

December 5, 2012

Commission Meeting

[Incorporating changes to Nov 21, 2012]

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 ~~legislation~~ 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 ~~enlarging~~ redefining
the jurisdiction of the Ethics and Elections Commission to ~~cover~~ include administration
of the Whistleblower Protection Code; adding new sections 4.20.805; 4.20.870;
4.20.875; 4.20.810; repealing sections 4.20.820; 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 ~~w~~ 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 ~~w~~ 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 is the underpinning of a
democratic government; and,

Comment [kmf1]: Check convention for order of preamble

1 WHEREAS, ~~ensuring that governmental actions insure rather than denigrate~~ **advance and protect**
the public health and safety; ~~is paramount to sustaining the community in which we live~~
2 and,

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

4 ~~WHEREAS, all of the above is fostered by an open, honest and protective policy that~~
~~encourages employees to step forward as Whistleblowers to report in good faith alleged~~
5 ~~improper governmental actions, and~~

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

7 WHEREAS, an effective ~~W~~whistleblower ~~P~~rotection program should include: an accessible
reporting system; prompt, efficient, and independent investigation and evaluation of
8 ~~complaints~~ **allegations** that ~~W~~whistleblowers have been subject to retaliation; and
effective remedies in cases where such retaliation has occurred,

9 NOW, THEREFORE,

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

11
12 **Section 1.** Section 4.20.800 of the Seattle Municipal Code, last amended by Ordinance
13 117039, is amended as follows:

14 Seattle Municipal Code 4.20.800 - Policy -- Purpose.

15 It is the purpose of this ordinance to:

16 ~~1~~**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;

17 ~~2~~**B.** Provide City employees protection from retaliatory action for making a good faith
18 report or being perceived as making a report, or cooperating or being perceived as cooperating in
19 any subsequent inquiry or investigation;

20 ~~3~~**C.** Provide for an independent investigation of reports to inform the operation of City
21 government and promote the public confidence;

22 ~~4~~**D.** Provide for an independent investigation and determination of alleged retaliation;

23 ~~5~~**E.** Provide an administrative forum in which to address the harm caused by
24 retaliatory behavior;

25 ~~6~~**F.** Provide for the assessment of penalties against ~~those~~ individuals who retaliate
26 against a City employee ~~who acts in accordance with this chapter;~~

1 ~~7~~G. Adopt a City Whistleblower program so as to comply with RCW 42.41.050,
Local Government Whistleblower Protection, and

2 ~~8~~H. In ~~so~~ adopting this subchapter, do nothing to diminish employee rights under any
3 collective bargaining agreement.

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

6 Definitions

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

9 “Adverse change” includes, but is not limited to:

10 ~~denial~~ of adequate staff to perform duties;

11 frequent staff changes;

12 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
13 opposition to the employee’s expressed wish;

14 refusal to assign meaningful work;

15 unsubstantiated letters of reprimand or unsatisfactory performance evaluations;

16 reduction in pay;

17 denial of promotion;

18 transfer or reassignment;

19 demotion, suspension or dismissal or other disciplinary action;

20 a supervisor or superior ~~who behaves~~ ~~ing~~ in, or encourages ~~ing~~ coworkers to behave in, a
hostile manner toward the employee;

21 issuance of or attempt to enforce any nondisclosure policy or agreement in a manner
22 inconsistent with prior practice, or

23 any other significant action that is inconsistent compared to actions taken before the
24 employee engaged in action protected by this chapter, or compared to other employees who have
25 not engaged in action protected by this chapter.

Comment [kmf2]: Check convention for capitalization?

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

4 “City Employee” or “Employee” means, every individual who is, or was at the time
5 actions under this chapter were taken, appointed to a position of employment in any City agency,
6 whether in a permanent, temporary or intermittent position, ~~an elected official, an individual~~
7 ~~who volunteers services to the City and individuals appointed to boards and commissions~~
8 ~~whether paid or unpaid.~~

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

11 “Commission” means the Seattle Ethics and Elections Commission.

