

1 **CITY OF SEATTLE**

2 **ORDINANCE** _____

3 **COUNCIL BILL** _____

4 ..title

5 AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.29 to the Seattle
6 Municipal Code (SMC); and amending Sections 3.15.000 and 6.208.020 of the SMC.

8 ..body

9 WHEREAS, the City has identified a need to provide immediate protection to low-wage hotel

10 employees by passing a package of new labor standards ordinances; NOW,

11 THEREFORE,

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

13 Section 1. A new Chapter 14.29 is added to the Seattle Municipal Code as follows:

14 **CHAPTER 14.29 HOTEL EMPLOYEES JOB RETENTION**

15 **14.29.010 Short title**

16 This Chapter 14.29 shall constitute the “Hotel Employees Job Retention Ordinance” and may be
17 cited as such.

18 **14.29.020 Definitions**

19 For the purposes of this Chapter 14.29:

20 “Adverse action” means denying a job or promotion, demoting, terminating, failing to
21 rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair
22 immigration-related practices, filing a false report with a government agency, changing an
23 employee’s status to a nonemployee, or otherwise discriminating against any person for any
24 reason prohibited by Section 14.29.120. “Adverse action” for an employee may involve any

1 aspect of employment, including pay, work hours, responsibilities or other material change in the
2 terms and conditions of employment;

3 “Agency” means the Office of Labor Standards and any division therein;

4 “Aggrieved party” means an employee or other person who suffers tangible or intangible
5 harm due to an employer or other person’s violation of this Chapter 14.29;

6 “Ancillary hotel business” means any business that (1) routinely contracts with
7 the hotel for services in conjunction with the hotel’s purpose; (2) leases or sublets space at the
8 site of the hotel for services in conjunction with the hotel’s purpose; or (3) provides food and
9 beverages, to hotel guests and to the public, with an entrance within the hotel premises
10 ~~(a) food or beverage business with one or more of the following characteristics: (i) operates~~
11 ~~from a physical location that is within a hotel, (ii) has direct interior access to the hotel, or (iii)~~
12 ~~both abuts the hotel and is an amenity to the hotel guests; or (b) businesses that contract with the~~
13 ~~hotel to further the hotel’s core function of providing guest lodging, housekeeping, room service,~~
14 ~~laundry, parking, events or conventions, or other services”;~~

15 “Change in control” means any sale, assignment, transfer, contribution, or other
16 disposition of all or substantially all of the assets used in the operation of a hotel or an ancillary
17 hotel business or a discrete portion of the hotel or the ancillary hotel business that continues in
18 operation as a hotel or as an ancillary hotel business of the same business type, or a controlling
19 interest (including by consolidation, merger, or reorganization) of the outgoing hotel employer or
20 any person who controls the outgoing hotel employer;

21 “City” means the City of Seattle;

22 “Compensation” means payment owed to an employee by reason of employment
23 including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses,

1 rest breaks, promised or legislatively required pay or paid leave, and reimbursement for
2 employer expenses. For reimbursement for employer expenses, an employer shall indemnify
3 the employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of the employee's duties, or of the employee's obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful;

7 “Director” means the Director of the Office of Labor Standards or the Director’s
8 designee;

9 “Employ” means to suffer or permit to work;

10 “Employee” means “employee” as defined under Section 12A.28.200, including but not
11 limited to full-time employees, part-time employees, and temporary workers. An alleged
12 employer bears the burden of proof that the individual is, as a matter of economic reality, in
13 business for oneself (i.e. independent contractor) rather than dependent upon the alleged
14 employer;

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

20 “Employment commencement date” means the date on which an employee retained by
21 the incoming hotel employer pursuant to this Chapter 14.29 commences work for the incoming
22 hotel employer in exchange for benefits and compensation under the terms and conditions
23 established by the incoming hotel employer or as required by law;

1 “Hotel” means a hotel or motel, as defined in Section 23.84A.024, containing 60 or more
2 guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee,
3 regardless of how many of those rooms or suites are occupied or in commercial use at any given
4 time;

5 “Incoming hotel employer” means an employer that owns, controls, or operates a hotel or
6 an ancillary hotel business that is subject to a change in control after the change in control;

7 “Outgoing hotel employer” means an employer that owns, controls, or operates a hotel or
8 an ancillary hotel business that is subject to a change in control prior to the change in control;

9 “Preferential hiring list” means a list of the names, addresses, dates of hire, and job
10 classifications for all employees that worked in the City for the outgoing hotel employer for at
11 least 30 calendar days prior to the execution of a transfer document;

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

16 “Respondent” means an employer or any person who is alleged to have committed a
17 violation of this Chapter 14.29;

18 “Successor” means any person to whom an employer quitting, selling out, exchanging,
19 or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
20 employer’s business, a major part of the property, whether real or personal, tangible or
21 intangible, of the employer’s business. For purposes of this definition, “person” means any
22 individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm,
23 corporation, business trust, partnership, limited liability partnership, company, joint stock

1 company, limited liability company, association, joint venture, or any other legal or commercial
2 entity;

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

5 **14.29.025 Intent of ordinance**

6 The intent of this Chapter 14.29 is to reduce job insecurity in the hospitality workforce that are
7 caused by changes in ownership.

