

OFFICE OF THE EMPLOYEE OMBUD (OEO)

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Budget Summary (\$ in 1,000s)

	2018 Adopted	2019 Proposed	% Change 2018 Adopted to 2019 Proposed	2020 Proposed	% Change 2019 Proposed to 2020 Proposed
<i>Office of the Employee Ombud</i>	0	\$564	100%	\$562	(0.3%)
Total Appropriation	0	\$564	100%	\$562	(0.3%)
Total FTEs	0	3.0	100%	3.0	0

The Mayor’s 2019-2020 Proposed Budget would fund a new Office of the Employee Ombud¹ (OEO) within the Executive branch. The Mayor transmitted an ordinance to codify the OEO in the Seattle Municipal Code (see Attachment A).

This memo provides background information leading up to the proposal for the creation of the OEO, describes the work the OEO is envisioned to do, and identifies issues and options for the Council’s consideration.

Background:

Current City Complaint and Investigation System defined in the City Personnel Rules

Harassment is defined in the Preamble to the City’s Personnel Rules; and [Personnel Rules 1.1.4-1.1.6](#) outline how the City will respond, investigate, and determine appropriate actions to be taken in response to the allegations. The Personnel Rules provide an opportunity for an employee to seek informal advice from the Seattle Office for Civil Rights (OCR), the Washington State Human Rights Commission (WAHRC), and the Equal Opportunity Employment Commission (EEOC),² as well as consult with or file a harassment complaint with OCR, WAHRC, or EEOC.³ The Personnel Rules⁴ also allow the appointing authority or management representative to contract with an independent party investigator.

Due to the multiple potential forums, the potential confidentiality of the initial inquiry, and the decentralization of the investigations done by individual departments, Citywide data does not currently exist on the number of allegations of harassment, the number of investigations

¹ The Mayor’s Proposed Budget, Executive Order, and draft legislation consistently use the neologism “Ombud” as a gender-neutral term referring to an Ombudsman (or Ombudsperson). Throughout this memo, we will also use this term to avoid confusion.

² Personnel Rule 1.1.4.A.1.

³ Personnel Rule 1.1.4.C.

⁴ Personnel Rule 1.1.5.B.

conducted, or the outcomes of those investigations.

The Mayor's 2019-2020 Proposed Budget provides for a new City Investigator in the Seattle Department of Human Resources (SDHR) to develop and coordinate a consistent Citywide response to anti-harassment complaints. The Executive will assess, by the end of 2018, which investigatory staff from other departments should be transferred to SDHR and will develop legislation implementing the transfers on the same timeline.

Anti-Harassment Interdepartmental Team Report and Recommendations

Due to concerns about workplace culture that surfaced Citywide over the last several years, the Mayor's Office established the Anti-Harassment Interdepartmental Team (IDT) in March 2018. It is composed of 21 members drawn from City Departments, labor unions, the Mayor's office and the Legislative Department. Their July 2018 report, *Addressing and Preventing Workplace Harassment and Discrimination*, describes their methodology and analysis, and provides 34 recommendations with a ranking as needing immediate-, mid-, or long-term implementation.

The IDT's recommendations for an OEO follow:

"Immediately investigate and propose a structure for an Ombuds function within the City. This neutral third party is necessary to adequately address the lack of trust and support people experience when they report incidents of harassment. A proposal should be led by OCR and SDHR and be completed within three months. The Ombuds function will address these overarching concerns: (Immediate-Mid-Long)

- a. Be an advocate for employees
- b. Be independent (of the executive)
- c. Address concerns that employees have that may not rise to the level of a full investigation
- d. Offer support
- e. Be trauma-informed
- f. Follow up with employees throughout the process
- g. Offer confidential support (they will not be a mandatory reporter)
- h. Listen with empathy
- i. Engage in harm reduction
- j. Communicate with regular updates and completely respond to my questions
- k. Help to hold leadership accountable."⁵

Executive Order 2018-04, the Mayor's Proposed 2019-2020 Budget, and the Proposed Ordinance

In response to the IDT Report and recommendations, Mayor Durkan signed [Executive Order 2018-04](#) on September 21, 2018, outlining how the Executive would move forward in handling allegations of harassment and discrimination.

