SEATTLE CITY COUNCIL

Legislative Summary

CB 118702

Record No.: CB 118702 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 **Ord. no:** Ord 125060 **In Control:** City Clerk

File Created: 05/12/2016

Final Action: 06/17/2016

Title: AN ORDINANCE relating to the Seattle Ethics and Elections Commission; authorizing the Executive Director to execute an agreement with the City of Kirkland for renewing an independent ethics program for the City of Kirkland; and ratifying and confirming certain prior acts.

Notes:

Sponsors: Harrell

	Date
Filed with City Clerk:	6/17/2016
Mayor's Signature:	6/17/2016
Vetoed by Mayor:	
Veto Overridden:	
Veto Sustained:	

Attachments:

Drafter: Emilia.Sanchez@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	05/17/2016	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	05/19/2016	sent for review	Education, Equity, and Governance Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Education, Equity, and Governance Committee **Notes:**						
1	Full Council	05/31/2016	referred	Education, Equity, and Governance Committee			
1	Education, Equity, and Governance Committee	06/01/2016	pass				Pass
	Action Text: The Committee recommends that Full Council pass the Council Bill (CB). In Favor: 3 Chair Harrell, Vice Chair González , Member Juarez						

Opposed: 0

1	Full Council	06/06/2016	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:

In Favor: 8 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

1	City Clerk	06/09/2016	submitted for Mayor's signature	Mayor

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor

Notes:

1	Mayor	06/10/2016	Signed	

Action Text: The Council Bill (CB) was Signed.

Notes:

1	Mayor	06/17/2016	returned	City Clerk

Action Text: The Council Bill (CB) was returned. to the City Clerk

Notes:

1	City Clerk	06/17/2016	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 125060

COUNCIL BILL 118702

AN ORDINANCE relating to the Seattle Ethics and Elections Commission; authorizing the Executive Director to execute an agreement with the City of Kirkland for renewing an independent ethics program for the City of Kirkland; and ratifying and confirming certain prior acts.

WHEREAS, in 1991, The City of Seattle (City) established the independent Seattle Ethics and Elections Commission (SEEC) to administer and enforce the City's ethics, elections, lobbying, and whistleblower codes; and

WHEREAS, in 2011, the City Council passed Ordinance 123787, executing an agreement between the SEEC and the City of Kirkland that provided independent and comprehensive ethics programming to the City of Kirkland; and

WHEREAS, the SEEC and the City of Kirkland are ready to renew their partnership in the interest of working together and effectively serving the interests of their residents; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Executive Director of the Seattle Ethics and Elections Commission, or the Director's designee, is authorized to execute an agreement substantially in the form of Attachment A to this ordinance, "Amended and Restated Independent Ethics Program Agreement Between the City of Kirkland and the City of Seattle."

Section 2. The Executive Director or designee is authorized to execute or modify further agreements between The City of Seattle and the City of Kirkland related to the independent ethics program that is the subject of Attachment A to this ordinance.

Section 3. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 6th day of June, 2016, and signed by me in open session in authentication of its passage this 6th day of June, 2016.

President Pro Tem of the City Council

Approved by me this 10th day of June, 2016.

Edward B. Murray, Mayor

Filed by me this 17th day of June, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment A – Amended and Restated Independent Ethics Program Agreement Between the City of Kirkland and the City of Seattle

AMENDED AND RESTATED INDEPENDENT ETHICS PROGRAM AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE CITY OF SEATTLE

THIS AMENDED AND RESTATED INDEPENDENT ETHICS PROGRAM AGREEMENT ("Agreement") is made by and between the City of Kirkland ("Kirkland") and the City of Seattle ("Seattle"), referred to collectively as the "Parties".

WHEREAS, the City of Kirkland has adopted a Code of Ethics for City Officials to ensure public confidence in the integrity of local government; and

WHEREAS, in order to best strengthen ethical compliance, Kirkland desires to establish an independent ethics investigation program; and

WHEREAS, Seattle has established an independent and well-respected ethics program through the Seattle Ethics and Elections Commission; and

WHEREAS, the Seattle Ethics and Elections Commission staff have proven expertise in providing a comprehensive ethics program; and

WHEREAS, the Parties have negotiated the terms and conditions of this Agreement under which Seattle will provide an independent and comprehensive ethics program to Kirkland;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Term and Termination

1.1 This Agreement shall be effective upon mutual execution by the Parties for an initial term of three years. This Agreement may be extended for such additional terms as are agreed to by the Parties in writing. The Seattle Ethics and Elections Commission ("SEEC") shall have the discretion to extend the Agreement on behalf of Seattle.

