



SEATTLE CITY COUNCIL

Finance and Housing Committee

Agenda

Thursday, August 11, 2022

9:30 AM

Special Meeting

Council Chamber, City Hall
600 4th Avenue
Seattle, WA 98104

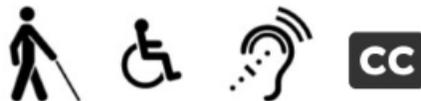
Teresa Mosqueda, Chair
Lisa Herbold, Vice-Chair
Alex Pedersen, Member
Sara Nelson, Member
Andrew J. Lewis, Member

Chair Info: 206-684-8808; Teresa.Mosqueda@seattle.gov

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Finance and Housing Committee
Agenda
August 11, 2022 - 9:30 AM
Special Meeting

Meeting Location:

Council Chamber, City Hall, 600 4th Avenue, Seattle, WA 98104

Committee Website:

<http://www.seattle.gov/council/committees/finance-and-housing>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

Members of the public may register for remote or in-person Public Comment to address the Council. Details on how to provide Public Comment are listed below:

Remote Public Comment - Register online to speak during the Public Comment period at the meeting at <http://www.seattle.gov/council/committees/public-comment>. Online registration to speak will begin two hours before the meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

In-Person Public Comment - Register to speak on the Public Comment sign-up sheet located inside Council Chambers at least 15 minutes prior to the meeting start time. Registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Mosqueda at Teresa.Mosqueda@seattle.gov

Please Note: Times listed are estimated

A. Call To Order**B. Approval of the Agenda****C. Public Comment****D. Items of Business**

1. [CB 120396](#) **AN ORDINANCE relating to the financing of the Aquarium Expansion project; creating a fund for depositing proceeds of tax-exempt limited tax general obligation bonds in 2023; authorizing the loan of funds in the amount of \$20,000,000 from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund for continuing the work on the “Ocean Pavilion” Aquarium expansion; amending Ordinance 126490, which adopted the 2022 Budget, including the 2022-2027 Capital Improvement Program (CIP); changing appropriations to Seattle Parks and Recreation; and revising project allocations and spending plans for certain projects in the 2022-2027 CIP; all by a 3/4 vote of the City Council.**

Attachments: [Att A - Aquarium Expansion - Project Page](#)

Supporting Documents: [Summary and Fiscal Note](#)
[Presentation](#)
[Central Staff Memo](#)

Briefing, Discussion, and Possible Vote

Presenters: Marshall Foster, Director, Kyle Butler, Waterfront and Civic Projects; Caleb Wagenaar, City Budget Office; Brad Rutherford and Rick Johnson, Seattle Aquarium; Eric McConaghy, Council Central Staff

2. [CB 120397](#) **AN ORDINANCE** relating to the financing of the Aquarium Expansion project; authorizing amendments to existing agreements with the Seattle Aquarium Society relating to such financing; and providing for other related matters.

Attachments: [Att A - Amendment to Ocean Pavilion Funding Agreement](#)
[Att B - Amendment to the Seattle Aquarium Operations and Management Agreement](#)

Supporting

Documents: [Summary and Fiscal Note](#)
[Central Staff Memo](#)

Briefing, Discussion, and Possible Vote

Presenters: Marshall Foster, Director, Kyle Butler, Waterfront and Civic Projects; Caleb Wagenaar, City Budget Office; Brad Rutherford and Rick Johnson, Seattle Aquarium; Eric McConaghy, Council Central Staff

3. [CB 120391](#) **AN ORDINANCE** establishing the City's commitments and plans for supporting cannabis workers and supporting communities disproportionately harmed by the federal War on Drugs.

Supporting

Documents: [Summary and Fiscal Note](#)
[Central Staff Memo](#)
[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Dan Eder and Brianna Thomas, Mayor's Office; Amy Gore, Council Central Staff

4. [CB 120392](#) **AN ORDINANCE** relating to licensing cannabis businesses in Seattle; establishing social equity applicant criteria for cannabis businesses; setting fees for cannabis businesses; expanding the purposes for which a cannabis license may be issued in the future; updating references in the code to “cannabis”; and amending Chapter 6.500 of the Seattle Municipal Code.

Supporting

Documents: [Summary and Fiscal Note](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Dan Eder and Brianna Thomas, Mayor's Office; Lise Kaye, Council Central Staff

5. [CB 120393](#) **AN ORDINANCE** relating to employment in Seattle; adding a new Chapter 8.38 to the Seattle Municipal Code; and amending Sections 3.02.125 and 14.20.025 of the Seattle Municipal Code.

Supporting

Documents: [Summary and Fiscal Note](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Dan Eder and Brianna Thomas, Mayor's Office; Jasmine Marwaha, Council Central Staff

E. Adjournment



Legislation Text

File #: CB 120396, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the financing of the Aquarium Expansion project; creating a fund for depositing proceeds of tax-exempt limited tax general obligation bonds in 2023; authorizing the loan of funds in the amount of \$20,000,000 from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund for continuing the work on the “Ocean Pavilion” Aquarium expansion; amending Ordinance 126490, which adopted the 2022 Budget, including the 2022-2027 Capital Improvement Program (CIP); changing appropriations to Seattle Parks and Recreation; and revising project allocations and spending plans for certain projects in the 2022-2027 CIP; all by a 3/4 vote of the City Council.

WHEREAS, The City of Seattle (“City”) owns the Seattle Aquarium facility (“Aquarium”), located on Piers 59 and 60 along the Seattle Central Waterfront (“Waterfront”) and recognizes the importance of the Aquarium for its national and regional standing for scientific research, marine conservation education, civic engagement, and value as a visitor destination. The Seattle Aquarium Society (SEAS) has managed aspects of the Aquarium operations since the 1980s under a series of agreements with the City’s Parks and Recreation Department (SPR), and SEAS assumed full management responsibility in 2010; and

WHEREAS, in 2009, the City Council passed Ordinance 123205, authorizing SPR to enter into a long-term agreement with SEAS to operate and manage the Aquarium. The Operations and Management Agreement (OMA) required SEAS to prepare a master plan to guide investments in the physical development of the Aquarium and further required that the SEAS Master Plan be approved by the City Council by resolution. Under the OMA, new capital improvements that SEAS develops will be owned by the City, with SEAS owning all animals and maintaining and operating the facility, including providing animal care and programming of the Aquarium. The OMA requires SEAS to coordinate its

planning and development of a future Master Plan with the Committee on Central Waterfront Partnerships, and the Waterfront Planning parameters developed by the City Council. Further, the OMA requires that the Master Plan be consistent with the City's adopted Alaskan Way and Seawall Replacement Program, especially as it concerns the seawall replacement component of the program and the redesign of adjacent public spaces at Waterfront Park and Piers 62/63; and

WHEREAS, in 2019, the City Council passed Ordinance 126015, authorizing a funding agreement and a construction agreement between the City of Seattle and SEAS to provide up to \$34 million for a new aquarium facility to be known as the Ocean Pavilion. Both the Funding Agreement and Construction Agreement have been executed by the City and SEAS; and

WHEREAS, construction of the Ocean Pavilion is expected to increase the Aquarium's attendance to 1.2 million visitors a year, and the City believes an expanded Aquarium facility will better serve the needs of City residents and visitors and will be a significant draw to anchor the north end of the future Waterfront Park; and

WHEREAS, due to the COVID-19 pandemic and subsequent regional and nationwide economic conditions, fundraising for the Ocean Pavilion by SEAS has lagged behind initial estimates, creating funding constraints for SEAS; and

WHEREAS, SEAS has requested an additional \$20 million of financial support in 2022 and 2023 to allow construction of the Ocean Pavilion to advance on pace with the City's Waterfront Program, while allowing SEAS additional time to advance their philanthropic campaign; and

WHEREAS, in negotiating an additional \$20 million of financial support, the Parties understand and agree that this funding shall be the City's final contribution to the Ocean Pavilion; and

WHEREAS, the design of the Ocean Pavilion and the City's Overlook Walk project are integrated in order to maximize benefits to the public and minimize construction impacts and duration for all parties; and

WHEREAS, as part of the public benefits established in the earlier Funding Agreement, the design of the

Ocean Pavilion provides for public access and open space amenities as part of the roof, elevator, and exterior stair connections to the Waterfront, which shall be open and maintained as available to the public by SEAS; and

WHEREAS, it will be efficient and in the public interest to have the Ocean Pavilion building infrastructure, exhibits and public access amenities all constructed as one project to be delivered by SEAS; and

WHEREAS, Seattle Municipal Code subsection 5.06.030.C requires City Council approval by ordinance of any interfund loan for a duration of 90 days or more; and

WHEREAS, in the normal course of business the City may temporarily lend cash between funds to maintain required balances; and

WHEREAS, the Director of Finance and the City Budget Director have determined that this interfund loan request is consistent with the Debt Management Policies adopted by Resolution 31553; and

WHEREAS, there is sufficient cash in the REET I Capital Projects Fund to support an interfund loan of up to \$20 million through December 31, 2023, and still meet regular budgeted operating needs; and

WHEREAS, funds loaned by the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund for bridge financing of the Aquarium Expansion project are anticipated to be repaid from proceeds from the sale of tax-exempt LTGO Bonds, which is expected to be finalized in 2023; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new 2023 Multipurpose LTGO Bond Fund is created in the City Treasury, into which the principal proceeds and any premium received from the sale and delivery of limited tax general obligation bonds in 2023 shall be deposited for the purpose of paying all or part of the costs of various elements of the City's capital improvement program and other City purposes approved by ordinance. The Fund shall receive earnings on its positive balances and pay interest on its negative balances. The Director of Finance is authorized to create other Accounts or Subaccounts as may be needed.

Section 2. The Director of Finance is authorized to make a non-revolving loan of up to \$20 million

principal and interest outstanding from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund, created by Section 1 of this ordinance, to provide bridge financing for expenditures related to the Aquarium Expansion project (MC-PR-21006) that will be financed by authorized, tax-exempt limited tax general obligation (LTGO) bond proceeds. The loan is to be repaid no later than December 31, 2023, with interest on the loan at the rate of return of the City’s Consolidated Cash Pool. The entire principal and interest amount of the loan drawn is intended to be repaid with proceeds from the future sale of tax-exempt LTGO bonds issued in 2023.

Section 3. The Director of Finance may effectuate the loan authorized in Section 2 of this ordinance by transferring cash from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund, or by carrying the 2023 Multipurpose LTGO Bond Fund in a negative cash position, in an amount not to exceed \$20 million until no later than December 31, 2023, or until repayment with proceeds from the sale of tax-exempt LTGO bonds in 2023, whichever is earlier. The Director of Finance is further authorized to establish, and modify if necessary from time to time, a repayment plan and schedule.

Section 4. Appropriations in the 2022 Adopted Budget and project allocations in the 2022-2027 Adopted Capital Improvement Program (CIP) for the following items are increased as follows:

Item	Dept	Fund	Budget Summary Level/BCL Code	CIP Project Name/ID	CIP Project Appropriation Change
4.1	Seattle Parks and Recreation	2023 Multipurpose LTGO Bond Fund (37100)	Building for the Future (37100-BC-PR-2000)	Aquarium Expansion (MC-PR-21006)	\$20,000,000
Net Change					\$20,000,000

These modifications shall operate for the purposes of decreasing or increasing the bases for the limit imposed by subsection 4(c) of Ordinance 126490.

The CIP Project page for this program is attached to this ordinance as Attachment A.

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

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments:
Attachment A - Aquarium Expansion - CIP Project Page

Aquarium Expansion

Project No:	MC-PR-21006	BSL Code:	BC-PR-20000
Project Type:	Discrete	BSL Name:	Building For The Future
Project Category:	Rehabilitation or Restoration	Location:	1483 Alaskan WAY
Current Project Stage:	Stage 5 - Construction	Council District:	Council District 7
Start/End Date:	2015 - 2023	Neighborhood District:	Downtown
Total Project Cost:	\$54,040	Urban Village:	Downtown

The Seattle Aquarium is owned by Seattle Parks and Recreation and operated by the non-profit Seattle Aquarium Society (SEAS). SEAS is planning a major expansion to the Aquarium's existing footprint to add new programming and visitor capacity. This project will provide a new Ocean Pavilion that will integrate with improvements made by The Office of the Waterfront along the Central Waterfront. SEAS also intends to make improvements to piers 59 and 60 to improve exhibit space and operations efficiency. Design and construction of the project is led by SEAS and coordinated with City investments by Seattle Parks and Recreation and Office of the Waterfront. This project is part of the overall waterfront improvement program and appropriates City matching funds for SEAS' project. The City has committed to provided up to \$34 million to SEAS for design and construction through a funding agreement authorized by City Council in 2019 (Ordinance 126015). In 2022, the City and SEAS amended the Funding Agreement to include an additional \$20 million in Ocean Pavilion funding. The amended Funding Agreement includes an amendment to the existing Operation and Management Agreement (OMA) with Seattle Parks and Recreation, which establishes an annual Enhanced Facility Fee starting in 2023 through the remainder of the OMA (expiring in 2030). The 2022 appropriation out of the 2023 Multipurpose LTGO Bond Fund is supported by an Interfund Loan, to be repaid after issuance of the 2023 LTGO bonds.

Resources	LTD Actuals	2021 Revised	2022	2023	2024	2025	2026	2027	Total
LTGO Bond Proceeds	-	9,000	31,975	4,000	-	-	-	-	44,975
Real Estate Excise Tax I	2,167	2,458	-	-	-	-	-	-	4,625
Real Estate Excise Tax II	4,440	-	-	-	-	-	-	-	4,440
Total:	6,607	11,458	31,975	4,000	-	-	-	-	54,040
Fund Appropriations / Allocations?	LTD Actuals	2021 Revised	2022	2023	2024	2025	2026	2027	Total
2021 Taxable LTGO Bond Fund	-	9,000	-	-	-	-	-	-	9,000
2022 Multipurpose LTGO Bond Fund	-	-	11,975	-	-	-	-	-	11,975
2023 LTGO Taxable Bond Fund	-	-	-	4,000	-	-	-	-	4,000
2023 Multipurpose LTGO Bond Fund	-	-	20,000	-	-	-	-	-	20,000
REET I Capital Fund	2,167	2,458	-	-	-	-	-	-	4,625
REET II Capital Fund	4,440	-	-	-	-	-	-	-	4,440
Total:	6,607	11,458	31,975	4,000	-	-	-	-	54,040

O&M Impacts: NA

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Office of the Waterfront	Kyle Butler/206-580-9883	Caleb Wagenaar/206-733-9228

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the financing of the Aquarium Expansion project; creating a fund for depositing proceeds of tax-exempt limited tax general obligation bonds in 2023; authorizing the loan of funds in the amount of \$20,000,000 from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund for continuing the work on the “Ocean Pavilion” Aquarium expansion; amending Ordinance 126490, which adopted the 2022 Budget, including the 2022-2027 Capital Improvement Program (CIP); changing appropriations to Seattle Parks and Recreation; and revising project allocations and spending plans for certain projects in the 2022-2027 CIP; all by a 3/4 vote of the City Council.

Summary and Background of the Legislation:

The Seattle Aquarium is owned by the City of Seattle and operated by the non-profit Seattle Aquarium Society (SEAS). SEAS is constructing a major expansion to the Aquarium's existing footprint to add new programming and visitor capacity. The Seattle Aquarium Ocean Pavilion Project is an integral component of the overall Central Waterfront Program. In 2019, SEAS and the City entered into an Ocean Pavilion Funding Agreement (Funding Agreement) in which the City agreed to commit \$34 million towards the capital costs of the Ocean Pavilion project and SEAS agreed to secure the balance of funds necessary through other government resources and private contributions.

Design and construction of the project is led by SEAS and coordinated with City investments by Seattle Parks and Recreation (SPR) and the Office of the Waterfront. Construction has been carefully coordinated with the Main Corridor and Overlook Walk projects. Project coordination includes sequenced construction of key components including shared walls, rooftops, staging areas and shifts in traffic flows. The current construction schedule allows for the completion of all major elements of the Seattle Waterfront Program by 2025.

SEAS is facing several industry-wide challenges including supply chain uncertainty, and labor and material cost increases, as well as delays in the timing of major gifts and smaller-than-expected contributions from other public entities as part of their capital campaign. These challenges have combined to increase the project cost and create cash flow timing problems for the Ocean Pavilion project, which is already under construction.

SEAS has requested the City provide an additional \$20 million in funding in 2022 to assist with their cash flow needs. SEAS would reimburse the City by the end of June 2030, through the addition of a “Enhanced Facility Fee” schedule in the existing Aquarium Operations and Management Agreement. Because SEAS is requesting the funding in 2022, this strategy requires an Interfund Loan in 2022.

This interfund loan will provide bridge financing for the Seattle Aquarium “Ocean Pavilion” project through the Aquarium Expansion CIP Project (MC-PR-21006). The City is increasing its contribution to the Aquarium Expansion project by \$20 million in 2023 LTGO bond financing. The loan will be repaid in full when the City receives 2023 LTGO bond proceeds, tentatively scheduled for May or June 2023.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? X Yes No

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:	Total Project Cost Through 2027:
Aquarium Expansion	MC-PR-21006	1483 Alaskan Way	2015	2023	\$54,040,000

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? X Yes No

Appropriation change (\$):	General Fund \$		Other \$	
	2022	2023	2022	2023
			\$20,000,000	

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Indirect financial impacts are possible if payments related to other funding agreements are not paid in a timely manner by SEAS. The interfund loan will facilitate financing Seattle Aquarium’s “Ocean Pavilion” costs in the short term, with an addition of payments to the City by SEAS of “Enhanced Facility” Fees that are being established through an amendment to the Operations & Management Agreement between the City and SEAS. It would also ensure that Ocean Pavilion construction is not delayed, helping keep the City’s Overlook Walk project on schedule, reducing the likelihood of cost increases.

Are there financial costs or other impacts of *not* implementing the legislation?

Delays to the construction of the Aquarium’s Ocean Pavilion could potentially create schedule and budget risk for the delivery of the Waterfront’s Overlook Walk project (MC-TR-C073) due to the high degree of integration between the projects.

3.a. Appropriations

X This legislation adds, changes, or deletes appropriations.

Fund Name and Number	Dept	Budget Control Level Name/##*	2022 Appropriation Change	2023 Estimated Appropriation Change
2023 Multipurpose LTGO Bond Fund / 37100	Seattle Parks and Recreation	BC-PR-20000 - Building For The Future - CIP	\$20,000,000	\$0
TOTAL			\$20,000,000	

*See budget book to obtain the appropriate Budget Control Level for your department.

Is this change one-time or ongoing?

One time.

4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
 Yes, SDOT and OWCP due to the connection with project delivery of the Overlook Walk (MC-TR-C073).
- b. **Is a public hearing required for this legislation?**
 No.
- c. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
 No.
- d. **Does this legislation affect a piece of property?**
 No.
- e. **Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**

No direct implications, however, our existing funding agreement with the Aquarium for the Ocean Pavilion requires SEAS to have a community workforce agreement consistent with Project Hire and to provide programs for disadvantaged youth. These terms would be in place for this additional funding as well.

- f. **Climate Change Implications**
 - 1. **Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**

No, not likely to cause an increase or decrease. This will allow SEAS construction plans to continue as planned.

- 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

Not directly, however supporting the Ocean Pavilion’s construction will help the Aquarium deliver its message about climate impacts on the ocean to the public.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)?**

Not a new initiative. The long-term measurable goals are to improve the Waterfront and increase the economic vitality of downtown and the City overall by enhancing the Aquarium’s infrastructure and ability to deliver their future programming.

Summary Attachments:

N/A

Aquarium Funding Legislation

Marshall Foster, Kyle Butler, Caleb Wagenaar
Finance & Housing Committee
August 11th, 2022

TODAY'S AGENDA

- City and Aquarium Partnership and History
- Ocean Pavilion Project Summary
- Overview of Proposed Legislation
- Next Steps

CITY AND AQUARIUM PARTNERSHIP

- Long-standing partnership between Seattle Parks & Recreation and Seattle Aquarium Society (SEAS); SEAS operates and maintains the City's Aquarium as a public asset
- Collaborative design for expansion to increase visitation, expand marine conservation and provide additional public park space complementing the Waterfront Seattle vision
- Aligned construction schedules to maximize efficiency, reduce disruption



CITY AND AQUARIUM PARTNERSHIP

Year	Action	Purpose
2009	Ordinance 123205	<ul style="list-style-type: none"> Authorized transition of Aquarium operations and maintenance from Seattle Parks and Recreation (SPR) to Seattle Aquarium Society (SEAS)
2012	Resolution 31399	<ul style="list-style-type: none"> Encouraged partnerships with Pike Place Market and Aquarium to integrate expansions into Waterfront Concept Design
2013	Ordinance 124121	<ul style="list-style-type: none"> Authorized execution of MOU to guide renovation and expansion of Seattle Aquarium between City and SEAS
2015	Ordinance 124908	<ul style="list-style-type: none"> Amended MOU to increase City spending cap from \$1 million to \$1.8 million
2015	Resolution 31603	<ul style="list-style-type: none"> Approved SEAS Master Plan and on-land Aquarium expansion (as an alternative to then-planned in-water expansion)
2017	Ordinance 125422	<ul style="list-style-type: none"> Amended MOU to support Aquarium advancement of Ocean Pavilion through schematic design
2018	Ordinance 125630	<ul style="list-style-type: none"> Replaced previous MOUs; increased maximum design funding to \$4.7M for further design of the Ocean Pavilion. Set forth conditions of a future Project Development Agreement
2019	Ordinance 126015	<ul style="list-style-type: none"> Construction Funding agreement confirming terms for City funding, process and requirements for advancing Ocean Pavilion into construction

Project Overview

- \$160M total project cost; \$34M City funding
- Public park roof, stair and elevator connections to Pike Place Market (via City's Overlook Walk)
- Current \$20M short-term funding need:
 - Project cost increases
 - Private fundraising, other public sector commitments slower during COVID
 - SEAS, as a non-profit entity, does not have necessary private borrowing capacity





Today's Proposed Legislation

SPR Aquarium Expansion OMA & Funding Agreement Ordinance:

- Amends existing Operation and Management Agreement and Funding Agreement
- Establishes a new Enhanced Facility Fee

SPR Aquarium Expansion Interfund Loan Ordinance:

- Authorizes Interfund Loan for \$20 million* and provides \$20 million in 2022 appropriation authority for the Seattle Parks and Recreation "Aquarium Expansion" (Ocean Pavilion) CIP Project.

*Interfund Loan approved by Debt Management Policy Advisory Committee on 7/20/2022

Key Terms of Funding Agreement

Provides \$20 million in additional project funding from the City in 2022 and establishes an Enhanced Facility Fee for SEAS

- Interfund Loan for 2022 costs, bridge financing to a 2023 Bond Issuance.
- Enhanced Facility Fee (EF Fee) established for the Ocean Pavilion through the existing SEAS/Parks Operations and Management Agreement (OMA), expiring in 2030.
- EF Fee payable to Seattle Parks and Recreation, from SEAS, monthly beginning in 2023.

Risk Management

- Requires SEAS commit a portion of their existing operating reserve to the Ocean Pavilion Project to assist with cash flow in 2022 and 2023, prior to drawing on additional \$20 million.
- Legislation requires EF Fee Reserve equaling one year of the fee (~\$3.5-\$4.5M), held by the City or third party.
- Establish Corrective Action Plan for missed EF Fee payment and/or use of EF Fee Reserve.
- In the case of the EF Fee Reserve depletion, use annual funding provided by Municipal Parks District, to SEAS, for EF Fee payment.
- Amendments establish mutual expectation that SEAS is solely responsible for all remaining funding.

Next Steps

- **If approved, the proposed \$20 million increase in support for the Ocean Pavilion will include the following legislation and processes:**
 - **Proposed Legislation (2022):**
 - Amend Ocean Pavilion Funding Agreement and the SPR/SEAS OMA (through 2030)
 - Create Interfund Loan, 2023 LTGO Bond Fund, and amend 2022 Adopted Budget and 2022-2027 CIP and Aquarium Expansion CIP Project
 - **Subsequent Legislation -- 2023-2028 Proposed Budget and CIP will include:**
 - \$20 million in bonds authorization to repay Interfund Loan
 - Appropriates Debt Service on bonds through Parks and Recreation fund, recognizes EF Fee revenue into Parks and Recreation Fund.
 - Issue \$20 million in bonds for Aquarium Expansion in Spring of 2023
 - Issue approximately \$3.5-4.5 million in bonds for EF Fee in Spring of 2023

August 9, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Eric McConaghy, Analyst
Subject: Increased Funding for Seattle Aquarium’s Ocean Pavilion – Council Bills 120396 and 120397

On August 11, 2022, the Finance and Housing Committee (Committee) will discuss and potentially vote on recommendations on two, interdependent Council Bills (CB). Together, the two bills would increase the City’s funding for Seattle Aquarium’s Expansion Project, also known as the Ocean Pavilion, from \$34 million to \$54 million with Seattle Aquarium Society (SEAS) committing to reimburse the City for the additional funding and associated costs:

1. [CB 120396](#), Aquarium Expansion Interfund Loan ordinance and
2. [CB 120397](#), the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement ordinance.

This memorandum (1) provides an introduction to the Ocean Pavilion project; (2) describes the proposed legislation; (3) outlines the legislative background related to the Ocean Pavilion; and (4) outlines next steps.

Introduction

The City owns the Seattle Aquarium and the non-profit SEAS operates the Seattle Aquarium for the City according to the Operations and Management Agreement authorized in 2009 via [Ordinance 123205](#). The Ocean Pavilion Project includes a new aquarium building, the accessible rooftop on the Ocean Pavilion that includes public open space, a public stair on the west façade of the Ocean Pavilion, and a public stair and elevator on the south façade of the Ocean Pavilion. The City and SEAS have integrated the Ocean Pavilion with the City’s Overlook Walk Project: the bridge from the Pike Place Marketfront over Alaskan Way to the roof of the Ocean Pavilion, stairs extending west towards Pier 62, and stairs wrapping the north side of the Ocean Pavilion. SEAS updated the Public Assets and Homelessness Committee regarding the Ocean Pavilion project status on July 20, 2020. The briefing materials and video of the meeting [are available online](#).

The City has affirmed the location and integration of the Ocean Pavilion Project with the Overlook Walk Project through multiple legislative actions (see Legislative Background section on page 4) as part of the City’s overall planning for the capital projects of the [Central Waterfront Program](#). The City has committed increasing levels of funding to SEAS for the Ocean Pavilion Project since 2013.

The Executive reports that due to the COVID-19 pandemic and related economic conditions SEAS has experienced labor and material cost increases simultaneously with delays in expected project funding from private and public sources for the Ocean Pavilion Project. This has resulted in SEAS having insufficient cash to support the project in the near term. SEAS requested additional funding to address this cashflow issue from the City to support the ongoing project work in 2022 and 2023.

Without additional funding in the short term, SEAS would wait for actual contributions of the expected private philanthropic and public funding for the Ocean Pavilion to pay construction costs. The delay would likely increase the cost of the project significantly and would adversely affect the cost and timing for the City's completion of the Overlook Walk Project because the two projects are interdependent. The City and SEAS are also in close coordination for the Ocean Pavilion Project and the City's Main Corridor (new Alaskan Way) Project. The proposed CBs comprise the Executive's proposal to provide additional funding to SEAS that would cover the costs of the Ocean Pavilion Project that currently outrun SEAS' available cash.

To date, the City has committed \$34 million of the total estimated cost of \$160 million to complete the Ocean Pavilion Project. The Executive's proposal would reset the maximum City commitment to \$54 million with SEAS committing to reimbursing the City for the additional \$20 million plus associated costs through a new Enhanced Facility Fee (EFF) according to a monthly schedule with full reimbursement by the end of June 2030.

