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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;
adding new sections 4.20.805; 4.20; 4.20.870; 4.20.875; 4.20.810; repealing sections
4.20.820; 4.20.850....

WHEREAS, ...; and

WHEREAS, ...; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. ...Section 4.20.800, last amended by Ordinance 11709, is amended as
follows:

Seattle Municipal Code 4.20.800 - Policy -- Purpose.

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

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

3 2. Provide City employees protection from retaliatory action for making good faith
4 reports and cooperating in any subsequent inquiry or investigation;

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

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

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

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

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

14 Section 2. A new section, Section 4.20.805, is added to the Seattle Municipal Code as
15 follows:

16 Definitions

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

19 “Adverse change” includes, but is not limited to denial of adequate staff to perform
20 duties;

21 frequent staff changes;

22 frequent and undesirable office changes or changes in the physical location of the
23 employee’s workplace or a change in the basic nature of the employee’s job, if either are in
24 opposition to the employee’s expressed wish;

25 refusal to assign meaningful work;

26 unsubstantiated letters of reprimand or unsatisfactory performance evaluations;

27 demotion, reduction in pay;

28 denial of promotion;

 transfer or reassignment;

1 suspension or dismissal or other disciplinary action;
2 a supervisor or superior behaving in or encouraging coworkers to behave in a hostile
3 manner toward the employee;
4 issuance of or attempt to enforce any nondisclosure policy or agreement in a manner
5 inconsistent with prior practice, or
6 any other action that is inconsistent compared to actions taken before the employee
7 engaged in action protected by this chapter, or compared to other employees who have not
8 engaged in action protected by this chapter.

9 "City Employee" or "Employee" means, every individual who is appointed to a position
10 of employment in any City agency, whether in a permanent, temporary or intermittent position,
11 an elected official, an individual who volunteers services to the City and individuals appointed to
12 boards and commissions whether paid or unpaid.

13 "Commission" means the Seattle Ethics and Elections Commission.

14 "Cooperating Employee" means:

- 15 . A City employee who in good faith makes a report pursuant to this chapter;
- 16 . A City employee who is perceived by the employer as having reported pursuant to
17 this chapter, but who in fact, did not report;
- 18 . A City employee who in good faith provides information in connection with an
19 inquiry or investigation of a report made pursuant to this chapter, or
- 20 . A City employee who is perceived by the employer as providing information in
21 connection with an inquiry or investigation of a report made pursuant to this chapter, but who, in
22 fact, has not done so.

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

25 "Good Faith" means the individual reporting or providing information reporting pursuant
26 to this chapter has a reasonable basis in fact for reporting or providing the information.

27 "Gross Waste of Public Funds or Resources" means to spend or use funds or resources, or
28 to allow the use of any funds or resources, in a manner grossly deviating from the standard of
care or competence that a reasonable person would observe in the same situation. The term

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

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

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

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

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

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

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

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

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

1 “Retaliate,” and its kindred nouns, "retaliation" and "retaliatory action," means to make,
2 or use one’s official authority to make any adverse change in an employee's employment status
3 or the terms and conditions of employment where the employee’s protected activity under this
subchapter is a contributing factor in the decision to undertake the adverse change.

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

6 Section 3. ...Section 4.20.810, last amended by Ordinance 118392, is amended as
7 follows:

8 4.20.810 – ~~((Reporting improper governmental action – Employee protection))~~ Employee
9 Rights, Responsibility and Limitations.

