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Introduced By: Derdowski
Sullivan
Proposed No.: 91-741

ORDINANCE NO. **11687**

1
2 AN ORDINANCE relating to "Whistleblower"
3 reporting and protection; in response to
4 the enactment of Chapter 42.41 RCW adding
5 a new chapter to Title 3 of the King
6 County Code in connection therewith.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. Findings. The King County council finds that
9 providing good and effective service to the public and
10 gaining its trust requires that County government officials
11 and employees behave in a legal and aboveboard manner
12 consistent with their mandate to serve the public to the best
13 of their abilities. To this end, the council finds that it
14 is in the public interest to encourage County employees to
15 report improper governmental actions whenever and wherever
16 they are observed; and that the County take steps, as
17 presently authorized by law, to investigate allegations of
18 improper governmental action and to provide remedies to such
19 behavior wherever and whenever an allegation of improper
20 governmental action is substantiated by the findings of a
21 lawful investigation.

22 The council further finds that employees reporting
23 improper governmental action need to feel safe from
24 retaliation for having done so, and that any acts of
25 retaliation against an employee making a good faith report of
26 improper governmental action will be subject to a fair and
27 impartial investigation. County employees must feel that
28 their having made a good faith report of an improper
29 governmental action which results in an act, or acts, of

1 their having made a good faith report of an improper
2 governmental action which results in an act, or acts, of
3 retaliation will cause their government to take action to
4 make them whole again.

5 RCW 42.41, enacted by the Washington State legislature
6 and signed into law in 1992, provides a framework for the
7 County enacting its own legislation which will provide a
8 mechanism for reporting improper governmental action and for
9 providing the maximum protection possible against retaliation
10 to those employees making such reports.

11 NEW SECTION. SECTION 2 There is added to K.C.C. Title 3 a
12 new section to read as follows:

13 **Definitions.** As used in this ordinance, the following
14 terms shall have these meanings:

15 A. "Investigating official" means, each in connection
16 with a report of improper governmental action within his,
17 her, or its respective jurisdiction; the ombudsman; a person
18 to whom sexual harassment was properly reported according to
19 County policy; the agency designated by the executive to
20 receive unfair employment complaints filed under K.C.C.
21 12.18; the Washington State Commission on Judicial Conduct;
22 the department of public safety's internal investigations
23 unit; the county prosecuting attorneys of the State of
24 Washington; the presiding judge of the district and superior
25 courts; the executive; the department director of any
26 executive agency; the assessor; the director of the
27 department of judicial administration/ clerk of the superior
28 court; the chair of the council; and any authorized assistant

1 or representative of any of them in cases within their
2 respective appropriate jurisdictions.

3 B. "Employee" or "County employee" means any individual
4 who is appointed as an employee by the appointing authority
5 of a County agency, office, department, council, board,
6 commission or other separate unit or division of county
7 government, however designated. The term "employee" or
8 "county employee" also includes County elected officials and
9 members of county boards, commissions, committees, or other
10 multi-member bodies.

11 C. "Improper governmental action"

12 1. "Improper governmental action" means any action
13 by a County officer or employee that is undertaken in
14 the performance of the officer's or employee's official
15 duties, whether or not the action is within the scope of
16 employment, and:

- 17 a. Violates any State or federal law or rule
18 or County ordinance or rule, or
19 b. Constitutes an abuse of authority, or
20 c. Creates a substantial or specific danger to
21 the public health or safety, or
22 d. results in a gross waste of public funds.

23 2. "Improper governmental action" excludes
24 personnel actions, including but not limited to:
25 employee grievances, complaints, appointments,
26 promotions, transfers, assignments, reassignments,
27 reinstatements, restorations, performance evaluations,
28 reductions in pay, dismissals, suspensions, demotions,
29 reprimands, violations of collective bargaining or civil

1 service laws, or alleged violations of agreements with
2 labor organizations under collective bargaining.

3 3. A properly authorized County program or
4 activity does not become an "improper governmental
5 action" because an employee or investigating official
6 dissents from the County policy or considers the
7 expenditures unwise.

