

ORDINANCE _____

AN ORDINANCE relating to the Whistleblower Protection Code; amending the following sections of the Seattle Municipal Code (SMC): Section 4.20.800 to clarify the legislative purpose, Section 4.20.810 to clarify the rights and responsibilities of employees and the process for reporting, Section 4.20.860 to amend the manner in which allegations of retaliation are reported, investigated and resolved, Section 4.16.070.F adding retaliation to prohibited behavior under the Ethics Code, Section 3.70.010 and subsection 3.70.100.A redefining the jurisdiction of the Ethics and Elections Commission to include administration of the Whistleblower Protection Code; adding the following new sections to the SMC: Section 4.20.805 containing definitions of terms used in the Whistleblower Protection Code, Section 4.20.870 creating a private cause of action for retaliation against whistleblowers, Section 4.20.875 providing the Ethics and Elections Director investigative tools including subpoena power; repealing the following sections of the SMC: whose content had been replaced by amending or creating other sections, Section 4.20.820 concerning confidentiality provisions, Section 4.20.840 concerning civil penalties, and Section 4.20.850 concerning definitions.

WHEREAS, in 1990, 1991, 1992 and 1994, the City Council has recognized the important public policy inherently expressed by the City's Whistleblower Protection Code; and

WHEREAS, it is in the public interest to encourage public employees to report instances of improper governmental action in order to give the governmental entity the opportunity to correct improper governmental actions; and

WHEREAS, the most effective way to encourage public employees to report improper governmental action is to provide an effective whistleblower protection program that includes a clear reporting process and effective protection from retaliation; and

WHEREAS, City employees who step forward as whistleblowers to make good faith reports of perceived improper governmental actions serve the public interest; and

WHEREAS, it is the policy of the City not to disclose the identity of a Cooperating Employee who in good faith reports alleged improper government action, a policy which is intended to ensure that Cooperating Employees report potential improper governmental action without concern that providing such information would endanger their physical safety or property, their right to privacy, or result in any form of retaliation; and

1 WHEREAS, City employees who step forward as whistleblowers uphold the principle that
2 holding a public office or employment is a public trust; and

3 WHEREAS, the efficient and honest use of public funds is of paramount importance to
4 upholding the public trust; and

5 WHEREAS, ensuring that government comports with the rule of law strengthens a democratic
6 government; and

7 WHEREAS, ensuring that governmental actions advance and protect both the public's health and
8 safety is critical to our communities; and

9 WHEREAS, the dissemination of thorough, accurate, truthful and necessary information is the
10 basis upon which decision makers make informed decisions and judgments; and

11 WHEREAS, it is the intent of the City of Seattle to protect City employees from retaliation for
12 reporting improper governmental actions regardless of whether the information arguably
13 relates to a policy decision, whether properly or improperly implemented; and

14 WHEREAS it is the intent of the City of Seattle to fund a robust, independent and effective
15 whistleblower protection program; and

16 WHEREAS, an effective whistleblower protection program should include: an accessible
17 reporting system; prompt, efficient, and independent investigation and evaluation of
18 allegations that whistleblowers have been subject to retaliation; and effective remedies in
19 cases where such retaliation has occurred; NOW, THEREFORE,

20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21 **Section 1.** Section 4.20.800 of the Seattle Municipal Code, last amended by Ordinance
22 117039, is amended as follows:

23 4.20.800 Policy – ((P))purpose ((-))

24 ~~((Unless prohibited by state law, City employees are encouraged to report on improper
25 governmental action to the appropriate City or other government official, depending on the
26 nature of the improper governmental action. To assist such reporting and to implement Sections
27 42.41.030 and 42.41.040 of the Revised Code of Washington ("RCW"), Sections 4.20.800~~

1 through 4.20.860 provide City employees a process for reporting improper governmental action
2 and protection from retaliatory action for reporting and cooperating in the investigation and/or
3 prosecution of improper governmental action in good faith in accordance with this subchapter.))

4 It is the purpose of this ordinance to:

5 A. Encourage City employees to report in good faith assertions of improper
6 governmental action and to provide employees with a clear process for making reports;

7 B. Provide City employees protection from retaliatory action for making a good faith
8 report or being perceived as making a report, or cooperating or being perceived as cooperating in
9 any subsequent inquiry or investigation;

10 C. Provide for an independent investigation of reports to inform the operation of City
11 government and promote the public confidence;

12 D. Provide for an independent investigation and determination of alleged retaliation;

13 E. Provide an administrative forum in which to address the harm caused by
14 retaliatory behavior;

15 F. Provide for the assessment of penalties against individuals who retaliate against a
16 City employee;

17 G. Adopt a whistleblower program to comply with RCW 42.41, Local Government
18 Whistleblower Protection; and

19 H. In adopting this subchapter do nothing to diminish employee rights under any
20 collective bargaining agreement.

21 **Section 2.** A new Section 4.20.805 of the Seattle Municipal Code is added to
22 Subchapter III of Chapter 4.20 as follows:
23

1 4.20.805 Definitions

2 As used in Sections 4.20.800 through 4.20.880, the following terms are defined as
3 follows:

4 "Adverse change" is an unfavorable workplace action that includes, but is not limited to:
5 denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office
6 changes or changes in the physical location of the employee's workplace or a change in the basic
7 nature of the employee's job, if either is in opposition to the employee's expressed wish; refusal
8 to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance
9 evaluations; reduction in pay; denial of promotion; transfer or reassignment; demotion,
10 suspension or dismissal or other disciplinary action; a supervisor or superior who behaves in, or
11 encourages coworkers to behave in, a hostile manner toward the employee; issuance of or
12 attempt to enforce any nondisclosure policy or agreement in a manner inconsistent with prior
13 practice; or any other significant unfavorable action that is inconsistent compared to actions
14 taken before the employee engaged in action protected by this chapter, or compared to other
15 employees who have not engaged in action protected by this chapter.
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18 "City agency" means any department, office, board, commission, or committee of the
19 City, or any subdivision thereof, but excludes public corporations and ad hoc advisory
20 committees.
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22 "City employee" or "Employee" means every individual who is, or was at the time
23 actions under this chapter were taken, appointed to a position of employment in any City agency,
24 whether in a permanent, temporary or intermittent position.
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1 "City officer" means every individual elected or appointed to an office in any City
2 agency, whether such individual is paid or unpaid.

3 "Commission" means the Seattle Ethics and Elections Commission.