10 A. Rights.

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

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

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

17 B. ~~((Limitations))~~ Responsibilities.

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

25 2. ~~((Except in cases of emergency where the employee believes in good faith that~~
26 ~~substantial damage to persons or property will result unless a report is made immediately to a~~

1 ~~person or entity who is not the appropriate auditing official listed in Section 4.20.850 A, an~~
2 ~~employee shall, before making a report to a person who is not the appropriate auditing official,~~
3 ~~first make a written report of the improper governmental action to the appropriate auditing~~
4 ~~official. No emergency under this subsection exists where prompt attention and reporting under~~
5 ~~this subchapter by the employee could have avoided the perceived need to report immediately to~~
6 ~~a person not the appropriate auditing official.~~

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

11 ~~((3-)) An employee who reports his or her own improper action will not ((grant an))~~
12 ~~((immunity)) be free from discipline or termination under Section 4.04.230 or 4.08.100~~
13 ~~((insofar)) if his or her improper action would be cause for discipline or termination.~~

14 C. ~~((Employee Protections and)) Protected Conduct~~

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

17 a. Reporting an assertion of improper government action to the Executive Director;

18 ~~((a-))~~ b. Reporting an assertion of improper government action to an employee's
19 supervisor, manager, officer or appointing authority or director;

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

23 d. ~~((r))~~ Reporting violations of the Fair Employment Practices ordinance to the
24 Office for Civil Rights;

25 e. ~~((r))~~ Reporting ((police)) misconduct by Seattle Police Department personnel to
26 the ((Police Departments Internal Investigation Section)) Seattle Police Office of Professional
27 Accountability;

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

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

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

7 ~~((e))~~i. Testifying in any proceeding ~~((or prosecution))~~ that arises ~~((out of an “improper
8 governmental action.”))~~ in whole or in part from a report made in accordance with this
9 subchapter;

10 j. Reporting outside of City government or to law enforcement if:

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

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

16 k. Reporting when the Employee believes in good faith that a crime is about to be
17 committed, to any law enforcement agency, to the City Attorney or the County Prosecuting
18 Attorney, the Executive Director, or any supervisor, manager or head of a department.

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

26 2. No City officer or employee shall:

27 a. Use his or her official authority or influence, directly or indirectly, to threaten,
28 intimidate, or coerce an employee for the purpose of interfering with that employee's right to
disclose information concerning an improper governmental action, cooperate in an inquiry or

1 investigation based on a report of improper governmental action or testify in any proceeding
2 arising from a report.

3 b. Retaliate against any employee because that employee proceeded or is proceeding in
4 good faith in accordance with this subchapter.

5 ~~((D. Penalty. Any City officer or employee who engages in prohibited retaliatory action~~
6 ~~is subject to discipline by suspension without pay, demotion or discharge or, pursuant to Section~~
7 ~~4.20.840, a civil fine up to Five Hundred Dollars (\$500.00), or both discipline and a fine.~~

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

14 Section 4. Section 4.20.820, last amended by Ordinance 117039, is deleted.

15 ~~((4.20.820 Confidentiality. To the extent provided by law, the identity of an employee~~
16 ~~reporting information about an improper governmental action shall be kept confidential unless~~
17 ~~the employee in writing waives confidentiality.))~~

18 Section 5. amending Seattle Municipal Code section 4.20.830, which was last amended
19 by Ordinance 117039, as follows:

20 4.20.830 Reports to the Executive Director ((Investigation)).

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

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

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

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

9 D. Mandatory and Discretionary Referral.

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

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

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

24 c Assertions of violations of the Fair Employment Practices ordinance to the Office for
25 Civil Rights

26 d. Assertions regarding misconduct by Seattle Police Department personnel to the
27 ~~((Police Departments Internal Investigation Section))~~ Seattle Police Office of Professional
28 Accountability;

1 e. Assertions of violations of the Code of Judicial Conduct ((by Municipal Court
2 Judges)) to the Washington State Commission on Judicial Conduct;

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

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

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

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

7 1. When the Executive Director investigates an asserted violation of the Elections
8 Code, the Executive Director shall handle that assertion according to SMC 2.04.070 and the
9 Ethics and Election Commission's Administrative Rules. If the Executive Director investigates
10 an asserted a violation of the Ethics Code, the Executive Director shall handle that allegation
11 according to SMC 4.16.090 and the Ethics and Election Commission's Administrative Rules. If
12 the Executive Director investigates an asserted violation of the Lobbying Code, the Executive
13 Director shall handle that allegation according to SMC 2.06 and the Ethics and Election
14 Commission's Administrative Rules.