The Proposed Budget provides \$564,000 in 2019 and \$562,000 in 2020 as illustrated in Table 1.

⁵ City of Seattle, Anti-Harassment Interdepartmental Team, *Addressing and Preventing Workplace Harassment and Discrimination*, Page 36 (July 2018).

Table 1: Funding breakdown for OEO

	2019	2020
Citywide allocations, start-up, and inflation costs	\$138,900	\$135,005
3.0 FTEs (one Manager 2; two Strategic Advisor 1)	\$424,700	\$426,900
Total	\$563,600	\$561,905

The ordinance establishes and codifies the new OEO in the Seattle Municipal Code. It provides that:

- The OEO Director is to be appointed by the Mayor and confirmed by the City Council.
- The OEO mission is to “assist individual City employees in understanding their options and resources regarding allegations of workplace misconduct and navigating the City’s processes and systems for reporting, investigating, and addressing work place conduct concerns including, but not limited to allegations of harassment.”
- The OEO’s functions are to:
 - Provide neutral and impartial information to City employees about their options for addressing allegations of workplace harassment, discrimination, or other misconduct. OEO will maintain employee confidentiality to the extent required under law;
 - Facilitate discussions to address miscommunications that may have led to City workplace conflict; and
 - Report annually to the Mayor’s Office and City Council on any issues that have a broad systemic impact including recommendations to change the City’s Personnel Rules, investigation system, workplace expectations, and other City processes and systems. This report is due annually by March 31.
- In addition, the duties of the OEO Director include providing input to the Mayor and City Council on the performance of OEO and recommending any process improvements.

The OEO will not conduct investigations. The intent is for the OEO to operate independently of other City departments, to assist City employees in understanding and navigating the City processes they have available to them, and to be an alternative source of information to those currently provided.

Issue Identification:

1. How will Council know if the OEO’s implementation will be consistent with the IDT’s recommendations?

The IDT recommendations envisioned an OEO that would be rooted in race and social justice, be able to assure employee confidentiality and anonymity, review and recommend replacements to the existing city response to harassment allegations, and have independence from the Executive. As the OEO has not been established yet, it is unclear how they will implement their functions and whether they have adequate resources to do so.

Options:

- A. Amend the proposed legislation to require the OEO to provide Council with an implementation plan by the end of the 1st quarter of 2019 for Council’s consideration. This implementation plan should, at a minimum, include how the OEO will maintain data on the number of employees assisted while maintaining employee confidentiality, the categories of complaints, the number of issues resolved, the role of the IDT, and how oversight of whether the OEO is consistent with the recommendations will continue if the IDT is ever disbanded.
- B. Pass the legislation as proposed.

2. The continued role of the IDT is not reflected in the proposed legislation.

The proposed legislation requires that the OEO submit an annual report to the Mayor and the City Council. The Executive Order states that the IDT will work with the SDHR Director and OEO to submit an annual work plan. It also states that the IDT will continue to meet and provide oversight of OEO implementation and requests that the IDT work with SDHR to guide the City’s efforts. However, these roles are not reflected in the legislation.

Options:

- A. Amend the legislation to require that the OEO’s annual report to the Mayor and City Council be done in consultation with the IDT.
- B. Amend the legislation to permit the IDT, at their discretion, to submit a supplemental report to the OEO’s annual report.
- C. Pass the legislation as proposed.

3. It is unclear how the City will strengthen the City’s response to harassment allegations.

The ordinance requires the OEO to report annually to the Mayor’s Office and City Council on any issues that have a broad systemic impact including recommendations to change the City’s Personnel Rules, investigation system, workplace expectations, and other City processes and systems. This report is due annually by March 31.