4 "Cooperating employee" means a City employee who:

5 A. In good faith makes a report of alleged improper governmental action
6 pursuant to subsection 4.20.810.C;

7 B. Is perceived by the City as having reported pursuant to this chapter, but
8 who in fact, did not report;

9 C. In good faith provides information in connection with an inquiry or
10 investigation of a report or testifies in any proceeding resulting from a report; or
11

12 D. Is perceived by the employer as providing information in connection with
13 an inquiry or investigation of a report made pursuant to this chapter, but who in fact has not done
14 so.
15

16 "Executive Director" means the Executive Director of the Seattle Ethics and Elections
17 Commission.

18 "Good faith" means the individual reporting or providing information has a reasonable
19 basis in fact for reporting or providing the information.
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21 "Gross waste of public funds or resources" means to spend or use funds or resources, or
22 to allow the use of any funds or resources, in a manner grossly deviating from the standard of
23 care or competence that a reasonable person would observe in the same situation. The term
24 "gross waste of public funds or resources" also includes the non-collection of a debt or other
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1 obligation owed the City when the non-collection is done in a manner grossly deviating from the
2 standard of care or competence that a reasonable person would observe in the same situation.

3 "Improper governmental action"

4 A. Improper governmental action means any action by an employee that is
5 undertaken in the performance of the employee's official duties, whether or not the action is
6 within the scope of employment, that:

- 7
- 8 1. Violates any federal, state, county or City statute, ordinance or rule;
 - 9 2. Creates a substantial or specific risk of serious injury, illness, peril, or loss,

10 that is a gross deviation from the standard of care or competence that a reasonable person would
11 observe in the same situation;

- 12 3. Results in a gross waste of public funds or resources; or
- 13 4. Prevents the dissemination of scientific opinion or alters technical findings

14 without scientifically valid justification, unless disclosure is legally prohibited. This provision is
15 not meant to preclude the discretion of agency management to adopt a particular scientific
16 opinion or technical finding from among differing opinions or technical findings to the exclusion
17 of other scientific opinion or technical findings.
18

19 B. Improper governmental action excludes:

20

- 21 1. Personnel actions, including but not limited to: employee grievances,
22 complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements,
23 restorations, reemployments, performance evaluations, reductions in pay, dismissals,
24 suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or
25 alleged violations of agreements with labor organizations under collective bargaining, or any
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1 action that may be taken under RCW Chapters 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 or
2 RCW 54.04.170 and 54.04.180.

3 2. A properly authorized City policy, reasonable expenditure or activity
4 merely because an employee dissents from the City policy or considers the expenditure unwise.

5 "Interested Parties" means the Cooperating Employee who alleges retaliatory action, the
6 relevant agency, the Executive Director, and the individual employee the Executive Director
7 alleges to have retaliated.

8 "Report" means:

9 A. Reporting any assertion of improper government action to the Executive
10 Director including reporting violations of the Ethics and Elections Codes;

11 B. Reporting any assertion of improper government action to an employee's
12 supervisor, manager, officer or appointing authority or director;

13 C. Reporting any assertion of sexual harassment to the employee's
14 supervisor, Equal Employment Officer, agency head, or other government official as set out in
15 the City's procedure for reporting sexual harassment complaints;

16 D. Reporting alleged violations of the Fair Employment Practices ordinance
17 or the Health Insurance Portability and Accountability Act (HIPAA) to the Office for Civil
18 Rights;

19 E. Reporting alleged misconduct by Seattle Police Department personnel to
20 the Seattle Police Office of Professional Accountability;

21 F. Reporting alleged violations of the Code of Judicial Conduct to the
22 Washington State Commission on Judicial Conduct;

1 G. Reporting alleged violations of criminal laws to any law enforcement
2 agency;

3 H. Reporting when the employee believes in good faith that a crime is about
4 to be committed, to any law enforcement agency, agency head, manager or supervisor;

5 I. Reporting if an employee is, in good faith, seeking advice, counsel or
6 opinion on their rights and responsibilities under this subchapter to determine whether to make a
7 report under this chapter;
8

9 J. Reporting outside of City government if 30 days have passed since the
10 employee made a written report pursuant to this chapter; or

11 K. Reporting in an emergency, to any person who has the ability to address
12 the danger or risk, where the employee believes in good faith that there is a substantial and
13 specific danger or risk of serious injury, illness, peril, or loss to any person. No emergency
14 under this subsection exists where prompt attention and reporting under this subchapter by the
15 employee could have avoided the perceived need to report immediately.
16

17 "Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," means to make,
18 or use one's authority to make, an adverse change in a Cooperating Employee's employment
19 status or terms and conditions of employment where the employee's status as a Cooperating
20 Employee was a contributing factor in the decision making process.
21

22 **Section 3.** Section 4.20.810 of the Seattle Municipal Code, last amended by
23 Ordinance 118392, is amended as follows:

24 ~~((4.20.810 Reporting improper governmental action—Employee protection.~~

1 ~~A. Right. Every City employee shall have the right to report, in good faith and in accordance~~
2 ~~with this subchapter, to a City official, another government official or a member of the public,~~
3 ~~information concerning an improper governmental action.~~

4 ~~B. Limitations.~~

5 ~~1. This section does not authorize a City employee to report information that is subject to an~~
6 ~~applicable privilege against disclosure at law (e.g., RCW 5.60.060 privileged communications),~~
7 ~~unless waived, or to make disclosure where prohibited at law. The only purpose of this~~
8 ~~subchapter is to protect and encourage employees who know or in good faith believe improper~~
9 ~~governmental action has occurred to report those actions in good faith and in accordance with~~
10 ~~this subchapter.~~

11 ~~2. Except in cases of emergency where the employee believes in good faith that substantial~~
12 ~~damage to persons or property will result unless a report is made immediately to a person or~~
13 ~~entity who is not the appropriate auditing official listed in Section 4.20.850 A, an employee~~
14 ~~shall, before making a report to a person who is not the appropriate auditing official, first make a~~
15 ~~written report of the improper governmental action to the appropriate auditing official. No~~
16 ~~emergency under this subsection exists where prompt attention and reporting under this~~
17 ~~subchapter by the employee could have avoided the perceived need to report immediately to a~~
18 ~~person not the appropriate auditing official.~~

19 ~~An employee making a written report as required by this subsection is encouraged to wait at least~~
20 ~~thirty (30) days from receipt of the written report by the appropriate auditing official before~~
21 ~~reporting the improper governmental action to a person who is not an appropriate auditing~~
22 ~~official.~~

1 ~~3. An employee's reporting of his or her own improper action does not grant an employee~~
2 ~~immunity from discipline or termination under Section 4.04.230 or 4.08.100 insofar as his or her~~
3 ~~improper action would be cause for discipline.~~

4 ~~C. Employee Protections and Protected Conduct.~~

5 ~~1. The following conduct by employees is protected if carried out in good faith under this~~
6 ~~subchapter:~~