CB 120396, Aquarium Expansion Interfund Loan

CB 120396 would establish the necessary financial elements necessary to disburse \$20 million to SEAS for the Ocean Pavilion beginning in 2022. Approval of CB 120396 would:

- Create a new 2023 Multipurpose tax-exempt limited tax general obligation (LTGO) Bond Fund;
- Authorize an interfund loan of \$20 million from REET I Capital Projects Fund to the new Fund. This interfund loan would allow the City to begin disbursing funds to SEAS in 2022; that loan serves as a bridge until the City authorizes and completes anticipated bond sales in 2023;
- Increase appropriations in the Aquarium Expansion CIP; and
- Amend the CIP project page for the Aquarium Expansion CIP

The proposed legislation specifies that the new 2023 Multipurpose LTGO Bond Fund would receive the principal proceeds and any premium received from the sale and delivery of LTGO bonds in 2023 "for the purpose of paying all or part of the costs of various elements of the City's capital improvement program and other City purposes approved by ordinance." The Director of City Finance would be authorized to loan \$20 million from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund to provide bridge financing for expenditures related to the Ocean Pavilion project until the City receives proceeds from LTGO bond sales.

The proposed ordinance states the City's intention to sell LTGO bonds to repay the interfund loan and requires the repayment to be completed by the end of 2023.

Consistent with the City debt management policies, the Director of City Finance and the City Budget Director determined that this interfund loan request is consistent with the Debt Management Policies adopted by Resolution 31553 and the Debt Management Policy Advisory Committee considered and approved the proposed interfund loan.

Central Staff recommendation on CB 120396

Council should only approve CB 120396 if CB 120397 is approved. The interfund loan, new fund, changes to appropriations and expected bond sales that would be authorized by CB 120396, do not make sense without the amendments to two agreements between the City and SEAS that approval of CB 120397 would authorize. Specifically, without the amendments proposed in CB 120397, the City would not have a plan to generate revenues to cover the debt service on the LTGO bond issuance; the bond process would be used to pay back the interfund loan that provides immediate funding to address SEAS short-term funding constraints.

CB 120397, Amendments to the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement.

CB 120397 would authorize the Superintendent of the Department of Parks and Recreation, the Director of Finance, and the Director of the Office of the Waterfront, acting jointly, to execute amendments to: (a) the Ocean Pavilion Funding Agreement and (b) the Seattle Aquarium Operations and Management Agreement (O&M Agreement). The amendments to the Agreements would be mutually contingent upon execution.

The City authorized execution of the Ocean Pavilion Funding Agreement by [Ordinance 126015](#) in 2019 and executed the agreement with SEAS on June 30, 2020 (*see Legislative Background section for more information*). See Attachment A of CB 120397 for the proposed amendment to the Ocean Pavilion Funding Agreement.

The proposed amendments to Ocean Pavilion Agreement would:

- Increase the City's funding commitment to SEAS for the Ocean Pavilion project from \$34 million to \$54 million and
- Make the increased funding of \$20 million contingent upon the execution of an amendment to the O&M Agreement requiring that SEAS pay a new fee, the Enhanced Facility Fee (EFF), "to reimburse the City for its costs incurred in making the additional funding available and to reflect the value of the improved facility;" and
- Commit SEAS to secure the balance of the funding, without additional City funding beyond the funding included in this agreement, needed to fully fund the Ocean Pavilion.

As mentioned above, the City authorized execution of the O&M Agreement by Ordinance 123205 in 2009. The City and SEAS executed the agreement with SEAS in January 2010. See Attachment B of CB 120397 for the proposed amendment to the O&M Agreement.

By executing the proposed amendments to the O&M Agreement:

- SEAS would agree to pay the EFF¹ on a regular schedule;
- SEAS and the City would agree to Corrective Actions to be taken if SEAS fails to make payments on time; and
- The City would express the intent to issue bonds as the funding source for the additional Ocean Pavilion funding (but would not be required to issue bonds).

The proposal would address the risk that SEAS would make late EFF payments or fail to make payments by requiring the City to draw from a required reserve (funded by the bond sales) and, if the reserve is depleted, directing any funding provided by the City to SEAS in connection with its operation of the Aquarium facility to cover EFF payments.

Central Staff recommendation on CB 120397

Approval of CB 120397 is a policy choice to continue support for SEAS' Ocean Pavilion consistent with previous legislative decisions described in the next section. The proposed legislation would address SEAS financial difficulties, unforeseen at the time of executing the current agreements regarding the Ocean Pavilion Project, but cannot entirely mitigate the additional financial risk to the City of providing additional funding for the Ocean Pavilion. This risk is that, if for some reason SEAS is unable to complete the EFF payments to entirely reimburse the City, the City would have to cover the outstanding debt service without that additional revenue.

Rejecting CB 120397 or taking no other action to provide support to SEAS would mean near-certain cost increases and delays to the Ocean Pavilion Project and the City's inter-related projects. Central Staff does not have complete estimates of these costs but recognizes their significance.

Legislative Background - Ocean Pavilion Project

In 2013, the City passed [Ordinance 124121](#), authorizing the execution of an Memorandum of Understanding (MOU) Concerning Renovation and Expansion of the Seattle Aquarium and Development of the Central Waterfront Project between the City and SEAS ("[2013 MOU](#)"). In 2013, the City and SEAS signed the 2013 MOU which appropriated \$1 million to SEAS for design and planning of an Aquarium expansion located over water to the south of Pier 59. The MOU directed the City to coordinate design efforts with SEAS, so that a potential expansion would be consistent with the overall Central Waterfront design and vision.

¹ The EFF payment would be in addition to existing SEAS debt service reimbursements to the City for past capital improvements to the Aquarium

The 2013 MOU also identified a potential City contribution not to exceed \$45 million toward the Aquarium expansion. In 2014, the City's anticipated contribution to the Aquarium expansion project was reduced, shown as \$33.5 million on the project page for the Aquarium Expansion project in the [Department of Parks and Recreation portion](#) of the Adopted 2015 – 2020 Capital Improvement Plan (CIP).

In 2015, the City approved SEAS's Master Plan by [Resolution 31603](#). By approving the Master Plan, the City Council directed the Office of the Waterfront and DPR to advance the design and environmental review of the Aquarium expansion, today known as the Ocean Pavilion, at the Overlook Walk Location.

Also in 2015, the City passed [Ordinance 124908](#), amending the 2013 MOU to increase the City's maximum compensation to SEAS for 50 percent of its expenditures for the Aquarium Expansion Project engineering, design, and consultant services incurred beginning January 1, 2013 from \$1 million to \$1.8 million.

In 2017, the City Council passed [Ordinance 125422](#), authorizing a second amendment to the 2013 MOU that reaffirmed the City's commitment to the Ocean Pavilion concept as the Aquarium Expansion, outlined the design process to reach 30 percent schematic design, required SEAS to fund 30 percent schematic design, and committed the City and SEAS to develop a funding plan and new memorandum of understanding to be brought to the City Council for consideration.

In 2018 Council passed [Ordinance 125630](#) authorizing the execution of the 2018 MOU and replacing and superseding the 2013 MOU. The passing of Ordinance 125630 increased the maximum amount of City funding for design and development of the proposed Ocean Pavilion project from \$1.8 million to \$4.7 million to reimburse SEAS up to 50 percent of eligible costs. The 2018 MOU also reiterated the City's anticipated total funding of \$34 million as described in the City's 2018-2023 Capital Improvement Program (CIP).

Additionally, the 2018 MOU stated that the City would reimburse SEAS for construction costs of the Ocean Pavilion according to a Project Development Agreement (PDA). The ordinance specified actions prerequisite for the execution of the PDA as (1) completion of 60 percent design development, including cost estimates; (2) SEAS providing the Director of the City Budget Office with a cost estimate and comprehensive funding plan; (3) Council being provided with a report on the feasibility of the comprehensive funding plan and (4) Council authorization of execution of the PDA by ordinance.

The City approved the Ocean Pavilion Funding Agreement via Ordinance 126015 in 2019 authorizing the execution of a funding agreement for the Ocean Pavilion Project and the execution of a later construction agreement for the Ocean Pavilion Project between the City and SEAS without further Council approval. Significantly, Ordinance 126015 found that the

authorized funding and construction agreements together would satisfy the intent and purpose of the PDA specified in Ordinance 125630 and the 2018 MOU and amended Ordinance 125630 to delete the language specifying actions prerequisite for the execution of the PDA (see above).

By approving CB 126015 the Council agreed to authorize the Executive to execute a funding agreement with SEAS committing the City to funding \$34 million of the Ocean Pavilion project without the opportunity to review a feasibility report on a comprehensive funding plan based on a cost estimate for the Ocean Pavilion project and agreed to authorize the Executive to execute a future construction agreement with SEAS without the opportunity to review the construction agreement.

Approving CB 126015 was a policy decision, like the decision before the Council in this legislative package, to continue the City's history of support for and trust in SEAS to raise funds for the Ocean Pavilion and to complete the project. Note that in the recitals of Ordinance 126015, "the City and SEAS recognize(d) that SEAS' efforts to secure funding commitments from private individuals, corporations, foundations and governments sources other than the City of Seattle are, in part, supported by a funding commitment from the City *before* (emphasis mine) it is feasible to negotiate some of the elements of the PDA that were anticipated under the 2018 MOU."

Next steps

If the Committee votes on recommendations to Council on CB 120396 and CB 120397 on August 11, then Council could consider and take final action on August 16.

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Brian Goodnight, Lead Analyst



Legislation Text

File #: CB 120397, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the financing of the Aquarium Expansion project; authorizing amendments to existing agreements with the Seattle Aquarium Society relating to such financing; and providing for other related matters.

WHEREAS, The City of Seattle (“City”) owns the Seattle Aquarium facility (“Aquarium”), located on Piers 59 and 60 along the Seattle Central Waterfront (“Waterfront”) and recognizes the importance of the Aquarium for its national and regional standing for scientific research, marine conservation education, civic engagement, and value as a visitor destination. The Seattle Aquarium Society (SEAS) has managed aspects of the Aquarium operations since the 1980s under a series of agreements with the City’s Parks and Recreation Department (SPR), and SEAS assumed full management responsibility in 2010; and

WHEREAS, in 2009, the City Council passed Ordinance 123205, authorizing SPR to enter into a long-term agreement with SEAS to operate and manage the Aquarium. The Operations and Management Agreement (OMA) required SEAS to prepare a master plan to guide investments in the physical development of the Aquarium and further required that the SEAS master plan be approved by the City Council by resolution. Under the OMA, new capital improvements that SEAS develops will be owned by the City, with SEAS owning all animals and maintaining and operating the facility, including providing animal care and programming of the Aquarium. The OMA requires SEAS to coordinate its planning and development of a future Master Plan with the Committee on Central Waterfront Partnerships, and the Waterfront Planning parameters developed by the City Council. Further, the OMA

requires that the Master Plan be consistent with the City's adopted Alaskan Way and Seawall Replacement Program, especially as it concerns the seawall replacement component of the program and the redesign of adjacent public spaces at Waterfront Park and Piers 62/63; and

WHEREAS, in 2019, the City Council passed Ordinance 126015, authorizing a funding agreement and a construction agreement between the City and SEAS to provide up to \$34 million for a new aquarium facility to be known as the Ocean Pavilion. Both the Funding Agreement and Construction Agreement have been executed by the City and SEAS; and

WHEREAS, construction of the Ocean Pavilion is expected to increase the Aquarium's attendance to 1.2 million visitors a year, and the City believes an expanded Aquarium facility will better serve the needs of City residents and visitors and will be a significant draw to anchor the north end of the future Waterfront Park; and

WHEREAS, due to the COVID-19 pandemic and subsequent regional and nationwide economic conditions, fundraising for the Ocean Pavilion by SEAS has lagged behind initial estimates, creating funding constraints for SEAS; and

WHEREAS, SEAS has requested an additional \$20 million of financial support in 2022 and 2023 to allow construction of the Ocean Pavilion to advance on pace with the City's Waterfront Program, while allowing SEAS additional time to advance their philanthropic campaign; and

WHEREAS, in negotiating amendments to the Ocean Pavilion Funding Agreement and the OMA to provide an additional \$20 million of financial support in the near-term under the amended Funding Agreement, which is to be offset by increased fees paid to the City by SEAS over the remaining term of the amended OMA, the Parties understand and agree that this funding shall be the City's final contribution to the Ocean Pavilion; and

WHEREAS, the design of the Ocean Pavilion and the City's Overlook Walk project are integrated in order to maximize benefits to the public and minimize construction impacts and duration for all parties; and

WHEREAS, as part of the public benefits established in the earlier Funding Agreement, the design of the Ocean Pavilion provides for public access and open space amenities as part of the roof, elevator, and exterior stair connections to the Waterfront, which shall be open and maintained as available to the public by SEAS; and

WHEREAS, it will be efficient and in the public interest to have the Ocean Pavilion building infrastructure, exhibits, and public access amenities all constructed as one project to be delivered by SEAS; and

WHEREAS, Seattle Municipal Code subsection 5.06.030.C requires City Council approval by ordinance of any interfund loan for a duration of 90 days or more, and in the ordinance introduced as Council Bill [REDACTED], the City Council approved an interfund loan for this purpose, contingent on the approval of amendments to the Ocean Pavilion Funding Agreement and the OMA to carry out the foregoing; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The amendments to the Ocean Pavilion Funding Agreement and the Seattle Aquarium Operations and Management Agreement, in substantially the forms attached to this ordinance as Attachments A and B, respectively, are hereby authorized to be executed on behalf of the City by the Superintendent of Parks and Recreation, the Director of Finance, and the Director of the Office of the Waterfront, acting jointly, and with only such additions, deletions, and modifications as the three officials, acting jointly, determine are in the City's best interest.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments:

Attachment A - Amendment to the Ocean Pavilion Funding Agreement

Attachment B - Amendment to the Seattle Aquarium Operations and Management Agreement

AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT

by and between

THE CITY OF SEATTLE

and the

SEATTLE AQUARIUM SOCIETY

dated as of _____, 20__

AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT

This AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT (“Funding Amendment”), dated as of _____, 2022, amends that certain Ocean Pavilion Funding Agreement dated June 30, 2020 (“Original Funding Agreement”) by and between THE CITY OF SEATTLE (the “City”), a first class city organized under the laws of the State of Washington (the “State”), and the SEATTLE AQUARIUM SOCIETY (“SEAS”), a Washington nonprofit corporation (together, the “Parties”). Unless otherwise stated, all capitalized terms used in this Funding Amendment have the same meanings given in the Original Funding Agreement. The Original Funding Agreement, as amended by this Funding Amendment, is referred to as the “Amended Funding Agreement.”

The City and SEAS enter into this Funding Amendment for the purpose of addressing increased Project costs by making an additional Twenty Million Dollars (\$20,000,000) available for eligible capital costs of the project. This additional funding commitment is contingent on execution of an amendment to the Seattle Aquarium Operations and Management Agreement setting out a new fee due to the City that is intended to reimburse the City for its costs incurred in making the additional funding available and to reflect the value of the improved facility.

This Funding Amendment is authorized by resolution of the SEAS Board of Directors adopted on _____, 2022, and by Ordinance _____ of the City passed by the City Council on _____, 2022.

RECITALS

The following facts and circumstances form the background of this Funding Agreement Amendment:

(a) SEAS and the City have previously agreed to contribute to the capital improvements to the City-owned Aquarium facility known as the Ocean Pavilion Project (the “Project”), pursuant to the Funding Agreement. The Project has encountered increased costs to completion and the Parties wish to ensure that the Project is completed such that the public benefits described below will be realized.

(b) The Parties reaffirm that the Project furthers the purposes of SEAS by providing an enhanced facility to be utilized by SEAS in fulfilling its mission in education, conservation and recreation, and serves the public interest by improving the Aquarium facilities owned by the City, providing benefits to residents of and visitors to Seattle and the region, and continuing the City’s history of developing the Aquarium as an important civic asset, cultural resource, and public amenity, and as a focal point of a revitalized and redeveloped waterfront.

(c) The City and other public and private funders are providing SEAS with critical financial assistance for the development of the Project, which provides significant public benefits to the community. Both Parties reaffirm their respective commitments to carrying out the Project and ensuring the completion of the enhancements to the Aquarium facility through the use of

multiple sources of funding from both public and private sources. The respective Funding Commitments of each of the Parties, as adjusted by this Amendment, are intended to be fixed and in no way commit the City to covering any future increased costs of the Project.

(d) The City and SEAS have determined to execute this Funding Amendment to address an increase in budgeted Project costs that were not originally anticipated by the Parties in order to ensure that an important public asset is preserved and enhanced so that it may continue to provide the benefits to the public described above.

AMENDMENT TERMS

The Parties agree as follows:

- 1. Condition Precedent.** This Funding Amendment, and the increased City funding commitment set out herein, is contingent on City and SEAS executing an amendment to the Seattle Aquarium Operations and Management Agreement, dated January 26, 2010, setting out a new Enhanced Facility Fee determined by City in its reasonable discretion reflective of the improved facility. Unless specified in a separate written agreement or subsequent amendments to the OMA and Funding Agreement, the City shall be under no obligation to issue any additional debt for the Project or any other Aquarium capital purpose.
- 2. Definitions.** Unless otherwise defined, other capitalized terms used herein have the meanings given in the Funding Agreement.
- 3. City Commitment Increased.** The City hereby increases the City's Funding Commitment from Thirty-Four Million Dollars (\$34,000,000) to Fifty-Four Million Dollars (\$54,000,000). To enact this change, Section 2.2.1 of the Funding Agreement is struck and replaced by:

2.2.1 City's Funding Commitment. The City commits to include in the City Capital Improvement Program a total of Fifty-Four Million Dollars (\$54,000,000.00) for the Ocean Pavilion (the "City's Funding Commitment"). The City's Funding Commitment is inclusive of the amounts paid to SEAS under prior agreements for the design and development of the Ocean Pavilion including the 2018 MOU. Proceeds of the City's Funding Commitment may be used solely to reimburse SEAS for Project costs for the Ocean Pavilion including the associated costs of planning, design, and construction. The parties acknowledge that the City's Funding Commitment is conditioned, in part, upon the over-all scope of the Project as reflected in the Project Budget attached as Exhibit C and SEAS construction of the Waterfront Related Elements consistent with Exhibit B as refined through the design review process under Section 4.3. If the Project Budget were to be significantly reduced by SEAS, the City reserves the right to adjust the City's Funding Commitment. The increased amount of the City Funding Commitment described in this Amendment will be made available on a reimbursement basis upon reimbursement requests submitted no more frequently than monthly, as set forth in a set of written reimbursement

procedures agreed to by the City's Director of the Office of the Waterfront and the Superintendent of Parks and Recreation or their respective designees, and SEAS. The City will fund all reimbursement requests within [30] days of approval of the request.

4. Reaffirmation of SEAS Commitment. Notwithstanding the increase to the Project Budget, SEAS acknowledges and reaffirms its responsibility for securing the balance of the funding, without additional City funding beyond the funding included in this agreement, needed to fully fund the Ocean Pavilion in accordance with the Final Project Design and for fully funding the Animal Care Facility.

5. No Other Changes to Funding Agreement; Other Agreements Not Affected. Except as otherwise expressly provided in this Funding Amendment, all of the terms and conditions of the Original Funding Agreement remain unchanged and in full force and effect. Furthermore, the Parties acknowledge that the City and SEAS have entered into, and may in the future enter into, separate agreements with SEAS relating to the Facility, the Project, or related facilities. Nothing in this Funding Amendment shall be construed as altering or limiting the terms or conditions of any such separate agreements between the City and SEAS, and such agreements, and the parties' interests thereunder, are expressly not merged with their respective interests under this Funding Amendment.

[Signature page follows.]

6. Counterparts.

This Funding Amendment may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Funding Amendment.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and SEAS have caused this Funding Amendment to be executed in their respective names by their duly authorized officers and have caused this OMA Amendment to be dated as of the date set forth on the first page hereof.

THE CITY OF SEATTLE, a Washington municipal corporation

By _____
Its Director of the Office of the Waterfront

and

By _____
Its Acting Superintendent of Parks and Recreation

and

By _____
Its [Interim] Director of Finance

Pursuant to Ordinance _____

SEATTLE AQUARIUM SOCIETY,
a Washington non-profit corporation

By _____
Its President and CEO

Pursuant to Resolution: _____

AMENDMENT TO OPERATIONS AND MANAGEMENT AGREEMENT

by and between

THE CITY OF SEATTLE

and the

SEATTLE AQUARIUM SOCIETY

regarding the

Ocean Pavilion

dated as of _____, 20__

AMENDMENT TO OPERATIONS AND MANAGEMENT AGREEMENT

This AMENDMENT TO OPERATIONS AND MANAGEMENT AGREEMENT regarding the Ocean Pavilion (“OMA Amendment”), dated as of _____, 2022, amends that certain Operations and Management Agreement, dated January 26, 2010 (the “Original OMA”), by and between THE CITY OF SEATTLE (the “City”), a first class city organized under the laws of the State of Washington (the “State”), and the SEATTLE AQUARIUM SOCIETY (“SEAS”), a Washington nonprofit corporation (together, the “Parties”). Unless otherwise stated, all capitalized terms used in this OMA Amendment have the same meanings given in the Original OMA. The Original OMA, as amended by this OMA Amendment, is referred to as the “OMA.”

The City and SEAS agree to execute this OMA Amendment for the purpose of addressing increased City capital investment in City-owned Aquarium facilities by adding a new Enhanced Facility Fee (“EF Fee”) payable by SEAS to City.

The City and SEAS enter into this OMA Amendment for the purpose of addressing increased City capital investment in Aquarium facilities costs by adding the EF Fee payable by SEAS to City, pursuant to Section 6.6 of the OMA and is authorized by resolution of the SEAS Board of Directors adopted on _____, 2022, and by Ordinance _____ of the City passed by the City Council on _____, 2022.

RECITALS

The following facts and circumstances form the background of this OMA Amendment:

(a) The City agreed, through Section 6.6 of the OMA, to consider issuing debt for Aquarium capital purposes if requested by SEAS. SEAS has requested that the City issue debt to support the Ocean Pavilion Project (“Ocean Pavilion” or “Project”), a capital improvement project for aquarium and waterfront purposes, as more fully described in the Ocean Pavilion Funding Agreement, dated June 30, 2020, by and between the Parties (the “Original Funding Agreement”), as amended by the Funding Amendment described below.

(b) As set out in the Amendment to Ocean Pavilion Funding Agreement (“Funding Amendment”) to be executed on the date of this OMA Amendment, Clerk No. _____, the City will increase the City’s Financial Commitment (as defined in Section 7.2.1 of the Original Funding Agreement) for the Project by \$20 million to support eligible capital project costs (the increased amount is referred to as the “Increased Funding Commitment”). The City currently intends to finance the Increased Funding Commitment by issuing debt in the form of City general obligation bonds (the “Project Bonds”). For purposes of clarity, the Parties note that, while the City may opt to issue the Project Bonds as a portion of a larger issue of various purpose general obligation bonds, the term “Project Bonds” as used throughout this document will refer only to that portion of bonds issued by the City as are allocated to funding the Increased Funding Commitment.

(c) The Project furthers the purposes of SEAS by providing an enhanced facility to be utilized in fulfilling its mission in education, conservation and recreation, and serves the public interest by improving the Aquarium facilities owned by the City, providing benefits to residents of and visitors to Seattle and the region, and continuing the City’s history of developing the Aquarium as an important civic asset, cultural resource, and public amenity, and as a focal point of a revitalized and redeveloped waterfront.

(d) The Parties further recognize that the EF Fee imposed under this amendment is consistent with the City’s historical approach to the City-owned Aquarium facility, and in the best interest of the City, its residents, and taxpayers, in order to ensure that additional investment by the City in its asset is offset by receiving a portion of the increased revenues that SEAS expects to generate by operating an enhanced facility on the City’s revitalized waterfront.

(e) Under the OMA, SEAS currently pays, and continues to pay through July 15, 2025 pursuant to Exhibit 6 of the OMA (as most recently revised as of _____, 2022), the City Debt Service Reimbursement to compensate the City for certain capital costs that were associated with the existing Premises. Pursuant to this OMA Amendment, SEAS will pay an additional EF Fee reflecting the amounts necessary to make the City whole for its Increased Funding Commitment, including the principal amount borrowed by the City to fund its Increased Funding Commitment (including funding any deposit to the EF Fee Reserve Account, as may be required hereunder) plus interest thereon, and such costs and fees as are associated with and allocable to the Project Bonds.

(f) The Project will develop the Ocean Pavilion as additional Aquarium facilities to be operated pursuant to the OMA. The improved Aquarium facilities are more valuable than the state of the Premises when the Original OMA was executed.

(g) The City and SEAS have determined to execute this OMA Amendment to address the increased value of the Premises based on the pending Ocean Pavilion construction.

AMENDMENT TERMS

The Parties agree as follows:

- 1. Condition Precedent.** SEAS obligation to pay the EF Fee set out in this OMA Amendment is contingent on City and SEAS executing the Funding Amendment. Unless specified in a separate written agreement or subsequent amendments to the OMA and Funding Agreement, the City shall be under no obligation to issue any additional debt for the Project or any other Aquarium capital purpose.
- 2. Definitions.** The term “Premises,” as used in the Original OMA and in this OMA Amendment, is hereby amended to include the Project, as defined herein to include the Ocean Pavilion as part of the City’s Aquarium Facility. All references to “this Agreement” in the OMA shall henceforth refer to the OMA, as amended by this OMA Amendment and the exhibits hereto,

and as it may in the future be amended by the Parties in accordance with its terms. Unless otherwise defined, other capitalized terms used herein have the meanings given in the OMA.

3. SEAS to pay Monthly EF Fee. The Original OMA is hereby amended to add a new Section 6.8, as follows:

Section 6.8 Enhanced Facilities Fee (“EF Fee”).

(a) SEAS agrees to pay the monthly EF Fees in the amounts and at the times set forth in Exhibit 8 (the “EF Fee Payment Schedule”). SEAS shall make its payments according to the EF Fee Payment Schedule, as it may be adjusted as permitted in Section 6.8(b), below, and the City will not provide invoices to SEAS. EF Fees shall be paid to the City (to the Parks and Recreation Department, or as otherwise directed in writing by the City). Payment shall be made on or prior to the first business day of each month (as to each payment date, an “EF Fee Due Date”).

(b) The City currently intends to issue limited tax general obligation debt (the “Project Bonds”) to finance its Increased Funding Commitment to the Project, including paying the costs and fees incurred in connection with issuing the debt and, if necessary, the funding of the reserve deposit described herein. SEAS acknowledges and agrees that (a) the EF Fees payable hereunder are estimated and are intended to be sufficient to offset in full the City’s costs to pay the principal of (including premium, if any) and interest on the Project Bonds as the same shall come due; (b) the Project Bonds may be issued in one or more series and are intended to be issued in an aggregate amount sufficient to provide for (i) the City’s Increased Funding Commitment (as identified in Section 3 of the Funding Amendment), (ii) the costs and fees incurred in connection with the issuance of the Project Bonds, including without limitation, bond counsel fees and financial advisory fees, and (iii) the funding of a deposit to the EF Fee Reserve Account, as set forth in Exhibit 9. If the City includes the Project Bonds as part of a larger general obligation City bond issuance (“General Obligation Bonds”), the Project Bonds shall bear an allocable share of the costs of issuing the General Obligation Bonds that will be reflected in the EF Fee charged to SEAS. For purposes of clarity, the EF Fee is intended to reflect the costs of issuance of the Project Bonds, including the fees of the City’s bond counsel for work attributable to the Increased Funding Commitment. At the request of SEAS, these costs and fees may be included in the par amount of the Project Bonds and reflected in the EF Fee.

(c) SEAS further acknowledges and agrees that the total EF Fees payable have been determined by City to be sufficient to pay in full all of the costs set forth in subsection (b) above, and that the EF Fee also includes amounts payable prior to the issue date of the Project Bonds, which amounts are fixed, based on the disbursement schedule established under the Funding Amendment, to include (i) the interest accrued by the City to provide these funds in advance of

the issuance of the Project Bonds, plus (ii) a monthly amount necessary (if any) to fund a portion of the deposit to the EF Fee Reserve Account.