12 “Cooperating Employee” means a City employee who:

13 ~~A City employee who~~ in good faith makes a report of alleged improper
14 governmental action pursuant to SMC 4.20.810.C;

15 is perceived by the employer as having reported pursuant to this chapter, but
16 whom in fact, did not report;

17 ~~A City employee who~~ in good faith provides information in connection with an
18 inquiry or investigation of a report ~~made pursuant to this chapter~~ or testifies in any proceeding
19 resulting from a report, or

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

23 “Executive Director” means the Executive Director of the Seattle Ethics and Elections
24 Commission.

25 “Good Faith” means the individual reporting or providing information has a reasonable
26 basis in fact for reporting or providing the information.

27 “Gross Waste of Public Funds or Resources” means to spend or use funds or resources, or
28 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

Comment [NVD3]: We would like the commission to weigh in on the perception issue.

Comment [kmf4]: See NVD@ above

1 “gross waste of public funds or resources” also includes the non-collection of a debt or other
2 obligation owed the City when the non-collection is done in a manner grossly deviating from the
3 standard of care or competence that a reasonable person would observe in the same situation.

4 “Improper governmental action” means any action by an employee that is undertaken in
5 the performance of the employee's official duties, whether or not the action is within the scope of
6 employment, ~~which and:~~

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

8 Creates a substantial or specific ~~danger or a~~ risk of serious injury, illness, peril, or
9 loss, ~~to which the exposure of the public that~~ is a gross deviation from the standard of care or
10 competence ~~which that~~ a reasonable person would observe in the same situation;

11 Results in a gross waste of public funds or resources, or

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

17 “Improper Governmental Action” excludes* personnel actions, including but not
18 limited to: employee grievances, complaints, appointments, promotions, transfers, assignments,
19 reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions
20 in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or
21 civil service laws, or alleged violations of agreements with labor organizations under collective
22 bargaining, or any action that may be taken under RCW Chapters 41.08, 41.12, 41.14, 41.56,
23 41.59, or 53.18 or RCW 54.04.170 and 54.04.180.

24 A properly authorized City ~~program~~ policy, reasonable expenditure or activity
25 does not become an “improper governmental action” because an employee dissents from the City
26 policy or considers the ~~program or~~ expenditures unwise.

27 “Interested Parties” means the Cooperating Employee who alleges retaliatory action, the
28 ~~head of the Cooperating Employee’s department~~ relevant agency, the Executive Director, and the
specific individual employee ~~the Executive Director~~ alleges to have retaliated.

1 A “report” shall mean:

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

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

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

9 reporting alleged violations of the Fair Employment Practices ordinance to the Office for
10 Civil Rights;

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

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

15 reporting alleged violations of criminal laws to local law enforcement or the county
16 prosecuting attorney;

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

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

22 reporting when the employee believes in good faith that a crime is about to be committed,
23 to any law enforcement agency, the County Prosecuting Attorney, the Executive Director, or
24 agency head, manager or supervisor; or

25 reporting in an emergency, to any person who has the ability to address the danger or
26 risk, where the Employee believes in good faith that there is a substantial and specific danger or
27 risk of serious injury, illness, peril, or loss to any person. No emergency under this subsection

1 exists where prompt attention and reporting under this subchapter by the employee could have
2 avoided the perceived need to report immediately.

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

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

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

12 To knowingly take or directing others to take, any action for the purpose ~~of interfering of:~~
13 interfering with an employee's right to report information; ~~or, for the purpose of~~ influencing an
14 employee's cooperation in an inquiry or investigation based on a report ~~of improper~~ of improper
15 governmental action; ~~or, with the purpose of~~ interfering or influencing testimony in any
16 investigation or proceeding arising from a report.

17 **Section 3.** Section 4.20.810 of the Seattle Municipal Code, last amended by Ordinance
18 118392, is amended as follows:

19 4.20.810 ~~Employee~~ Rights, Responsibility and Limitations.

20 A. Rights.

21 1. Every employee shall have the right to report in good faith pursuant to this subchapter
22 an assertion of improper governmental action;

23 ~~2. Every employee who acts in good faith pursuant to this subchapter and~~ shall be free
24 from retaliation.

