

January 10, 2012

Draft

Incorporating changes to March 1st, 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 purpose; Section 4.20.810, to
clarify the rights, responsibilities and process for reporting; Section 4.20.860 to amend
the manner in which allegation of retaliation are reported, investigated and resolved;
4.16.070.6 adding retaliation to prohibited behavior under the Ethics Code; 3.70.010 and
3.70.100 enlarging the jurisdiction of the Ethics and Elections Commission to cover
administration of the Whistleblower 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 Whistleblowers to make good faith reports of
perceived improper governmental actions serves 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, insuring that government comports with the rule of law is the underpinning of a
democratic government, and

WHEREAS, insuring that governmental actions insure rather than denigrate 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,

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

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

3 WHEREAS, an effective Whistleblower Protection program should include: an accessible
4 reporting system; prompt, efficient, and independent investigation and evaluation of
5 complaints that Whistleblowers have been subject to retaliation; and effective remedies in
6 cases where such retaliation has occurred,

7 NOW, THEREFORE,

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

9 Section 1. Section 4.20.800 of the Seattle Municipal Code, last amended by Ordinance
10 11709, is amended as follows:

11 Seattle Municipal Code 4.20.800 - Policy -- Purpose.

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

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

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

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

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

28 5. Provide an administrative forum in which to address the harm caused by
retaliatory behavior.

6. Provide for the assessment of penalties against those individuals who retaliate
against a City employee who acts in accordance with this chapter, and,

7. Adopt a City Whistleblower program so as to comply with RCW 42.41.050, Local

Government Whistleblower Protection

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 are in opposition to the employee’s expressed wish;

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 disciplinary action;

a supervisor or superior 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.

“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

1 volunteers services to the City and individuals appointed to boards and commissions whether
2 paid or unpaid.

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

4 "Cooperating Employee" means:

5 A City employee who in good faith makes a report of alleged improper
6 governmental action pursuant to this chapter;

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

9 A City employee who in good faith provides information in connection with an
10 inquiry or investigation of a report made pursuant to this chapter, or

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

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

16 “Good Faith” means the individual reporting or providing information ~~pursuant to this~~
17 ~~chapter~~ has a reasonable basis in fact for reporting or providing the information regardless of
18 whether the information provided is found to support a finding of improper governmental action
19 or retaliation.

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

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

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

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

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

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

10 “Improper Governmental Action” excludes: personnel actions, including but not
11 limited to: employee grievances, complaints, appointments, promotions, transfers, assignments,
12 reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions
13 in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or
14 civil service laws, or alleged violations of agreements with labor organizations under collective
15 bargaining, or any action that may be taken under RCW Chapters 41.08, 41.12, 41.14, 41.56,
16 41.59, or 53.18 or RCW 54.04.170 and 54.04.180.

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

20 “Interested Parties” means the Cooperating Employee who alleges retaliatory action, the
21 head of the Cooperating Employee’s department, the Executive Director, and the specific
22 employee alleged to have retaliated.

23 “Retaliate,” and its kindred nouns, “retaliation” and “retaliatory action,” means to make,
24 or use one’s official authority to make any adverse change in an Cooperating Employee's
25 employment status or the terms and conditions of employment. ~~where the employee’s protected
26 activity under this subchapter is a contributing factor in the decision to undertake the adverse
27 change.~~

28 “Use of official authority to influence” includes to knowingly threaten, take or direct
others to take, a retaliatory action against a Cooperating Employee.

1 Section 3. Section 4.20.810 of the Seattle Municipal Code, last amended by Ordinance
2 118392, is amended as follows:

3 4.20.810 – ~~((Reporting improper governmental action—Employee protection))~~ Employee
4 Rights, Responsibility and Limitations.

5 A. Rights.

6 1. Every employee shall have the right ~~((to report))~~ to report in good faith ~~((and in~~
7 ~~accordance with))~~ pursuant to this subchapter ~~(to a City official, another governmental official or~~
8 ~~a member of the public,))~~ an assertion of improper governmental action.