(d) Upon issuance of the Project Bonds (if the City determines to issue such bonds), the City shall adjust the EF Fee Payment Schedule to reflect the City's actual rather than estimated financing costs (including actual principal amount issued, actual interest rates and terms of the borrowing, and allocable fees and costs) associated with the Project Bonds. If the City determines to fund the Increased Funding Commitment through sources other than the issuance of the Project Bonds, the EF Fee Payment Schedule will be adjusted to reflect the City's actual cost of funds. Future adjustments to the EF Fee Payment Schedule (i) are required upon a partial prepayment by SEAS of EF Fees consistent with subsection (e), below, and (ii) are permitted in the City's reasonable discretion to reflect changes in the City's financing costs resulting from any refinancing of the Project Bonds, consistent with subsection (f), below.

(e) SEAS may prepay all or a portion of the EF Fees due through the end of the OMA term by providing the City with 30 days' notice of such prepayment. Any prepayment shall be credited against the costs to defease or redeem a corresponding portion of the Project Bonds at the earliest economically feasible opportunity. There shall be no penalty for prepayment of the EF Fee, but SEAS acknowledges that it shall be responsible for any costs incurred by the City in causing an early redemption of the Project Bonds. The City shall adjust the EF Fee Payment Schedule to reflect the prepayment, taking into account the full cost to redeem the Project Bonds prior to maturity, including any call premium and escrow costs.

(f) In the event of an optional redemption, defeasance, or refunding of all or a portion of the Project Bonds (other than in conjunction with a prepayment of the EF Fees under subsection (e), above), the City may, but need not, adjust the EF Fee Payment Schedule to reflect the City's current financing costs for the Increased Funding Commitment. The City shall provide SEAS with at least 90 days' prior notice of any proposed refunding or restructuring of the Project Bonds that may change any redemption price or redemption dates on the Project Bonds. Within 30 days of such notice SEAS shall confirm whether it intends to prepay the EF Fees prior to the date of such refunding or restructuring of the Project Bonds, based on the redemption prices and dates applicable prior to such refunding or restructuring.

(g) At all times until all EF Fees have been paid in full, SEAS agrees to satisfy the Compliance Commitments set forth in Exhibit 9 attached hereto. SEAS understands and acknowledges that City is relying on SEAS fulfillment of these Compliance Commitments in determining whether it is feasible to issue bonds for

purposes set out in Section 6.8(a) and to maintain compliance with requirements and undertakings associated with such bonds.

(h) Notwithstanding the provisions of subsections 6.8(b) – 6.8(g) of the OMA, City is under no obligation to issue the Project Bonds to finance its fulfillment of the Increased Funding Commitment. The City reserves the right, in its sole discretion, to use any funding mechanism it deems prudent, including but not limited to direct appropriation or interfund loans. In the event City declines to issue the Project Bonds, City will provide SEAS written notice of the alternative source of funds for the Increased Funding Commitment. SEAS's obligation to pay the EF Fees according to the EF Payment Schedule will remain in full force and effect, as will SEAS's right to prepay all or a portion of the EF Fees without penalty.

4. Additional Remedies. The Original OMA is hereby amended by adding a new Section 21.3 in the following form:

21.3 Corrective Action Plan; Additional Remedies.

(a) In addition to the remedies available elsewhere in the OMA in an Event of Default, for so long as the EF Fee remains payable under the OMA and in addition to any other remedies available, if any Corrective Action Event has occurred under this OMA, the Parties shall develop a Corrective Action Plan as set forth in Exhibit 9. Unless otherwise specified, the applicable cure period for any Corrective Action Event under this OMA Amendment (including attachments hereto) shall be 30 days.

(b) If on the date that is 30 days prior to any debt service payment date on the Project Bonds, the amount of EF Fees paid over the preceding six-month period is insufficient to reimburse the City for the debt service next coming due on the Project Bonds, the City Director of Finance shall direct the Depository to transfer funds from the EF Fee Reserve Account to the City's debt service accounts with respect to the Project Bonds prior to the Project Bond debt service payment date. If the amount in the EF Fee Reserve Account is insufficient for this transfer, the City Director of Finance may redirect any funding provided by the City to SEAS in connection with its operation of the Aquarium facility to remedy any delinquency in the payment of EF Fees and may redirect such funds to replenish the EF Fee Reserve Account.

5. EF Fee Payment Schedule. The Original OMA is hereby amended by adding a new Exhibit 8 in the form attached to this Amendment and incorporated herein.

6. Compliance Commitments and Accountability. The Original OMA is hereby amended by adding a new Exhibit 9 in the form attached to this OMA Amendment and incorporated herein. The City shall have access, at reasonable times and upon reasonable notice, to any SEAS books, records, documents, accounts, files, reports and other property and papers of SEAS relating to

the Project and pursuant to the terms and conditions of this OMA Amendment for the purpose of making audits, surveys, examinations, excerpts, and transcripts as further provided in Exhibit 9. SEAS agrees to cooperate, fully and promptly, with the City or any of its designees in providing relevant information to enable the City to monitor SEAS's compliance with this OMA Amendment.

7. No Other Changes to OMA; Other Agreements Not Affected. Except as otherwise expressly provided in this OMA Amendment, all of the terms and conditions of the Original OMA remain unchanged and in full force and effect. Furthermore, SEAS and the City acknowledge that the City and SEAS have entered into, and may in the future enter into, separate agreements with SEAS relating to the Facility, the Project, or related facilities, including without limitation those agreements listed in Section 4.8. Nothing in this OMA Amendment shall be construed as altering or limiting the terms or conditions of any such separate agreements between the City and SEAS, and such agreements, and the parties' interests thereunder, are expressly not merged with their respective interests under this OMA Amendment.

[Signature page follows.]

8. Counterparts. This OMA Amendment may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same OMA Amendment.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and SEAS have caused this OMA Amendment to be executed in their respective names by their duly authorized officers and have caused this OMA Amendment to be dated as of the date set forth on the first page hereof.

THE CITY OF SEATTLE, a Washington municipal corporation

By _____
Its Director of the Office of the Waterfront

and

By _____
Its Acting Superintendent of Parks and Recreation

and

By _____
Its [Interim] Director of Finance

Pursuant to Ordinance _____

SEATTLE AQUARIUM SOCIETY,
a Washington non-profit corporation

By _____
Its President and CEO

Pursuant to Resolution: _____

Exhibit 8 – EF Fee Payment Schedule
to the Aquarium Operations and Management Agreement,
as amended by the OMA Amendment

Enhanced Facility Fee Payment Schedule

EF Fee Payment Schedule
(Payable by SEAS to City)

EF Fee Due Date	Allocable to Principal	Allocable to Interest	Total
	(1)		

TOTAL

(1) Monthly principal component payments to commence six months in advance of the first anticipated Project Bond principal payment. *[At the time of ordinance adoption, the first Project Bond principal payment is anticipated, subject to market conditions, to occur in 2024.]*

Exhibit 9 – Ocean Pavilion Funding Compliance Commitments
to the Aquarium Operations and Management Agreement,
as amended by the OMA Amendment

SEAS agrees to satisfy the following commitments as an essential element of the OMA Amendment and the Increased Funding Commitment to the Project to be provided by the City in connection with the OMA Amendment and the Funding Amendment. Failure to satisfy these commitments shall constitute an Event of Default under the OMA as if set forth in the OMA.

1. Representations, Warranties and Obligations of SEAS Relating to the Ocean Pavilion

1.1 Representations, Warranties and Covenants. As an inducement to the City to execute the OMA Amendment and the Funding Amendment, and in addition to the representations, warranties, and covenants set forth elsewhere in the OMA, SEAS hereby repeats and affirms all representations and warranties set forth in Section 18.1 and 18.3 of the OMA and reasserts each covenant set forth in the OMA (including, without limiting the foregoing, the fiscal covenants set forth in Section 6). All such representations and warranties are deemed given as of the date hereof and as of every date hereafter for so long as the EF Fees are due under the OMA and may be relied upon by the City. SEAS shall fully comply with and abide by all such covenants at all times throughout the term of this OMA Amendment.

1.2 Obligations of SEAS. For so long as the EF Fees are due under the OMA (as amended by the OMA Amendment), the obligations of SEAS shall include, without limitation, the following:

(a) SEAS agrees to pay the EF Fees at the times and in the amounts required under the EF Fee Payment Schedule (as such schedule may be adjusted from time to time in accordance with the OMA Amendment) and to perform and observe the other obligations on its part contained in the OMA Amendment. Such obligations shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. SEAS's obligations shall continue in effect and shall survive the satisfaction of any other SEAS obligations to the City until such time as all EF Fees have been paid, together with any costs owed to the City pursuant to indemnification provisions under the OMA.

(b) SEAS agrees to continue its corporate existence in good standing, to operate the Aquarium facilities and the Project consistent with the OMA, and to do everything reasonably within its power establish and maintain available Aquarium revenues sufficient (together with other funds available for this purpose) to permit the payment when due of all EF Fees and to establish, use and maintain the EF Fee Reserve Account, consistent with paragraph __, below.

(c) The City will establish and maintain an EF Fee Reserve Account in the custody of a depository selected by the City (the "Depository") under a Depository Agreement to be executed by the Depository, the City and SEAS. No later than the issue date of the Project Bonds, the EF Fee Reserve Account shall be fully funded in accordance with paragraph __, below.

2. Funds and Accounts; EF Fee Payment Mechanics.

2.1 Monthly EF Fee Payments. It is acknowledged and understood by the Parties that SEAS will make monthly payments of EF Fees to the City in the manner directed by the City. Monthly payments commencing on the first day of the first calendar month following execution of the OMA Amendment and the Funding Amendment through the first day of the first calendar month following the issue date for the Project Bonds shall be in an amount calculated to cover the City's cost to provide funds under the Funding Agreement in advance of the Project Bond issuance, plus an amount agreed upon by the Parties for deposit to the EF Fee Reserve Account. Upon issuance of the Project Bonds, the EF Fee Payment Schedule shall be adjusted so that each monthly payment is equal to 1/6th of the interest next coming due on the Project Bonds, plus 1/12th of the principal next coming due on the Project Bonds. EF Fees shall be considered delinquent only on the date that is the first day of each month prior to a debt service payment date with respect to the Project Bonds (or such other semiannual date as is selected by the Parties, if the City determines not to finance the Increased Financial Contribution by the issuance of Project Bonds).

2.2 EF Fee Reserve Account; Final Disposition. To secure SEAS's obligations to the City under the OMA Amendment, and for so long as any obligation of SEAS under the OMA Amendment remains outstanding, SEAS agrees to maintain a deposit in the EF Fee Reserve Account equal to the maximum annual EF Fee Payment amount, where the annual EF Fee Payment amount is the sum of all monthly EF Fee Payments due in each calendar year. The amounts held in the EF Fee Reserve Account shall be invested as directed in the Depository Agreement and retained in that account. Interest earnings in excess of the minimum required deposit (less any fees required to pay the costs of the Depository's services) may be released to SEAS no more frequently than once per year, in accordance with the Depository Agreement. When the total amount of all EF Fees due is equal to or less than the amount in the EF Fee Reserve Account, then the amounts therein shall be used to make the transfers to the City's fiscal agent in respect of the Project Bonds and no further EF Fees shall be due. If any funds remain in the EF Fee Reserve Account after all EF Fees have been paid and no Project Bonds remain outstanding, then any funds in the EF Fee Reserve Account shall be remitted to SEAS by the Depository.

2.3 Payment Mechanics. EF Fees shall be due and payable to the Department of Parks and Recreation on the first business day of each month. EF Fees not paid in full as of the date that is the first day of each month prior to each City debt service payment date with respect to the Project Bonds shall be deemed delinquent and shall thereafter bear interest at a rate of 12%.

(a) Delinquent EF Fees; EF Fee Reserve Account. The Parties acknowledge that the EF Fees are intended to be sufficient to fully cover the City's debt service payments with respect to the Project Bonds. As of the first business day of each month preceding each Project Bond debt service payment date, the City shall confirm that the EF Fee receipts since the most recent Project Bond debt service payment date are in an amount at least equal to the amount of Project Bond debt service then coming due. If there is a shortfall in the amount of EF Fees received to date, the City shall direct the Depository to draw on the EF Fee Reserve Subaccount, for transfer to the fiscal agent for the Project Bonds, an amount sufficient to cover that shortfall. Immediately

following a draw on the EF Fee Reserve Account, the City shall notify SEAS of the amount of such draw, and SEAS agrees to replenish the EF Fee Reserve Account within 30 days. After 30 days, if SEAS has failed to replenish the EF Fee Reserve Account, the City shall redirect any funding to be provided by the City to SEAS in connection with its operation of the Aquarium Facility to replenish the EF Fee Reserve Account until that account is fully replenished. The City Director of Finance, in such Director's discretion, may alternatively determine to adjust the EF Fee Payment Schedule such that the City is fully reimbursed over time, not to exceed one year. A longer repayment period may be utilized only upon approval of the City Council.

(b) Insufficiency in EF Fee Reserve Account. If the amount in the EF Fee Reserve Account is insufficient as of 10:00 am (Pacific) on the second Business Day preceding any Project Bond debt service payment date to make up a shortfall as described in subparagraph (a), the Depository shall provide written notice of the amount of such shortfall to the Parties in accordance with the Depository Agreement. If SEAS fails to deposit sufficient funds into the EF Reserve Account to make up the shortfall by 10:00 am (Pacific) on the Project Bond debt service payment date, the City shall be entitled to reimbursement by SEAS for any amounts that are necessary to make up the shortfall. SEAS shall be obligated to reimburse such amounts plus interest accruing at a rate of 12% per annum, calculated on the basis of a 360 day year of 30 day months. This reimbursement obligation shall survive the termination of the OMA.

3. Continuing Disclosure. It is anticipated that SEAS may be treated as an “obligated person” (within the meaning of Rule 15c2-12 of the Securities and Exchange Commission) with respect to the Project Bonds, and SEAS agrees to enter into a written undertaking to provide continuing disclosure, if determined to be necessary. Failure of SEAS to comply with such undertaking shall not be considered an Event of Default under the OMA. However, the City, or its dissemination agent, may (and, at the request of the Owners of at least a majority in aggregate principal amount of the then-outstanding Project Bonds, accompanied by indemnity satisfactory to it, shall) or any owner of such bonds may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause SEAS to comply with its obligations under this paragraph or the Undertaking.

4. Tax Covenants. If the City determines, in its sole discretion, to fund all or a portion of the Increased Funding Commitment through the issuance of the Project Bonds, or any portion thereof, that are issued on a tax-exempt or tax-advantaged basis, SEAS agrees to execute such certificates or other documents as may be necessary to establish the basis for such tax treatment. Furthermore, for so long as the Project Bonds (or any portion thereof) remain outstanding, SEAS agrees not to take, or permit to be taken on its behalf, any action which would result in the interest paid on the tax-exempt or tax-advantaged Project Bonds becoming taxable, and shall take all actions necessary or required to preserve the tax-exempt or tax-advantaged status of the interest paid on those Project Bonds. SEAS further covenants and agrees to pay or cause to be paid for the benefit of the City, to the Internal Revenue Service, within 10 days of receipt by SEAS of a written demand therefor, such amounts as have been determined to be necessary to be delivered to the Internal Revenue Service as a rebate amount for the Project Bond proceeds (and for any other amounts treated as “gross proceeds” of the Project Bonds) pursuant to Section 148

of the Code. In the event that the interest on the Project Bonds becomes taxable as a result of actions or omissions of SEAS not approved in writing by the City, SEAS shall indemnify and hold the City, its officers, and agents harmless from any additional interest payments and penalties which arise from SEAS' actions or omissions.

5. Accountability and Reporting.

5.1 Annual Report. SEAS shall provide to the Director of Finance with copies of all reports required to be provided to the City under sections 16.2 (Annual Report to City Council Parks Committee), 16.3 (Monthly Report to Superintendent) and 16.4 (Annual Plan to Parks Board and Superintendent), and other sections of the OMA, and Section 2.3 of the Funding Agreement and Section 8 of the Construction Agreement. If not set forth in these reports, SEAS shall additionally provide to the Director of Finance a report on the planned and actual operations of the Project, which report shall include:

(a) An annual report on the financial and operating aspects of the Aquarium facilities, including the Project; and

(b) Copies of SEAS' adopted capital and operating budgets for the upcoming fiscal year, within 60 days of adoption, including a comparison of the prior fiscal year budget to actual, and any final or adopted financial projections prepared in connection with the budgeting process for the Project and for the Aquarium facilities; and

(c) On an annual basis, SEAS shall provide to the City a copy of its audited financial statements, as required under Section 16.5 of the OMA; and

(d) In addition to and without limiting the rights to require audits and conduct inspections generally under the OMA, the City shall have the right, but not obligation, upon reasonable notice to review necessary to understand Project finances, to assist the City in complying with City financial management and accounting policies, to assist the City in complying with obligations to third parties regarding City accounting or financial management, or to maintain good standing for the Project Bonds or other City financial instruments. In that case, SEAS shall provide all requested documentation and otherwise reasonably cooperate to allow the City to effectively and efficiently conduct the audit, subject to the procedures applicable to the review of donor information set forth in Section 2.3 of the Funding Agreement to the extent that such procedures are consistent with and responsive to the auditors' requests; and

(e) As part of the annual report provided under subparagraph (a), the Annual Plan required to be provided under the OMA, annual Fundraising Plan required to be provided under the Funding Agreement, or Project information and updates required to be provided under the Construction Agreement, SEAS will provide City with information regarding (i) its fundraising efforts conducted in connection with SEAS funding commitment for the Ocean Pavilion, including securing grants and philanthropy, including a plan of projections and records of performance compared to the plan; (ii) payment of the EF Fee; and (iii) the status of Project construction and expenses. Additionally, if requested in writing by City, SEAS will within 30 days of such request

provide a written response detailing progress towards fundraising goals, including pledges, accounts receivable, and actual payments to date.

5.2 Corrective Action Plan.

(a) Corrective Action Events. The following are Corrective Action Events:

- (1) Any withdrawal from the EF Fee Reserve Account that is not replenished to the minimum required amount within 30 days or in accordance with a replenishment schedule approved in writing by the City Director of Finance (other than the transfer of amounts remaining once the reserve deposit exceeds the total amount of EF Fees due); or
- (2) Any material adverse change in the financial or operating condition of SEAS or the Facility, including but not limited to a material adverse change in SEAS Revenue, other revenues, expenditures, or fund balance, which SEAS or the City reasonably believes will impact SEAS ability to make timely payments of the EF Fee; or
- (3) Receipts of pledges, grants and other fundraising efforts for the Project in any year below anticipated fundraising projections contained in the plans and projections reported by the City under paragraph 5.1(e), to the extent that such shortfall could reasonably be expected to result in SEAS' failure to deliver the Project as required under the Construction Agreement or in SEAS' failure to comply with its obligations under the OMA or this Agreement; or
- (4) A written request by SEAS (other than in conjunction with its annual budget request) to amend or update the requested amount of City financial support in a manner reasonably deemed by the City Director of Finance to have significant budgetary impacts on the City or the Metropolitan Park District; or
- (5) Notice given by SEAS to the City of any event which will or is likely to substantially delay construction or the issuance of the Certificate of Occupancy for the Project; or
- (6) Any substantial draw on or reduction in the levels of SEAS' operating reserves that is not anticipated in the annual plans and projections provided to the City under paragraph 5.1; or
- (7) Issuance of notice of cancellation of any insurance policy maintained pursuant to the OMA; or
- (8) Any other Event of Default under the OMA, subject to any applicable cure period.

(b) Permissible Corrective Action Plan Contents. The City Director of Finance may, but is not required to, convene a Financial Oversight Committee, consisting of equal representation from the City and SEAS plus the Director of Finance (or such Director's designee), to monitor, review and assist in the development of any Corrective Action Plan and take such other actions as are required or permitted under this OMA Amendment. Corrective Action Plans may include different elements depending on the Corrective Action Event or events prompting them. Upon receipt or delivery of notice of a Corrective Action Event, SEAS shall promptly prepare and submit

a plan to the City (and to the Financial Oversight Committee, if one is formed) proposing the specific steps being taken to correct the specified deficiencies (the "Proposed Corrective Action Plan"). The specific steps to be proposed by SEAS shall be appropriate to correct the specified deficiencies and may include amendments to the Fundraising Plan, identification of additional sources of funding, use of SEAS reserves, development of an alternative financing plan, budget adjustments, identification and implementation of other measures reasonably likely to result in timely completion of the Project, or other steps. The Proposed Corrective Action Plan shall be submitted to the City (and Financial Oversight Committee, if any) within 30 days after the date that notice of the Corrective Action Event was delivered or received. The Proposed Corrective Action Plan shall specify a proposed prompt completion date for correcting the specified deficiencies, which completion date shall not be more than 180 days from the date the City receives the Proposed Corrective Action Plan, unless the City, in its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions. The City (and the Financial Oversight Committee, if any) shall review the Proposed Corrective Action Plan and notify SEAS, in writing of the City's determination as to the sufficiency of the Proposed Corrective Action Plan. If SEAS does not propose a Proposed Corrective Action Plan within the time required in this subsection, or if the Proposed Corrective Action Plan is not determined to be sufficient by the City, SEAS agrees to work in good faith with the City (and the Financial Oversight Committee, if any) to develop a Corrective Action Plan that the City reasonably determines to be sufficient. Upon the City's determination of sufficiency of a Proposed Corrective Action Plan, SEAS shall implement the Corrective Action Plan and complete the Corrective Action Plan by the time specified therein. Any Corrective Action Plan should include a Monitoring Program providing for frequent periodic review of SEAS' financial situation, including receipts of grants, proceeds of fundraising from donations and other private sources, and projections regarding cash flows and revenue receipts. The Monitoring Program may be undertaken by City and/or SEAS staff for reporting to a Financial Oversight Committee, if any, and/or the City Director of Finance.

(c) Responsibility to Identify and Report Corrective Action Events; Failure to Implement Corrective Action Plan. It shall be the responsibility of SEAS to promptly identify and report to the City Director of Finance the occurrence of any Corrective Action Event. It shall be the responsibility of the City Director of Finance to identify Corrective Action Events that the Director may reasonably have cause to be aware of or may otherwise identify in course of performance of the obligations hereunder. The City Council shall be notified of the implementation of any Corrective Action Plan. The failure of SEAS to submit, implement, and comply with an acceptable Corrective Action Plan as required herein shall constitute an Event of Default hereunder.

(d) Corrective Action Plan; When Proposed and Imposed. SEAS shall notify the City upon the occurrence of any Corrective Action Event and provide the City with such information as the City may request concerning such occurrence. No action required under this section may in any manner whatsoever adversely affect the exemption from federal income taxation of interest on any Project Bonds issued on a tax-exempt or tax-advantaged basis. Taking action under this section shall not be a condition to the City's exercise of its rights and remedies set

forth in the OMA, and any action the City may take pursuant to this section shall not diminish or abrogate the City’s rights and remedies available under this OMA Amendment.

5.3 Accounting. SEAS agrees to establish and/or maintain accounting procedures and systems and maintain its accounting books and records in accordance with generally accepted accounting procedures consistent with the OMA and the Funding Agreement.

5.4 Assignment. This OMA Amendment shall inure to the benefit of the City and SEAS and shall be binding upon the City and SEAS, and their successors. No party shall assign any of its rights or delegate any of its duties under this OMA Amendment without the express written approval of the other parties.

5.5 City Approval. The Superintendent of Parks and Recreation (or that officer’s successor, delegee, or assignee, within or without the Parks and Recreation Department) or such other individual as the City may designate in writing, is the agent of the City for the purposes of all approvals, notices, and releases of funds required pursuant to this OMA Amendment. Unless specifically otherwise provided for herein, all consents, approvals and other decisions of the City hereunder shall be binding only if made in writing by the Superintendent of Parks and Recreation, or that officer’s successor or designee. No approval, consent, or decision of the City for purposes of this OMA Amendment shall be effective for purposes of any other agreement or instrument to which the City is a party or beneficiary, or for any regulatory or other purpose.

5.6 Amendments to the OMA and to Other Documents. No amendment to the OMA, the Funding Agreement, the Depository Agreement, or any documents appended to or incorporated into such documents, or any other documents or agreements relating to the issuance of the Project Bonds, shall be valid without the written consent of the City.

5.7 Severability. In the event any provision of the OMA Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5.8 Counterparts. This Exhibit 9 to the OMA Amendment may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same OMA Amendment.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and SEAS have caused this Exhibit 9 to be executed in their respective names by their duly authorized officers and have caused this OMA Amendment to be dated as of the date set forth on the first page hereof.

THE CITY OF SEATTLE, a Washington municipal corporation

By _____
Its Director of the Office of the Waterfront

and

By _____
Its Acting Superintendent of Parks and Recreation

and

By _____
Its [Interim] Director of Finance

Pursuant to Ordinance _____

SEATTLE AQUARIUM SOCIETY

By _____
Its President and CEO
Pursuant to Resolution: _____

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Office of the Waterfront	Kyle Butler/206-580-9883	Caleb Wagenaar/ 206-733-9228

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE relating to the financing of the Aquarium Expansion project; authorizing amendments to existing agreements with the Seattle Aquarium Society relating to such financing; and providing for other related matters.

Summary and Background of the Legislation:

This legislation provides Council authorization for an amendment to the existing Operations and Management Agreement (“OMA”) to recognize the City’s increased investment in the Seattle Aquarium’s Ocean Pavilion project. The Seattle Aquarium is owned by the City of Seattle and operated by the non-profit Seattle Aquarium Society (SEAS). SEAS is constructing a major expansion to the Aquarium’s existing footprint to add new programming and visitor capacity. The Seattle Aquarium Ocean Pavilion Project is an integral component of the overall Central Waterfront Program. In 2019, SEAS and the City entered into an Ocean Pavilion Funding Agreement (Funding Agreement) in which the City agreed to commit \$34 million towards the capital costs of the Ocean Pavilion project and SEAS agreed to secure the balance of funds necessary through other government resources and private contributions.

Design and construction of the project is led by SEAS and coordinated with City investments by Seattle Parks and Recreation (SPR) and the Office of the Waterfront (OW). Construction has been carefully coordinated with the Main Corridor and Overlook Walk projects. Project coordination includes sequenced construction of key components including shared walls, rooftops, staging areas and shifts in traffic flows. The current construction schedule allows for the completion of all major elements of the Seattle Waterfront Program by 2025.

SEAS is facing several industry-wide challenges including supply chain uncertainty, and labor and material cost increases, as well as delays in the timing of major gifts and smaller-than-expected contributions from other public entities as part of their capital campaign. These challenges have combined to increase the project cost and create cash flow timing problems for the Ocean Pavilion project, which is already under construction.

In response to a request from SEAS, the City is providing an additional \$20 million investment in this City-owned facility beginning in 2022 to assist in meeting the project’s cash flow needs. The City’s investment will be supported by an interfund loan from the REET I Capital Projects Fund to the 2023 LTGO Bond Fund. Proceeds from the 2023 LTGO issuance will repay the borrowing costs associated with the interfund loan. Council

authorization for financing is provided through an additional interfund loan ordinance as a companion to this legislation.

An amendment to the existing Operations and Management Agreement (“OMA Agreement”) is authorized through this legislation to recognize the City’s increased investment in the Ocean Pavilion project. SEAS commits to pay an “Enhanced Facility Fee” beginning in 2023 through June 2030, the term of the current agreement. The Fee Schedule will be determined in 2023 following the City’s issuance of Limited Tax General Obligation (LTGO) bonds as described in the OMA Agreement.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes X No

A companion bill appropriates the expenditures necessary to execute the agreements.

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes X No

Appropriation change (\$):	General Fund \$		Other \$	
	2022	2023	2022	2023
				\$1,257,759
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2022	2023	2022	2023
				\$1,257,759

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
 Appropriation changes will be included in the 2023-2024 Proposed Budget.

