



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

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

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

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

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

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

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

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

16 **Section 1.** Section 4.20.800 of the Seattle Municipal Code, last amended by Ordinance  
17 117039, is amended as follows:

18 ~~((Unless prohibited by state law, City employees are encouraged to report on improper  
19 governmental action to the appropriate City or other government official, depending on the  
20 nature of the improper governmental action. To assist such reporting and to implement Sections  
21 42.41.030 and 42.41.040 of the Revised Code of Washington ("RCW"), Sections 4.20.800  
22 through 4.20.860 provide City employees a process for reporting improper governmental action  
23 and protection from retaliatory action for reporting and cooperating in the investigation and/or  
24 prosecution of improper governmental action in good faith in accordance with this subchapter.))~~

1           4.20.800 Policy -- Purpose

2 It is the purpose of this ordinance to:

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

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

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

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

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

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

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

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

19           **Section 2.** A new section 4.20.805 of the Seattle Municipal Code is added to Subchapter  
20 III of Chapter 4.20 as follows:

21           4.20.805 Definitions

1 As used in Sections 4.20.800 through 4.20.880, the following terms shall have these  
2 meanings:

3 “Adverse change” includes, but is not limited to: denial of adequate staff to perform  
4 duties; frequent staff changes; frequent and undesirable office changes or changes in the physical  
5 location of the employee’s workplace or a change in the basic nature of the employee’s job, if  
6 either is in opposition to the employee’s expressed wish; refusal to assign meaningful work;  
7 unsubstantiated letters of reprimand or unsatisfactory performance evaluations; reduction in pay;  
8 denial of promotion; transfer or reassignment; demotion, suspension or dismissal or other  
9 disciplinary action; or a supervisor or superior who behaves in, or encourages coworkers to  
10 behave in, a hostile manner toward the employee; issuance of or attempt to enforce any  
11 nondisclosure policy or agreement in a manner inconsistent with prior practice; or any significant  
12 action that is inconsistent compared to actions taken before the employee engaged in action  
13 protected by this chapter, or compared to other employees who have not engaged in action  
14 protected by this chapter.  
15  
16

17 “City Agency” means any department, office, board, commission, or committee of the  
18 City, or any subdivision thereof, but excludes public corporations and ad hoc advisory  
19 committees.  
20

21 “City Employee” or “Employee” means every individual who is, or was at the time  
22 actions under this chapter were taken, appointed to a position of employment in any City agency,  
23 whether in a permanent, temporary or intermittent position.  
24

25 “City Officer” means every individual elected or appointed to an office in any City  
26 agency, whether such individual is paid or unpaid.  
27  
28







1           9.       Reporting if an employee is, in good faith, seeking advice, counsel or  
2 opinion on their rights and responsibilities under this subchapter to determine whether to make a  
3 report under this chapter;

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

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

11           “Retaliate,” and its kindred nouns, “retaliation” and “retaliatory action,” means to make,  
12 or use one’s authority to make, an adverse change in a Cooperating Employee's employment  
13 status or terms and conditions of employment where the employee’s status as a Cooperating  
14 Employee was a contributing factor in the decision making process.

15           **Section 3.** Section 4.20.810 of the Seattle Municipal Code, last amended by Ordinance  
16 118392, is amended as follows:

17           ~~(((4.20.810 Reporting improper governmental action—Employee protection.~~

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

21           ~~B. Limitations.~~



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

7  
8 ~~2. Except in cases of emergency where the employee believes in good faith that substantial~~  
9 ~~damage to persons or property will result unless a report is made immediately to a person or~~  
10 ~~entity who is not the appropriate auditing official listed in Section 4.20.850 A, an employee~~  
11 ~~shall, before making a report to a person who is not the appropriate auditing official, first make a~~  
12 ~~written report of the improper governmental action to the appropriate auditing official. No~~  
13 ~~emergency under this subsection exists where prompt attention and reporting under this~~  
14 ~~subchapter by the employee could have avoided the perceived need to report immediately to a~~  
15 ~~person not the appropriate auditing official.~~