8 **14.29.030 Employee coverage**

9 A. For the purposes of this Chapter 14.29, covered employees are limited to those who
10 have worked in the City for an outgoing hotel employer for at least 30 calendar days prior to the
11 execution of a transfer document.

12 B. For purposes of this Chapter 14.29, covered employees do not include an employee
13 who is a manager, supervisor, or confidential employee.

14 **14.29.040 Employer coverage**

15 A. For the purposes of this Chapter 14.29, covered employers are limited to those who
16 either (a) own, control or operate a hotel in the City or (b) own, control, or operate, an ancillary
17 hotel business in the City with ~~20~~50 or more employees worldwide regardless of where those
18 employees are employed, including but not limited to chains, integrated enterprises, or franchises
19 associated with a franchisor or network of franchises that employ ~~20~~50 or more employees in
20 aggregate. Covered employers are also limited to those who are party to a transfer document that
21 effects a change in control and are either (a) an outgoing hotel employer or (b) an incoming hotel
22 employer.

1 B. To determine the number of employees for the current calendar year, the calculation
2 shall be based upon:

3 1. The average number per calendar week of employees who worked for
4 compensation during the preceding calendar year for any and all weeks during which at least one
5 employee worked for compensation. For employers that did not have any employees during the
6 previous calendar year, the number of employees will be calculated based upon the average
7 number per calendar week of employees who worked for compensation during the first 90
8 calendar days of the current year in which the employer engaged in business; and

9 2. All employees who worked for compensation shall be counted, including but
10 not limited to:

- 11 a. Employees who are not covered by this Chapter 14.29;
- 12 b. Employees who worked inside the City;
- 13 c. Employees who worked outside the City; and
- 14 d. Employees who worked in full-time employment, part-time
15 employment, joint employment, temporary employment, or through the services of a temporary
16 services or staffing agency or similar entity.

17 C. Separate entities that form an integrated enterprise shall be considered a single
18 employer under this Chapter 14.29. Separate entities will be considered an integrated enterprise
19 and a single employer under this Chapter 14.29 where a separate entity controls the operation of
20 another entity. The factors to consider include, but are not limited to:

- 21 1. Degree of interrelation between the operations of multiple entities;
- 22 2. Degree to which the entities share common management;
- 23 3. Centralized control of labor relations; and

1 4. Degree of common ownership or financial control over the entities.

2 **14.29.050 Outgoing hotel employer obligations**

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

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

12 **14.29.060 Incoming hotel employer obligations**

13 A. The incoming hotel employer shall keep the notice required by subsection 14.29.050.B
14 posted during any closure of the hotel or ancillary hotel business and for 180 calendar days after
15 the hotel or ancillary hotel business is open to the public under its control.

16 B. The incoming hotel employer shall:

17 1. Maintain the preferential hiring list provided by the outgoing hotel employer, as
18 set forth in subsection 14.29.050.A; and

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

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

3 D. If the employee accepts the written job offer, the incoming hotel employer shall retain
4 that employee for no fewer than 90 calendar days following the employee's employment
5 commencement date. During this 90-day transition employment period, the employee shall be
6 employed under the terms and conditions established by the incoming hotel employer, or as
7 required by law, except for as provided in subsection 14.29.060.E.

8 E. During the 90-day transition employment period established by subsection
9 14.29.060.D, the incoming hotel employer shall:

10 1. Only layoff employees if the incoming hotel employer determines that fewer
11 hotel employees were required than by the outgoing hotel employer. In this circumstance, the
12 incoming hotel employer shall retain employees by seniority within each job classification to the
13 extent that comparable job classifications exist; and

14 2. Only discharge an employee for just cause.

15 F. At the end of the 90-day transition employment period established by subsection
16 14.29.060.D, the incoming hotel employer shall provide a written performance evaluation to
17 each employee. If the employee's performance during the 90-day transition employment period
18 is satisfactory, the incoming hotel employer shall consider offering the employee continued
19 employment under the terms and conditions established by the incoming hotel employer, or as
20 required by law.