8 D. "Retaliate," and its kindred nouns, "retaliation" and
9 "retaliatory action," means:

10 1. to make, because of a report of improper
11 governmental action, any unwarranted adverse change in
12 an employee's employment status or the terms and
13 conditions of employment including, but not limited to,
14 denial of adequate staff to perform duties; frequent
15 staff changes; frequent and undesirable office changes;
16 refusal to assign meaningful work; unsubstantiated
17 letters of reprimand or unsatisfactory performance
18 evaluations; demotion; reduction in pay; denial of
19 promotion; transfer or reassignment; suspension or
20 dismissal; or other unwarranted disciplinary action; or,

21 2. hostile actions by another employee towards a
22 local government employee that were encouraged by a
23 supervisor or senior manager or official.

24 E. "Emergency," means a circumstance that if not
25 immediately changed may cause harm or injury to person or
26 property.

27 NEW SECTION. SECTION 3. There is added to K.C.C. Title 3 a
28 new section to read as follows: _

29 **Policy - Purpose.** Unless prohibited by State law,
30 County employees are encouraged to report on improper

1 governmental action to the appropriate County or other
2 government official. To assist such reporting and to
3 implement Sections 42.41.030 and 42.41.040 of the Revised
4 Code of Washington ("RCW"), this ordinance provides County
5 employees a process for reporting improper governmental
6 action and protection from retaliatory action for reporting
7 and cooperating in the investigation and/or prosecution of
8 improper governmental action in good faith in accordance with
9 this subchapter.

10 NEW SECTION SECTION 4. There is added to K.C.C. Title 3 a
11 new section to read as follows: _

12 **Right to report.** A. Right. Every County employee shall
13 have the right to report, in good faith and in accordance
14 with this ordinance, information concerning an improper
15 governmental action.

16 B. Limitations.

17 1. This section does not authorize a County
18 employee to report information that is subject to an
19 applicable privilege against disclosure at law (e.g.,
20 RCW 5.60.060 privileged communications) unless waived,
21 or to make disclosure where prohibited at law. The only
22 purpose of this ordinance is to protect and encourage
23 employees who know or in good faith believe improper
24 governmental action has occurred to report those actions
25 in good faith and in accordance with this ordinance.

26 2. Except in cases of emergency where the employee
27 believes in good faith that substantial damage to
28 persons or property will result unless a report is made
29 immediately to a person or entity who is not the
30 appropriate investigating official listed in section 2A

1 of this ordinance, the employee shall, before making a
2 report to a person who is not the appropriate
3 investigating official, first make a written report of
4 the improper governmental action to the appropriate
5 investigating official. No emergency under this
6 subsection exists where prompt attention and reporting
7 under this subchapter by the employee could have avoided
8 the perceived need to report immediately to a person not
9 the appropriate investigating official.

10 3. An employee making a written report as required
11 by this subsection is encouraged to wait at least thirty
12 (30) days from receipt of the written report by the
13 appropriate investigating official before reporting the
14 improper governmental action to a person who is not an
15 appropriate investigating official. However, reporting
16 to a person who is not an appropriate investigating
17 official prior to this thirty (30) day period will not
18 result in the loss of the protections contained in this
19 ordinance.

20 4. An employee's reporting of his or her own
21 improper action does not grant an employee immunity from
22 discipline or termination insofar as his or her improper
23 action would be cause for discipline.

24 C. Employee Protections and Protected Conduct.

25 1. The following conduct by employees is protected
26 if carried out in good faith under this subchapter:

27 a. Reporting sexual harassment to the
28 employee's supervisor, department head, or other
29 government official as set out in the County's
30 adopted procedure for reporting sexual harassment

1 complaints; reporting violations of the fair
2 employment practices ordinance (K.C.C. 12.18) to
3 the executive or his or her designee; reporting
4 police misconduct to the department of public
5 safety's internal investigation unit; reporting
6 violations of the Code of Judicial Conduct to the
7 Washington State Commission on Judicial Conduct;
8 reporting improper governmental action occurring
9 within the district court to the presiding judge of
10 the district court; reporting improper governmental
11 action occurring within the legislative branch to
12 the chair of the council; reporting improper
13 governmental action occurring within the executive
14 branch to the executive or to the department
15 director of the executive agency in which the
16 alleged improper governmental action occurred or to
17 the ombudsman; reporting improper governmental
18 action occurring within the department of judicial
19 administration to the director/ clerk of the
20 superior court or to the ombudsman; reporting
21 improper governmental action occurring within the
22 department of assessments to the assessor or the
23 ombudsman; reporting improper governmental action
24 occurring within the superior court to the
25 presiding judge of the superior court; reporting
26 violations of criminal laws to the county
27 prosecuting attorney; and reporting violations of
28 the Ethics Code, and any actions for which no other
29 appropriate recipient of a report is listed in this
30 subsection, to the ombudsman.

