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STANDARD TRANSMITTAL FORM

Sender's Name: Cailin Dejillas **Phone Number / Extension:** 4-0454

Department: Seattle Office for Civil Rights **Date of Transmittal:** 08/13/2015

Division / Workgroup: Office of Labor Standards **Date Executed:** 08/13/2015

Title of Document:	Seattle Human Rights Rules Chapter 40
Document Number:	
Authorizing or Related Legislation:	SMC 14.04, 14.06, 14.08, 14.10, 14.16, 14.17, 14.19, 14.20
For Council Consideration?	☐ Yes ☒ No
SMC or other statute / policy requiring filing with the City Clerk *See chart on InWeb 'What to File' page: http://inweb/legislative_dep/WhatToFile.htm #AllDepartments*	SMC 3.02.060; SMC 3.02.070; SMC 3.42.020; SMC 3.02.020
Other identifying Numbers: *(Related projects, permits, etc.)*	
Street address and abbreviated legal description:	Seattle Office for Civil Rights Office of Labor Standards 810 Third Avenue, Suite 750, Seattle, WA 98104
Actions to be taken by the City Clerk's Office:	Please make two certified copies and file the rules.

Notes / Comments:

Thank you for your assistance. I will also be bringing a hard copy by the Clerk's Office today. Please let me know if you need anything else.

Cailin Dejillas, Lead Investigator, Office of Labor Standards, Seattle Office for Civil Rights, on behalf of

Patricia Lally, Director, Seattle Office for Civil Rights and

Dylan Orr, Division Director, Office of Labor Standards

SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Human Rights Rules
Chapter 40

Practice and Procedure in Civil Rights Ordinances

General Provisions

SHRR 40-005. APPLICABILITY OF RULES

SHRR 40-010. RELATION TO ORDINANCES

SHRR 40-015. DEFINITIONS

SHRR 40-020. PRACTICE WHERE RULES DO NOT GOVERN

SHRR 40-025. CONSTRUCTION OF RULES

SHRR 40-030. EXCEPTIONS TO RULES

SHRR 40-035. SEVERABILITY

SHRR 40-040. COMPUTATION OF TIME

SHRR 40-045. SERVICE AND FILING OF PAPERS

SHRR 40-050. WHO MAY REPRESENT PARTIES

SHRR 40-055. DEPARTMENT'S FUNCTION

SHRR 40-060. COOPERATION AGREEMENTS WITH OTHER AGENCIES

SHRR 40-065. ACCESS TO RECORDS

SHRR 40-070. ETHICS AND CONFLICTS OF INTEREST

SHRR 40-075 — 40-100 [Reserved]

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Charges

SHRR 40-105. WHERE TO FILE

SHRR 40-110. CONTENT AND BASIS OF CHARGES

SHRR 40-115. TIME FOR FILING

SHRR 40-120. AMENDMENT OF CHARGE

SHRR 40-125. WITHDRAWAL OF CHARGE

SHRR 40-130. CONSOLIDATION OF INVESTIGATION, CONCILIATION AND CONFERENCE OF CHARGES

SHRR 40-135. EXCLUSIONS — DEFENSE TO CHARGE

SHRR 40-140 — 40-200 [Reserved]

Investigations and Predetermination Settlements

SHRR 40-205. DIRECTOR'S OR DIVISION DIRECTOR'S CHARGES AND INVESTIGATIONS

SHRR 40-210. WHO WILL INVESTIGATE

SHRR 40-215. FACT FINDING AND SETTLEMENT CONFERENCES

SHRR 40-225. SCOPE OF INVESTIGATION

SHRR 40-230. ORAL INTERVIEWS

SHRR 40-235. REQUESTS FOR PRODUCTION, INTERROGATORIES, REQUESTS FOR ACCESS AND SUBPEONAS

SHRR 40-240. FACT FINDING AND SETTLEMENT CONFERENCES

SHRR 40-245. FAILURE TO RESPOND

SHRR 40-250. CONFIDENTIALITY

SHRR 40-255 — 40-300 [Reserved]

Termination of Cases

SHRR 40- 305. DISMISSAL OF A CHARGE WITHOUT FINDINGS OF FACT

SHRR 40-310. ADMINISTRATIVE CLOSURE OF CASES

SHRR 40-315. PRE-DETERMINATION SETTLEMENTS

SHRR 40-320. EXTENT OF CONCILIATION AND CONFERENCE EFFORTS

SHRR 40-325. CHARGING PARTY'S CONSENT NOT REQUIRED FOR CONCILIATION AND CONFERENCE AGREEMENTS

SHRR 40-330. SUCCESSFUL CONCILIATION OR CONFERENCE

SHRR 40-335. UNSUCCESSFUL CONCILIATION OR CONFERENCE

SHRR 40-340. FINDINGS OF FACT AND DETERMINATIONS OF REASONABLE CAUSE OR NO REASONABLE CAUSE

SHRR 40-345. CONCILIATION OR CONFERENCE EFFORTS ARE REQUIRED

SHRR 40-350. ENFORCEMENT OF CONCILIATION OR CONFERENCE AGREEMENTS

SHRR 40-355. DIRECTOR'S OR DIVISION DIRECTOR'S ORDER IN CITY PSST, JAO AND FAIR EMPLOYMENT PRACTICES CASES

SHRR 40-360. WITHDRAWAL AND AMENDMENT OF FINDINGS, DETERMINATIONS AND ORDERS

SHRR 40-365 APPEALS TO HUMAN RIGHTS COMMISSION

SHRR 40-370. PRESENTATION OF DOCUMENTS TO CITY COUNCIL IN CITY EMPLOYMENT CASES

SHRR 40-375. APPEALS TO HEARING EXAMINER IN CITY EMPLOYMENT CASES

Appendix A - Monetary Award Guidelines, General Provisions

General Provisions

SHRR 40-005. APPLICABILITY OF RULES

1. These rules (Chapter 40) govern the procedures of the Seattle Office for Civil Rights and Office of Labor Standards (Department) in administering the:
   (a) Fair Employment Practices Ordinance, as amended, Seattle Municipal Code (SMC) 14.04;
   (b) Public Accommodations Ordinance, SMC 14.06;
   (c) Open Housing Ordinance, as amended, SMC 14.08;
   (d) Fair Contracting Practices Ordinance, SMC 14.10;
   (e) Paid Sick Time and Safe Time (PSST), SMC 14.16;
   (f) The Use of Criminal History in Employment Decisions (Job Assistance Ordinance, "JAO"), SMC 14.17;
   (g) Minimum Wage (MWO), SMC 14.19;
   (h) Wage and Tip Compensation Requirements (AWT), SMC 14.20 and Ordinance No. 124644; and
   (i) Applicable provisions of SMC 3.14.900, which established the Seattle Office for Civil Rights;
   (j) Applicable provisions of Ordinance No. 124643, which established the Office of Labor Standards.

   The rules govern the procedure from the charging party's initial inquiry until the charge is withdrawn or the Director or Division Director dismisses the charge, administratively closes the case, refers the matter to the City Attorney for prosecution, or, in City Employment cases, obtains confirmation the respondent has complied with the Director's or Division Director's order.

(2) These rules and any amendment to these rules shall apply to charges pending before the Department when the rules or the amendment are or is adopted except that anything already done need not be redone to comply with the rules or with the amendment.

SHRR 40-010. RELATION TO ORDINANCES

These rules supplement the provisions of the Ordinances outlined in SHRR 40-005.

SHRR 40-015. DEFINITIONS

(1) The following definitions operate within the Seattle Civil Rights Ordinances, Labor Standards Ordinances and these rules:

   (a) "Case" means the proceedings before the Department regarding a charge.

(b) "Charge" means the document containing the alleged unlawful practice(s) that has been filed with the Department by a person claiming to be aggrieved by the practice(s).