9 2. Every employee who acts in good faith pursuant to this subchapter shall be free from
10 retaliation.

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

13 B. ~~((Limitations))~~ Responsibilities.

14 1. ~~((This section does not authorize a))~~ An Employee may not disclose information
15 ~~((to report information that is))~~ subject to an applicable privilege against disclosure at law (e.g.,
16 RCW 5.60.060 privileged communications), except to the extent that the information is
17 necessary to substantiate a report made to the Executive Director, EEO officer or department
18 head. ~~((unless waived, or to make disclosure where prohibited at law. The only purpose of this~~
19 ~~subchapter is to protect and encourage employees who know or in good faith believe improper~~
20 ~~governmental action has occurred to report those actions in good faith and in accordance with~~
21 ~~this subchapter.))~~

22 2. ~~((Except in cases of emergency where the employee believes in good faith that~~
23 ~~substantial damage to persons or property will result unless a report is made immediately to a~~
24 ~~person or entity who is not the appropriate auditing official listed in Section 4.20.850 A, an~~
25 ~~employee shall, before making a report to a person who is not the appropriate auditing official,~~
26 ~~first make a written report of the improper governmental action to the appropriate auditing~~
27 ~~official. No emergency under this subsection exists where prompt attention and reporting under~~
28 ~~this subchapter by the employee could have avoided the perceived need to report immediately to~~
~~a person not the appropriate auditing official.~~

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

5 ~~((3.))~~ An employee who reports his or her own improper action will not ~~((grant an))~~
6 ~~((immunity))~~ be free from discipline or termination under Section 4.04.230 or 4.08.100
7 ~~((insofar))~~ if his or her improper action would be cause for discipline or termination.

8 C. ~~((Employee Protections and))~~ 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 ~~((a.))~~b. Reporting an assertion of improper government action to an employee's
13 supervisor, manager, officer or appointing authority or director;

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

17 d. ~~((f))~~ Reporting alleged violations of the Fair Employment Practices ordinance to
18 the Office for Civil Rights;

19 e. ~~((f))~~Reporting ((police)) alleged misconduct by Seattle Police Department
20 personnel to the ((Police Departments Internal Investigation Section)) Seattle Police Office of
21 Professional Accountability;

22 f. ~~((f))~~ Reporting alleged violations of the Code of Judicial Conduct ((by Municipal
23 Court Judges)) to the Washington State Commission on Judicial Conduct;

24 g. ~~((f))~~ Reporting alleged violations of criminal laws to the appropriate county
25 prosecuting attorney; ((and reporting violations of the Elections Code or the Ethics Code, and
26 any actions for which no other appropriate recipient of a report is listed in this subsection,))

27 ~~((b))~~h. Cooperating in an inquiry or investigation ((by an "auditing official" related to
28 "improper governmental actions", and/or)) resulting from a report made in accordance with this
subchapter;

1 ~~((e))~~i. Testifying in any proceeding ~~((or prosecution))~~ that arises ~~((out of an "improper~~
2 ~~governmental action."))~~ in whole or in part from a report made in accordance with this
3 subchapter;

4 j. Reporting outside of City government or to law enforcement if;

5 i. The employee is, in good faith, seeking advice, counsel or opinion on their
6 rights and responsibilities under this subchapter to determine whether to make a report under this
7 chapter, or

8 ii. 30 days have passed since the employee made a written report pursuant to
9 this chapter.

10 iii. Reporting when the employee believes in good faith that a crime is about
11 to be committed, to any law enforcement agency, to the City Attorney or the County Prosecuting
12 Attorney, the Executive Director, or any supervisor, manager or head of a department.

13 iv. Reporting in an emergency, to a person who has the ability to address the
14 danger or risk, where the Employee believes in good faith that ~~((imminent and substantial~~
15 ~~((damage))~~ persons or property will result, to any person who the employee believes can prevent
16 the damage to persons or property.)) there is a substantial and specific danger or risk of serious
17 injury, illness, peril, or loss to any person. No emergency under this subsection exists where
18 prompt attention and reporting under this subchapter by the employee could have avoided the
19 perceived need to report immediately.