The interfund loan will allow the City to provide necessary funding to invest in the City-owned Aquarium as part of the development of the Ocean Pavilion in 2022 and 2023 prior the issuance of the 2023 LTGO bonds. SEAS will pay an “Enhanced Facility Fee” through the end of the term of the existing agreement in recognition of the improvements being made to the Aquarium facility. This agreement is reflected in the amendment to the OMA Agreement between the City and SEAS. Financial impacts are possible if payments for the Enhanced Facility Fee are not paid by SEAS in full, or according to the agreed upon schedule.

Are there financial costs or other impacts of *not* implementing the legislation?

Delays to the construction of the Aquarium’s Ocean Pavilion project as part of the Aquarium Expansion project (MC-PR-21006) could potentially create schedule and budget risks for the delivery of the Waterfront’s Overlook Walk project (MC-TR-C073) due to the high degree of integration between the projects.

3.a. Appropriations

 This legislation adds, changes, or deletes appropriations.

A companion bill appropriates the expenditures necessary to execute the agreements.

3.b. Revenues/Reimbursements

 X This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

Fund Name and Number	Dept	Revenue Source	2022 Revenue	2023 Estimated Revenue
10200 – Park and Recreation Fund	Seattle Parks and Recreation	Seattle Aquarium Society Enhanced Facility Fee	\$0	\$1,257,759
TOTAL			\$0	\$1,257,759

Is this change one-time or ongoing?

Ongoing during 2023-2030. The 2023 estimated revenue reflects the estimated amount due to be paid by SEAS to Seattle Parks and Recreation beginning in 2023 and continuing through the end of the term of the current agreement in June 2030. EF Fee revenue will be transferred to the Bond Interest and Redemption Fund, via appropriations approved through the annual budget, to meet the City’s financial obligations related to this agreement.

Revenue/Reimbursement Notes:

The Enhanced Facility Fee and associated appropriations will end in June 2030 at the conclusion of the term of the existing OMA agreement between the City and SEAS, or when the Enhanced Facility Fee is fully paid, whichever comes first.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes, SDOT and the Office of the Waterfront (OW) are engaged due to the connection with project delivery of the Overlook Walk (MC-TR-C073). In addition, the City Finance Director has been designated certain roles described in the OMA.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

No direct implications, however, the existing funding agreement with the Aquarium for the Ocean Pavilion requires SEAS to have a community workforce agreement consistent with Project Hire and to provide programs for disadvantaged youth. These terms would be in place for this additional funding agreement as well.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No, not likely to cause an increase or decrease. It is anticipated that this amendment to the OMA will allow SEAS' construction plans to continue as planned.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

This legislation is not anticipated to directly increase or decrease Seattle's resiliency, however supporting the Ocean Pavilion's construction will help the Aquarium deliver its message about climate impacts on the ocean to the public.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

Not a new initiative. The long-term measurable goals are to improve the Waterfront and increase the economic vitality of downtown and the City overall by enhancing the City-owned Aquarium's infrastructure and preserve and build upon the Aquarium's ability to deliver future programming.

Summary Attachments:

N/A

August 9, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Eric McConaghy, Analyst
Subject: Increased Funding for Seattle Aquarium’s Ocean Pavilion – Council Bills 120396 and 120397

On August 11, 2022, the Finance and Housing Committee (Committee) will discuss and potentially vote on recommendations on two, interdependent Council Bills (CB). Together, the two bills would increase the City’s funding for Seattle Aquarium’s Expansion Project, also known as the Ocean Pavilion, from \$34 million to \$54 million with Seattle Aquarium Society (SEAS) committing to reimburse the City for the additional funding and associated costs:

1. [CB 120396](#), Aquarium Expansion Interfund Loan ordinance and
2. [CB 120397](#), the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement ordinance.

This memorandum (1) provides an introduction to the Ocean Pavilion project; (2) describes the proposed legislation; (3) outlines the legislative background related to the Ocean Pavilion; and (4) outlines next steps.

Introduction

The City owns the Seattle Aquarium and the non-profit SEAS operates the Seattle Aquarium for the City according to the Operations and Management Agreement authorized in 2009 via [Ordinance 123205](#). The Ocean Pavilion Project includes a new aquarium building, the accessible rooftop on the Ocean Pavilion that includes public open space, a public stair on the west façade of the Ocean Pavilion, and a public stair and elevator on the south façade of the Ocean Pavilion. The City and SEAS have integrated the Ocean Pavilion with the City’s Overlook Walk Project: the bridge from the Pike Place Marketfront over Alaskan Way to the roof of the Ocean Pavilion, stairs extending west towards Pier 62, and stairs wrapping the north side of the Ocean Pavilion. SEAS updated the Public Assets and Homelessness Committee regarding the Ocean Pavilion project status on July 20, 2020. The briefing materials and video of the meeting [are available online](#).

The City has affirmed the location and integration of the Ocean Pavilion Project with the Overlook Walk Project through multiple legislative actions (see Legislative Background section on page 4) as part of the City’s overall planning for the capital projects of the [Central Waterfront Program](#). The City has committed increasing levels of funding to SEAS for the Ocean Pavilion Project since 2013.

The Executive reports that due to the COVID-19 pandemic and related economic conditions SEAS has experienced labor and material cost increases simultaneously with delays in expected project funding from private and public sources for the Ocean Pavilion Project. This has resulted in SEAS having insufficient cash to support the project in the near term. SEAS requested additional funding to address this cashflow issue from the City to support the ongoing project work in 2022 and 2023.

Without additional funding in the short term, SEAS would wait for actual contributions of the expected private philanthropic and public funding for the Ocean Pavilion to pay construction costs. The delay would likely increase the cost of the project significantly and would adversely affect the cost and timing for the City's completion of the Overlook Walk Project because the two projects are interdependent. The City and SEAS are also in close coordination for the Ocean Pavilion Project and the City's Main Corridor (new Alaskan Way) Project. The proposed CBs comprise the Executive's proposal to provide additional funding to SEAS that would cover the costs of the Ocean Pavilion Project that currently outrun SEAS' available cash.

To date, the City has committed \$34 million of the total estimated cost of \$160 million to complete the Ocean Pavilion Project. The Executive's proposal would reset the maximum City commitment to \$54 million with SEAS committing to reimbursing the City for the additional \$20 million plus associated costs through a new Enhanced Facility Fee (EFF) according to a monthly schedule with full reimbursement by the end of June 2030.

CB 120396, Aquarium Expansion Interfund Loan

CB 120396 would establish the necessary financial elements necessary to disburse \$20 million to SEAS for the Ocean Pavilion beginning in 2022. Approval of CB 120396 would:

- Create a new 2023 Multipurpose tax-exempt limited tax general obligation (LTGO) Bond Fund;
- Authorize an interfund loan of \$20 million from REET I Capital Projects Fund to the new Fund. This interfund loan would allow the City to begin disbursing funds to SEAS in 2022; that loan serves as a bridge until the City authorizes and completes anticipated bond sales in 2023;
- Increase appropriations in the Aquarium Expansion CIP; and
- Amend the CIP project page for the Aquarium Expansion CIP

The proposed legislation specifies that the new 2023 Multipurpose LTGO Bond Fund would receive the principal proceeds and any premium received from the sale and delivery of LTGO bonds in 2023 "for the purpose of paying all or part of the costs of various elements of the City's capital improvement program and other City purposes approved by ordinance." The Director of City Finance would be authorized to loan \$20 million from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund to provide bridge financing for expenditures related to the Ocean Pavilion project until the City receives proceeds from LTGO bond sales.

The proposed ordinance states the City's intention to sell LTGO bonds to repay the interfund loan and requires the repayment to be completed by the end of 2023.

Consistent with the City debt management policies, the Director of City Finance and the City Budget Director determined that this interfund loan request is consistent with the Debt Management Policies adopted by Resolution 31553 and the Debt Management Policy Advisory Committee considered and approved the proposed interfund loan.

Central Staff recommendation on CB 120396

Council should only approve CB 120396 if CB 120397 is approved. The interfund loan, new fund, changes to appropriations and expected bond sales that would be authorized by CB 120396, do not make sense without the amendments to two agreements between the City and SEAS that approval of CB 120397 would authorize. Specifically, without the amendments proposed in CB 120397, the City would not have a plan to generate revenues to cover the debt service on the LTGO bond issuance; the bond process would be used to pay back the interfund loan that provides immediate funding to address SEAS short-term funding constraints.

CB 120397, Amendments to the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement.

CB 120397 would authorize the Superintendent of the Department of Parks and Recreation, the Director of Finance, and the Director of the Office of the Waterfront, acting jointly, to execute amendments to: (a) the Ocean Pavilion Funding Agreement and (b) the Seattle Aquarium Operations and Management Agreement (O&M Agreement). The amendments to the Agreements would be mutually contingent upon execution.

The City authorized execution of the Ocean Pavilion Funding Agreement by [Ordinance 126015](#) in 2019 and executed the agreement with SEAS on June 30, 2020 (*see Legislative Background section for more information*). See Attachment A of CB 120397 for the proposed amendment to the Ocean Pavilion Funding Agreement.

The proposed amendments to Ocean Pavilion Agreement would:

- Increase the City's funding commitment to SEAS for the Ocean Pavilion project from \$34 million to \$54 million and
- Make the increased funding of \$20 million contingent upon the execution of an amendment to the O&M Agreement requiring that SEAS pay a new fee, the Enhanced Facility Fee (EFF), "to reimburse the City for its costs incurred in making the additional funding available and to reflect the value of the improved facility;" and
- Commit SEAS to secure the balance of the funding, without additional City funding beyond the funding included in this agreement, needed to fully fund the Ocean Pavilion.

As mentioned above, the City authorized execution of the O&M Agreement by Ordinance 123205 in 2009. The City and SEAS executed the agreement with SEAS in January 2010. See Attachment B of CB 120397 for the proposed amendment to the O&M Agreement.

By executing the proposed amendments to the O&M Agreement:

- SEAS would agree to pay the EFF¹ on a regular schedule;
- SEAS and the City would agree to Corrective Actions to be taken if SEAS fails to make payments on time; and
- The City would express the intent to issue bonds as the funding source for the additional Ocean Pavilion funding (but would not be required to issue bonds).

The proposal would address the risk that SEAS would make late EFF payments or fail to make payments by requiring the City to draw from a required reserve (funded by the bond sales) and, if the reserve is depleted, directing any funding provided by the City to SEAS in connection with its operation of the Aquarium facility to cover EFF payments.

Central Staff recommendation on CB 120397

Approval of CB 120397 is a policy choice to continue support for SEAS' Ocean Pavilion consistent with previous legislative decisions described in the next section. The proposed legislation would address SEAS financial difficulties, unforeseen at the time of executing the current agreements regarding the Ocean Pavilion Project, but cannot entirely mitigate the additional financial risk to the City of providing additional funding for the Ocean Pavilion. This risk is that, if for some reason SEAS is unable to complete the EFF payments to entirely reimburse the City, the City would have to cover the outstanding debt service without that additional revenue.

Rejecting CB 120397 or taking no other action to provide support to SEAS would mean near-certain cost increases and delays to the Ocean Pavilion Project and the City's inter-related projects. Central Staff does not have complete estimates of these costs but recognizes their significance.

Legislative Background - Ocean Pavilion Project

In 2013, the City passed [Ordinance 124121](#), authorizing the execution of an Memorandum of Understanding (MOU) Concerning Renovation and Expansion of the Seattle Aquarium and Development of the Central Waterfront Project between the City and SEAS ("[2013 MOU](#)"). In 2013, the City and SEAS signed the 2013 MOU which appropriated \$1 million to SEAS for design and planning of an Aquarium expansion located over water to the south of Pier 59. The MOU directed the City to coordinate design efforts with SEAS, so that a potential expansion would be consistent with the overall Central Waterfront design and vision.

¹ The EFF payment would be in addition to existing SEAS debt service reimbursements to the City for past capital improvements to the Aquarium

The 2013 MOU also identified a potential City contribution not to exceed \$45 million toward the Aquarium expansion. In 2014, the City's anticipated contribution to the Aquarium expansion project was reduced, shown as \$33.5 million on the project page for the Aquarium Expansion project in the [Department of Parks and Recreation portion](#) of the Adopted 2015 – 2020 Capital Improvement Plan (CIP).

In 2015, the City approved SEAS's Master Plan by [Resolution 31603](#). By approving the Master Plan, the City Council directed the Office of the Waterfront and DPR to advance the design and environmental review of the Aquarium expansion, today known as the Ocean Pavilion, at the Overlook Walk Location.

Also in 2015, the City passed [Ordinance 124908](#), amending the 2013 MOU to increase the City's maximum compensation to SEAS for 50 percent of its expenditures for the Aquarium Expansion Project engineering, design, and consultant services incurred beginning January 1, 2013 from \$1 million to \$1.8 million.

In 2017, the City Council passed [Ordinance 125422](#), authorizing a second amendment to the 2013 MOU that reaffirmed the City's commitment to the Ocean Pavilion concept as the Aquarium Expansion, outlined the design process to reach 30 percent schematic design, required SEAS to fund 30 percent schematic design, and committed the City and SEAS to develop a funding plan and new memorandum of understanding to be brought to the City Council for consideration.

In 2018 Council passed [Ordinance 125630](#) authorizing the execution of the 2018 MOU and replacing and superseding the 2013 MOU. The passing of Ordinance 125630 increased the maximum amount of City funding for design and development of the proposed Ocean Pavilion project from \$1.8 million to \$4.7 million to reimburse SEAS up to 50 percent of eligible costs. The 2018 MOU also reiterated the City's anticipated total funding of \$34 million as described in the City's 2018-2023 Capital Improvement Program (CIP).

Additionally, the 2018 MOU stated that the City would reimburse SEAS for construction costs of the Ocean Pavilion according to a Project Development Agreement (PDA). The ordinance specified actions prerequisite for the execution of the PDA as (1) completion of 60 percent design development, including cost estimates; (2) SEAS providing the Director of the City Budget Office with a cost estimate and comprehensive funding plan; (3) Council being provided with a report on the feasibility of the comprehensive funding plan and (4) Council authorization of execution of the PDA by ordinance.

The City approved the Ocean Pavilion Funding Agreement via Ordinance 126015 in 2019 authorizing the execution of a funding agreement for the Ocean Pavilion Project and the execution of a later construction agreement for the Ocean Pavilion Project between the City and SEAS without further Council approval. Significantly, Ordinance 126015 found that the

authorized funding and construction agreements together would satisfy the intent and purpose of the PDA specified in Ordinance 125630 and the 2018 MOU and amended Ordinance 125630 to delete the language specifying actions prerequisite for the execution of the PDA (see above).

By approving CB 126015 the Council agreed to authorize the Executive to execute a funding agreement with SEAS committing the City to funding \$34 million of the Ocean Pavilion project without the opportunity to review a feasibility report on a comprehensive funding plan based on a cost estimate for the Ocean Pavilion project and agreed to authorize the Executive to execute a future construction agreement with SEAS without the opportunity to review the construction agreement.

Approving CB 126015 was a policy decision, like the decision before the Council in this legislative package, to continue the City's history of support for and trust in SEAS to raise funds for the Ocean Pavilion and to complete the project. Note that in the recitals of Ordinance 126015, "the City and SEAS recognize(d) that SEAS' efforts to secure funding commitments from private individuals, corporations, foundations and governments sources other than the City of Seattle are, in part, supported by a funding commitment from the City *before* (emphasis mine) it is feasible to negotiate some of the elements of the PDA that were anticipated under the 2018 MOU."

Next steps

If the Committee votes on recommendations to Council on CB 120396 and CB 120397 on August 11, then Council could consider and take final action on August 16.

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Brian Goodnight, Lead Analyst



Legislation Text

File #: CB 120391, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE establishing the City’s commitments and plans for supporting cannabis workers and supporting communities disproportionately harmed by the federal War on Drugs.

WHEREAS, the unequal enforcement of cannabis laws results in racially disproportionate arrests and

incarcerations causing inter-generational poverty, housing insecurity, loss of education and employment opportunities, disruption of family structures and other burdens; and

WHEREAS, the use of the term “marijuana” in the United States has discriminatory origins and should be replaced with the more scientifically accurate term “cannabis”; and

WHEREAS, Initiative 502, the 2012 ballot measure that legalized recreational use of cannabis by adults over 21 years of age in the State of Washington, did not include provisions or create programs to acknowledge the disproportionate harms the enforcement of cannabis laws has on certain populations and communities, primarily Black communities; and

WHEREAS, Seattle cannabis businesses are owned primarily and operated by White men. This is also reflected nationally, as entry and success in the industry requires a combination of personal/generational wealth, access to unrestricted capital, technical expertise and a clean criminal record. The Washington State Liquor and Cannabis Board released ownership demographic data to the City of Seattle Department of Finance and Administrative Services (FAS) in 2018 and 2020 that confirms this disparity. As of January 2020, 42 of Seattle’s 48 cannabis retail stores had White majority ownership, and 37 of those stores were owned by white men; and

WHEREAS, the racial disproportionalities in the cannabis industry extend beyond licensing and ownership to professional development and professional advancement; and

WHEREAS, jobs in the cannabis industry pose unusual risks to workers in both retail and processing due to the prevalence of cash-based transactions, use of volatile chemicals in manufacturing, and contagion exposure; and jobs in the cannabis industry involve a product that is highly regulated in Washington and remains illegal under federal law; and

WHEREAS, FAS launched a Racial Equity Toolkit (RET) in 2018 to examine racial disparities in the licensing of cannabis businesses in Seattle. Research and engagement with hundreds of community stakeholders resulted in recommendations to address disproportionate ownership of Seattle cannabis businesses and redress some of the harms caused by the racially unequal enforcement of prior cannabis laws; and

WHEREAS, those recommendations include: eliminating City licensing fees for individuals who meet social equity criteria; reducing buffering and dispersion requirements to ensure there are desirable locations available for cannabis business licensees who meet social equity criteria; providing grants or loans, technical assistance, and business planning and mentorship to cannabis business applicants and licensees who meet social equity criteria; and investment in communities most harmed by the disproportionate enforcement of prior cannabis laws; and

WHEREAS, the City finds that it is necessary and appropriate to regulate the emerging cannabis industry within the City to improve workforce training and development, provide employee protections, and remedy the damage caused by cannabis prohibition and the failed War on Drugs to communities of color and marginalized communities; and

WHEREAS, cannabis businesses operating in the City of Seattle must be licensed by both the City and the State, and City laws and regulations of cannabis businesses must be consistent with State law; and

WHEREAS, this licensure affords the City an opportunity to engage with the cannabis industry and advance these recommendations; and

WHEREAS, in 2020, the State passed legislation, further amended in 2021 and 2022, to establish a Social Equity in Cannabis program. The purpose of the legislation is to provide business opportunities to cannabis license applicants who were disproportionately impacted by the unequal enforcement of cannabis prohibition laws; and

WHEREAS, the program authorizes the Washington State Liquor and Cannabis Board to issue retailer licenses that were previously forfeited, cancelled, revoked, or never issued but which could have been issued without exceeding the statewide cap on the number of retail licenses set in rule by the Board. These licenses will only be issued to applicants who meet certain social equity criteria established by State law and further clarified by rules to be promulgated by the Washington State Liquor and Cannabis Board. The program also establishes a technical assistance grant program for applicants who meet social equity criteria; and

WHEREAS, the Washington State Social Equity in Cannabis Task Force was established in 2020 and amended in 2021 and 2022 to make recommendations to the Washington State Liquor and Cannabis Board to promote business ownership among individuals who have been disproportionately impacted by the War on Drugs in order to remedy the harms resulting from the unequal enforcement of cannabis-related laws; and

WHEREAS, in addition to recommending the issuance of additional cannabis retailer, producer and processor licenses for those who meet certain criteria for social equity, the Washington State Social Equity in Cannabis Task Force is currently considering recommendations for the legislature to establish new cannabis business license types. The Task Force is also considering recommendations to make the new license types exclusive to those who meet certain criteria for social equity through 2029; and

WHEREAS, the City supports the establishment of new license types by the State, recognizing that Washington is behind other states in creating a variety of paths to market for cannabis consumers, producers, and retailers. The City also recognizes making these license types exclusive to social equity applicants

creates a unique opportunity for individuals who have been disproportionately impacted by the War on Drugs, and who have historically been excluded from opportunities in the legal cannabis industry, to launch competitive cannabis businesses with a reasonable chance for success; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City will include issues of cannabis equity on its 2023 State Legislative Agenda to be adopted later this year. These could include cooperative licensing, expungement of criminal records, social equity licensing for ancillary businesses, access to capital, and technical assistance.

Section 2. The City will include issues of cannabis equity on its 2023 Federal Legislative Agenda to be adopted later this year.

Section 3. The City will advocate partnership with King County to seek the expungement of cannabis convictions handed down prior to 2014.

Section 4. The Mayor's Office will use summer legal interns to participate in and partner with ongoing regional efforts to work on expungement of cannabis convictions handed down prior to 2014.

Section 5. The City intends to continue to partner with organizations that represent communities negatively impacted by the federal War on Drugs to ensure increased opportunities to ameliorate that damage including, but not limited to, cannabis related business ownership.

Section 6. The City will continue to partner with organizations advocating for the advancement, safety, and retention of cannabis workers.

Section 7. The City will pursue funds from the State and Federal government to address these aims.

Section 8. The City will fund a Cannabis Needs Assessment to further clarify what investments and improvements in this burgeoning industry could be supported by the City moving forward. At a minimum, the study will provide demographic information about workers currently employed in Seattle's cannabis industry. In addition to evaluating the training needs of the incumbent workforce, the study will evaluate and determine the highest training needs of those workers who wish to advance in the industry beyond entry-level positions

and also those seeking to become new owners. The study will include recommendations about whether and how to fund such training.

Section 9. To aid in the scoping of this needs assessment, the City will appoint an advisory committee comprised of workers, industry members, and community members impacted by the federal War on Drugs. The work of this advisory committee will commence in Quarter One of 2023, with a task of completing the scope of the needs assessment no later than the end of Quarter Two 2023. The advisory committee will then be tasked with reviewing the results of the needs assessment and providing recommendations to the Mayor and the Council no later than 60 days after the completion of the needs assessment, at which time the committee shall be dissolved.

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

Passed by the City Council the _____ day of _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)
Attachments:

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Mayor's Office	Brianna Thomas x4-7955 Dan Eder x4-8147	N/A

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE establishing the City's commitments and plans for supporting cannabis workers and supporting communities disproportionately harmed by the federal War on Drugs.

Summary and background of the Legislation: The federal War on Drugs disproportionately impacted Black, Indigenous, and People of Color. Cannabis businesses operating in the City of Seattle must be licensed by both Seattle and the State of Washington; and Seattle cannabis businesses are owned primarily by White men.

The legislation would memorialize the City intent to take a series of actions:

1. Include issues of cannabis equity on the City's 2023 State Legislative Agenda.
2. Include issues of cannabis equity on the City's 2023 federal Legislative Agenda.
3. Continue to advocate partnership with King County to seek the expungement of cannabis convictions handed down prior to 2014.
4. Use summer legal interns to work on expungement of cannabis convictions.
5. Continue to partner with organizations that represent communities negatively impacted by the federal War on Drugs to ensure increased opportunities to ameliorate that damage including, but not limited to, cannabis related business ownership.
6. Partner with organizations advocating for the advancement, safety, and retention of cannabis workers.
7. Pursue funds from the State and federal governments to support this work.
8. Fund a Cannabis Needs Assessment to provide demographic information about workers currently employed in Seattle's cannabis industry; determine the highest training needs of those workers wishing to advance in the cannabis industry and become owners; and include recommendations about whether and how to fund such training.
9. Appoint an advisory committee comprised of workers, industry members, and community members impacted by the federal War on Drugs.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. The legislation indicates that the City will fund a Cannabis Needs Assessment, which is estimated to cost \$250,000. There is currently no identified source of funding for the Cannabis Needs Assessment.

Are there financial costs or other impacts of *not* implementing the legislation?

No.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

No.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This legislation establishes expectations for steps the City intends to take to address the disproportionate harms that the federal War on Drugs caused to Black, Indigenous, and People of Color (BIPOC).

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

No.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**

N/A

Summary Attachments:

August 8, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Amy Gore, Analyst
Subject: CB 120391: Cannabis Equity Ordinance

On Thursday, August 11, the Finance and Housing Committee will discuss three pieces of legislation related to cannabis equity¹, including:

1. [Council Bill \(CB\) 120391](#), which would outline actions the City intends to take to improve racial disparities in the cannabis industry;
2. [CB 120392](#), which would revise several licensing provisions for cannabis retailers, producers, and processors doing business in or with the City of Seattle; and
3. [CB 120393](#), which would require cannabis business employers to take actions to reduce job insecurity caused by changes in business ownership.

The following memo provides background on this suite of legislation, an overview of the Racial Equity Toolkit (RET) performed by an interdepartmental team led by Facilities and Administrative Services (FAS), an overview of CB 120391, policy considerations, potential amendments, and next steps. For more information on proposed changes to licensing, see the Central Staff memo on CB 120392. For more information on cannabis business job security, see the Central Staff memo for CB 120393.

Background

In November of 2012, Washington voters approved Initiative 502, which removed state-law prohibitions against producing, processing, and selling cannabis, and allowed limited possession of cannabis by persons aged 21 and older. In addition, the initiative created a licensing and regulatory scheme for cannabis producers, processors, and retailers, imposed excise taxes on cannabis products, and established a dedicated fund for cannabis industry proceeds to support health care and substance abuse education and treatment.

Following these state changes, the City of Seattle took additional actions related to the cannabis industry, including establishing zoning and regulations related to the cannabis industry ([ORD 124326](#)), and requiring a business license and related fees ([ORD 124807](#), [ORD 125194](#), and [ORD 125703](#)).

¹ The following memo refers to “cannabis” rather than “marijuana,” consistent with current Washington State Law, unless referring to “medical marijuana”.

However, neither state nor local government used a racial equity framework in the legalization of the cannabis industry and the failure to account for equity considerations has both continued and exacerbated racial inequities caused by cannabis prohibition enforcement and policies such as the War on Drugs. Many jurisdictions are now working to address these racial disparities. For example, in 2020 the State of Washington passed [HB 2870](#) which created the Cannabis Social Equity Program to streamline retail licenses to people in communities disproportionately impacted by cannabis prohibition, and allows the Liquor Control Board to prioritize social equity applicants for its remaining unawarded licenses. The bill also allowed for the creation of the Social Equity in Cannabis Task Force.

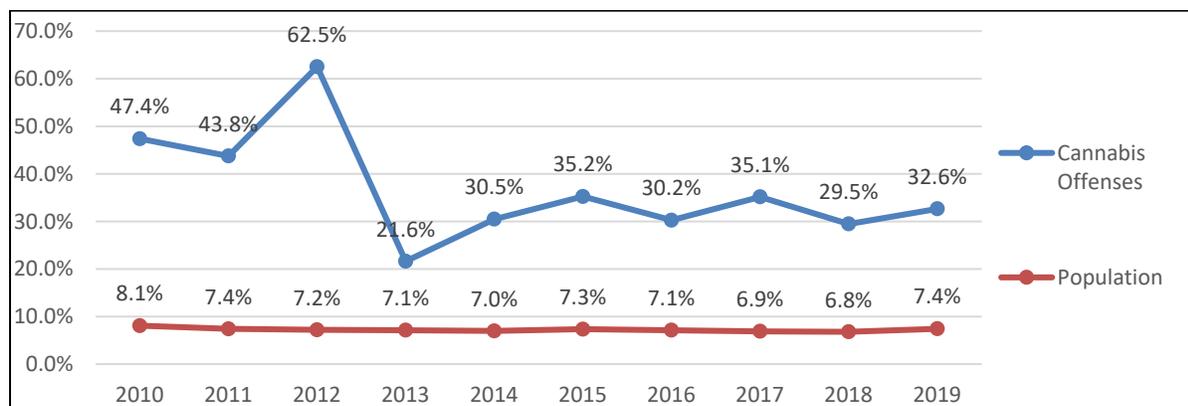
Cannabis Racial Equity Toolkit

FAS conducted an RET of the City’s cannabis policies, working with the Office of Economic Development (OED), Seattle Department of Construction and Inspections (SDCI), and the Seattle Office for Civil Rights (SOCR). Begun in 2018, the group initially focused on equity in cannabis business licensing and fees, but due to engagement feedback expanded their scope to include making systemic changes to the cannabis industry and centering Black communities.

