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Title: AN ORDINANCE relating to whistleblower protection; amending Ordinance 11687, Section 3, and K.C.C. 3.42.010, Ordinance 11687, Section 2, and K.C.C. 3.42.020, Ordinance 11687, Section 4, as amended, and K.C.C. 3.42.030, Ordinance 11687, Section 5, and K.C.C. 3.42.040, Ordinance 11687, Section 6, and K.C.C. 3.42.050, Ordinance 11687, Section 7, and K.C.C. 3.42.060 and adding new sections to K.C.C. chapter 3.42.

Sponsors: Dow Constantine, Larry Phillips, Reagan Dunn, Pete von Reichbauer, Larry Gossett, Bob Ferguson, Julia Patterson, Kathy Lambert

Indexes: Ombudsman

Code sections: 3.42 -, 3.42.010 -, 3.42.020 -, 3.42.030 -, 3.42.040 -, 3.42.050 -, 3.42.060 -

Attachments: 1. 16580.pdf, 2. 2009-0346 staff report Whistleblower 6-16-09 at v3.doc, 3. 2009-0346 whistleblower 6-16-09 Amendment 1 at.doc, 4. AM #1 6-29-09pdf

Date	Ver.	Action By	Action	Result
6/29/2009	2	Metropolitan King County Council	Hearing Held	
6/29/2009	2	Metropolitan King County Council	Passed as Amended	Pass
6/16/2009	1	Government Accountability and Oversight Committee	Amended	
6/16/2009	2	Government Accountability and Oversight Committee	Recommended Do Pass Substitute	Pass
5/26/2009	1	Metropolitan King County Council	Introduced and Referred	

Clerk 06/30/2009

AN ORDINANCE relating to whistleblower protection; amending Ordinance 11687, Section 3, and K.C.C. 3.42.010, Ordinance 11687, Section 2, and K.C.C. 3.42.020, Ordinance 11687, Section 4, as amended, and K.C.C. 3.42.030, Ordinance 11687, Section 5, and K.C.C. 3.42.040, Ordinance 11687, Section 6, and K.C.C. 3.42.050, Ordinance 11687, Section 7, and K.C.C. 3.42.060 and adding new sections to K.C.C. chapter 3.42.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 11687, Section 3, and K.C.C. 3.42.010 are each hereby amended to read as

follows:

Unless prohibited by ~~((S))~~state law, ~~((C))~~county employees are encouraged to report on improper governmental action to the appropriate county or other government official. To assist such reporting and to implement ~~((Sections 42.41.030 and 42.41.040 of the Revised Code of Washington ("RCW")))~~ chapter 42.41 RCW, this ~~((ordinance))~~ chapter provides county 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 ~~((sub))~~chapter.

SECTION 2. Ordinance 11687, Section 2, and K.C.C. 3.42.020 are each hereby amended to read as follows:

~~((As used in this ordinance, the following terms shall have these meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Appropriate ~~((F))~~investigating official" means~~((, each in connection with a report of improper governmental action within his, her, or its respective jurisdiction; the ombudsman; a person to whom sexual harassment was properly reported according to county policy; the agency designated by the executive to receive unfair employment complaints filed under K.C.C. 12.18; the Washington State Commission on Judicial Conduct; the department of public safety's internal investigations unit; the county prosecuting attorneys of the State of Washington; the presiding judge of the district and superior courts; the executive; the department director of any executive agency; the assessor; the director of the department of judicial administration/clerk of the superior court; the chair of the council;))~~ an investigating official acting within his or her respective jurisdiction as identified in K.C.C. 3.42.030.D. or any ~~((authorized))~~ assistant or representative ~~((of any of them in cases within their respective appropriate jurisdictions))~~ authorized to receive documents on his or her behalf, except that for the department of public safety, the only appropriate investigating official shall be the internal investigations unit or any assistant or representative authorized to receive documents on its behalf.

B. "Employee" or "county employee" means any individual who is appointed as an employee by the

appointing authority of a county agency, office, department, council, board, commission or other separate unit or division of county government, however designated. The term "employee" or "county employee" also includes county elected officials and members of county boards, commissions, committees, or other multi-member bodies.

C. "Good faith" means the individual providing the information or report of improper governmental action has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, is not acting in good faith.

