

Ordinance No. 119120

Council Bill No. 112251

AN ORDINANCE relating to compensation for appellants to the Civil Service Commission amending Seattle Municipal Code Section 4.20.225 to provide for no loss of compensation during appeal.

The City of Seattle

Council Bill/Ordinance

Law Department

M

CF No. _____

8-24-98 Foil

(EXCISE)

| | | |
|------------------------------|---------------------------|--|
| Date Introduced: | <u>7-13-98</u> | |
| Date 1st Referred: | <u>7-13-98</u> | |
| To: (committee) | <u>Finance and Budget</u> | |
| Date Re - Referred: | | |
| To: (committee) | | |
| Date Re - Referred: | | |
| To: (committee) | | |
| Date of Final Passage: | <u>8-24-98</u> | |
| Full Council Vote: | <u>7-0</u> | |
| Date Presented to Mayor: | <u>8-24-98</u> | |
| Date Approved: | <u>AUG 20 1998</u> | |
| Date Returned to City Clerk: | Date Published: | T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/> |
| <u>AUG 20 1998</u> | <u>2 PM</u> | |
| Date Vetoed by Mayor: | Date Veto Published: | |
| | | |
| Date Passed Over Veto: | Veto Sustained: | |
| | | |

(Handwritten initials)

This file is complete and ready

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Choe

Councilmember

Department

Committee Action:

Wesley Choe 2/19 adopted by FAB

3-24-98 Full Council Action: Passed 7-0
(Excused: Conlin, Podolowski)

This file is complete and ready for presentation to Full Council. Committee: _____

(initial/date)

MC

Law Dept. Review

OMP
Review

City Clerk
Review

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ORDINANCE 119120

AN ORDINANCE relating to compensation for appellants to the Civil Service Commission, amending Seattle Municipal Code Section 4.20.225 to provide for no loss of compensation during appeal.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code Section 4.20.225, Testimony at Civil Service Commission hearing—Compensation conditions, Ordinance 110202 as amended, is further amended as follows:

A. All City employees subpoenaed by the Civil Service Commission to testify at a Commission hearing, or a hearing delegated by the Commission to the Office of the Hearing Examiner, on behalf of the appellant or the responding department during the employee's regular work hours shall be released by the employing department to testify at the hearing without loss of the compensation otherwise due. ~~((If witness expenses are provided by other persons pursuant to contract or by practice, said sums shall be remitted forthwith to the employing department.))~~ Paid release time shall include reasonable travel time to and from the hearing and such time as is required from the employee's arrival at the hearing, as specified in the subpoena, through the time spent giving testimony. If an employee receives witness expenses for testimony, he or she shall remit the sum to the employing department in order to receive his or her regular compensation.

B. Any City employee who is an appellant in a hearing before the Civil Service Commission, or a hearing delegated by the Commission to the Office of the Hearing Examiner, shall be released by the employing department to attend the hearing without loss of compensation otherwise due under the following conditions:

1. When such hearing is scheduled during the employee's normal work hours and the employee is on regular pay status; and

2. Paid release time is limited to a maximum of sixteen (16) hours per appeal.

C. In order for the affected employee to ~~((be compensated for appearing as a witness))~~ attend the hearing during normal work hours without loss of compensation, the Civil Service Commission shall notify the employing department ((of the subpoena)) in

Norma McKinney/k
smc420225
6/11/98
V #2

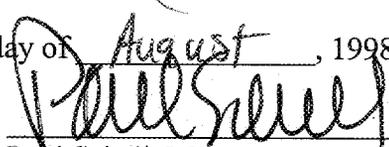
1 advance of the hearing and shall schedule testimony with due regard for the impact of the
2 employee's absence from his or her work duties on City business. (~~No compensation shall~~
3 ~~be made if the hearing takes place when the employee is off duty. This section also applies~~
4 ~~to hearings, which the Commission has delegated to the Office of the Hearing Examiner~~
5 ~~under Article XVI, Section 6 of the City Charter.))~~
6

7 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after
8 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
9 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

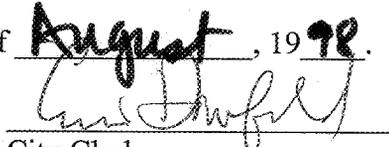
10 Passed by the City Council the 24th day of August, 1998, and signed by
11 me in open session in authentication of its passage this 24th day of August
12 1998.
13

14 
15 _____
16 President of the City Council

17 Approved by me this 25th day of August, 1998.

18 
19 _____
20 Paul Schell, Mayor

21 Filed by me this 28 day of August, 1998.

22 
23 _____
24 acting City Clerk
25

26 (SEAL)

COMPENSATION FOR CIVIL SERVICE APPELLANTS— BRIEFING JULY 31, 1998

We are proposing an amendment to SMC 4.20.225 to provide for no loss of compensation for appellants to the Civil Service Commission. The ordinance currently does not address appellants' compensation. Technically, an employee whose appeal is scheduled during normal work hours should take paid leave or be unpaid for that time.