In 2019, the team produced a detailed [Cannabis Equity Survey and Analysis](#). The report describes the harm done to Black residents through enforcement of cannabis policies both before and after legalization of cannabis. For example, in 2012 Black residents represented 62.5 percent of cannabis-related offenses while only 7.2 percent of the City’s population. The harms of these enforcement of cannabis-prohibition include:

- Financial burdens from pretrial detention, bail, and loss of work;
- Impacts of criminal record on eligibility for assistance programs and employment; and
- Incarceration, family separation, and enforcement activities creating emotional trauma on individuals, families, and entire communities.

Chart 1. Comparing Black individuals as a percentage of Seattle cannabis offenses and population



Data Source: Cannabis Equity Survey and Analysis and US Census American Community Survey (1-Year Estimates, Table B02001)

The report also showed that after legalization, none of Seattle’s existing Black-owned medical marijuana businesses were given new licenses by the State. The now-legal cannabis industry is dominated by white ownership, due in part to a lack of access to personal or private capital to invest in legal cannabis businesses and the impacts of prior enforcement action preventing access to legal cannabis licenses. In addition, Black residents are still disproportionately impacted by the enforcement of public consumption laws. For example, in 2019, Black people represented 32.6 percent of City cannabis offenses while only 7.4 percent of the population.

The RET team also conducted stakeholder outreach, reaching over 200 community members and City Departments through two dozen stakeholder engagements, including a cannabis community forum. Engagement highlighted themes including prioritizing communities most impacted by cannabis-prohibition enforcement, collecting accurate data collection, supporting access to banking, funding, and training support, incorporating the medical marijuana community in data and policy decisions, and ensuring the legal viability of social equity programs. Stakeholders recommended that the City:

- Dedicate \$1 million dollars per year for ten years to fund the Seattle Cannabis Equity Program;
- Align with the State’s Social Equity Task Force Program; (See staff memo on CB 120392)
- Partner with OED to develop a program to assist Black retail cannabis license holders;
- Support OED in implementing grants for those most impacted by the War on Drugs; and
- File a motion with King County Superior Court to vacate convictions and dismiss charges for felony cannabis possession.

As described during their March 2, 2022 [presentation](#) to Council, the FAS Leadership team recommended investing \$1 million per year on cannabis social equity and the following policies and programs:

- Increasing equity in business licensing such as lowering licensing fees (See staff memo on CB 120392);
- Reducing buffering and dispersion requirements;
- Providing grants or loans and technical assistance;
- Mentorship and business planning; and
- Investing in communities most impacted by cannabis prohibition enforcement.

CB 120391

CB 120391 would outline several actions that the City plans to take to address racial disparities in the cannabis industry:

- Include cannabis equity issues such as cooperative licensing, expungement of criminal records, social equity licensing for ancillary businesses, access to capital, and technical assistance on its 2023 State Legislative Agenda.

- Include cannabis equity issues on its 2023 Federal Legislative Agenda.
- Advocate for the expungement of cannabis convictions with King County and use summer legal interns to supporting ongoing regional efforts to work on expungement of cannabis convictions.
- Partner with organizations that represent negatively impacted communities to mitigate the damage of the federal War on Drugs, including cannabis-related business ownership and partner with organizations advocating for the advancement, safety, and retention of cannabis workers.
- Pursue funds from the State and Federal government for cannabis equity work.
- Fund a Cannabis Needs Assessment to:
 - clarify investments and improvements that could be supported by the City;
 - provide demographic information about cannabis industry workers;
 - evaluate and determine the training needs of workers to advance beyond entry-level positions and those seeking to become new owners; and
 - make recommendations on whether to fund training and, if so, how.
- Appoint an advisory committee comprised of workers, industry members, and community members to support the Cannabis Needs Assessment, review it, and provide recommendations to the Mayor and Council no later than 60 days after its completion. CB 120391 specifies that the advisory committee will work during the first and second quarters of 2023 to scope the Needs Assessment and that it will be dissolved after completion of this work.

Policy Issues

1. Additional Recommended Actions – As noted above, the City’s cannabis equity RET identified several actions the City could take to address past harm and current racial disparities in the cannabis industry; however not all of these recommendations are included in CB 120391. For example, the RET team recommended reducing buffering and dispersion requirements for cannabis businesses, providing grants or loans and technical assistance, providing mentorship and business planning to support Black-owned cannabis businesses, and investing in communities most impacted by the enforcement of prohibition. All of these remaining RET recommendations would have fiscal impacts, depending on the scale of the program. The recommendation of the RET was to spend \$1 million per year.

Options:

- A. Amend CB 120391 to include some or all of the RET recommendations; or
- B. Take no action.

2. Needs Assessment Funding – CB 120391 would commit to funding a Cannabis Needs Assessment. The Assessment is anticipated to cost approximately \$250,000. There is currently no funding identified to support this work.

Options:

- A. Amend CB 120391 to identify a funding source;
- B. Amend CB 120391 to remove the Needs Assessment until a funding source is identified;
or
- C. Take no action.

3. Advisory Committee – CB 120391 states that the City will appoint an advisory committee to be comprised of “workers, industry members, and community members impacted by the federal War on Drugs...” but gives no additional guidance on eligibility or selection of advisory committee members.

Options:

- A. Amend CB 120391 to give additional guidance on the process of selecting advisory committee members;
- B. Amend CB 120391 to give additional guidance on the eligibility criteria for advisory committee members; or
- C. Take no action.

Potential Amendments

To date, there is one potential amendment identified for the Committee’s consideration during the August 17 committee meeting. Proposed Amendment 1, sponsored by Councilmember Mosqueda, would add a new Section 10 to CB 120391 to provide additional guidance on the preferred characteristics for the organization selected to conduct the Assessment. (See Attachment 1)

Next Steps

CB 120391, as well as CB 120392 and CB 120393, will be discussed during a special meeting of the Finance and Housing Committee on August 11. Councilmembers who would like to propose amendments should contact Central Staff no later than noon on August 12. The Committee will discuss and potentially vote on amendments and the bills during the regularly scheduled Finance and Housing Committee meeting on August 17.

Attachments

1. Proposed Amendment 1 – Cannabis Needs Assessment

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Asha Venkataraman, Lead Analyst

Amy Gore
Finance and Housing Committee
August 11, 2022
D1b
Attachment 1 – Amendment 1 to CB 120391

Amendment 1 Version 1 to CB 120391– Cannabis Equity ORD

Sponsor: Councilmember Mosqueda
Cannabis Needs Assessment

Effect: This amendment would add a new Section 10 to describe the type of organization that should conduct the Cannabis Needs Assessment, specifying that it shall be conducted by a non-profit, such as We Train Washington.

Add a new section to CB 120391 as follows:

Section 10. The Cannabis Needs Assessment shall be conducted by a non-profit organization, such as We Train Washington, with experience in curriculum development, administering retail training and apprenticeship programs in the State of Washington, expertise in the roles and functions of jobs within the cannabis industry, and that is not primarily funded by cannabis businesses or employer associations.

Section ~~11~~10. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.



SEATTLE CITY COUNCIL
CENTRAL STAFF

Cannabis Equity

AMY GORE, LISE KAYE, JASMINE MARWAHA, LEGISLATIVE ANALYSTS

FINANCE & HOUSING COMMITTEE
AUGUST 11, 2022

CB 120391 – Cannabis Equity

Background

- Initiative 502 was approved by voters in November of 2012.
- State removed prohibitions against producing, processing, and selling cannabis, allowed limited possession of cannabis by persons aged 21 and older, and created a licensing and regulatory scheme, imposed excise taxes.
- City of Seattle established zoning regulations, required business licenses and related fees.
- Most cannabis-related changes were done without racial equity lens.

CB 120391 – Cannabis Equity

Racial Equity Toolkit

- Facilities and Administrative Services led inter-departmental team to conduct a RET on the City’s cannabis policies.
- The RET detailed disproportionate harm to Black individuals, families, and communities both before and after legalization.
- Stakeholder recommendations included \$1M of funding per year for a Seattle Cannabis Equity Program.
- FAS team also recommended increasing equity in business licensing, reducing buffering and dispersion requirements, providing grants/loans and technical assistance to black cannabis businesses, providing mentorship, investing in communities most impacted by cannabis prohibition enforcement.

CB 120391 – Cannabis Equity

CB 120391 expresses City's intention to:

- Include cannabis equity issues in the City's 2023 State and Federal Legislative Agendas.
- Advocate with King County for the expungement of cannabis convictions.
- Partner with organizations that represent negatively impacted communities to mitigate the damage of the federal War on Drugs.
- Pursue funds from the State and Federal government for cannabis equity work.
- Fund a Cannabis Needs Assessment.
- Appoint an advisory committee comprised of workers, industry members, and community members to support the Cannabis Needs Assessment.

CB 120391 – Policy Issues

- The City’s cannabis equity RET identified several actions the City could take to address past harms and racial disparities, some of which are not included in the proposed CB 120391.
- Options:
 - Amend CB 120391 to include some or all of the RET recommendations;
or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 would commit to funding a Cannabis Needs Assessment. The Assessment is anticipated to cost approximately \$250,000. There is currently no funding identified to support this work.
- Options:
 - Amend CB 120391 to identify a funding source;
 - Amend CB 120391 to remove the Needs Assessment until a funding source is identified; or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 states that the City will appoint an advisory committee to be comprised of “workers, industry members, and community members impacted by the federal War on Drugs...” but gives no additional guidance on eligibility or selection of advisory committee members.
- Options:
 - Amend CB 120391 to give additional guidance on the process of selecting advisory committee members;
 - Amend CB 120391 to give additional guidance on the eligibility criteria for advisory committee members; or
 - Take no action.

CB 120391 – Potential Amendments

1. Cannabis Needs Assessment (Mosqueda)

- Would add a new Section 10 to CB 120391 to provide additional guidance on the preferred characteristics for the organization selected to conduct the Assessment.

CB 120392 – Cannabis Licensing

- Creates new no-fee social equity license and criteria
- Removes fees for premises reinspection and license reinstatement
- Expands licensed activity, in anticipation of potential state legislation
 - On-premise consumption
 - Delivery
 - Special event consumption
- Modifies terminology from “marijuana” to “cannabis”

CB 120392 – Cannabis Licensing Fees

Marijuana License Type	2019 (Ord 125703)		Proposed (CB 120392)	
	Annual Fee	Related Fees ¹	Annual Fee	Related Fee ²
Inside City	\$3,500	\$250	\$3,500	\$250
Inside City - Social Equity Applicant	n/a	n/a	\$0	\$0
Outside City ³	\$2,000	\$250	\$2,000	\$250
Outside City - Social Equity Applicant	n/a	n/a	\$0	\$0

CB 120392 – Social Equity License Criteria

- Cannabis retailer licenses – criteria for social equity applicants
 - At least 51% ownership by individual(s) who have resided in a disproportionately impacted area as defined below (length of residence TBD by LCB)
 - High poverty rate
 - High rate of participation in income-based federal or state programs
 - High rate of unemployment
 - High rate of cannabis-related arrest, conviction or incarceration
 - At least 51% ownership by individual(s) of a family member of an individual previously convicted of a cannabis offense or a drug offense
 - Other criteria TBD by FAS Director after LCB adopts its criteria
- LCB public hearing on draft rules 9/14; adoption 9/28 or later

CB 120392 – Policy Issues

- The City's eligibility criteria for social equity license applicants must be consistent with LCB's forthcoming rules
 - Options:
 - Postpone action, pending LCB's final rules, and/or
 - Pass CB 120392 but require Council approval of any criteria changes
 - Take no action
- Adding a no fee social equity license could affect FAS' cost recovery for the cannabis licensing program
 - Options:
 - Request an annual cost recovery report to Council
 - Take no action

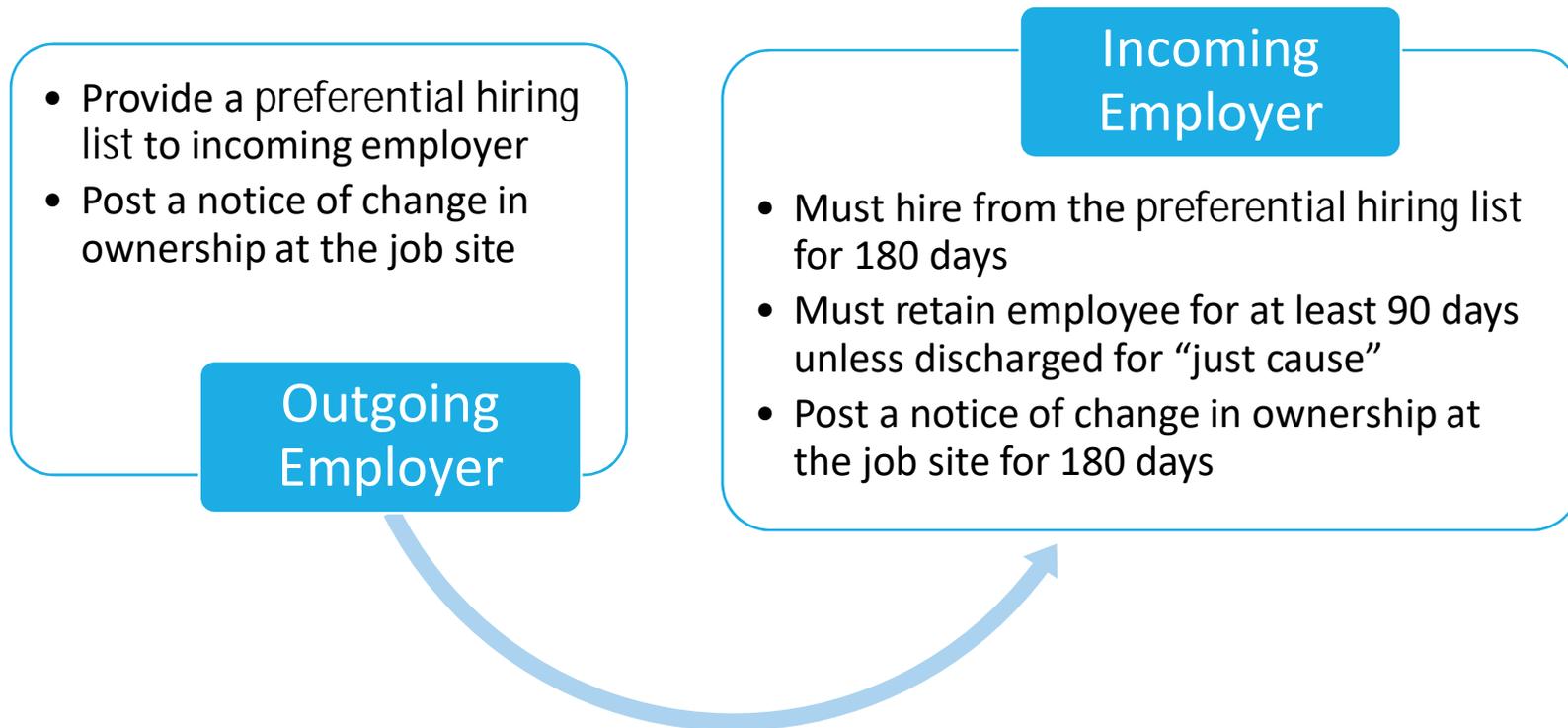
CB 120392 – Potential Amendments to Date

- Fee reductions for small businesses producing or transporting cannabis in Seattle (CM Herbold)
- Social equity license priority for previous owners of medical marijuana dispensaries (CM Nelson)

CB 120393 - Cannabis Job Retention Ordinance

- Requires Cannabis Business Employers take certain actions to reduce job insecurity caused by changes in ownership
- Covered Employers: those who own, operate and/or control a cannabis business.
 - Licensed under SMC Chapter 6.500
 - Integrated enterprises
- Covered Employees: those who work at a covered cannabis business for at least 30 days prior to a change in ownership.

CB 120393 - Employer Obligations



CB 120393 - Employer Obligations Cont'd

- Notice and Posting
 - Written notice to employees of the names used by any associated integrated enterprises
 - To be incorporated into current Notice of Employment Information (NOEI) obligations
 - Notice of rights afforded under the ordinance
- Recordkeeping requirements for three years (standard)

Questions?



Legislation Text

File #: CB 120392, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to licensing cannabis businesses in Seattle; establishing social equity applicant criteria for cannabis businesses; setting fees for cannabis businesses; expanding the purposes for which a cannabis license may be issued in the future; updating references in the code to “cannabis”; and amending Chapter 6.500 of the Seattle Municipal Code.

WHEREAS, the unequal enforcement of cannabis laws has resulted in racially disproportionate arrests and incarcerations causing inter-generational poverty, housing insecurity, loss of education and employment opportunities, disruption of family structures, and other burdens; and

WHEREAS, Initiative 502, the 2012 ballot measure that legalized recreational use of cannabis by adults over 21 years of age in the State of Washington, did not include provisions or create programs to acknowledge the disproportionate harms the enforcement of cannabis laws has had on certain populations and communities, primarily Black communities; and

WHEREAS, Seattle cannabis businesses are owned primarily by White men. This is also reflected nationally, as entry into the industry requires personal/generational wealth and a clean criminal record. The Washington State Liquor and Cannabis Board released ownership demographic data to the City of Seattle Department of Finance and Administrative Services (FAS) in 2018 and 2020 that confirms this disparity. As of January 2020, 42 of Seattle’s 48 cannabis retail stores had White majority ownership, and 37 of those stores were owned by White men; and

WHEREAS, recognizing these disparities, FAS launched a Racial Equity Toolkit (RET) in 2018 to examine racial disparities in the licensing of cannabis businesses in Seattle. Through research and multiple

engagements with hundreds of community stakeholders, the RET process resulted in community recommendations to address disproportionate ownership of Seattle cannabis businesses and redress some of the harms caused by the racially unequal enforcement of prior cannabis laws. Those recommendations include eliminating City licensing fees for individuals who meet social equity criteria; reducing buffering and dispersion requirements to ensure there are desirable locations available for cannabis business licensees who meet social equity criteria; providing grants or loans, technical assistance, and business planning and mentorship to cannabis business applicants and licensees who meet social equity criteria; and investment in communities most harmed by the disproportionate enforcement of prior cannabis prohibition laws; and

WHEREAS, cannabis businesses operating in Seattle must be licensed by both the City and the State, and City laws and regulations of cannabis businesses must be consistent with State law; and

WHEREAS, in 2020, the State passed legislation, further amended in 2021 and 2022, to establish a Social Equity in Cannabis program. The purpose of the legislation is to provide business opportunities to cannabis license applicants who were disproportionately impacted by the unequal enforcement of cannabis prohibition laws. The program authorizes the Washington State Liquor and Cannabis Board to issue retailer licenses that were previously forfeited, cancelled, revoked, or never issued but which could have been issued without exceeding the statewide cap on the number of retail licenses set in rule by the Board. These licenses will only be issued to applicants who meet certain social equity criteria established by State law and further clarified by rules to be promulgated by the Washington State Liquor and Cannabis Board. The program also establishes a technical assistance grant program for applicants who meet social equity criteria; and

WHEREAS, in response to community demands from the Racial Equity Toolkit process, and to further reduce barriers to entry into the legal cannabis industry, The City of Seattle is establishing its own local Social Equity in Cannabis program, generally aligned with the State's Social Equity in Cannabis program. This

alignment will give those who meet social equity criteria, as established by State and local laws and rules, the greatest chances of success in entering the legal cannabis industry in Seattle; and

WHEREAS, the Washington State Social Equity in Cannabis Task Force was established in 2020 and amended in 2021 and 2022 to make recommendations to the Washington State Liquor and Cannabis Board to promote business ownership among individuals who have been disproportionately impacted by the federal policy known as the War on Drugs in order to remedy the harms resulting from the unequal enforcement of cannabis-related laws; and

WHEREAS, in addition to recommending the issuance of additional cannabis retailer, producer, and processor licenses for those who meet certain criteria for social equity, the Washington State Social Equity in Cannabis Task Force is currently considering recommendations for the Legislature to establish new cannabis business license types, including a cannabis delivery license and a cannabis social consumption license. The Task Force is also considering recommendations to make the new license types exclusive to those who meet certain criteria for social equity through 2029; and

WHEREAS, the City supports the establishment of new license types by the State, recognizing that Washington is behind other states in creating a variety of paths to market for cannabis consumers, producers, and retailers. The City also recognizes making these license types exclusive to social equity applicants creates a unique opportunity for individuals who have been disproportionately impacted by the War on Drugs, and who have historically been excluded from opportunities in the legal cannabis industry, to launch competitive cannabis businesses with a reasonable chance for success; and

WHEREAS, the use of the term “marijuana” in the United States has discriminatory origins and should be replaced with the more scientifically accurate term “cannabis”; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Chapter 6.500 of the Seattle Municipal Code, last amended by Ordinance 125703, is amended as follows:

Chapter 6.500 ((MARIJUANA)) CANNABIS BUSINESSES

Section 2. Section 6.500.020 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.020 Definitions

For the purposes of this Chapter 6.500 the following definitions are adopted:

“Authorization” means a form developed by the Washington State Department of Health that is completed and signed by a qualifying patient’s health care professional and printed on tamper-resistant paper.

“Cannabis” means all parts of the plant *Cannabis spp.*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. The term does not include:

1. The mature stalks of the plant; fiber produced from the stalks, oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of the plant that is incapable of germination; or

2. Hemp or industrial hemp as defined in RCW 15.140.020, seeds used for licensed hemp production under chapter 15.140 RCW.

“Cannabis business” means any person licensed by the Washington State Liquor and Cannabis Board and The City of Seattle to grow, possess, produce, process, manufacture, sell (whether at wholesale or retail), distribute, transport, allow for consumption on their premises, or deliver cannabis, and includes, but is not limited to, any cannabis processor, producer, or retailer, regardless of whether the cannabis is intended for medical or recreational use.

“Cannabis concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

“Cannabis health and beauty aid” means a product containing parts of the cannabis plant and ~~((that))~~ which: (a) is intended for use only as a topical application to provide ~~((for))~~ therapeutic benefit or to enhance appearance; (b) contains a THC concentration of not more than 0.3 percent; (c) does not cross the blood-brain barrier; and (d) is not intended for ingestion by humans or animals.

“Cannabis-infused products” means products that contain cannabis or cannabis extracts, are intended for human use, are derived from cannabis, and have a THC concentration no greater than ten percent. The term “cannabis-infused products” does not include either useable cannabis or cannabis concentrates.

“Cannabis license” or “license” means a license issued by the Director giving permission to a person to engage in a cannabis business in Seattle.

“Cannabis processor” means a person licensed by the Washington State Liquor and Cannabis Board to process cannabis into cannabis concentrates, useable cannabis, and cannabis-infused products, package and label cannabis concentrates, useable cannabis, and cannabis-infused products for sale in retail outlets, and sell cannabis concentrates, useable cannabis, and cannabis-infused products at wholesale to cannabis retailers.

“Cannabis producer” means a person licensed by the Washington State Liquor and Cannabis Board to produce and sell cannabis at wholesale to cannabis processors and other cannabis producers.

“Cannabis products” means useable cannabis, cannabis concentrates, and cannabis-infused products as defined in this Section 6.500.020.

“Cannabis retailer” means a person licensed by the Washington State Liquor and Cannabis Board to sell cannabis concentrates, useable cannabis, and cannabis-infused products in a retail outlet.

“Department” means the Department of Finance and Administrative Services of The City of Seattle.

“Designated provider” means a person who is 21 years of age or older and:

1. a. Is the parent or guardian of a qualifying patient ~~((who is under the age of 18 years and ((beginning July 1, 2016,))~~) holds a recognition card; or

b. Has been designated in writing by a qualifying patient to serve as the designated provider for

that patient;

((+)) 2. a. Has an authorization from the qualifying patient’s health care professional; or:

((b. Beginning July 1, 2016:))

- 1) Has been entered into the medical ((marijuana)) cannabis authorization database as being the designated provider to a qualifying patient; ((and))
- 2) Has been provided a recognition card;
- 3) Is prohibited from consuming ((marijuana)) cannabis obtained for the personal, medical use of the qualifying patient for whom the individual is acting as designated provider;
- 4) Provides ((marijuana)) cannabis to only the qualifying patient that has designated ((him or her)) them;
- 5) Is in compliance with the terms and conditions of ((RCW)) chapter 69.51A RCW; and
- 6) Is the designated provider to only one patient at any one time.

“Director” means the Director of the Department of Finance and Administrative Services of The City of Seattle or that Director’s designee.

“Disproportionately impacted area” means a census tract or comparable geographic area that satisfies the following criteria, which may be further defined in a rule by the Director after consideration of the criteria established by the Washington State Liquor and Cannabis Board:

1. The area has a high poverty rate;
2. The area has a high rate of participation in income-based federal or state programs;
3. The area has a high rate of unemployment; and
4. The area has a high rate of arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

“Employee” means any individual who is employed by an employer in return for the payment of direct or indirect monetary wages or profit, any individual who volunteers ((his or her)) their services to an employer

for no monetary compensation, or any individual who performs work or renders services, for any period of time, at the direction of an owner, lessee, or other person in charge of a place.

“Engaging in business” has the meaning provided in subsection 5.30.030.B.1.

“Gross profit” means the entire gross receipts from all sales and services made in, upon, or from the licensed business.

“Health care professional” means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, ~~((an osteopathic physicians’ assistant licensed under chapter 18.57A RCW,))~~ a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

“Juvenile” means any individual who is under the chronological age of 18 years.

~~((“Marijuana” means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~

~~“Marijuana business” means any person or entity that grows, possesses, produces, processes, manufactures, sells (whether at wholesale or retail), distributes, transports, allows for consumption on their premises, or delivers marijuana with the object of gain, benefit, or advantage to the person, and includes, but is not limited to, any marijuana processor, producer, or retailer, regardless of whether the marijuana is intended for medical or recreational use.~~

~~“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.~~

~~“Marijuana license” or “license” means a license issued by the Director giving permission to a person to engage in a marijuana business in Seattle.~~

~~“Marijuana processor” means a person licensed by the Washington State Liquor and Cannabis Board to process marijuana into marijuana concentrates, usable marijuana, and marijuana-infused products, package and label marijuana concentrates, usable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana, and marijuana-infused products at wholesale to marijuana retailers.~~

~~“Marijuana producer” means a person licensed by the Washington State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.~~

~~“Marijuana products” means usable marijuana, marijuana concentrates, and marijuana-infused products as defined in this Section.~~

~~“Marijuana-infused products” means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana, and have a THC concentration no greater than ten percent. The term “marijuana-infused products” does not include either usable marijuana or marijuana concentrates.~~

~~“Marijuana retailer” means a person licensed by the Washington State Liquor and Cannabis Board to sell marijuana concentrates, usable marijuana, and marijuana-infused products in a retail outlet.)~~

~~“Medical ((marijuana)) cannabis authorization database” means the secure and confidential database created by the Washington State Department of Health pursuant to ((chapter)) RCW 69.51A.230. ((RCW, as amended by Chapter 70, Laws of 2015.))~~

“Net profit” means gross sales minus cost of goods sold.

“Operator” means any person operating, conducting, or maintaining a ((marijuana)) cannabis business.

“Person” means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

“Process” means to engage in any one or more of the activities of a ~~((marijuana))~~ cannabis processor.

“Produce” means to plant, grow, or harvest ~~((marijuana))~~ cannabis for medical or recreational use.