(c) "Civil Rights Ordinances" include the:

i. Fair Employment Practices Ordinance No. 109116, as amended, Seattle Municipal Code (SMC) 14.04;
ii. Public Accommodations Ordinance No. 121593, SMC 14.06;
iii. Open Housing Ordinance No.104839, as amended, SMC 14.08;
iv. Fair Contracting Practices Ordinance No. 119601, SMC 14.10;

(d) "Commission" means the Seattle Human Rights Commission.

(e) "Department" means the Seattle Office for Civil Rights, which includes the Office of Labor Standards.

(f) "Division" means the Office of Labor Standards (OLS) Division of the Seattle Office for Civil Rights.

(g) "Division Director" means the Director of the Office of Labor Standards Division of the Seattle Office for Civil Rights or the Division Director's designee.

(h) "Director" means the Director of the Seattle Office for Civil Rights, or the Director's designee.

(i) "Issued" means signed and dated by the Director or Division Director.

(j) "Labor Standards Ordinances" include:

i. Paid Sick Time and Safe Time (PSST), SMC 14.16;
ii. Use of Criminal History in Employment Decisions (JAO), SMC 14.17;
iii. Minimum Wage (MWO), SMC 14.19; and
iv. Wage and Tip Compensation Requirements (AWT), SMC 14.20.

(k) "Real estate transactions" include "the sale, purchase, conveyance, exchange, rental, lease, sublease, assignment, transfer or other disposition of real property." SMC 14.08.020 DD.

(l) Regarding "Unlawful Inquiries or Advertisements," the prohibitions against publishing, printing, issuing, displaying or circulating any statement, communication, advertisement, publication, or notice indicating any preference, limitation or specification based on membership or status in a

protected category, as outlined in SMC 14.08.070, include oral communications.

(m) "Discrimination: Age and Disability" It is permissible under SMC 14.08 for housing to be limited to older persons, in compliance with 42 U.S.C. §3607 (b), or to persons with disabilities. However, it is not permissible to discriminate against any person in any real estate transaction involving such housing because of their membership or status in any other protected category covered by SMC 14.08.

(n) "Discrimination by reason of sex" includes discrimination on the basis of pregnancy, a pregnancy-related complication, or childbirth. The sole exception to this subsection is business necessity for the employment action demonstrated by an employer.

SHRR 40-020. PRACTICE WHERE RULES DO NOT GOVERN

If a matter arises in administering the Seattle Civil Rights or Labor Standards Ordinances that is not specifically governed by these rules, the Director or Division Director shall exercise discretion to specify the procedure to be followed to promote the just and speedy determination of the merits of all charges and complaints received by the Department.

SHRR 40-025. CONSTRUCTION OF RULES

These rules shall be liberally construed to permit the Department to accomplish its administrative duties and to secure the just and speedy determination of the merits of all charges and complaints received by the Department.

SHRR 40-030. EXCEPTIONS TO THESE RULES

On the Director's or Division Director's own motion or at the request of a party, the Director or Division Director may grant an exception to a rule in a specific instance where special circumstances are such that literal application of the rule will not accomplish the purposes of the Seattle Civil Rights or Labor Standards Ordinances. If an exception to a rule is granted, the Director or Division Director shall notify the parties within five days that the exception has been granted. The notice shall state the procedure that will be followed in lieu of the excepted rule.

SHRR 40-035. SEVERABILITY

If any of these rules or any part of a rule is determined to be invalid, the remaining rules or part of the rule affected shall continue in full force and effect.

SHRR 40-040. COMPUTATION OF TIME

(1) In computing any period of time prescribed or allowed by these rules, by order of the Director, Division Director or the Seattle Civil Rights or Labor Standards Ordinances, the last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday officially recognized by the City of Seattle. In that event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday officially recognized by the City.

SHRR 40-045. SERVICE AND FILING OF PAPERS

(1) Charges. A charge is filed when it is received in the office of the Department.

(2) Other Documents.

(a) Who Serves. The Director or Division Director shall cause to be served (delivered) all papers issued by the Department. Parties shall be responsible for serving their own papers.

(b) How Served. Service of papers other than charges may be made personally, by first-class mail, by certified or registered mail with return receipt requested, by facsimile transmission, or by leaving a copy with a person of suitable age and discretion at the office, principal place of business, or residence of the person to be served. If service is made by mail, the papers shall be deposited in the United States mail addressed to the person upon whom they are served with postage prepaid. Service by mail shall be deemed complete, and documents received, on the third day following the day the papers are placed in the mail, unless the third day is a Saturday, Sunday or legal holiday officially recognized by either the City of Seattle or the U.S. Postal Service in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day.

(c) Proof of Service. Proof of service may be made by written acknowledgment of service, by the affidavit of the person who personally served the papers or who mailed the papers or by a certificate of mailing signed by the person who caused the papers to be mailed.

(d) Upon Whom Served. All papers served by the Department or by any party shall be served upon all parties and upon the agent designated by a party or by law. An attorney entering his or her appearance or withdrawing as representative for any person shall notify the Department and all parties or their attorneys of his or her appearance or withdrawal in writing.

(3) All Notices to be in Writing. All notices issued by the Department in the implementation of the Seattle Civil Rights and Labor Standards Ordinances shall be in writing and shall be served upon the parties to a charge in accordance with

subsection (2) of this section.

SHRR 40-050. WHO MAY REPRESENT PARTIES

(1) In the procedures prescribed by this Chapter (SHRR Ch. 40), a party may designate an individual over the age of 18 to be his or her representative, and must inform the Department in writing of that individual's name, address and telephone number. The designated representative will exercise the rights of the party. Communication with the designated representative is communication with the party. A party may also be represented by a bona fide officer, partner, agent or full time employee of an association, partnership or corporation.

(2) If a City department is to be represented by an attorney, such representation must conform to the requirements of the City Charter.

SHRR 40-055. DEPARTMENT'S FUNCTION

(1) The Department administers the Seattle Civil Rights and Labor Standards Ordinances to accomplish their purposes.

(2) The Department receives and investigates charges to determine whether reasonable cause exists to believe an unlawful practice has occurred or is occurring. If reasonable cause is found to exist, the Department will attempt to obtain a remedy that will eliminate the unlawful practice and prevent its recurrence. Such remedy may be compensatory, corrective or proscriptive. See Appendix A – Monetary Award Guidelines, General Provisions. The remedy appropriate to eliminate and to prevent the recurrence of an unlawful practice is a matter within the discretion of the Director or Division Director until or unless:
   (a) The case is referred to the City Attorney;
   (b) In PSST, JAO and Fair Employment Practices cases in which a City department is a respondent, the matter is certified to a Hearing Examiner or appealed to the Commission; or
   (c) In cases involving an unlawful real estate practice, the charging party or respondent elects a civil action under SMC 14.08.165.

SHRR 40-060. COOPERATION AGREEMENTS WITH OTHER AGENCIES

(1) If a charge alleges facts which would also provide the basis for a charge with the Equal Employment Opportunity Commission (EEOC) or the Department of Housing and Urban Development (HUD), the Department may accept it on behalf of EEOC or HUD and forward it to the appropriate agency. Under work-sharing agreements between the Department and each federal agency, the Department, in most instances will process the charge for the federal agency.

(2) When a complaint filed with the Seattle Civil Service Commission alleges facts which if true would establish a violation of the Fair Employment Practices Ordinance, the Department will, pursuant to Civil Service Rule 5.03, investigate the allegations of the complaint and advise the Civil Service Commission whether a violation of the Fair Employment Practices Ordinance has occurred.

SHRR 40-065. ACCESS TO RECORDS

(1) Pursuant to RCW 42.56.240(1), specific information and records compiled in the investigations by the Department or by the Director or Division Director, which are otherwise not exempt from disclosure will not be available for public inspection or copying until:
   (a) In cases in which a City department is the respondent, the Final Findings of Fact and Determination has been issued;
   (b) A notice of unsuccessful conciliation or conference has been issued; or
   (c) A finding of no reasonable cause, a Predetermination Settlement Agreement or a Conciliation or Conference Agreement has been issued or the matter or charge has been withdrawn or dismissed.

