

Ordinance No. 123309

Council Bill No. 116859

AN ORDINANCE relating to executive and merit leave; amending Seattle Municipal Code Section 4.20.320 to provide for executive and merit leave for additional employees who serve in exempt and eligible positions, making technical corrections, eliminating superfluous language, and ratifying and confirming certain prior acts.

CF No. _____

Date Introduced:	<u>May 10, 2010</u>	
Date 1st Referred:	To: (committee) <u>Finance and Budget</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>5-24-10</u> <u>8-0</u>	
Date Presented to Mayor:	Date Approved: <u>5-25-10</u> <u>June 3, 2010</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input type="checkbox"/> F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Jean Goldson*
Councilmember

Committee Action:

Y - JG, M'OB, NL (Do pass)

5-24-10 Passed 8-0 Excused RC

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

ORDINANCE 123309

AN ORDINANCE relating to executive and merit leave; amending Seattle Municipal Code Section 4.20.320 to provide for executive and merit leave for additional employees who serve in exempt and eligible positions, making technical corrections, eliminating superfluous language, and ratifying and confirming certain prior acts.

WHEREAS, salaried administrative, professional and executive employees as defined by the Fair Labor Standards Act and the Washington Minimum Wage Act are exempt from overtime pay provisions and not entitled to receive overtime pay; and

WHEREAS, salaried employees exempt from or not covered by the overtime pay provisions of the Fair Labor Standards Act or the Washington Minimum Wage Act are typically expected to work more than a 40 hour work week without receiving overtime compensation; and

WHEREAS, it is equitable to compensate employees who are exempt from or not covered by the overtime pay provisions of Fair Labor Standards Act or the Washington Minimum Wage Act and who typically work more than a 40 hour work week by providing Executive Leave; and

WHEREAS, where deemed appropriate by the appointing authority, the extraordinary work efforts of salaried employees who are exempt from or not covered by the overtime pay provisions of Fair labor Standards Act or the Washington Minimum Wage Act should be recognized by providing eligible employees with Merit Leave;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 4.20.320 of the Seattle Municipal code is amended as follows:

SMC 4.20.320 Executive and Merit leave for eligible employees((:))

A. Definitions((:))

1. "Eligible employee" is any regular, salaried, professional, administrative, or executive employee who is exempt from or not covered by the overtime pay provisions of the Fair Labor



1 Standards Act~~((;))~~ or the Washington Minimum Wage Act, and not otherwise excluded by this
2 section. Eligible employees are those assigned to a classification or position which receives a
3 top salary step equal to or greater than the top salary step of pay range 36.5, and those assigned
4 to the Accountability Pay for Executives Program, Manager Compensation Program, or Strategic
5 Advisor Program, regardless of pay group or zone, and are not entitled to receive overtime
6 compensation or compensatory time for hours worked in excess of ~~((forty-))~~40~~((;))~~ in one ~~((+))~~
7 workweek. In the Executive Department, the Law Department, and the Legislative Branch an
8 “eligible employee” is any regular, salaried employee who is not entitled to receive overtime
9 compensation or compensatory time under state or federal law.

11 B. Policy~~((;))~~

12 1. Executive leave: Unless specifically excluded in subsection C of this Section 4.20.320
13 ~~((below))~~, all eligible employees shall receive four ~~((4))~~ days of executive leave at the
14 beginning of each calendar year. Executive leave must be used in the calendar year for which it
15 is given.

17 2. Eligible employees are expected to fulfill their professional responsibilities with no
18 ~~((expectation of receiving))~~ receipt of overtime or compensatory time off in lieu of overtime,
19 regardless of the actual time it takes to perform assigned tasks. Eligible employees should be
20 allowed discretion in structuring their workday to ensure that assigned tasks are completed.
21 Eligible employees are not required to use paid vacation or sick leave to cover occasional
22 absences of less than four ~~((4))~~ hours during any one ~~((+))~~ workday, and shall be paid their
23 regular salary despite such absences. Eligible employees are expected to notify supervisors in
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1 advance of such absences and are expected to schedule such absences in a manner which will
2 cause the least impact on work within their work unit.

3 3. Merit leave: An Appointing Authority (~~(A Department Director)~~) may, at his or her
4 discretion, award to eligible employees up to six (~~((6))~~) days of merit leave during the month of
5 December of each year. Eligible employees must use any awarded merit leave in the subsequent
6 calendar year and may not receive cash in lieu of merit leave.