20 2. No City officer or employee shall:

21 a. Use his or her official authority or influence, directly or indirectly, to threaten,
22 intimidate, or coerce an employee for the purpose of interfering with that employee's right to
23 report information concerning an assertion of improper governmental action, cooperate in an
24 inquiry or investigation based on the report of improper governmental action or testify in any
25 proceeding arising from a report.

26 b. Retaliate against any Cooperating Employee, ~~because that employee proceeded or is~~
27 ~~proceeding in good faith in accordance with this subchapter or that employee is otherwise~~
28 ~~protected by this sub-chapter.~~

1 ~~((D. Penalty. Any City officer or employee who engages in prohibited retaliatory action~~
2 ~~is subject to discipline by suspension without pay, demotion or discharge or, pursuant to Section~~
3 ~~4.20.840, a civil fine up to Five Hundred Dollars (\$500.00), or both discipline and a fine.~~

4 ~~———— E. Annual Restatement. Upon entering City service and at least once each year thereafter,~~
5 ~~every City officer and employee shall receive a written summary of this chapter, the procedures~~
6 ~~for reporting improper governmental actions to auditing officials, the procedures for obtaining~~
7 ~~the protections extended, and the prohibition against retaliation in this section. The Executive~~
8 ~~Director of the Ethics and Elections Commission shall ensure that such summaries are~~
9 ~~distributed and that copies are posted where all employees will have reasonable access to them.))~~

10 Section 4. Section 4.20.820, last amended by Ordinance 117039, is repealed.

11 ~~((4.20.820 Confidentiality. To the extent provided by law, the identity of an employee~~
12 ~~reporting information about an improper governmental action shall be kept confidential unless~~
13 ~~the employee in writing waives confidentiality.))~~

14 Section 5. Section 4.20.830 of the Seattle Municipal Code, last amended by Ordinance
15 117039, is amended as follows:

16 4.20.830 Reports to the Executive Director ~~((Investigation))~~.

17 A. Reports: Any employee may report to the Executive Director a good faith
18 assertion of improper governmental action.

19 B. Time Limitation for Investigations: In order to be investigated by the Executive
20 Director, an assertion of improper governmental action must be reported within 18-12 months of
21 the occurrence of the alleged improper governmental action, or within 18-12 months of when a
22 reasonable person similarly situated to the reporting employee would have become aware of the
23 occurrence. The Executive Director may at his or her discretion and a finding that the public's
24 interest would be served by initiating an inquiry or investigation into the asserted improper
25 governmental action, may investigate or refer a matter which falls outside of this time period.

26 C. Inquiry - Within fourteen (14) days after receiving an assertion of alleged
27 improper governmental action, the Executive Director shall conduct a confidential preliminary
28 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.

1 1. If, after a preliminary inquiry, the Executive Director determines that the facts as
2 asserted would constitute improper governmental action, the Executive Director must make a
3 mandatory referral, make a discretionary referral or open an investigation.

4 D. Mandatory and Discretionary Referral.

5 ~~((A))~~ 1. Mandatory Referral ~~((or Retention))~~. The Executive Director ~~((of the~~
6 ~~Ethics and Elections Commission,))~~ upon receiving a report alleging ~~((improper governmental~~
7 ~~action,))~~ the following, shall refer the ~~((complainant to the appropriate auditing official listed in~~
8 ~~Section 4.20.850 A if the Executive Director is not the appropriate auditing official. If the~~
9 ~~Executive Director is the appropriate auditing official, and the report alleges a violation of the~~
10 ~~Elections Code or the Code of Ethics, the Executive Director shall handle that allegation~~
11 ~~according to the ordinances and rules applicable to the code alleged to have been violated.))~~
12 employee as follows:

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

17 b. Assertions of violations of the Fair Employment Practices ordinance to the Office
18 for Civil Rights;