D. "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

E. "Gross waste of public funds" means to spend or use public funds or to allow public funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

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

~~((1-))~~ a. ~~((V))~~violates any state or federal law or rule or county ordinance or rule~~((,-øø))~~;

~~((2-))~~ b. ~~((C))~~constitutes an abuse of authority~~((,-øø))~~;

c. is gross mismanagement;

~~((3-))~~ d. ~~((C))~~creates a substantial ~~((øø))~~ and specific danger to the public health or safety~~((,-))~~; ~~((øø))~~

~~((4-))~~ e. ~~((R))~~results in a gross waste of public funds~~((,-))~~; or

f. prevents the dissemination of scientific opinion or alters technical findings without scientifically

valid justification, unless disclosure is legally prohibited. This subsection G.1.f. is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinions or technical findings.

2. "Improper governmental action" (~~((excludes))~~) does not include (~~((personnel actions, including, but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands,))~~) violations of anti-discrimination laws, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining. A properly authorized county program or activity does not become an "improper governmental action" because an employee or investigating official dissents from the county policy or considers the expenditures unwise.

G. "Investigating official" means any individual to whom a report may be made pursuant to K.C.C. 3.42.030.D. or any assistant or representative authorized to receive documents on his or her behalf.

~~((D.))~~ H. "Retaliate," (~~((and its kindred nouns,))~~) "retaliation" and "retaliatory action," means to make (~~((because of a report of improper governmental action,))~~) any unwarranted adverse change in an employee's employment status or the terms and conditions of employment including, but not limited to(~~((;))~~):

1. ~~((d))~~ Denial of adequate staff to perform duties;
2. ~~((f))~~ Frequent staff changes;
3. ~~((f))~~ Frequent and undesirable office changes;
4. ~~((f))~~ Refusal to assign meaningful work;
5. Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
6. ~~((d))~~ Demotion;
7. ~~((f))~~ Reduction in pay;
8. ~~((d))~~ Denial of promotion;
9. Denial of training or benefits;

10. ~~((t))~~ Transfer or reassignment;

11. ~~((s))~~ Suspension or dismissal; ~~((or))~~

12. ~~((o))~~ Other unwarranted disciplinary action; ~~((or, hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official))~~

13. A supervisor or senior manager or official behaving in or encouraging coworkers to behave in a hostile manner toward the employee, or failing to take appropriate action to prevent coworkers from behaving in a hostile manner toward the employee.

I. "Substantial and specific danger" means a risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

J. "Written report of improper governmental action" means any writing that alleges that an improper governmental action has occurred and describes the basis for that belief.

~~((E. "Emergency" means a circumstance that if not immediately changed may cause harm or injury to person or property.))~~

SECTION 3. Ordinance 11687, Section 4, as amended, and K.C.C. 3.42.030 are each hereby amended to read as follows:

A. Every county employee shall have the right to report, in good faith in accordance with this ordinance, information concerning an improper governmental action.

B. In reporting improper governmental action, the employee is encouraged, but not required, to make a written report first to any investigating official as defined by K.C.C. 3.42.020.G; the employee is encouraged to consult with the office of the ombudsman in order to determine to whom a written report should be made.

C.1. This section does not authorize a county employee to report information that is subject to an applicable privilege against disclosure at law ~~((e.g.)),~~ such as RCW 5.60.060 privileged communications~~((s))~~, unless waived, or to make disclosure where prohibited at law. ~~((The only purpose of this chapter is to protect~~

~~and encourage employees who know or in good faith believe improper governmental action has occurred to report those actions in good faith in accordance with this ordinance. Except in cases of emergency where the employee believes in good faith that substantial damage to persons or property will result unless a report is made immediately to a person or entity who is not the appropriate investigating official listed in Section, the employee shall, before making a report to a person who is not the appropriate investigating official, first make a written report of the improper governmental action to the appropriate investigating official. No emergency under this subsection exists where prompt attention and reporting under this chapter by the employee could have avoided the perceived need to report immediately to a person not the appropriate investigating official.))~~

2. An employee making a written report ~~((as required by))~~ under this subsection is encouraged to wait at least thirty ~~((30))~~ days from receipt of the written report by the ~~((appropriate))~~ investigating official before reporting the improper governmental action to a person who is not an ~~((appropriate))~~ investigating official. However, reporting to a person who is not an ~~((appropriate))~~ investigating official ~~((prior to))~~ before this ~~((thirty (30) day))~~ thirty-day period will not result in the loss of the protections ~~((contained))~~ in this ~~((ordinance))~~ chapter.