“Qualifying patient” means a person who:

1. ~~((a-))~~ Is a patient of a health care professional;

~~((b))~~ 2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

~~((c))~~ 3. Is a resident of the state of Washington at the time of such diagnosis;

~~((d))~~ 4. Has been advised by that health care professional about the risks and benefits of the medical use of ~~((marijuana))~~ cannabis;

~~((e))~~ 5. Has been advised by that health care professional that ~~((he or she))~~ they may benefit from the medical use of ~~((marijuana))~~ cannabis;

~~((f))~~ 6. ~~((1))~~ a. Has an authorization from ~~((his or her))~~ their health care professional; or

~~((2))~~ b. ~~((Beginning July 1, 2016, has))~~ Has been entered into the medical ~~((marijuana))~~ cannabis authorization database and has been provided a recognition card; and

~~((g))~~ 7. Is otherwise in compliance with the terms and conditions of chapter 69.51A RCW.

~~((2-))~~ “Qualifying patient” does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of chapter 69.51A RCW are inconsistent with and contrary to ~~((his or her))~~ that person’s supervision and all related processes and procedures related to that supervision.

“Recognition card” means a card issued to qualifying patients and designated providers by a ~~((marijuana))~~ cannabis retailer with a medical ~~((marijuana))~~ cannabis endorsement that has entered them into the medical ~~((marijuana))~~ cannabis authorization database.

“Social equity applicant” means:

1. An applicant who has at least 51 percent ownership and control by one or more individuals who have

resided in a disproportionately impacted area for a period of time defined in rule by the Director after consideration of the time period established by the Washington State Liquor and Cannabis Board; or

2. An applicant who has at least 51 percent ownership and control by at least one individual who has been convicted of a cannabis offense, a drug offense, or is a family member of such an individual; or

3. An applicant who meets criteria defined in rule by the Director after consideration of the criteria established by the Washington State Liquor and Cannabis Board.

“Successor” means any person to whom the owner(s) of a ((~~marijuana~~)) cannabis business who are quitting, selling out, exchanging, or disposing of the ((~~marijuana~~)) cannabis business sells or otherwise conveys, directly or indirectly, the owner(s)’ share of the business, or any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the business in bulk and not in the ordinary course of the person’s marijuana business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

“Tamper-resistant paper” means paper that meets one or more of the following industry-recognized features:

1. One or more features designed to prevent copying of the paper;
2. One or more features designed to prevent the erasure or modification of information on the paper; or
3. One or more features designed to prevent the use of counterfeit authorization.

~~((“Recognition card” means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana authorization database.))~~

“True party of interest” means:

1. For a sole proprietorship, the sole proprietor and spouse.
2. For a general partnership, all partners and their spouses.
3. For a limited partnership, limited liability partnership, or limited liability limited partnership, all

general partners and their spouses and all limited partners and their spouses.

4. For a limited liability company, all members and their spouses, and all managers and their spouses.

5. For a privately held corporation, all corporate officers (or persons with equivalent title) and their spouses, and all stockholders and their spouses.

6. For a publicly held corporation, all corporate officers (or persons with equivalent title) and their spouses, and all stockholders and their spouses.

7. For multilevel ownership structures, all persons and entities that make up the ownership structure and their spouses.

8. Any entity or person (inclusive of financiers) that is expecting a percentage of the profits in exchange for a monetary loan or expertise, any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year, or any entity or person who exercises control over the licensed business in exchange for money or expertise.

“True party of interest” does not mean:

1. A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

2. A person who receives a bonus as an employee, if: the employee is on a fixed wage or salary and the bonus is not more than 25 percent of the employee’s pre-bonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

3. A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

((“Usable Marijuana”)) “Useable cannabis” means dried ((~~marijuana~~)) cannabis flowers. The term ((~~“usable marijuana”~~)) “useable cannabis” does not include either ((~~marijuana~~)) cannabis-infused products or ((~~marijuana~~)) cannabis concentrates.

Section 3. Section 6.500.030 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.030 License required

A. It is unlawful for any person to engage in a ((~~marijuana~~)) cannabis business in the City unless such person possesses a valid ((~~marijuana~~)) cannabis license and is in compliance with all ((~~provision[s]~~)) provisions of this Chapter 6.500.

B. The following are exempt from the requirement to obtain a ((~~marijuana~~)) cannabis license:

1. ((~~Marijuana~~)) Cannabis businesses located on federal lands.
2. Persons licensed by the Washington State Liquor and Cannabis Board to conduct quality assurance testing or research on ((~~marijuana~~)) cannabis for scientific purposes.
3. Manufacturers and distributors of cannabis health and beauty aids.

Section 4. Section 6.500.040 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.040 General provisions

A. No ((~~marijuana~~)) cannabis business shall be located within another business. More than one ((~~marijuana~~)) cannabis business licensee may be located in the same building if each licensee occupies an area that is physically separate from any other business and has its own separate entrance. Licensees shall not commingle ((~~marijuana~~)) cannabis and ((~~marijuana~~)) cannabis products.

B. No ((~~marijuana~~)) cannabis processor licensed by the Department shall conduct the processing, storage, or sale of ((~~marijuana~~)) cannabis-infused products except using sanitary practices and ensuring facilities are constructed, kept, and maintained in a clean and sanitary condition pursuant to rules prescribed by the Seattle Department of Construction and Inspections, Seattle Fire Department, Washington Department of Agriculture under Chapters 16-165 and 16-167 of the Washington Administrative Code (WAC), and Seattle-King County Department of Public Health.

C. Consumption of ~~((marijuana))~~ cannabis or ~~((marijuana))~~ cannabis products is prohibited on licensed premises unless expressly permitted by license type.

D. Signs containing the following language must be conspicuously posted at each entry: “Persons under 21 years of age are not permitted on these premises without a valid qualifying patient card. Juvenile qualifying patients must be accompanied by their designated provider at all times.”

E. ~~((Marijuana))~~ Cannabis and ~~((marijuana))~~ cannabis products may only be sold or provided to the public by retail licensees from their licensed business locations or by other licensees expressly permitted by license type to sell or provide cannabis or cannabis products to the public.

F. ~~((Marijuana))~~ Cannabis and ~~((marijuana))~~ cannabis products shall not be sold, donated or transferred at festivals, fairs, farmers’ markets, or other similar events without a license expressly permitting such activities.

G. Licensees may only purchase ~~((marijuana))~~ cannabis and ~~((marijuana))~~ cannabis products from another licensee in compliance with Section 5.55.030 of the Seattle Municipal Code and this Chapter 6.500.

Section 5. Section 6.500.050 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.050 License applications

A. Only persons who possess a valid Washington State Liquor and Cannabis Board license to engage in a cannabis business, including but not limited to a license to produce, process, distribute, or transport ~~((marijuana))~~ cannabis or ~~((marijuana))~~ cannabis products are eligible for a City ~~((marijuana))~~ cannabis license.

B. Those persons licensed by the Liquor and Cannabis Board to conduct quality assurance testing or research on ~~((marijuana))~~ cannabis for scientific purposes are exempted from the requirement to acquire the license created by this Chapter 6.500. Manufacturers and distributors of cannabis health and beauty aids are likewise exempted from the requirement to acquire a license created by this Chapter 6.500.

C. ~~((Marijuana))~~ Cannabis businesses that are not located within Seattle city limits but provide ((

~~marijuana~~) cannabis or (~~marijuana~~) cannabis products to (~~marijuana~~) cannabis businesses located in Seattle city limits must obtain (~~marijuana~~) cannabis licenses.

D. All applications shall be submitted by and issued in the name(s) of the true party(ies) of interest and shall be signed by such person(s) and certified as true under penalty of perjury, and shall be accompanied by written evidence sufficient to show that such person(s) are the owner, operator, or lessee of the premises. All applications shall be submitted on a form supplied by the Director.

1. Failure to provide complete information required on an application form approved by the Director's form shall render the application incomplete and the license consequently shall be denied.

2. Within 30 days of any change in the information required to be submitted in this Section 6.500.050, each licensee shall notify the Director in writing of such change on a form provided by the Director.

E. Applicants shall comply with all City and State laws, including but not limited to license or tax obligations and all provisions of this Chapter 6.500.

F. Licensees who cease to engage in (~~marijuana~~) cannabis business activities must notify the Department within 15 days of discontinuation.

Section 6. Section 6.500.080 of the Seattle Municipal Code, last amended by Ordinance 125703, is amended as follows:

6.500.080 License and related fees

A. Licenses shall expire June 30 each year and be annually renewable. The following annual fees shall apply:

1. (~~Marijuana License~~) Cannabis license - Located in Seattle: \$3500
2. Cannabis license for social equity applicants - Located in Seattle: \$0
- ~~((2))~~ 3. (~~Marijuana License~~) Cannabis license - Located outside Seattle: (~~(.....)~~) \$2,000
4. Cannabis license for social equity applicants - Located outside Seattle: \$0

B. License fees are non-refundable.

C. License fees are not prorated.

D. Related fees

~~((1. Premises reinspection \$250~~

~~2. License reinstatement \$250~~

3)) 1. Relocation of physical address: ~~((.....))~~ \$250

2. Relocation of physical address for social equity applicants: \$0

E. The Director shall review annually the licensing fees in this Section 6.500.080 and may make any necessary adjustments in a Director's Rule to ensure the fees achieve full cost recovery of the Department's administrative, enforcement, and other regulatory costs based on, but not limited to, consideration of the following factors:

1. The projected costs and annual budget allotted for administrative, enforcement, and regulatory costs across the ~~((marijuana))~~ cannabis industry; and
2. The need for increased enforcement to reduce illegal activity.

Section 7. Section 6.500.100 of the Seattle Municipal Code, enacted by Ordinance 124807, is amended as follows:

6.500.100 State regulatory provisions_ ~~((§))~~ Director to adopt rules

The Director shall adopt rules that incorporate applicable provisions of the Washington Administrative Code relating to the regulation of ~~((marijuana))~~ cannabis businesses by the Washington State Liquor and Cannabis Board, and shall periodically review and update such rules as changes are made to such provisions of the Washington Administrative Code.

Section 8. Section 6.500.110 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.110 Restricted access for persons under 21 years of age

A. It is unlawful for any person under the age of 21 years to be in or upon any licensed premises, except

that qualifying patients ages 18 to 21 years in possession of a valid recognition card and juveniles both in possession of a valid recognition card and accompanied by a designated provider may enter upon the premises of a licensed ((~~marijuana~~)) cannabis retail business as long as the retailer possesses a Washington State-issued medical ((~~marijuana~~)) cannabis endorsement.

B. It is unlawful for any owner, operator, manager, employee, or other person in charge of a ((~~marijuana~~)) cannabis business to allow any person under the age of 21 years to be in or upon any licensed premises, except that qualifying patients ages 18 to 21 years in possession of a valid recognition card and juveniles both in possession of a valid recognition card and accompanied by a designated provider may enter upon the premises of a licensed ((~~marijuana~~)) cannabis retail business as long as the retailer possesses a medical ((~~marijuana~~)) cannabis endorsement.

C. All licensees shall affirmatively check the identifications and confirm the ages of all persons who enter or are on the premises.

D. ((~~Marijuana~~)) Cannabis retailers with medical endorsements shall issue recognition cards in accordance with state law and shall confirm the validity of authorizations and recognition cards when selling ((~~marijuana~~)) cannabis or ((~~marijuana~~)) cannabis products under their medical ((~~marijuana~~)) cannabis endorsements.

Section 9. Section 6.500.140 of the Seattle Municipal Code, last amended by Ordinance 124963, is amended as follows:

6.500.140 License suspension

In addition to the reasons set forth in Section 6.202.230 as now or hereafter amended, any license issued under this Chapter 6.500 may be suspended upon a finding that:

A. Any amount of ((~~marijuana~~)) cannabis or ((~~marijuana~~)) cannabis product has been sold to any person that is under the age of 21 years who is not a qualifying patient with a recognition card issued by the licensee or any of the licensee's owners, officers, managers, employees, or agents. Designated providers with a recognition

card may purchase ((marijuana)) cannabis or ((marijuana)) cannabis products on behalf of a qualified patient of any age;

B. The licensee or any of its owners, officers, managers, employees, or agents has violated or failed to comply with any applicable provisions of this Chapter 6.500 or any rule or regulation prescribed under this Chapter 6.500;

C. The licensee or its owners, officers, managers, employees, or agents permitted or authorized any violation of any of the provisions of this Chapter 6.500 by any person;

D. Three or more of any combination of citations, notices of violation, notices of infraction, charges, complaints, or any other notifications to the licensee that the licensee has violated any one or more provisions of the Seattle Municipal Code or other applicable law, including but not limited to applicable development regulations, zoning and building codes, noise, fire, licensing and health ordinances, laws, rules, and regulations, were issued to the licensee in any three-month period;

E. The licensee does not maintain a current license required under Chapter 6.208 or is in default in any payment of any license fee or tax, penalty, or interest due under Title 5 or Title 6;

F. The licensee is a person who has been certified pursuant to RCW 74.20A.320 by the Washington Department of Social and Health Services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the Director's receipt of a release issued by the Washington Department of Social and Health Services stating that the licensee is in compliance with the order; or

G. The licensee, manager, or any employee or agent of a licensee knew or had reason to know that a violation of this Chapter 6.500 was occurring or about to occur and such licensee, manager, employee, or agent failed to either prevent or report to proper law enforcement authorities the violation.

Section 10. Section 6.500.143 of the Seattle Municipal Code, enacted by Ordinance 125516, is amended as follows:

6.500.143 Property owner responsibilities

No property owner shall permit a lessee or sublessee to engage in a ~~((marijuana))~~ cannabis business on the property unless the lessee or sublessee possesses a valid ~~((marijuana))~~ cannabis business license.

Section 11. Section 6.500.147 of the Seattle Municipal Code, enacted by Ordinance 124807, is amended as follows:

6.500.147 Suspension or revocation- ~~((; effective))~~ Effective date- ~~((; length))~~ Length

A. Except for summary suspensions under Section 6.500.150, suspensions or revocations become effective upon the date of issuance of any notice of suspension or revocation or, in the event of an appeal, when a final ruling on appeal affirming the Director's findings is issued.

B. Length of suspensions

1. Unless a time period is specified in a particular section of this Chapter 6.500, suspensions shall extend until evidence is produced to the Director showing by preponderance that the violation is cured. Where a violation cannot be cured, suspensions shall extend one month or until the license expires, whichever occurs first. Licensees must submit a written request for reinstatement to the Director after the period of suspension has passed.

2. The Department shall post a suspension notice in a conspicuous place on or about the licensed premises. The notice shall state that the license has been suspended by order of the Director.

3. During the period of license suspension, the licensee, its manager, employees, and agents:

- a. Are required to comply with all applicable laws;
- b. Shall not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;
- c. Shall not place or permit the placement of any statement on the licensed premises indicating that the premises has been closed for any reason other than as stated in the suspension notice;
- d. Shall not advertise by any means that the licensed premises is closed for any reason

other than as stated in the suspension notice.

4. During the period of license suspension:

a. The licensee shall not operate the ~~((marijuana))~~ cannabis business; and

b. No sale, delivery, service, destruction, removal, or receipt of ~~((marijuana))~~ cannabis or ~~((marijuana))~~ cannabis products shall be conducted by the licensee.

5. Upon approval by the Director, a licensee may take necessary measures to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsalable during a suspension, provided that such measures shall not include processing the product.

6. If the Director has ordered a license suspended, the applicant may contest the suspension to the Hearing Examiner in the same manner as that provided under Section 6.202.270 to contest license denials, revocations, or refusals to renew.

C. Length of Revocation. Revocations shall extend until the end of the annual license period. The licensee or any person in which the licensee is a principal, or any person who is or was a principal of the licensee, shall not again be licensed during such period.

D. Except in cases involving summary suspension, whenever a timely notice of appeal under Section 6.202.270 is filed, a licensee may continue to engage in the activity for which the license is required pending a final decision.

Section 12. Section 6.500.150 of the Seattle Municipal Code, enacted by Ordinance 124807, is amended as follows:

6.500.150 License-Summary suspension

A. Notwithstanding any other provision of this Chapter 6.500, a license may be summarily suspended, with such suspension to take effect immediately by order of the Director prior to hearing upon finding that there is reasonable cause to believe that ~~((the))~~ activity ~~((licensed under this Chapter 6.500 and))~~ engaged in by the licensee causes or will cause a clear, substantial, and imminent hazard to life, safety, property, or privacy.

B. Whenever any license is summarily suspended a hearing by the Hearing Examiner may be requested by the licensee within ten days after the date of suspension. The Director may waive the ten-day requirement upon satisfaction that failure to submit the request was beyond the control of the licensee. Such hearing shall be held within five days of the request, unless a later date is agreed to by the licensee, with a minimum 48 ((-)) hours' notice to the licensee, and shall be conducted by the Hearing Examiner according to the Hearing Examiner rules for contested cases. The Director shall have the burden of proving by a preponderance of the evidence that the activity engaged in by the licensee causes or will cause a clear, substantial and imminent hazard to life, safety, property, or privacy. The Hearing Examiner shall issue the decision within ten days of the date of the hearing.

C. If the applicant does not file a timely request for hearing, the Director's order for summary suspension shall be final and the suspension shall remain in effect until such time as the Director determines that the hazard no longer exists.

Section 13. Section 6.500.160 of the Seattle Municipal Code, last amended by Ordinance 125516, is amended as follows:

6.500.160 Seizure or confiscation of ((~~marijuana~~)) cannabis and ((~~marijuana~~)) cannabis products

The Department, its authorized agents, or the Seattle Police Department may seize or confiscate (1) all ((~~marijuana~~)) cannabis or ((~~marijuana~~)) cannabis products in the possession of a ((~~marijuana~~)) cannabis business that does not possess a valid ((~~marijuana~~)) cannabis license, ((~~and~~)) or (2) all ((~~marijuana~~)) cannabis or ((~~marijuana~~)) cannabis products that do not meet any or all ((~~of~~)) requirements of this Chapter 6.500 or any rules promulgated pursuant to this Chapter 6.500.

Nothing in this Section 6.500.160 shall be construed to limit the authority of any law enforcement officer to seize or confiscate ((~~marijuana~~)) cannabis or ((~~marijuana~~)) cannabis products pursuant to any other law.

Section 14. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but

if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Mayor's Office	Brianna Thomas x4-7955 Dan Eder x4-7831	Lorine Cheung

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to licensing cannabis businesses in Seattle; establishing social equity applicant criteria and setting related fees for qualifying cannabis businesses; expanding the purposes for which a cannabis license may be issued in the future; updating references in the code to “cannabis”; and amending Chapter 6.500 of the Seattle Municipal Code.

Summary and background of the Legislation: The federal War on Drugs disproportionately impacted Black, Indigenous, and People of Color. Cannabis businesses operating in the City of Seattle must be licensed by both Seattle and the State of Washington; and Seattle cannabis businesses are owned primarily by White men.

The legislation would update the City’s codes with respect to licensing cannabis businesses in several ways.

1. The legislation would create a new “social equity applicant” definition for those applying for a Seattle cannabis license. The Seattle license annual fee for those who meet the social equity applicant definition would be zero.
2. The legislation would expand the purposes for which a Seattle cannabis license may be issued in the future, anticipating future actions by the State to expand the types of State-licensed cannabis businesses.
3. The legislation updates references in the code from “marijuana” to “cannabis.”

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. If this legislation is implemented, annual fees could decrease by a nominal amount depending on the number of social equity applicants for Seattle cannabis licenses.

Are there financial costs or other impacts of *not* implementing the legislation?

No.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

No.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

Future actions by the State to create additional social equity licenses for existing cannabis business types provide additional opportunities for BIPOC-owned cannabis businesses; and future actions by the State to create additional types of cannabis businesses also create additional opportunities for BIPOC-owned cannabis businesses. Creating and implementing a no-cost Seattle cannabis license for social equity applicants is intended to encourage cannabis businesses owned by Black, Indigenous, and People of Color (BIPOC) to locate in Seattle.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

No.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

Summary Attachments:

August 8, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Lise Kaye, Analyst
Subject: CB 120392 – Cannabis Licensing Provisions

On Thursday, August 11, the Finance and Housing Committee will discuss [Council Bill \(CB\) 120392](#), which would revise several licensing provisions for cannabis retailers, producers and processors doing business in or with the City of Seattle. Major revisions include a new license available through the Department of Facilities and Administrative Services (FAS) to individuals qualifying as “social equity” applicants, criteria defining that category of applicant, and replacing the term “marijuana” with “cannabis” in the Seattle Municipal Code (SMC).¹ CB 120392 would also expand the purposes for which the license may be used, in anticipation of possible state legislation that could allow on-premise consumption licenses, delivery licenses, and/or special event consumption licenses. The bill would delete the \$250 fees for premises reinspection and license reinstatement.

This memo provides state and city legislative context, describes key provisions of CB 120392, and identifies policy issues for Council consideration and outlines next steps.

Background

In 2012, Washington State became one of the first two states to legalize adult recreational use of cannabis, following voter approval of Initiative 502. Cities, towns, and counties in Washington State may prohibit or designate appropriate zones for state-licensed cannabis businesses. The City has issued 45 retail licenses (all in the city) and 88 producer/processor licenses (51 in the city and 37 outside of the city). Please see Attachment 1 for a map of licensed cannabis businesses in the City and Attachment 2 for a list of the City-licensed producer/processor businesses outside the City.

Racial Equity Toolkit

In 2018, FAS, together with the City’s Office of Economic Development, the Department of Construction and Inspections, and the Office for Civil Rights, initiated a Racial Equity Toolkit (RET) on Cannabis Licensing, initially focused on business licensing. Based on community feedback, the RET mission expanded to include:

- Access to licenses and capital;
- Access to business education and mentorship;
- Community reinvesting;
- Small Business Association (SBA) business plan support;

¹ The following memo refers to “cannabis” rather than “marijuana,” consistent with current Washington State Law, unless referring to “medical marijuana” or to language/terminology from the current (August 2022) Seattle Municipal Code.

- Flexibility to pivot quickly as new barriers arise;
- Reinvesting proceeds into the Black community; and
- Rebuilding generational wealth.

At the March 3, 2022, Finance and Housing Committee meeting, FAS presented community and stakeholder recommendations from the RET. The recommendations included prioritizing benefits for equity efforts to communities most impacted by prior cannabis laws, making reparations for medical cannabis businesses closed due to state and city licensing requirements, and providing financial support for members of those impacted communities wishing to start new cannabis businesses.²

Table 1 describes the City’s cannabis-related legislation since passage of Initiative 502, from initial zoning and regulations to establishment of a City Marijuana Business License, as well as two subsequent increases in fees for the City license. With adoption of [Ordinance \(ORD\) 125703](#) in 2018, Council delegated authority to the FAS Director to adjust the license fees.

Table 1. City of Seattle Cannabis-Related Legislation Following Passage of Initiative 502

Date	Legislation	Effect
October 7, 2013	ORD 124326	Established zoning and other regulations for the production, processing, selling, or delivery of cannabis in Seattle.
July 13, 2015	ORD 124807	Required a City Marijuana Business License and established licensing fees.
November 21, 2016	ORD 125194	Increased Marijuana Business License fees. ³
November 19, 2018	ORD 125703	Increased Marijuana Business License fees and delegated authority to the FAS Director to adjust the fees. ⁴

Table 2 shows changes in the City’s Marijuana Business License fee from 2016 to the present. FAS reports that it has recovered 100% of its program costs since the 2019 fee increase.⁵ In addition, the City of Seattle collected an average of \$1.5 million per (state fiscal) year since 2020 in sales tax revenue. City Business and Occupation Tax revenue from cannabis-related businesses have decreased somewhat in 2022 (\$195,000 YTD), but 2020 and 2021 averaged \$570,000.

² See staff memo for [CB 120391](#) for additional background, including additional detail about the RET

³ Per the Ordinance 125194’s Summary and Fiscal Note, the City’s fees were not recovering FAS’s costs.

⁴ Per the Ordinance 125703’s Summary and Fiscal Note, increased fees would support the FAS’s cost recovery and implementation of the new Accela Integrated Code Management System to manage code enforcement activities

⁵ Cost recovery was 35% prior to the 2019 increase. Staff analysis of FAS’ cost recovery calculations is ongoing.

Table 2. Cannabis Annual Business License and Related Fees

Marijuana License Type	2016 (Ord 124807)		2017 (Ord 125194)		2019 (Ord 125703)		Proposed (CB 120392)	
	Annual Fee	Related Fees ¹	Annual Fee	Related Fees ¹	Annual Fee	Related Fees ¹	Annual Fee	Related Fee ²
Inside City	\$1,000	\$250	\$1,500	\$250	\$3,500	\$250	\$3,500	\$250
Inside City - Social Equity Applicant	n/a	n/a	n/a	n/a	n/a	n/a	\$0	\$0
Outside City ³	\$500	\$250	\$750	\$250	\$2,000	\$250	\$2,000	\$250
Outside City - Social Equity Applicant	n/a	n/a	n/a	n/a	n/a	n/a	\$0	\$0

¹ Fee for reinspection, reinstatement and relocation of physical address in Seattle

² Fee for relocation of physical address

³ FAS reports that the City has been charging these fees for reinspection, reinstatement and relocation of physical address in Seattle but only for reinstatement outside Seattle. FAS anticipates that, should CB 120392 be enacted (which would eliminate all reinspection and reinstatement fees), FAS expects to continue to collect the relocation fee only from businesses within Seattle. Staff analysis is ongoing.

Washington State Marijuana Social Equity Legislation

In 2020, [HB 2870](#) created the Marijuana Social Equity Program under the Washington State Liquor and Cannabis Board (LCB) to streamline retail licenses to people in communities disproportionately impacted by the enforcement of cannabis prohibition. It allows the LCB to prioritize its remaining unawarded licenses to “social equity applicants” or reissue them to existing licensees whose licenses have been canceled, revoked or forfeited. Under existing law, the City of Seattle would receive two of the 38 available licenses.⁶ On August 3, 2022, the LCB approved [proposed draft rules](#), for which a public hearing will be held on September 14, 2022. The LCB could adopt the rules as soon as September 28, 2022. In addition, prior to accepting social equity license applications, the University of Washington will submit to the LCB and its Social Equity in Cannabis Task Force an analysis of the Task Force’s recommended criteria for a Disproportionately Impacted Area.

Also this year, the Washington legislature passed [HB 1210](#), replacing all references to “marijuana” in state law with the word “cannabis.” The bill stated that the use of the term “marijuana” in the United States has discriminatory origins and should be replaced with “the more scientifically accurate term “cannabis.”

⁶ Although not passed in the 2022 legislative session, [legislation](#) could be reintroduced in 2023 to increase the number of social equity licenses available and allow them to be sited anywhere in the state.

Council Bill 120392

The Executive prepared CB 120392 in response to community demands identified in the Cannabis RET, in anticipation of the State's issuance of social equity licenses, and to express the City's support for issuance of new cannabis business license types currently under consideration by the State's Social Equity in Cannabis Task Force. CB 120392 would revise the licensing provisions described below for cannabis retailers, producers and processors doing business in or with the City of Seattle.

Social Equity Applicant

CB 120392 would create two new types of licenses for "social equity applicants" (one for businesses located in Seattle and one for those located outside of Seattle), with eligibility defined as follows:

- 1. An applicant who has at least fifty-one percent ownership and control by one or more individuals who have resided in a disproportionately impacted area for a period of time defined in rule by the Director after consideration of the time period established by the Washington State Liquor and Cannabis Board; or*
- 2. An applicant who has at least fifty-one percent ownership and control by at least one individual who has been convicted of a cannabis offense, a drug offense, or is a family member of such an individual;⁷ or*
- 3. An applicant who meets criteria defined in rule by the Director after consideration of the criteria established by the Washington State Liquor and Cannabis Board.*

Disproportionately Impacted Area

CB 120392 includes residence in a disproportionately impacted area, using the State's definition in [RCW 69.50.335](#), as shown below, as one consideration in qualifying as a social equity applicant. FAS will rely primarily on the State's data sources to identify these locations.

"Disproportionately impacted area" means a census tract or comparable geographic area that satisfies the following criteria, which may be further defined in a rule by the Director after consideration of the criteria established by the Washington State Liquor and Cannabis Board:

- 1. The area has a high poverty rate;*
- 2. The area has a high rate of participation in income-based federal or state programs;*
- 3. The area has a high rate of unemployment;*
- 4. The area has a high rate of arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.*

⁷ LCB's proposed rules, issued August 3, 2022, include both drug offenses and cannabis offenses in a Social Equity Application Scoring Rubric, but only cannabis offenses are listed as social equity applicant requirements [Section 2(h)]. Staff review is ongoing.