1.2 This Agreement may be terminated by either party for its convenience and without cause at any time, upon 60 days written notice delivered by certified mail, return receipt requested, to the other party. In addition, if either party's governing body does not provide the necessary appropriation authority for the following year, this Agreement may be terminated effective January 1st of the following year by giving notice no later than December 2nd of the current year.

1.3 Either party may terminate this Agreement in the event that the other party substantially fails to perform its obligations as described in this Agreement following written notice by certified mail, return receipt requested, of such non-performance and a reasonable opportunity (of not less than 14 calendar days) for the non-performing party to cure the issues of non-performance.

2.0 Comprehensive Ethics Program

2.1 Program Elements

2.1.1. Seattle, through the executive director and staff of its SEEC Office, shall provide an independent and comprehensive Ethics Program ("Program") for Kirkland. The Program shall include, but not be limited to, the elements identified in Section 2.2 through 2.5.

2.1.2. By execution of this Agreement, Kirkland designates the SEEC Executive Director as the Kirkland "Ethics Officer," as that term is used in the existing Kirkland Code of Ethics, and authorizes the SEEC Executive to perform all responsibilities of that office.

2.1.3. Seattle shall carry out the Program with the care and diligence that is customary for a program of this nature. Seattle shall stay abreast of best practices regarding ethics for public agencies and institute such practices in the Program. Seattle shall recommend any amendments to this Agreement that may be necessary to carry out such best practices.

2.2 Code of Ethics Revisions

Over the duration of this Agreement, Seattle shall make such recommendations as it deems necessary to ensure the Code of Ethics is complete, effective and enforceable. Such recommendations shall be made in consultation with Kirkland and will take into account the unique issues and interests of Kirkland. The Kirkland City Council will retain the final authority regarding the content of any Code of Ethics revisions.

2.3 Ethics Complaints, Investigations and Written Findings

2.3.1. Complaints. Seattle shall receive written complaints submitted by any person to the Kirkland City Clerk alleging violations of the Kirkland Code of Ethics. Seattle shall provide appropriate communications to each person filing a complaint as to the receipt of the complaint, status of the complaint, and final disposition of the matter complained of.

2.3.2. Investigations. Seattle shall in its sole discretion determine in accordance with the standard practices of the SEEC which complaints to investigate and the scope of such investigation. Investigations shall be conducted in a thorough, documented, and professional manner so as to provide sufficient evidentiary grounds to support such action as may be taken by the Kirkland City Council for violations of the Code of Ethics. Seattle shall refer to Kirkland those complaints it receives which Seattle has determined do not warrant further investigation as a Code of Ethics violation but which may need other action by Kirkland.

2.3.3. Written Findings. Seattle shall provide Kirkland with a detailed written investigative report of Seattle's findings ("Written Findings") for each ethics investigation

conducted by Seattle. The level of detail in such report shall be commensurate with the complexity of the matter at issue, whether a violation of the Code of Ethics is found to have occurred, and the severity of the violation found. Written Findings involving a violation of the Code of Ethics shall provide sufficient detail to provide the Kirkland City Council with the necessary information to make an informed and defensible decision regarding the appropriate action to take.

2.3.4. City Council Action. The Kirkland City Council considers ethics violations a very serious matter and will carefully review and consider all Written Findings to determine the appropriate action to take. The Kirkland City Council shall be solely responsible for determining if penalties should be imposed and at what level.

2.5 Advisory Opinions

In addition to the training required by this Agreement, at the request of Kirkland, Seattle shall provide written advisory opinions regarding interpretation, application, and compliance with the Code of Ethics.

2.6 Election Related Matters Not Covered

Because Seattle lacks legal jurisdiction to regulate Kirkland election matters, the Program will not include Kirkland City Council election and campaign related issues. Those matters will continue to be regulated by the Washington State Public Disclosure Commission.

3.0 Data Collection and Reporting

3.1 Seattle shall make such presentations to the Kirkland City Council regarding the Program as are reasonably requested by Kirkland from time to time. Such presentations shall include an overview of the Program, review of data collected, assessment of the Program's effectiveness, and recommendations for improvements.