4. An employee's reporting of ~~((his or her))~~ the employee's own improper action does not grant ~~((an))~~ the employee immunity from discipline or termination insofar as ~~((his or her))~~ the employee's improper action would be cause for discipline.

~~((C. Any or all of the following conduct by employees is protected if carried out in good faith under this chapter:))~~ D. For purposes of this chapter, the person to whom a written report should be made is as follows:

1. Reporting sexual harassment to the employee's supervisor, department head~~((;))~~ or other government official as set out in the county's adopted procedure for reporting sexual harassment complaints;
2. ~~((;))~~ Reporting violations of the fair employment practices ordinance, which is K.C.C. chapter 12.18,

to the executive or (~~his or her~~) the executive's designee;

3. ((~~¶~~))Reporting police misconduct to the department of public safety's internal investigation unit or to the office of law enforcement oversight;

4. ((~~¶~~))Reporting violations of the Code of Judicial Conduct to the Washington ((~~S~~))state Commission on Judicial Conduct;

5. ((~~¶~~))Reporting improper governmental action occurring within the district court to the presiding judge of the district court;

6. ((~~¶~~))Reporting improper governmental action occurring within the legislative branch to the chair of the council or to the prosecutor;

7. ((~~¶~~))Reporting improper governmental action occurring within the executive branch to the executive or to the department director of the executive agency in which the alleged improper governmental action occurred or to the ombudsman;

8. ((~~¶~~))Reporting improper governmental action occurring within the department of judicial administration to the director/clerk of the superior court or to the ombudsman;

9. ((~~¶~~))Reporting improper governmental action occurring within the department of assessments to the assessor or to the ombudsman;

10. Reporting improper governmental action occurring within the department of elections to the director of elections or to the ombudsman;

11. ((~~¶~~))Reporting improper governmental action occurring within the superior court to the presiding judge of the superior court;

12. ((~~¶~~))Reporting violations of criminal laws to the sheriff or the county prosecuting attorney;

13. Reporting improper governmental action of the county prosecuting attorney to the state auditor or the attorney general;

14. ((~~¶~~))Reporting improper governmental action occurring within the office of economic and

financial analysis to any member of the forecast council or to the ombudsman; ~~((and))~~

15. ~~((F))~~ Reporting violations of ~~((the Ethics Code, and any actions for which no other appropriate recipient of a report is listed in this subsection))~~ K.C.C. chapter 3.04, the Employee Code of Ethics, to the ombudsman~~((:)); and~~

16. Reporting any improper governmental action for which no other appropriate recipient of a report is listed in subsection D.1. through 15. of this section to the ombudsman.

E. Any one or more of the following conduct by employees is protected under this chapter:

1. Reporting improper governmental action;

2. Cooperating in an investigation by ~~((an "investigating"))~~ any official~~(("))~~ related to ~~(("))~~improper governmental action~~(("))~~, including but not limited to local, state, federal, and internal investigations; and

3. Testifying in any official proceeding, hearing, or prosecution arising out of an ~~(("))~~improper governmental action.~~(("))~~

~~((D. No))~~ F. A county officer or employee shall not retaliate, attempt to retaliate or threaten to retaliate against any employee because that employee has in good faith ~~((utilized the provisions of this chapter))~~ engaged in conduct protected by K.C.C. 3.42.030.E., or because the county officer or employee believes the employee has engaged in or will engage in such conduct, whether or not such conduct actually occurred.

~~((E.))~~ G. Any county officer or employee who engages in ~~((prohibited))~~ retaliatory action prohibited by K.C.C. 3.42.030.F. is subject to disciplinary action ~~((up to and))~~ including, but not limited to, suspension without pay, demotion or termination. In addition, any elected official who engages in retaliatory action prohibited by K.C.C. 3.42.030.F. is subject to censure by motion of the council and also may be subject to recall from office due to misfeasance or malfeasance in office.

