municipal Code a new Section 4.20.860 as  
8 follows:

9 **4.20.860 Reporting and Adjudicating Retaliation.**

10 A. Complaint. In order to seek relief, an employee who  
11 believes he or she has been retaliated against in violation of  
12 section 4.20.810C must file a signed written complaint within 30  
13 days of the occurrence alleged to constitute retaliation. The  
14 complaint shall be filed with the Office of the Mayor and must  
15 specify the alleged retaliatory action and the relief requested.

16 B. Investigation and Response. The Mayor's office shall  
17 forward the complaint to the head of the executive office or  
18 department in which the retaliation is alleged to have occurred,  
19 or, at the Mayor's option, to the President of the City Council  
20 or the Presiding Judge of the Municipal Court if their respec-  
21 tive branches are implicated in the complaint. The head of the  
22 department, office, or branch to which the complaint was  
23 referred shall ensure that the complainant is sent a response  
24 within thirty (30) days after the filing of the complaint. If  
25 the head of an executive office or department is alleged to have  
26 retaliated in violation of section 4.20.810, the Mayor shall  
27 ensure that the complainant is sent a response within thirty  
28 (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

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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.

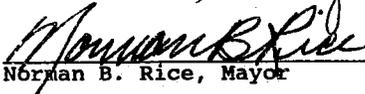
Section 3. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter.

Passed by the City Council the 7<sup>th</sup> day of February, 1994, and signed by me in open session in authentication of its passage this 7<sup>th</sup> day of February, 1994.

  
\_\_\_\_\_  
President of the City Council

Approved by me this 9<sup>th</sup> day of February, 1994.

  
\_\_\_\_\_  
Norman B. Rice, Mayor

Filed this 9<sup>th</sup> day of February, 1994.

(SEAL) By   
\_\_\_\_\_  
Deputy Clerk

Published \_\_\_\_\_

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City of Seattle  
Ethics and Elections Commission



February 2, 1994

City Council President Jim Street  
Seattle City Council  
1100 Municipal Building

Re: Proposed Revisions To The Whistleblower Code

Dear Council President Street:

Attached is a copy of proposed revisions to the Whistleblower Code. These revisions bring the Seattle ordinance in compliance with the State Whistleblower statute that became effective on January 1, 1993. In addition, they clarify the Code and make it more readable. The following is a summary of the revisions:

The Whistleblower Code has been revised to emphasize that the protections of confidentiality and freedom from retaliation are conditioned upon the employee acting in good faith under the chapter. **SMC 4.20.800 and .810(A)**.

The Code more clearly identifies the appropriate auditing authority for the various complaints of improper governmental action, e.g., the Human Rights Department for discrimination complaints, police Internal Investigations for police misconduct, etc. **SMC 4.20.810(C) (1) (a)**.

The revisions clearly delineate the complainant's course of conduct and the Executive Director's procedures, making separate rules unnecessary. See **SMC 4.20.810(B) (2)** (employee files written report to appropriate auditing authority, waits 30 days for response), **SMC 4.20.830(A)** (Executive Director shall ensure that appropriate auditing official responds within 30 days of receipt, may contact head of department or may conduct investigation), **SMC 4.20.830(B)** (if Executive Director conducts investigation, within 30 days, he or she provides to the complainant a status report of investigation), **SMC 4.20.830(C)** (if Executive Director determines an improper governmental action occurred, he or she reports to complainant and department head, if department head does not respond or provides unsatisfactory response, Executive Director reports to Mayor and Council), and **SMC 4.20.830(D)** (if no further action warranted, Executive Director may close investigation, sends notice to complainant).

The definitions are more clearly stated in **SMC 4.20.850:**  
**(A):** "Auditing official" states that the Executive Director is the appropriate official only if an Ethics, Elections or other alleged

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violation that does not involve a law that already has a procedure in place. When an alleged violation involves action that is addressed in an ordinance that assigns jurisdiction to another entity, that entity is the appropriate auditing authority;

(B): "Employee" does not include volunteers;

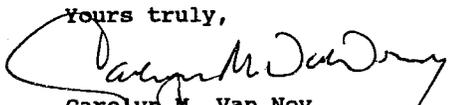
(C): "Improper governmental action" identifies the conduct while performing official duties, whether or not within the scope of those duties;

(D): "Retaliate" is clarified to be unwarranted adverse action taken as a result of the report of improper governmental action.

**SMC 4.20.860** is added to provide guidance to employees who believe they have been retaliated against for reporting an improper governmental action or for cooperating in an investigation of an alleged improper governmental action. Such employees are directed to report the alleged retaliation to the Mayor's Office and specify the relief requested. The Mayor would then send the complaint to the department involved and ensure that a response is given the complainant within thirty days of receipt of the complaint. If the alleged action occurred in the Legislative Department or the Municipal Court, the Mayor's Office would refer the claim to the President of the Council or the Court Administrator, respectively, and they have thirty days to respond. **SMC 4.20.860(B)**. If the complainant is not satisfied with the response, he or she has fifteen days after the thirty day limit to ask the Mayor to provide a hearing before a State Administrative Law Judge. The Mayor then has five working days from receipt of the request to apply to the State Office of Administrative Hearings for a hearing to be conducted, pursuant to RCW 42.41.040. **SMC 4.20.860(C)**. The City would be assessed the charges that the State incurred in conducting the hearing. The Administrative Law Judge is authorized to assess portions or all of the City's costs to the complainant, if he or she determines that the claim was frivolous.

These revisions have undergone extensive review by the Mayor's Office, the Law Department and the Commission. Please contact us if you have questions or concerns. Thank you for your attention to this matter.

Yours truly,

  
Carolyn M. Van Noy,  
Executive Director

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**THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:**

*Tom Thib*

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**FOR CITY COUNCIL PRESIDENT USE ONLY**

**COMMITTEE(S) REFERRED TO:**

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**PRESIDENT'S SIGNATURE**

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