7
8 ~~a. Reporting sexual harassment to the employee's supervisor, EEO officer, department head, or~~
9 ~~other government official as set out in the City's adopted procedure for reporting sexual~~
10 ~~harassment complaints; reporting violations of the Fair Employment Practices ordinance to the~~
11 ~~Office for Civil Rights; reporting police misconduct to the Police Department's Internal~~
12 ~~Investigation Section; reporting violations of the Code of Judicial Conduct by Municipal Court~~
13 ~~judges to the Washington State Commission on Judicial Conduct; reporting violations of~~
14 ~~eriminal laws to the appropriate county prosecuting attorney; and reporting violations of the~~
15 ~~Elections Code or the Ethics Code, and any actions for which no other appropriate recipient of a~~
16 ~~report is listed in this subsection, to the Executive Director of the Seattle Ethics and Elections~~
17 ~~Commission;~~

18
19 ~~b. Cooperating in an investigation by an "auditing official" related to "improper governmental~~
20 ~~action"; and/or~~

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

22
23 ~~2. No City officer or employee shall retaliate against any employee because that employee~~
24 ~~proceeded or is proceeding in good faith in accordance with this subchapter.~~

1 ~~D. Penalty. Any City officer or employee who engages in prohibited retaliatory action is subject~~
2 ~~to discipline by suspension without pay, demotion or discharge or, pursuant to Section 4.20.840,~~
3 ~~a civil fine up to Five Hundred Dollars (\$500.00), or both discipline and a fine.~~

4 ~~E. Annual Restatement. Upon entering City service and at least once each year thereafter, every~~
5 ~~City officer and employee shall receive a written summary of this chapter, the procedures for~~
6 ~~reporting improper governmental actions to auditing officials, the procedures for obtaining the~~
7 ~~protections extended, and the prohibition against retaliation in this section. The Executive~~
8 ~~Director of the Ethics and Elections Commission shall ensure that such summaries are~~
9 ~~distributed and that copies are posted where all employees will have reasonable access to them.))~~

11 4.20.810 Employee rights, responsibilities and limitations

12 A. Rights

13 1. Every employee shall have the right to report in good faith pursuant to this
14 subchapter an assertion of improper governmental action and shall be free from retaliation.

15 2. The identity of a cooperating employee shall be kept confidential and shall
16 not be disclosed unless such disclosure is required under applicable law or the employee in
17 writing waives confidentiality.

18 B. Responsibilities

19 1. An employee may not disclose information when disclosure is prohibited
20 under the law (e.g., RCW 5.60.060 privileged communications).

21 2. An employee who reports his or her own improper governmental action
22 will not be free from discipline or termination under Section 4.04.230 or 4.08.100 if his or her
23 improper action would be cause for discipline or termination.

1 C. Prohibitions

2 No City agency, officer or employee shall retaliate against any cooperating employee.

3 **Section 4.** Section 4.20.820 of the Seattle Municipal Code, last amended by
4 Ordinance 117039 and that currently reads as follows, is repealed:

5 ~~((4.20.820 Confidentiality.~~

6 ~~_____ To the extent allowed by law, the identity of an employee reporting information about an~~
7 ~~improper governmental action shall be kept confidential unless the employee in writing waives~~
8 ~~confidentiality.))~~

9 **Section 5.** Section 4.20.830 of the Seattle Municipal Code, last amended by
10 Ordinance 117039, is amended as follows:

11 ~~((4.20.830 Investigation.~~

12 ~~A. Referral or Retention. The Executive Director of the Ethics and Elections Commission, upon~~
13 ~~receiving a report alleging improper governmental action, shall refer the complainant to the~~
14 ~~appropriate auditing official listed in Section 4.20.850 A if the Executive Director is not the~~
15 ~~appropriate auditing official. If the Executive Director is the appropriate auditing official, and the~~
16 ~~report alleges a violation of the Elections Code or the Code of Ethics, the Executive Director~~
17 ~~shall handle that allegation according to the ordinances and rules applicable to the code alleged~~
18 ~~to have been violated. If the Executive Director is the appropriate auditing official and the report~~
19 ~~alleges improper governmental action that does not fall within the prohibitions of the Ethics~~
20 ~~Code or the Elections Code, the Executive Director may refer the report to the chief elected~~
21 ~~official of the branch of government implicated in the allegation, who shall ensure that the~~
22 ~~appropriate officer or agency responds to the complainant in writing within thirty (30) days of~~

1 receipt of the report by the appropriate auditing official, with a copy of the response to the
2 Executive Director. If the Executive Director does not refer the report to another official, or if the
3 other official's response is not timely or satisfactory to the Executive Director, the Executive
4 Director may conduct an investigation. The procedures in subsections B through E of Section
5 4.20.830 shall apply only to the Executive Director of the Ethics and Elections Commission
6 when he or she is investigating an improper governmental action that does not fall within the
7 prohibitions of the Ethics Code or the Elections Code and that should not have been referred to
8 another auditing official under the first sentence of this subsection; other auditing officials
9 investigating allegations of improper governmental action appropriately referred to them are not
10 bound by these procedures.

11
12 ~~B. Executive Director's Investigation. At any stage in an investigation of an alleged "improper~~
13 ~~governmental action," the Executive Director of the Seattle Ethics and Elections Commission~~
14 ~~may issue subpoenas, administer oaths, examine witnesses, compel the production of documents~~
15 ~~or other evidence, enlist the assistance of the City Attorney, the City Auditor, or the Chief of~~
16 ~~Police, refer the matter to the State Auditor or law enforcement authorities, and/or issue reports,~~
17 ~~each as deemed appropriate.~~

18
19 ~~Within thirty (30) days after receiving information about an "improper governmental action"~~
20 ~~from a City employee, the Executive Director shall conduct a preliminary investigation, and~~
21 ~~provide the complainant with a written report of the general status of the investigation which~~
22 ~~may include matters for further research or inquiry.~~

23
24 ~~C. Completion and Reports. Upon completion of the investigation, the Executive Director shall~~
25 ~~notify the complainant in writing of any determinations made. If the Executive Director~~
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1 ~~determines that an improper governmental action has occurred, the Executive Director shall~~
2 ~~report the nature and details of the activity to the complainant; to the head of the department with~~
3 ~~responsibility for the action; and if a department head is implicated, to the Mayor and City~~
4 ~~Council; and to such other governmental officials or agencies as the Executive Director deems~~
5 ~~appropriate. If satisfactory action to follow up the report is not being taken within a reasonable~~
6 ~~time, the Executive Director shall report his or her determination to the Mayor and advise the~~
7 ~~City Council.~~

8
9 ~~D. Closure. The Executive Director may close an investigation at any time he or she determines~~
10 ~~that no further action is warranted and shall so notify the complainant.~~

11 ~~E. Decisions of the Executive Director under this section are not appealable to the Ethics and~~
12 ~~Elections Commission.))~~

13
14 4.20.830 Reports to the Executive Director

15 The following applies to any report of improper governmental action made to the
16 Executive Director.

17 A. Reports. A report of improper governmental action should be made within 12
18 months of when a reasonable person similarly situated to the reporting employee would have
19 become aware of the occurrence. The Executive Director may initiate an inquiry of an
20 occurrence falling outside of this time limitation if he or she believes that doing so is in the
21 public interest.