~~((F.))~~ H. Each appointing authority shall ensure that, ~~((U))~~upon entering county service or any time there are material changes to this chapter, every county officer and employee shall receive a written summary of this chapter, the procedures for reporting improper governmental actions to investigating officials, the

procedures for obtaining the protections extended, ~~((and))~~ the prohibition against retaliation in this section, and identification of offices and resources available to help the employee understand the provisions of this chapter including but not limited to the ombudsman's office. The ombudsman's office shall assist in the development of materials. Copies of these summaries shall be ~~((copies))~~ conspicuously posted where all employees will have reasonable access to them. Every county officer and employee shall also receive a written summary of this chapter at least once every two years; the summary may be distributed electronically.

SECTION 4. Ordinance 11687, Section 5, and K.C.C. 3.42.040 are each hereby amended to read as follows:

To the extent allowed by ~~((law))~~ the Public Disclosure Act, RCW 42.56.240 and other laws, the identity or identifying characteristics of an employee reporting information about an improper governmental action or cooperating in an investigation of improper governmental action under K.C.C. 3.42.030E.1. or K.C.C. 3.42.030E.2. shall be kept confidential ~~((unless))~~ from all persons except for investigating officials and their staff. However, the employee ~~((in writing))~~ may waive~~((s))~~ confidentiality in a written waiver or by making his or her identity known in connection with the protected conduct in the course of public testimony or by acknowledging his or her identity in a claim against the county for retaliation. If applicable, the complainant may state in writing whether the complainant wishes his or her name not to be disclosed pursuant to the provisions of RCW 42.56.240(2), which exempts information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety or property.

SECTION 5. Ordinance 11687, Section 6, and K.C.C. 3.42.050 are each hereby amended to read as follows:

A. ~~((Referral or retention. The ombudsman is the appropriate investigating official for all improper governmental actions not specifically referred to in Section 3.42.030C.D.1. The ombudsman is also an appropriate investigating official for alleged improper governmental action occurring within an executive~~

~~branch agency, including the department of assessments and the department of judicial administration. If, in accordance with the guidelines of Section 3.42.030C.1, the ombudsman is not the appropriate investigating official, the ombudsman shall, immediately upon receipt, refer reports alleging improper governmental action to the appropriate investigating official listed in Section 3.42.020))~~ If the official receiving a complaint under this section is not the appropriate investigating official identified in K.C.C. 3.42.030.D.1, he or she shall immediately forward the written report to the appropriate investigating official and notify the reporting employee of the referral.

B. ~~If ((the)) a report of improper governmental action meets the definition of a complaint under K.C.C. 3.04.055 ((the Employee Code of Ethics))), the ombudsman, upon receipt of the report, shall investigate that allegation according to the ((ordinances and rules applicable to the ethics code)) procedures in K.C.C. chapter 3.04, the Employee Code of Ethics.~~

C. ~~If the ombudsman is an appropriate investigating official and the report does not meet the definition of a complaint under K.C.C. chapter 3.04, the ((ethics code)) Employee Code of Ethics, the ombudsman upon receipt of the report may refer the report to the department director of the agency in which the alleged improper governmental action occurred or to the chief elected official of the branch of government implicated in the allegation((, who shall ensure that the appropriate officer or agency responds to the complainant in writing within thirty (30) days of the receipt of the report, with a copy of the response to the ombudsman.)); ((I)if the ombudsman does not refer to another official, or if the other official's response is not timely or satisfactory to the ombudsman, the ombudsman ((may)) shall conduct an investigation((-)) in accordance with the procedures outlined in section 7 of this ordinance.~~

D. ~~If a report of improper governmental action is filed with ((the executive or a department director, including the clerk of the superior court or the assessor)) an appropriate investigating official who is not the ombudsman, and a report is concurrently filed with the ombudsman, the ombudsman ((should)) may defer action until the investigation is completed by the affected department, office or agency. When the ombudsman~~

chooses to conduct a concurrent investigation the ombudsman shall notify the executive and the chair of the council. ((The procedures in Sections 3.42.050B through E shall apply only to the ombudsman when he or she is investigating a report of an improper governmental action that is not investigated according to the rules applicable to the ethics code in accordance with Section 3.42.050A. The procedures in Section 3.42.050B through E do not apply to any other government official.