19 c. Assertions regarding misconduct by Seattle Police Department personnel to the
20 ~~((Police Departments Internal Investigation Section))~~ Seattle Police Office of Professional
21 Accountability;

22 d. Assertions of violations of the Code of Judicial Conduct ~~((by Municipal Court~~
23 ~~Judges))~~ to the Washington State Commission on Judicial Conduct;

24 2. Discretionary Referral: ~~((If the Executive Director is the appropriate auditing~~
25 ~~official and the report alleges improper governmental action that does not fall within the~~
26 ~~prohibitions of the Ethics Code or the Elections Code, The))~~ The Executive Director may refer
27 ~~((the))~~ a report to the chief elected official of the branch of government implicated in the
28 allegation or to other governmental agencies the Executive Director believes better suited to
investigate the allegation.

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

5 b. Within ~~((30))~~ 60 days of a discretionary referral being made by the Executive
6 Director, the City official or department head receiving the referral shall personally or through
7 their designated representative, write to the Executive Director, ~~and to the reporting employee~~
8 ~~who initiated the complaint if the employee has waived confidentiality pursuant to SMC~~
9 ~~4.20.810, as to actions taken to communicate the plan to resolve the concern and a date at which~~
10 ~~by the department or agency anticipates the concern will be resolved. If the employee has not~~
11 ~~waived confidentiality the Executive Director shall inform the employee.~~ ~~((who shall ensure that~~
12 ~~the appropriate officer or agency responds to the complainant in writing within thirty (30) days~~
13 ~~of receipt of the report by the appropriate auditing official, with a copy of the response to the~~
14 ~~Executive Director. If the Executive Director does not refer the report to another official, or if the~~
15 ~~other official's response is not timely or satisfactory to the Executive Director, the Executive~~
16 ~~Director may conduct an investigation. The procedures in subsections B through E of Section~~
17 ~~4.20.830 shall apply only to the Executive Director of the Ethics and Elections Commission~~
18 ~~when he or she is investigating an improper governmental action that does not fall within the~~
19 ~~prohibitions of the Ethics Code or the Elections Code and that should not have been referred to~~
20 ~~another auditing official under the first sentence of this subsection; other auditing officials~~
21 ~~investigating allegations of improper governmental action appropriately referred to them are not~~
22 ~~bound by these procedures.)) If the Executive Director does not receive a report report is not~~
23 ~~received, or, if within a reasonable time the department does not resolve the concern, the~~
24 ~~Executive Director shall~~ may alert the Mayor and advise the City Council.

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

1 1. When the Executive Director investigates an asserted violation of the Elections
2 Code, the Executive Director shall handle that assertion according to SMC 2.04.070 and the
3 Ethics and Election Commission’s Administrative Rules. If the Executive Director investigates
4 an asserted a violation of the Ethics Code, the Executive Director shall handle that allegation
5 according to SMC 4.16.090 and the Ethics and Election Commission’s Administrative Rules. If
6 the Executive Director investigates an asserted violation of the Lobbying Code, the Executive
7 Director shall handle that allegation according to SMC 2.06 and the Ethics and Election
8 Commission’s Administrative Rules.

9 2. Investigation of improper governmental action that does not assert violations of
10 the Ethics, Election or Lobbying Code shall be completed within a period of six (6) months. If an
11 investigation cannot be completed within that time the Executive Director must inform the
12 employee who initiated the complaint as to the reason why and estimate the completion date of
13 the investigation.

14 3. ((€)) Completion and Reports. Upon completion of the investigation, the
15 Executive Director shall:

16 a. Issue a report that summarizes the facts ((complainant)) and makes a
17 determination as to whether there is reasonable cause to believe that improper governmental
18 action occurred.

19 b. If the Executive Director determines there is reasonable cause to believe an
20 improper governmental action has occurred, the Executive Director shall report the nature and
21 details of the activity to:

- 22 c. the reporting employee ((complainant));
23 d. to the head of the department with responsibility for the action, and
24 e. if a department head is implicated, to the Mayor and City Council, and such other
25 governmental officials or agencies as the Executive Director deems appropriate.