22
23 B. Inquiry. Within 14 days after receiving an assertion of alleged improper
24 governmental action, the Executive Director shall conduct a confidential preliminary inquiry to
25 determine if the facts as asserted would constitute improper governmental action. The Executive
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1 Director shall communicate the results to the reporting individual along with the actions, if any,
2 that will be taken. If, after a preliminary inquiry, the Executive Director determines that the facts
3 as asserted would constitute improper governmental action, the Executive Director shall make a
4 mandatory or discretionary referral, or may open an investigation.

5 C. Mandatory and discretionary referral

6 1. Mandatory referral. The Executive Director shall refer an employee
7 making the following allegations as follows:

8 a. Sexual harassment to any management representative, the Seattle
9 Office for Civil Rights, Equal Employment Opportunity Commission, the Washington Human
10 Rights Commission, or other governmental official as set out in the City's adopted procedure for
11 reporting sexual harassment complaints;

12 b. Violations of the Fair Employment Practices ordinance to the
13 Office for Civil Rights;

14 c. Allegations regarding misconduct by Seattle Police Department
15 personnel to the Seattle Police Office of Professional Accountability; or

16 d. Allegations of violations of the Code of Judicial Conduct to the
17 Washington State Commission on Judicial Conduct.

18 2. Discretionary referral. The Executive Director may refer a report to the
19 chief elected official of the branch of government named in the allegation or to other
20 governmental agencies the Executive Director believes better suited to investigate the allegation.

21 a. When the Executive Director makes a discretionary referral
22 pursuant to this chapter, the cooperating employee shall be notified before the referral is made.

1 b. Within 60 days of a discretionary referral being made by the
2 Executive Director, the City official or agency head receiving the referral shall personally or
3 through their designated representative, respond to the Executive Director with the agency's plan
4 to investigate and/or resolve the concern. If the Executive Director does not receive an agency's
5 plan or, if within a reasonable time the agency does not complete the plan, the Executive
6 Director may alert the Mayor and the City Council.

7
8 D. Investigation

9 1. The Executive Director shall investigate alleged violations of the
10 Elections Code according to Section 2.04.070 and the Ethics and Election Commission's
11 Administrative Rules; alleged violations of the Ethics Code according to Section 4.16.090 and
12 the Ethics and Election Commission's Administrative Rules; and, alleged violations of the
13 Lobbying Code according to Chapter 2.06 and the Ethics and Election Commission's
14 Administrative Rules.

15
16 2. Investigations of improper governmental action that do not assert
17 violations of the Ethics, Election or Lobbying Code shall be completed within a period of six
18 months. If an investigation cannot be completed within that time the Executive Director must
19 inform the employee who reported the concern as to the reason why and estimate the completion
20 date of the investigation.

21
22 3. Completion and Reports. Upon completion of the investigation, the
23 Executive Director shall issue a report summarizing the facts and determining whether there is
24 reasonable cause to believe that improper governmental action occurred.

1 4. If the Executive Director determines there is reasonable cause to believe
2 an improper governmental action has occurred, the Executive Director shall report the nature and
3 details of the activity to the reporting employee; the head of the agency with responsibility for
4 the action; and, if an agency head is implicated, to the Mayor and City Council, and such other
5 governmental officials or agencies as the Executive Director deems appropriate.

6 E. Response by the City agency. The head of the agency in which the conduct took
7 place, or their designated representative, shall report to the Executive Director within 60 days
8 what action was taken to address the conduct. The Executive Director shall report the resolution
9 to the reporting employee. If the Executive Director determines that satisfactory action to follow
10 up the report is not being taken, the Executive Director shall report his or her determination to
11 the Mayor and the City Council.

12 F. Closure. The Executive Director may close an inquiry or investigation at any
13 time he or she determines that no further action is warranted and shall so notify the reporting
14 employee.

15 G. Decisions of the Executive Director under this section are not appealable to the
16 Ethics and Elections Commission.

17 **Section 6.** Section 4.20.840 of the Seattle Municipal Code, last amended by
18 Ordinance 117039 and that currently reads as follows is repealed:

19 ~~((4.20.840—Civil Penalty~~

20 ~~A violation of subsection C of Section 4.20.810 is a civil offense. A person who is guilty~~
21 ~~thereof may be punished in the Seattle Municipal Court by a civil fine or forfeiture not to exceed~~
22 ~~Five Hundred Dollars (\$500.00).))~~

1 **Section 7.** Section 4.20.850 of the Seattle Municipal Code, last amended by
2 Ordinance 118392 and that currently reads as follows is repealed:

3 ~~((4.20.850 Definitions~~

4 As used in Sections 4.20.800 through 4.20.860, the following terms shall have these
5 meanings:

6 A. ~~"Auditing official" means, each in connection with a report of improper governmental~~
7 ~~action within his, her, or its respective jurisdiction, the Executive Director of the Seattle Ethics~~
8 ~~and Elections Commission; a person to whom sexual harassment was properly reported~~
9 ~~according to City policy; the Office for Civil Rights; the Washington State Commission on~~
10 ~~Judicial Conduct; the Police Department's Internal Investigations Section; the county prosecuting~~
11 ~~attorneys of the State of Washington; and any authorized assistant or representative of any of~~
12 ~~them in cases within their respective appropriate jurisdictions.~~

13 B. ~~"Employee" means anyone employed by the City, whether in a permanent or~~
14 ~~temporary position, including full-time, part-time, and intermittent workers. It also includes~~
15 ~~members of appointed boards or commissions, whether or not paid.~~

16 C. 1. ~~"Improper governmental action" means any action by a City officer or employee~~
17 ~~that is undertaken in the performance of the officer's or employee's official duties, whether or not~~
18 ~~the action is within the scope of employment, and:~~

19 a. ~~Violates any state or federal law or rule or City ordinance, and, where~~
20 ~~applicable, King County ordinances, or~~