(2) Except as provided in subsection (3) below, during investigation of, conciliation and conference efforts regarding a charge, the Director or Division Director may disclose to a party information and records supplied to the Department by another party to that case if, in the judgment of the Director or Division Director, such disclosure would promote the effective enforcement of the Seattle Civil Rights or Labor Standards Ordinances.

(3) No information or record exempt from disclosure under RCW Chapter 42.56 shall at any time be disclosed by the Department, Director or Division Director except to the Commission, to the EEOC, to HUD, to federal or state agencies charged with enforcement of fair labor standards or to the Seattle Civil Service Commissions; and only when the recipient agency is prohibited from disclosing such information and records.

(4) The Department, Director or Division Director will disclose from open files statistical information not descriptive of any readily identifiable person or persons. See RCW 42.56.210.

(5) Notwithstanding this rule, the Director or Division Director may release or disclose any information related to or submitted in connection with an investigation if, after seeking legal advice, the Director or Division Director believes that releasing or disclosing such information is appropriate.

SHRR 40-070. ETHICS AND CONFLICTS OF INTEREST

(1) In addition to the conduct prohibited by the City's Code of Ethics, SMC Chapter 4.16, no Department employee will investigate or attempt to conciliate a charge against a person with whom the employee, a member of the employee's immediate family or a person with whom the employee:
   (a) Has a substantial financial relationship or close personal relationship;
   (b) Has a current application for employment;
   (c) Is employed; or
   (d) Is a tenant.

(2) The Department shall refer to the EEOC or Washington State Human Rights Commission (WSHRC) Civil Rights charges filed by Department employees, except in those cases in which neither the EEOC nor WSHRC has jurisdiction over the matters alleged in the charge. When neither the EEOC nor WSHRC has jurisdiction over a Department employee's charge, the Director or Division Director may designate a third party who in the Director's or Division Director's judgment is impartial and qualified to investigate and to recommend a determination of the Department employee's charge.

SHRR 40-075 — 40-100 [Reserved]

Charges

SHRR 40-105. WHERE TO FILE

Charges shall be filed at the Seattle Office for Civil Rights, in downtown Seattle, Washington.

SHRR 40-110. CONTENT AND BASIS OF CHARGES

(1) General. The Seattle Civil Rights and Labor Standards Ordinances state what must be included in charges. *See* SMC 14.04.080, 14.06.050, 14.08.100, 14.10.050, 14.16.080, 14.17.060, 14.19.060D and 14.20.070B.

(2) Intake. The Department will draft the charge when the charging party or his or her representative provides the requisite information to the Department.

(3) Defects. A charge shall not be rejected as insufficient because of failure to include all required information so long as, in the judgment of the Director or Division Director, it substantially satisfies the requirements necessary for processing. A charge lacking in any technical requirement shall not be considered defective, provided the requirement is later met.

SHRR 40-115. TIME FOR FILING

(1) A charge must be filed within 180 days of the occurrence of the alleged unlawful practice for Fair Employment Practices, public accommodations, contracting, PSST and JAO cases. *See* SMC 14.04.090, 14.06.050, 14.10.060, 14.16.080 and 14.17.060.

(2) For housing cases, a charge must be filed within one year of the occurrence of the alleged unlawful housing practice. *See* SMC 14.08.110.

(3) For MWO and AWT cases, a charge must be filed within three years of the occurrence of the unlawful practice. *See* SMC 14.19.060, SMC 14.20.070.

SHRR 40-120. AMENDMENT OF CHARGE

(1) General Rule. A charging party may amend the charge at any time prior to the issuance of findings of fact and a determination so long as the Director or Division Director has adequate time to investigate additional allegations and the parties have adequate time to present evidence. *See* SMC 14.04.100, 14.06.060, 14.08.120, 14.10.070, 14.16.080 and 14.17.060.

(2) Amendments that relate back to original charge.
- (a) For jurisdictional purposes the following amendments shall relate back to the date the original charge was filed:
  - i. Amendments to cure technical defects or omissions;
  - ii. Amendments to clarify and amplify allegations;
  - iii. Amendments to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth in the original charge.
- (b) Amendments permitted under (2)(a)(ii) include but are not limited to amendments that change the prohibited basis of the original charge.

(3) Amendments for Subsequent Actions. Amendments to add allegations of additional unrelated unlawful acts and/or acts of retaliation that arose after the filing of the original charge may be made if:
- (a) The amendment is permissible under SHRR 40-120(1); and
- (b) The amendment is filed within 180 days after the occurrence of the acts alleged, one year for housing charges, or three years for MWO and AWT charges.

(4) Amendments Changing Respondents.
- (a) An amendment adding or changing a respondent relates back to the date the original charge was filed if:
  - i. The amendment is permissible under 14.04.100, 14.06.060, 14.08.120, 14.10.070, 14.16.080 or 14.17.060 or under SHRR 40-120(1) and (2); and

ii. If, within one year of the alleged discriminatory act, practice or violation for housing cases,180 days for PSST, JAO and other Civil Rights cases or three years for MWO and AWT Cases, the party to be brought in by amendment:

(a) Has received notice of the charge such that he or she will not be substantially prejudiced in maintaining his or her defense on the merits; and

(b) Knew or should have known that but for a mistake concerning the identity of the proper party, the charge would have been brought against him or her.

(b) Nothing in this rule should be construed to require the amendment of a charge that names and is served upon the proper respondent but which incorrectly states the respondent's name. The findings of fact may correct the name of such respondent. For example, a respondent identified in a charge as XYZ Products may be correctly identified as XYZ Products, Inc. in the findings of fact.

(5) Drafting Amended Charges. The Department may draft amended charges. The charging party shall sign the amended charge under penalty of perjury. The amended charge shall be served on the respondent in the manner prescribed by SMC 14.04.110, 14.06.070, 14.08.130, 14.10.080, 14.16.080, 14.17.060, 14.19 or 14.20 within 20 days after the charging party signs the amended charge.

SHRR 40-125. WITHDRAWAL OF CHARGE

(1) A charging party may request that his or her charge be withdrawn at any time before Findings of Fact and Determination have been made by the Director by giving the Department written notice of his or her request. To withdraw a charge which has been jointly filed with EEOC or HUD, the charging party must submit to the Department a complete and signed Request for Withdrawal form authorized by EEOC or HUD for this purpose.

(2) Upon receipt of the appropriate withdrawal notice, the Director may make inquiries to ascertain whether the charging party gave the notice voluntarily and with an understanding of the consequences. Unless the Director or designee determines that the withdrawal request is coerced or uninformed, the Department shall terminate its action on the charge and notify the charging party and respondent that the charge has been withdrawn

(3) A charging party who withdraws a charge with benefits, or upon receipt of desired benefits from the respondent, may not file another charge that alleges the same facts and violation as the withdrawn charge. The charge will be dismissed with prejudice. A charging party who withdraws a charge without benefits may file another charge that alleges the same facts and violation as the withdrawn charge,

within the statute of limitations. The charge will be dismissed without prejudice.

SHRR 40-130. CONSOLIDATION OF INVESTIGATION CONCILIATION AND CONFERENCE OF CHARGES

The Director or Division Director may order charges involving a common question of law or fact, or involving a common party or parties, to be consolidated for investigation, conciliation, conference or hearing on any or all of the matters at issue in the charges.

SHRR 40-135. EXCLUSIONS — DEFENSE TO CHARGE

When a respondent asserts that its action constituted an effort to address criminal activity and raises SMC 14.04.050E, 14.06.030D(5), or 14.08.190(I) as a defense, the Department shall consult RCW 9.66.010 and other similar applicable laws. In doing so the Department may consider interpretations thereof as have been made by agencies and the courts.