26 F. Response by City Official: The head of the department with responsibility for the
27 conduct, or their designated representative, shall report to the Executive Director within sixty
28 (60) days what action was taken to address the conduct. The Executive Director shall report the
resolution to the reporting employee. If satisfactory action to follow up the report is not being

1 taken within (~~a reasonable~~) this time, the Executive Director shall report his or her
2 determination to the Mayor and advise the City Council.

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

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

8 Section 6 Section 4.20.840 of the Seattle Municipal Code, last amended by Ordinance
9 117039, is repealed.

10 (~~SMC 4.20.840 Civil penalty.~~
11 ~~A violation of subsection C of Section 4.20.810(C)(2) is a civil offense. A person who is guilty~~
12 ~~thereof may be punished in the Seattle Municipal Court by a civil fine or forfeiture not to exceed~~
13 ~~Five Thousand Dollars (\$5,000.00).)~~)

14 Section 7. Section 4.20.850 of the Seattle Municipal Code, last amended by Ordinance
15 118392, is repealed.

16 (~~SMC 4.20.850 Definitions. As used in Sections [4.20.800](#) through [4.20.860](#), the~~
17 ~~following terms shall have these meanings:~~

18 A. ~~"Auditing official" means, each in connection with a report of improper governmental action~~
19 ~~within his, her, or its respective jurisdiction, the Executive Director of the Seattle Ethics and~~
20 ~~Elections Commission; a person to whom sexual harassment was properly reported according to~~
21 ~~City policy; the Office for Civil Rights; the Washington State Commission on Judicial Conduct;~~
22 ~~the Police Department's Internal Investigations Section; the county prosecuting attorneys of the~~
23 ~~State of Washington; and any authorized assistant or representative of any of them in cases~~
24 ~~within their respective appropriate jurisdictions.~~

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

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

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

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

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

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

9 ~~2. "Improper governmental action" excludes personnel actions, including but not limited to:~~
10 ~~employee grievances, complaints, appointments, promotions, transfers, assignments,~~
11 ~~reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions~~
12 ~~in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or~~
13 ~~civil service laws, or alleged violations of agreements with labor organizations under collective~~
14 ~~bargaining, or any action that may be taken under Chapter 41.08, 41.12, 41.14, 41.56, 41.59, or~~
15 ~~53.18 RCW or RCW 54.04.170 and 54.04.180.~~

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

19 ~~D. "Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make,~~
20 ~~because of an activity protected under Section [4.20.810](#), any unwarranted adverse change in an~~
21 ~~employee's employment status or the terms and conditions of employment including, but not~~
22 ~~limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and~~
23 ~~undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of~~
24 ~~reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of~~
25 ~~promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary~~
26 ~~action.~~

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

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

4.20.860 (~~(Reporting and adjudicating retaliation)~~) 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 (~~(in violation of Section 4.20.810 C)~~) for engaging in an activity~~en~~ protected under this subchapter, must file a signed written complaint within (~~(thirty (30))~~) 180 days of the occurrence alleged to constitute retaliation.

2. Place of Filing. The complaint shall be filed with (~~(the Office of the Mayor)~~) the Executive Director. (~~(and)~~)

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

a. The alleged act of retaliation and the date or dates on which it occurred; The alleged act of retaliation and the date or dates on which it occurred;

b. The person or persons responsible for the alleged retaliation;

c. The person or persons responsible for the alleged retaliation, and The activity taken by the employee which gave rise to the protection under the subchapter, or the activity that the employee was mistakenly perceived to have taken which the employee alleges was the basis for retaliation;

d. The specific relief requested and;

e. If the protected activity is based on an employee's report to a departmental supervisor, manager, officer, appointing authority, director, or person other than the Executive Director, evidence of the report, its content and date

B. Initial Determination (~~(and Response)~~).

1. The Executive Director shall make an initial determination as to the sufficiency of the complaint. A complaint is sufficient if the Executive Director determines that if true, the facts would show the employee is a Cooperating Employee entitled to the protections of this subchapter, that the alleged acts would meet the definition of retaliation and the alleged acts occurred within the proscribed time period. A complaint shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for the Executive Director's determination of sufficiency to be made.