21 **14.29.100 Notice and posting**

1 A. The Agency shall create and make available a poster that gives notice of the rights
2 afforded by this Chapter 14.29. The Agency shall create the poster in English, Spanish, and other
3 languages. The poster shall give notice of:

- 4 1. The right to notice that the hotel or business is changing ownership;
- 5 2. The right to be offered a job with the incoming hotel employer;
- 6 3. The right to just cause employment for the first 90 days of employment;
- 7 4. If layoff is required, the right to be laid off by seniority within one's job
8 classification for the first 90 days of employment;
- 9 5. The right to a written performance evaluation after 90 days of employment;
- 10 6. The right to be protected from retaliation for exercising in good faith the rights
11 protected by this Chapter 14.29; and
- 12 7. The right to file a complaint with the Agency or bring a civil action for
13 violation of the requirements of this Chapter 14.29.

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

22 **14.29.110 Employer records**

1 A. Each employer shall retain records that document compliance with this Chapter 14.29
2 including but not limited to:

3 1. A written copy of the preferential hiring list required by subsection
4 14.29.050.A;

5 2. Written verification of offers of employment extended to each employee as
6 required by subsection 14.29.060.B. The verification shall include the name, address, date of
7 hire, and employment occupation classification of each employee; ~~and~~

8 3. Written records of the performance evaluations required by subsection
9 14.29.060.F; and

10 4. Pursuant to rules issued by the Director, other records that are material and
11 necessary to effectuate the terms of this Chapter 14.29.-

12 B. Records required by subsection 14.29.110.A shall be retained for a period of three
13 years.

14 C. If the employer fails to retain adequate records required under subsection 14.29.110.A,
15 there shall be a presumption, rebuttable by clear and convincing evidence, that the employer
16 violated this Chapter 14.29 for the periods for which records were not retained for each
17 employee for whom records were not retained.

18 **14.29.120 Retaliation prohibited**

19 A. No employer or any other person shall interfere with, restrain, deny, or attempt to
20 deny the exercise of any right protected under this Chapter 14.29.

21 B. No employer or any other person shall take any adverse action against any person
22 because the person has exercised in good faith the rights protected under this Chapter 14.29.

23 Such rights include but are not limited to the right to make inquiries about the rights protected

1 under this Chapter 14.29; the right to inform others about their rights under this Chapter 14.29;
2 the right to inform the person's employer, union or similar organization, and/or the person's legal
3 counsel or any other person about an alleged violation of this Chapter 14.29; the right to file an
4 oral or written complaint with the Agency or bring a civil action for an alleged violation of this
5 Chapter 14.29; the right to cooperate with the Agency in its investigations of this Chapter 14.29;
6 the right to testify in a proceeding under or related to this Chapter 14.29; the right to refuse to
7 participate in an activity that would result in a violation of city, state, or federal law; and the right
8 to oppose any policy, practice or act that is unlawful under this Chapter 14.29.

9 C. No employer or any other person shall communicate to a person exercising rights
10 protected under this Section 14.29.120, directly or indirectly, the willingness to inform a
11 government employee or contracted organization that the person is not lawfully in the United
12 States, or to report, or to make an implied or express assertion of a willingness to report,
13 suspected citizenship or immigration status of an employee or a family member of the employee
14 to a federal, state, or local agency because the employee has exercised a right under this Chapter
15 14.29.

16 D. It shall be considered a rebuttable presumption of retaliation if the employer or any
17 other person takes an adverse action against a person within 90 calendar days of the person's
18 exercise of rights protected in this Section 14.29.120. However, in the case of seasonal
19 employment that ended before the close of the 90 calendar day period, the presumption also
20 applies if the employer fails to rehire a former employee at the next opportunity for work in the
21 same position. The employer may rebut the presumption with clear and convincing evidence that
22 the adverse action was taken for a permissible purpose.

1 E. Proof of retaliation under this Section 14.29.120 shall be sufficient upon a showing
2 that the employer or any other person has taken an adverse action against a person and the
3 person's exercise of rights protected in this Section 14.29.120 was a motivating factor in the
4 adverse action, unless the employer can prove that the action would have been taken in the
5 absence of such protected activity.

6 F. The protections afforded under this Section 14.29.120 shall apply to any person who
7 mistakenly but in good faith alleges violations of this Chapter 14.29.

8 G. A complaint or other communication by any person triggers the protections of this
9 Section 14.29.120 regardless of whether the complaint or communication is in writing or makes
10 explicit reference to this Chapter 14.29.

11 **14.29.130 Enforcement power and duties**

12 A. The Agency shall investigate violations of this Chapter 14.29, as defined herein, and
13 shall have such powers and duties in the performance of these functions as are defined in this
14 Chapter 14.29 and otherwise necessary and proper in the performance of the same and provided
15 for by law.

16 B. The Agency shall be authorized to coordinate implementation and enforcement of this
17 Chapter 14.29 and shall promulgate appropriate guidelines or rules for such purposes.

18 C. The Director of the Agency is authorized and directed to promulgate rules consistent
19 with this Chapter 14.29 and Chapter 3.02. Any guidelines or rules promulgated by the Director
20 shall have the force and effect of law and may be relied on by employers, employees, and other
21 parties to determine their rights and responsibilities under this Chapter 14.29.

