

# SEATTLE ETHICS & ELECTIONS COMMISSION ADMINISTRATIVE RULES

## Rule 1. GENERAL RULES AND PROCEDURE

### 1.1 Description of Organization.

~~The Seattle Ethics and Elections Commission is a seven member board established pursuant to Seattle Municipal Code 3.70.100. Members of the Commission are appointed as follows:~~

- ~~— (a) Three members appointed by the Mayor;~~
- ~~— (b) Three members appointed by a two-thirds vote of the members of the City Council;~~
- ~~— (c) One member is selected by the other six Commission members.~~

### 1.1 Definitions

~~The following definitions shall apply, unless the context or subject matter requires otherwise. The following definitions supplement those in SMC 2.04.010 and SMC 4.16.030, and clarify the meaning of terms used in the Ethics and Elections Codes, and these rules.~~

- ~~(1) "Executive Director" means the Executive Director of the Seattle Ethics and Elections Commission.~~
- (2) "Complainant" means the person who files a complaint with the Executive Director under SMC 4.16.090 or SMC 2.04.080.
- (3) "Respondent" means the person alleged to have violated the Seattle Ethics Code, SMC Chapter 4.16, or the Seattle Elections Code, SMC Chapter 2.04.
- ~~(4) "Commission" means the Seattle Ethics and Elections Commission.~~
- (4) "Chair" means the Chair of the Seattle Ethics and Elections Commission or his/her designee.
- (5) "Compensation" means anything of value provided in exchange for services rendered or goods transferred, excluding campaign contributions. Compensation includes, but is not limited to, salary, fees, or commissions.
- (6) "Financial Interest" means any interest, such as a right, claim, title, or legal share, in something that is equated with money or something that has a monetary or market value, whether or not quantifiable.
- ~~(8) "Option to purchase" means any option to take by sale, gift, or any other voluntary transaction creating an interest in property, including a security interest.~~
- (7) "Transaction or activity" means the conduct of any dealings between or among two or more persons. This term does not include the purchase of utilities or the application for a permit to modify one's own property.

~~1.2 The Chair may waive or alter the provisions of any of these rules in order to serve the ends of justice.~~

### 1.2-3 Meetings

- (1) Regular meetings of the Commission shall be held on the first Wednesday of each month beginning no earlier than 4:00 p.m. and no later than 6:00 p.m. Such meetings shall be held at the Seattle Municipal Tower, or at such other place as may be designated by the Chair ~~of the Commission.~~
- (2) The Commission may hold meetings in which, for some or all of the meeting, any or all members are present and voting by telephone conference call. ~~Such meetings shall be~~

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~~designated "telephonic meetings" on the meeting agenda.~~ Commission members may be present and may vote by telephone conference call, as provided in subsection ~~(2C)~~ of this rule ~~1.3~~, for the conduct of all business except electing officers, appointing members, or conducting hearings as to alleged violations of the Commission administered ordinances. For example, Commission members may be present and vote by telephone on procedural motions or appeals of the Executive Director's dismissal decisions, whether or not an evidentiary hearing occurs.

- (3) A telephonic meeting shall be deemed to take place in the meeting place designated on the agenda, where at least one member of the Commission staff shall be present and where there shall be a device on which can be heard the voices of all Commission members on the telephone line by everyone present in the meeting room and by all other Commission members on the telephone line. ~~Each Commission member who is on the telephone line shall identify himself or herself before speaking, and shall notify the others if he or she is about to disconnect from the call.~~ A Commission member who is connected remotely to the telephone line in the meeting place shall be considered to be actually present at that meeting for the period of time he or she is so connected, and that presence shall count toward a quorum of the Commission for all purposes, unless subsection ~~(1B)~~ of this rule ~~1.3~~ provides otherwise.

Special meetings of the Commission may be called by the Chair or any four members of the Commission with 24 hours prior written notice, mailed, hand-delivered, faxed or e-mailed to ~~(i) all Commission members and to;~~ ~~(ii) each local newspaper of general circulation and;~~ ~~(iii) each local radio and television station that has on file with the Executive Director a written request for notice of such meetings;~~ and ~~to (iv) individuals who have requested notice of such meetings.~~ The notice shall include the time and place of the meeting and each item of business to be transacted. Any Commission member may waive the requirement that he or she receive such notice by so notifying the Executive Director by e-mail, telephone or fax, or by being present when the special meeting convenes. ~~See RCW 42.30.080.~~

- ~~(3) All meetings~~ Meetings of the Commission shall be open ~~meetings to the public unless the Commission meets in executive session~~ in accordance with ~~the State Open Meetings Law, RCW 42.30.110. The most common exemptions are:~~ law:
- ~~(a) Matters affecting national security see RCW 42.30.110(1)(a);~~
  - ~~(b) Matters regarding selection of a site or acquisition of real estate by lease or purchase see RCW 42.30.110(1)(b) and (c);~~
  - ~~(c) Personnel matters, see RCW 42.30.110(1)(f) and (g);~~
  - ~~(d) Litigation matters, see RCW 42.30.110(1)(i);~~
  - ~~(e) Deliberations in a quasi-judicial matter between named parties, see 42.30.140(2) (This exemption includes Commission deliberations in cases where the Executive Director has charged a violation and cases where the Executive Director's decision to dismiss is appealed.)~~

~~(4) Minutes shall be taken at all meetings.~~

- (5) If a Commissioner has three consecutive unexcused absences from meetings, the Commission shall notify the Mayor and City Council ~~with the request that removal proceedings be initiated.~~