SHRR 40-140 — 40-200 [Reserved]

Investigations

SHRR 40-205. DIRECTOR'S OR DIVISION DIRECTOR'S CHARGES AND INVESTIGATIONS

(1) Pursuant to SMC 3.14.910 and 3.14.912, the Director or Division Director may initiate investigations to determine the extent to which any potential respondent is complying with the Seattle Civil Rights and Labor Standards Ordinances.

(2) An investigation may be initiated by the Director or Division Director before or after a charge has been filed.

(3) All investigatory and discovery procedures available to the Department in the investigation of charges may, at the discretion of the Director or Division Director, be utilized in investigations initiated by the Director or Division Director.

(4) At the conclusion of an investigation, the Director or Division Director will make findings of fact and a determination whether there is or is not reasonable cause to believe the potential respondent is complying with the Seattle Civil Rights and Labor Standards Ordinances. *See* SHRR 40-340.

SHRR 40-210. WHO WILL INVESTIGATE

Charges will be investigated by the Director or Division Director. The Director or Division Director may assign and reassign cases for investigation to Department staff members or

other designees. During an investigation, the Director or Division Director may utilize information gathered under federal, state, or local laws or by federal, state, or local agencies that are charged with the administration of fair employment practices, public accommodations practices, fair housing, fair contracting, protected leave, use of criminal records in employment, wage payment, and minimum wage and compensation ordinances.

SHRR 40-215. FACT FINDING AND SETTLEMENT CONFERENCES

(1) At such times as are deemed appropriate, the Director may hold fact finding and settlement conferences. Such conferences are part of the investigation of a charge. The charging party and respondent shall attend the conference. The purpose of the conference will be:
   (a) To identify the undisputed elements of the charge;
   (b) To define and, if possible, to resolve the disputed elements of the charge; and
   (c) To attempt to settle the charge.

SHRR 40-225. SCOPE OF INVESTIGATION

In investigating a charge, the Director or Division Director may require a person to submit information to determine the facts concerning the unlawful practice alleged in the charge. The Director or Division Director may enter and inspect such places and such records (and make copies thereof), question such persons, and investigate such facts, conditions, practices, or matters as the Director or Division Director may deem appropriate to determine whether any person has violated any provision of the Civil Rights or Labor Standards Ordinances, or which may aid in the enforcement of the provisions of these ordinances.

SHRR 40-230. ORAL INTERVIEWS

(1) The Director or Division Director may interview the charging party, the respondent and any persons who may provide information concerning the allegations of a charge.

(2) Except at the request of the person interviewed, the charging party, the charging party's agent, the respondent and the respondent's agent will not be present during interviews of potential witnesses.

(3) The Director or Division Director may record statements of persons only with the person's consent. A person may, at his or her own expense, make a copy of his or her own recorded statement.

(4) The Director or Division Director may provide any person interviewed with a copy

of any existing written transcript or summary of the interviewed person's own statement. The Director or Division Director may request the person interviewed to confirm by his or her signature that a written interview transcript or a summary thereof is an accurate representation of his or her statement. The person interviewed may submit additional comments regarding his or her testimony to the Department.

SHRR 40-235. REQUESTS FOR PRODUCTION, INTERROGATORIES, ACCESS AND SUBPOENAS

(1) The Director or Division Director may request a respondent to provide documents, records, files or other sources of evidence to the Department. The respondent shall provide such documents, records, files or other material to the Department within 10 days of receiving of the Director's or Division Director's request.

(2) The Director or Division Director may issue interrogatories to a respondent. The respondent shall provide complete answers to the interrogatories to the Department within 10 days of receiving the interrogatories.

(3) If the respondent is unable within 10 days to provide the material requested or to completely answer the interrogatories asked by the Director or Division Director, the respondent shall notify the Director or Division Director, respectively, within five days of the date of the request or interrogatories. The notification shall be written and shall state the specific time, not to exceed 10 days beyond the original due date, when the material will be provided or the interrogatories will be answered. The Director or Division Director may grant a further extension for good cause.

(4) The Director or Division Director may access the respondent's business premises to conduct investigations. The Director or Division Director, while on the respondent's business premises, may examine, record, and copy materials; may take the statements of persons; and may carry out such other investigation duties authorized by this Chapter as the Director or Division Director may deem necessary. In JAO, PSST and AWT investigations, the Division Director will do so with appropriate notice and at a mutually agreeable time.

(5) The Director or Division Director will seek voluntary compliance with requests for production, interrogatories, requests for access to respondent's premises, to relevant evidence and to sources of evidence and subpoenas. If a person does not voluntarily comply, the Director or Division Director may issue a subpoena to order the person to provide the requested material, to completely answer interrogatories, to allow access to respondent's business premises, to relevant evidence and to sources of evidence or to comply with the subpoena within five days.

(6) If, in the Director's or Division Director's judgment, the circumstances of a particular case require accelerated response to the Department's discovery requests, the Director or Division Director may by order shorten the time in which a person must respond to a request for production, to interrogatories, to a request for access or to a subpoena.

(7) An order issued pursuant to this subsection to a respondent which is a City department may be transmitted to the Mayor who shall take appropriate action to secure compliance with the order.

(8) An order issued pursuant to this subsection to a respondent which is a not a City department may be transmitted to the City Attorney's Office which may take appropriate action to secure compliance with the order.

SHRR 40-240. FACT FINDING AND SETTLEMENT CONFERENCES

(1) At such times as are deemed appropriate, the Director and Division Director's designee may hold fact finding and settlement conferences. Such conferences are part of the investigation of a charge. The charging party and respondent shall attend the conference. The purpose of the conference will be:
   (a) To identify the undisputed elements of the charge;
   (b) To define and, if possible, to resolve the disputed elements of the charge; and
   (c) To attempt to settle the charge.

(2) The Director and Division Director's designee will schedule any fact finding and settlement conference to be held. The charging party and respondent will be notified at least 15 days in advance of such a conference. Notification of a fact finding and settlement conference may include a request to the charging party or to the respondent to provide information and documents for use at the conference. If the charging party or respondent do not intend to provide such information or documents, the party must so notify the Director or designee making the request within three days after receiving the notice and request.

(3) The Director and Division Director's designee may reschedule a fact finding and settlement conference on his or her own initiative or at the request of a party. If a party fails to attend a conference, the conference may be rescheduled or other investigation may be conducted by the Director's designee. If a charging party fails to attend a conference, the charge may be dismissed if the Director determines that such failure to attend is the result of charging party's failure to cooperate. See SHRR 40-305(1)b.

(4) Participants at fact finding conferences may be accompanied by counsel, but counsel's role is advisory only. The Director and Division Director's designee will

conduct the conference. Counsel will not be allowed to question or cross-examine parties or other witnesses.

(5) Respondent's representatives at a fact finding conference shall include:
(a) A person with knowledge of the facts pertaining to the charge; and
(b) A person with authority to negotiate a settlement.

(6) The Director's designee conducting the conference will:
(a) Explain the purpose of and the procedure for the conference, and
(b) Ask the charging party to confirm the allegations in the charge and ask the respondent to respond to the allegations if the respondent has not previously done so.

(7) The Director and Division Director's designee conducting the conference may:
(a) Question the participants at the conference;
(b) Request the participants to provide statements or documents;
(c) Terminate discussion on a particular point or terminate the conference when the Director's designee deems appropriate;
(d) Meet with the charging party or respondent individually concerning possible settlement and communicate all demands and offers to the appropriate person; and
(e) Ask the charging party what remedy he or she will accept to settle the charge subject to SHRR 40-055 (2).

(9) If the parties express interest in a settlement conference, the Director or Division Director may hold a settlement conference.

(10) If the charging party and respondent agree to an appropriate settlement, the Director or Division Director will draft a predetermination settlement (PDS) agreement as provided in SHRR 40-315.

(11) The Director's designee may tape-record conferences with the permission of all participants. A participant may tape-record a conference only with the permission of all other participants at the conference. No tape-recording shall be made of any settlement discussions that may occur at a conference.