25 ~~2.3.~~ To the extent allowed by law, the identity of a Cooperating Employee shall be kept
26 confidential and shall not be disclosed unless the employee in writing waives confidentiality.

27 B. Responsibilities.

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

1 ~~that the information is necessary to substantiate a report made to the Executive Director, EEO~~
2 ~~officer or department head.~~

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

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

8 Protected Conduct.

9 ~~1. The following conduct by an employee is protected if carried out in good faith~~
10 ~~and in accordance with this subchapter:~~

11 ~~a. Reporting an assertion of improper government action to the Executive Director~~
12 ~~including reporting violations of the Ethics and Elections Codes;~~

13 ~~b. Reporting an assertion of improper government action to an employee's supervisor, manager, officer or~~
14 ~~appointing authority or director;~~

15 ~~c. Reporting alleged sexual harassment to the employee's supervisor, EEO officer,~~
16 ~~department head, or other government official as set out in the City's procedure for reporting~~
17 ~~sexual harassment complaints;~~

18 ~~d. Reporting alleged violations of the Fair Employment Practices ordinance to the~~
19 ~~Office for Civil Rights;~~

20 ~~e. Reporting alleged misconduct by Seattle Police Department personnel to the~~
21 ~~Seattle Police Office of Professional Accountability;~~

22 ~~f. Reporting alleged violations of the Code of Judicial Conduct to the Washington~~
23 ~~State Commission on Judicial Conduct;~~

24 ~~g. Reporting alleged violations of criminal laws to local law enforcement or the~~
25 ~~county prosecuting attorney;~~

26 ~~h. Cooperating in an inquiry or investigation resulting from a report made in~~
27 ~~accordance with this subchapter;~~

28 ~~i. Testifying in any proceeding that arises in whole or in part from a report made in~~
~~accordance with this subchapter;~~

Comment [kmf5]: Discussion point for Commission.

- 1 ~~j. Reporting outside of City government or to law enforcement if:~~
2 ~~i. The employee is, in good faith, seeking advice, counsel or opinion on their~~
3 ~~rights and responsibilities under this subchapter to determine whether to make a report under this~~
4 ~~chapter, or~~
5 ~~ii. 30 days have passed since the employee made a written report pursuant to~~
6 ~~this chapter.~~
7 ~~iii. Reporting when the employee believes in good faith that a crime is about~~
8 ~~to be committed, to any law enforcement agency, to the City Attorney or the County Prosecuting~~
9 ~~Attorney, the Executive Director, or agency head, manager or supervisor. any supervisor,~~
10 ~~manager or head of a department.~~
11 ~~iv. Reporting in an emergency, to a person who has the ability to address the~~
12 ~~danger or risk, where the Employee believes in good faith that there is a substantial and specific~~
13 ~~danger or risk of serious injury, illness, peril, or loss to any person. No emergency under this~~
14 ~~subsection exists where prompt attention and reporting under this subchapter by the employee~~
15 ~~could have avoided the perceived need to report immediately.~~
16 ~~2. No City officer or employee shall retaliate against any Cooperating~~
17 ~~Employee.~~

[SECTION 4; 4.20.820 - Confidentiality is repealed]

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

20 4.20.830 Reports to the Executive Director

21 ~~A=~~ Reports: The following applies to any report of improper governmental action
22 made to the Executive Director. ~~Any employee may report to the Executive Director a good faith~~
23 ~~assertion of improper governmental action.~~

24 ~~B=~~ A. A report of improper governmental action should be made ~~Time Limitation for~~
25 ~~Investigations: In order to be investigated by the Executive Director, an assertion of improper~~
26 ~~governmental action must be reported~~ within 12 months of the occurrence of the alleged
improper governmental action, or within 12 months of when a reasonable person similarly

1 situated to the reporting employee would have become aware of the occurrence. The Executive
2 ~~Director may~~ Director may initiate an inquiry of an occurrence falling outside of this time
3 limitation if he or she believes that doing so is in the public interest.

4 ~~C.B.~~ C.B. Inquiry - Within ~~fourteen (14)~~ days after receiving an assertion of alleged
5 improper governmental action, the Executive Director shall conduct a confidential preliminary
6 inquiry to determine if the facts as asserted would constitute improper governmental action. The
7 Executive Director shall communicate the results to the reporting individual along with the
8 actions, if any, that will be taken.