### 1.4 Quorum and Voting

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- (1) Unless a quorum of five is required by ordinance or by subsection (2) of this rule ~~Rule 1.4~~, four members of the Commission shall constitute a quorum for the conduct of all business and proceedings of the Commission. The business and proceedings for which four members constitute a quorum include, but are not limited to, hearing appeals of the Executive Director's decision to dismiss, consideration of an order to the Executive Director to administratively dismiss a case, ruling on a prehearing motion, and ruling on a motion for reconsideration.
- (2) Five members of the Commission shall constitute a quorum for the promulgation of rules. Five members of the Commission are also required to constitute a quorum when either of the following is true:
  - (a) ~~both of the following are true:~~
    - ~~(i)~~ the Commission is conducting a hearing; and
    - ~~(ii)~~ as a result of that hearing, the Commission will determine whether a violation of a Commission administered ordinance has occurred; or
  - (b) the Commission is ruling on an application for modification of reporting requirements under SMC 2.04.  
Commission business that requires a quorum of five includes but is not limited to hearing charges of violation of a Commission administered ordinance, ruling on a prehearing motion when a hearing is held on the motion and the motion requires determination of whether a violation of a Commission administered ordinance has occurred, and ruling on a motion for reconsideration when a hearing is held on the motion and the motion requires determination of whether a violation of a Commission administered ordinance has occurred.
- (3) Any matter coming before the Commission may be decided by majority vote of those members present and voting, provided that the quorum requirements are met.
- (4) Voting by Commission members at all meetings and all votes, except for election of officers, shall be by recorded vote.

### 1.5 Membership of the Commission

#### 1.5 Officers

- (1) The Commission shall elect a Chairperson and a Vice Chairperson each November ~~Chair annually~~, to take office on January 1 of the following year.
- (2) The Vice-Chairperson shall act as Chairperson in the absence of the Chairperson or in the event of a vacancy in that position.

### 1.6 Petition for Rules

- (1) Any adult resident of the City of Seattle may, pursuant to ~~Section 4 of Ordinance 102228 SMC 3.02.040~~, petition the Commission for the adoption, amendment, or repeal of any Commission rule. A petition shall be in writing, signed by the petitioner, and shall contain:
  - (a) The name and address of the petitioner;
  - (b) The substance of the requested rule, and a brief statement of the reason why adoption of such rule is necessary or desirable; or
  - (c) In the case of a petition for amendment or repeal of a rule, the number of the rule to be amended or repealed, the substance of any requested amendment, and a brief statement of the reason why amendment or repeal of such rule is necessary or desirable.
- (2) A petition for adoption, amendment, or repeal of a rule shall be heard and considered at the next regularly scheduled Commission meeting, if the petition is received at least 14 days

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prior to the meeting, or at the next following meeting if not received within 14 days before a regularly scheduled meeting.

(3) The Commission shall, within 60 days after submission of the petition, either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings concerning the subject of such petition in accordance with SMC 3.02.030.

### Rule 2. PUBLIC RECORDS

#### 2.1.6 Public Records Available; Public Records Officer

- ~~(1) All records of the Commission are deemed to be available for public inspection between the hours of 8:00 AM and 5:00 PM, Monday through Friday, excluding legal holidays, and copying pursuant to these rules, except as specifically exempted by these rules or RCW 42.17.310 or other applicable law.~~
- ~~(2) The Commission's public records shall be in the charge of the Executive Director of the Commission.~~

#### 1.7 Index

~~The Commission has indexed by subject matter the advisory opinions of the Commission. The index is maintained in the Commission office and is available on the Commission's web site on the Internet. The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the Commission's office:~~

- ~~(1) Complaints received by the Commission are indexed and filed by type of complaint and by year. Each file has a number indicating the year received, a number designating the type of complaint, i.e., 1 is ethics, 2 is elections, WBI is whistleblower, month and day received, and sequential number if more than one of that type is received on the same day.~~
- ~~(2) Requests for advisory opinions received by the Commission are indexed and filed by type of request and by year received. Each file is given a number which includes the year received, number designating type of request, i.e., 1A is ethics, 2A is elections, month and day received, and sequential number if more than one of that type is received on the same day. Copies of issued opinions are filed in three-ring binders by year.~~
- ~~(3) Financial disclosure reports (F-1's and F-1A's) of elected officials are filed in a binder with all other elected officials' financial disclosure reports, by year and alphabetically. To protect the elected officials' privacy, the home addresses of the elected officials are redacted before posting their financial disclosure reports on the Commission's web site. In response to a request for inspection or copying of records under the Public Disclosure Law, RCW Ch. 42.17, Commission staff normally provides unredacted copies of the paper financial disclosure reports.
  - ~~(a) If an elected official believes that his or her right to privacy would be violated by disclosure of unredacted copies of such reports, that elected official must submit to the Executive Director a written request that home address information be redacted from the reports before disclosure. The written request must include the reason(s) the elected official believes his or her right to privacy would be violated. The Executive Director shall act upon such a request, and shall notify the elected official of his or her decision, within five business days of having received the request. violate his or her right to privacy direct that all home address information be redacted from any such report that is~~~~

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~~disclosed after the elected official submitted his or her request (c) If the Executive Director denies the request, the Executive Director shall inform the elected official of his or her right to seek an injunction under RCW 42.17.330~~

~~(d) The Executive Director shall direct that any elected official who has submitted such a request receive notification from the Commission under RCW 42.56.540 whenever the Commission receives a request for disclosure of that elected official's report. The Commission shall give such notification regardless of whether it has decided to release the unredacted report. A financial disclosure statement filed by an elected official who has requested the redaction of any portion of the report shall not be released until at least ten business days after the Commission has sent notification under RCW 42.56.540 to that official.~~

