

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Director investigative tools including subpoena power; repealing the following sections of the SMC: whose content had been replaced by amending or creating other sections, Section 4.20.820 concerning confidentiality provisions, Section 4.20.840 concerning civil penalties, and Section 4.20.850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
8 B. Provide City employees protection from retaliatory action for making a good faith
9 report or being perceived as making a report, or cooperating or being perceived as cooperating in
10 any subsequent inquiry or investigation;

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

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

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

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

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

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

22 **Section 2.** A new Section 4.20.805 of the Seattle Municipal Code is added to
23
24 Subchapter III of Chapter 4.20 as follows:
25
26

4.20.805 Definitions

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

“Adverse change” ~~is an unfavorable workplace action that~~ includes, but is not limited to: denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes or changes in the physical location of the employee’s workplace or a change in the basic nature of the employee’s job, if either is in opposition to the employee’s expressed wish; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; reduction in pay; denial of promotion; transfer or reassignment; demotion, suspension or dismissal or other disciplinary action; a supervisor or superior who behaves in, or encourages coworkers to behave in, a hostile manner toward the employee; issuance of or attempt to enforce any nondisclosure policy or agreement in a manner inconsistent with prior practice; or any other significant unfavorable action that is inconsistent compared to actions taken before the employee engaged in action protected by this chapter, or compared to other employees who have not engaged in action protected by this chapter.

“City agency” means any department, office, board, commission, or committee of the City, or any subdivision thereof, but excludes public corporations and ad hoc advisory committees.

“City employee” or “Employee” means every individual who is, or was at the time actions under this chapter were taken, appointed to a position of employment in any City agency, whether in a permanent, temporary or intermittent position.

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.
20

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
25

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
26

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

9 “Report” means:

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

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

14 C. Reporting any assertion of sexual harassment to the employee's
15 supervisor, Equal Employment Officer, agency head, or other government official as set out in
16 the City's procedure for reporting sexual harassment complaints;
17

18 D. Reporting alleged violations of the Fair Employment Practices ordinance
19 or the Health Insurance Portability and Accountability Act (HIPAA) to the Office for Civil
20 Rights;
21

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

24 F. Reporting alleged violations of the Code of Judicial Conduct to the
25 Washington State Commission on Judicial Conduct;
26

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 except as provided for in
21 Section 4.20.870B.
22

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

25 ~~((4.20.810 Reporting improper governmental action—Employee protection.~~
26

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

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 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~~
26

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
26

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.~~

1
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
14 D. ~~"Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make,~~
15 ~~because of an activity protected under Section 4.20.810, any unwarranted adverse change in an~~
16 ~~employee's employment status or the terms and conditions of employment including, but not~~
17 ~~limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and~~
18 ~~undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of~~
19 ~~reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of~~
20 ~~promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary~~
21 ~~action.~~

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

1 f. Whether the complainant has filed an action in any other forum
2 based upon the same conduct.

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

12
13 ~~C. Hearing. If an employee who has filed a complaint of retaliation under this section is~~
14 ~~dissatisfied with the response and desires a hearing pursuant to Section 42.41.040 RCW, the~~
15 ~~employee shall deliver a request for hearing to the Office of the Mayor within the time~~
16 ~~limitations specified in that section. Within five (5) working days of receipt of the request for~~
17 ~~hearing, the City shall apply to the state office of administrative hearings for a hearing to be~~
18 ~~conducted as provided in Section 42.41.040 RCW.))~~

19
20
21 B. Initial determination

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

24 2. If the Executive Director finds the complaint to be insufficient, he or she
25 shall dismiss the complaint and give notice to the employee. The employee may re-submit the
26

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

13 C. Investigation of sufficient complaints

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

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

21 3. All investigations shall be conducted in an objective and impartial manner.

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. The Executive Director may use the services of the City of Seattle’s
2 Alternative Dispute Resolution office or the King County Inter-local Conflict Resolution Group
3 or similar service to aid in determining an appropriate remedy.

4 3. A settlement may include any terms agreed upon by the parties and not
5 otherwise precluded by law, including the cooperating employee’s reasonable attorney fees
6 attributed directly to attendance at the settlement discussion.

7 4. Any settlement between a City agency and the cooperating employee must
8 include a provision in which the employee releases the City from further liability for acts giving
9 rise to the retaliation complaint.

10 5. Settlement agreements concerning charges or potential charges of
11 violations of subsection 4.16.070.F are subject to Commission approval.