16  
17 ~~An employee making a written report as required by this subsection is encouraged to wait at least~~  
18 ~~thirty (30) days from receipt of the written report by the appropriate auditing official before~~  
19 ~~reporting the improper governmental action to a person who is not an appropriate auditing~~  
20 ~~official.~~

21  
22 ~~3. An employee's reporting of his or her own improper action does not grant an employee~~  
23 ~~immunity from discipline or termination under Section 4.04.230 or 4.08.100 insofar as his or her~~  
24 ~~improper action would be cause for discipline.~~

25 ~~C. Employee Protections and Protected Conduct.~~  
26

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

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

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

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

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

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

21 ~~E. Annual Restatement. Upon entering City service and at least once each year thereafter, every~~  
22 ~~City officer and employee shall receive a written summary of this chapter, the procedures for~~

1 ~~reporting improper governmental actions to auditing officials, the procedures for obtaining the~~  
2 ~~protections extended, and the prohibition against retaliation in this section. The Executive~~  
3 ~~Director of the Ethics and Elections Commission shall ensure that such summaries are~~  
4 ~~distributed and that copies are posted where all employees will have reasonable access to them.))~~

5 4.20.810 Employee rights, responsibilities and limitations

6 A. Rights

7  
8 1. Every employee shall have the right to report in good faith pursuant to this  
9 subchapter an assertion of improper governmental action and shall be free from retaliation.

10 2. The identity of a Cooperating Employee shall be kept confidential and  
11 shall not be disclosed unless such disclosure is required under applicable law or the employee in  
12 writing waives confidentiality.

13  
14 B. Responsibilities

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

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

20  
21 C. Prohibitions

22 No City agency, officer or employee shall retaliate against any Cooperating Employee.

23 **Section 4.** Section 4.20.820 of the Seattle Municipal Code, last amended by Ordinance  
24 117039 and that currently reads as follows, is repealed:

25 ~~((4.20.820 Confidentiality~~

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

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

6 ~~((**4.20.830 Investigation.**~~

7  
8 ~~A. Referral or Retention. The Executive Director of the Ethics and Elections Commission, upon~~  
9 ~~receiving a report alleging improper governmental action, shall refer the complainant to the~~  
10 ~~appropriate auditing official listed in Section 4.20.850 A if the Executive Director is not the~~  
11 ~~appropriate auditing official. If the Executive Director is the appropriate auditing official, and the~~  
12 ~~report alleges a violation of the Elections Code or the Code of Ethics, the Executive Director~~  
13 ~~shall handle that allegation according to the ordinances and rules applicable to the code alleged~~  
14 ~~to have been violated. If the Executive Director is the appropriate auditing official and the report~~  
15 ~~alleges improper governmental action that does not fall within the prohibitions of the Ethics~~  
16 ~~Code or the Elections Code, the Executive Director may refer the report to the chief elected~~  
17 ~~official of the branch of government implicated in the allegation, who shall ensure that the~~  
18 ~~appropriate officer or agency responds to the complainant in writing within thirty (30) days of~~  
19 ~~receipt of the report by the appropriate auditing official, with a copy of the response to the~~  
20 ~~Executive Director. If the Executive Director does not refer the report to another official, or if the~~  
21 ~~other official's response is not timely or satisfactory to the Executive Director, the Executive~~  
22 ~~Director may conduct an investigation. The procedures in subsections B through E of Section~~  
23 ~~4.20.830 shall apply only to the Executive Director of the Ethics and Elections Commission~~  
24  
25  
26

1 ~~when he or she is investigating an improper governmental action that does not fall within the~~  
2 ~~prohibitions of the Ethics Code or the Elections Code and that should not have been referred to~~  
3 ~~another auditing official under the first sentence of this subsection; other auditing officials~~  
4 ~~investigating allegations of improper governmental action appropriately referred to them are not~~  
5 ~~bound by these procedures.~~

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

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

16 ~~C. Completion and Reports. Upon completion of the investigation, the Executive Director shall~~  
17 ~~notify the complainant in writing of any determinations made. If the Executive Director~~  
18 ~~determines that an improper governmental action has occurred, the Executive Director shall~~  
19 ~~report the nature and details of the activity to the complainant; to the head of the department with~~  
20 ~~responsibility for the action; and if a department head is implicated, to the Mayor and City~~  
21 ~~Council; and to such other governmental officials or agencies as the Executive Director deems~~  
22 ~~appropriate. If satisfactory action to follow up the report is not being taken within a reasonable~~  
23 ~~time, the Executive Director shall report the matter to the Mayor and City Council.~~

