



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 30, 2009

Ordinance 16580

Proposed No. 2009-0346.3

Sponsors Constantine, Phillips, Dunn, von Reichbauer, Gossett, Ferguson, Patterson and Lambert

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

9
10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

18 and protection from retaliatory action for reporting and cooperating in the investigation
19 and/or prosecution of improper governmental action in good faith in accordance with this
20 ~~((sub))~~chapter.

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

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

26 A. "Appropriate ~~((I))~~investigating official" means~~((, each in connection with a~~
27 ~~report of improper governmental action within his, her, or its respective jurisdiction; the~~
28 ~~ombudsman; a person to whom sexual harassment was properly reported according to~~
29 ~~county policy; the agency designated by the executive to receive unfair employment~~
30 ~~complaints filed under K.C.C. 12.18; the Washington State Commission on Judicial~~
31 ~~Conduct; the department of public safety's internal investigations unit; the county~~
32 ~~prosecuting attorneys of the State of Washington; the presiding judge of the district and~~
33 ~~superior courts; the executive; the department director of any executive agency; the~~
34 ~~assessor; the director of the department of judicial administration/clerk of the superior~~
35 ~~court; the chair of the council;)) an investigating official acting within his or her~~

36 respective jurisdiction as identified in K.C.C. 3.42.030.D. or any ~~((authorized))~~ assistant
37 or representative ~~((of any of them in cases within their respective appropriate~~
38 jurisdictions)) authorized to receive documents on his or her behalf, except that for the
39 department of public safety, the only appropriate investigating official shall be the

40 internal investigations unit or any assistant or representative authorized to receive
41 documents on its behalf.

42 B. "Employee" or "county employee" means any individual who is appointed as
43 an employee by the appointing authority of a county agency, office, department, council,
44 board, commission or other separate unit or division of county government, however
45 designated. The term "employee" or "county employee" also includes county elected
46 officials and members of county boards, commissions, committees, or other multi-
47 member bodies.

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

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

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

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

64 ~~((1-))~~ a. ~~((V))~~ violates any state or federal law or rule or county ordinance or
65 rule~~((,-Ø))~~;

66 ~~((2-))~~ b. ~~((C))~~ constitutes an abuse of authority~~((,-Ø))~~;

67 c. is gross mismanagement;

68 ~~((3-))~~ d. ~~((C))~~ creates a substantial ~~((Ø))~~ and specific danger to the public health
69 or safety~~((,-))~~; ~~((Ø))~~

70 ~~((4-))~~ e. ~~((R))~~ results in a gross waste of public funds~~((,-))~~; or

71 f. prevents the dissemination of scientific opinion or alters technical findings
72 without scientifically valid justification, unless disclosure is legally prohibited. This
73 subsection G.1.f. is not meant to preclude the discretion of agency management to adopt
74 a particular scientific opinion or technical finding from among differing opinions or
75 technical findings to the exclusion of other scientific opinions or technical findings.

76 2. "Improper governmental action" ~~((excludes))~~ does not include ~~((personnel~~
77 ~~actions, including, but not limited to: employee grievances, complaints, appointments,~~
78 ~~promotions, transfers, assignments, reassignments, reinstatements, restorations,~~
79 ~~performance evaluations, reductions in pay, dismissals, suspensions, demotions,~~
80 ~~reprimands,))~~ violations of anti-discrimination laws, violations of collective bargaining or
81 civil service laws, or alleged violations of agreements with labor organizations under
82 collective bargaining. A properly authorized county program or activity does not become

83 an "improper governmental action" because an employee or investigating official dissents
84 from the county policy or considers the expenditures unwise.

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

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

92 1. ~~((d))~~Denial of adequate staff to perform duties;

93 2. ~~((f))~~Frequent staff changes;

94 3. ~~((f))~~Frequent and undesirable office changes;

95 4. ~~((f))~~Refusal to assign meaningful work;

96 5. Unwarranted and unsubstantiated letters of reprimand or unsatisfactory
97 performance evaluations;

98 6. ~~((d))~~Demotion;

99 7. ~~((f))~~Reduction in pay;

100 8. ~~((d))~~Denial of promotion;

101 9. Denial of training or benefits;

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

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

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

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

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

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

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

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

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

124 B. In reporting improper governmental action, the employee is encouraged, but
125 not required, to make a written report first to any investigating official as defined by

126 K.C.C. 3.42.020.G; the employee is encouraged to consult with the office of the
127 ombudsman in order to determine to whom a written report should be made.