22 **14.29.140 Violation**

1 The failure of any respondent to comply with any requirement imposed on the respondent under
2 this Chapter 14.29 is a violation.

3 **14.29.150 Investigation**

4 A. The Agency shall have the power to investigate any violations of this Chapter 14.29
5 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the
6 Director including, but not limited to, situations when the Director has reason to believe that a
7 violation has occurred or will occur, or when circumstances show that violations are likely to
8 occur within a class of businesses because either the workforce contains significant numbers of
9 workers who are vulnerable to violations of this Chapter 14.29 or the workforce is unlikely to
10 volunteer information regarding such violations. An investigation may also be initiated through
11 the receipt by the Agency of a report or complaint filed by an employee or any other person.

12 B. An employee or other person may report to the Agency any suspected violation of this
13 Chapter 14.29. The Agency shall encourage reporting pursuant to this Section 14.29.150 by
14 taking the following measures:

15 1. The Agency shall keep confidential, to the maximum extent permitted by
16 applicable laws, the name and other identifying information of the employee or person reporting
17 the violation. However, with the authorization of such person, the Agency may disclose the
18 employee's or person's name and identifying information as necessary to enforce this Chapter
19 14.29 or for other appropriate purposes.

20 2. The Agency may require the employer to post or otherwise notify employees
21 that the Agency is conducting an investigation, using a form provided by the Agency and
22 displaying it on-site, in a conspicuous and accessible location, and in English and the primary
23 language(s) of the employee(s) at the particular workplace. If display of the form is not feasible,

1 including situations when the employee works remotely or does not have a regular workplace,
2 the employer may provide the form on an individual basis in physical or electronic format that is
3 reasonably conspicuous and accessible.

4 3. The Agency may certify the eligibility of eligible persons for "U" visas under
5 the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). The certification is subject
6 to applicable federal law and regulations, and rules issued by the Director.

7 C. The Agency's investigation must commence within three years of the alleged
8 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is
9 tolled during any investigation under this Chapter 14.29 and any administrative enforcement
10 proceeding under this Chapter 14.29 based upon the same facts. For purposes of this Chapter
11 14.29:

12 1. The Agency's investigation begins on the earlier date of when the Agency
13 receives a complaint from a person under this Chapter 14.29, or the Agency provides notice to
14 the respondent that an investigation has commenced under this Chapter 14.29.

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

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

20 E. The Director may apply by affidavit or declaration in the form allowed under RCW
21 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the attendance and
22 testimony of witnesses, or any document relevant to the issue of whether any employee or group
23 of employees has been or is afforded proper amounts of compensation under this Chapter 14.29

1 and/or to whether the employer has violated any provision of this Chapter 14.29. The Hearing
2 Examiner shall conduct the review without hearing as soon as practicable and shall issue
3 subpoenas upon a showing that there is reason to believe that a violation has occurred if a
4 complaint has been filed with the Agency, or that circumstances show that violations are likely to
5 occur within a class of businesses because the workforce contains significant numbers of
6 workers who are vulnerable to violations of this Chapter 14.29 or the workforce is unlikely to
7 volunteer information regarding such violations.

8 F. An employer that fails to comply with the terms of any subpoena issued under
9 subsection 14.29.150.E in an investigation by the Agency under this Chapter 14.29 prior to the
10 issuance of a Director's Order issued pursuant to subsection 14.29.160.C may not use such
11 records in any appeal to challenge the correctness of any determination by the Agency of
12 liability, damages owed, or penalties assessed.

13 G. In addition to other remedies, the Director may refer any subpoena issued under
14 subsection 14.29.150.E to the City Attorney to seek a court order to enforce any subpoena.

15 H. Where the Director has reason to believe that a violation has occurred, the Director
16 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
17 status quo pending completion of a full investigation or hearing, including but not limited to a
18 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
19 damages, and penalties due. A respondent may appeal any such order in accordance with Section
20 14.29.180.

21 **14.29.160 Findings of fact and determination**

22 A. Except when there is an agreed upon settlement, the Director shall issue a written
23 determination with findings of fact resulting from the investigation and statement of whether a

1 violation of this Chapter 14.29 has or has not occurred based on a preponderance of the evidence
2 before the Director.

3 B. If the Director determines that there is no violation of this Chapter 14.29, the Director
4 shall issue a "Determination of No Violation" with notice of an employee or other person's right
5 to appeal the decision, subject to the rules of the Director.

6 C. If the Director determines that a violation of this Chapter 14.29 has occurred, the
7 Director shall issue a "Director's Order" that shall include a notice of violation identifying the
8 violation or violations.