21 b. ~~Constitutes an abuse of authority, or~~

22 c. ~~Creates a substantial or specific danger to the public health or safety, or~~

d. ~~Results in a gross waste of public funds.~~

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2 2. ~~"Improper governmental action" excludes personnel actions, including but not~~
3 ~~limited to: employee grievances, complaints, appointments, promotions, transfers, assignments,~~
4 ~~reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions~~
5 ~~in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or~~
6 ~~civil service laws, or alleged violations of agreements with labor organizations under collective~~
7 ~~bargaining, or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59, or~~
8 ~~53.18 RCW or RCW 54.04.170 and 54.04.180.~~

9
10 3. ~~A properly authorized City program or activity does not become an "improper~~
11 ~~governmental action" because an employee or auditing official dissents from the City policy or~~
12 ~~considers the expenditures unwise.~~

13 D. ~~"Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make,~~
14 ~~because of an activity protected under Section 4.20.810, any unwarranted adverse change in an~~
15 ~~employee's employment status or the terms and conditions of employment including, but not~~
16 ~~limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and~~
17 ~~undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of~~
18 ~~reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of~~
19 ~~promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary~~
20 ~~action.~~

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22
23 E. ~~"Executive Director" means the Executive Director of the Seattle Ethics and Elections~~
24 ~~Commission.))~~

f. Whether the complainant has filed an action in any other forum

based upon the same conduct.

~~((B. Investigation and Response. The Mayor's office shall forward the complaint to the head of the executive office or department in which the retaliation is alleged to have occurred, or, at the Mayor's option, to the President of the City Council or the Presiding Judge of the Municipal Court if their respective branches are implicated in the complaint. The head of the department, office, or branch to which the complaint was referred shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint. If the head of an executive office or department is alleged to have retaliated in violation of Section 4.20.810, the Mayor shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint.~~

~~C. Hearing. If an employee who has filed a complaint of retaliation under this section is dissatisfied with the response and desires a hearing pursuant to Section 42.41.040 RCW, the employee shall deliver a request for hearing to the Office of the Mayor within the time limitations specified in that section. Within five (5) working days of receipt of the request for hearing, the City shall apply to the state office of administrative hearings for a hearing to be conducted as provided in Section 42.41.040 RCW.))~~

B. Initial determination

1. The Executive Director shall make an initial determination as to the sufficiency of the complaint within 14 days.

2. If the Executive Director finds the complaint to be insufficient, he or she shall dismiss the complaint and give notice to the employee. The employee may re-submit the

1 complaint within the 180-day filing period. The time in which the Executive Director is
2 considering the sufficiency of the complaint is not included in the 180 day time frame.

3 3. The Executive Director shall find the complaint sufficient if the complaint
4 asserts facts that, if true, would show:

- 5 a. the employee is a cooperating employee;
6 b. the employee was subjected to an adverse change or changes that
7 occurred within the prescribed time period; and
8 c. the employee's protected conduct reasonably appears to have been
9 a contributing factor.

10
11 4. The Executive Director shall not dismiss a complaint as insufficient
12 because it fails to include all required information so long as it substantially satisfies the
13 informational requirements.

14
15 C. Investigation of sufficient complaints

16 1. The Executive Director may choose not to investigate a complaint if the
17 matter is being pursued in another forum.

18 2. If the matter is not before another forum or if the Executive Director
19 decides to pursue a matter even though it is before another forum, the Executive Director shall
20 investigate sufficient complaints and endeavor to complete the investigation in 90 days. If the
21 investigation is not completed within 90 days, the Executive Director shall inform the interested
22 parties of the date the investigation is expected to be completed.

23
24 3. All investigations shall be conducted in an objective and impartial manner.
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1 4. The Executive Director shall at the conclusion of the investigation
2 determine whether there is reasonable cause to believe that retaliation occurred.

3 D. No reasonable cause found

4 If the Executive Director finds no reasonable cause to believe that retaliation occurred,
5 the Executive Director shall dismiss the complaint and inform the employee.

6 E. Reasonable cause found

7 1. If the Executive Director finds reasonable cause to believe that retaliation
8 occurred, the Executive Director shall issue a written report to the interested parties that shall
9 include a statement of the facts which provide the basis for the finding. The report may also
10 include the identity of the individual employee or employees responsible for the retaliation and
11 recommendations for agency action.

12 2. The Executive Director may submit a draft including findings and
13 recommendations to the interested parties for review and comment before issuing the final
14 investigative report and determination.

15 F. Settlement

16 Within 30 days of the Executive Director's final report finding reasonable cause, and
17 before the filing of a complaint with the Hearing Examiner pursuant to subsection 4.20.865.B,
18 the Director shall determine whether it is feasible to conduct a joint settlement conference with
19 the interested parties to attempt to agree on an appropriate remedy.

20 1. Interested parties may be represented at a settlement conference by a
21 person of their own choosing.

1 2. If after filing a complaint with the Executive Director, the complainant
2 files an action in another forum based upon the same conduct, the complainant shall inform the
3 Executive Director within 15 days.

4 3. After discovering or being informed of an action in another forum based
5 upon the same conduct the Executive Director may choose to continue with the proceedings or
6 suspend proceedings until either the other action is completed or the Executive Director
7 determines that another course of action is appropriate.
8

9 B. Filing a complaint with the Hearing Examiner

10 1. The Executive Director may file a complaint alleging retaliation with the
11 Hearing Examiner. The complaint shall:

- 12 a. name the interested parties;
13 b. provide a concise statement of the conduct constituting retaliation;

14 and
15

- 16 c. contain a request for relief.

17 2. All cases are governed by the Hearing Examiner Rules of Practice and
18 Procedure. The Hearing Examiner may promulgate such additional administrative rules as
19 needed.
20

21 3. If the Cooperating Employee is a party to the enforcement action, the
22 employee may choose to be represented by a person of their own choosing.

23 C. Proof
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1 4.20.870 Private cause of action

2 A. The cooperating employee may pursue a private cause of action under this
3 subchapter if a timely complaint of retaliation has been filed with the Executive Director, the
4 Executive Director has found that the complaint has reasonable cause, the Executive Director has
5 determined that a joint settlement is not feasible, and the cause of actions is filed within 12
6 months of the Executive Director providing notice to the parties under subsection 4.20.860.G
7 that he or she has determined a Settlement is not feasible. In no event can a cooperating
8 employee file a private cause of action if 30 days have passed since the Executive Director has
9 filed a complaint with the Hearing Examiner and named the cooperating employee as an
10 interested party.
11

12 B. When adhering to the filing requirements of subsection 4.20.870A, the
13 Cooperating Employee injured by any violation of this chapter shall have a civil action in a court
14 of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained
15 by the person, or both. Remedies for damages include the cost of suit including reasonable
16 attorneys' fees, without limitation; emotional distress damages not to exceed \$20,000; and any
17 other appropriate remedy authorized by this chapter, without limitation. The cooperating
18 employee has the burden to prove by a preponderance of the evidence that a violation occurred.
19
20