~~B. Ombudsman's investigation. If at any stage in an investigation of an alleged "improper governmental action," the ombudsman may issue subpoenas, administer oaths, examine witnesses, compel the production of documents or other evidence, refer the matter to the State Auditor, law enforcement authorities or other governmental agency, and/or issue reports, each as deemed appropriate. Within thirty (30) days after receiving information about an "improper governmental action" from a county employee, the ombudsman shall conduct a preliminary investigation, and provide the complainant with a written report of the general status of the investigation which may include matters for further research or inquiry.~~

~~C. Completion and reports. Upon completion of the investigation, the ombudsman shall notify the complainant in writing of any determinations made. If the ombudsman determines that an improper governmental action has occurred, the ombudsman shall report the nature and details of the activity to the complainant; to the head of the department with responsibility for the action and if a department head is implicated, to the executive and county council; and to such other governmental officials or agencies as the ombudsman deems appropriate. If satisfactory action to follow up the report is not being taken within a reasonable time, the ombudsman shall report his or her determination to the executive and advise the county council.~~

~~D. Closure. The ombudsman may close an investigation at any time he or she determines that no further action is warranted and shall so notify the complainant.~~

~~E. Decisions of the ombudsman under this section may not be appealed to the Board of Ethics.))~~

NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 3.42 a new section to read as

follows:

A. The procedures in this section shall apply to any investigating official except the ombudsman or the judicial branch. Investigations by the ombudsman shall be conducted in accordance with section 7 of this ordinance.

B. When an appropriate investigating official who is not the ombudsman receives a report of improper governmental action, he or she shall respond to the reporting employee in writing within thirty days of when the report was received with either a final report or a preliminary report, with a copy of the response to the ombudsman. If responding with a preliminary report, the official shall include a summary of the status of the investigation and information obtained thus far, and identifying matters for further research or inquiry. If the identity of the reporting employee is not known, the response shall be sent to the ombudsman.

C. The investigating official shall complete the investigation and issue a final report no later than one year from when the report of improper governmental action was received. If the final report concludes that there was improper governmental action, it shall include an action plan for addressing the improper governmental action and provide reasonable timelines for completing corrective actions.

D. The investigating official shall send a copy of the final report to the reporting employee and the ombudsman.

E. When conducting an investigation of improper governmental action occurring within the legislative branch, the prosecutor may at any stage, issue subpoenas, administer oaths, examine witnesses, and compel the production of documents or other evidence; refer the matter to the state auditor, law enforcement authorities or other governmental agency; and issue reports; or any combination thereof, each as deemed appropriate.

F. If the investigating official determines that that the employee reporting improper governmental action has been retaliated against or is at great risk of retaliation, the investigating official may seek temporary preventive action, including but not limited to the transfer of the reporting employee to another department at the request of the reporting employee or authorizing leave with pay for the reporting employee. If the

investigating official deems it necessary, the investigating official's recommendation may be made to the executive. Such a temporary preventative action may continue until the conclusion of any investigation and a permanent resolution of the matter.

G. To the extent allowed by law, investigating officials are encouraged to enter into cooperative agreements or arrangements for receiving and processing complaints with other agencies or entities that are investigating related complaints, so that duplication of functions shall be minimized and multiple redundant investigations avoided.

NEW SECTION. SECTION 7. There is hereby added to K.C.C. chapter 3.42 a new section to read as follows:

A. The procedures in this section apply to the ombudsman when the ombudsman is investigating a report of an improper governmental action that is not investigated according to the rules applicable to K.C.C. chapter 3.04, the Employee Code of Ethics.

B. In determining whether to conduct an investigation, the ombudsman may consider factors including, but not limited to, the nature and quality of the evidence and the existence of relevant laws and rules; whether the alleged improper governmental action was isolated or systematic; the history of previous assertions regarding the same subject or subject matter; whether other avenues are available for addressing the matter; whether the matter has already been investigated or is in litigation; the seriousness or significance of the asserted improper governmental action; and the cost and benefit of the investigation. The ombudsman has the sole discretion to determine the priority and weight given to these or any other relevant factors and to decide whether a matter is to be investigated.