In fact, the City has a mixed practice relative to compensation for Civil Service appellants. Most departments do not "unpay" employees for the time they are in appeal, although some (most notably City Light) have an official position of not paying for appellants' appearances before the Commission.

Initially, the Commission intended to submit legislation to amend SMC 4.20.225. When they asked that Personnel propose the legislation instead, we agreed on the grounds that doing so would at least allow us to tailor the proposal to take into account as many perspectives as possible.

The resulting council bill provides a maximum of 16 hours compensation for appellants whose appeals occur during normal work hours and who are on active pay status at the time of the appeal. Our rationale is:

- A Civil Service Commission appeal is the final step in a City-sanctioned internal administrative process. Withholding compensation altogether might be interpreted as intent to discourage the use of this process.
- By virtue of providing compensation for appeals, we are designating appeals as "work assignments". Management ought to be able to expect that this work assignment, like any other, will require a maximum length of time to complete barring unforeseen circumstances. Because the Law Department informs us that the average appeal is heard in 16 hours or less, we used that benchmark as the maximum amount of compensable time under the ordinance.
- Given that we now know we have a mixed practice, we must remedy that. If we retain the current ordinance, we must direct departments to cease compensating appellants. The potential damage to employee morale and trust might easily outweigh the cost of compensating appellants for a minimal amount of time.

In spite of our conscious efforts to take all perspectives into account, we do not have a consensus on this issue. The Law Department, although comfortable with the legality of what we have proposed, objects on the following policy grounds:

- As a matter of principle, management should not pay employees to challenge management decisions.
- Legalizing the compensation of appellants might inadvertently encourage employees to file "no-risk" appeals.

- A better approach would be to not compensate appellants but let the Commission exercise its authority to order back pay for appellants who win their cases.

We discussed this issue with the Mayor's Management Work Group in early June and found a diversity of opinion there as well.

- Senior managers from departments that are in compliance with the current legislation agreed with Law that the proposed change would signal employees that appeals are now "risk-free."
- Others felt that it would be financially advantageous to the City to encourage employees to use the Civil Service Commission appeal process rather than take their grievances to arbitration or to court.
- Since employees who work second and third shifts would most likely be in appeal during their nonwork hours, their departments stand to incur an overtime obligation unless they can find some way to flex the employees' regular shifts to accommodate the time spent in appeal.

The Civil Service Commission supports the proposed legislation generally, although they have indicated they will subpoena any appellants who need more than 16 hours in order to ensure their continued compensation. (The practice of subpoenaing appellants is unprecedented as far as we know, but the Commission has not been challenged on it to date.)

The amount of dissension surrounding this issue obscures the fact that a very minimal number of employees will be affected. Out of the approximately 350 employees allocated to the new Manager and Strategic Advisor classification and compensation programs, for example, only one has appealed her allocation to the Civil Service Commission. A large percentage of appeals are settled in pre-hearing conferences. Many of the most divisive and contentious appeals involve individuals who have been discharged—who would not be eligible for compensation under this proposed legislation because they are not on active pay status. Unless providing for compensation during appeals really does increase the number of appeals (a circumstance we see as unlikely since we suspect that most employees already assume they would be paid), this legislation will have minimal financial impact. Its importance lies in the message that passing it or not passing it sends to City employees, and in its demonstration of good faith with the Civil Service Commission.



City of Seattle

Paul Schell, Mayor

Executive Services Department

Dwight D. Dively, Director

June 25, 1998

MEMORANDUM

TO: The Honorable Sue Donaldson, President
Seattle City Council

FROM: 
Dwight Dively, Director
Executive Services Department


Norma McKinney
Personnel Director

SUBJECT: Proposed Legislation To Amend SMC 4.20.225

The attached council bill proposes an amendment to Seattle Municipal Code Section 4.20.225, *Testimony at Civil Service Commission hearing—Compensation conditions* to provide that appellants to the Commission receive their regular compensation when appearing at hearings during normal work hours, provided they are on regular pay status. Currently, this section provides that subpoenaed witnesses may testify without loss of pay, but does not authorize compensation of appellants.