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b. Cooperating in an investigation by an "investigating official" related to "improper governmental action"; and/or

c. Testifying in a proceeding or prosecution arising out of an "improper governmental action."

2. No County officer or employee shall retaliate against any employee because that employee has in good faith utilized the provisions of this ordinance.

D. Penalty. Any County officer or employee who engages in prohibited retaliatory action is subject to disciplinary action up to and including termination.

F. Distribution of policy and procedures. Upon entering County service, every County officer and employee shall receive a written summary of this chapter, the procedures for reporting improper governmental actions to investigating officials, the procedures for obtaining the protections extended, and the prohibition against retaliation in this section. Copies of these summaries shall be copies conspicuously posted where all employees will have reasonable access to them.

NEW SECTION SECTION 5 There is added to K.C.C. Title 3 a new section to read as follows:

Confidentiality. To the extent allowed by law, the identity of an employee reporting information about an improper governmental action shall be kept confidential unless the employee in writing waives confidentiality.

NEW SECTION SECTION 6 There is added to K.C.C. Title 3 a new section to read as follows:

Investigation. A. Referral or Retention.

1 1. The ombudsman is the appropriate investigating
2 official for all improper governmental actions not
3 specifically referred to in section 4(C)(1)(a) of this
4 ordinance. The ombudsman is also an appropriate
5 investigating official for alleged improper governmental
6 action occurring within an executive branch agency,
7 including the department of assessments and the
8 department of judicial administration. If, in
9 accordance with the guidelines of section 4(C)(1)(a),
10 the ombudsman is not the appropriate investigating
11 official, the ombudsman shall, immediately upon receipt,
12 refer reports alleging improper governmental action to
13 the appropriate investigating official listed in section
14 2 of this ordinance. If the report of improper
15 governmental meets the definition of a complaint under
16 K.C.C. 3.04.055 (the Employee Code of Ethics), the
17 ombudsman shall investigate that allegation according to
18 the ordinances and rules applicable to the ethics code.

19 2. If the ombudsman is an appropriate
20 investigating official and the report does not meet the
21 definition of a complaint under the ethics code, the
22 ombudsman may refer the report to the department
23 director of the agency in which the alleged improper
24 governmental action occurred or to the chief elected
25 official of the branch of government implicated in the
26 allegation, who shall ensure that the appropriate
27 officer or agency responds to the complainant in writing
28 within thirty (30) days of the receipt of the report,
29 with a copy of the response to the ombudsman. If the
30 ombudsman does not refer to another official, or if the

1 other official's response is not timely or satisfactory to
2 the ombudsman, the ombudsman may conduct an investigation.

3 3. If a report of improper governmental action is
4 filed with the executive or a department director, including
5 the clerk of the superior court or the assessor, and a report
6 is concurrently filed with the ombudsman, the ombudsman
7 should defer action until the investigation is completed by
8 the affected department. When the ombudsman chooses to
9 conduct a concurrent investigation the ombudsman shall notify
10 the executive and the chair of the council. The procedures
11 in subsections 6B through E of this ordinance shall apply
12 only to the ombudsman when he or she is investigating a
13 report of an improper governmental action that is not
14 investigated according to the rules applicable to the ethics
15 code in accordance with subsection 6A(1) of this ordinance.
16 The procedures in sections 6B through E of this ordinance do
17 not apply to any other government official.

18 B. Ombudsman's Investigation.

19 1. At any stage in an investigation of an alleged
20 "improper governmental action", the ombudsman may issue
21 subpoenas, administer oaths, examine witnesses, compel the
22 production of documents or other evidence, refer the matter
23 to the State Auditor, law enforcement authorities or other
24 governmental agency, and/or issue reports, each as deemed
25 appropriate.

26 2. Within thirty (30) days after receiving information
27 about an "improper governmental action" from a County
28 employee, the ombudsman shall conduct a

1 preliminary investigation, and provide the complainant
2 with a written report of the general status of the
3 investigation which may include matters for further
4 research or inquiry.