1 a. If the complaint is found to be sufficient, the Executive Director shall investigate the
2 complaint and endeavor to conclude that investigation within 90 days of receiving the
3 employee's complaint.

4 b. If the complaint is found insufficient, the Executive Director shall reply to the
5 employee in writing as to why the complaint fails and dismiss the complaint. The employee may
6 re-submit the complaint ~~within 180 days of the act alleged to constitute retaliation. The time in~~
7 ~~which the Executive Director is determining the sufficiency of the complaint is not included in~~
8 ~~the 180 time frame. if the complaint meets all other requirements.~~

9 ~~((Mayor's office shall forward the complaint to the head of the executive office or~~
10 ~~department in which the retaliation is alleged to have occurred, or, at the Mayor's option, to the~~
11 ~~President of the City Council or the Presiding Judge of the Municipal Court if their respective~~
12 ~~branches are implicated in the complaint. The head of the department, office, or branch to which~~
13 ~~the complaint was referred ensure that the complainant is sent a response within thirty (30) days~~
14 ~~after the filing of the complaint. If the head of an executive office or department is alleged to~~
15 ~~have retaliated in violation of Section .20.810, the Mayor shall ensure that the complainant is~~
16 ~~sent a response within thirty (30) days after the filing of the complaint.))~~

17 C. Reasonable Cause Investigation - The Executive Director may investigate
18 complaints found to be sufficient. The investigation of a sufficient complaint shall be limited to
19 the facts alleged in the complaint and shall be conducted in an objective and impartial manner.
20 The Executive Director shall prepare a written determination which shall include a determination
21 as to whether there is or is not reasonable cause to believe that retaliation has been committed, or
22 is being committed, and that conduct protected under this sub-chapter was a contributing factor.

23 1. If the Executive Director determines there is no reasonable cause to believe that
24 retaliation occurred the Executive Director shall dismiss the complaint. The Executive Director
25 shall inform the employee of the dismissal. ~~After this determination, the employee may seek any~~
26 ~~recourse or remedy otherwise permitted them by law.~~

27 2. If the Executive Director finds reasonable cause to believe that retaliation occurred,
28 the Executive Director shall issue a written report which shall include:

1 a. A statement of the facts which provide the basis for finding that retaliation occurred
2 and a specific recommendation for departmental action necessary to address the retaliation and
3 the relief sought by the Cooperating Employee, and,

4 b. The identity of the specific employee ~~or employees~~ responsible for retaliation in
5 violation of this subchapter and a recommendation for departmental action needed to address the
6 retaliatory behavior of the specific employee or employees responsible for the retaliatory
7 behavior. ~~ed penalty to be assessed against that employee.~~

8 c. The Executive Director may submit the findings and recommendations to the
9 interested parties for review and comment prior to issuing the investigative report and
10 determination.

11 d. Upon completion of the investigation, the Executive Director shall deliver a copy of
12 the report finding reasonable cause to the interested parties.

13 D. Settlement. Within 30 days of the Executive Director's report finding reasonable
14 cause, the Director shall confer with the interested parties and attempt to reach a joint settlement
15 between any or all of the interested parties. ~~An employee may be represented by a person of~~
16 his/her own choosing.

17 1. The Executive Director may utilize the services of the City of Seattle's Alternative
18 Dispute Resolution or the King County Inter-local Conflict Resolution Group or similar service
19 to aid in the resolution of the dispute.

20 2. The settlement may include, ~~but is not limited to,~~ any ~~remedy-terms~~ agreed upon by
21 the parties and not otherwise precluded by law, and may include compensatory damages such as
22 restoration of employment, job classification, seniority rights, back pay, benefits, and any
23 increases in compensation that would have occurred and interest if applicable, admittance to
24 participation in a guidance, apprentice training or retraining program, or such other actions as the
25 parties agree.