- ~~(4) Financial disclosure reports (financial interest statements) of City employees and appointed officials are filed by department and year of receipt. To protect the employees' and appointed officials' right to privacy, as permitted in RCW 42.17.310(1)(b) and RCW 42.17.310(1)(u), the home addresses of the employees and appointed officials shall be redacted from their financial interest statements before posting them on the Commission's web site. Such home addresses also shall be redacted from the employees' and appointed officials' financial interest statements before such statements are offered to anyone requesting inspection or copying under the Public Disclosure Law, RCW 42.17. If the requested report includes property that is not the residence of but in which the employee or appointed official owns an interest, and if the Commission staff concludes that the address information requested is subject to disclosure, the Commission staff shall notify the employee or appointed official of the request under RCW 42.17.330, and shall give them ten business days in which to seek a court order protecting the record from disclosure, before such record is disclosed.~~

### **1.8 Requests for Public Records**

~~RCW 42.17 requires that agencies protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency. Therefore, public records may be inspected or copied or copies of such records obtained, upon compliance with the following procedure. A request shall be made in writing either via electronic mail or upon a form prescribed by the Executive Director. The form shall be presented to the Executive Director, or to a member of the staff designated by him or her if the Executive Director is not available, during office hours. The request shall include:~~

### **1.9 Response to Public Records Requests**

- ~~(1) The Commission office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:~~
- ~~—— (a) providing the record; or~~
  - ~~—— (b) acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or~~
  - ~~—— (c) denying the public records request, with an explanation of the denial as required in Rule 1.12(3);~~
- ~~(2) The office may take reasonable additional time to respond to a request, based on the need to:~~
- ~~—— (a) have the requester clarify the scope of the request;~~
  - ~~—— (b) locate and assemble the information requested;~~
  - ~~—— (c) notify third persons who may be affected by the request; or~~

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~~(d) determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.~~

~~**1.10 Copying** No fee shall be charged for the inspection of public records. The Commission shall charge a fee for providing copies of public records.~~

### ~~**1.11 Protection of Public Records**~~

- ~~(1) No person shall knowingly alter, deface, or destroy public records of the office.~~
- ~~(2) Public records of the office shall not be removed in whole or in part from the premises except by the staff of the Commission in order to perform their official duties.~~
- ~~(3) The requester of public records is solely responsible for the care and safekeeping of those records while they are in the requester's possession or control.~~
- ~~(4) Records furnished for public inspection or copying shall be returned in good condition and in the same sequence or organization as when furnished.~~

### ~~**1.12 Exemptions**~~

- ~~(1) The Commission office reserves the right to determine that a requested public record is exempt from disclosure under the provisions of RCW 42.17.310 or other law.~~
- ~~(2) In addition, pursuant to RCW 42.17.260(1) and RCW 42.17.310, the office reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by RCW 42.17 or other law. The public records officer will fully justify such a deletion in writing.~~
- ~~(3) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.~~

### ~~**2.21.13 Review of Denials of Public Records Request**~~

- ~~(1) Any person who objects to a denial of a request for a public record ~~may promptly~~, should, within 30 days of the date of receiving the written notice of denial, petition for review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the Executive Director or other staff member which constituted or accompanied the denial.~~
- ~~(2) ~~Immediately~~ After receiving a written request for review of a decision denying a public record, the Executive Director or other staff member receiving the request for review shall refer it to the Chair ~~of the Commission~~. The Chair shall ~~immediately~~ consider the matter and either affirm or reverse such denial.~~

## ~~**Rule 3 II. ENFORCEMENT PROCEDURES**~~

~~**3.1 2.2 Computation of Time** Computation of any period of time prescribed or allowed by these rules shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or a national, state, or city holiday, the period shall run until the end of the next following business day.~~

### ~~**3.22.3 Form of Complaint**~~

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- (1) A complaint alleging violation of Seattle Municipal Code Chapter 4.16, or Seattle Municipal Code Chapter 2.04 may be brought to the attention of the Commission by any person. Complaints shall be made to the Executive Director. A complaint shall be in writing and signed by the complainant.
- (2) A complaint shall state the basic facts surrounding the alleged violation including nature of the alleged violation(s), date, time, and place, of the alleged violation(s), name of the person or persons responsible, and any documentation or other evidence the respondent can produce regarding the violation.
- (3) All complaints filed with the Executive Director shall be considered part of the Executive Director's investigative record, and shall not be subject to public disclosure under RCW 42.17, unless the complaint is used as evidence in a proceeding before the Commission or in a prosecution in a court of law.
- (4) When the Executive Director receives a written request to disclose a complaint, the Executive Director shall notify the complainant of the request so that the complainant may take necessary action to protect his or her right to privacy.

### **3.3.2-4 Preliminary Investigation of Complaints**

- (1) Upon receipt of a complaint, the Executive Director will review the complaint for substantial compliance with the requirements of Rule 3.2(B). If the complaint complies with those requirements, the Executive Director shall initiate a preliminary investigation. The preliminary investigation shall be limited to the Executive Director determining if the complaint on its face, i.e. assuming all facts are true, shows reason to believe SMC Chapter 4.16 or SMC Chapter 2.04 has been violated.
- (2) The Executive Director shall complete the preliminary investigation within 30 days of the Executive Director's receipt of the complaint. The Executive Director may seek an extension of (30) days from the Commission upon showing good cause why the preliminary investigation cannot be completed within the 30 day period.