5 C. Completion and Reports. Upon completion of the
6 investigation, the ombudsman shall notify the complainant in
7 writing of any determinations made. If the ombudsman
8 determines that an improper governmental action has occurred,
9 the ombudsman shall report the nature and details of the
10 activity to the complainant; to the head of the department
11 with responsibility for the action and if a department head
12 is implicated, to the executive and County council; and to
13 such other governmental officials or agencies as the
14 ombudsman deems appropriate. If satisfactory action to follow
15 up the report is not being taken within a reasonable time,
16 the ombudsman shall report his or her determination to the
17 Executive and advise the County council.

18 D. Closure. The ombudsman may close an investigation at
19 any time he or she determines that no further action is
20 warranted and shall so notify the complainant.

21 E. Decisions of the ombudsman under this section may not
22 be appealed to the Board of Ethics.

23 NEW SECTION SECTION 7. There is added to K.C.C. Title 3 a
24 new section to read as follows:

25 **Reporting and Adjudicating Retaliation.**

26 A. Complaint. In order to seek relief, an employee who
27 believes he or she has been retaliated against in violation
28 of subsection C(2) of section 4 of this ordinance must file a
29 signed written complaint within 30 days of the occurrence
30 alleged to constitute retaliation. The complaint shall be

1 filed with the ombudsman and must specify the alleged
2 retaliatory action and the relief requested.

3 B. Investigation and Response. The ombudsman shall
4 immediately forward the complaint to the head of the
5 executive office or department in which the retaliation is
6 alleged to have occurred; or to the prosecuting attorney, if
7 his office is implicated in the complaint; or to the chair of
8 the County council or to the presiding judge of the superior
9 or district courts if their respective branches are
10 implicated in the complaint. The head of the department,
11 office, or branch to which the complaint was referred shall
12 ensure that the complainant is sent a response within thirty
13 (30) days after the filing of the complaint with the
14 ombudsman. If the head of an executive office or department
15 is alleged to have retaliated in violation of subsection C(2)
16 of section 4 of this ordinance, the executive shall ensure
17 that the complainant is sent a response within thirty (30)
18 days after the filing of the complaint with the ombudsman.

19 C. Hearing. If an employee who has filed a complaint of
20 retaliation under this section is dissatisfied with the
21 response and desires a hearing pursuant to section 42.41.040
22 RCW, or the employee has not received a response within
23 forty-five (45) days of having filed the complaint with the
24 ombudsman, the employee shall deliver a request for hearing
25 to the head of the branch within which retaliation is alleged
26 to have occurred within fifteen (15) days of receipt of the
27 response from the County or, if no response is received
28 within the forty-five (45) day response period, within
29 fifteen (15) days of the expiration of the response time
30 period. Within five (5) working days of receipt of the

1 request for hearing, the County shall apply to the state
2 office of administrative hearings for a hearing to be
3 conducted as provided in Section 42.41.040 RCW.

4 D. Extension. If the chief elected official in the
5 branch of government where the retaliation is alleged to have
6 occurred finds that additional time is needed to make a
7 proper response to the complaint of retaliation, he or she
8 shall notify the complainant in writing prior to the
9 expiration of the forty-five (45) day response period. The
10 effect of such notice is to extend for an additional forty-
11 five (45) days the time period in which a response must be
12 made. Only one forty-five (45) day extension may be
13 obtained.

14 PROVIDED however, an employee shall not have the right
15 to seek the a hearing under this section pursuant to RCW
16 42.41.040 if the complaint of retaliation is pursued under
17 and falls within the subject matter jurisdiction of a
18 collective bargaining agreement grievance procedure ending in
19 binding arbitration or the career service grievance procedure
20 ending in a hearing before the personnel board.
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NEW SECTION SECTION 8. There is added to K.C.C. Title 3
a new section to read as follows:

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.

INTRODUCED AND READ for the first time this 9th
day of September, 1991.

PASSED by a vote of 13 to 0 this 13th day of
February, 1995.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Kent Pullen
Chair

ATTEST:

Gerald A. Peterson
Clerk of the Council

APPROVED this 24th day of February, 1995.

Greg Lohse
King County Executive