9 1. The Director's Order shall state with specificity the amounts due under this
10 Chapter 14.29 for each violation, including payment of civil penalties, fines, and penalties
11 payable to the aggrieved party pursuant to subsection 14.29.170.B and 14.29.170.D; and unpaid
12 compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines,
13 and interest pursuant to subsection 14.29.170.C for retaliation.

14 2. The Director's Order may specify that civil penalties due to the Agency can be
15 mitigated for respondent's timely payment of remedy due to an aggrieved party under subsection
16 14.29.170.A.4.

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

19 4. The Director's Order may direct the respondent to take such corrective action as
20 is necessary to comply with the requirements of this Chapter 14.29, including, but not limited to,
21 monitored compliance for a reasonable time period.

22 5. The Director's Order shall include notice of the respondent's right to appeal the
23 decision, pursuant to Section 14.29.180.

1 **14.29.170 Remedies**

2 A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties
3 payable to aggrieved parties, fines, and interest provided under this Chapter 14.29 are cumulative
4 and are not intended to be exclusive of any other available remedies, penalties, fines and
5 procedures. Pursuant to subsection 14.29.160.C3, the Director may specify that ~~all~~ civil
6 penalties and fines are due to the aggrieved party rather than due to the Agency.

7 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
8 fines contained in this Section 14.29.170 shall be increased annually to reflect the rate of
9 inflation and calculated to the nearest cent on January 1 of each year. The Agency shall
10 determine the amounts and file a schedule of such amounts with the City Clerk.

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

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

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

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

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

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

7 5. When determining the amount of liquidated damages, civil penalties, penalties
8 payable to aggrieved parties, and fines due under this Section 14.29.170, for a settlement
9 agreement or Director's Order, including but not limited to the mitigation of civil penalties and
10 fines due to the Agency for timely payment of remedy due to an aggrieved party under
11 subsection 14.29.170.A.4, the Director shall consider:

12 a. The total amount of unpaid compensation, liquidated damages,
13 penalties, fines, and interest due;

14 b. The nature and persistence of the violations;

15 c. The extent of the respondent's culpability;

16 d. The substantive or technical nature of the violations;

17 e. The size, revenue, and human resources capacity of the respondent;

18 f. The circumstances of each situation;

19 g. The amounts of penalties in similar situations; and

20 h. Other factors pursuant to rules issued by the Director.

21 B. A respondent found to be in violation of this Chapter 14.29 shall be liable for full
22 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
23 this Chapter 14.29, and other equitable relief.

1 1. For a first violation of this Chapter 14.29, the Director may assess liquidated
2 damages in an additional amount of up to twice the unpaid compensation.

3 2. For subsequent violations of this Chapter 14.29, the Director shall assess an
4 amount of liquidated damages in an additional amount of twice the unpaid compensation.

5 3. For purposes of establishing a first and subsequent violation for this Section
6 14.29.170, the violation must have occurred within ten years of the settlement agreement or
7 Director's Order.

8 C. A respondent found to be in violation of this Chapter 14.29 for retaliation under
9 Section 14.29.120 shall be subject to any appropriate relief at law or equity including, but not
10 limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full
11 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
12 this Chapter 14.29, and liquidated damages in an additional amount of up to twice the unpaid
13 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
14 party of up to \$5,000.

15 D. A respondent found to be in violation of this Chapter 14.29 shall be subject to civil
16 penalties. Pursuant to subsection 14.29.160.C.3, the Director may specify that civil penalties are
17 due to the aggrieved party rather than due to the Agency.

18 1. For a first violation of this Chapter 14.29, the Director may assess a civil
19 penalty of up to \$500 per aggrieved party.

20 2. For a second violation of this Chapter 14.29, the Director shall assess a civil
21 penalty of up to \$1,000 per aggrieved party, or an amount equal to ten percent of the total
22 amount of unpaid compensation, whichever is greater.

1 3. For a third or any subsequent violation of this Chapter 14.29, the Director shall
2 assess a civil penalty of up to \$5,000 per aggrieved party, or an amount equal to ten percent of
3 the total amount of unpaid compensation, whichever is greater. The maximum civil penalty for a
4 violation of this Chapter 14.29 shall be \$20,000 per aggrieved party, or an amount equal to ten
5 percent of the total amount of unpaid compensation, whichever is greater.

6 4. For purposes of this Section 14.29.170, a violation is a second, third, or
7 subsequent violation if the respondent has been a party to one, two, or more than two settlement
8 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
9 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
10 the date of the violation; otherwise, it is a first violation.