**3.4 2.5 Dismissal** If the Executive Director determines that a complaint does not on its face present a violation of SMC 4.16 or SMC 2.04, or presents a violation of SMC 4.16 or SMC 2.04, but the violation was inadvertent and minor and was or is being satisfactorily corrected and cured, the Executive Director shall dismiss the complaint by a letter to the complainant stating the reasons for dismissal. The Executive Director shall send a copy of the dismissal letter to the respondent.

### **3.5 Powers and Duties of Executive Director**

- (1) During the course of an investigation, the Executive Director may issue a "demand for information" directed to any person who may possess information which is relevant and material to the investigation. The demand for information shall:
  - (a) Specifically describe the information which is sought; and
  - (b) Set forth a reasonable time and place for the production of the information.
- (2) The demand for information may be personally delivered or sent by certified mail, return receipt requested.

**3.6 2-8 Initiation of Enforcement** If the Executive Director determines through a preliminary investigation that a complaint presents a facial violation of SMC 4.16 or SMC 2.04, the Executive Director shall initiate a full investigation.

### **3.7 2-8.1 Administrative Dismissal**

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- (1) If ~~the Executive Director has a full investigation reveals~~ evidence indicating that there are reasonable grounds to believe a violation of SMC 4.16 or SMC 2.04 has occurred, and ~~either (i) the violation was inadvertent or minor, but not both, or (ii) appropriate actions have already been taken to address the allegedly unlawful conduct~~~~the violation was not inadvertent and minor, but the Executive Director believes that the respondent or the employing department took appropriate action regarding the conduct at issue~~, the Executive Director ~~may~~ shall ask the Commission to direct ~~him or~~ her to administratively dismiss the case. This request shall be made at a Commission meeting. The request shall describe the basis for the Executive Director's reason to believe that a violation occurred, the Code provision ~~the Executive Director has reasonable grounds to believe was~~ violated, ~~the cure or appropriate action taken by the respondent or the employing department~~, and the reason the Executive Director believes ~~the public interest is not served by pursuing the matter, which may include a description of the action taken to address the alleged violation~~~~there is no value in entering into a settlement or in initiating an enforcement proceeding~~.
- (2) The Commission shall direct the Executive Director either to administratively dismiss the case or ~~deny the request to proceed with action~~. If the Commission directs the Executive Director to administratively dismiss the case, the Executive Director shall send a letter to the complainant describing the Commission's action and the basis on which the action was taken and send a copy of the letter to the respondent, without the complainant's name or address.

### **3.8 2.8.2 Initiation of Enforcement Proceeding**

- (1) If a full investigation reveals facts and evidence indicating that there are reasonable grounds to believe a violation of SMC 4.16 or SMC 2.04 has occurred, the violation was not inadvertent and minor, and the Commission has not directed the Executive Director to administratively dismiss the case, the Executive Director shall schedule an enforcement hearing by forwarding to the Commission and the respondent a charging document and scheduling a hearing.
- (2) The charging document shall state the provisions of SMC 4.16 or 2.04 allegedly violated and shall identify the conduct that constitutes the alleged violations of SMC 4.16 or SMC 2.04.
- (3) If SMC 4.16 is allegedly violated, the Executive Director shall, within 30 days of mailing the charging document, schedule a hearing on the matter before the Commission. For good cause shown, the Commission may allow the Executive Director to schedule the hearing within 60 days of mailing the charging document. The Executive Director shall set the hearing date in his or her discretion, but within 30 days from the date of scheduling.
- (4) If SMC 2.04 is allegedly violated, the Executive Director shall schedule the hearing and the Commission shall make a ruling pursuant to SMC 2.04.075.
- (5) The Executive Director shall provide the respondent, at respondent's request, with copies of all materials to be presented by the Executive Director at the hearing.
- (6) The Executive Director may conduct one or more prehearing conferences with the respondent(s) to facilitate the hearing of the matter by the Commission, to make stipulations of fact or simplify issues, or to develop a recommended settlement of all or part of the charges.

### **3.9 2.9 Notice Requirements**



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- (1) If SMC 4.16 is allegedly violated, notice shall be given to the respondent at least 20 days prior to a hearing. Respondent may sign a waiver of the 20 days notice, but in no case shall a hearing be held with less than 48 hours notice to the respondent and the public.
- (2) If SMC 2.04 is allegedly violated, the respondent shall be given the maximum practicable notice of the hearing. Public notice of hearings concerning SMC 2.04 shall be made at least 24 hours in advance of such hearing.
- (3) The notice of hearing shall include:
  - (a) A statement of the time, place, and issues to be considered;
  - (b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - (c) Reference to the particular sections of the SMC alleged to have been violated.
- (4) The Executive Director shall serve the notice. Notice may be served through the U.S. mail, by personal service, or through regular messenger service to city departments.
- (5) Regardless of the place of hearing listed in the notice of hearing, any hearing originally scheduled in one ~~room of the City of Seattle Municipal Building facility~~ may be conducted in any other ~~room of the Municipal Building.~~ City facility. If the roomsite of the hearing is changed, there must be a notice posted conspicuously on the door of the room where the hearing was originally scheduled, stating the ~~room number~~ place where the hearing ~~is to~~ will be held.

### **3.10 2.10 Prehearing Motions, Petitions, or Requests**

- (1) All prehearing motions, petitions or requests ("prehearing motions") must be submitted to the Commission and served on all parties to the action at least five business days before the scheduled hearing or the scheduled meeting at which the prehearing motion shall be decided. All prehearing motions shall be in writing, and will ordinarily be decided without oral argument. Motions must include the material facts on which the prehearing motion is based, the legal grounds that support the prehearing motion and the request for relief.
- (2) Prehearing motions shall be granted only for good cause.
- (3) The Commission shall issue an order granting or denying the prehearing motion.