A Civil Service Commission hearing represents the last step in an administrative process designed to resolve employee allegations of rules and policy violations *internally*. We should not discourage use of an internal administrative process, particularly when the decision to use an external process (e.g., the court system) can be so costly. On the other hand, we have a responsibility to try to ensure that disputes are resolved with the least possible impact on City business. For that reason, the proposed legislation limits our ordinance obligation to 16 hours of compensated time per appeal—which generally should be sufficient for the presentation of evidence and arguments.

My decision to propose this ordinance change was not arrived at easily. It is a far more controversial amendment than it appears on its face:

- The Civil Service Commission supports the legislation to the extent that it provides authorization for some compensation. However, they have made it clear that they will subpoena appellants who need more time in order to ensure their continued compensation.

The Honorable Sue Donaldson
Proposed Legislation To Amend SMC 4.20.225
June 25, 1998
Page two

- The proposal was submitted to the Mayor's Management Work Group for discussion last month, and that body of senior managers did not reach a consensus on the matter. Some managers felt very strongly that it is improper to compensate employees for challenging management. Others felt just as strongly that we should not use compensation (or the lack thereof) to discourage employees from utilizing this City-sanctioned administrative process.
- There is currently a mixed practice in the City, with some departments paying appellants and others withholding pay in some instances. Knowing that, we cannot maintain the status quo; we must either amend the ordinance or notify those departments that are paying appellants of the need to stop doing so.

I believe that the attached council bill is the best possible solution to a truly thorny issue. Your favorable consideration is appreciated. Please direct any questions to Kathy Steinmeyer, Senior Policy Analyst, at 684-7921 or to me at 684-7870.

NM/ks
Attachment

C: The Honorable Martha Choe, Chair
Finance and Budget Committee
Laurie Brown, Special Assistant to the Mayor
Civil Service Commission

TIME AND DATE STAMP

SPONSORSHIP

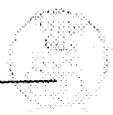
THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Martha Chase

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE



City of Seattle

ORDINANCE 119120

AN ORDINANCE relating to compensation for appellants to the Civil Service Commission, amending Seattle Municipal Code Section 4.20.025 to provide for no loss of compensation during appeal.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code Section 4.20.025, Testimony at Civil Service Commission hearing -- Compensation conditions, Ordinance 118202 as amended, is further amended as follows:

A. All City employees subpoenaed by the Civil Service Commission to testify at a Commission hearing, or a hearing delegated by the Commission to the Office of the Hearing Examiner, on behalf of the appellant or the responding department during the employee's regular work hours shall be released by the employing department to testify at the hearing without loss of the compensation otherwise due. (If witness expenses are provided by other persons pursuant to contract or by practice, said sums shall be remitted forthwith to the employing department.) Paid release time shall include reasonable travel time to and from the hearing and such time as is required from the employee's arrival at the hearing, as specified in the subpoena, through the time spent giving testimony. If an employee receives witness expenses for testimony, he or she shall remit the sum to the employing department in order to receive his or her regular compensation.

B. Any City employee who is an appellant in a hearing before the Civil Service Commission, or a hearing delegated by the Commission to the Office of the Hearing Examiner, shall be released by the employing department to attend the hearing without loss of compensation otherwise due under the following conditions:

1. When such hearing is scheduled during the employee's normal work hours and the employee is on regular pay status; and

2. Paid release time is limited to a maximum of sixteen (16) hours per appeal.

C. In order for the affected employee to (be compensated for appearing as a witness) attend the hearing during normal work hours without loss of compensation, the Civil Service Commission shall notify the employing department (of the subpoena) in advance of the hearing and shall schedule testimony with due regard for the impact of the employee's absence from his or her work duties on City business. (No compensation shall be made if the hearing takes place when the employee is off duty. This section also applies to hearings, which the Commission has delegated to the Office of the Hearing Examiner under Article XVI, Section 6 of the City Charter.)

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of August, 1998, and signed by me in open session in authentication of its passage this 24th day of August, 1998.

SUE DONALDSON,
President of the City Council.
Approved by me this 28th day of August, 1998.

PAUL SCHELL,
Mayor.
Filed by me this 28th day of August, 1998.

(Seal) TINA DANFELD,
Acting City Clerk.

Publication ordered by JUDITH PIPPIN,
City Clerk.

(Boldface denotes deletion.)

Date of official publication in Daily Journal of Commerce, Seattle, September 11, 1998. 9/11(27578)

STATE OF WASHINGTON - KING COUNTY

City Clerk

—ss.

No. ORD IN FULL

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119120

was published on

09/11/98

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on

09/11/98

Notary Public for the State of Washington,
residing in Seattle