C. If the ombudsman elects not to investigate the matter, the ombudsman shall, before making a final decision to close the investigation, send a notice to the person who made the report explaining the factors considered and the analysis applied, summarizing allegation deficiencies if any, and providing a reasonable opportunity to reply. The notification may be by electronic means.

D. If the ombudsman determines that that the employee reporting improper governmental action has been retaliated against or is at great risk of retaliation, the ombudsman may recommend to the head of the department that temporary preventive action be taken, including but not limited to transferring the reporting employee at the reporting employee's request to another department or authorizing leave with pay for the reporting employee. If the ombudsman deems it necessary, the ombudsman's recommendation may be made to the executive instead. Such temporary preventative action may continue until the conclusion of any investigation and a permanent resolution of the matter.

E. If the ombudsman elects to conduct an investigation and it appears to the ombudsman that the investigation will take longer than thirty days to complete, the ombudsman shall, within thirty days after receiving the report of alleged improper governmental action, provide the complainant with a preliminary written report that summarizes the procedural status of the investigation, the information obtained thus far, any preliminary findings as the ombudsman deems appropriate, and identifying matters for further research or inquiry. The ombudsman shall also notify the subject or subjects of the investigation and the agency head of the need for continued investigation.

F. When conducting an investigation, the ombudsman may at any stage issue subpoenas, administer oaths, examine witnesses, and compel the production of documents or other evidence; refer the matter to the state auditor, law enforcement authorities or other governmental agency; and issue reports; or any combination thereof, each as deemed appropriate.

G. Upon completion of an investigation, the ombudsman shall make a final written report that summarizes the results of the investigation, including findings with regard to each assertion of improper governmental action and recommended actions. The ombudsman shall complete the investigation and issue a final report within one year of receipt of the report of improper governmental action.

1. If the ombudsman determines that no improper governmental action has occurred, the ombudsman shall send the report to the complainant, the subject or subjects of the investigation and the agency head.

2. If the ombudsman determines that an improper governmental action has occurred:

a. The ombudsman shall give the subject of the report an opportunity to respond before issuing a final report.

b. The ombudsman shall send the report to: the complainant; the head of the department with responsibility for the action or if a department head is implicated, to the executive and county council; and such other governmental officials or agencies as the ombudsman deems appropriate. The ombudsman shall also send a copy of the written report to the executive or the county council if requested to do so by the complainant, if the ombudsman has not already done so.

c. The department with responsibility for the improper governmental action shall report back to the ombudsman and complainant with an action plan for addressing the improper governmental action and provide reasonable timelines for completing its corrective actions. The department's response should be made within fourteen days of receipt of the ombudsman's report. If the ombudsman deems that satisfactory action within a reasonable timeframe has not been achieved, the ombudsman shall report his or her determination to the executive and the county council.

d. The ombudsman may impose a fine of not greater than ten thousand dollars on the department within which the improper governmental action occurred. A fine should be imposed for improper governmental actions that are exceptionally egregious or for which corrective actions have been highly unsatisfactory. The department shall be given a reasonable opportunity to be heard before imposition of any fine. Proceeds collected from any fine shall be deposited into an account to be used for the purpose of educating employees about this chapter or may be applied by the department toward the cost of administrative leave paid to the employee reporting the improper governmental action where the reason for the administrative leave is related to the employee's reporting.

H. At any stage in the investigation, the ombudsman may, with the agreement of the parties, recommend, arrange for, convene, or conduct voluntary mediation between the employee and either the subject

of the investigation or agency head, or both, with cost sharing, if any, to be determined by the parties.

1. If the parties reach agreement as a result of mediation, the ombudsman may close the investigation.

2. The response times from subsection E. of this section shall be tolled for the duration of the mediation process.

3. Mediation and other informal resolution processes are voluntary. No employer or employee shall be pressured into participating in such processes, and no negative inferences shall be drawn if any party declines to participate in such processes. If a party agrees to participate in voluntary mediation or other informal resolution process, that party is under no obligation to accept the resolution recommended by the mediator, the ombudsman, or any other person participating in this process, and no negative inferences shall be drawn as a result of a refusal to accept such recommendations.