1 ~~time, the Executive Director shall report his or her determination to the Mayor and advise the~~  
2 ~~City Council.~~

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

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

7  
8 4.20.830 Reports to the Executive Director

9 The following applies to any report of improper governmental action made to the  
10 Executive Director.

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

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

23  
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25  
26 C. Mandatory and Discretionary Referral

1           1. Mandatory Referral. The Executive Director shall refer an employee  
2 making the following allegations as follows:

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

7           b. Violations of the Fair Employment Practices ordinance to the  
8 Office for Civil Rights;

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

11           d. Allegations of violations of the Code of Judicial Conduct to the  
12 Washington State Commission on Judicial Conduct.

13           2. Discretionary Referral. The Executive Director may refer a report to the  
14 chief elected official of the branch of government named in the allegation or to other  
15 governmental agencies the Executive Director believes better suited to investigate the allegation.

16           a. When the Executive Director makes a discretionary referral  
17 pursuant to this chapter, the Cooperating Employee shall be notified before the referral is made.

18           b. Within 60 days of a discretionary referral being made by the  
19 Executive Director, the City official or agency head receiving the referral shall personally or  
20 through their designated representative, respond to the Executive Director with the agency's plan  
21 to resolve the concern with a date at which the agency anticipates the planned action will be  
22 completed. If the Executive Director does not receive an agency's plan or, if within a reasonable  
23  
24  
25  
26

1 time the agency does not complete the plan, the Executive Director may alert the Mayor and the  
2 City Council.

3 D. Investigation

4 1. The Executive Director shall investigate alleged violations of the  
5 Elections Code according to Section 2.04.070 and the Ethics and Election Commission's  
6 Administrative Rules; alleged violations of the Ethics Code according to Section 4.16.090 and  
7 the Ethics and Election Commission's Administrative Rules; and, alleged violations of the  
8 Lobbying Code according to Chapter 2.06 and the Ethics and Election Commission's  
9 Administrative Rules.

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

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

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



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

7  
8           F. Closure. The Executive Director may close an inquiry or investigation at any  
9 time he or she determines that no further action is warranted and shall so notify the reporting  
10 employee.

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

13  
14           **Section 6.** Section 4.20.840 of the Seattle Municipal Code, last amended by Ordinance  
15 117039 and that currently reads as follows is repealed:

16           ~~((4.20.840 – Civil Penalty~~

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

20  
21           **Section 7.** Section 4.20.850 of the Seattle Municipal Code, last amended by Ordinance  
22 118392 and that currently reads as follows is repealed:

23           ~~((4.20.850 Definitions~~

24           ~~As used in Sections 4.20.800 through 4.20.860, the following terms shall have these~~  
25 ~~meanings:~~



1 ~~civil service laws, or alleged violations of agreements with labor organizations under collective~~  
2 ~~bargaining, or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59, or~~  
3 ~~53.18 RCW or RCW 54.04.170 and 54.04.180.~~

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

7  
8 ~~D. "Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make,~~  
9 ~~because of an activity protected under Section 4.20.810, any unwarranted adverse change in an~~  
10 ~~employee's employment status or the terms and conditions of employment including, but not~~  
11 ~~limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and~~  
12 ~~undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of~~  
13 ~~reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of~~  
14 ~~promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary~~  
15 ~~action.~~

16  
17 ~~E. "Executive Director" means the Executive Director of the Seattle Ethics and Elections~~  
18 ~~Commission.))~~

19  
20 **Section 8.** Section 4.20.860 of the Seattle Municipal Code, last amended by Ordinance  
21 117039, is amended as follows:

22 4.20.860 (~~(Reporting and adjudicating retaliation.)~~) Retaliation

23 A. Complaint - Alleging Retaliation

24 1. Timeliness. In order to seek relief, an employee who believes he or she  
25 has been (~~retaliated against in violation~~) the subject of ((Section 4.20.810 C)) retaliation must  
26

1 file a signed written complaint within ~~((thirty (30)))~~ 180 days of the occurrence alleged to  
2 constitute retaliation or within 180 days of when they reasonably should have known that an  
3 occurrence alleged to constitute retaliation occurred.

