February 6, 2013

Commission Meeting

ORDINANCE _____

AN ORDINANCE relating to the Whistleblower Protection Code; _____; _____; _____, amending the following sections of the Seattle Municipal Code: Section 4.20.800, to clarify the legislative purpose; Section 4.20.810, to clarify the rights and responsibilities of employees and the process for reporting; Section 4.20.860 to amend the manner in which allegation of retaliation are reported, investigated and resolved; Section 4.16.070.6 adding retaliation to prohibited behavior under the Ethics Code; Sections 3.70.010 and 3.70.100 redefining the jurisdiction of the Ethics and Elections Commission to include administration of the Whistleblower Protection Code; adding new sections 4.20.805, containing definitions of terms used in the whistleblower code ; 4.20.870, creating a private cause of action for retaliation against whistleblowers; 4.20.875, providing the Ethics and Elections Director investigative tools including subpoena power; repealing sections 4.20.820 concerning confidentiality provisions replaced by ; 4.20.840; 4.20.850.

WHEREAS, it is in the public interest to encourage public employees to report instances of improper governmental action in order to give the governmental entity the opportunity to correct improper governmental actions; and,

WHEREAS, the most effective way to encourage public employees to report improper governmental action is to provide an effective whistleblower protection program that includes a clear reporting process and effective protection from retaliation; and,

WHEREAS City employees who step forward as whistleblowers to make good faith reports of perceived improper governmental actions serve the public interest; and,

WHEREAS, in 1990, 1991, 1992 and 1994, the City Council has recognized the important public policy inherently expressed by the City's Whistleblower Protection Code; and,

WHEREAS, City employees who step forward as whistleblowers uphold the principle that holding a public office or employment is a public trust; and,

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

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

,

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

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

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 relates to a policy decision, whether properly or improperly implemented; and

WHEREAS it is the intent of the City of Seattle to fund a robust, independent and effective Whistleblower Protection program; and,

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

NOW, THEREFORE**,**

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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

Seattle Municipal Code 4.20.800 - Policy -- Purpose.

It is the purpose of this ordinance to:

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

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

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

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

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

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

G. Adopt a City Whistleblower program so as to comply with RCW 42.41.030, Local Government Whistleblower Protection; and

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

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

Definitions

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

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

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

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

"City Officer" means every individual elected or appointed to an office in any City agency, whether such individual is paid or unpaid.

"Commission" means the Seattle Ethics and Elections Commission.

"Cooperating Employee" means a City employee who:

in good faith makes a report of alleged improper governmental action pursuant to SMC 4.20.810.C;

is perceived by the City as having reported pursuant to this chapter, but who in fact, did not report;

in good faith provides information in connection with an inquiry or investigation of a report or testifies in any proceeding resulting from a report, or

is perceived by the employer as providing information in connection with an inquiry or investigation of a report made pursuant to this chapter, but who in fact has not done so.

"Executive Director" means the Executive Director of the Seattle Ethics and Elections Commission.

"Good Faith" means the individual reporting or providing information has a reasonable basis in fact for reporting or providing the information.

"Gross Waste of Public Funds or Resources" means to spend or use funds or resources, or to allow the use of any funds or resources, in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation. The term "gross waste of public funds or resources" also includes the non-collection of a debt or other obligation owed the City when the non-collection is done in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

"Improper governmental action" means any action by an employee that is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of employment, that:

Violates any federal, state, county or City statute, ordinance or rule;

Creates a substantial or specific risk of serious injury, illness, peril, or loss, that is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation;

Results in a gross waste of public funds or resources; or

Prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless disclosure is legally prohibited. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinion or technical findings.

"Improper Governmental Action" excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining, or any action that may be taken under RCW Chapters 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 or RCW 54.04.170 and 54.04.180.

A properly authorized City policy, reasonable expenditure or activity does not become an "improper governmental action" because an employee dissents from the City policy or considers the expenditure unwise.