9 ~~If~~ If, after a preliminary inquiry, the Executive Director determines that the facts as
10 asserted would constitute improper governmental action, the Executive Director ~~shall~~ must make
11 a mandatory or discretionary referral, ~~make a discretionary referral~~ or may open an investigation.

12 ~~D.C.~~ D.C. Mandatory and Discretionary Referral.

13 1. Mandatory Referral. The Executive Director ~~upon receiving a report alleging~~
14 ~~the following~~ shall refer an ~~the~~ employee making the following allegations as follows:

15 a. ~~Assertions of S-~~ Assertions of S-exual harassment to any management representative, the Seattle
16 Office of Civil Rights, Equal Employment Opportunity Commission, the Washington Human
17 Rights Commission, or other governmental official as set out in the City's adopted procedure for
18 reporting sexual harassment complaints;

19 b. ~~Assertions of v-~~ Assertions of v-iolations of the Fair Employment Practices ordinance to the
20 Office for Civil Rights;

21 c. ~~Assertions-~~ Allegations regarding misconduct by Seattle Police Department
22 personnel to the Seattle Police Office of Professional Accountability; or,

23 d. ~~Assertions-~~ Allegations of violations of the Code of Judicial Conduct to the
24 Washington State Commission on Judicial Conduct.;

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

28 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

1 Director shall not ~~divulge~~ disclose the identity of the Cooperating Employee without a written
2 waiver of confidentiality by the employee.

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

10 D.E. Investigation.

11 1. When the Executive Director shall investigate ~~an asserted~~ alleged violation of
12 the Elections Code, ~~the Executive Director shall handle that assertion~~ according to SMC
13 2.04.070 and the Ethics and Election Commission's Administrative Rules; ~~If the Executive~~
14 ~~Director investigates an asserted~~ alleged violations of the Ethics Code, ~~the Executive Director~~
15 ~~shall handle that allegation~~ according to SMC 4.16.090 and the Ethics and Election
16 Commission's Administrative Rules; ~~and, If the Executive Director investigates an~~
17 ~~asserted~~ alleged violations of the Lobbying Code, ~~the Executive Director shall handle that~~
18 ~~allegation~~ according to SMC 2.06 and the Ethics and Election Commission's Administrative
19 Rules.

20 2. Investigation~~s~~ of improper governmental action that ~~does~~ not assert violations of
21 the Ethics, Election or Lobbying Code shall be completed within a period of ~~six (6)~~ six months.
22 If an investigation cannot be completed within that time the Executive Director must inform the
23 employee who reported the ~~concern~~ concern as to the reason why and estimate the completion
24 date of the investigation.

25 3. Completion and Reports. Upon completion of the investigation, the Executive
26 Director shall ~~;~~

27 a. ~~Issue a report that summariz~~ inges the facts and ~~makes a~~ determining whether
28 there is reasonable cause to believe that improper governmental action occurred.

1 180 days of when they reasonably should have known that an occurrence alleged to constitute
2 retaliation ~~had~~ occurred.

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

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

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

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

8 c. The conduct that ~~establishes that~~ the employee ~~is a Cooperating Employee; took,~~
~~or was mistakenly perceived to have taken, that qualifies the employee to the protections under~~
~~this ordinance.~~

9 d. The relief the employee is requesting and,

10 e. If the protected conduct is based on an employee's report to a ~~departmental~~
~~supervisor, manager, officer, appointing authority, director, or~~ person other than the Executive
11 Director, ~~some independent evidence that a report was made on a specific date and~~ some
12 evidence of its content. ~~contained information perceived to be improper governmental conduct.~~

13 B. Initial Determination.

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

16 2. If ~~the complaint is not sufficient,~~ the Executive Director finds the complaint to be
17 insufficient, he or she shall dismiss the complaint and shall give notice to the ~~employee~~
18 employee, ~~as to why the complaint fails and dismiss the complaint.~~

19 ~~The employee may re-submit the complaint within the 180-day filing period. The time in~~
20 ~~which the Executive Director is~~ determining considering the sufficiency of the complaint is not
21 included in the 180 day time frame.