SHRR 40-245. FAILURE TO RESPOND

(1) If a Respondent fails to respond to a charge alleging a violation of a Civil Rights Ordinance within 10 days for a Housing or Public Accommodation charge or 20 days for other charges, or fails to maintain and provide records that establish compliance with the relevant Ordinance(s), and the Respondent has been served pursuant to SHRR 40-045, the Director may enter a finding that there is reasonable

cause to believe that the Respondent violated the law as alleged.

(2) If an employer fails to respond to a charge alleging a violation of a Labor Standards Ordinance within 10 days or fails to maintain and provide records that establish compliance with the relevant Ordinance(s), and the employer has been served pursuant to SHRR 40-045, the Division Director may enter a default order that the employer has violated the ordinance(s) as alleged.

SHRR 40-250. CONFIDENTIALITY

(1) Information that in the judgment of the Director or Division Director would tend to identify persons who have furnished information about violations of law to the Director, Division Director, or their designees, shall not be disclosed under these Rules except as provided below at paragraph (3).

(2) The Director and Division Director shall maintain and protect from disclosure, to the fullest extent of the law, information that would tend to identify persons who furnished information about violations of law in matters before the Office of the Hearing Examiner; and, under all applicable Washington Public Records Act exemptions, see RCW 42.56.240, except as provided below at paragraph (3).

(3) Information that would tend to identify persons who have furnished information about violations of law to the Director, Division Director, or their designees may only be disclosed under these Rules upon an agreement between the person to be identified and the Director or Division Director to disclose such information.

SHRR 40-255 – 40-300 [Reserved]

Termination of Cases

SHRR 40-305. DISMISSAL OF A CHARGE WITHOUT FINDINGS OF FACT

(1) The Director or Division Director may dismiss a charge without making findings of fact and a determination whether there is reasonable cause to believe an unlawful practice has occurred when he or she determines dismissal is appropriate, including, but not limited to, cases where:

(a) The Director or Division Director determines that all portions of the charge were not timely filed or that the Department does not otherwise have jurisdiction;

(b) The charging party fails to provide necessary information requested by the Director or Division Director, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate with the Director or Division Director to the extent he or she is unable to resolve the charge, and the charging party has had 14 days' notice of the Director's of Division Director's intent to dismiss the charge for failure of the charging party to cooperate;

(c) The charging party cannot be located by the Director or Division Director after reasonable efforts to locate the charging party, including notice to the charging party at his or her last known address of the Director's or Division Director's intent to dismiss the charge, and at least 14 days have elapsed since the Director or Division Director sent notice of intent to dismiss the charge.

(2) In those cases where a complaint or charge has been filed with the EEOC, HUD, or another federal or state agency, that agency may decide if the state or federal charge or complaint should be dismissed.

(3) The charging party will be notified by the Director or Division Director that a charge has been dismissed.

SHRR 40- 310. ADMINISTRATIVE CLOSURE OF CASES

(1) The Director or Division Director may administratively close a case when it is appropriate, including, but not limited to, cases where:
   (a) A civil action has been filed and is being actively litigated in a court which seeks relief on the same facts as are alleged in the charge;
   (b) A Predetermination Settlement agreement has been reached pursuant to SHRR 40-315.

(2) An administrative closure of a case terminates the action of the Director or Division Director and the Department on the charge. A charging party may not file another charge that alleges the same facts and violation as the charge in a case which has been administratively closed, except where permissible by law.

The charging party and respondent will be notified by the Director or Division Director that a charge has been administratively closed.

SHRR 40-315. PRE-DETERMINATION SETTLEMENTS

(1) The charging party and the respondent may resolve the charge by agreement at any time before a determination regarding reasonable cause is made.

(2) If, before a determination regarding reasonable cause is made, the charging party and respondent agree upon a settlement and the Director or Division Director believes the remedy afforded the charging party is appropriate (see SHRR 40-055), the Department will draft a PDS agreement. The agreement may include, but need not be limited to, the following provisions:
   (a) A "no fault" settlement has been reached;
   (b) The agreement constitutes a first violation of the relevant ordinance;
   (c) The charging party and the respondent accept the terms of the agreement

as a resolution of the charge;

(d) The specific action(s) the charging party and respondent will take to effectuate settlement of the charge and the time within which the action(s) will be taken;

(e) The charging party agrees not to sue the respondent for matters which were alleged in the charge or could have been alleged in the charge;

(f) The Department may investigate any alleged breach of the agreement;

(g) If litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action;

(h) The Department may monitor compliance for a minimum period of one year.

(3) If the charging party and the respondent sign the PDS agreement, the agreement will be incorporated in an Order of the Director or Division Director which will state that the parties shall comply with the terms of the PDS agreement.

(4) The Director or Division Director will require proof of compliance with the terms of the PDS agreement.

(5) An order incorporating a PDS agreement will have the force and effect of an order incorporating conciliation or conference agreement. A PDS agreement may be enforced in the same manner as a conciliation or conference agreement. *See* SHRR 40-350. The Director or Division Director may seek to enforce the terms of a PDS agreement in a court of competent jurisdiction.

(6) In those instances in which a person claiming to be aggrieved or to be a member of the class claimed to be aggrieved by the practices alleged in a charge is not a party to a PDS agreement, the agreement shall not in any way prejudice the rights of such person to proceed in any forum against the respondent.

SHRR 40-320. EXTENT OF CONCILIATION AND CONFERENCE EFFORTS

(1) In conciliating or conferencing a case in which a determination of reasonable cause has been made, the Director or Division Director shall attempt to achieve a just resolution of all unlawful practices found to have been committed by obtaining an agreement with the respondent that it will eliminate the unlawful practices and that it will provide appropriate affirmative relief.

(2) If the charging party and the respondent have been afforded a reasonable opportunity to negotiate an agreement, and it is apparent to the Director or Division Director that an agreement cannot be reached, the conciliation or conference efforts may be determined to have been unsuccessful.

(3) In PSST, JAO and Fair Employment Practices cases except when a City department is the respondent, if conciliation is not successful, the Director or

Division Director will issue a notice of the parties' failure to conciliate and refer the case to the Law Department within thirty (30) days of issuance of the reasonable cause determination. The thirty day period may be extended at the Director's or Division Director's discretion.

SHRR 40-325. CHARGING PARTY'S CONSENT NOT REQUIRED FOR CONCILIATION OR CONFERENCE AGREEMENT

In cases filed under Civil Rights and Labor Standards Ordinances except SMC 14.08, the charging party's consent is not required for the Director or Division Director to enter into a conciliation or conference agreement with a respondent if the Director or Division Director, respectively, determines the agreement provides the charging party all relief to which the charging party would be entitled pursuant to SMC 14.04.140A, 14.04.150B, 14.10.110A, 14.10.120B, 14.16.080E, 14.17.060A, 14.19.060F, 14.20.070D and pursuant to SHRR 40-055(2) and SHRR 40-320 – 40-325.

SHRR 40-330. SUCCESSFUL CONCILIATION OR CONFERENCE

(1) Conciliation and conference agreements reached in all cases except PSST, JAO and Fair Employment Practices cases in which a City department is the respondent shall be written, signed and incorporated in an order. *See* SMC14.04.140A, 14.06.100A, 14.06.100B, 14.08.160A, 14.08.160B, 14.10.110A, 14.16.080E, 14.17.060A, 14.19.060, 14.20.070.

(2) Conciliation agreements reached in PSST, JAO and Fair Employment Practices cases in which a City department is the respondent shall be signed by the head of the respondent City department and incorporated in an Agreed Order issued by the Director or Division Director. The Agreed Order shall thereafter be treated as any other final order issued by the Director or Division Director pursuant to SMC 14.04.150B, 14.16.080F or 14.17.060 except that the respondent may not appeal the Agreed Order.

(3) Conciliation and conference agreements will include a provision stating that if litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action.

(4) The Director or Division Director shall cause a copy of any signed conciliation or conference agreement and order or Agreed Order incorporating such an agreement to be served upon the respondent and upon the charging party.