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8 4. Out-of-class assignment: Employees who are otherwise eligible for overtime
9 compensation who work out-of-class in an executive leave eligible position shall be eligible for
10 executive and merit leave according to a minimum hour threshold and formula established and
11 published by the Personnel Director and shall not receive overtime compensation when so
12 assigned. This provision may apply to represented employees provided their bargaining agent
13 has concurred in its application. (~~(Part 2 of this subsection)~~) Subsection B.2 of this Section
14 4.20.320 becomes applicable to employees who work out-of-class in an executive leave eligible
15 position after a specified threshold is reached as defined by the Personnel Director.

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17 C. Exclusions(~~(-)~~)

18 1. (~~(Employees who are not covered by or are otherwise exempt from provisions of the~~
19 ~~Fair Labor Standards Act and work in the Executive Department, the Legislative Department, the~~
20 ~~Law Department and~~) Department Directors who receive vacation allowance pursuant to
21 (~~(SMC)~~) Section 4.34.030 shall be excluded from Section(~~(s)~~) 4.20.315 and this Section
22 4.20.320. Officers and employees of the Seattle Municipal Court who are exempt from, or not
23 otherwise covered by the Fair Labor Standards Act; and employees who are working pursuant to
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1 a collective bargaining agreement shall also be excluded from Section((s)) 4.20.315 and this
2 Section 4.20.320 except as provided for in subsection ((B4)) B.4 of this ((section)) Section
3 4.20.320. All employees employed by the Seattle Public ((library))Library are specifically
4 excluded from all provisions of Section((s)) 4.20.315 and this Section 4.20.320.

5 2. Emergency Response Employees. In order to ensure continued effective response to
6 public emergencies, all emergency response employees who work in position titles designated in
7 ((SMC)) subsection A.2. of this Section 4.20.320((A2)) shall be eligible for overtime or
8 compensatory time at the rate of time-and-one-half for all hours worked in excess of ((forty
9)40((9))) during one ((1)) workweek. Emergency response employees shall not receive
10 executive or merit leave ((benefit(s))) benefits.

11 3. Class Series Exception. If at least one ((1)) position title in a class series is below the
12 36.5 salary range, then all position titles in the class series up through and including the "senior"
13 level will be eligible for overtime and shall not receive executive or merit leave ((benefit(s)))
14 benefits. This Section does not apply to eligible employees in the Executive Department, the
15 Law Department and the Legislative Branch.

16 ((D. Review. It is recognized that executive and merit leave are new personnel practices
17 in The City of Seattle, and that it may be necessary to adjust aspects of this policy from time to
18 time. Therefore, it shall be the responsibility of the Personnel Director to study the impact of the
19 executive leave policy and, when appropriate, make recommendations to the Council regarding
20 its impact, and propose any appropriate rules to implement the provisions of this act. The
21 Personnel Director shall make a report to the Council regarding implementation of this policy



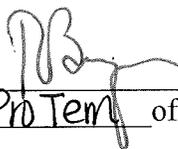
1 ~~twenty-four (24) months after the effective date of the ordinance codified in Sections 4.20.315~~
2 ~~and 4.20.320.))~~

3 **Section 2.** The award of merit and/or executive leave in departments and branches not
4 previously covered by Section 4.20.320 is hereby ratified and confirmed. Such leave may only
5 be used during continued employment and no employee may receive cash in lieu of such leave.
6 The appointing authorities in those departments and branches are authorized to place conditions
7 and limitations on the use of such leave.
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9 **Section 3.** This ordinance shall take effect and be in force 30 days from and after its
10 approval by the Mayor, but if not approved and returned by the Mayor within 10 days after
11 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

12 Passed by the City Council the 24th day of May, 2010, and
13 signed by me in open session in authentication of its passage this

14 24th day of May, 2010.

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18 President Pro Tem of the City Council

19 Approved by me this 3rd day of June, 2010

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21 
22 Michael McGinn, Mayor



Filed by me this 3rd day of June, 2010.

Carol Shu
City Clerk

(Seal)

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
City Attorney's Office	Darby DuComb, 684-8228	

Legislation Title: Executive and Merit Leave Ordinance

• **Summary of the Legislation:**

This ordinance removes the Executive Department, Legislative Branch, and Law Department exclusion from the Executive and Merit Leave programs and allows such departments' eligible employees to participate in such program. The Municipal Court and Seattle Public Library have opted not to alter their exclusion from the program.