26 3. Any settlement between a City department and the protected employee must include
27 a provision in which the employee releases the City from further liability for acts giving rise to
28 the retaliation complaint in order for the employee to obtain the benefit of the settlement.

4. Any settlement agreement between the Executive Director and a specific employee
or employees who engaged in retaliatory acts shall be subject to Commission approval.

1 Section 9. A new Section 4.20.870 of the Seattle Municipal Code is added to Subchapter
2 III of Chapter 4.20 as follows:

3 4.20.870 - Enforcement:

4 A. Enforcement.

5 1. Within 60 days of the Executive Director's determination of reasonable cause, if no
6 settlement has been reached, the Executive Director may file a complaint alleging retaliation
7 with the Hearing Examiner providing notice to the head of the implicated department and the
8 specific employee, if any, found to have engaged in prohibited retaliation.

9 2. All cases shall be governed by the Hearing Examiner Rules of Practice and
10 Procedure. The Hearing Examiner may promulgate such additional administrative rules as
11 needed to aid in the Determination of Reasonable Cause.

12 B. Proof. The burden of proof in any proceeding against a department for a
13 Determination of Reasonable Cause is as follows:

14 1. If ~~the a~~ Cooperating Employee is shown to have been subjected to an act defined in
15 this sub-chapter as retaliation, it is presumed that retaliation prohibited by this sub-chapter has
16 occurred.

17 a.) The department presumed to have taken retaliatory action under subsection (1) of
18 this section may rebut that presumption by proving by a preponderance of the evidence that the
19 employee's status as a Cooperating Employee was not a ~~contributory-contributing~~ factor, in the
20 decision making process resulting in the adverse change. and that the action taken was not
21 merely pre-textual. Evidence of a series of documented personnel problems or a single,
22 egregious event, or other evidence to support a finding that the departmental conduct or actions
23 were based on wholly independent, separate and legitimate reasons shall be admitted. The
24 Executive Director shall be allowed to present evidence to counter the departmental assertion.

25 2. The allegation that a specific employee or employees retaliated against a Cooperating
26 Employee must be proved by the Executive Director by a preponderance of the evidence.

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

1 1 If the Hearing Examiner concludes that a department retaliated against a Cooperating
2 Employee in violation of this subchapter, the Hearing Examiner may order such relief as is
3 deemed necessary to effectuate the purpose of this chapter, and secure compliance therewith~~the~~
4 appropriate remedy, including but not limited to, hiring, reinstatement, or upgrading with or
5 without back pay, all lost benefits, including executive and vacation leave, any increases in
6 compensation that would have occurred and interest if applicable, admittance or restoration to
7 membership in a labor organization, admittance to participation in a guidance, apprentice
8 training or retraining program, or such other action which will effectuate the purposes of this
9 chapter, including action which could be ordered by a court, except that damages for humiliation
10 and mental suffering, the employee's attorney fees and other such damages shall compensatory
11 damages including the restoration of employment, job classification, seniority rights, back pay,
12 benefits, and any increases in compensation that would have occurred and interest if applicable,
13 admittance to participation in a guidance, apprentice training or retraining program, discipline of
14 an employee who was found to have retaliated, and such other actions as the Hearing Examiner
15 may decide including an award for non-compensatory damages in an amount not to exceed
16 \$10,000.00.

17 2. If the Hearing Examiner finds that an employee retaliated against a Cooperating
18 Employee in violation of this subchapter, the Hearing Examiner shall deliver the findings of fact
19 and conclusions of law to the Commission, and may include a recommendation to the
20 Commission as to an appropriate fine or penalty. Only the Commission has the authority to
21 impose a penalty against an individual employee. The Hearing Examiner may recommend to
22 the department that disciplinary action be commenced against a specific employee or employees
23 found to have retaliated.

24 3. The Commission may impose a fine as provided by SMC 4.16.100 on the employee
25 found to have engaged in retaliatory behavior as defined under this sub-chapter.