21 C. If the employee files a civil action, the Executive Director shall dismiss any
22 administrative action for relief for that employee in which the charged party is an agency, but
23 may still pursue administrative action against any employee alleged to have violated subsection
24 4.16.070.F.
25
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1 **Section 11.** A new Section 4.20.875 of the Seattle Municipal Code is added to Subchapter
2 III of Chapter 4.20 as follows:

3 4.20.875 Investigative powers

4 At any stage in an inquiry or investigation of an alleged improper governmental action, or
5 the investigation regarding an assertion of retaliation for engaging in conduct protected in this
6 subchapter, the Executive Director may issue subpoenas, administer oaths, examine witnesses,
7 submit written questions to be answered under oath and, compel the production of documents or
8 other evidence. If the subpoenaed party or agency does not respond to the request in a timely
9 manner, the Executive Director may ask for the assistance of the City Attorney to pursue
10 enforcement through order in superior court.
11

12 **Section 12.** A new Section 4.20.880 of the Seattle Municipal Code is added to
13 Subchapter III of Chapter 4.20 as follows:

14 4.20.880 Annual restatement and training

15 The Seattle Ethics and Election Commission and City Personnel shall, within six months
16 of the effective date of this ordinance, develop and present a plan for adoption by City Personnel
17 and the Seattle Ethics and Elections Commission that reaches the following goals ensuring:
18

19 A. City employees attend a Whistleblower Protection Code training offered by the
20 Seattle Ethics and Elections Commission within six months of entering City service;
21

22 B. All City employees who are acting in a management or supervisory capacity at
23 the time this ordinance becomes effective will, within one year of the effective date attend a
24 Whistleblower Protection Code training offered by the Seattle Ethics and Elections Commission;
25
26
27
28

1 C. Every City employee who acts within a supervisory capacity will, within six
2 months of undertaken supervisory responsibilities, attend a Whistleblower Protection Code
3 training offered by the Seattle Ethics and Elections Commission; and

4 D. On annual basis each City employee receives a written summary of this chapter as
5 prepared by the Ethics and Elections Commission.

6 **Section 13.** Section 4.16.070 of the Seattle Municipal Code, last amended by
7 Ordinance 123010, is amended as follows:
8

9 4.16.070 Prohibited conduct((:))

10 A ((€))covered ((F))individual may not:

11 ((+)) A. Disqualification from ((A))acting on City ((B))business((:))

12 ((a)) 1. Participate in a matter in which any of the following has a financial
13 interest, except as permitted by Section 4.16.071

14 ((i)) a. the ((€))covered ((F))individual;

15 ((ii)) b. an immediate family member of the ((€))covered
16 ((F))individual;

17 ((iii)) c. an individual residing with the ((€))covered ((F))individual;

18 ((iv)) d. a person the ((€))covered ((F))individual serves as an
19 officer, director, trustee, partner or employee;

20 ((v)) e. a person with which the ((€))covered ((F))individual is
21 seeking or has an arrangement concerning future employment.

22 ((b:)) 2. Participate in a matter in which a person that employed the
23 ((€))covered ((F))individual in the preceding 12 months, or retained the ((€))covered
24

1 ((F))individual or his or her firm or partnership in the preceding 12 months, has a financial
2 interest; provided, however, that the Executive Director shall waive this section when:

3 ((F)) a. the ((E))covered ((F))individual's appointing authority or
4 the authority's designee makes a written determination that there is a compelling City need for
5 the ((E))covered ((F))individual to participate in a matter involving a prior employer or client,
6 and submits that determination with a written plan showing how the authority will safeguard the
7 City's interests, and
8

9 ((F)) b. the Executive Director determines that the authority's plan
10 is satisfactory.

11 ((e.)) 3. Perform any official duties when it could appear to a reasonable
12 person, having knowledge of the relevant circumstances, that the ((E))covered ((F))individual's
13 judgment is impaired because of either (1) a personal or business relationship not covered under
14 subsection ((a)) 1 or ((b)) 2 above, or (2) a transaction or activity engaged in by the ((E))covered
15 ((F))individual. It is an affirmative defense to a violation of this subsection ((e)) 3 if the
16 ((E))covered ((F))individual, (~~prior to~~) before performing the official act, discloses the
17 relationship, transaction or activity in writing to the Executive Director and the ((E))covered
18 ((F))individual's appointing authority, and the appointing authority or the authority's designee
19 either approves or does not within one week of the disclosure disqualify the ((E))covered
20 ((F))individual from acting. For an elected official to receive the same protection, the official
21 must file a disclosure with the Executive Director and the City Clerk. If a ((E))covered
22 ((F))individual is charged with a violation of this subsection, and asserts as an affirmative defense
23 that a disclosure was made, the burden of proof is on the ((E))covered ((F))individual to show
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1 that a proper disclosure was made and that the ((C))covered ((F))individual was not notified that
2 he or she was disqualified from acting.

3 ((d.)) 4. Subsections ((Sections)) ((4.06.070.1.a)) 4.16.070.A.1 and ((1-b))
4 4.16.070.A.2 ((shall)) do not apply if the prohibited financial interest is shared with a substantial
5 segment of the City's population.

6 ((2-)) B. Improper ((U))use of ((O))official ((P))position((:))

7 ((a.)) 1. Use or attempt to use his or her official position for a purpose that
8 is, or would to a reasonable person appear to be, primarily for the private benefit of the
9 ((C))covered ((F))individual or any other person, rather than primarily for the benefit of the City,
10 except as permitted by Section 4.16.071;

11 ((b-)) 2. Use or attempt to use, or permit the use of any City funds,
12 property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for
13 other than a City purpose, except as permitted by Section 4.16.071; provided, that nothing shall
14 prevent the private use of City property which is available on equal terms to the public generally
15 (such as the use of library books or tennis courts), the use of City property in accordance with
16 municipal policy for the conduct of official City business (such as the use of a City automobile),
17 if in fact the property is used appropriately; or the use of City property for participation of the
18 City or its officials in activities of associations that include other governments or governmental
19 officials;

20 ((e-)) 3. Except in the course of official duties, assist any person in any
21 matter involving the ((C))covered ((F))individual's department; provided, further, that except in
22 the course of official duties, a ((C))covered ((F))individual in the Mayor's office or the legislative
23

1 department may not assist any person in any matter. This subsection c(~~(-shall)~~) does not apply to
2 any(~~(€)~~)covered (~~(F)~~)individual appearing on his or her own behalf on any matter, or on behalf of
3 any business entity solely owned by the (~~(€)~~)covered (~~(F)~~)individual, if not otherwise prohibited
4 by ordinance;

5 (~~(d-)~~) 4. Influence or attempt to influence a City decision to contract with,
6 or the conduct of City business with, a person in which any of the following has a financial
7 interest:
8

- 9 (~~(i)~~) a. the (~~(€)~~)covered (~~(F)~~)individual;
- 10 (~~(ii)~~) b. an immediate family member of the (~~(€)~~)covered
11 (~~(F)~~)individual;
- 12 (~~(iii)~~) c. an individual residing with the (~~(€)~~)covered (~~(F)~~)individual;
- 13 (~~(iv)~~) d. a person the (~~(€)~~)covered (~~(F)~~)individual serves as an
14 officer, director, trustee, partner or employee;
- 15 (~~(v)~~) e. a person with which the (~~(€)~~)covered (~~(F)~~)individual is
16 seeking or has an arrangement concerning future employment,
17

18 However, it is not a violation of this section for a City contractor to attempt to obtain
19 other contracts with the City.