• **Background:**

Upon taking office on January 1, 2010, the Seattle City Attorney evaluated the Seattle City Attorney's Office executive and merit leave program and concluded that the program should be authorized by ordinance for the Executive Department, the Law Department and the Legislative Branch. This ordinance amends SMC 4.20.320 to include these previously excluded departments in the City's merit and executive leave program so that the outstanding performance and additional work hours of eligible employees in those departments and branches can be recognized through the program.

• *Please check one of the following:*

X **This legislation does not have any financial implications.**

• **What is the financial cost of not implementing the legislation?** Costs stemming from unauthorized leave provisions.

• **Does this legislation affect any departments besides the originating department?** • Yes, the Executive Department, and the Legislative Department. Those departments are aware of this legislation.

• **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None.

• **Is the legislation subject to public hearing requirements:** No.





Seattle City Attorney

Peter S. Holmes

May 4, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes eligible employees in the Executive Department, Legislative Branch, and Law Department to participate in the City's Executive and Merit Leave Programs.

Upon taking office on January 1, 2010, the Seattle City Attorney evaluated the Seattle City Attorney's Office merit leave program and concluded that the program should be authorized by ordinance. This ordinance seeks to explicitly extend the City's executive and merit leave programs to some of the departments and branches that were excluded from the original ordinance, make the programs transparent, and allow the City to track the leave granted in its payroll system.

Thank you for your consideration of this legislation. Should you have questions, please contact Darby DuComb, Chief of Staff for Seattle City Attorney Peter Holmes, at (206) 684-8228.

Sincerely,

Peter S. Holmes
Seattle City Attorney

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

255801
CITY OF SEATTLE, CLERKS OFFICE

No.

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.

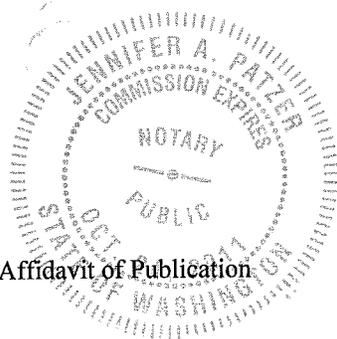
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 123309

was published on

06/07/10

The amount of the fee charged for the foregoing publication is the sum of \$ 273.00, which amount has been paid in full.



James C. [Signature]
Subscribed and sworn to before me on
06/07/10
[Signature]
Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

ORDINANCE 123309

AN ORDINANCE relating to executive and merit leave; amending Seattle Municipal Code Section 4.20.320 to provide for executive and merit leave for additional employees who serve in exempt and eligible positions, making technical corrections, eliminating superfluous language, and ratifying and confirming certain prior acts.

WHEREAS, salaried administrative, professional and executive employees as defined by the Fair Labor Standards Act and the Washington Minimum Wage Act are exempt from overtime pay provisions and not entitled to receive overtime pay; and

WHEREAS, salaried employees exempt from or not covered by the overtime pay provisions of the Fair Labor Standards Act or the Washington Minimum Wage Act are typically expected to work more than a 40 hour work week without receiving overtime compensation; and

WHEREAS, it is equitable to compensate employees who are exempt from or not covered by the overtime pay provisions of Fair Labor Standards Act or the Washington Minimum Wage Act and who typically work more than a 40 hour work week by providing Executive Leave; and

WHEREAS, where deemed appropriate by the appointing authority, the extraordinary work efforts of salaried employees who are exempt from or not covered by the overtime pay provisions of Fair Labor Standards Act or the Washington Minimum Wage Act should be recognized by providing eligible employees with Merit Leave;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 4.20.320 of the Seattle Municipal code is amended as follows:

SMC 4.20.320 Executive and Merit leave for eligible employees((:))

A. Definitions((:))

1. "Eligible employee" is any regular, salaried, professional, administrative, or executive employee who is exempt from or not covered by the overtime pay provisions of the Fair Labor Standards Act((:)) or the Washington Minimum Wage Act, and not otherwise excluded by this section. Eligible employees are those assigned to a classification or position which receives a top salary step equal to or greater than the top salary step of pay range 36.5, and those assigned to the Accountability Pay for Executives Program, Manager Compensation Program, or Strategic Advisor Program, regardless of pay group or zone, and are not entitled to receive overtime compensation or compensatory time for hours worked in excess of ((forty-))40((:)) in one ((H)) workweek. In the Executive Department, the Law Department, and the Legislative Branch an "eligible employee" is any regular, salaried employee who is not entitled to receive overtime compensation or compensatory time under state or federal law.