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

20 3. ~~((C))~~ Completion and Reports. Upon completion of the investigation, the
21 Executive Director shall:

22 a. Issue a report that summarizes the facts ~~((complainant))~~ and makes a
23 determination as to whether there is reasonable cause to believe that improper governmental
24 action occurred.

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

28 c. the reporting employee ~~((complainant))~~;

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

1 e. if a department head is implicated, to the Mayor and City Council, and
2 f. such other governmental officials or agencies as the Executive Director deems
3 appropriate.

4 F. Response by City Official: The head of the department with responsibility for the
5 conduct, or their designated representative, shall report to the Executive Director within sixty
6 (60) days what action was taken to address the conduct. The Executive Director shall report the
7 resolution to the reporting employee. If satisfactory action to follow up the report is not being
8 taken within ((a reasonable)) this time, the Executive Director shall report his or her
9 determination to the Mayor and advise the City Council.

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

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

15 Section 7. Seattle Municipal Code section 4.20.840, which was last amended by
16 Ordinance 117039, is deleted.

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

21 Section 8. Seattle Municipal Code section 4.20.850, which was last amended by
22 Ordinance 118392,

23 is deleted.
24 ((SMC 4.20.850 Definitions. As used in Sections 4.20.800 through 4.20.860, the
25 following terms shall have these meanings:

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

1 ~~the Police Department's Internal Investigations Section; the county prosecuting attorneys of the~~
2 ~~State of Washington; and any authorized assistant or representative of any of them in cases~~
3 ~~within their respective appropriate jurisdictions.~~

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

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

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

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

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

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

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

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

26 D. ~~"Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," mean to make,~~
27 ~~because of an activity protected under Section [4.20.810](#), any unwarranted adverse change in an~~
28 ~~employee's employment status or the terms and conditions of employment including, but not~~
~~limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and~~

~~undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion, reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary action.~~

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

Section 9. Section 4.20.860, which was 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 4.20.840 C~~) for engaging in action 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 activity which gave rise to the protection under this sub-chapter and the date or time period over which the activity took place;

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

c. The person or persons responsible for the alleged retaliation, and

d. The specific relief requested.

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 sub-chapter, 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

1 informational requirements necessary for the executive Director's determination of sufficiency to
2 be made.

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

6 b. If the complaint is found insufficient, the Executive Director shall reply to the
7 employee in writing as to why the complaint fails and dismiss the complaint. The employee may
8 re-submit the complaint 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, the
28 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 if the Executive Director finds any specific employee responsible for retaliation in violation of
3 this subchapter and SMC 4.16.070.6, and a specific recommendation for departmental action
4 necessary to address the retaliation and the relief sought by the Cooperating employee, and,

5 b. The identity of the specific employee responsible for retaliation in violation of this
6 subchapter and a recommended penalty to be assessed against that employee.

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

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

11 D. Settlement. Within 30 days of the Executive Director's report finding reasonable cause,
12 the Director shall confer with the interested parties and attempt to reach a joint settlement between
13 any or all of the interested parties.

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

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

22 3. Any settlement between a City department and the protected employee must include a
23 provision in which the employee releases the City from further liability for acts giving rise to the
24 retaliation complaint in order for the employee to obtain the benefits of the settlement.

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

27 Section 7. A new Section 4.20.870 is added to the Seattle Municipal Code as follows:

28 4.20.870 - Enforcement:

 A. Enforcement

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

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

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

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

12 a.) The department presumed to have taken retaliatory action under subsection (1) of
13 this section may rebut that presumption by a preponderance of the evidence that the employee’s
14 status as a Cooperating Employee was not a contributory factor, and that the action taken was not
15 merely pre-textual. Evidence of a series of documented personnel problems or a single, egregious
16 event, or other evidence to support a finding that the departmental conduct or actions were based
17 on wholly independent, separate and legitimate reasons shall be admitted. The Executive Director
18 shall be allowed to present evidence to counter the departmental assertion.