"Interested Parties" means the Cooperating Employee who alleges retaliatory action, the relevant agency, the Executive Director, and the individual employee the Executive Director alleges to have retaliated.

"Report" shall mean:

reporting any assertion of improper government action to the Executive Director including reporting violations of the Ethics and Elections Codes;

reporting any assertion of improper government action to an employee's supervisor, manager, officer or appointing authority or director;

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

reporting alleged violations of the Fair Employment Practices ordinance or the Health Insurance Portability and Accountability Act (HIPAA) to the Office for Civil Rights;

reporting alleged misconduct by Seattle Police Department personnel to the Seattle Police Office of Professional Accountability;

reporting alleged violations of the Code of Judicial Conduct to the Washington State Commission on Judicial Conduct;

reporting alleged violations of criminal laws to any law enforcement agency;

reporting when the employee believes in good faith that a crime is about to be committed, to any law enforcement agency, agency head, manager or supervisor;

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

reporting outside of City government if 30 days have passed since the employee made a written report pursuant to this chapter; or

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

"Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," means,

To make, or use one's authority to make, an adverse change in a Cooperating Employee's employment status or terms and conditions of employment where the employee's status as a Cooperating Employee was a contributing factor in the decision making process

~~To use one's authority to directly or indirectly threaten or intimidate an employee for the purposes of interfering with or influencing an employee's cooperation in an inquiry or investigation based on a report of improper governmental action; or, interfering or influencing testimony in any investigation or proceeding arising from a report; or,~~

~~To knowingly take or direct others to take any action for the purpose of: influencing an employee's cooperation in an inquiry or investigation based on a report of improper governmental action; or, interfering or influencing testimony in any investigation or proceeding arising from a report.~~

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

4.20.810 Employee rights, responsibilities and limitations.

A. Rights.

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

2. To the extent allowed by law, the identity of a Cooperating Employee shall be kept confidential and shall not be disclosed unless the employee in writing waives confidentiality.

B. Responsibilities.

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

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

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

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

((~~4.20.820 Confidentiality~~

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

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

4.20.830 Reports to the Executive Director

Reports: The following applies to any report of improper governmental action made to the Executive Director.

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

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

C. Mandatory and Discretionary Referral.

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

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

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

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

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

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

a. When the Executive Director makes a discretionary referral pursuant to this chapter, the Cooperating Employee shall be notified before the referral is made. The Executive Director shall not disclose the identity of the Cooperating Employee without a written waiver of confidentiality by the Cooperating Employee.

b. Within 60 days of a discretionary referral being made by the Executive Director, the City official or agency head receiving the referral shall personally or through their designated representative, send to the Executive Director the agency's plan to resolve the concern with a date at which the agency anticipates the planned action will be completed. If the Executive Director does not receive an agency's plan or, if within a reasonable time the agency does not complete the plan, the Executive Director may alert the Mayor and advise the City Council.

D. Investigation.

1. The Executive Director shall investigate alleged violations of the Elections Code~~,~~ according to SMC 2.04.070 and the Ethics and Election Commission's Administrative Rules; alleged violations of the Ethics Code~~,~~ according to SMC 4.16.090 and the Ethics and Election Commission's Administrative Rules; and, alleged violations of the Lobbying Code~~,~~ according to SMC 2.06 and the Ethics and Election Commission's Administrative Rules.