### **3.11 2.10.1 Dispositive and Non-Dispositive Prehearing Motions**

- (1) Dispositive Prehearing Motions
  - (a) dispositive prehearing motions are those prehearing motions that if granted would result in dismissing the charges or otherwise terminating the proceeding before the Commission.
  - (b) Upon receipt of a dispositive prehearing motion, the Executive Director shall promptly transmit the motion to the Commission members and shall poll the members of the Commission who can be reached and report the result to the parties at least 24 hours before the Commission meeting at which the motion will be decided;
  - (c) If the Executive Director or other party who opposes a dispositive motion responds to the motion at least ~~forty-eight (48)~~ hours before the Commission meeting at which the motion will be decided, the Executive Director will transmit the response to the Commission before conducting the poll. Response to a dispositive motion may be submitted anytime prior to the beginning of the Commission meeting at which the motion will be decided, unless the Chair permits a later filing.
- (2) Non-dispositive Prehearing Motions

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- (a) Non-dispositive prehearing motions are those prehearing motions that, if granted, would not result in dismissing the charges or otherwise terminating the proceeding before the Commission.
- (b) Upon receipt of a non-dispositive prehearing motion, the Executive Director shall promptly convey the motion to the Commission Chair who may decide the motion or may hold the motion for decision by the Commission or the Chair at the Commission meeting.
- (c) A ruling on a non-dispositive motion is interlocutory and therefore not immediately appealable.

### **3.122-11 Recommendations for Settlement**

The following procedures are available for informal dispute resolution that may make elaborate proceedings under SMC 3.02 and these rules unnecessary.

- (1) Any person whose interest in a matter before the Commission may be resolved by settlement shall communicate his or her request to the Executive Director, setting forth all pertinent facts and the desired remedy. If the Executive Director requires additional information to resolve the matter informally, the Executive Director shall promptly provide to the person seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.
- (2) When the Executive Director and respondent agree that some or all of the facts are uncontested, a stipulation of the facts is reached, the Executive Director is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.
- (3) If settlement of an enforcement hearing may be accomplished by informal negotiation, negotiations shall be concluded by:
  - (a) Stipulation of facts of the parties; or
  - (b) Stipulation of the parties; or
  - (c) Withdrawal by the Executive Director of the action which is the subject matter of the enforcement hearing.
- (4) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The stipulation shall be recited on the record at the hearing. The Commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the Commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the Commission shall enter an order in conformity with the terms of the stipulation. If the Commission rejects the stipulation or the respondent does not agree to the Commission's proposed modifications to the stipulation, then the parties are not bound by the stipulation, and a hearing shall be held in which the rejected stipulation shall not be considered as evidence. If the Commission requests that additional facts be presented, the matter shall be referred to the Executive Director for further investigation.
- (5) All proposed stipulations must include the following provisions:
  - (a) "This agreement is binding on all parties, their heirs, successors, and assigns;"
  - (b) "This agreement shall constitute the whole agreement between the parties;"
  - (c) "The parties agree that, if this agreement is rejected by the Commission, the respondent(s) agrees to waive any challenges to the Commission subsequently presiding over a hearing on this matter;"
  - (d) "If the respondent(s) breaches this agreement, the Commission may impose sanctions for each violation identified by the Executive Director in the agreement."

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- (6) If multiple respondents are involved, and not all respondents desire settlement, the cases of the respondents wishing to settle shall be severed from the cases of the respondents not wishing to settle. Settlements in such instances should be presented to the Commission. Fact-finding in the cases of the non-settling respondents shall be conducted by the Hearing Examiner.

### **3.13 2-12 Referrals to the Hearing Examiner**

- (1) The Commission may, at its discretion, delegate fact finding to the Office of the Hearing Examiner.
- (2) Whenever a hearing is delegated to the Hearing Examiner, the hearing examiner's duties shall be limited to making findings of fact. The Commission reserves to itself the duty of applying the law to the facts independently found by the Hearing Examiner.

### **3.14 2-13 Enforcement Hearing**

- (1) In some situations more than one complaint may be filed with regard to a single alleged violation of a Commission-administered ordinance. Where practical, feasible, and consistent with ordinance requirements, the Chair may consolidate for hearing complaints filed with regard to a single transaction alleged to be in violation of the ordinance. The respondent or the Executive Director may request or bring to the attention of the Chair the need for consolidation.
- (2) The format for an enforcement hearing will be of an informal nature yet designed so that the evidence and facts relevant to a particular proceeding will become most readily and efficiently available to the Commission. An enforcement hearing shall include, but not be limited to, the following elements:
  - (a) A brief introductory statement by the Chair;
  - (b) Presentation of the charging document and supporting evidence by the Executive Director;
  - (c) Response to the charges by the respondent.

For good cause, the order of presentation of evidence may be altered.

- (3) Pursuant to SMC 4.16.090(G), all enforcement hearings shall be conducted as though they were "contested cases" hearings under the Administrative Code, Seattle Municipal Code Chapter 3.02 (Ordinance 102228) and according to the Commission's rules and regulations.
- (4) All enforcement hearings involving the following persons shall be open to the public:
  - (a) Alleged Code of Ethics violations in which the following are respondents:
    - (i) City elected officials,
    - (ii) Deputy Mayor,
    - (iii) heads of departments and Executive Department offices,
    - (iv) members of boards and commissions,
    - (v) City employees represented by unions that have not signed an agreement to permit employees to request closed hearings, (Employees not listed above who are charged with a Code of Ethics violation may request a closed hearing, pursuant to SMC chapter 4.16.)
  - (b) All alleged Elections Code violations.
- (5) Unless directed otherwise by the Chair, each party to the enforcement hearing shall submit to the Commission at the enforcement hearing a proposed written determination that comports with the requirements of Rule 3.232.22.