22 ~~b. If a complaint is found to lacknot sufficienty, an employee may elect to file a case in~~
23 ~~civil action court. A civil action based on this ordinance must be filed no later than 24 months~~
24 ~~from the time the Executive Director issues the notice of insufficiency.~~

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Comment [kmf6]: Removed after .pdf was sent to Commission for 12/5 meeting

1 3. ~~A complaint is sufficient if the~~ The Executive Director shall find the complaint
2 sufficient if the complaint determines that ~~asserted facts, that~~ if true, ~~the asserted facts~~ would
show:

3 ~~i. The employee is a Cooperating Employee entitled to the protections of this sub-~~
4 ~~chapter; and,~~

5 ~~ii. that the employee~~ the employee was subjected to an adverse change or changes
6 which occurred within the proscribed time period; ~~and,~~

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

9 4. The Executive Director ~~A complaint~~ shall not ~~dismiss a complaint~~ ~~be rejected as~~
10 ~~insufficient as insufficient~~ because ~~it of failure~~ to include all required information so long as it
11 substantially satisfies the informational requirements, ~~necessary for the Executive Director's to~~
~~make a determination of sufficiency.~~

12 C. Investigation of Sufficient Complaints.

13 1. The Executive Director shall investigate sufficient complaints ~~found to be~~
14 ~~sufficient and.~~

15 ~~2. The Executive Director shall~~ endeavor to complete the investigation in 90 days.

16 ~~3. All The investigations of a sufficient complaint shall be limited to the facts alleged~~
17 ~~in the complaint and shall be~~ shall be conducted in an objective and impartial manner.

18 ~~4. The Executive Director shall at the conclusion of the investigation prepare a written~~
19 determine whether there is or is not reasonable cause to believe that an adverse act was or is
20 being taken and that retaliation occurred. ~~conduct protected under this sub-chapter was a~~
~~contributing factor in taking the adverse action.~~

21 D. No Reasonable Cause Found. ~~+~~

22 ~~1. If the Executive Director finds no reasonable cause to believe retaliation has~~
23 occurred, the Executive Director shall dismiss the complaint and inform the employee. ~~The~~
24 ~~Executive Director shall inform the employee of the dismissal.~~

25 ~~2. The employee may pursue a private cause of action under this sub-chapter if the civil~~
26 ~~action is brought within 21 months after the Executive Director's notice of no reasonable cause.~~

E. Reasonable Cause Found:

1
2 1. If the Executive Director finds reasonable cause to believe that retaliation occurred,
3 the Executive Director shall issue a ~~final~~ written report to the interested parties which shall
4 include ~~the~~

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

8 ~~b. A specific plan to address the relief sought by the Cooperating Employee.~~

9 ~~c. A specific recommendation for departmental action necessary to address the~~
10 ~~purposes of this sub chapter, and,~~

11 ~~d. The identity of the specific employee or employees responsible for the retaliation~~
12 ~~and a recommendation for departmental action to address the retaliatory behavior of the~~
13 ~~employee or employees responsible.~~

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

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

21 1. Interested parties ~~An employee~~ may be represented at a settlement conference by a
22 person of their own choosing.

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

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

1 4. Any settlement between a City ~~department~~ agency and the Cooperating Employee
2 must include a provision in which the employee releases the City from further liability for acts
3 giving rise to the retaliation complaint. ~~in order for the employee to obtain the benefit of the~~
4 ~~settlement.~~

5 5. Any ~~settlement~~ agreement between the Executive Director and a specific employee
6 or employees ~~settling a violating 4.16.070.6 who engaged in retaliatory acts~~ shall be subject to
7 Commission approval under the Seattle Ethics and Elections Commission Administrative Rule.

