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 enlarging, redefining the jurisdiction of the Ethics and Elections Commission to include administration of the Whistleblower Protection Code; adding new sections 4.20.805; 4.20.870; 4.20.75; 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 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 is the underpinning of a democratic government; and,
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 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, 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 improper governmental actions; and

WHEREAS is it 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 complaints/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:


It is the purpose of this ordinance to:

4A. Encourage City employees to report in good faith assertions of improper governmental action and to provide employees with a clear process for making reports;
4B. 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;
4C. Provide for an independent investigation of reports to inform the operation of City government and promote the public confidence;
4D. Provide for an independent investigation and determination of alleged retaliation;
4E. Provide an administrative forum in which to address the harm caused by retaliatory behavior;
4F. Provide for the assessment of penalties against those individuals who retaliate against a City employee who acts in accordance with this chapter;

MASTER 1.0 – page 2
(2) Adopt a City Whistleblower program so as to comply with RCW 42.41.050, Local Government Whistleblower Protection, and

(4) 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 behaving in, or encouraging 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.

Comment [kmf2]: Check convention for capitalization?
“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, an elected official, an individual who volunteers services to the City and individuals appointed to boards and commissions, whether paid or unpaid.

“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 employer as having reported pursuant to this chapter, but whom in fact, did not report;
- in good faith provides information in connection with an inquiry or investigation of a report made pursuant to this chapter, 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, which and:

- Violates any federal, state, county or City statute, ordinance or rule;
- Creates a substantial or specific danger or a risk of serious injury, illness, peril, or loss, to which the exposure of the public that is a gross deviation from the standard of care or competence which 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 department or 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 program policy, reasonable expenditure or activity does not become an “improper governmental action” because an employee dissents from the City policy or considers the program or expenditures unwise.

“Interested Parties” means the Cooperating Employee who alleges retaliatory action, the head of the Cooperating Employee’s department, relevant agency, the Executive Director, and the specific individual employee the Executive Director alleged to have retaliated.
A “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 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 local law enforcement or the county prosecuting attorney;
- reporting outside of City government 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;
- reporting when the employee believes in good faith that a crime is about to be committed to any law enforcement agency, the County Prosecuting Attorney, the Executive Director, or agency head, manager or supervisor, 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 the terms and conditions of employment where the employee’s
status as a Cooperating Employee was a contributing factor in the decision making process; or,
To use one’s authority to directly or indirectly threaten or intimidate an employee for the
purposes of: interfering with an employee’s right make a report of improper governmental
action; or, interfering with or influencing an employee's cooperation in an inquiry or
investigation based on a report of improper governmental action; or, with the purpose of
interfering or influencing testimony in any investigation or proceeding arising from a report; or,

To knowingly take or directing others to take, any action for the purpose of interfering
with an employee’s right to report information; or, for the purpose of influencing an
employee's cooperation in an inquiry or investigation based on a report of improper governmental action; or, with the purpose of 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, Responsibility 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.
2. Every employee who acts in good faith pursuant to this subchapter and shall be free
from retaliation.

22. 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) except to the extent
that the information is necessary to substantiate a report made to the Executive Director, EEO officer or department head.

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.

Protected Conduct.

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

   a. Reporting an assertion of improper government action to the Executive Director, including reporting violations of the Ethics and Elections Code;

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

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

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

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

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

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

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

   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. Reporting outside of City government or to law enforcement if:
   i. The 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, or
   ii. 30 days have passed since the employee made a written report pursuant to
       this chapter.
   iii. Reporting when the employee believes in good faith that a crime is about
        to be committed, to any law enforcement agency, to the City Attorney or the County Prosecuting
        Attorney, the Executive Director, or agency head, manager or supervisor, any supervisor,
        manager or head of a department.
   iv. Reporting in an emergency, to a 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.

2. No City officer or employee shall
   retaliating against any cooperating
   Employees.

   [SECTION 4; 4.20.820 - Confidentiality is repealed]

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

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

   B. A report of improper governmental action should be made Time Limitation for
   Investigations: In order to be investigated by the Executive Director, an assertion of improper
   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
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.

**CB. Inquiry -** Within fourteen (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.

**DC. Mandatory and Discretionary Referral.**

1. **Mandatory Referral.** The Executive Director, upon receiving a report alleging the following, shall refer the employee making the following allegations as follows:

   a. **Assessments of Sexual Harassment** to any management representative, the Seattle Office of 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. **Assessments of Violations of the Fair Employment Practices ordinance** to the Office for Civil Rights;

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


2. **Discretionary Referral.** The Executive Director may refer a report to the chief elected official of the branch of government implicated 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

   **MASTER 1.0 – page 10**
Directors shall not disclose the identity of the Cooperating Employee without a written waiver of confidentiality by the employee.