B. Policy((:))

1. Executive leave: Unless specifically excluded in subsection C of this Section 4.20.320 ((below)), all eligible employees shall receive four ((H)) days of executive leave at the beginning of each calendar year. Executive leave must be used in the calendar year for which it is given.

2. Eligible employees are expected to fulfill their professional responsibilities with no ((expectation of receiving)) receipt of overtime or compensatory time off in lieu of overtime, regardless of the actual time it takes to perform assigned tasks. Eligible employees should be allowed discretion in structuring their workday to ensure that assigned tasks are completed. Eligible employees are not required to use paid vacation or sick leave to cover occasional absences of less than four ((H)) hours during any one ((H)) workday, and shall be paid their regular salary despite such absences. Eligible employees are expected to notify supervisors in advance of such absences and are expected to schedule such absences in a manner which will cause the least impact on work within their work unit.

3. Merit leave: An Appointing Authority ((A-Department-Director)) may, at his or her discretion, award to eligible employees up to six ((6)) days of merit leave during the month of December of each year. Eligible employees must use any awarded merit leave in the subsequent calendar year and may not receive cash in lieu of merit leave.

4. Out-of-class assignment: Employees who are otherwise eligible for overtime compensation who work out-of-class in an executive leave eligible position shall be eligible for executive and merit leave according to a minimum hour threshold and formula established and published by the Personnel Director and shall not receive overtime compensation when so assigned. This provision may apply to represented employees provided their bargaining agent has concurred in its application. ((Part-2-of-this-subsection)) Subsection B.2 of this Section 4.20.320 becomes applicable to employees who work out-of-class in an executive leave eligible position after a specified threshold is reached as defined by the Personnel Director.

C. Exclusions((:))

1. ((Employees who are not covered by or are otherwise exempt from provisions of the Fair Labor Standards Act and work in the Executive Department, the Legislative Department, the Law Department and) Department Directors who receive vaca-

tion allowance pursuant to ((SMC)) Section 4.34.030 shall be excluded from Section((s)) 4.20.315 and this Section 4.20.320. Officers and employees of the Seattle Municipal Court who are exempt from, or not otherwise covered by the Fair Labor Standards Act; and employees who are working pursuant to a collective bargaining agreement shall also be excluded from Section((s)) 4.20.315 and this Section 4.20.320 except as provided for in subsection ((B4)) B.4 of this ((section)) Section 4.20.320. All employees employed by the Seattle Public ((library))Library are specifically excluded from all provisions of Section((s)) 4.20.315 and this Section 4.20.320.

2. Emergency Response Employees. In order to ensure continued effective response to public emergencies, all emergency response employees who work in position titles designated in ((SMC)) subsection A.2 of this Section 4.20.320((A2)) shall be eligible for overtime or compensatory time at the rate of time-and-one-half for all hours worked in excess of ((forty-))40((:)) during one ((H)) workweek. Emergency response employees shall not receive executive or merit leave ((benefit(s))) benefits.

3. Class Series Exception. If at least one ((1)) position title in a class series is below the 36.5 salary range, then all position titles in the class series up through and including the "senior" level will be eligible for overtime and shall not receive executive or merit leave ((benefit(s))) benefits. This Section does not apply to eligible employees in the Executive Department, the Law Department and the Legislative Branch.

((D-Review. It is recognized that executive and merit leave are new personnel practices in The City of Seattle, and that it may be necessary to adjust aspects of this policy from time to time. Therefore, it shall be the responsibility of the Personnel Director to study the impact of the executive leave policy and, when appropriate, make recommendations to the Council regarding its impact, and propose any appropriate rules to implement the provisions of this act. The Personnel Director shall make a report to the Council regarding implementation of this policy twenty-four (24) months after the effective date of the ordinance codified in Sections 4.20.315 and 4.20.320-))

Section 2. The award of merit and/or executive leave in departments and branches not previously covered by Section 4.20.320 is hereby ratified and confirmed. Such leave may only be used during continued employment and no employee may receive cash in lieu of such leave. The appointing authorities in those departments and branches are authorized to place conditions and limitations on the use of such leave.

Section 3. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of May, 2010, and signed by me in open session in authentication of its passage this

24th day of May, 2010.

RICHARD CONLIN,

President of the City Council.

Approved by me this 3rd day of June, 2010.

MICHAEL MCGINN,

Mayor.

Filed by me this 3rd day of June, 2010.

(Seal) JUDITH E. PIPPIN,

City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, June 7, 2010.

6/7(255801)