License Fees

CB 120392 would set annual cannabis license fees at zero for two new social equity licenses (one for businesses located in Seattle and the other for those located outside of Seattle). In addition, the fee for relocation of a physical address for a social equity applicant would be zero. The bill would also delete the \$250 fees for premises reinspection and license reinstatement. According to FAS, these fees are not needed to help meet the full cost of the regulatory program.

Expanded Purposes

The Washington State Social Equity in Cannabis Task Force is currently considering recommendations for the legislature to establish new cannabis business license types. CB 120392 would expand the purposes for which a cannabis license may be used in the event that the legislature issues or authorizes local jurisdictions to issue on-premises consumption licenses, delivery licenses, and/or special event consumption licenses. It also expands eligibility for a City cannabis license to match any cannabis business practice licensed by the LCB license.

Terminology

CB 120392 would replace “marijuana” with “cannabis” throughout SMC 6.500.

Policy Issues

1. Eligibility Criteria – Timing and Authority – The City of Seattle’s cannabis regulations must be consistent with state law, including rules issued under the authority of specific enabling statutes and codified in the Washington Administrative Code (WAC). Recognizing that the LCB has yet to promulgate its final rules for social equity licenses, CB 120392 would authorize the FAS Director to further define the criteria for disproportionately impacted areas; establish a residency requirement; and, add a third to-be-determined set of criteria for social equity applicants after consideration of the LCB’s forthcoming rules.

Options:

- A. Postpone action on the CB 120392, pending LCB’s final rules; and/or
 - B. Require Council approval of any changes to eligibility criteria
 - C. Take no action
2. Cost Recovery Impacts – As noted above, Ordinance 125703 granted the FAS Director authority to set the cost recovery level for Marijuana Business Licenses. Adding a no fee license without making any adjustments to the existing license fees and/or to the City’s expenses (e.g., frequency of inspections or prioritizing enforcement) could reduce cost recovery for cannabis business licenses.

Options:

- A. Request an annual cost recovery report to Council
- B. Take no action

Potential Amendments

To date, two potential amendments have been identified for the Committee's consideration and possible vote on August 17.

Amendment 1, sponsored by CM Herbold, would reduce license fees from \$3,500 to \$2,000 for small cannabis producers and transporters in the City of Seattle. This is based on a draft FAS proposal from 2020, which estimated the fiscal impact at \$4,500 per year.

Amendment 2, sponsored by CM Nelson, would prioritize social equity license applications from former owners of medical marijuana dispensaries who applied for but were not awarded state licenses after the state legalized cannabis possession and sale in 2012.

Next Steps

CB 120392 will be discussed during a special meeting of the Finance and Housing Committee on August 11. Councilmembers who would like to propose amendments should contact Central Staff no later than noon on August 12. The Committee will discuss and potentially vote on amendments and the bill during the regularly scheduled Finance and Housing Committee meeting on August 17.

Attachments

1. Cannabis Retailers, Producers and Processors in the City of Seattle
2. City Licensed Cannabis Businesses Located Outside Seattle

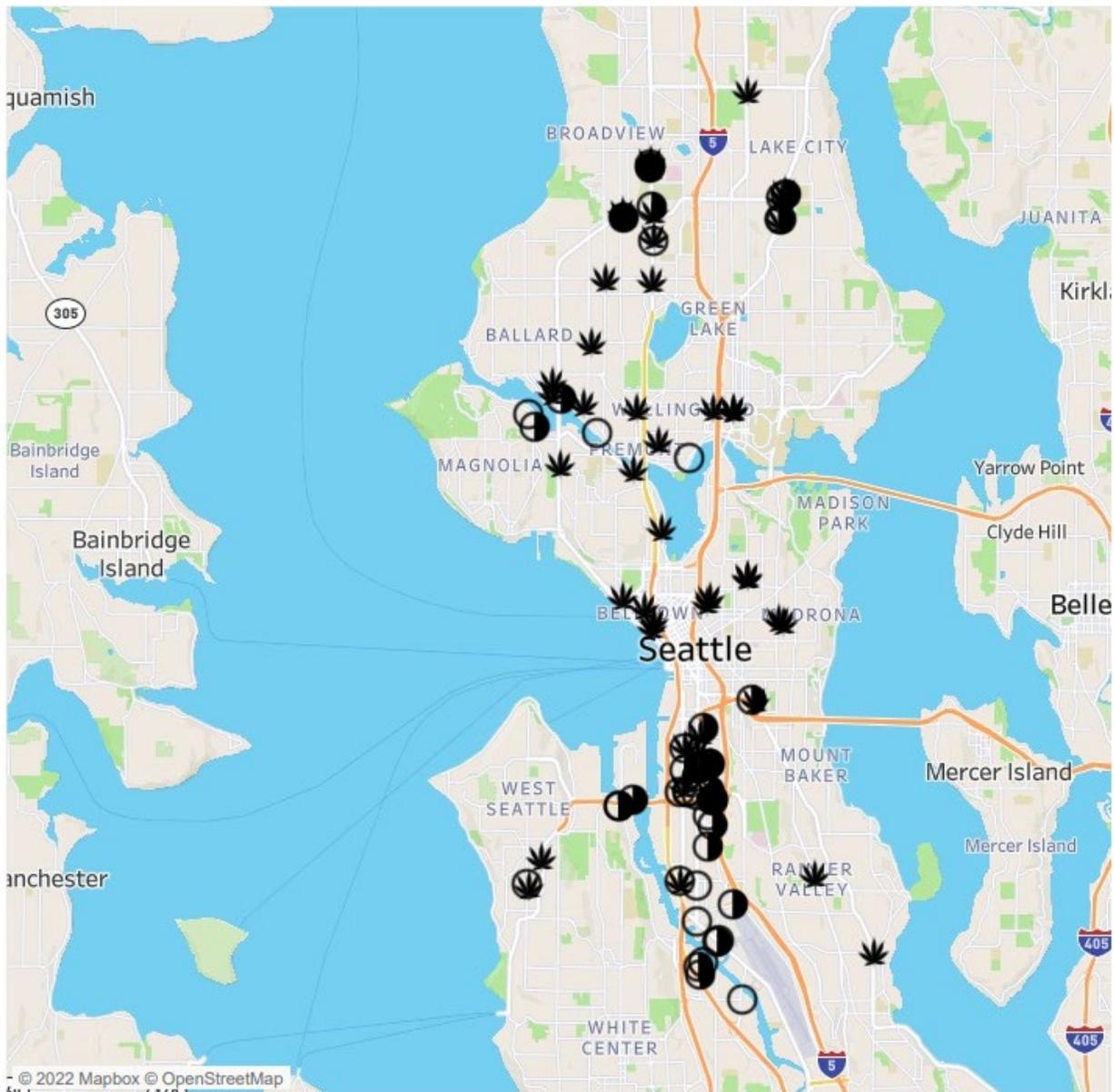
cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Asha Venkataraman, Lead Analyst

Attachment 1. Cannabis Retailers, Producers and Processors in the City of Seattle



Consumer Protection

Active Cannabis Licenses Last Data Update: 7/20/2022



Attachment 2. City Licensed Cannabis Businesses Located Outside Seattle

Trade Name	License Category	Street Address	City State Zip
ARTIZEN CANNABIS COMPANY	Producer/Processor	2660 WILLAMETTE DR NE # F	LACEY, WA 98516
PHAT PANDA	Producer/Processor	2611 N WOODRUFF RD # B	SPOKANE VALLEY, WA 99206-4138
QUALITY GREEN TREES	Producer/Processor	26268 TWELVE TREE LN NW # 140	POULSBO, WA 98370
CREEKSIDE CANNABIS	Producer/Processor	33081 STATE ROUTE 20	SEDRO WOOLLEY, WA 98284-8044
TWO HEADS CO	Producer/Processor	1725 OCEAN AVE # BLDG 4	RAYMOND, WA 98577
DNA GARDENS	Producer/Processor	12720 278TH DR NE	GRANITE FALLS, WA 98252
GLW	Producer/Processor	3623 E PRINCETON AVE	SPOKANE, WA 99217
KOKUA SERVICES INC	Producer/Processor	8401 HOGUM BAY LN NE	LACEY, WA 98516-3125
FAIRWINDS MANUFACTURING	Producer/Processor	5913 NE 127TH AVE # 400	VANCOUVER, WA 98682
TOPSHELF	Producer/Processor	19705 60TH AVE NE # B	ARLINGTON, WA 98223-4769
DOC & YETI	Producer/Processor	2407 50TH AVE SW	TUMWATER, WA 98512
HARMONY FARMS	Producer/Processor	8575 COMMERCE PLACE DR NE # A	LACEY, WA 98516
SEATTLES PRIVATE RESERVE	Producer/Processor	17731 59TH AVE NE # 16A	ARLINGTON, WA 98223
OPTIMUM EXTRACTS	Producer/Processor	1501 CENTER ST	TACOMA, WA 98409-7923
GOLDEN TREE PRODUCTIONS	Producer/Processor	2524 N MACHIAS RD # UNIT A	LAKE STEVENS, WA 98258-9208
CANNA ORGANIX	Producer/Processor	374 BUSINESS PARK LOOP	SEQUIM, WA 98382-9491
TRAIL BLAZIN PRODUCTIONS	Producer/Processor	2005 DIVISION ST	BELLINGHAM, WA 98226
NORTHWEST CANNABIS SOLUTIONS	Producer/Processor	9603 LATHROP INDUSTRIAL DR SW	OLYMPIA, WA 98512
FORBIDDEN FARMS	Producer/Processor	1920 PORT OF TACOMA RD	TACOMA, WA 98421
AVITAS	Producer/Processor	25404 STATE ROUTE 9 NE	ARLINGTON, WA 98223
DAB DUDES HI GUYS	Producer/Processor	1445 19 B INDUSTRIAL WAY	LONGVIEW, WA 98632
BONDI FARMS	Producer/Processor	1401 INDUSTRIAL WAY	LONGVIEW, WA 98632
FIFTY FOLD INDUSTRIES	Producer/Processor	2709 N FELTS LN # STE 101	SPOKANE VALLEY, WA 99206
FIRELINE	Producer/Processor	17831 59TH AVE NE # 7	ARLINGTON, WA 98223-6303
JMS CONSULTANTS	Producer/Processor	1512 CENTER ST STE A	TACOMA, WA 98409-7903
SUSPENDED BRANDS	Producer/Processor	860 NE OLD BELFAIR HWY	BELFAIR, WA 98528-9613
AGRIJUANA	Producer/Processor	1810 SE COMMERCE AVE	BATTLE GROUND, WA 98604-8963
ROOT DOWN LLC	Producer/Processor	3830 E BOONE AVE	SPOKANE, WA 99202-4505
LANDRACE LABS	Producer/Processor	5845 192ND LN SW # 102	ROCHESTER, WA 98579
AGRO COUTURE	Producer/Processor	2602 S 38TH ST # PMB 292	TACOMA, WA 98409
SECRET GARDENS OF WASHINGTON	Producer/Processor	410 IDA ST W	BREMERTON, WA 98312-3134
FALCANNA	Producer/Processor	123 ELWHA RD	PORT ANGELES, WA 98362-9385
PIONEER NUGGETS	Producer/Processor	17835 59TH AVE NE # 8A	ARLINGTON, WA 98223-6303
VERDELUX CHOCOLATES	Producer/Processor	924 KENTUCKY ST	BELLINGHAM, WA 98225
SWIFTS GREEN LABS	Producer/Processor	45 RAYMOND SOUTH BEND RD	RAYMOND, WA 98577
GABRIEL LLC	Producer/Processor	29700 SE HIGH POINT WAY	ISSAQUAH, WA 98027-8886
SUBX	Producer/Processor	1419 WHITEHORN ST	FERNDALE, WA 98248-8923



SEATTLE CITY COUNCIL
CENTRAL STAFF

Cannabis Equity

AMY GORE, LISE KAYE, JASMINE MARWAHA, LEGISLATIVE ANALYSTS

FINANCE & HOUSING COMMITTEE
AUGUST 11, 2022

CB 120391 – Cannabis Equity

Background

- Initiative 502 was approved by voters in November of 2012.
- State removed prohibitions against producing, processing, and selling cannabis, allowed limited possession of cannabis by persons aged 21 and older, and created a licensing and regulatory scheme, imposed excise taxes.
- City of Seattle established zoning regulations, required business licenses and related fees.
- Most cannabis-related changes were done without racial equity lens.

CB 120391 – Cannabis Equity

Racial Equity Toolkit

- Facilities and Administrative Services led inter-departmental team to conduct a RET on the City’s cannabis policies.
- The RET detailed disproportionate harm to Black individuals, families, and communities both before and after legalization.
- Stakeholder recommendations included \$1M of funding per year for a Seattle Cannabis Equity Program.
- FAS team also recommended increasing equity in business licensing, reducing buffering and dispersion requirements, providing grants/loans and technical assistance to black cannabis businesses, providing mentorship, investing in communities most impacted by cannabis prohibition enforcement.

CB 120391 – Cannabis Equity

CB 120391 expresses City's intention to:

- Include cannabis equity issues in the City's 2023 State and Federal Legislative Agendas.
- Advocate with King County for the expungement of cannabis convictions.
- Partner with organizations that represent negatively impacted communities to mitigate the damage of the federal War on Drugs.
- Pursue funds from the State and Federal government for cannabis equity work.
- Fund a Cannabis Needs Assessment.
- Appoint an advisory committee comprised of workers, industry members, and community members to support the Cannabis Needs Assessment.

CB 120391 – Policy Issues

- The City’s cannabis equity RET identified several actions the City could take to address past harms and racial disparities, some of which are not included in the proposed CB 120391.
- Options:
 - Amend CB 120391 to include some or all of the RET recommendations;
or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 would commit to funding a Cannabis Needs Assessment. The Assessment is anticipated to cost approximately \$250,000. There is currently no funding identified to support this work.
- Options:
 - Amend CB 120391 to identify a funding source;
 - Amend CB 120391 to remove the Needs Assessment until a funding source is identified; or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 states that the City will appoint an advisory committee to be comprised of “workers, industry members, and community members impacted by the federal War on Drugs...” but gives no additional guidance on eligibility or selection of advisory committee members.
- Options:
 - Amend CB 120391 to give additional guidance on the process of selecting advisory committee members;
 - Amend CB 120391 to give additional guidance on the eligibility criteria for advisory committee members; or
 - Take no action.

CB 120391 – Potential Amendments

1. Cannabis Needs Assessment (Mosqueda)

- Would add a new Section 10 to CB 120391 to provide additional guidance on the preferred characteristics for the organization selected to conduct the Assessment.

CB 120392 – Cannabis Licensing

- Creates new no-fee social equity license and criteria
- Removes fees for premises reinspection and license reinstatement
- Expands licensed activity, in anticipation of potential state legislation
 - On-premise consumption
 - Delivery
 - Special event consumption
- Modifies terminology from “marijuana” to “cannabis”

CB 120392 – Cannabis Licensing Fees

Marijuana License Type	2019 (Ord 125703)		Proposed (CB 120392)	
	Annual Fee	Related Fees ¹	Annual Fee	Related Fee ²
Inside City	\$3,500	\$250	\$3,500	\$250
Inside City - Social Equity Applicant	n/a	n/a	\$0	\$0
Outside City ³	\$2,000	\$250	\$2,000	\$250
Outside City - Social Equity Applicant	n/a	n/a	\$0	\$0

CB 120392 – Social Equity License Criteria

- Cannabis retailer licenses – criteria for social equity applicants
 - At least 51% ownership by individual(s) who have resided in a disproportionately impacted area as defined below (length of residence TBD by LCB)
 - High poverty rate
 - High rate of participation in income-based federal or state programs
 - High rate of unemployment
 - High rate of cannabis-related arrest, conviction or incarceration
 - At least 51% ownership by individual(s) of a family member of an individual previously convicted of a cannabis offense or a drug offense
 - Other criteria TBD by FAS Director after LCB adopts its criteria
- LCB public hearing on draft rules 9/14; adoption 9/28 or later

CB 120392 – Policy Issues

- The City's eligibility criteria for social equity license applicants must be consistent with LCB's forthcoming rules
 - Options:
 - Postpone action, pending LCB's final rules, and/or
 - Pass CB 120392 but require Council approval of any criteria changes
 - Take no action

- Adding a no fee social equity license could affect FAS' cost recovery for the cannabis licensing program
 - Options:
 - Request an annual cost recovery report to Council
 - Take no action

CB 120392 – Potential Amendments to Date

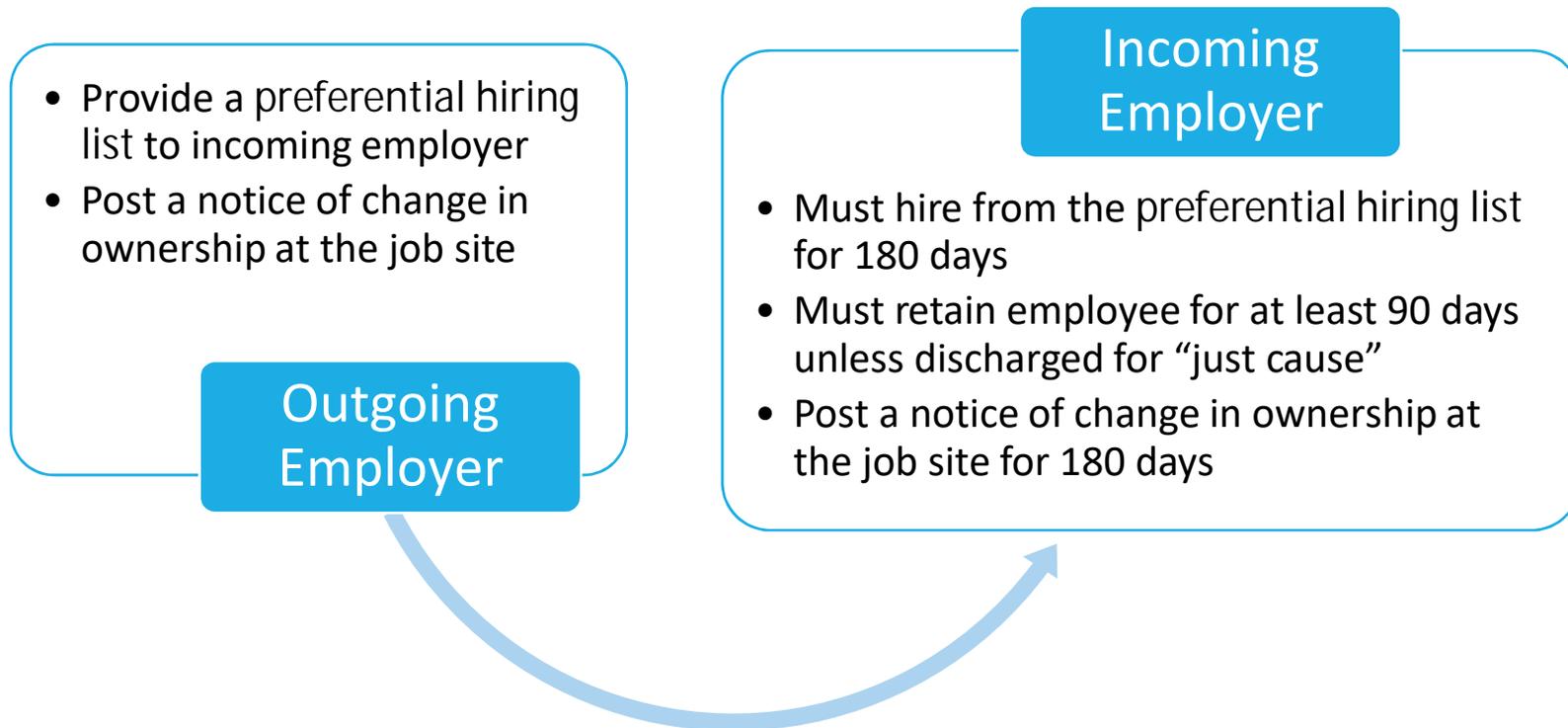
- Fee reductions for small businesses producing or transporting cannabis in Seattle (CM Herbold)

- Social equity license priority for previous owners of medical marijuana dispensaries (CM Nelson)

CB 120393 - Cannabis Job Retention Ordinance

- Requires Cannabis Business Employers take certain actions to reduce job insecurity caused by changes in ownership
- Covered Employers: those who own, operate and/or control a cannabis business.
 - Licensed under SMC Chapter 6.500
 - Integrated enterprises
- Covered Employees: those who work at a covered cannabis business for at least 30 days prior to a change in ownership.

CB 120393 - Employer Obligations



CB 120393 - Employer Obligations Cont'd

- Notice and Posting
 - Written notice to employees of the names used by any associated integrated enterprises
 - To be incorporated into current Notice of Employment Information (NOEI) obligations
 - Notice of rights afforded under the ordinance
- Recordkeeping requirements for three years (standard)

Questions?



Legislation Text

File #: CB 120393, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 8.38 to the Seattle Municipal Code; and amending Sections 3.02.125 and 14.20.025 of the Seattle Municipal Code.

WHEREAS, the Council finds that it is necessary and appropriate to regulate the emerging cannabis industry within the City to improve workforce training and development, provide employee protections, and remedy the damage caused by cannabis prohibition and the failed War on Drugs to communities of color and marginalized communities; and

WHEREAS, the Council intends to address equity and workforce development within the cannabis industry by passing a package of ordinances; and

WHEREAS, jobs in the cannabis industry pose unusual risks to workers in both retail and processing due to the prevalence of cash-based transactions, use of volatile chemicals in manufacturing, and contagion exposure, and which involves a product that is highly regulated in Washington and remains illegal under federal law; and

WHEREAS, the Council encourages every cannabis business to insure that ten percent of all hours worked by employees are performed by employees who have an arrest or conviction for the possession, use, manufacture, or cultivation of cannabis that occurred prior to January 1, 2014 or has otherwise demonstrated impact from the failed War on Drugs (including having a parent, sibling, spouse, or child who has such conviction); and

WHEREAS, it is in the City's interest to retain cannabis workers who are trained in safety and compliance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 8.38 is added to the Seattle Municipal Code as follows:

Chapter 8.38 CANNABIS EMPLOYEE JOB RETENTION

8.38.010 Short title

This Chapter 8.38 shall constitute the “Cannabis Employee Job Retention Ordinance” and may be cited as such.

8.38.020 Definitions

For purposes of this Chapter 8.38:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by this Chapter 8.38. "Adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities or other material change in the terms and conditions of employment.

"Agency" means the Office of Labor Standards and any division therein.

"Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 8.38.

“Cannabis business” means an organization licensed or required to be licensed under Chapter 6.500.

"Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a cannabis business or a discrete portion of the cannabis business that continues in operation as a cannabis business of the same business type, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing cannabis employer or any person who controls the outgoing cannabis employer.

"City" means The City of Seattle.

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

"Director" means the Director of the Office of Labor Standards or the Director's designee.

"Employ" means to suffer or permit to work.

"Employee" means any individual employed by an employer, including but not limited to full-time employees, part-time employees, and temporary workers. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

"Employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by any other employer.

"Employment commencement date" means the date on which an employee retained by the incoming cannabis employer pursuant to this Chapter 8.38 commences work for the incoming cannabis employer in exchange for benefits and compensation under the terms and conditions established by the incoming cannabis employer or as required by law.

"Incoming cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control after the change in control.

"Outgoing cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control prior to the change in control.

"Preferential hiring list" means a list of the names, addresses, dates of hire, and job classifications for all employees that worked in the City for the outgoing cannabis employer for at least 30 calendar days prior to the execution of a transfer document.

"Rate of inflation" means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W, for the 12 month period ending in August, provided that the percentage increase shall not be less than zero.

"Respondent" means an employer or any person who is alleged to have committed a violation of this Chapter 8.38.

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

"Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect a change in control.

8.38.030 Employee coverage

For the purposes of this Chapter 8.38, covered employees are limited to those who have worked in the City for an outgoing cannabis business for at least 30 calendar days prior to the execution of a transfer document.

8.38.040 Employer coverage

A. For the purposes of this Chapter 8.38, covered employers are limited to those who own, control, or operate a cannabis business in the City, including but not limited to integrated enterprises.

B. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 8.38. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 8.38 where a separate entity controls the operation of another entity. The factors to consider include but are not limited to:

1. Degree of interrelation between the operations of multiple entities;
2. Degree to which the entities share common management;
3. Centralized control of labor relations;
4. Degree of common ownership or financial control over the entities; and
5. Use of a common brand, trade, business, or operating name.

8.38.050 Outgoing cannabis employer obligations

A. When a cannabis business undergoes a change in control, the outgoing employer shall, within 15 calendar days after the execution of a transfer document, provide a preferential hiring list to the incoming cannabis employer.

B. The outgoing cannabis employer shall post written notice of the change in control at the affected business within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place so as to be readily viewed by employees and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing cannabis employer and its contact information, the name of the incoming cannabis employer and its contact information, and the effective date of the change in control.

8.38.060 Incoming cannabis employer obligations

A. The incoming cannabis employer shall keep the notice required by subsection 8.38.050.B posted during any closure of the cannabis business and for 180 calendar days after the cannabis business is open to the public under its control.

B. The incoming cannabis employer shall:

1. Maintain the preferential hiring list provided by the outgoing cannabis employer, as set forth in subsection 8.38.050.A; and

2. Hire from that preferential hiring list for a period beginning upon the execution of the transfer document and continuing for 180 calendar days after the cannabis business is open to the public under the incoming cannabis employer. The incoming cannabis employer must hire by seniority within each job classification to the extent that comparable job classifications exist.

C. If the incoming cannabis employer extends an offer of employment to an employee, the offer shall be in writing and remain open for at least ten business days.

D. If the employee accepts the written job offer, the incoming cannabis employer shall retain that employee for no fewer than 90 calendar days following the employee's employment commencement date. During this 90-day transition employment period, the employee shall be employed under the terms and conditions established by the incoming cannabis employer, or as required by law, except for as provided in subsection 8.38.060.E.

E. During the 90-day transition employment period established by subsection 8.38.060.D, the incoming cannabis employer shall:

1. Only lay off employees if the incoming cannabis employer determines that fewer cannabis employees were required than by the outgoing cannabis employer. In this circumstance, the incoming cannabis employer shall retain employees by seniority within each job classification to the extent that comparable job classifications exist; and

2. Only discharge an employee for just cause.

F. At the end of the 90-day transition employment period established by subsection 8.38.060.D, the incoming cannabis employer shall provide a written performance evaluation to each employee. If the employee's performance during the 90-day transition employment period is satisfactory, the incoming cannabis employer shall consider offering the employee continued employment under the terms and conditions

established by the incoming cannabis employer, or as required by law.

8.38.100 Notice and posting

A. The Agency shall create and make available a poster that gives notice of the rights afforded by this Chapter 8.38. The Agency shall create the poster in English, Spanish, and other languages. The poster shall give notice of:

1. The right to notice that the cannabis business is changing ownership;
2. The right to be offered a job with the incoming cannabis employer;
3. The right to just cause employment for the first 90 days of employment;
4. If layoff is required, the right to be laid off by seniority within one's job classification for the first 90 days of employment;
5. The right to a written performance evaluation after 90 days of employment;
6. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.38; and
7. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.38.

B. Employers shall display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. Employers shall display the poster in English and in the primary language of the employee(s) at the particular workplace. Employers shall make a good faith effort to determine the primary languages of the employees at that particular workplace. If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace or job site, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

C. Employers shall give written notice to employees of the name and any trade ("doing business as") names used by any associated integrated enterprise. Such information shall be included in the written notice of

employment information required by subsection 14.20.025.D.