I. The ombudsman may close an investigation at any time the ombudsman determines that no further action is warranted and shall so notify the complainant, the subject or subjects of the investigation and the agency head. The ombudsman shall also issue any reports as required by this section.

J. Decisions of the ombudsman under this section may not be appealed to the board of ethics.

SECTION 8. Ordinance 11687, Section 7, and K.C.C. 3.42.060 are each hereby amended to read as follows:

A. ~~((Complaint.))~~ In order to seek relief, an employee who believes he or she has been retaliated against in violation of K.C.C. 3.42.030~~((D)).~~E. must file a signed written complaint within ~~((30 days))~~ six months of when the alleged retaliation occurred ~~((occurrence alleged to constitute retaliation or the employee reasonably should have known of the occurrence.~~) The complaint shall be filed with the ombudsman and must specify the alleged retaliatory action and the relief requested.

B. ~~((Investigation and Response.))~~ The ombudsman shall ~~((immediately forward the complaint to the head of the executive office or department in which the retaliation is alleged to have occurred, or to the prosecuting attorney, if his office is implicated in the complaint, or to the chair of the county council or to the~~

~~presiding judge of the superior court or district courts if their respective branches are implicated in this complaint. The head of the department, office, or branch to which the complaint was referred shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint with the ombudsman. If the head of an executive office or department is alleged to have retaliated in violation of K.C.C. 3.42.030D, the executive shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint with the ombudsman.~~

~~C. Hearing.)) conduct an investigation of the alleged retaliatory action except that complaints involving the judicial branch shall be forwarded to the appropriate investigating official for that branch for investigation and complaints involving councilmembers shall be forwarded to and investigated by the prosecutor.~~

C. When conducting an investigation, the ombudsman or prosecutor may at any stage, issue subpoenas, administer oaths, examine witnesses, and compel the production of documents or other evidence; refer the matter to the state auditor, law enforcement authorities or other governmental agency; and issue reports; or any combination thereof, each as deemed appropriate.

D. If it appears to the ombudsman or prosecutor after conducting an investigation that no retaliation has occurred, the ombudsman or prosecutor shall so notify the complainant summarizing his or her findings and providing a reasonable opportunity for the complainant to reply before making a final determination.

E. The ombudsman or prosecutor shall, within forty-five days after receiving the report of alleged retaliatory action, provide the complainant with a written report that summarizes the results of the investigation, including findings with regard to each assertion of retaliation and recommended actions. The ombudsman or prosecutor shall also send a copy of the written report to any governmental officials or agencies as he or she deems appropriate. If the ombudsman or prosecutor finds that additional time is needed to complete the report, he or she shall notify the complainant in writing before the expiration of the forty-five day response period, and shall specify the reasons that additional time is required. The effect of the notice is to extend for forty-five days the time period in which a response must be made. Only two such extensions may be made.

F. The following apply to investigations by the ombudsman under this section.

1. If it appears to the ombudsman at any stage in the process that the complainant is at great risk of retaliation, the ombudsman may recommend to the head of the department that temporary preventive action be taken, including but not limited to transferring the individual to another department or authorizing leave with pay. If the ombudsman deems it necessary, the ombudsman's recommendation may be made to the executive instead. Such temporary preventative action may continue until the conclusion of any investigation and a permanent resolution of the matter;

2. If the ombudsman determines that no retaliatory action has occurred, the ombudsman shall send the report to the complainant, the subject or subjects of the investigation and the agency head; and

3. If the ombudsman determines that retaliatory action has occurred:

a. The ombudsman shall give the subject of the investigation an opportunity to respond before issuing a final report;

b. The ombudsman shall send the report to: the complainant; the head of the department with responsibility for the action or if a department head is implicated, to the executive and county council, and to such other governmental officials or agencies as the ombudsman deems appropriate. The ombudsman shall also send a copy of the written report to the executive or the county council if requested to do so by the complainant, if the ombudsman has not already done so;

c. The department with responsibility for the retaliatory action shall report back to the ombudsman and complainant with an action plan for addressing the retaliatory action and provide reasonable timelines for when the corrective actions will occur. The department's response should be made within fourteen days of receipt of the ombudsman's report;

d. If the ombudsman deems that the responsible department has not taken satisfactory action within a reasonable timeframe, the ombudsman shall report his or her determination to the executive and the county council; and

e. The ombudsman may impose a fine on the department within which the retaliatory action occurred; the ombudsman shall not impose a fine greater than ten thousand dollars. A fine should be imposed for retaliatory actions where the department's response to the retaliatory actions was grossly inadequate. The department shall be given a reasonable opportunity to be heard before imposition of any fine. Proceeds collected from any fine shall be deposited into an account to be used for the purpose of educating employees about this chapter or applied by the department toward administrative leave paid to the complainant where the reason for the administrative leave is related to the retaliation claim.