128 C.1. This section does not authorize a county employee to report information that
129 is subject to an applicable privilege against disclosure at law (~~((e.g.)),~~ such as RCW
130 5.60.060 privileged communications(~~(t)~~), unless waived, or to make disclosure where
131 prohibited at law. (~~((The only purpose of this chapter is to protect and encourage~~
132 ~~employees who know or in good faith believe improper governmental action has occurred~~
133 ~~to report those actions in good faith in accordance with this ordinance. Except~~
134 ~~in cases of emergency where the employee believes in good faith that substantial damage~~
135 ~~to persons or property will result unless a report is made immediately to a person or entity~~
136 ~~who is not the appropriate investigating official listed in Section, the employee shall,~~
137 ~~before making a report to a person who is not the appropriate investigating official, first~~
138 ~~make a written report of the improper governmental action to the appropriate~~
139 ~~investigating official. No emergency under this subsection exists where prompt attention~~
140 ~~and reporting under this chapter by the employee could have avoided the perceived need~~
141 ~~to report immediately to a person not the appropriate investigating official.))~~)

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

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

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

155 1. Reporting sexual harassment to the employee's supervisor, department
156 head~~((s))~~ or other government official as set out in the county's adopted procedure for
157 reporting sexual harassment complaints;

158 2. ~~((#))~~Reporting violations of the fair employment practices ordinance, which is
159 K.C.C. chapter 12.18, to the executive or ~~((his or her))~~ the executive's designee;

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

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

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

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

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

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

173 9. ((#))Reporting improper governmental action occurring within the department
174 of assessments to the assessor or to the ombudsman;

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

177 11. ((#))Reporting improper governmental action occurring within the superior
178 court to the presiding judge of the superior court;

179 12. ((#))Reporting violations of criminal laws to the sheriff or the county
180 prosecuting attorney;

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

183 14. ((#))Reporting improper governmental action occurring within the office of
184 economic and financial analysis to any member of the forecast council or to the
185 ombudsman; ((and))

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

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

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

- 194 1. Reporting improper governmental action;
195 2. Cooperating in an investigation by ~~((an "investigating))~~ any official~~(("))~~
196 related to ~~(("))~~improper governmental action~~(("))~~, including but not limited to local, state,
197 federal, and internal investigations; and
198 3. Testifying in any official proceeding, hearing, or prosecution arising out of an
199 ~~(("))~~improper governmental action.~~(("))~~

200 ~~((D. No))~~ F. A county officer or employee shall not retaliate, attempt to retaliate
201 or threaten to retaliate against any employee because that employee has in good faith
202 ~~((utilized the provisions of this chapter))~~ engaged in conduct protected by K.C.C.
203 3.42.030.E., or because the county officer or employee believes the employee has
204 engaged in or will engage in such conduct, whether or not such conduct actually
205 occurred.

206 ~~((E.))~~ G. Any county officer or employee who engages in ~~((prohibited))~~
207 retaliatory action prohibited by K.C.C. 3.42.030.F. is subject to disciplinary action ~~((up to~~
208 and)) including, but not limited to, suspension without pay, demotion or termination. In
209 addition, any elected official who engages in retaliatory action prohibited by K.C.C.
210 3.42.030.F. is subject to censure by motion of the council and also may be subject to
211 recall from office due to misfeasance or malfeasance in office.

212 ~~((F.))~~ H. Each appointing authority shall ensure that, ~~((U))~~upon entering county
213 service or any time there are material changes to this chapter, every county officer and
214 employee shall receive a written summary of this chapter, the procedures for reporting
215 improper governmental actions to investigating officials, the procedures for obtaining the
216 protections extended, ~~((and))~~ the prohibition against retaliation in this section, and

217 identification of offices and resources available to help the employee understand the
218 provisions of this chapter including but not limited to the ombudsman's office. The
219 ombudsman's office shall assist in the development of materials. Copies of these
220 summaries shall be ((copies)) conspicuously posted where all employees will have
221 reasonable access to them. Every county officer and employee shall also receive a
222 written summary of this chapter at least once every two years; the summary may be
223 distributed electronically.

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

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

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

242 A. ~~((Referral or retention. The ombudsman is the appropriate investigating~~
243 ~~official for all improper governmental actions not specifically referred to in Section~~
244 ~~3.42.030C.D.1. The ombudsman is also an appropriate investigating official for alleged~~
245 ~~improper governmental action occurring within an executive branch agency, including~~
246 ~~the department of assessments and the department of judicial administration. If, in~~
247 ~~accordance with the guidelines of Section 3.42.030C.1, the ombudsman is not the~~
248 ~~appropriate investigating official, the ombudsman shall, immediately upon receipt, refer~~
249 ~~reports alleging improper governmental action to the appropriate investigating official~~
250 ~~listed in Section 3.42.020)) If the official receiving a complaint under this section is not~~
251 ~~the appropriate investigating official identified in K.C.C. 3.42.030.D.1, he or she shall~~
252 ~~immediately forward the written report to the appropriate investigating official and notify~~
253 ~~the reporting employee of the referral.~~