11 E. For the following violations, the Director may assess a fine up to the amounts set forth
12 below:

Violation	Fine
Failure to post notice of the change in control of a hotel or ancillary hotel business as required by subsections 14.29.050.B and 14.29.060.A	\$500 per aggrieved party
Failure to hire from the preferential hiring list as required by Section 14.29.060	\$500 per aggrieved party
Failure to retain an employee for at least 90 days as required by Section 14.29.060	\$500 per aggrieved party
Failure to provide employees with written notice of rights under Section 14.29.100	\$500
Failure to maintain records for three years under Section 14.29.110	\$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.29.120	\$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.29.150.B.2	\$500
Failure to provide notice of failure to comply with final order to the public under subsection 14.29.210.A.1	\$500

1 The fine amounts shall be increased cumulatively by 50 percent of the fine for each preceding
2 violation for each subsequent violation of the same provision by the same employer or person
3 within a ten year period. The maximum amount that may be imposed in fines in any one year
4 period for each type of violation listed above is \$5,000 unless a fine for retaliation is issued, in
5 which case the maximum amount is \$20,000.

6 F. A respondent who willfully hinders, prevents, impedes, or interferes with the Director
7 or Hearing Examiner in the performance of their duties under this Chapter 14.29 shall be subject
8 to a civil penalty of not less than \$1,000 and not more than \$5,000.

9 G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and
10 interest, the Agency may assess against the respondent in favor of the City reasonable costs
11 incurred in enforcing this Chapter 14.29, including but not limited to reasonable attorney's fees.

12 H. An employer that is the subject of a settlement agreement stipulating that a violation
13 shall count for debarment, or final order for which all appeal rights have been exhausted, shall
14 not be permitted to bid, or have a bid considered, on any City contract until such amounts due
15 under the final order have been paid in full to the Director. If the employer is the subject of a
16 final order two times or more within a five-year period, the employer shall not be allowed to bid
17 on any City contract for two years. This subsection 14.29.170.H shall be construed to provide
18 grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and
19 shall not be governed by that chapter, provided that nothing in this subsection 14.29.170.H shall
20 be construed to limit the application of Chapter 20.70. The Director shall notify the Director of
21 Finance and Administrative Services of all employers subject to debarment under this subsection
22 14.29.170.H.

23 **14.29.180 Appeal period and failure to respond**

1 A. An employee or other person who claims an injury as a result of an alleged violation
2 of this Chapter 14.29 may appeal the Determination of No Violation Shown, pursuant to the
3 rules of the Director.

4 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
5 to Section 14.29.170, by requesting a contested hearing before the Hearing Examiner in writing
6 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
7 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
8 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
9 until 5 p.m. on the next business day.

10 **14.29.190 Appeal procedure and failure to appear**

11 A. Contested hearings shall be conducted pursuant to the procedures for hearing
12 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
13 hearing contested cases. The review shall be conducted de novo and the Director shall have the
14 burden of proof by a preponderance of the evidence before the Hearing Examiner. Upon
15 establishing such proof, the remedies and penalties imposed by the Director shall be upheld
16 unless it is shown that the Director abused discretion. Failure to appear for a contested hearing
17 will result in an order being entered finding that the employer committed the violation stated in
18 the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just,
19 the Hearing Examiner may set aside an order entered upon a failure to appear.

20 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying,
21 or reversing the Director's Order.

22 **14.29.200 Appeal from Hearing Examiner order**

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

5 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
6 sought in compliance with this Section 14.29.200.

7 **14.29.210 Failure to comply with final order**

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

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

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

17 3. The Director may refer the matter to the City Attorney for the filing of a civil
18 action in any court of competent jurisdiction to enforce such order or to collect amounts due. In
19 the alternative, the Director may seek to enforce a settlement agreement, a Director's Order, or a
20 final order of the Hearing Examiner under Section 14.29.220.

21 4. The Director may request that the City's Department of Finance and
22 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
23 requested by the employer or person until such time as the employer complies with the remedy

1 as defined in the settlement agreement or final order. The City's Department of Finance and
2 Administrative Services shall have the authority to deny, refuse to renew, or revoke any business
3 license in accordance with this subsection 14.29.210.A.4.

4 B. No respondent that is the subject of a settlement agreement or final order issued under
5 this Chapter 14.29 shall quit business, sell out, exchange, convey, or otherwise dispose of the
6 respondent's business or stock of goods without first notifying the Agency and without first
7 notifying the respondent's successor of the amounts owed under the settlement agreement or final
8 order at least three business days prior to such transaction. At the time the respondent quits
9 business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of
10 goods, the full amount of the remedy, as defined in the settlement agreement or the final order
11 issued by the Director or the Hearing Examiner, shall become immediately due and payable. If
12 the amount due under the settlement agreement or final order is not paid by respondent within
13 ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall
14 become liable for the payment of the amount due, provided that the successor has actual
15 knowledge of the order and the amounts due or has prompt, reasonable, and effective means of
16 accessing and verifying the fact and amount of the order and the amounts due. The successor
17 shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy.
18 When the successor makes such payment, that payment shall be deemed a payment upon the
19 purchase price in the amount paid, and if such payment is greater in amount than the purchase
20 price the amount of the difference shall become a debt due such successor from the employer.