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

D. Investigation.

1. When the Executive Director investigates an alleged violation of the Elections Code, the Executive Director shall handle that allegation according to SMC 2.04.070 and the Ethics and Election Commission’s Administrative Rules; and, If the Executive Director investigates an alleged violation of the Ethics Code, the Executive Director shall handle that allegation according to SMC 4.16.090 and the Ethics and Election Commission’s Administrative Rules; and, If the Executive Director investigates an alleged violation of the Lobbying Code, the Executive Director shall handle that allegation 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:

   a. Issue a report summarizing the facts and determining whether there is reasonable cause to believe that improper governmental action occurred.
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:

a. the reporting employee;

d. to the head of the department, agency with responsibility for the action; and,

e. 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.

F. Response by the City Official: The head of the department, agency in which the conduct took place, or their designated representative, shall report to the Executive Director within sixty (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 within this time, the Executive Director shall report his or her determination to the Mayor and advise the City Council.

G. Closure and Decisions. 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.

Decisions of the Executive Director under this section are not appealable to the 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 for engaging in action protected under this subchapter, 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 had 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; took, or was mistakenly perceived to have taken, that qualifies the employee to the protection under this ordinance;
   d. The relief the employee is requesting and,
   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 Director, some independent evidence that a report was made on a specific date and some evidence of its content contained information perceived to be improper governmental 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 complaint is not sufficient, the Executive Director finds the complaint to be insufficient, he or she shall dismiss the complaint and shall give notice to the employee as to why the complaint fails and dismiss the complaint.

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

b. If a complaint is found to lack sufficientcy, an employee may elect to file a case in civil action court. A civil action based on this ordinance must be filed no later than 24 months from the time the Executive Director issues the notice of insufficiency.
3. A complaint is sufficient if the Executive Director shall find the complaint sufficient if the complaint determines that, if true, the asserted facts would show:

   i. The employee is a Cooperating Employee entitled to the protections of this subchapter; and,
   ii. that the employee was subjected to an adverse change or changes which occurred within the proscribed time period; and,
   iii. the employee’s protected conduct reasonably appears to have been a contributing factor.

4. The Executive Director A complaint shall not be rejected as insufficient because it fails to include all required information so long as it substantially satisfies the informational requirements necessary for the Executive Director’s to make a determination of sufficiency.

C. Investigation of Sufficient Complaints.

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

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

   23. All investigations of a sufficient complaint shall be limited to the facts alleged in the complaint and shall be conducted in an objective and impartial manner.

   34. The Executive Director shall at the conclusion of the investigation prepare a written determination whether there is or is not reasonable cause to believe that an adverse act was or is being taken and that retaliation occurred. . . .

D. No Reasonable Cause Found

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

   2. The employee may pursue a private cause of action under this subchapter if the civil action is brought within 21 months after the Executive Director’s notice of no reasonable cause.
E. Reasonable Cause Found:

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

   a. 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.

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

   c. A specific recommendation for departmental action necessary to address the purpose of this sub-chapter and

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

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 to address the harm of the retaliation.

1. Interested parties. An employee 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 department or 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, in order for the employee to obtain the benefit of the settlement.

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

Section 9. A new Section 4.20 870.865 of the Seattle Municipal Code is added to Subchapter III of Chapter 4.20 as follows:

4.20. 870.865 - Enforcement:
A. Election of Administrative Forum:
1. Nothing in this subchapter prohibits an employee from filing in any administrative forum or effects the remedies available in that forum.

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

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

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

Within 30 days of receiving notice of the Executive Director’s Complaint, the employee must inform the Executive Director if they:

a. Elect to seek remedies through the administrative process outlined in this subchapter;

b. Elect to seek remedies through a private action in a court of competent jurisdiction.
1. An employee electing a private cause of action waives the right to an administrative hearing.

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

3. 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

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

3. 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.

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

C. Proof

1. The burden of proof in any proceeding against a 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 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 [NVD8]: We want the commission’s to explore this further and give us thoughts.
c.) The department may affirmatively defend against the presumption of retaliation by 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 resulting in the adverse change. Evidence of a series of documented personnel problems or a single, egregious event, or other evidence to support a finding that the departmental conduct or action was based on wholly independent, separate and legitimate non-retaliatory reasons shall be admitted.

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

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

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 subchapter 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 which could be ordered by a court. Damages may be awarded for humiliation and mental suffering, and for the Cooperating Employee’s attorney fees incurred at the administrative hearing, but shall not together total more than $20,000.
   b. The agency shall comply with the provisions of any order effecting 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 City Attorney and the City Attorney shall seek to enforce 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;

   MASTER 1.0 – page 18
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 fine or penalty. Only the Commission has the authority to impose a penalty against an individual employee.

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

3. Commission Action. The Commission shall accept the Hearing Examiner’s Findings of Fact as dispositive. The Commission may impose sanctions as fine as provided by SMC 4.16.100 on the employee found to have engaged in retaliatory behavior violated 4.16.070.6 as defined under this subchapter.

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 State 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:

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.

   MASTER 1.0 – page 19
2. The Cooperating Employee may seek all available remedies in a civil action including attorney fees if they are the prevailing party.

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) 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 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.
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
(Chapter 2.04); to publish the City's election pamphlets (Chapter 2.14); to administer the political
sign ordinance (Chapter 2.24); 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); the
political sign code (Code Chapter 2.24); 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)