However, neither the legislation nor the Executive Order require any action from the Mayor or City Council regarding the actions they will take upon receiving recommendations in OEO’s annual report.

Options:

- A. Amend the legislation to require that the Mayor respond and state the Council’s intent to respond to any recommendations in the OEO’s annual report within 90 days of receipt.
- B. Amend the legislation to require the OEO to compile and maintain data on how many employees they have served and the types of concerns they have heard and provide this information in the annual report.

- C. Pass the legislation as proposed.

4. The OEO only covers Executive Departments.

Ensuring a workplace free of harassment for City employees is a Citywide issue and should involve all branches of government. The legislation refers to the role of the OEO as assisting individual City employees but is not clear that this encompasses all employees (*e.g.*, judicial and legislative branch employees), not just Executive branch employees.

Options:

- A. Amend the legislation to clarify that the OEO will assist all City employees from all branches of city government and require that the Implementation Plan include how information on other branches of government will be compiled and disseminated.
- B. Pass the legislation as proposed.

5. The 2019-2020 Proposed Budget proposes 3.0 FTEs (a Manager 2 position as the ombud and two Strategic Advisor 1 positions to assist City employees in navigating City processes), but does not provide separate administrative staff. SDHR and OEO instead would enter into a Memorandum of Understanding for SDHR administrative staff to provide OEO with administrative support.

The new OEO may need high-level staff to carry out the duties of the OEO but there is no dedicated administrative staff within the OEO to assist these positions. It may be difficult for higher level positions to complete the scope of their responsibilities without internal administrative assistance. It is also unclear if 3.0 FTEs is a sufficient staffing level or if the budget is sufficient.

Options:

- A. Amend the legislation to require that as part of the annual report the OEO include an assessment of whether the resources and staffing are sufficient to carry out their assigned function.
- B. Pass the legislation as proposed.

6. Concerns have been raised as to whether the OEO will be independent and what independence means in practice.

As proposed by the legislation, OEO will be independent from other Executive departments. However, it is not proposed to be independent from the Executive Branch altogether – the director is a Manager 2 position that will be appointed by the Mayor and confirmed by Council and is likely subject to at-will removal.

However, this may be mitigated by the following considerations:

- OEO will not be part of either SDHR or OCR, the two most likely departments for independence concerns to be raised.

- OEO is envisioned to have a navigator role and will recommend changes to the existing system as they work within the existing system to see where improvements can be made. However, the decisions on whether to change the reporting system will have to be made by the Mayor and City Council. Perhaps the most important safeguard is to ensure OEO provide recommendations as anticipated in the ordinance.
- Oversight by Council will provide some safeguards. If the Council amends the ordinance to require submission of the implementation plan, it will have an opportunity to review how the OEO plans to operate.
- If Council amends the ordinance to require the annual report to include the number of employees assisted and types of concerns they have, Council will have an indication of whether employees are using the OEO and whether there is an environment of trust.
- The appointment structure proposed is the most common one used by the City. Another mechanism used to appoint directors is for a commission such as the Ethics and Elections Director (who is initially appointed by the commission and confirmed by the City Council) . Also, the City Librarian is appointed by the Library Board.

Options:

- A. Amend the legislation to provide a different appointment structure than appointed by the Mayor and confirmed by Council or to require the OEO Director position be for a specified term and provide for removal for good cause. As proposed the Manager 2 may be removed at the discretion of the appointing authority.
- B. Pass the legislation as proposed.

Budget Actions Proposed by Councilmembers as of October 10, 2018:

- 1. Legislation to define the OEO (Councilmember Herbold)** – Councilmember Herbold’s proposal would make any amendments to anticipated legislation to define independence, structure, oversight, accountability, and scope.

Attachments:

- A. Ordinance to Codify the Office of Employee Ombud in the Seattle Municipal Code