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**3.15 ~~2-14~~ Oath** All testimony before the Commission shall be taken under oath or affirmation, administered by the presiding official.

### **3.16 ~~2-15~~ Presiding Officials**

- (1) The Chair shall preside over all hearings. If the Chair is absent or disqualified, the Chair may designate, in writing, any member of the Commission to preside as the Chair.
- (2) The Commission has the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. The Chair or his or her designate shall have all powers necessary to that end, including the following:
  - (a) Administering oaths and affirmations;
  - (b) Issuing subpoenas;
  - (c) Ruling on offers of proof and receiving evidence;
  - (d) Regulating the course of hearings and the conduct of parties and their agents;
  - (e) Considering and ruling on all procedural and other motions appropriate to the proceedings;
  - (f) Making and issuing written determinations.
- (3) In the performance of adjudicative functions, the Commission shall not be responsible to or subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.
- (4) Any Commission member may, on his or her own initiative, enter an order disqualifying him or herself in the event of a conflict of interest, bias or prejudice, or the appearance thereof.
- (5) A complainant or respondent may file an affidavit, which is a sworn statement in writing and under oath, stating that a fair and impartial hearing cannot be had by reason of the conflict of interest, bias, or prejudice of a Commission member. The affidavit must set forth facts and reasons for the belief that the conflict of interest, bias, or prejudice exists. The affidavit shall be filed not less than 24 hours before the hearing, unless good cause is shown, and in any case before the commencement of the hearing. The Chair shall rule on the affidavit prior to making any other ruling and prior to the hearing.

### **3.17 ~~2-16~~ Time Limit on Oral Testimony**

- (1) The Chair may impose time limitations on oral testimony as necessary to expedite proceedings and avoid continuation of a hearing. The Chair will provide as much advance notice as is practicable when time limits are imposed.
- (2) If the parties are unable to present their arguments and testimony within the allotted time, they may request of the Chair an opportunity to submit written materials after the close of the hearing.

### **3.18 ~~2-17~~ Rights of Parties**

Every party shall have the right of due notice, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Cross-examination shall be permitted as is necessary for a full disclosure of the facts.

### **3.19 ~~2-18~~ Role of Complainant**

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- (1) When a complaint has been filed with the Executive Director, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the Commission.
- (2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the Executive Director prior to the hearing to be used at the hearing in the discretion of the Executive Director. The complainant or any other person wishing to be heard in a contested case hearing may request permission of the ~~Chair, Executive Director~~ in advance of such hearing, and the ~~Chair, Executive Director~~ may grant such person a reasonable opportunity to be heard on factual or legal issues before the Commission.

### **3.20 2-19 Ex Parte Communications**

- (1) A member of the Commission may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process with any party or any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:
  - (a) Any Commission member may receive aid from legal counsel who have not participated in investigation or prosecution;
  - (b) Commission members may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial function in the same or a factually related case.
- (2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a Commission member may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.
- (3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a Commission member may not communicate under subsection (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.
- (4) If, before serving as a Commission member in an adjudicative proceeding, a person receives an ex parte communication that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.
- (5) A Commission member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the Commission member received an ex parte communication. The Commission member shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence if any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted.

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- (6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a Commission member who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

### **3.21 2-20 Content of Record**

- (1) The record of a hearing conducted by the Commission shall include:
- (a) Notices of all proceedings;
  - (b) Any prehearing order;
  - (c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
  - (d) Evidence received or considered;
  - (e) A statement of matters officially noticed;
  - (f) Proffers of proof and objections and rulings thereon;
  - (g) Proposed findings, requested orders, and exceptions;
  - (h) The recording prepared at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
  - (i) Any final order, initial order, or order on reconsideration;
  - (j) Matters placed on the record after an ex parte communication.
- (2) Except to the extent that this rule or another rule provides otherwise, the hearing record constitutes the exclusive basis for Commission action in adjudicative proceedings and for judicial review of adjudicative proceedings.

**3.22 2-21 Determination Time Requirement** The written determination of the Commission shall be made within seven days of the hearing, PROVIDED that the Commission may extend the issuance of its determination to no later than fourteen days from the date of hearing in cases found by the Commission to require additional time, after notice to the respondent.

### **3.23 2-22 Content of Determination**

A determination shall include a statement of the following:

- (a) The nature and background of the proceeding;
- (b) Findings of fact including both ultimate facts and basic or underlying facts supporting the findings. The findings shall be based exclusively on the evidence presented in the hearing, including the Executive Director's report of investigation or charging document, and those matters officially noticed. The findings shall consist of a concise statement of each fact found upon each contested issue of fact;
- (c) A determination of whether the ordinance has been violated, the acts or omissions to act which constituted a violation, and the specific section or sections of the ordinance which those acts or omissions violated;
- (d) Any recommendation for disciplinary action to be imposed by an appropriate City authority pursuant to SMC 4.16.090(H) or any sanction imposed by SMC 4.16.100.

**3.24 2-23 Transmittal of Determination** Upon a determination that the ordinance has been violated, and that disciplinary action should be taken, the determination shall forthwith be transmitted to the employee's department head, or other appropriate City authority, informing such City authority of the provisions of SMC 4.16.090(H) and requesting a written report within fourteen days of the disciplinary action taken.

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**3.25 2.24 Disclosure of Determination** The determination of the Commission is a public record and shall be available for public review. Copies of each determination shall be available to any person upon payment of charges designated by City ordinance.