21 **14.29.220 Debt owed The City of Seattle**

22 A. All monetary amounts due under a settlement agreement or Director's Order shall be a
23 debt owed to the City and may be collected in the same manner as any other debt in like amount,

1 which remedy shall be in addition to all other existing remedies, provided that amounts collected
2 by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties,
3 or front pay shall be held in trust by the City for the aggrieved party and, once collected by the
4 City, shall be paid by the City to the aggrieved party.

5 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
6 time period set forth in subsection 14.29.180.B the Director's Order shall be final, and the
7 Director may petition the Seattle Municipal Court to enforce the Director's Order by entering
8 judgment in favor of the City finding that the respondent has failed to exhaust its administrative
9 remedies and that all amounts and relief contained in the order are due. The Director's Order
10 shall constitute prima facie evidence that a violation occurred and shall be admissible without
11 further evidentiary foundation. Any certifications or declarations authorized under RCW
12 9A.72.085 containing evidence that the respondent has failed to comply with the order or any
13 parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's
14 Order to the Hearing Examiner within the time period set forth in subsection 14.29.180.B and
15 therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible
16 without further evidentiary foundation.

17 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
18 within the time period set forth in subsection 14.29.200.A, the order of the Hearing Examiner
19 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
20 Order by entering judgment in favor of the City for all amounts and relief due under the order of
21 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
22 that the violations contained therein occurred and shall be admissible without further evidentiary
23 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing

1 evidence that the respondent has failed to comply with the order or any parts thereof, and is
2 therefore in default, or that the respondent has failed to avail itself of judicial review in
3 accordance with subsection 14.29.200.A, shall also be admissible without further evidentiary
4 foundation.

5 D. In considering matters brought under subsections 14.29.220.B and 14.29.220.C, the
6 Municipal Court may include within its judgment all terms, conditions, and remedies contained
7 in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are
8 consistent with the provisions of this Chapter 14.29.

9 **14.29.230 Private right of action**

10 A. Any person or class of persons that suffers injury as a result of a violation of this
11 Chapter 14.29 or is the subject of prohibited retaliation under Section 14.29.120 may bring an
12 action in a court of competent jurisdiction against the employer or other person violating this
13 Chapter 14.29 and, upon prevailing, may be awarded reasonable attorney's fees and costs and
14 such legal or equitable relief as may be appropriate to remedy the violation including, without
15 limitation, the payment of any unpaid compensation plus interest due to the person and
16 liquidated damages in an amount up to twice the unpaid compensation; a penalty payable to any
17 aggrieved party of no less than \$100 and not more than \$1000 for each day the employer was in
18 violation. Interest shall accrue from the date the unpaid compensation was first due at 12
19 percent per annum, or the maximum rate permitted under RCW 19.52.020.

20 B. For purposes of this Section 14.29.230, "person" includes any entity a member of
21 which has suffered injury or retaliation, or any other individual or entity acting on behalf of an
22 aggrieved party that has suffered injury or retaliation.

1 C. For purposes of determining membership within a class of persons entitled to bring an
2 action under this Section 14.29.230, two or more employees are similarly situated if they:

- 3 1. Are or were employed by the same employer or employers, whether
- 4 concurrently or otherwise, at some point during the applicable statute of limitations period,
- 5 2. Allege one or more violations that raise similar questions as to liability, and
- 6 3. Seek similar forms of relief.

7 D. For purposes of subsection 14.29.230.C, employees shall not be considered dissimilar
8 solely because their:

- 9 1. Claims seek damages that differ in amount, or
- 10 2. Job titles or other means of classifying employees differ in ways that are
- 11 unrelated to their claims.

12 E. An order issued by the court may include a requirement for an employer to submit a
13 compliance report to the court and to the City.

14 **14.29.235 Collective bargaining agreement**

15 A. The requirements of this Chapter 14.29 shall not apply to any employees
16 covered by a bona fide collective bargaining agreement to the extent that such requirements are
17 expressly waived in the collective bargaining agreement, or in an addendum to an existing
18 agreement including an agreement that is open for negotiation, in clear and unambiguous terms
19 provided, however, that in either case, the agreement must be ratified by the employees and must
20 have alternative safeguards that meet the public policy goals of this Chapter 14.29.

21 B. Any waiver by an individual employee of any provisions of this Chapter 14.29
22 shall be deemed contrary to public policy and shall be void and unenforceable.

23 **14.29.240 Other legal requirements**

1 This Chapter 14.29 provides hotel employee protection requirements and shall not be construed
2 to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement,
3 policy, or standard that provides for greater protections; and nothing in this Chapter 14.29 shall
4 be interpreted or applied so as to create any power or duty in conflict with federal or state law.
5 Nor shall this Chapter 14.29 be construed to preclude any person aggrieved from seeking judicial
6 review of any final administrative decision or order made under this Chapter 14.29 affecting
7 such person.