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

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

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

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

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

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

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

((~~4.20.840 - Civil Penalty~~

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

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

((~~4.20.850 Definitions~~

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

~~A. "Auditing official" means, each in connection with a report of improper governmental action within his, her, or its respective jurisdiction, the Executive Director of the Seattle Ethics and Elections Commission; a person to whom sexual harassment was properly reported according to City policy; the Office for Civil Rights; the Washington State Commission on Judicial Conduct; the Police Department's Internal Investigations Section; the county prosecuting~~

~~attorneys of the State of Washington; and any authorized assistant or representative of any of them in cases within their respective appropriate jurisdictions.~~

~~B. "Employee" means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time, and intermittent workers. It also includes members of appointed boards or commissions, whether or not paid.~~

~~C. 1. "Improper governmental action" means any action by a City officer or employee that is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment, and:~~

~~a. Violates any state or federal law or rule or City ordinance, and, where applicable, King County ordinances, or~~

~~b. Constitutes an abuse of authority, or~~

~~c. Creates a substantial or specific danger to the public health or safety, or~~

~~d. Results in a gross waste of public funds.~~

~~2. "Improper governmental action" excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining, or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.~~

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

~~D. "Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make, because of an activity protected under Section 4.20.810, any unwarranted adverse change in an employee's employment status or the terms and conditions of employment including, but not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of~~

~~reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinaryaction.~~

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

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

4.20.860 Retaliation.

A. Complaint - Alleging Retaliation

1. Timeliness. In order to seek relief, an employee who believes he or she has been the subject of retaliation must file a signed written complaint within 180 days of the occurrence alleged to constitute retaliation or within 180 days of when they reasonably should have known that an occurrence alleged to constitute retaliation occurred.

2. Place of Filing. The complaint shall be filed with the Executive Director.

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

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

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

c. The conduct that establishes that the employee is a Cooperating Employee;

d. The relief the employee is requesting and,

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

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

B. Initial Determination.

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

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

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

i. the employee is a Cooperating Employee; and,

ii. the employee was subjected to an adverse change or changes that occurred within the prescribed time period; and,

iii. the employee's protected conduct reasonably appears to have been a contributing factor.

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

C. Investigation of Sufficient Complaints.

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

2. If the matter is not before another forum or if the Executive Director decides to pursue a matter even though it is before another forum, the Executive Director shall investigate sufficient complaints and endeavor to complete the investigation in 90 days.

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

3. The Executive Director shall at the conclusion of the investigation determine whether there is reasonable cause to believe that retaliation occurred.

D. No Reasonable Cause Found. If the Executive Director finds no reasonable cause to believe that retaliation occurred, the Executive Director shall dismiss the complaint and inform the employee.

E. Reasonable Cause Found:

1. If the Executive Director finds reasonable cause to believe that retaliation occurred, the Executive Director shall issue a written report to the interested parties that shall include a

statement of the facts which provide the basis for the finding. The report may also include the identity of the individual employee or employees responsible for the retaliation and recommendations for agency action.

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

D. Settlement. Within 30 days of the Executive Director's final report finding reasonable cause, the Director shall determine whether the interested parties would attend a joint settlement conference in an attempt to agree on an appropriate remedy.

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

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

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

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

5. Any agreement between the Executive Director and a specific employee or employees settling a violating 4.16.070.6 shall be subject to Commission approval under the Seattle Ethics and Elections Commission Administrative Rule.

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

4.20. 865 - Enforcement:

A. Election of administrative forum:

1. Nothing in this subchapter prohibits an employee from filing in any administrative forum or affects the remedies available in that forum.

2. If after filing a complaint with the Executive Director, the complainant files an action in another forum based upon the same conduct, the complainant should inform the Executive Director within 15 days.

3. After being informed of an action in another forum based upon the same conduct the Executive Director may choose to continue with the proceedings or suspend proceedings until either the other action is completed or the Executive Director determines that another course of action is appropriate.

B. Filing a Complaint with the Hearing Examiner.

1. The Executive Director may file a Complaint alleging retaliation with the Hearing Examiner. The Complaint shall:

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. ~~to aid in the Determination of Reasonable Cause.~~

Comment [A1]: E.D. makes the Reasonable Cause Determination, and the HE ruled on the case?

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 action.