4 2. Place of Filing. The complaint shall be filed with the ~~((Office of the~~  
5 ~~Mayor and must specify the alleged retaliatory action and the relief requested))~~ Executive  
6 Director.

7  
8  
9 3. Contents of the Complaint. The complaint alleging retaliation must state:

10 a. The adverse change or changes alleged to be retaliation and the  
11 date or dates it occurred;

12 b. The person or persons responsible for the adverse change or  
13 changes;

14 c. The conduct undertaken, or the conduct perceived to have been  
15 taken, by the employee that establishes the employee is a Cooperating Employee;

16 d. The relief the employee is requesting;

17 e. If the protected conduct is based on an employee's report to a  
18 person other than the Executive Director, some independent evidence that a report was made on  
19 a specific date and some evidence of its content; and

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

22 ~~((B. Investigation and Response. The Mayor's office shall forward the complaint to the head of~~  
23 ~~the executive office or department in which the retaliation is alleged to have occurred, or, at the~~

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

8  
9 ~~C. Hearing. If an employee who has filed a complaint of retaliation under this section is~~  
10 ~~dissatisfied with the response and desires a hearing pursuant to Section 42.41.040 RCW, the~~  
11 ~~employee shall deliver a request for hearing to the Office of the Mayor within the time~~  
12 ~~limitations specified in that section. Within five (5) working days of receipt of the request for~~  
13 ~~hearing, the City shall apply to the state office of administrative hearings for a hearing to be~~  
14 ~~conducted as provided in Section 42.41.040 RCW.))~~

15  
16 B. Initial Determination

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

19  
20 2. If the Executive Director finds the complaint to be insufficient, he or she  
21 shall dismiss the complaint and give notice to the employee. The employee may re-submit the  
22 complaint within the 180-day filing period. The time in which the Executive Director is  
23 considering the sufficiency of the complaint is not included in the 180 day time frame.

24 3. The Executive Director shall find the complaint sufficient if the complaint  
25 asserts facts that, if true, would show:  
26



1           E. Reasonable Cause Found

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

7                   2. The Executive Director may submit a draft including findings and  
8 recommendations to the interested parties for review and comment prior to issuing the final  
9 investigative report and determination.

10           D. Settlement

11                   Within 30 days of the Executive Director's final report finding reasonable cause, and  
12 prior to the filing of a complaint, the Director shall determine whether the interested parties  
13 would attend a joint settlement conference in an attempt to agree on an appropriate remedy.

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

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

19                   3. A settlement may include any terms agreed upon by the parties and not  
20 otherwise precluded by law, including the Cooperating Employee's reasonable attorney fees  
21 attributed directly to attendance at the settlement discussion.





- a. name the interested parties;
  - b. provide a concise statement of the conduct constituting retaliation;
- and
- c. contain a request for relief.

2. All cases shall be governed by the Hearing Examiner Rules of Practice and Procedure. The Hearing Examiner may promulgate such additional administrative rules as needed.

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

#### C. Proof

1. The burden of proof in any proceeding against an individual employee or employees for retaliating against a Cooperating Employee in violation of 4.16.070.6 is with the Executive Director. Retaliation must be shown by a preponderance of the evidence.

2. The burden of proof in any proceeding against an agency is as follows:

a. The Executive Director has the burden to prove by a preponderance of the evidence that the subject employee is a Cooperating Employee as defined by Section 4.20.805, and that the Cooperating Employee was subjected to an adverse change.

b. If the Hearing Examiner finds the Executive Director has met that burden, the agency then has the burden of proving by a preponderance of the evidence that there was a legitimate non-retaliatory reason for the adverse change and that the employee's status as a Cooperating Employee was not a contributing factor in the decision making process. Evidence of a series of documented personnel problems or a single, egregious event, or other evidence to

1 support a finding that the agency conduct or action was based on independent, separate and non-  
2 retaliatory reasons shall be admitted.

