

September 18, 2020

MEMORANDUM

To: Public Safety and Human Services Committee
From: Lish Whitson, Analyst
Subject: Council Bill 119893: Whistleblower protections for reports to the Office of the Inspector General

On Tuesday, September 22, the Public Safety and Human Services Committee will consider Council Bill (CB) [119893](#), which would amend Seattle’s whistleblower protection code ([Subchapter III](#) of Chapter 4.20 of the Seattle Municipal Code) to include protections for employees who report improper governmental actions by the Seattle Police Department (SPD), including the Office of Police Accountability (OPA), to the Office of the Inspector General for Public Safety (OIG). This memorandum describes the existing whistleblower protection code and the effect of adding OIG to the code.

Whistleblower Protection Code

The whistleblower protection code provides City employees with the right to be free from retaliation when they report improper governmental actions. Key to the code are the definitions of “report” and “improper governmental action.” The proposed bill would amend the definition of “report” to include testimony about improper governmental action by the Seattle Police Department to OIG.

Under Section [4.22.805](#), “report” is defined as:

- A. Reporting any assertion of improper government action to the Executive Director including reporting violations of the Ethics and Elections Codes;
- B. Reporting any assertion of improper government action to an employee's supervisor, manager, officer or appointing authority or director;
- C. 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;
- D. Reporting alleged violations of the Fair Employment Practices ordinance or the Health Insurance Portability and Accountability Act (HIPAA) to the Office for Civil Rights;
- E. Reporting alleged misconduct by Seattle Police Department personnel to the Seattle Police Office of Professional Accountability;
- F. Reporting alleged violations of the Code of Judicial Conduct to the Washington State Commission on Judicial Conduct;
- G. Reporting alleged violations of criminal laws to any law enforcement agency;

- H. 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;
- I. Reporting if an employee is, in good faith, seeking advice, counsel or opinion on their rights and responsibilities under this subchapter to determine whether to make a report under this chapter;
- J. Reporting outside of City government if 30 days have passed since the employee made a written report pursuant to this chapter; or
- K. 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 exists where prompt attention and reporting under this subchapter by the employee could have avoided the perceived need to report immediately.

Key to this definition is the concept of "improper governmental action." The same section defines improper governmental action as follows:

"Improper governmental action"

- A. 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:
 - 1. Violates any federal, state, county or City statute, ordinance or rule;
 - 2. 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;
 - 3. Results in a gross waste of public funds or resources; or
 - 4. 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.
- B. Improper governmental action excludes:
 - 1. 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 RCW Chapters 41.08 , 41.12 , 41.14 , 41.56 , 41.59 , or 53.18 or RCW 54.04.170 and 54.04.180 .
 - 2. A properly authorized City policy, reasonable expenditure or activity merely because an employee dissents from the City policy or considers the expenditure unwise.

If an employee makes a report as defined in the code, they may be protected from retaliation. The Seattle Ethics and Elections Commission (SEEC) Executive Director is charged with reviewing complaints of retaliation. The Executive Director conducts an inquiry and, if the complaint falls within the whistleblower protection code, investigates the alleged retaliation. If the Executive Director has reasonable cause to believe that retaliation has occurred the employee has the option to (1) pursue settlement with the City or (2) file a civil case in Superior Court. The SEEC Executive Director may file a complaint alleging retaliation with the Seattle Hearing Examiner. Relief and damages vary depending on the venue and facts of the case.

Council Bill 119893

The OIG is charged with auditing and reviewing activities of SPD and the OPA and may also audit other City agencies on matters related to policing and criminal justice. During its auditing activities, OIG may hear reports of improper governmental acts. CB 119893 would amend the definition of “report” by adding “reporting any assertion of improper governmental action” related to the SPD to OIG. This would provide whistleblower status to employees who report threats to public safety or violations of City, State, or Federal Law caused by the Seattle Police Department. Providing such protection to employees who make reports will better enable the OIG to do its work.

Next Steps

If the Public Safety and Human Services Committee acts on CB 119893 at its September 22 meeting, the legislation may be considered at a City Council meeting as early as September 29.

cc: Dan Eder, Interim Director
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