20 (~~(3-)~~) C. Acceptance of (~~(F)~~)things of (~~(V)~~) value(~~(-)~~)

21 (~~(a-)~~) 1. Solicit or receive any retainer, gift, loan, entertainment, favor, or
22 other thing of monetary value from any person or entity where the retainer, gift, loan,
23 entertainment, favor, or other thing of monetary value has been solicited, or received or given or,
24 to a reasonable person, would appear to have been solicited, received or given with intent to give
25

1 or obtain special consideration or influence as to any action by the ((C))covered ((F))individual in
2 his or her official capacity; provided, that nothing shall prohibit campaign contributions which
3 are solicited or received and reported in accordance with applicable law.

4 ((4.)) D. Disclosure of confidential information((:))

5 ((a.)) 1. Disclose or use any confidential information gained by reason of
6 his or her official position for other than a City purpose.

7
8 ((5.)) E. Interest in City ((C))contracts((:))

9 ((a.)) 1. Hold or acquire a financial or beneficial interest, direct or indirect,
10 personally or through a member of his or her immediate family, in any contract which, in whole
11 or in part, is made by, through, or under the supervision of the ((C))covered ((F))individual, or
12 which is made by or through a person supervised, directly or indirectly, by the ((C))covered
13 ((F))individual, except as permitted by Section 4.16.071; or accept, directly or indirectly, any
14 compensation, gratuity, or reward in connection with such contract from any other person or
15 entity beneficially interested ((therein)) in the contract. This subsection ((shall)) does not apply
16 to the furnishing of electrical, water, other utility services or other services by the City at the
17 same rates and on the same terms as are available to the public generally.

18
19 ((b.)) 2. Unless prohibited by subsection ((a)) 1, have a financial interest,
20 direct or indirect, personally or through a member of his or her immediate family, in any contract
21 to which the City or any City agency may be a party, and fail to disclose such interest to the City
22 contracting authority ((prior to)) before the formation of the contract or the time the City or City
23 agency enters into the contract; provided, that this subsection ((b))2 ((shall)) does not apply to
24 any contract awarded through the public bid process in accordance with applicable law.
25
26

1 F. Retaliate against a City Employee as prohibited under Section 4.20.810 of the
2 Whistleblower Protection Code; or directly or indirectly threaten or intimidate a City employee
3 for the purposes of interfering with that employee's right to communicate with the Commission,
4 its employees, or its agents; or directly or indirectly threaten or intimidate an employee for the
5 purposes of interfering with or influencing an employee's cooperation in an inquiry or
6 investigation, or interfering or influencing testimony in any investigation or proceeding arising
7 from a report; or knowingly take or direct others to take any action for the purpose of:

8 1. influencing an employee's cooperation in an inquiry or investigation based
9 on a report of improper governmental action; or

10 2. interfering or influencing testimony in any investigation or proceeding
11 arising from a report.

12 ((6)) G. Application to Certain Members of Advisory Committees((-))

13 1. ((SMC)) Subsections ((4.16.070.1.a)) 4.16.070.A.1 and ((4.16.070.1.b))
14 4.16.070.A.2 ((shall)) apply to employee members of advisory committees. ((SMC-s))
15 Subsections ((4.16.070.1.a)) 4.16.070.A.1 and ((4.16.070.1.b shall)) 4.16.070.A.2 do not apply to
16 other members of advisory committees. This subsection ((6)) G ((shall)) instead ((apply)) applies
17 to all other members of advisory committees. No member of an advisory committee to whom
18 this subsection applies shall:
19
20
21

22 a. Have a financial interest, direct or indirect, personally or through a
23 member of his or her immediate family, in any matter upon which the member would otherwise
24 act or participate in the discharge of his or her official duties, and fail to disqualify himself or
25 herself from acting or participating in the matter.
26

1 b. Engage or have engaged in any transaction or activity which would
2 to a reasonable person appear to be in conflict with or incompatible with the proper discharge of
3 official duties, or which would to a reasonable person appear to impair the member's
4 independence of judgment or action in the performance of official duties, without fully
5 disclosing on the public record of the advisory committee the circumstances of the transaction or
6 activity giving rise to such an appearance (~~(prior to)~~) before engaging in the performance of such
7 official duties. Such a member shall also file with the Commission a full written disclosure of the
8 circumstances giving rise to such an appearance (~~(prior to)~~) before engaging in such official
9 duties. If such prior written filing is impractical, the member shall file such a disclosure as soon
10 as practical.
11

12 **Section 14.** Section 3.70.010 of the Seattle Municipal Code, last amended by
13 Ordinance 116005, is amended as follows:
14

15 3.70.010 Commission established – (~~(P)~~)purpose(~~(-)~~)

16 (~~(There is hereby established a)~~) The Seattle Ethics and Elections Commission is
17 established to administer the City's Code of Ethics (Chapter 4.16); to administer the Election
18 Campaign Code and its campaign matching fund program (Chapter 2.04); to publish the City's
19 election pamphlets (Chapter 2.14(~~(-)~~)) and to administer the (~~(political sign ordinance (Chapter~~
20 ~~2.24) and to investigate certain complaints of improper governmental action under the~~
21 ~~whistleblower protection ordinance))~~ Whistleblower Protection Code (~~((SMC))~~) Sections 4.20.800
22 through (~~(4.20.860))~~ 4.20.880.
23

24 **Section 15.** Subsection 3.70.100.A of the Seattle Municipal Code, which section was last
25 amended by Ordinance 123361, is amended as follows:
26

1 3.70.100 Powers and duties((-))

2 The Commission shall have the following powers:

3 A. To administer the City's Code of Ethics (~~(((Code)))~~ Chapter 4.16); the Election
4 Campaign Code and its campaign matching fund program (~~(((Code)))~~ Chapter 2.04); the City's
5 election pamphlet ordinance (~~(((Code)))~~Chapter 2.14); the lobbying disclosure ordinance (~~(((Code)))~~
6 Chapter 2.06 ()); ~~the political sign code (Code Chapter 2.24);))~~ and the ((whistleblower
7 protection ordinance)) Whistleblower Protection Code (~~(((SMC)))~~ Sections 4.20.800 through
8 ((4.20.860)) 4.20.880 inclusive) (~~(insofar as violations of the Code of Ethics or elections~~
9 ~~ordinance may be involved)~~)-(called collectively "Commission-administered ordinances");

10
11 **Section 16. Application of Ordinance**

12 The Code sections added or amended by this ordinance are to be applied prospectively
13 only after the effective date of this ordinance. An employee who gained rights, protections or
14 liabilities under the preceding version of SMC 4.20.800 et seq, must proceed under the terms of
15 the those prior code provisions.