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

259 C. If the ombudsman is an appropriate investigating official and the report does
260 not meet the definition of a complaint under K.C.C. chapter 3.04, the ~~((ethics code))~~
261 Employee Code of Ethics, the ombudsman upon receipt of the report may refer the report
262 to the department director of the agency in which the alleged improper governmental

263 action occurred or to the chief elected official of the branch of government implicated in
264 the allegation(~~(, who shall ensure that the appropriate officer or agency responds to the~~
265 ~~complainant in writing within thirty (30) days of the receipt of the report, with a copy of~~
266 ~~the response to the ombudsman.)); ((F))if the ombudsman does not refer to another
267 official, or if the other official's response is not timely or satisfactory to the ombudsman,
268 the ombudsman ((may)) shall conduct an investigation((-) in accordance with the
269 procedures outlined in section 7 of this ordinance.~~

270 D. If a report of improper governmental action is filed with (~~the executive or a~~
271 ~~department director, including the clerk of the superior court or the assessor)) an
272 appropriate investigating official who is not the ombudsman, and a report is concurrently
273 filed with the ombudsman, the ombudsman (~~should~~) may defer action until the
274 investigation is completed by the affected department, office or agency. When the
275 ombudsman chooses to conduct a concurrent investigation the ombudsman shall notify
276 the executive and the chair of the council. (~~The procedures in Sections 3.42.050B~~
277 ~~through E shall apply only to the ombudsman when he or she is investigating a report of~~
278 ~~an improper governmental action that is not investigated according to the rules applicable~~
279 ~~to the ethics code in accordance with Section 3.42.050A. The procedures in Section~~
280 ~~3.42.050B through E do not apply to any other government official.~~~~

281 ~~B. Ombudsman's investigation. If at any stage in an investigation of an alleged~~
282 ~~"improper governmental action," the ombudsman may issue subpoenas, administer oaths,~~
283 ~~examine witnesses, compel the production of documents or other evidence, refer the~~
284 ~~matter to the State Auditor, law enforcement authorities or other governmental agency,~~
285 ~~and/or issue reports, each as deemed appropriate. Within thirty (30) days after receiving~~

286 information about an "improper governmental action" from a county employee, the
287 ombudsman shall conduct a preliminary investigation, and provide the complainant with
288 a written report of the general status of the investigation which may include matters for
289 further research or inquiry.

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

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

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

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

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

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

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

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

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

329 F. If the investigating official determines that that the employee reporting
330 improper governmental action has been retaliated against or is at great risk of retaliation,

331 the investigating official may seek temporary preventive action, including but not limited
332 to the transfer of the reporting employee to another department at the request of the
333 reporting employee or authorizing leave with pay for the reporting employee. If the
334 investigating official deems it necessary, the investigating official's recommendation may
335 be made to the executive. Such a temporary preventative action may continue until the
336 conclusion of any investigation and a permanent resolution of the matter.

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

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

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

347 B. In determining whether to conduct an investigation, the ombudsman may
348 consider factors including, but not limited to, the nature and quality of the evidence and
349 the existence of relevant laws and rules; whether the alleged improper governmental
350 action was isolated or systematic; the history of previous assertions regarding the same
351 subject or subject matter; whether other avenues are available for addressing the matter;
352 whether the matter has already been investigated or is in litigation; the seriousness or
353 significance of the asserted improper governmental action; and the cost and benefit of the

354 investigation. The ombudsman has the sole discretion to determine the priority and
355 weight given to these or any other relevant factors and to decide whether a matter is to be
356 investigated.

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

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

371 E. If the ombudsman elects to conduct an investigation and it appears to the
372 ombudsman that the investigation will take longer than thirty days to complete, the
373 ombudsman shall, within thirty days after receiving the report of alleged improper
374 governmental action, provide the complainant with a preliminary written report that
375 summarizes the procedural status of the investigation, the information obtained thus far,
376 any preliminary findings as the ombudsman deems appropriate, and identifying matters

377 for further research or inquiry. The ombudsman shall also notify the subject or subjects
378 of the investigation and the agency head of the need for continued investigation.

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

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

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

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

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

396 b. The ombudsman shall send the report to: the complainant; the head of the
397 department with responsibility for the action or if a department head is implicated, to the
398 executive and county council; and such other governmental officials or agencies as the
399 ombudsman deems appropriate. The ombudsman shall also send a copy of the written

400 report to the executive or the county council if requested to do so by the complainant, if
401 the ombudsman has not already done so.