3  
4 3. All interested parties may present evidence at the discretion of the Hearing  
5 Examiner. The burden is on the Cooperating Employee to present any evidence of emotional  
6 distress.

7  
8 D. Findings of the Hearing Examiner

9 After hearing the evidence, the Hearing Examiner shall issue written findings of fact and  
10 conclusions of law as to whether this sub-chapter was violated.

11 1. If the Hearing Examiner concludes that an agency retaliated against a  
12 Cooperating Employee in violation of this subchapter:

13 a. The Hearing Examiner may order actual damages and such other  
14 relief deemed necessary to effectuate the purpose of this chapter and to secure future compliance,  
15 including such relief and action that could be ordered by a court.

16 b. If the Cooperating Employee proves emotional distress damages,  
17 the Hearing Examiner may award the Cooperating Employee damages. Any award for emotional  
18 distress shall not exceed Twenty Thousand Dollars (\$20,000.00).

19 c. The Hearing Examiner may award reasonable attorney fees. Any  
20 award for attorneys' fees shall not exceed Twenty Thousand Dollars (\$ 20,000.00).

21 d. The agency shall comply with the provisions of any order granting  
22 relief and shall furnish proof of compliance to the Executive Director. In the event that the  
23 agency refuses or fails to comply with the order, or does not seek timely judicial review, the  
24  
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26

1 Executive Director shall notify the Mayor, the Council and the City Attorney. The Director may  
2 request that the City Attorney seek enforcement of the order in an appropriate court.

3           2.       If the Hearing Examiner finds that one or more employees retaliated  
4 against a Cooperating Employee in violation of 4.16.070.6 and this subchapter:

5                   a.       The Hearing Examiner shall deliver the findings of fact and  
6 conclusions of law to the Commission, and may include a recommendation to the Commission as  
7 to an appropriate sanction under 4.16.100. Only the Commission has the authority to impose a  
8 penalty against an individual employee.

9                   b.       The Hearing Examiner may recommend to the agency that  
10 disciplinary action be commenced against an individual employee or employees found to have  
11 retaliated.  
12

13           3.       Commission Action. The Commission shall accept the Hearing  
14 Examiner's Findings of Fact as dispositive. The Commission may impose sanctions as provided  
15 by Section 4.16.100 on the employee found to have violated subsection 4.16.070.6.  
16

17           4.       The final order of the Hearing Examiner or the Commission shall include  
18 a notice to the parties of the right to obtain judicial review of the order in accordance with  
19 applicable law.  
20

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

23           4.20.870 Private cause of action  
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1           A.     The Cooperating Employee may pursue a private cause of action under this  
2 subchapter if a timely complaint of retaliation has been filed with the Executive Director and the  
3 cause of actions is:

4                   1.     Filed no later than 24 months after the Executive Director's notice of  
5 insufficiency;

6                   2.     Filed within 21 months after the Executive Director's notice of a finding  
7 of no reasonable cause;

8                   3.     Filed within 18 months after the Executive Director's finding of  
9 reasonable cause; or  
10

11                   4.     Filed within 12 months of the Executive Director ending Settlement  
12 discussions.  
13

14                   5.     In no event can a Cooperating Employee file a private cause of action if 30  
15 days have passed since the Executive Director has filed a complaint with the Hearing Examiner  
16 and named the Cooperating Employee as an interested party.

17           B.     The Cooperating Employee injured by any violation of this chapter shall have a  
18 civil action in a court of competent jurisdiction to enjoin further violations, or to recover the  
19 actual damages sustained by the person, or both, together, without limitation, the cost of suit  
20 including reasonable attorneys' fees and any other appropriate remedy authorized by this chapter.  
21 The Cooperating Employee shall have the burden to prove by a preponderance of the evidence a  
22 violation occurred.  
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1 C. If the employee files a civil action the Executive Director shall dismiss any  
2 administrative action for relief for that employee but may still pursue administrative action as to  
3 any employee alleged to have violated SMC 4.16.070.6.