8.38.110 Employer records

A. Each employer shall retain records that document compliance with this Chapter 8.38 including:

1. A written copy of the preferential hiring list required by subsection 8.38.050.A;
2. Written verification of offers of employment extended to each employee as required by

subsection 8.38.060.B. The verification shall include the name, address, date of hire, and employment occupation classification of each employee;

3. Written records of the performance evaluations required by subsection 8.38.060.F; and

4. Pursuant to rules issued by the Director, other records that are material and necessary to

effectuate the terms of this Chapter 8.38.

B. Records required by subsection 8.38.110.A shall be retained for a period of three years.

C. If the employer fails to retain adequate records required under subsection 8.38.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 8.38 for the periods for which records were not retained for each employee for whom records were not retained.

8.38.120 Retaliation prohibited

A. No employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Chapter 8.38.

B. No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 8.38. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 8.38; the right to inform others about their rights under this Chapter 8.38; the right to inform the person's employer, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.38; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.38; the right to cooperate with the Agency in its investigations of this Chapter 8.38; the right to testify in a

proceeding under or related to this Chapter 8.38; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice or act that is unlawful under this Chapter 8.38.

C. No employer or any other person shall communicate to a person exercising rights protected in this Section 8.38.120, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 8.38.

D. It shall be a rebuttable presumption of retaliation if the employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.38.120. However, in the case of seasonal employment that ended before the close of the 90-calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 8.38.120 shall be sufficient upon a showing that the employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.38.120 was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 8.38.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.38.

G. A complaint or other communication by any person triggers the protections of this Section 8.38.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.38.

8.38.125 Rulemaking authority

The Director is authorized to administer and enforce this Chapter 8.38. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter 8.38 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.38. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by employers, employees, and other parties to determine their rights and responsibilities under this Chapter 8.38.

8.38.130 Enforcement power and duties

The Agency shall have the power to administer and enforce this Chapter 8.38 and shall have such powers and duties in the performance of these functions as are defined in this Chapter 8.38 and otherwise necessary and proper in the performance of the same and provided for by law.

8.38.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 8.38 is a violation.

8.38.150 Investigation

A. The Agency shall have the power to investigate any violations of this Chapter 8.38 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 8.38. The Agency may initiate an investigation pursuant to Director's Rules including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because either the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 8.38 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or any other person.

B. An employee or other person may report to the Agency any suspected violation of this Chapter 8.38.

The Agency shall encourage reporting pursuant to this Section 8.38.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. However, with the authorization of such person, the Agency may disclose the employee's or person's name and identifying information as necessary to enforce this Chapter 8.38 or for other appropriate purposes.

2. The Agency may require the employer to post or otherwise notify other employees working for the employer that the Agency is conducting an investigation. The network company shall provide the notice of investigation in a form, place, and manner designated by the Agency. The Agency shall create the notice of investigation in English and other languages.

3. The Agency may certify the eligibility of eligible persons for "U" Visas under the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). This certification is subject to applicable federal law and regulations, and Director's Rules.

C. The Agency's investigation shall commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 8.38 and any administrative enforcement proceeding under this Chapter 8.38 based upon the same facts. For purposes of this Chapter 8.38:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 8.38, or the Agency provides notice to the respondent that an investigation has commenced under this Chapter 8.38.

2. The Agency's investigation ends when the Agency issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

D. The Agency's investigation shall be conducted in an objective and impartial manner.

E. The Director may apply by affidavit or declaration in the form allowed under RCW 5.50.050 to the

Hearing Examiner for the issuance of subpoenas requiring an employer to produce the records required by Section 8.38.110, or the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 8.38.110, or any other document relevant to the issue of whether any employee or group of employees received the information or other benefits required by this Chapter 8.38 and/or to whether the employer has violated any provision of this Chapter 8.38. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has occurred; a complaint has been filed with the Agency; or circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.38, the workforce is unlikely to volunteer information regarding such violations, or the Agency has gathered preliminary information indicating that a violation may have occurred.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 8.38.150.E in an investigation by the Agency under this Chapter 8.38 before the issuance of a Director's Order issued pursuant to subsection 8.38.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 8.38.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 8.38.180.

8.38.160 Findings of fact and determination

A. Except when there is an agreed upon settlement, the Director shall issue a written determination with

findings of fact resulting from the investigation and statement of whether a violation of this Chapter 8.38 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 8.38, the Director shall issue a "Determination of No Violation" with notice of an employee or other person's right to appeal the decision, pursuant to Director's Rules.

C. If the Director determines that a violation of this Chapter 8.38 has occurred, the Director shall issue a "Director's Order" that shall include a notice of violation identifying the violation or violations.

1. The Director's Order shall state with specificity the amounts due under this Chapter 8.38 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 8.38.170.

2. The Director's Order may specify that civil penalties and fines due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party pursuant to subsection 8.38.170.A.4.

3. The Director's Order may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.38, including, but not limited to, monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision, pursuant to Section 8.38.180.

8.38.170 Remedies

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 8.38, is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines

and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 8.38.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If a violation is ongoing when the Agency receives a complaint or opens an investigation, the Director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the Director's Order.

3. Interest shall accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020.

4. If there is a remedy due to an aggrieved party, the Director may waive part or all civil penalties and fines due to the Agency based on timely payment of the full remedy due to the aggrieved party.

a. The Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order.

b. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order.

c. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 8.38.170, for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of

remedy due to an aggrieved party under subsection 8.38.170.A.4, the Director may consider:

- a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;
- b. The nature and persistence of the violations;
- c. The extent of the respondent's culpability;
- d. The substantive or technical nature of the violations;
- e. The size, revenue, and human resources capacity of the respondent;
- f. The circumstances of each situation;
- g. The amount of penalties in similar situations; and
- h. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 8.38.

B. A respondent found to be in violation of this Chapter 8.38 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this Chapter 8.38, and other equitable relief.

1. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may:

- a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or
- b. Assess a daily amount for unpaid compensation in a minimum amount of \$150 for each day that each violation occurred or continued. This amount shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. For a first violation of this Chapter 8.38, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

3. For subsequent violations of this Chapter 8.38, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

4. For purposes of establishing a first and subsequent violation for this Section 8.38.170, the violation must have occurred within ten years of the settlement agreement or Director's Order.

C. A respondent found to be in violation of this Chapter 8.38 for retaliation under Section 8.38.120 shall be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 8.38, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,755.31.

D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.38 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 8.38, the Director may assess a civil penalty of up to \$575.31 per aggrieved party.

2. For a second violation of this Chapter 8.38, the Director shall assess a civil penalty of up to \$1,150.63 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 8.38, the Director shall assess a civil penalty of up to \$5,755.31 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this Section 8.38.170, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating

that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines for a violation of this Chapter 8.38 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to post notice of the change in control of cannabis business as required by subsections 8.38.050.B and 8.38.060.A	\$575.31 per aggrieved party
Failure to hire from the preferential hiring list as required by Section 8.38.060	\$575.31 per aggrieved party
Failure to retain an employee for at least 90 days as required by Section 8.38.060	\$575.31 per aggrieved party
Failure to provide employees with written notice of rights under Section 8.38.100	\$575.31 per aggrieved party
Failure to retain records for three years under Section 8.38.110	\$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.38.120	\$1,150.63 per aggrieved party
Failure to provide notice of investigation to employees under subsection 8.38.150.B.2	\$575.31 per aggrieved party
Failure to provide notice of failure to comply with final order to the public under subsection 8.38.210.A.1	\$575.31 per aggrieved party

The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$5,755.31 per aggrieved party. If a fine for retaliation is issued, the maximum amount that may be imposed is \$23,020 per aggrieved party.

F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 8.38 shall be subject to a civil penalty of not less than \$1,150.63 and not more than \$5,755.31.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter

8.38, including but not limited to reasonable attorney's fees.

H. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the subject of a final order two times or more within a five-year period, the respondent shall not be allowed to bid on any City contract for two years. This subsection 8.38.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter, provided that nothing in this subsection 8.38.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all employers subject to debarment under this subsection 8.38.170.H.

8.38.180 Appeal period and failure to respond

A. An employee or other person who claims an injury as a result of an alleged violation of this Chapter 8.38 may appeal the Determination of No Violation, pursuant to Director's Rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 8.38.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

8.38.190 Appeal procedure and failure to appear

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear

for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying, or reversing the Director's Order, consistent with Ordinance 126068.

8.38.200 Appeal from Hearing Examiner order

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 8.38.200.

8.38.210 Failure to comply with final order

A. If a respondent fails to comply within 30 days of service of any settlement agreement with the Agency, or with any final order issued by the Director or the Hearing Examiner for which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following measures to secure compliance:

1. The Director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the Agency.

2. The Director may refer the matter to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the amounts due.

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a settlement agreement, a Director's Order, or a final order of the Hearing Examiner under Section 8.38.220.

4. The Director may request that the City's Department of Finance and Administrative Services deny, suspend, refuse to renew, or revoke any business license held or requested by the employer or person until such time as the employer complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 8.38.210.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 8.38 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the settlement agreement or final order at least three business days prior to such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in the settlement agreement or the final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the settlement agreement or final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

8.38.220 Debt owed The City of Seattle

A. All monetary amounts due under a settlement agreement or Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies; provided that amounts collected by the City for unpaid compensation,

liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 8.38.180.B the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 8.38.180.B and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 8.38.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 8.38.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 8.38.220.B and 8.38.220.C, the Seattle Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or

the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 8.38.

8.38.230 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.38 or is the subject of prohibited retaliation under Section 8.38.120 may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 8.38 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$5,755.31 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 8.38.230, "person" includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.38.230, two or more employees are similarly situated if they:

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period,
2. Allege one or more violations that raise similar questions as to liability, and
3. Seek similar forms of relief.

D. For purposes of subsection 8.38.230.C, employees shall not be considered dissimilar solely because:

1. The employees' claims seek damages that differ in amount, or
2. The job titles or other means of classifying employees differ in ways that are unrelated to their

claims.

E. An order issued by the court may include a requirement for an employer to submit a compliance report to the court and to the City.

8.38.233 Waiver

Any waiver by an individual of any provisions of this Chapter 8.38 shall be deemed contrary to public policy and shall be void and unenforceable.

8.38.240 Other legal requirements-Effect on other laws

A. The provisions of this Chapter 8.38:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;
2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or which extends other protections to employees of a cannabis business; and
3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.38 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.38 affecting such person. Nothing in this Section 8.38.240 shall be construed as restricting an employee's right to pursue any other remedies at law or equity for violation of the employee's rights.

8.38.250 Severability

The provisions of this Chapter 8.38 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.38, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 8.38 or the validity of its application to other persons or circumstances.

Section 2. Subsection 14.20.025.D of the Seattle Municipal Code, which section was last amended by Ordinance 125135, is amended as follows:

14.20.025 Notice and posting

* * *

D. Employers shall give written notice of employment information to employees that contains items listed in subsections 14.20.025.D.4.a through 14.20.025.D.4.((i))j in English and in the primary language(s) of the employee(s) receiving the written information.

1. Employers shall give this written notice to employees at time of hire and to all employees who work for the employer as of that date and in the future.

2. Employers shall revise this written notice before any change to such employment information, or as soon as practicable for retroactive changes to such employment information, pursuant to rules issued by the Director. For the written good faith estimate of the employee's work schedule in subsection 14.20.025.D.4.h, the employer is required to revise the notice once every year and when there is a significant change to the work schedule due to changes in the employee's availability or to the employer's business needs, pursuant to Section 14.22.025.

3. If an employer fails to give this written notice for the items listed in subsections 14.20.025.D.4.a through 14.20.025.D.4.g, the failure shall constitute evidence weighing against the credibility of the employer's testimony regarding the agreed-upon rate of pay.

4. The written notice shall include the following items:

- a. Name of employer and any trade ("doing business as") names used by the employer;
- b. Physical address of the employer's main office or principal place of business and, if different, a mailing address;
- c. Telephone number and, if applicable, email address of the employer;
- d. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate

or rates of pay;

e. Employer's tip policy, with an explanation of any tip sharing, pooling, or allocation policies;

f. Pay basis (e.g. hour, work shift, day, week, commission);

g. Employee's established pay day for earned compensation due by reason of employment;

h. For employees covered by Chapter 14.22, a written good faith estimate of the employee's work schedule including the median number of hours the employee can expect to work each work week, and whether the employee will be expected to work on-call shifts; ~~((and))~~

i. For employees covered by Chapter 8.38, the information required by subsection 8.38.100.C; and

~~((+))~~j. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.20.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126283, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

Basis for Case	Fee in dollars
* * *	
Cable Communications (Chapter 21.60)	No fee
<u>Cannabis Jobs Retention Ordinance (Chapter 8.38)</u>	No fee
* * *	

* * *

Section 4. Sections 1 and 2 of this ordinance shall take effect nine months after the effective date of this

ordinance.

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

Passed by the City Council the _____ day of _____, 2022, and signed by me in open session in authentication of its passage this ____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments:

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Office of Labor Standards	Kerem Levitas/206-641-6427	Kailani DeVille/206-615-0703

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to employment in Seattle; adding a new Chapter 8.38 to the Seattle Municipal Code; and amending Sections 3.02.125 and 14.20.025 of the Seattle Municipal Code.

Summary and Background of the Legislation: This legislation requires cannabis business employers to take certain actions to reduce job insecurity caused by changes in ownership. Covered employers are those who own, operate and/or control a cannabis business. Covered employees include those who work at a covered cannabis business for at least 30 days prior to a change in ownership. Key protections include:

1. Outgoing employer obligations

- a. Outgoing employers that undergo a change in ownership must provide a preferential hiring list to the incoming employer.
- b. Outgoing employers must post notice of the change in ownership at the jobsite.

2. Incoming employer obligations

- a. Incoming employers must hire from the preferential hiring list for 180 days. If an employee accepts a job offer, the employer must retain the employee for no less than 90 days and can only discharge the employee for just cause during this time period.
- b. Incoming employers must continue to post notice of the change in ownership for 180 days.

3. **Notice and Posting.** Employers must provide a notice of rights afforded under the ordinance. Employers must also provide a written notice to employees of the names used by any associated integrated enterprises.

4. **Recordkeeping.** Employers must maintain records that document compliance for a period of three years.

5. **OLS Enforcement and Outreach.** The legislation provides authority to the Office of Labor Standards (OLS) to provide rulemaking, outreach and enforcement related to the new labor standard.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

materials in other languages and working with community partners to ensure that translations are appropriate for the particular demographic groups in impacted communities. OLS intends to provide translations based on information and best practices made available by the Office of Immigrant and Refugee Affairs.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

No.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

This legislation will be similar to other labor standards that OLS provides education and outreach on and enforces. The same metrics OLS uses for other local labor laws should apply here (e.g., number of inquiries, number of complaints, case completion time).

Education, outreach and enforcement will be key to the effectiveness of providing employers with information on their responsibilities, employees information on their rights, and promoting compliance with required protections and benefits.

Summary Attachments:

August 8, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Jasmine Marwaha, Analyst
Subject: Council Bill 120393, creating transparency and job security protections for cannabis employees

On Thursday, August 11, the Finance and Housing Committee will discuss [Council Bill \(CB\) 120393](#). CB 120393 is intended to create job security and transparency protections for employees of cannabis businesses in Seattle in the event of changes in business ownership. CB 120393 is part of a suite of legislation proposed to advance racial and social equity in cannabis regulations. The bill is intended to provide workforce stability while the City continues to look at policies and investments to improve racial disparities in the cannabis industry and clarify license requirements for cannabis businesses. Please see staff memos for [CB 120391](#) (Cannabis Equity) and [CB 120392](#) (Cannabis Licensing) for additional information on these efforts to address cannabis equity in the City.

This memo provides background on the legislation, a summary of CB 120393, policy issues, and next steps.

Background

The Finance and Housing Committee has heard employees share concerns in previous committee meetings about job insecurity due to the changing nature of cannabis business ownership. For example, in one instance discussed in committee, all employees in a cannabis business were laid off when that business was sold to a new owner. Currently there are no protections in place for cannabis workers to retain their jobs in the event of a change in business ownership.

Job insecurity and transparency are of particular concern for employees in the cannabis industry, in part because of the way that employment is structured in the industry. Cannabis businesses do not have access to federally insured banking, and therefore establish separate business entities, typically Limited Liability Companies (LLCs), to pay their employees. The employees may work for an LLC that might be different than the retail name or the name on the cannabis business license. It is possible for employees in the same store to be working for different LLCs, which can make it difficult to determine true employment relationships between a worker and a cannabis business. The legislation is therefore intended to give workers transparency about entities that are associated with the cannabis business.

Council Bill 120393

This legislation would require cannabis business employers to take certain actions to increase transparency and reduce job insecurity caused by changes in ownership. Covered employers are those who own, operate and/or control a cannabis business licensed under Seattle Municipal Code (SMC) Chapter 6.500. Covered employees include those who work at a covered cannabis business for at least 30 days prior to a change in ownership. Key protections for covered employees would include:

- Outgoing employer obligations
For businesses that undergo a change in ownership, outgoing employers must provide a preferential hiring list to the incoming employer and post a notice of the change in ownership at the jobsite.
- Incoming employer obligations
Incoming employers must hire from the preferential hiring list for 180 days and continue to post notice of the change in ownership. If an employee accepts a job offer, the employer must retain the employee for no less than 90 days and can only discharge the employee for just cause during this time period.
- Notice and Posting
Employers must provide a notice of rights afforded under the ordinance. Employers must also provide a written notice to employees of the names used by any associated integrated enterprises.
- Recordkeeping
Employers must maintain records that document compliance for a period of three years.
- OLS Enforcement and Outreach
The legislation provides authority to the Office of Labor Standards (OLS) to provide rulemaking, outreach and enforcement related to the new labor standard.

Policy Issues

CB 120393 is largely modeled after the [Hotel Employees Job Retention Ordinance](#) (HEJR), passed by Council in 2019, which contains similar job retention provisions for the hotel industry. Having similar provisions that address job insecurity in the event of a change in business ownership helps ensure expediency in implementation for OLS, and consistency across industries.

However, CB 120393 creates an obligation on employers in the cannabis industry that is not present in HEJR. To provide more transparency about the entities associated with a cannabis business, cannabis employers are required to update their Notice of Employment Information (NOEI) – a notice required under the [Wage Theft Ordinance](#) – with the names used by any associated integrated enterprises of the employer. While the bill as drafted recognizes the unique challenges present in the cannabis industry, the Committee may want to more closely

align with legislative precedent from the hotel industry to maintain consistency across industries.

Options:

- A. Strike the additional notice requirement to align with the Hotel Employees Job Retention Ordinance.
- B. Take no action.

Next Steps

CB 120393, as well as CB 120391 and CB 120392, will be discussed during a special meeting of the Finance and Housing Committee on August 11. Councilmembers who would like to prepare amendments should contact Central Staff no later than noon on August 12. The Committee will discuss and potentially vote on amendments and the bills during the regularly scheduled meeting on August 17.

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Asha Venkataraman, Lead Analyst



SEATTLE CITY COUNCIL
CENTRAL STAFF

Cannabis Equity

AMY GORE, LISE KAYE, JASMINE MARWAHA, LEGISLATIVE ANALYSTS

FINANCE & HOUSING COMMITTEE

AUGUST 11, 2022

CB 120391 – Cannabis Equity

Background

- Initiative 502 was approved by voters in November of 2012.
- State removed prohibitions against producing, processing, and selling cannabis, allowed limited possession of cannabis by persons aged 21 and older, and created a licensing and regulatory scheme, imposed excise taxes.
- City of Seattle established zoning regulations, required business licenses and related fees.
- Most cannabis-related changes were done without racial equity lens.

CB 120391 – Cannabis Equity

Racial Equity Toolkit

- Facilities and Administrative Services led inter-departmental team to conduct a RET on the City’s cannabis policies.
- The RET detailed disproportionate harm to Black individuals, families, and communities both before and after legalization.
- Stakeholder recommendations included \$1M of funding per year for a Seattle Cannabis Equity Program.
- FAS team also recommended increasing equity in business licensing, reducing buffering and dispersion requirements, providing grants/loans and technical assistance to black cannabis businesses, providing mentorship, investing in communities most impacted by cannabis prohibition enforcement.

CB 120391 – Cannabis Equity

CB 120391 expresses City's intention to:

- Include cannabis equity issues in the City's 2023 State and Federal Legislative Agendas.
- Advocate with King County for the expungement of cannabis convictions.
- Partner with organizations that represent negatively impacted communities to mitigate the damage of the federal War on Drugs.
- Pursue funds from the State and Federal government for cannabis equity work.
- Fund a Cannabis Needs Assessment.
- Appoint an advisory committee comprised of workers, industry members, and community members to support the Cannabis Needs Assessment.

CB 120391 – Policy Issues

- The City’s cannabis equity RET identified several actions the City could take to address past harms and racial disparities, some of which are not included in the proposed CB 120391.
- Options:
 - Amend CB 120391 to include some or all of the RET recommendations;
or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 would commit to funding a Cannabis Needs Assessment. The Assessment is anticipated to cost approximately \$250,000. There is currently no funding identified to support this work.
- Options:
 - Amend CB 120391 to identify a funding source;
 - Amend CB 120391 to remove the Needs Assessment until a funding source is identified; or
 - Take no action.

CB 120391 – Policy Issues

- CB 120391 states that the City will appoint an advisory committee to be comprised of “workers, industry members, and community members impacted by the federal War on Drugs...” but gives no additional guidance on eligibility or selection of advisory committee members.
- Options:
 - Amend CB 120391 to give additional guidance on the process of selecting advisory committee members;
 - Amend CB 120391 to give additional guidance on the eligibility criteria for advisory committee members; or
 - Take no action.

CB 120391 – Potential Amendments

1. Cannabis Needs Assessment (Mosqueda)

- Would add a new Section 10 to CB 120391 to provide additional guidance on the preferred characteristics for the organization selected to conduct the Assessment.

CB 120392 – Cannabis Licensing

- Creates new no-fee social equity license and criteria
- Removes fees for premises reinspection and license reinstatement
- Expands licensed activity, in anticipation of potential state legislation
 - On-premise consumption
 - Delivery
 - Special event consumption
- Modifies terminology from “marijuana” to “cannabis”

CB 120392 – Cannabis Licensing Fees

Marijuana License Type	2019 (Ord 125703)		Proposed (CB 120392)	
	Annual Fee	Related Fees ¹	Annual Fee	Related Fee ²
Inside City	\$3,500	\$250	\$3,500	\$250
Inside City - Social Equity Applicant	n/a	n/a	\$0	\$0
Outside City ³	\$2,000	\$250	\$2,000	\$250
Outside City - Social Equity Applicant	n/a	n/a	\$0	\$0

CB 120392 – Social Equity License Criteria

- Cannabis retailer licenses – criteria for social equity applicants
 - At least 51% ownership by individual(s) who have resided in a disproportionately impacted area as defined below (length of residence TBD by LCB)
 - High poverty rate
 - High rate of participation in income-based federal or state programs
 - High rate of unemployment
 - High rate of cannabis-related arrest, conviction or incarceration
 - At least 51% ownership by individual(s) of a family member of an individual previously convicted of a cannabis offense or a drug offense
 - Other criteria TBD by FAS Director after LCB adopts its criteria
- LCB public hearing on draft rules 9/14; adoption 9/28 or later

CB 120392 – Policy Issues

- The City's eligibility criteria for social equity license applicants must be consistent with LCB's forthcoming rules
 - Options:
 - Postpone action, pending LCB's final rules, and/or
 - Pass CB 120392 but require Council approval of any criteria changes
 - Take no action
- Adding a no fee social equity license could affect FAS' cost recovery for the cannabis licensing program
 - Options:
 - Request an annual cost recovery report to Council
 - Take no action

CB 120392 – Potential Amendments to Date

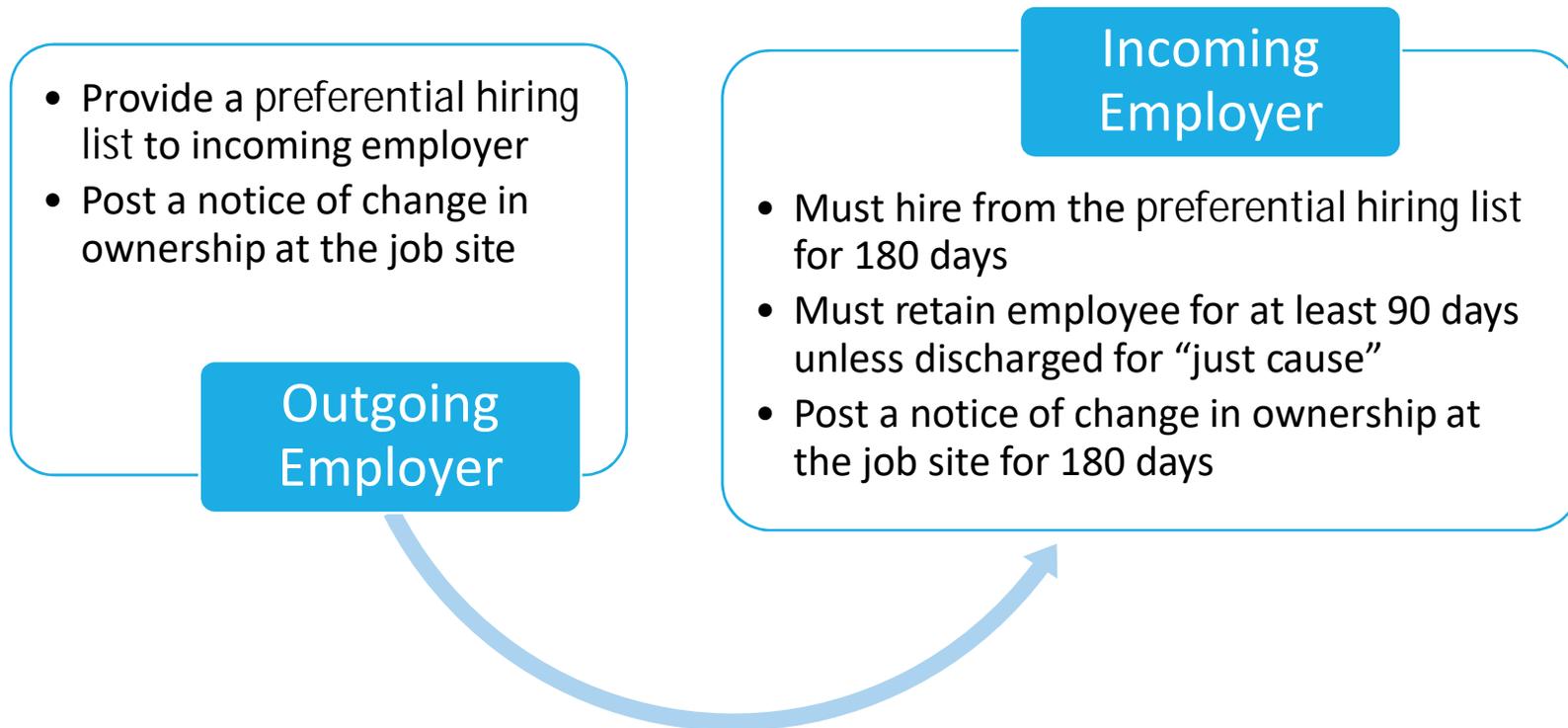
- Fee reductions for small businesses producing or transporting cannabis in Seattle (CM Herbold)

- Social equity license priority for previous owners of medical marijuana dispensaries (CM Nelson)

CB 120393 - Cannabis Job Retention Ordinance

- Requires Cannabis Business Employers take certain actions to reduce job insecurity caused by changes in ownership
- Covered Employers: those who own, operate and/or control a cannabis business.
 - Licensed under SMC Chapter 6.500
 - Integrated enterprises
- Covered Employees: those who work at a covered cannabis business for at least 30 days prior to a change in ownership.

CB 120393 - Employer Obligations



CB 120393 - Employer Obligations Cont'd

- Notice and Posting
 - Written notice to employees of the names used by any associated integrated enterprises
 - To be incorporated into current Notice of Employment Information (NOEI) obligations
 - Notice of rights afforded under the ordinance
- Recordkeeping requirements for three years (standard)

Questions?