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

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

418 H. At any stage in the investigation, the ombudsman may, with the agreement of
419 the parties, recommend, arrange for, convene, or conduct voluntary mediation between
420 the employee and either the subject of the investigation or agency head, or both, with cost
421 sharing, if any, to be determined by the parties.

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

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

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

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

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

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

442 A. ~~((Complaint.))~~ In order to seek relief, an employee who believes he or she has
443 been retaliated against in violation of K.C.C. 3.42.030~~((D))~~.E. must file a signed written
444 complaint within ~~((30 days))~~ six months of when the alleged retaliation occurred

445 ~~((occurrence alleged to constitute retaliation or the employee reasonably should have~~
446 ~~known of the occurrence.~~ The complaint shall be filed with the ombudsman and must
447 specify the alleged retaliatory action and the relief requested.

448 B. ~~((Investigation and Response.))~~ The ombudsman shall ~~((immediately forward~~
449 ~~the complaint to the head of the executive office or department in which the retaliation is~~
450 ~~alleged to have occurred, or to the prosecuting attorney, if his office is implicated in the~~
451 ~~complaint, or to the chair of the county council or to the presiding judge of the superior~~
452 ~~court or district courts if their respective branches are implicated in this complaint. The~~
453 ~~head of the department, office, or branch to which the complaint was referred shall ensure~~
454 ~~that the complainant is sent a response within thirty (30) days after the filing of the~~
455 ~~complaint with the ombudsman. If the head of an executive office or department is~~
456 ~~alleged to have retaliated in violation of K.C.C. 3.42.030D, the executive shall ensure~~
457 ~~that the complainant is sent a response within thirty (30) days after the filing of the~~
458 ~~complaint with the ombudsman.~~

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

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

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

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

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

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

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

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

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

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

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

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

510 e. The ombudsman may impose a fine on the department within which the
511 retaliatory action occurred; the ombudsman shall not impose a fine greater than ten
512 thousand dollars. A fine should be imposed for retaliatory actions where the department's

513 response to the retaliatory actions was grossly inadequate. The department shall be given
514 a reasonable opportunity to be heard before imposition of any fine. Proceeds collected
515 from any fine shall be deposited into an account to be used for the purpose of educating
516 employees about this chapter or applied by the department toward administrative leave
517 paid to the complainant where the reason for the administrative leave is related to the
518 retaliation claim.

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

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

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

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

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

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

542 I. If an employee who has filed a complaint of retaliation under this section is
543 dissatisfied with the progress of the investigation or the response and desires a hearing
544 ((pursuant to)) under RCW 42.41.040, ((or the employee has not received a response within
545 forty five (45) days of having filed the complaint with the ombudsman,)) the employee
546 shall deliver a request for hearing to the head of the branch within which retaliation is
547 alleged to have occurred within ((fifteen (15) days)) the later of: one year of ((the receipt
548 of the response from the county or, if no response is received within the forty five (45) day
549 response period, within fifteen (15) days of the expiration of the response time period))
550 when the alleged retaliation occurred or the employee reasonably should have known of the
551 occurrence; or ninety days from receipt of the department's response under K.C.C.
552 3.42.060E.2.b. The employee shall notify the ombudsman of the request. Within five
553 ((5)) working days of receipt of the request for hearing, the county shall apply to the state
554 office of administrative hearings for a hearing to be conducted as provided in RCW
555 42.41.040(5) through (9).

556 ~~(D. Extension. If the chief elected official in the branch of government where~~
557 ~~the retaliation is alleged to have occurred finds that additional time is needed to make a~~
558 ~~proper response to the complaint of retaliation, he or she shall notify the complainant in~~

559 ~~writing prior to the expiration of the forty five (45) day response period. The effect of~~
560 ~~such notice is to extend for an additional forty five (45) days for the time period in which~~
561 ~~a response must be made. Only one forty five (45) day extension may be obtained,~~
562 ~~provided, however,))~~

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

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

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

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

582 report shall be filed with the clerk of the council for distribution to the chair of the
583 council and the executive.
584

Ordinance 16580 was introduced on 5/26/2009 and passed as amended by the Metropolitan King County Council on 6/29/2009, by the following vote:

Yes: 8 - Mr. Constantine, Mr. Ferguson, Ms. Lambert, Mr. von Reichbauer,
Mr. Gossett, Mr. Phillips, Ms. Patterson and Mr. Dunn
No: 0
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



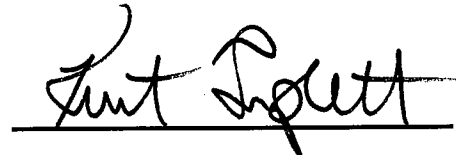
Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 10th day of July, 2009.



Kurt Triplett, County Executive

Attachments None

2009 JUL 10 PM 3:18
CLERK
KING COUNTY COUNCIL

RECEIVED