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

6 4.20.875 Investigative powers

7  
8 At any stage in an inquiry or investigation of an alleged improper governmental action, or  
9 the investigation regarding an assertion of retaliation for engaging in conduct protected in this  
10 sub-chapter, the Executive Director may issue subpoenas, administer oaths, examine witnesses,  
11 submit written questions to be answered under oath and, compel the production of documents or  
12 other evidence. If the subpoenaed party or agency does not respond to the request in a timely  
13 manner, the Executive Director may ask for the assistance of the City Attorney to pursue  
14 enforcement through order in superior court.  
15

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

18 4.20.880 Annual Restatement and Training

19  
20 The Seattle Ethics and Election Commission and City Personnel shall, within six months  
21 of the effective date of this ordinance, develop and present a plan for adoption by City Personnel  
22 and the Seattle Ethics and Elections Commission that reaches the following goals ensuring:

23 A. City employees attend a Whistleblower Protection Code training offered by the  
24 Seattle Ethics and Elections Commission within six months of entering City service;  
25  
26  
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28

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

4           C. Every City employee who acts within a supervisory capacity will, within 6  
5 months of undertaken supervisory responsibilities, attend a Whistleblower Protection Code  
6 training offered by the Seattle Ethics and Elections Commission; and

7  
8           D. On annual basis each City employee receives a written summary of this chapter as  
9 prepared by the Ethics and Elections Commission.

10           **Section 13.** Section 4.16.070 of the Seattle Municipal Code, last amended by Ordinance  
11 123010, is amended as follows:

12           4.16.070 Prohibited conduct

13           A Covered Individual may not:

14           ...

15  
16           6. Retaliate against a City Employee as prohibited under Section 4.20.810 of  
17 the Whistleblower Protection Code; or directly or indirectly threaten or intimidate a City  
18 employee for the purposes of interfering with that employee's right to communicate with the  
19 Commission, its employees, or its agents; or directly or indirectly threaten or intimidate an  
20 employee for the purposes of interfering with or influencing an employee's cooperation in an  
21 inquiry or investigation, or interfering or influencing testimony in any investigation or  
22 proceeding arising from a report; or knowingly take or direct others to take any action for the  
23 purpose of:  
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1                    a. influencing an employee's cooperation in an inquiry or  
2 investigation based on a report of improper governmental action; or

3                    b. interfering or influencing testimony in any investigation or  
4 proceeding arising from a report.

5                    ((6)) 7. Application to Certain Members of Advisory Committees

6                    a. Subsections 4.16.070.1.a and 4.16.070.1.b shall apply to employee  
7 members of advisory committees. Subsections 4.16.070.1.a and 4.16.070.1.b shall not apply to  
8 other members of advisory committees. This subsection ((6)) 7 shall instead apply to all other  
9 members of advisory committees. No member of an advisory committee to whom this subsection  
10 applies shall:  
11

12                    ((a)) 1) Have a financial interest, direct or indirect, personally or  
13 through a member of his or her immediate family, in any matter upon which the member would  
14 otherwise act or participate in the discharge of his or her official duties, and fail to disqualify  
15 himself or herself from acting or participating in the matter.  
16

17                    ((b)) 2) Engage or have engaged in any transaction or activity  
18 which would to a reasonable person appear to be in conflict with or incompatible with the proper  
19 discharge of official duties, or which would to a reasonable person appear to impair the  
20 member's independence of judgment or action in the performance of official duties, without fully  
21 disclosing on the public record of the advisory committee the circumstances of the transaction or  
22 activity giving rise to such an appearance prior to engaging in the performance of such official  
23 duties. Such a member shall also file with the Commission a full written disclosure of the  
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1 circumstances giving rise to such an appearance prior to engaging in such official duties. If such  
2 prior written filing is impractical, the member shall file such a disclosure as soon as practical.

3 **Section 14.** Section 3.70.010 of the Seattle Municipal Code, last amended by Ordinance  
4 116005, is amended as follows:

5 3.70.010 Commission established -- Purpose

6 There is hereby established a Seattle Ethics and Elections Commission to administer the  
7 City's Code of Ethics (Chapter 4.16); to administer the Election Campaign Code and its  
8 campaign matching fund program Chapter 2.04); to publish the City's election pamphlets  
9 (Chapter 2.14(~~(;))~~) and to administer the (~~(political sign ordinance (Chapter 2.24) and to~~  
10 ~~investigate certain complaints of improper governmental action under the whistleblower~~  
11 ~~protection ordinance))~~ Whistleblower Protection Code (Sections 4.20.800 through (~~(4.20.860))~~  
12 4.20.880).