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

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

24 1 If the Hearing Examiner concludes that a department retaliated against a Cooperating
25 Employee in violation of this subchapter, the Hearing Examiner may order the appropriate remedy,
26 including but not limited to, compensatory damages including the restoration of employment, job
27 classification, seniority rights, back pay, benefits, and any increases in compensation that would have
28 occurred and interest if applicable, admittance to participation in a guidance, apprentice training or
retraining program, discipline of an employee who was found to have retaliated or such other

1 actions as the parties agree, except that any award for non-compensatory damages may not exceed \$
2 10,000.00, and such other actions as the Hearing Examiner may decide.

3 2. If the Hearing Examiner concludes that an employee retaliated against a cooperating
4 employee in violation of this subchapter, the Hearing Examiner shall make a recommendation to the
5 Commission as to an appropriate fine or penalty. Only the Commission has the authority to impose
6 a penalty against an individual employee.

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

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

11 Section 8. A new Section 4.20.875 is added to the Seattle Municipal Section 8. A new
12 Section 4.20.875 is added to the Seattle Municipal Code as follows:

13 4.20.875 - Investigative Powers. At any stage in an inquiry or investigation of an
14 alleged "improper governmental action," or the investigation regarding an assertion of retaliation
15 for engaging in conduct protected in this sub-chapter, the Executive Director may issue
16 subpoenas, administer oaths, examine witnesses, compel the production of documents or other
17 evidence, enlist the assistance of the City Attorney, the City Auditor, the Chief of Police or the
18 County Prosecuting Attorney.

19 Section 9. A new Section 4.20.880 is added to the Seattle Municipal Code as follows:

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

24 Section 10. A new section, Section 4.16.070.6 last amended in is amended as follows:

25 SMC 4.16.070.6 – A Covered Individual may not

26 Retaliate against any Cooperating Employee as those terms are defined in the City's
27 Whistleblower Protection Code, SMC 4.20.805.

28 Section 11. Section 4.16.070., is amended as as follows:

SMC 4.16.070.((6)) 7 - Application to Certain Members of Advisory Committees.

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

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

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

18 Section 12 - SMC 3.70.010, which was last amended by Ordinance 116005, is amended as follows:

19 **SMC 3.70.010 Commission established -- Purpose.** There is hereby established a
20 Seattle Ethics and Elections Commission to administer the City's Code of Ethics (Chapter 4.16); to
21 administer the Election Campaign Code and its campaign matching fund program (Chapter 2.04); to
22 publish the City's election pamphlets (Chapter 2.14); to administer the political sign ordinance
23 (Chapter 2.24) and to ~~((investigate certain complaints of improper governmental action under))~~
24 administer the Whistleblower Protection Code ~~((ordinance))~~ (SMC Sections 4.20.800 through
25 4.20.880).

26 Section 13 - SMC 3.70.100, which was last amended by Ordinance 116005, is amended as
27 follows:

28 **SMC 3.70.100 Powers and duties.**

1 The Commission shall have the following powers: A. To administer the City's Code of Ethics (Code
2 Chapter 4.16); the Election Campaign Code and its campaign matching fund program (Code
3 Chapter 2.04); the City's election pamphlet ordinance (Code Chapter 2.14); the lobbying disclosure
4 ordinance (Code Chapter 2.06); the political sign code (Code Chapter 2.24); and the whistleblower
5 protection ordinance (SMC Sections 4.20.800 through 4.20.~~(860)~~880 inclusive) (called collectively
6 "Commission-administered ordinances").

7 Section 10. Effective Date: This ordinance shall take effect and be in force 30 days after
8 its approval by the Mayor, but if not approved and returned by the Mayor within ten days after
9 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

10 Passed by the City Council the ____ day of _____, 2011, and
11 signed by me in open session in authentication of its passage this
12 ____ day of _____, 2011.

13 _____
14
15 President _____ of the City Council

16
17 Approved by me this ____ day of _____, 2011.

18 _____
19
20 Michael McGinn, Mayor

21
22 Filed by me this ____ day of _____, 2011.

23 _____
24
25 Monica Martinez Simmons, City Clerk

26 (Seal)