SHRR 40-335. UNSUCCESSFUL CONCILIATION OR CONFERENCE

(1) In PSST, JAO and Civil Rights cases except PSST, JAO or Fair Employment Practices cases in which a City department is the respondent, if conciliation efforts

are unsuccessful, a written finding of the failure of conciliation shall be issued by the Director or Division Director pursuant to SMC 14.04.140 B, 14.06.100 C, 14.08.160 C, 14.10.110 B, 14.16.080 E or 14.17.060.

(2) In PSST, JAO or Fair Employment Practices cases in which a City department is the respondent, if conciliation efforts are unsuccessful, the Director or Division Director will notify the parties of the failure of conciliation and will thereafter proceed to issue the order required by SMC 14.04.150 B, 14.16.080 F and 14.17.060.

(3) In MWO and AWT cases, if a Respondent refuses to promptly comply with an Order signed by the Division Director which includes the relief mandated by law after unsuccessful conference and failure to file a timely appeal, the Division will refer the matter to the City Attorney to secure enforcement of the Order.

SHRR 40-340. FINDINGS OF FACT AND DETERMINATIONS OF REASONABLE CAUSE OR NO REASONABLE CAUSE

(1) Cases in Which Findings and Determinations are Required. In all cases where the charge has not been withdrawn or the case has not been dismissed or administratively closed, the Director or Division Director will make findings of fact and a determination whether there is or is not reasonable cause to believe an unlawful practice has been committed or is being committed (referred to in this rule as a "determination").

(2) Standard of Proof. A reasonable cause determination will be made when, in the judgment of the Director or Division Director, a preponderance of the credible evidence establishes that an unlawful practice has been committed or is being committed.

(3) Procedure.

(a) In all cases, except PSST, JAO and Civil Rights Employment cases in which a City department is the respondent, findings of fact and a determination will be made by the Director or Division Director. The findings and determination will be served on the respondent and on the charging party within five days after they are signed by the Director or Division Director.

(b) In PSST, JAO and Fair Employment Practices cases in which a City department is a respondent:

i. The Director or Division Director shall cause proposed findings of fact and a proposed determination to be served upon the charging party and upon the respondent;

ii. The charging party or respondent may file with the Department any

comments he or she may have regarding the proposed findings and proposed determination within 20 days from the date the proposed findings and determination were issued;

iii. The Director or Division Director will consider any timely filed comments of the parties and may direct further investigation of the case or issue final findings and a final determination.

SHRR 40-345. CONCILIATION OR CONFERENCE EFFORTS ARE REQUIRED

(1) Post-determination conciliation or conference efforts are mandated by the Seattle Civil Rights and Labor Standards Ordinances in all cases in which a reasonable cause determination has been made, except in PSST, JAO and Civil Rights Employment cases in which a City department is the respondent. *See* SMC 14.04.140, 14.06.100, 14.08.140, 14.10.110, 14.16.080, 14.17.060, 14.19.060 and 14.20.070. *See* Appendix A.

(2) In PSST, JAO and Fair Employment Practices cases in which a City department is the respondent and in which a reasonable cause determination has been made, the Director or Division Director is required to confer with the parties and determine an appropriate remedy as part of the process of determining an appropriate order. The Director or Division Director shall attempt to eliminate unlawful practices determined to have been committed by conference, conciliation and persuasion during the communication with the parties. *See* SMC 14.04.150B, 14.16.080 F, 14.17.060.

SHRR 40-350. ENFORCEMENT OF CONCILIATION AND CONFERENCE AGREEMENTS

(1) In all cases except those listed in paragraph (2) below, if a respondent fails or refuses to comply with the terms of a conciliation or conference agreement and order, within 20 days after the Director or Division Director determines the agreement has been breached and, in MWO and AWT matters, has not filed a timely appeal, the Director or Division Director shall cause the record of the proceedings to be delivered to the City Attorney. The City Attorney may invoke the aid of the appropriate court to secure enforcement of the agreement and the imposition of penalties. *See* SMC 14.04.060, 14.04.180 D, 14.04.210, 14.06.130 B, 14.08.187 B, 14.08.200, 14.10.110, 14.16.080 E, 14.17.060, 14.19.070, 14.20.060.

(2) In Public Accommodations, Open Housing and Fair Contracting cases in which a City department is the respondent, if the respondent fails or refuses to comply with the terms of a conciliation agreement incorporated in an order of the Director, within 20 days after the Director determines the agreement has been breached, a copy of the order incorporating the agreement shall be transmitted to

the Mayor. The Mayor shall take appropriate action to secure compliance with the order. *See* SMC 14.06.130 A, 14.08.187 A and 14.10.120.

SHRR 40-355. DIRECTOR'S OR DIVISION DIRECTOR'S ORDER IN CITY PSST, JAO AND FAIR EMPLOYMENT PRACTICES CASES

In PSST, JAO and Fair Employment Practices cases in which a City department is the respondent, within 60 days of the date final findings and a final determination of reasonable cause are issued, if conciliation efforts have not resulted in a signed conciliation agreement, the Director or Division Director will issue an order outlining the appropriate remedy, as mandated by SMC 14.04.150 B, 14.16.080 E, 14.17.060 A.

SHRR 40-360. WITHDRAWAL AND AMENDMENT OF FINDINGS, DETERMINATIONS AND ORDERS

Final findings of fact, determination and order may not be withdrawn or amended without the agreement of the parties except:

(1) Upon a remand order of the Human Rights Commission following an appeal pursuant to SMC 14.04.130, 14.04.160, 14.06.090, 14.08.150, 14.16.080 or 14.17.060;
(2) Upon the Director's or Division Director's Order after considering reconsideration under MWO or AWT; or
(3) Upon motion from a party or upon the Director's or Division Director's motion to correct clerical mistakes or errors arising from oversight or omission.

SHRR 40-365. APPEALS AND RECONSIDERATION BY CHARGING PARTY

(1) Challenge of Dismissals and Administrative Closures. A charging party may challenge the dismissal of his or her charge (see SHRR 40-305) or the administrative closure of the case regarding his or her charge (see SHRR 40-310) by filing a written statement challenging the dismissal or administrative closure with the Human Rights Commission within 30 days of the date the notice of dismissal or notice of administrative closure was issued. *See* SHRR 46-040 and 46-050.

(2) Appeal of No Cause Determination. For cases that do not allege violations of the MWO or AWT Ordinance, a charging party may appeal a determination that there is not reasonable cause for believing an unlawful practice has been committed by filing a written statement appealing the decision with the Human Rights Commission within 30 days of the date the determination was issued. *See* SMC 14.04.130, 14.06.090, 14.08.150, 14.16.080, 14.17.060, SHRR 46-030.

(3) Appeal of Civil Rights, PSST or JAO Determination that is both Reasonable Cause

and No Cause. For charges which allege multiple allegations, some of which result in reasonable cause determinations and some of which result in no cause determinations, if conciliation of the matter is unsuccessful, the Director or Division Director will issue a notice of the parties' failure to conciliate and refer the case to the Law Department within thirty (30) days of issuance of the reasonable cause determination. The thirty day period may be extended at the Director's or Division Director's discretion. The charging party may appeal the no cause portion of the case before the Seattle Human Rights Commission.

(4) Appeals of Reasonable Cause Determinations in Cases Involving City Department as Respondents. In PSST, JAO and Civil Rights Employment cases in which a City department is the respondent, the charging party or respondent may appeal the Director's or Division Director's determination that there is reasonable cause to believe an unlawful practice has been or is being committed and the Director's or Division Director's Order, by filing a written statement with the Human Rights Commission within 30 days of the date the Director's or Division Director's Order is issued. *See* SMC 14.04.160 A, 14.16.080 G, 14.17.060, 14.19.060 and SHRR 46-060.