26 4. The department shall comply with the provisions of any order effecting relief and
27 shall furnish proof of compliance to the Executive Director. In the event that the department
28 refuses or fails to comply with the order, the Executive Director shall notify the City Attorney
and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or
compliance with the order.

1 5.4. The final order of the Hearing Examiner or the Commission shall include a notice
2 to the parties of the right to obtain judicial review of the order in accordance with State law.

3 Section 10. A new Section 4.20.875 of the Seattle Municipal Code is added to
4 Subchapter III of Chapter 4.20 as follows:

5 4.20.875 - Investigative Powers. At any stage in an inquiry or investigation of an alleged
6 improper governmental action, or the investigation regarding an assertion of retaliation for
7 engaging in conduct protected in this sub-chapter, the Executive Director may issue subpoenas,
8 administer oaths, examine witnesses, submit written questions to be answered under oath with in
9 ten days of service, compel the production of documents or other evidence and receive a written
10 response of the requested documents within ten days of service, enlist the assistance of the City
11 Attorney, the City Auditor, the Chief of Police or the County Prosecuting Attorney. If the party
12 fails to comply with a subpoena compelling production of information, the Executive Director
13 may ask for the assistance of the matter may be turned over to counsel City Attorney to pursue
14 for the commission for enforcement through of the order in superior court.

15 Section 11. A new Section 4.20.880 of the Seattle Municipal Code is added to
16 Subchapter III of Chapter 4.20 as follows:

17 4.20.880 - Annual Restatement. Upon entering City service and at least once each year
18 thereafter, every City officer and employee shall receive a written summary of this chapter. The
19 City shall use best efforts to ensure that accurate and complete summaries are distributed and
20 that copies are posted where all employees will have reasonable access to them.

21 Section 12. Section 4.16.070 of the Seattle Municipal Code, last amended by Ordinance
22 123010, is amended as follows:

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

24 ...

25 6 Engage in any activity prohibited under SMC 4.20.810 of the Whistleblower
26 Protection Code.

27 ((6)) 7 - Application to Certain Members of Advisory Committees.

28 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 6-7 shall instead apply to all other members of

1 advisory committees. No member of an advisory committee to whom this subsection applies
2 shall:

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

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

16 Section 13. Section 3.70.010 of the Seattle Municipal Code, last amended by Ordinance
17 116005, is amended as follows:

18 SMC 3.70.010 Commission established -- Purpose. There is hereby established a
19 Seattle Ethics and Elections Commission to administer the City's Code of Ethics (Chapter 4.16);
20 to administer the Election Campaign Code and its campaign matching fund program
21 (Chapter 2.04); to publish the City's election pamphlets (Chapter 2.14); to administer the political
22 sign ordinance (Chapter 2.24) and to ~~((investigate certain complaints of improper governmental
23 action under))~~ administer the Whistleblower Protection Code ((ordinance)) (SMC Sections
24 4.20.800 through 4.20.880).

25 Section 14. Section 3.70.100 of the Seattle Municipal Code, last amended by Ordinance
26 116005, is amended as follows:

27 SMC 3.70.100 Powers and duties.

28 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

1 ordinance (Code Chapter 2.14); the lobbying disclosure ordinance (Code Chapter 2.06); the
2 political sign code (Code Chapter 2.24); and the whistleblower protection ordinance (SMC
3 Sections 4.20.800 through 4.20.~~(860)~~880 inclusive) (called collectively "Commission-
administered ordinances").

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

7
8 Passed by the City Council the ____ day of _____, 201~~2~~⁴, and
9 signed by me in open session in authentication of its passage this
10 ____ Day of _____, 201~~2~~⁴.

11
12 _____
13 President _____ of the City Council

14
15 Approved by me this ____ day of _____, 201~~2~~⁴.

16
17 _____
18 Michael McGinn, Mayor

19
20 Filed by me this ____ day of _____, 201~~2~~⁴.

21
22 _____
23 Monica Martinez Simmons, City Clerk

24 (Seal)