8 **Section 9.** A new Section 4.20. ~~870 865~~ of the Seattle Municipal Code is added to
9 Subchapter III of Chapter 4.20 as follows:

10 4.20. ~~870 865~~ - Enforcement:

11 A. Election of Administrative Forums:

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

14 ~~Within 60 days of the Executive Director issuing a final report finding reasonable cause to~~
15 ~~believe that retaliation has occurred, or within 30 days after a refusal to attend Settlement~~
16 ~~discussions or within 30 days after the failure to produce a Settlement Agreement, whichever~~
17 ~~date is later, the Executive Director shall provide the employee with notice of their right to~~
18 ~~pursue a remedy in either an administrative hearing or in a private cause of action in a civil court.~~

19 2. If an employee has also filed a timely retaliation complaint with the Executive
20 Director, the employee must give notice to the Executive Director whether they elect to proceed
21 in another administrative forum or elect to proceed under this subchapter. This election must be
22 made within 30 days after filing in the other administrative forum.

23 3. In any circumstance, the employee electing to pursue protections under this
24 subchapter must make a timely complaint to the Executive Director

25 ~~Within 30 days of receiving notice of the Executive Director's Complaint, the employee must~~
26 ~~inform the Executive Director if they,~~

27 ~~a. Elect to seek remedies through the administrative process outlined in this sub chapter~~
28 ~~or;~~

~~b. Elect to seek remedies through a private action in a court of competent jurisdiction.~~

Comment [kmf7]: Added after draft sent for
12/5 meeting

~~c. An employee electing a private cause of action waives the right to an administrative hearing.~~

~~d. A civil action based on this ordinance must be filed within 12 months of the election.~~

~~c. An employee may seek all available remedies in a civil action including front pay and reasonable attorney fees if they are the prevailing party.~~

B. Filing a Complaint with the Hearing Examiner. ~~Enforcement.~~

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, name the interested parties, a concise statement of the conduct constituting retaliation and a request for relief.~~

~~2. The Executive Director shall provide notice to the interested parties.~~

~~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.

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

C. Proof.

1. The burden of proof in any proceeding against ~~an specific individual~~ an specific 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 ~~department for a Determination of Reasonable Cause~~ 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. ~~as defined in this sub chapter.~~

b) If the Hearing Examiner finds the Executive Director has met that burden, the agency ~~If this burden is met, it is presumed that retaliation prohibited by this sub chapter has occurred.~~

Comment [NVDS]: We want the commission's to explore this further and give us thoughts.

1 ~~e.) The department then may affirmatively defend against the presumption of retaliation~~
2 ~~by~~ has the burden of proving by a preponderance of the evidence that there was a legitimate non-
3 retaliatory reason for the adverse action and that the ~~e~~ employee's status as a Cooperating
4 Employee was not a contributing factor in the decision making process, ~~resulting in the adverse~~
5 ~~change.~~ Evidence of a series of documented personnel problems or a single, egregious event, or
6 other evidence to support a finding that the ~~departmental~~ agency conduct or actions ~~were was~~
7 based on wholly independent, separate and ~~legitimate~~ non-retaliatory reasons shall be admitted.

8 3. The Executive Director shall be allowed to may present evidence to rebuttal evidence.
9 counter the departmental assertion.

10 4d) All interested parties named in the complaint may present evidence at the discretion
11 of in addition to that presented by the Executive Director on any issue before the Hearing
12 Examiner.

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

16 1. If the Hearing Examiner concludes that ~~an agency~~ department retaliated against a
17 Cooperating Employee in violation of this subchapter:

18 a. The ~~the~~ Hearing Examiner may order actual damages and such other relief deemed
19 necessary to effectuate the purpose of this chapter and to secure future compliance, including
20 such relief and action which could be ordered by a court. Damages may be awarded for
21 humiliation and mental suffering, and for the Cooperating Employee's attorney fees incurred at
22 the administrative hearing, but shall not together total more than \$20,000.

23 b. The agency shall comply with the provisions of any order effecting relief and shall
24 furnish proof of compliance to the Executive Director. In the event that the agency refuses or
25 fails to comply with the order, or does not seek timely judicial review, the Executive Director
26 shall notify the City Attorney and the City Attorney shall seek to enforce the order in an
27 appropriate court.