**3.26 2.25 Disposition & Transmittal of Case Record** The case record including all evidence and exhibits shall be retained in the offices of the Commission, or in the offices of the City Attorney during the pendency of an action brought by the City Attorney. If a determination is made that there has been no violation of the ordinance, original documents produced as exhibits shall be returned to the person producing each such document, and a copy, abstract, summary, or other memorandum of the nature and content of the document shall replace the document in the case record.

**3.27 2.26 Citation of Cases** Whenever referencing any determination or order made by the Commission, that determination or order shall be cited as follows:  
In the Matter of [Respondent's Surname], (S.E.E.C. [year]).

### **Rule 4. Appeals**

- (1) Upon the written request of a party aggrieved by an Executive Director's decision to dismiss a complaint, or to impose late filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.
- (2) An appeal of a dismissal shall be served at the office of the Commission no later than 21 days after the date of mailing the decision of which review is sought.
- (3) An appeal of late-filing penalties shall be served at the office of the Commission no later than 14 days after the date of mailing the decision of which review is sought.
- (4) A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.
- (5) When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.
- (6) The Commission shall act on the request at the next meeting at which it may be practicable by:
  - (a) deciding whether to review the Executive Director's decision; and
  - (b) if it decides to do so, either affirming, reversing, or amending the decision.
- (7) In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.

### **Rule 5 ~~III~~. ADVISORY OPINIONS**

#### **5.1 ~~3-1~~ Commission Advisory Opinions**

- (1) Any person subject to or affected by the Commission administered ordinances may request a written advisory opinion. The request should be in writing and should explain all the pertinent facts and circumstances. Advisory opinions are intended to assist the person seeking advice and to guide future conduct. The Commission retains sole discretion to determine in which cases the Commission will issue an advisory opinion ~~a binding advisory opinion will be issued.~~ Factors the Commission may consider when

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determining in which cases a binding advisory opinion will be issued include, but are not limited to, whether the issue presented is one of general application, one that has not recently been addressed by the Commission, or one that is likely to be the subject of controversy or dispute. Abstracts of Commission opinions or the full text of Commission opinions are available on the Commission's web site.~~The Commission maintains a public index of its advisory opinions dating back to 1975.~~

~~(2) The Executive Director is authorized to issue verbal or written non-binding staff opinions, which are not binding on the Commission. Upon issuing a non-binding staff opinion, the Executive Director shall caution the party requesting the opinion that the opinion is non-binding, and that only the Commission has the authority to issue binding opinions interpreting SMC Chapter 4.16 or Chapter 2.04.~~

### 3.2 Binding Commission Advisory Opinions

~~(2) The Commission shall consider draft Commission ~~each~~ opinions prepared by the Executive Director as soon as is practicable at the first practical meeting after such referral. The Commission may decline to issue the advisory opinion or, by vote, approve or, modify, or reverse the opinion.~~

~~(3) Advisory opinions issued by the Commission shall be designated as follows: Advisory Opinion [year – number]. Op. Sea. Ethics & Elects. Comm'n. [opinion number] [(year)].~~

## **Rule 6 IV. PROCEDURES FOR MODIFICATION OF REPORTING ECONOMIC INTEREST STATEMENTS**

**6.1 4.0 Statement of Policy:** Pursuant to SMC 4.16.080(B)(3), the Commission may suspend or modify any of the reporting requirements of SMC 4.16.080 in particular cases, ~~if it finds that reporting presents a manifestly unreasonable hardship and suspension or modification will not frustrate the purpose of the requirement.~~ The Commission will expeditiously handle requests to suspend or modify to assure that the requirements are not frustrated by delays beyond the reporting deadline~~the reporting requirement.~~

### **6.2 4. Request To Suspend or Modify Personal Financial Disclosure Reporting:**

- (A) Any officer or employee whose position has been designated by rule to complete an financial economic interest statement may submit a written request to the Commission to suspend or modify the reporting requirement.
- (B) The request must be filed in the Commission Office at least ten ~~(10)~~ days before the last regularly scheduled Commission meeting before the April 15 filing deadline. An officer or employee who does not timely file a written request is deemed to have waived any right to suspension or modification.
- (C) The Commission may accept reporting modifications of reporting personal finances ~~(F-1's and F-1A's)~~ granted by the Washington State Public Disclosure Commission to City officers who are required to file such statements with the State and with the City and who file a request with the Commission pursuant to this rule.,~~4.1.~~

### **6.3 4.2 Hearing To Suspend or Modify:**



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- (A) ~~Upon receipt of a request for suspension or modification, the Commission shall conduct a hearing at its next regularly scheduled meeting, or at a special meeting, if it deems necessary to meet the intent of chapter 4.16.~~
- (B) The Commission Chair shall have the authority to: (1) administer oaths and affirmations; (2) rule on all procedural matters and objections; and (3) rule on offers of proof and receive relevant evidence.
- (C) ~~The~~ Commission members shall have the authority to ~~question~~**interrogate** the requesting officer or employee and witnesses, to develop any facts deemed necessary to fairly and adequately decide the issues.
- (D) ~~After hearing, the Commission shall issue a written order. The order shall include the reason or reasons for the determination and the extent of the modification or suspension, if any.~~

### **6.4.4.3 Hearing By Affidavit or Sworn Statement:**

- (A) An officer or employee may choose to waive an appearance at a hearing conducted pursuant to these regulations.
- (B) If ~~the officer or employee waives an~~ appearance ~~is waived~~, the officer or employee shall submit to the Commission a written, sworn statement **explaining the basis for his or her setting out in detail the rationale for requesting modification or suspension request toing modification or suspensions of** the reporting requirements ~~of the Code.~~
- (C) The Commission shall decide the issues in the same manner as if an appearance were made, provided that if the Commission is unable to reach a conclusion due to insufficient evidence, it may adjourn the hearing to gather more evidence, or it may deny the request. If the Commission adjourns the hearing, it may grant a temporary suspension of reporting requirements until the decision to grant or deny the exemption is finalized by formal action of the Commission.