13  
14  
15 **Section 15.** Section 3.70.100 of the Seattle Municipal Code, last amended by Ordinance  
16 116005, is amended as follows:

17 3.70.100 Powers and duties

18 The Commission shall have the following powers:

19  
20 A. To administer the City's Code of Ethics (Chapter 4.16); the Election Campaign  
21 Code and its campaign matching fund program (Chapter 2.04); the City's election pamphlet  
22 ordinance (Chapter 2.14); the lobbying disclosure ordinance (Chapter 2.06 (~~(; the political sign~~  
23 ~~code (Code Chapter 2.24);))~~) and the (~~(whistleblower protection ordinance))~~ Whistleblower  
24 Protection Code (Sections (~~(4.20.800))~~ 4.20.800 through (~~(4.20.860))~~ 4.20.880 inclusive)



1 ((~~insofar as violations of the Code of Ethics or elections ordinance may be involved~~)) (called  
2 collectively "Commission-administered ordinances").

3 B. To publish the election pamphlet (Code Chapter 2.14); to maintain as a public record reports  
4 required by the City's election campaign code (SMC Sections 2.04.150 through 2.04.290) and  
5 publish data; to enforce limitations on campaign contributions (SMC Sections 2.04.340 through  
6 2.04.350); to execute campaign contracts, disburse campaign matching funds (SMC Sections  
7 2.04.400 through 2.04.470), and seek recovery thereof if funds are due the City (SMC Sections  
8 2.04.450 through 2.04.510); to solicit and accept donations for the campaign matching fund  
9 account; and to promulgate forms for employee statements of economic interest and maintain  
10 files for their public inspection (SMC Section 4.16.080);

11 C. To promulgate, amend and rescind rules and regulations in accordance with the City's  
12 Administrative Code (Code Chapter 3.02) in order to carry out the Commission-administered  
13 ordinances, and to establish its own procedures;

14 D. To authorize investigations, hold hearings, and make findings on violations or alleged  
15 violations of any Commission-administered ordinances; to consider complaints, inquiries, and to  
16 initiate its own proceedings; to render advisory opinions; to publish informative publications and  
17 conduct educational programs as to Commission-administered ordinances;

18 E. In its discretion, to delegate to the Office of the Hearing Examiner the fact-finding in a case  
19 and to review and revise the recommended decision of the Hearing Examiner as to the  
20 interpretation and application of Commission-administered ordinances;

21 F. To administer oaths and affirmations, examine witnesses, and compel attendance of persons,  
22 and production of documents, papers, books, accounts, letters, and records by subpoena;

1 G. To appoint an Executive Director (SMC Section 3.70.150), subject to confirmation by the  
2 City Council, and to confirm staff appointed by the Executive Director;

3 H. To make expenditures authorized in its annual budget; to retain expert and consultant  
4 services; to use the services of the City Attorney as deemed appropriate to carry out its functions;  
5 and to call upon the Director of Finance and Administrative Services and Auditor to assist in  
6 auditing compliance with campaign contribution limits and eligibility for campaign matching  
7 funds; and  
8

9 I. To make recommendations to the City Council for amendments to Commission-administered  
10 ordinances or for new legislation and to comment on the effect of other legislation upon its  
11 functions or Commission-administered ordinances.

12 **Section 16. Effective Date**

13 This ordinance shall take effect and be in force 30 days after its approval by the Mayor,  
14 but if not approved and returned by the Mayor within ten days after presentation, it shall take  
15 effect as provided by Section 1.04.020.  
16

17  
18  
19 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2013, and signed by  
20 me in open session in authentication of its passage this  
21

22 \_\_\_\_ Day of \_\_\_\_\_, 2013.  
23

24 \_\_\_\_\_  
25 President \_\_\_\_\_ of the City Council  
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Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

Michael McGinn, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

Monica Martinez Simmons, City Clerk

(Seal)

DRAFT