3.2 Should any records held by the Seattle related to work for Kirkland under this Agreement become the subject of a request for public records under Chapter 42.56 RCW, Seattle shall use its best efforts to notify Kirkland of such request and consult with Kirkland regarding a proposed response and the date by which Seattle anticipates responding. If Seattle notifies Kirkland in writing that it plans to produce any records and Kirkland disagrees that such records are subject to production, Kirkland may then within a reasonable time of receipt of notification by Seattle, give notice in writing to Seattle that (a) specifically identifies each record, or part thereof that Kirkland asserts is exempt from production, and (b) cites the statutory exemption under Chapter 42.56 RCW, or any other law, and provides a brief explanation of how the exemption applies to the record, so that Seattle may respond to the records requester. Seattle may decide whether or not to withhold or redact those public records that Kirkland reasonably claims are exempt from production based upon Kirkland's explanation. Kirkland at its sole expense may seek a judicial declaration or injunction with respect to the public records request. Kirkland further agrees that it will, at its sole expense, defend the non-disclosure of that information Kirkland claims in the

written notice to be exempt from production and indemnify Seattle for any and all penalties assessed and costs that Seattle incurs, if any. The provisions of this paragraph shall survive the termination of this Agreement.

4.0 Independence of Seattle

The Parties are committed to the independent investigation of ethics complaints by Seattle and will take such actions as are necessary to further and maintain such independence during the term of the Agreement.

5.0 Cooperation

5.1 Kirkland shall provide its full cooperation to make the Program a success. This cooperation shall include, but not be limited to, promptly transmitting ethics complaints to Seattle, providing information needed to assist the Program, facilitating investigations where requested, providing assistance in coordinating training, making Kirkland facilities available as needed, and such other assistance as is agreed upon.

5.2 The City Attorney for Kirkland and the SEEC Executive Director, or such other designee identified by a Party in writing, shall serve as the Agreement Coordinators. The designated Agreement Coordinators shall work together as necessary to further the Program and facilitate successful implementation of this Agreement.

6.0 Compensation

6.1 In order to carry out the Program, the Parties agree that it is appropriate for Kirkland to pay Seattle, as sole compensation for the services performed under this Agreement, such sums of money as are arrived at by computing the actual number of hours expended in the performance of this Agreement and multiplying such total hours by $105.

6.2 Billings should be submitted after services are rendered. Kirkland will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-tenth of an hour. Each billing statement should set forth for each date services were performed:

A brief summary of the services provided;
The number of hours, or fractions of hours, spent;
Expenses and disbursements in detail.

7.0 Indemnification

7.1 Seattle shall indemnify, defend and hold Kirkland and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Seattle, or any of its officers, agents, employees, program agreements or clients. In the event of suit against Kirkland, Seattle shall appear and defend the same, provided Seattle is notified in a timely manner of the suit. In the

event that Kirkland and Seattle are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity shall not include claims arising as a result of the sole negligence of Kirkland, or any of its officers, employees or agents.

7.2 Kirkland shall indemnify, defend and hold Seattle and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Kirkland, or any of its officers, agents, employees, program agreements or clients. In the event of suit against Seattle, Kirkland shall appear and defend the same, provided Kirkland is notified in a timely manner of the suit. In the event that Seattle and Kirkland are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity shall not include claims arising as a result of the sole negligence of Seattle.

7.3 The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

8.0 Legal Relations

8.1 It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party.

8.2 This Agreement is entered into under the authority of RCW 39.34.080 and does not form a separate organization or administrative entity under RCW 39.34.030. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other party.

8.3 The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

8.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

8.5 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless expressly agreed to in writing by the party to be charged.

8.6 Neither party may assign this Agreement, in whole or part, without the express written consent of the other party.

8.7 This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and construed without regard to who drafted such language.

9.0 Notice

Any notice due under this Agreement shall be provided to Parties at the addresses below:

To Kirkland:	City Manager City of Kirkland 123 5th Avenue Kirkland, WA 98033-6189	Copy to:	City Attorney's Office City of Kirkland 123 5th Avenue Kirkland, WA 98033-6189
To Seattle:	Attn: Executive Director Seattle Ethics and Elections Commission P.O. Box 94729 Seattle, WA 98124-4729		

10.0 Entire Agreement

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by a written agreement signed by the Parties. The SEEC shall have the authority to execute amendments to the Agreement on behalf of Seattle.

IN WITNESS THEREOF the Parties hereto have executed the Agreement on the dates shown below with their respective signatures.

CITY OF KIRKLAND	**CITY OF SEATTLE**
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____