(5) Reconsideration.

a. The charging party in fair contracting cases may request reconsideration in response to a finding that is no reasonable cause or partially no reasonable cause. The Director will consider a request for reconsideration filed within 30 days of a Determination of no reasonable cause and will respond in writing by either granting or denying the request. *See* SMC 14.10.100.

b. A complaining witness in MWO or AWT cases may request reconsideration in response to a finding that is no reasonable cause or partially no reasonable cause. The Director will consider a request for reconsideration filed within 15 days of a Determination of no reasonable cause, and will respond in writing by either granting or denying the request. The Director will consider new evidence only if the party seeking reconsideration can establish that it could not have been discovered by due diligence before the end of the investigation. The Director may affirm the conclusion or send it back to the Division Director for further investigation or reconsideration.

SHRR 40-370. PRESENTATION OF DOCUMENTS TO CITY COUNCIL IN CITY PSST, JAO AND FAIR EMPLOYMENT PRACTICES CASES

In PSST, JAO and Fair Employment Practices cases in which a City department is the respondent and the remedy ordered by the Director or Division Director includes payment of more than $5,000.00, if no timely appeal has been filed, the Director or Division Director will, within 90 days of the date of his or her final order, cause the necessary documents to be presented to the City Council. *See* SMC 14.04.150 D; 14.16.080 F; 14.17.060. If a timely appeal is filed, the Director or Division Director will provide the

necessary documents to the City Council within 30 days of the date his or her final order is affirmed by a panel of the Commission.

SHRR 40-375. APPEALS TO HEARING EXAMINER.

(1) In PSST, JAO or Fair Employment Practices cases in which a City department is the respondent and the remedy ordered by the Director or Division Director includes payment of more than $5,000.00, if all necessary documents have been presented to the City Council and it fails or refuses to appropriate the amount ordered by the Director or Division Director within 90 days of the date the documents are presented to the Council, the Director or Division Director will certify the case to the Hearing Examiner. *See* SMC 14.04.150 D, 14.16.080 F, 14.17.060, section III of the Rules and Procedures Governing Employment Discrimination and Open Housing Cases issued by the Office of the Hearing Examiner.

(2) In MWO or AWT cases, the respondent may appeal the Division Director's order by requesting a contested hearing before the Hearing Examiner within 15 days of being served with the Division's decision. SMC 14.19.060; SMC 14.20.070.

APPENDIX A

MONETARY AWARD GUIDELINES, GENERAL PROVISIONS

(1) The purpose of these guidelines is to provide a basis for the computation of monetary awards in cases filed under SMC 14.04, 14.06, 14.08, 14.10, 14.16, 14.19 and 14.20 arising under the Seattle Civil Rights and Labor Standards Ordinances, as amended. These guidelines are not mandatory and may be deviated from by the parties or by the Director or Division Director.

(2) These guidelines do not apply to any non-monetary relief, nor do they apply to monetary relief not inuring directly to the benefit of the awardee, such as employer contributions to fringe benefit funds.

(3) Awards in compensation for tangible loss may be supported by evidence such as the following:
   (a) Vouchers, receipted bills, rental agreements, or estimates;
   (b) A written statement by the awardee setting forth the nature and amount of the loss incurred, and facts showing that the loss was incurred as a result of unlawful discriminatory acts or practices of the respondent;
   (c) When back pay awards are involved in Civil Rights Ordinance cases, the awardee's statement shall also include a description of attempts to secure alternate employment and either (i) a statement that no interim earnings were received, or (ii) a statement showing by whom the awardee was employed and earnings received during the interim period.

BACK PAY AWARDS IN CIVIL RIGHTS ORDINANCE CASES

(1) Back Pay. Once it has been determined that an awardee has sustained economic loss from a discriminatory employment practice, back pay should be awarded. The issue in determining whether a back pay award is appropriate is whether the awardee was economically injured and requires back pay to be made whole.

(2) Computation. Back pay awards shall be computed to include all earnings and benefits that would be due the awardee but for respondent's unlawful acts or practices. The award shall be equal to the difference between what the awardee would have earned from respondent and any interim earnings actually earned during the computation period plus uncompensated lost benefits and interest, less legal deductions due as a result of the award.
   (a) What the awardee would have earned from the respondent shall include the base pay, and any overtime or bonuses that would have been payable during the compensation period. The rate of pay and hours worked prior to the unlawful practice, or the same for similarly situated employees or replacement employees, should be used to compute the earnings on either

an hourly, weekly or monthly basis, as is convenient.

(b) Interim earnings shall include all amounts actually earned by the awardee during the interim period, including overtime pay, bonuses, and part-time employment earnings during the interim period which could not have been earned simultaneously with the desired full-time position. Unemployment compensation and welfare benefits shall not be considered interim earnings.

(c) Uncompensated benefits shall include any and all benefits that are not otherwise included in sub-section (a) that would have accrued to the awardee or upon the awardee's behalf and all expenses actually incurred by the awardee in order to replace benefits that were lost as a result of respondent's unlawful actions.

i. Benefits that would have accrued to the awardee or upon an awardee's behalf include, but are not limited to, employer contributions to retirement and/or profit sharing funds. Where appropriate, contributions may be made to the funds on the awardee's behalf in lieu of a direct payment to the awardee.

ii. Expenses actually incurred to replace lost benefits include, but are not limited to, the purchase of insurance or costs incurred by the awardee which would have been compensated by the respondent or by insurance paid for by the respondent.

(d) Legal deductions due as a result of the award include mandatory contributions, such as FICA, that are actually required by law to be withheld from wages. The amount deducted under this section shall be paid to the appropriate fund on the awardee's behalf.

(e) The compensation period for the calculation of back pay shall commence at the time the unlawful act or practice occurred and shall continue until the date a conciliation agreement is entered pursuant to SMC 14.04.140 or a determination of an appropriate remedy is issued pursuant to SMC 14.04.150. Whenever reinstatement is part of the agreement or remedy, the compensation period shall be computed so as to include consideration of actual reinstatement. The compensation period shall not include any period where the awardee's interim earnings, from employment with either the respondent or with another employer, equal or exceed earnings which would have been received from the respondent but for the respondent's unlawful act or practice.

(3) Special Circumstances Affecting Back Pay Award.

(a) For back pay to be awarded for a period of unemployment, the awardee must show that she or he was ready, willing, and able to take work during the interim period and that she or he exercised reasonable diligence toward securing other employment. For this purpose, the written statement executed by the awardee pursuant to SHRR 40-320 should provide sufficient evidence to sustain the award of back pay. If the awardee did not

use reasonable diligence in securing alternate employment during any part of the compensation period, then the compensation period will be decreased by that amount of time in making the computation described in paragraph (2) above.

(b) Offers to reinstate the awardee will only affect the awardee's right to back pay when such offers would wholly rectify the effects upon the awardee of respondent's past discriminatory acts or practices. The offer to reinstate must include: reinstatement in a position equal to that which the awardee held before the unlawful acts or practices, complete back pay, restoration of seniority and reimbursement of the expenses which the awardee incurred as a result of the unlawful acts or practices, and assurances that the respondent will maintain a non-discriminatory working environment.

AWARDS IN COMPENSATION OF INCIDENTAL AND CONSEQUENTIAL EXPENDITURES AND LOSSES IN CIVIL RIGHTS CASES

(1) Travel and Time. Travel expenses shall be awarded to the extent actually incurred by the awardee because of respondent's unlawful act or practice. These expenses shall also include those incurred as a result of additional commuting between home and job caused either by a relocation of work or housing. Personal time lost by an awardee as a result of respondent's unlawful act or practices shall be compensated at the rate of awardee's normal hourly pay, or if none such exists, at the rate of the current minimum wage at the time the awardee receives compensation. Travel and time expenses may be compensated to the extent they are reasonably ascertainable and unavoidable.

(2) Employment Agency Fees. All employment agency fees paid by an awardee to secure a job from which she or he is unlawfully discharged or laid off, and those which are contracted for or paid by an awardee to secure late employment because of such termination, shall be compensable.