8 **14.29.250 Severability**

9 The provisions of this Chapter 14.29 are declared to be separate and severable. If any clause,
10 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.29, or the
11 application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not
12 affect the validity of the remainder of this Chapter 14.29 or the validity of its application to other
13 persons or circumstances.

14 **14.29.260 Effective date**

15 A. For ancillary hotel businesses with between 50+ and 250 employees that contract,
16 lease, or sublease with a hotel as of the date of passage of this Chapter 14.29, the provisions of
17 this Chapter 14.29 shall take effect on July 1, 2025.

18 B. For all other covered employers, tThe provisions of this Chapter 14.29 shall take
19 effect on January-July 1, 2020.

20 Section 2. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance
21 125684, is amended as follows:

22 **3.15.000 Office of Labor Standards created – Functions**

1 There is created within the Executive Department an Office of Labor Standards, under the
2 direction of the Mayor. The mission of the Office of Labor Standards is to advance labor
3 standards through thoughtful community and business engagement, strategic enforcement and
4 innovative policy development, with a commitment to race and social justice. The Office of
5 Labor Standards seeks to promote greater economic opportunity and further the health, safety,
6 and welfare of employees; support employers in their implementation of labor standards
7 requirements; and end barriers to workplace equity for women, communities of color,
8 immigrants and refugees, and other vulnerable workers.

9 The functions of the Office of Labor Standards are as follows:

10 A. Promoting labor standards through outreach, education, technical assistance, and
11 training for employees and employers;

12 B. Collecting and analyzing data on labor standards enforcement;

13 C. Partnering with community, businesses, and workers for stakeholder input and
14 collaboration;

15 D. Developing innovative labor standards policy;

16 E. Administering and enforcing City of Seattle ordinances relating to minimum wage,
17 and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of
18 criminal history in employment decisions (Chapter 14.17), wage and tip compensation
19 requirements (Chapter 14.20), secure scheduling (Chapter 14.22), hotel employees job retention
20 (Chapter 14.29), commuter benefits (Chapter 14.30), and other labor standards ordinances the
21 City may enact in the future.

22 Section 3. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last
23 amended by Ordinance 125684, is amended as follows:

1 **6.208.020 Denial, revocation of, or refusal to renew business license**

2 A. In addition to any other powers and authority provided under this Title 6, the Director,
3 or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any
4 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's
5 designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or
6 refusal to renew the license and on what grounds such a decision was based. The Director may
7 deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of
8 the following grounds:

- 9 1. The license was procured by fraud or false representation of fact.
- 10 2. The licensee has failed to comply with any provisions of this Chapter 6.208.
- 11 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
12 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
- 13 4. The licensee is in default in any payment of any license fee or tax under Title 5
14 or Title 6.
- 15 5. The property at which the business is located has been determined by a court to
16 be a chronic nuisance property as provided in Chapter 10.09.
- 17 6. The applicant or licensee has been convicted of theft under subsection
18 12A.08.060.A.4 within the last ten years.
- 19 7. The applicant or licensee is a person subject within the last ten years to a court
20 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
21 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
22 either:

1 a. The expiration of the time for filing an appeal from the final judgment
2 order under the court rules in effect at the time of the final judgment order; or

3 b. If a timely appeal is made, the date of the final resolution of that appeal
4 and any subsequent appeals resulting in final judicial affirmation of the findings of violations of
5 chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

6 8. The applicant or licensee is a person subject within the last ten years to a final
7 and binding citation and notice of assessment from the Washington Department of Labor and
8 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
9 penalties assessed therewith were not satisfied within 30 days of the date the citation became
10 final and binding.

11 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4,
12 14.20.080.A.4, 14.22.115.A.4, 14.29.210.A.4, and 14.30.180.A.4, the applicant or licensee has
13 failed to comply, within 30 days of service of any settlement agreement, with any final order
14 issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing
15 Examiner under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.29, and 14.30, for which all
16 appeal rights have been exhausted, and the Director of the Office of Labor Standards has
17 requested that the Director deny, refuse to renew, or revoke any business license held or
18 requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in
19 effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.29,
20 and 14.30 are remedied.

21 10. The business is one that requires an additional license under this Title 6 and
22 the business does not hold that license.

1 11. The business has been determined under a separate enforcement process to be
2 operating in violation of law.

3 * * *

4 Section 4. If any section or subsection of the Seattle Municipal Code affected by this
5 ordinance is amended by ordinance without reference to amendments made by this ordinance,
6 each ordinance shall be given effect to the extent that the amendments do not conflict in purpose,
7 and the code reviser may publish the section or subsection in the official code with all
8 amendments incorporated therein.

9

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

4 Passed by the City Council the _____ day of _____, 2019,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2019.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2019.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2019.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)