F. At any stage in the investigation, the ombudsman or prosecutor may, with the agreement of the parties, recommend, arrange for, convene or conduct voluntary mediation between the employee and the subject of the investigation and/or agency head.

1. If the employer and employee reach agreement as a result of a mediation, the investigation shall be closed and the employee shall not be entitled to seek a hearing under subsection I. of this section.

2. If the employer and employee fail to reach agreement, the response times from subsection C. of this section shall be tolled for the duration of the mediation process.

3. Mediation and other informal resolution processes are voluntary. No employer or employee shall be pressured into participating in such processes, and no negative inferences shall be drawn if any party declines to participate in such processes. If a party agrees to participate in voluntary mediation or other informal resolution process, that party is under no obligation to accept the resolution recommended by the mediator, the ombudsman, or any other person participating in this process, and no negative inferences shall be drawn as a result of a refusal to accept such recommendations.

G. The ombudsman or prosecutor may close an investigation at any time he or she determines that no further action is warranted and shall so notify the complainant, the subject or subjects of the investigation and the agency head. The ombudsman or prosecutor shall also issue any reports as required by this section.

H. Decisions of the ombudsman under this section may not be appealed to the board of ethics.

I. If an employee who has filed a complaint of retaliation under this section is dissatisfied with the progress of the investigation or the response and desires a hearing ~~((pursuant to))~~ under RCW 42.41.040, ~~((or the employee has not received a response within forty-five (45) days of having filed the complaint with the ombudsman,))~~ the employee shall deliver a request for hearing to the head of the branch within which retaliation is alleged to have occurred within ~~((fifteen (15) days))~~ the later of: one year of ((the receipt of the response from the county or, if no response is received within the forty-five (45) day response period, within fifteen (15) days of the expiration of the response time period)) when the alleged retaliation occurred or the employee reasonably should have known of the occurrence; or ninety days from receipt of the department's response under K.C.C. 3.42.060E.2.b. The employee shall notify the ombudsman of the request. Within five ~~((~~ five ~~))~~ working days of receipt of the request for hearing, the county shall apply to the state office of administrative hearings for a hearing to be conducted as provided in RCW 42.41.040 ~~(5)~~ through (9).

~~((D. Extension. If the chief elected official in the branch of government where the retaliation is alleged to have occurred finds that additional time is needed to make a proper response to the complaint of retaliation, he or she shall notify the complainant in writing prior to the expiration of the forty-five (45) day response period. The effect of such notice is to extend for an additional forty-five (45) days for the time period in which a response must be made. Only one forty-five (45) day extension may be obtained, provided, however,))~~

J. ~~((a))~~ An employee shall not have the right to seek a hearing under this section ~~((pursuant to RCW 42.41.040))~~ if the complaint of retaliation is pursued under and falls within the subject matter jurisdiction of a collective bargaining agreement grievance procedure ending in binding arbitration or the career service grievance procedure ending in a hearing before the personnel board.

K. To the extent allowed by law, investigating officials are encouraged to enter into cooperative agreements or arrangements for receiving and processing complaints with other agencies or entities that are investigating related complaints, so that duplication of functions shall be minimized and multiple redundant investigations avoided.

NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 3.42 a new section to read as follows:

By March 31 of each year, the ombudsman shall submit an annual report on the status of the whistleblower program from the previous year, including summarizing improper governmental action and retaliation claims processed the previous year, case outcomes from all claims investigated by King County officials, resource issues, any concerns raised by whistleblowers about the process and any recommendations for program improvements. The ombudsman is encouraged to seek feedback from participants in the whistleblower process when preparing the report. Three copies of the report shall be filed with the clerk of the council for distribution to the chair of the council and the executive.