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

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

5 b. The Hearing Examiner may recommend to the ~~department~~ agency that disciplinary
6 action be commenced against ~~an specific individual~~ employee or employees found to have
7 retaliated. ~~If there is a recommendation for discipline, the Hearing Examiner shall describe the
8 findings and conclusions that support the recommendation to impose discipline~~

9 3. Commission Action. The Commission ~~shall accept the Hearing Examiner's Findings~~
10 ~~of Fact as dispositive. The Commission~~ may impose ~~sanctions a fine~~ as provided by SMC
11 4.16.100 on the employee found to have ~~engaged in retaliatory behavior~~ violated 4.16.070.6. as
12 ~~defined under this sub chapter.~~

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

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

18 4.20.870 – Private Cause of Action.

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

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

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

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

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

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

Comment [NVD9]: So findings can be used in any future deliberations.

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Comment [kmf10]: Added after .pdf was sent to Commission for 12/5 meeting

1 2. The Cooperating Employee may seek all available remedies in a civil action including
2 attorney fees if they are the prevailing party.

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

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

7 4.20.875 - Investigative Powers. At any stage in an inquiry or investigation of an alleged
8 improper governmental action, or the investigation regarding an assertion of retaliation for
9 engaging in conduct protected in this sub-chapter, the Executive Director may issue subpoenas,
10 administer oaths, examine witnesses, submit written questions to be answered under oath and,
11 compel the production of documents or other evidence. If the subpoenaed party or agency does
12 not respond to the request in a timely manner, the Executive Director may, the Executive
13 Director may ask for the assistance of the City Attorney to pursue enforcement through order in
superior court.

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

16 4.20.880 - Annual Restatement and Training. The Seattle Ethics and Election
17 Commission and City Personnel shall, within six months of the effective date of this ordinance,
18 develop and present a plan for adoption by City Personnel and the Seattle Ethics and Elections
19 Commission that reaches the following goals ensuring:

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

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

Comment [kmf11]: This section has not been
addressed by the Commission.

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

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

6 **Section 13.** Section 4.16.070 of the Seattle Municipal Code, last amended by Ordinance
7 123010, is amended as follows:

8 SMC 4.16.070 Prohibited Conduct - A Covered Individual may not:

9 ...

10 6 Engage in any activity prohibited under SMC 4.20.810 of the Whistleblower
11 Protection Code.

12 ((6)) 7 - Application to Certain Members of Advisory Committees.

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

18 1. Have a financial interest, direct or indirect, personally or through a member of his or
19 her immediate family, in any matter upon which the member would otherwise act or participate
20 in the discharge of his or her official duties, and fail to disqualify himself or herself from acting
21 or participating in the matter.

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

1 appearance prior to engaging in such official duties. If such prior written filing is impractical, the
2 member shall file such a disclosure as soon as practical.

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

5 SMC 3.70.010 Commission established -- Purpose. There is hereby established a
6 Seattle Ethics and Elections Commission to administer the City's Code of Ethics (Chapter 4.16);
7 to administer the Election Campaign Code and its campaign matching fund program
8 (Chapter 2.04); to publish the City's election pamphlets (Chapter 2.14); ~~to administer the political~~
9 ~~sign ordinance (Chapter 2.24)~~ and to administer the Whistleblower Protection Code (SMC
10 Sections 4.20.800 through 4.20.880).

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

13 SMC 3.70.100 Powers and duties.

14 The Commission shall have the following powers:

15 A. To administer the City's Code of Ethics (Code Chapter 4.16); the Election Campaign Code
16 and its campaign matching fund program (Code Chapter 2.04); the City's election pamphlet
17 ordinance (Code Chapter 2.14); the lobbying disclosure ordinance (Code Chapter 2.06); ~~the~~
18 ~~political sign code (Code Chapter 2.24);~~ and the whistleblower protection ordinance (SMC
19 Sections 4.20.800 through 4.20.880 inclusive) (called collectively "Commission-administered
20 ordinances").

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

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

4 _____
5 _____
6 President _____ of the City Council

7
8 Approved by me this ____ day of _____, 2013.

9 _____
10 _____
11 Michael McGinn, Mayor

12
13 Filed by me this ____ day of _____, 2013.

14 _____
15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)

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