(3) Housing Sales. If an awardee has been unlawfully prohibited by a respondent from making an offer to purchase housing, or if the awardee's offer is unlawfully rejected and an equal or lower offer is accepted by respondent from another, then an award equal to the difference between the asking price of the housing at the time the awardee's offer was rejected and the final selling price shall be made. If an awardee finds it necessary to pay an inflated price to secure other housing as a result of unlawful discrimination, an award equal to the excess amount paid over market price shall be made.

(4) Housing Rental. If, to satisfy her or his immediate housing needs, an awardee is unlawfully required to pay rent in excess of that at which respondent's housing was offered, an amount equal to the total increased rental costs which the awardee has paid or has committed herself or himself to pay, or the increased amount for one

year, whichever amount is greater, shall be made.

(5) Real Estate and Rental Agency Fees. All real estate and rental agency fees and advertising costs paid by an awardee to secure housing accommodations from which she or he is later unlawfully evicted or caused to move, and those which are contracted for or paid by an awardee to secure later housing accommodations because of such unlawful removal, shall be compensable.

(6) Housing Deposits. If an awardee is unlawfully removed by respondent from any housing accommodation, and in order to secure new accommodations is required to pay damage or other deposit, then an award shall be made equal to 1% per month on refundable deposits. The award should be computed for the period of awardee's actual or expected rental terms, or for one year, whichever is longer. On nonrefundable deposits, an amount equal to the amount by which the deposit exceeds the deposit made on the housing accommodations from which the awardee was unlawfully removed shall be made.

(7) Miscellaneous Expenses. All other expenses or losses incurred as a result of respondent's unlawful acts or practices shall be compensable by monetary award.

(8) Interest. Interest shall accrue at the rate of 12 percent per annum on the amount of money delinquent and shall be computed on a monthly basis. It shall be added to all back pay awards and to all awards to compensate of out-of-pocket expenses incurred by the awardee. Such interest shall run from the date such back pay was due the awardee as wages or from the date the expenses were paid out by the awardee until the amount is paid.

(9) Employment Discrimination--Computation. All calculations under subsections 1, 2 7, and 8 above, for an employment discrimination case, shall be computed with reference to the period over which the awardee is determined to have been damaged by the respondent's wrongful act.

(10) Attorney's Fees.

(a) The Director may require the payment of a charging party's reasonable attorney's fees as a condition of settlement of any determination that reasonable cause exists to believe that an unlawful practice has occurred or pursuant to SHRR 40-215. The Director shall determine what is a reasonable attorney's fee by determining the number of hours reasonably expended multiplied by a reasonable hourly rate.

(b) Any person requesting payment for reasonable attorney's fees shall submit to the Department an affidavit and supporting documentation, including contemporaneously kept time records, which shows the number of hours worked, the work performed, the individual(s) who performed the work and the actual or a reasonable hourly rate for each individual. Copies shall be

provided to the respondent or respondent's representative. The respondent may submit contravening evidence upon the reasonableness of the hours expended or the requested hourly rate.

(c) In determining the reasonableness of the award, the Director may consider the following:

i. The prevailing market rates in the relevant community;

ii. The training, background, experience and skill of the individual attorney;

iii. The complexity of the issue;

iv. Whether any of the work or hours appear excessive, redundant or otherwise unnecessary; or

v. Any other factor which the courts of the United States or the State of Washington may from time to time consider to be relevant.

(d) No award shall be made under this section if a party represented themselves pro se or if a party's attorney failed to file a notice of appearance with the Department. No fee shall be recoverable for services rendered in connection with the representation of the party in another forum or prior to the date of filing a notice of appearance with the Department.

(e) The Director's determination regarding an award of reasonable attorney's fees shall be in writing, shall include the basis for the determination and shall be incorporated into a written order.

AWARDS IN COMPENSATION OF INTANGIBLE LOSSES IN CIVIL RIGHTS CASES

(1) Mental and physical anguish, pain and suffering should be compensable by monetary award to the extent they resulted from the unlawful acts or practices of the respondent. The undergoing of required medical, mental or psychiatric treatment shall constitute evidence of physical or mental anguish, pain and suffering. As well, any sworn statement of a charging party or other witness, that has been reduced to writing, in support of a charging party's contention of his/her suffering or distress shall constitute evidence of physical or mental anguish, pain and suffering.

(2) Embarrassment, humiliation and indignity are the natural and unavoidable consequences of any unlawful discriminatory act or practice and should be compensated in an amount not less than $814.11 (2015 dollars), adjusted for the current rate of inflation, as measured by the Consumer Price Index, to any affected awardee without further proof of injury or loss. An award for embarrassment, humiliation and indignity should be made in larger amounts, depending upon severity of harm suffered, when it appears that the humiliation, embarrassment or indignity suffered by the awardee was substantial or aggravated. Examples of facts showing such substance or aggravation are as follows:

(a) Untrue, derogatory statements of the respondent regarding the awardee were made known to the awardee;
(b) The awardee was demoted;
(c) Slurs or epithets were used by respondent in references to any class of persons protected by Seattle Civil Rights laws;
(d) The incident occurred publicly or was within the knowledge of the awardee's peers;
(e) Respondent's unlawful acts were willful; repetitive or reckless, constituting harassment; or
(f) Respondent knew or should have known that his or her actions violated the awardee's rights and the awardee knew that she or he was the victim of an unlawful discriminatory act or practice.

(3) In charges involving unlawful real estate practices, the charging party may be awarded a remedy that will eliminate the unlawful practice and prevent its recurrence under this section. Such remedy may be compensatory, corrective, or proscriptive. In all other charges, awards for humiliation and mental suffering shall not exceed Ten Thousand Dollars ($10,000.00).

Remedy for Paid Sick/Safe Time Cases

(1) **Notice and Posting**. An employer who willfully violates the notice and posting requirements of this Ordinance shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

(2) **Remedy**. In addition to any relief authorized by the Ordinance, liability may accrue and an aggrieved person may obtain relief as provided in the Ordinance, including recovery of back pay plus interest at a rate of 12 percent per annum, calculated monthly, for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

(3) **Settlement and Conciliation.** In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Division Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of the Ordinance, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Division Director, the charging party and the respondent. An order shall then

be entered by the Division Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

(4) **Retroactive PSST**. When an investigation results in a finding that the employer unlawfully withheld PSST accrual, use, and/or carry-over, the remedy for each employee may include but is not limited to:

(a) Payment for 30 PSST hours, considered back pay as a condition of settlement in SMC 14.16.080 E, 14.16.080 I, for each year of noncompliance at the employee's rate of pay on the last day of each year of noncompliance, plus interest at a rate of 12 percent per annum computed monthly from the last day of each year of noncompliance;

i. To calculate the equitable remedy, OLS will adjust number of hours paid out annually using the most recent data regarding "the frequency of work-loss days" for adults aged 18 and over as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Summary Health Statistics for U.S. Adults.

(b) In addition to the wages owed for withheld PSST, each affected employee will receive access to accrued paid sick leave hours. If payroll records exist, this will involve calculation of the PSST hours that would have accrued for each year of noncompliance. OLS will subtract from the accrual the number of hours paid out and restore the remaining balance of PSST hours that each employee should have accrued. If the number exceeds carryover restrictions, or if payroll records do not exist, the employer shall restore the maximum amount of PSST hours that the employee could have accrued for the period of noncompliance minus carryover restrictions.

This remedy may be prorated for the length of noncompliance.

Remedy for the Use of Criminal History in Employment Decision Cases (JAO)

In JAO cases, the exclusive remedy available under SMC 14.17.060 is a notice of infraction and offer of department assistance for the first violation; an order requiring the respondent to pay a monetary penalty of up to $750, payable to the charging party, for the second violation; and a monetary penalty of up to $1000, payable to the charging party, for each subsequent violation. In the event the Hearing Examiner (or panel majority) determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to pay the Agency's attorney's fees in addition to a monetary penalty.