12 G. End of settlement discussions

13 If the Executive Director determines that initiating a joint settlement conference is not
14 feasible or determines that, at any point after such a conference is initiated, it is no longer
15 feasible to reach a joint settlement, the Executive Director shall issue a notice to all interested
16 parties that a settlement is not feasible.
17 ~~to all interested parties that he or she intends to file a~~
18 ~~complaint with the Hearing Examiner.~~

19 **Section 9.** A new Section 4.20.865 of the Seattle Municipal Code is added to
20 Subchapter III of Chapter 4.20 as follows:

21 4.20.865 Enforcement

22 A. Election of administrative forum

1 4. The final order of the Hearing Examiner or the Commission shall include
2 a notice to the parties of the right to obtain judicial review of the order in accordance with
3 applicable law.

4 **Section 10.** A new Section 4.20.870 of the Seattle Municipal Code is added to
5 Subchapter III of Chapter 4.20 as follows:

6 4.20.870 Private cause of action

7 A. The cooperating employee may, after filing a timely and sufficient complaint with
8 the Executive Director, pursue a private cause of action under this subchapter if one of the
9 following conditions applies and the private cause of action is filed within 12 months of the
10 condition being met:

11 1. The Executive Director has determined not to investigate because the
12 matter is being pursued in another forum; or

13 2. the Executive Director has completed an investigation and determined that
14 no reasonable cause exists to believe that retaliation occurred; or

15 3. a timely complaint of retaliation has been filed with the Executive
16 Director, the Executive Director has found that the complaint has reasonable cause, the
17 Executive Director has determined that a joint settlement is not feasible, and ~~the cause of~~
18 ~~actions is filed within 12 months of~~ the Executive Director provides esing notice to the
19 parties under subsection 4.20.860.G that he or she has determined a Settlement is not
20 feasible. In no event can a cooperating employee file a private cause of action if 30 days
21 have passed since the Executive Director has filed a complaint with the Hearing
22 Examiner and named the cooperating employee as an interested party.

1 B. When adhering to the filing requirements of subsection 4.20.870A, the
2 Cooperating Employee injured by any retaliation in violation of this chapter shall have a civil
3 action in a court of competent jurisdiction to enjoin further retaliation violations, or to recover
4 the actual damages sustained by the person, or both. Remedies for damages include the cost of
5 suit including reasonable attorneys' fees, without limitation; emotional distress damages not to
6 exceed \$20,000; and any other appropriate remedy authorized by this chapter, without limitation.
7
8 ~~F~~To prove retaliation in a civil-court action, the cooperating employee has the burden to prove
9 by a preponderance of the evidence that the employee's status as a cooperating employee was a
10 substantial factor in the decision making process that resulted in an adverse action against the
11 cooperating employee.

12 C. If the employee files a civil action, the Executive Director shall dismiss any
13 administrative action for relief for that employee in which the charged party is an agency, but
14 may still pursue administrative action against any employee alleged to have violated subsection
15 4.16.070.F.
16

17 **Section 11.** A new Section 4.20.875 of the Seattle Municipal Code is added to Subchapter
18 III of Chapter 4.20 as follows:

19 4.20.875 Investigative powers

20
21 At any stage in an inquiry or investigation of an alleged improper governmental action, or
22 the investigation regarding an assertion of retaliation for engaging in conduct protected in this
23 subchapter, the Executive Director may issue subpoenas, administer oaths, examine witnesses,
24 submit written questions to be answered under oath and, compel the production of documents or
25 other evidence. If the subpoenaed party or agency does not respond to the request in a timely
26

1 manner, the Executive Director may ask for the assistance of the City Attorney to pursue
2 enforcement through order in superior court.

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

5 4.20.880 Annual restatement and training

6 The Seattle Ethics and Election Commission and City Personnel shall, within six months
7 of the effective date of this ordinance, develop and present a plan for adoption by City Personnel
8 and the Seattle Ethics and Elections Commission that reaches the following goals ensuring:
9

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

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

15 C. Every City employee who acts within a supervisory capacity will, within six
16 months of undertaken supervisory responsibilities, attend a Whistleblower Protection Code
17 training offered by the Seattle Ethics and Elections Commission; and
18

19 D. On annual basis each City employee receives a written summary of this chapter as
20 prepared by the Ethics and Elections Commission.
21

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

24 4.16.070 Prohibited conduct((-))

25 A ((€))covered ((Ⓕ))individual may not:
26

1 subsection ((a)) 1 or ((b)) 2 above, or (2) a transaction or activity engaged in by the ((E))covered
2 ((F))individual. It is an affirmative defense to a violation of this subsection ((e)) 3 if the
3 ((E))covered ((F))individual, (~~(prior to))~~ before performing the official act, discloses the
4 relationship, transaction or activity in writing to the Executive Director and the ((E))covered
5 ((F))individual's appointing authority, and the appointing authority or the authority's designee
6 either approves or does not within one week of the disclosure disqualify the ((E))covered
7 ((F))individual from acting. For an elected official to receive the same protection, the official
8 must file a disclosure with the Executive Director and the City Clerk. If a ((E))covered
9 ((F))individual is charged with a violation of this subsection, and asserts as an affirmative defense
10 that a disclosure was made, the burden of proof is on the ((E))covered ((F))individual to show
11 that a proper disclosure was made and that the ((E))covered ((F))individual was not notified that
12 he or she was disqualified from acting.

13 ((d.)) 4. Subsections ((Sections)) ((4.06.070.1.a)) 4.16.070.A.1 and ((1.b))
14 4.16.070.A.2 (~~(shall))~~ do not apply if the prohibited financial interest is shared with a substantial
15 segment of the City's population.

16 ((z.)) B. Improper ((U))use of ((O))official ((P))position((-))

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

21 ((b.)) 2. Use or attempt to use, or permit the use of any City funds,
22 property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for
23 other than a City purpose, except as permitted by Section 4.16.071; provided, that nothing shall
24 prevent the private use of City property which is available on equal terms to the public generally
25 (such as the use of library books or tennis courts), the use of City property in accordance with
26

1 municipal policy for the conduct of official City business (such as the use of a City automobile),
2 if in fact the property is used appropriately; or the use of City property for participation of the
3 City or its officials in activities of associations that include other governments or governmental
4 officials;

5 ~~((e-))~~ 3. Except in the course of official duties, assist any person in any
6 matter involving the ~~((€))~~covered ~~((£))~~individual's department; provided, further, that except in
7 the course of official duties, a ~~((€))~~covered ~~((£))~~individual in the Mayor's office or the legislative
8 department may not assist any person in any matter. This subsection c~~((-shall))~~ does not apply to
9 any~~((€))~~covered ~~((£))~~individual appearing on his or her own behalf on any matter, or on behalf of
10 any business entity solely owned by the ~~((€))~~covered ~~((£))~~individual, if not otherwise prohibited
11 by ordinance;

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

- 15 ~~((i+))~~ a. the ~~((€))~~covered ~~((£))~~individual;
- 16 ~~((ii+))~~ b. an immediate family member of the ~~((€))~~covered
17 ~~((£))~~individual;
- 18 ~~((iii+))~~ c. an individual residing with the ~~((€))~~covered ~~((£))~~individual;
- 19 ~~((iv+))~~ d. a person the ~~((€))~~covered ~~((£))~~individual serves as an
20 officer, director, trustee, partner or employee;
- 21 ~~((v+))~~ e. a person with which the ~~((€))~~covered ~~((£))~~individual is
22 seeking or has an arrangement concerning future employment,

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

25 ~~((z-))~~ C. Acceptance of ~~((£))~~things of ~~((¥))~~ value~~((-))~~

1 ~~((a-))~~ 1. Solicit or receive any retainer, gift, loan, entertainment, favor, or
2 other thing of monetary value from any person or entity where the retainer, gift, loan,
3 entertainment, favor, or other thing of monetary value has been solicited, or received or given or,
4 to a reasonable person, would appear to have been solicited, received or given with intent to give
5 or obtain special consideration or influence as to any action by the ~~((€))~~covered ~~((£))~~individual in
6 his or her official capacity; provided, that nothing shall prohibit campaign contributions which
7 are solicited or received and reported in accordance with applicable law.

8 ~~((4-))~~ D. Disclosure of confidential information~~((-))~~

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

11 ~~((5-))~~ E. Interest in City ~~((€))~~contracts~~((-))~~

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

21 ~~((b-))~~ 2. Unless prohibited by subsection ~~((a))~~ 1, have a financial interest,
22 direct or indirect, personally or through a member of his or her immediate family, in any contract
23 to which the City or any City agency may be a party, and fail to disclose such interest to the City
24 contracting authority ~~((prior to))~~ before the formation of the contract or the time the City or City

1 agency enters into the contract; provided, that this subsection ((b))2 ((shall)) does not apply to
2 any contract awarded through the public bid process in accordance with applicable law.

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

11
12 1. influencing an employee's cooperation in an inquiry or investigation based
13 on a report of improper governmental action; or

14 2. interfering or influencing testimony in any investigation or proceeding
15 arising from a report.

16
17 ((6)) G. Application to Certain Members of Advisory Committees((:))

18 1. ((SMC)) Subsections ((4.16.070.1.a)) 4.16.070.A.1 and ((4.16.070.1.b))
19 4.16.070.A.2 ((shall)) apply to employee members of advisory committees. ((SMC-s))
20 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
21 other members of advisory committees. This subsection ((6)) G ((shall)) instead ((apply)) applies
22 to all other members of advisory committees. No member of an advisory committee to whom
23 this subsection applies shall:

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

5 b. Engage or have engaged in any transaction or activity which would
6 to a reasonable person appear to be in conflict with or incompatible with the proper discharge of
7 official duties, or which would to a reasonable person appear to impair the member's
8 independence of judgment or action in the performance of official duties, without fully
9 disclosing on the public record of the advisory committee the circumstances of the transaction or
10 activity giving rise to such an appearance (~~((prior to))~~) before engaging in the performance of such
11 official duties. Such a member shall also file with the Commission a full written disclosure of the
12 circumstances giving rise to such an appearance (~~((prior to))~~) before engaging in such official
13 duties. If such prior written filing is impractical, the member shall file such a disclosure as soon
14 as practical.
15
16

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

19 3.70.010 Commission established – (~~((P))~~)purpose((-))
20
21 (~~((There is hereby established a))~~) The Seattle Ethics and Elections Commission is
22 established to administer the City's Code of Ethics (Chapter 4.16); to administer the Election
23 Campaign Code and its campaign matching fund program (Chapter 2.04); to publish the City's
24 election pamphlets (Chapter 2.14(~~((;))~~)) and to administer the (~~((political sign ordinance (Chapter~~
25 ~~2.24) and to investigate certain complaints of improper governmental action under the~~

1 ~~whistleblower protection ordinance~~) Whistleblower Protection Code (~~(SMC)~~) Sections 4.20.800
2 through (~~(4.20.860)~~) 4.20.880).

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

5 3.70.100 Powers and duties(~~(-)~~)

6 The Commission shall have the following powers:

7 A. To administer the City's Code of Ethics (~~(Code)~~) Chapter 4.16); the Election
8 Campaign Code and its campaign matching fund program (~~(Code)~~) Chapter 2.04); the City's
9 election pamphlet ordinance (~~(Code)~~) Chapter 2.14); the lobbying disclosure ordinance (~~(Code)~~)
10 Chapter 2.06 (~~(-); the political sign code (Code Chapter 2.24);~~)) and the (~~whistleblower~~
11 ~~protection ordinance~~) Whistleblower Protection Code (~~(SMC)~~) Sections 4.20.800 through
12 (~~(4.20.860)~~) 4.20.880 inclusive) (~~(insofar as violations of the Code of Ethics or elections~~
13 ~~ordinance may be involved)~~) (called collectively "Commission-administered ordinances");

14
15
16 **Section 16.** Application of Ordinance

17 The Code sections added or amended by this ordinance are to be applied prospectively
18 only after the effective date of this ordinance. An employee who gained rights, protections or
19 liabilities under the preceding version of SMC 4.20.800 et seq, must proceed under the terms of
20 the those prior code provisions.
21

22 This ordinance does not affect any existing right acquired or liability or obligation
23 incurred under the code sections amended or repealed in this ordinance or under any rule or order
24 adopted under those sections, nor does it affect any proceeding instituted under those sections.
25

26 **Section 17.** Effective Date

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

4
5
6 Passed by the City Council the ____ day of _____, 2013, and signed by
7
8 me in open session in authentication of its passage this
9 ____ Day of _____, 2013.

10
11 _____
12 President _____ of the City Council

13
14 Approved by me this ____ day of _____, 2013.

15
16 _____
17 Michael McGinn, Mayor

18
19 Filed by me this ____ day of _____, 2013.

20
21 _____
22 Monica Martinez Simmons, City Clerk

23 (Seal)