**6.5.4.4 Hearing Record:** The request for suspension or modification and all evidence presented at hearing shall constitute the hearing record.

### **6.6.4.5 Possible Qualifications for Reporting Modification:**

~~Any of the~~**The** following ~~or any of them,~~ may be considered possible qualifications for a reporting modification under SMC 4.16.080 pursuant to these regulations:

- (1) Reporting any of the information required by SMC 4.16.080, if public disclosure would violate any legally recognizable confidential relationship.
- (2) Reporting any of the information for members of the immediate family of a City officer or employee, if such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status, and such financial interest does not constitute a present or prospective source of income to such City officer or employee or to any other person who is dependent upon such City officer or employee for support in whole or in part.
- (3) Reporting any other matter which would constitute an unreasonable hardship in a given case, where the interest in question would present no actual or potential conflict with the proper performance of the duties of the position held.

## **Rule 7. V. PROCEDURES FOR IDENTIFYING OFFICERS AND EMPLOYEES WHO MUST FILE FINANCIAL INTERESTS STATEMENTS UNDER SMC 4.16.080**

~~5.1. The mayor, each member of the City Council, each Municipal Court Judge and any other official who is subject to the reporting requirements of RCW 42.17.240, shall file a~~

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~~duplicate copy of the required report with the Commission by April 15 of each year, for the previous calendar year.~~

~~5.2. Every head of a City department and every division manager reporting directly to the head of a City department, every assistant City Attorney, each Deputy Mayor, the City Clerk and City Auditor and each employee in the City Auditor's office who conducts or supervises the conduct of audits shall file with the Commission, within 2 (two) weeks of appointment, and by April 15 of each succeeding year for the previous calendar year, a financial interests statement on the form provided by the Commission.~~

~~5.3. Each member of a City board or commission that is not an adhoc advisory committee, i.e., does not interpret, administer or execute City law, shall file with the Commission, within 2 (two) weeks of appointment, and by April 15 of each succeeding year for the proceeding calendar year, a financial interests statement on the form provided by the Commission.~~

~~7.15.4. In December of each year, (except in 1994, the request shall be made in March) the Commission shall submit a request to the Mayor, the City Attorney, the City Auditor and each Department Head to identify City officers and employees who must file Statements of Financial Interests under SMC 4.16.080 the following:~~

~~(a) The Mayor shall identify each member of his or her staff who, during the preceding calendar year had authority to direct the expenditure of public resources;~~

~~(b) The City Attorney shall identify all the names, positions and locations of each Assistant City Attorney;~~

~~(c) The City Auditor shall identify all the names, positions and locations of each person in his or her office who conducts or supervises the conduct of audits;~~

~~(d) Each head of the City department shall identify and provide a list of positions, names and work locations of: each division manager and each employee, and the supervisors of each such employee, who during the previous calendar year had decision making authority for the following acts resulting in acquisitions using City, County, State or Federal resources or commitments of City, County, State or Federal resources with an aggregate value of 5,000 or more:~~

~~(i) the purchase of goods; or~~

~~(ii) the purchase of equipment; or~~

~~(iii) the negotiation of contracts; or~~

~~(iv) the execution of contracts;~~

~~7.2 Department heads shall submit to the Commission the list of their department's filers no later than January 15 (except in 1994, the list shall be submitted to the Commission within (10) ten business days of the Commission distributing the request).~~

~~7.3. At its February meeting, the Commission shall hold a public hearing and adopt a rule that identifies the positions and names of the City officers and employees who must file financial interests statements by April 15 of that year, for the previous year. Following the February meeting, the Commission shall send to the staff for each board or commission required to file and to each department personnel representative a copy of the list of positions and names of officers and employees required to file and sufficient number of financial interests statements forms, so each officer and employee can complete and file the form with the Commission. The completed forms may be returned to the board or commission staff, the department personnel representative or directly to the Commission, at the officer or employee's discretion.~~

~~7.4 The phrase "decision-making authority" used in SMC 4.16.080.B.1 means the authority to make a decision "Decision making" as used in this rule shall mean making a determination that has a direct impact on the final act of purchasing or contracting. Examples of such "decision making authority" include, but are not limited to, drafting~~

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specifications for equipment to be purchased or for a contractor selection process, drafting the scope of work for a contract proposal, selecting a vendor from a blanket contract or as a sole source from whom a purchase will be made, participating in a selection panel that reviews responses to requests for proposal, selecting a product that will be purchased, etc. ~~The employee who performed the duty as well as the supervisors who had approval authority must be identified. The employee must be identified if he or she had the authority to make the determination, even if the employee's supervisor refused to approve the employee's determination~~

These rules were adopted by the Seattle Ethics and Elections Commission at a regularly scheduled meeting held on \_\_\_\_\_, 2007 and will be effective on the date they are filed with the City Clerk. The Commission members voting on this action were:

STATE OF WASHINGTON

CITY OF SEATTLE

I, WAYNE BARNETT, Executive Director of the Seattle Ethics and Elections Commission, State of Washington, do hereby certify that this is a true and correct copy of the Commission's Administrative Rules, as adopted on \_\_\_\_\_, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
WAYNE BARNETT, Executive Director

Adopted January 19, 1999  
Amended June 18, 2002