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

3. The Executive Director may present rebuttal evidence.

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

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

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

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

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

c. ~~If a Cooperating Employee chooses to be represented by an attorney and is awarded damages for emotional distress,~~ T~~t~~he Hearing Examiner may award reasonable attorney fees ~~attributed to presentation of the evidence at the Enforcement hearing~~. Any award for attorneys fees shall not exceed Twenty Thousand Dollars ($ 20,000.00).

d. The agency shall comply with the provisions of any order granting relief and shall furnish proof of compliance to the Executive Director. In the event that the agency refuses or fails to comply with the order, or does not seek timely judicial review, the Executive Director shall notify the Mayor, the Council and the City Attorney. The Director may request that the City Attorney seek enforcement of the order in an appropriate court.

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

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

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

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

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

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

4.20.870 – Private cause of action.

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

a. Filed no later than 24 months after the Executive Director's notice of insufficiency; or,

b. Filed within 21 months after the Executive Director's notice of a finding of no reasonable cause; or,

c. Filed within 18 months after the Executive Director's finding of reasonable cause; or,

d. Filed within 12 months of the Executive Director ending Settlement discussions.

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

2. The Cooperating employee injured by any violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter. The Cooperating

employee shall have the burden to prove by a preponderance of the evidence a violation occurred.

3. If the employee files a civil action the Executive Director shall dismiss any administrative action for relief for that employee.

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

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

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

4.20.880 - Annual Restatement and Training. The Seattle Ethics and Election Commission and City Personnel shall, within six months of the effective date of this ordinance, develop and present a plan for adoption by City Personnel and the Seattle Ethics and Elections Commission that reaches the following goals ensuring:

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

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

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

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

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

SMC 4.16.070 Prohibited conduct

A Covered Individual may not:

…

6. Retaliate against a City Employee as prohibited under SMC 4.20.810 of the Whistleblower Protection Code, or directly or indirectly threaten or intimidate a City employee for the purposes of interfering with that employee's right to communicate with the Commission, its employees, or its agents, or ~~, To use one's authority to~~ directly or indirectly threaten or intimidate an employee for the purposes of interfering with or influencing an employee's cooperation in an inquiry or investigation, or ~~based on a report of improper governmental action;~~ or, interfering or influencing testimony in any investigation or proceeding arising from a report; or,

~~To~~ knowingly take or direct others to take any action for the purpose of: influencing an employee's cooperation in an inquiry or investigation based on a report of improper governmental action; or, interfering or influencing testimony in any investigation or proceeding arising from a report.

7. Application to Certain Members of Advisory Committees.

A. SMC subsections 4.16.070.1.a and 4.16.070.1.b shall apply to employee members of advisory committees. SMC subsections 4.16.070.1.a and 4.16.070.1.b shall not apply to other members of advisory committees. This subsection 6 shall instead apply to all other members of advisory committees. No member of an advisory committee to whom this subsection applies shall:

1. Have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in any matter upon which the member would otherwise act or participate

in the discharge of his or her official duties, and fail to disqualify himself or herself from acting or participating in the matter.

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

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

SMC 3.70.010 Commission established -- Purpose**.**

There is hereby established a Seattle Ethics and Elections Commission to administer the City's Code of Ethics (Chapter 4.16); to administer the Election Campaign Code and its campaign matching fund program (Chapter2.04); to publish the City's election pamphlets (Chapter 2.14) and to administer the Whistleblower Protection Code (SMC Sections 4.20.800 through 4.20.880).

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

SMC 3.70.100 Powers and duties.

The Commission shall have the following powers:

A. To administer the City's Code of Ethics (Code Chapter 4.16); the Election Campaign Code and its campaign matching fund program (Code Chapter 2.04); the City's election pamphlet ordinance (Code Chapter 2.14); the lobbying disclosure ordinance (Code Chapter 2.06) and the whistleblower protection ordinance (SMC Sections 4.20.800 through 4.20.880 inclusive) (called collectively "Commission-administered ordinances").

Section 16. Effective Date: This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this

_____ Day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)