16
17 This ordinance does not affect any existing right acquired or liability or obligation
18 incurred under the code sections amended or repealed in this ordinance or under any rule or order
19 adopted under those sections, nor does it affect any proceeding instituted under those sections.

20
21 **Section 17. Effective Date**

22 This ordinance shall take effect and be in force 30 days after its approval by the Mayor,
23 but if not approved and returned by the Mayor within ten days after presentation, it shall take
24 effect as provided by Section 1.04.020.

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Passed by the City Council the ____ day of _____, 2013, and signed by
me in open session in authentication of its passage this
____ Day of _____, 2013.

President _____ of the City Council

Approved by me this ____ day of _____, 2013.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Mike Fong/5-1675	N/A

Legislation Title: AN ORDINANCE relating to the Whistleblower Protection Code; amending the following sections of the Seattle Municipal Code (SMC): Section 4.20.800 to clarify the legislative purpose, Section 4.20.810 to clarify the rights and responsibilities of employees and the process for reporting, Section 4.20.860 to amend the manner in which allegations of retaliation are reported, investigated and resolved, Section 4.16.070.F adding retaliation to prohibited behavior under the Ethics Code, Section 3.70.010 and Subsection 3.70.100.A redefining the jurisdiction of the Ethics and Elections Commission to include administration of the Whistleblower Protection Code; adding the following new sections to the SMC: Section 4.20.805 containing definitions of terms used in the Whistleblower Protection Code, Section 4.20.870 creating a private cause of action for retaliation against whistleblowers, Section 4.20.875 providing the Ethics and Elections Director investigative tools including subpoena power; repealing the following sections of the SMC: whose content had been replaced by amending or creating other sections, Section 4.20.820 concerning confidentiality provisions, Section 4.20.840 concerning civil penalties, and Section 4.20.850 concerning definitions.

Summary of the Legislation:

The broad purposes of the legislation as proposed by the Seattle Ethics and Elections Commission (SEEC or Commission) are as follows:

- 1) **Strengthens the process and timelines** related to whistleblower and retaliation investigations and adjudication procedures – at times giving the SEEC Director more discretion and injecting more transparency and clarity of actions into the process (including a role for the hearing examiner in retaliation complaints).
 1. Shifts the role of investigations of retaliation claims from the Mayor/Executive Branch to the SEEC Director.
 2. Gives the SEEC Director authority to investigate and pursue retaliation claims in front of the Hearing Examiner, essentially becoming the plaintiff’s attorney.

- 2) **Broadens the definition of protected activity** under the whistleblower code.
 1. Gives employees protection from retaliation if they report improper activity within their departments. Currently protection is only available for retaliation for reports to the SEEC office or other “appropriate auditing official.”
 2. Gives employees protection from retaliation if they have been *perceived* to have blown the whistle and that perception is the cause of the retaliation.

- 3) Strengthens and provides additional guidance on the types of **remedies and penalties** available for addressing retaliation.
 1. Makes retaliation a violation of the City Ethics Code and allows the SEEC to impose fines, if reasonable cause has been found by the Hearing Examiner.
 2. Expands the range of remedies to include those that could be ordered by Superior Court. Currently available remedies include any relief necessary to grant the employee his or her position back and reasonable attorneys' fees, but under this ordinance relief could include remedies like future pay and emotional distress payments (a significant expansion). However, attorneys' fees and emotional distress damages in the administrative process are capped at \$20,000.

- 4) Parallel to the strengthened administrative process, creates an avenue for employees to pursue a **private cause of action** (civil suit in court) if they allege retaliation from being a cooperating employee. This cause of action may only be pursued after the SEEC Executive Director investigates and finds reasonable cause that retaliation has occurred.

Background:

The SEEC last reviewed and recommended changes to the City's Whistleblower code in 1994. Beginning in early 2012, the Commission examined several changes intended to clarify and update the rights and responsibilities of employees, strengthen enforcement and remedies and substantially modify the process of investigations. The policy intent of the Commission was to amend the code in such a way as to improve protections for whistleblowers and create an environment that encourages the reporting of improper governmental activity and enhance the remedies available to those retaliated against for bringing (actual or perceived to have brought) those concerns to light. The Commission voted unanimously on February 6, 2013 to advance legislation to the Council for consideration.

Please check one of the following:

This legislation does not have any financial implications.

(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

NOTE: Though this legislation does not have direct financial implications through appropriations in this ordinance, the process and procedural changes along with the effort to encourage whistleblower activity and enhance remedies may increase claims of improper governmental activity and/or allegations of retaliation. This may result in additional financial implications in the form of staff and legal resources and the cost of potential financial remedies. Some additional staff time and resources may also be required of SEEC for carrying out trainings for City personnel on the new whistleblower code.

This legislation has financial implications.

(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL				

Revenue/Reimbursement Notes:

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

* 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.

Position Notes:

Do positions sunset in the future?

(If yes, identify sunset date)

Spending/Cash Flow:

(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**

NOTE: Though this legislation does not have direct financial implications through appropriations in this ordinance, the process and procedural changes along with the effort to encourage whistleblower activity and enhance remedies may increase claims of improper governmental activity and/or allegations of retaliation. This may result in additional financial implications in the form of staff and legal resources and the cost of potential financial remedies. Some additional staff time and resources may also be required of SEEC for carrying out trainings for City personnel on the new whistleblower code.

- b) **What is the financial cost of not implementing the legislation?**

Undetermined – but the encouragement of reporting of improper governmental actions could theoretically save the City money on improper expenditures or other violations that have financial implications.

- c) **Does this legislation affect any departments besides the originating department?**

The Whistleblower Code impacts all City employees and departments.

- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

None are identified at this time.

- e) **Is a public hearing required for this legislation?**

No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

g) **Does this legislation affect a piece of property?**

No

h) **Other Issues:**

List attachments to the fiscal note below: