



## Legislation Details (With Text)

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<b>Type:</b>	Ordinance (Ord)	<b>Status:</b>	Passed	<b>In control:</b>	City Clerk
<b>On agenda:</b>	10/1/2018				
<b>Final Action:</b>	10/10/2018	<b>Ord. No.</b>	Ord 125684		
<b>Title:</b>	AN ORDINANCE relating to employment in Seattle; requiring certain employers to offer employees the opportunity to use pre-tax earnings to purchase commuter benefits, other than parking, in accordance with federal law; adding a new Chapter 14.30 to the Seattle Municipal Code (SMC); and amending Sections 3.15.000 and 6.208.020 of the SMC.				
<b>Sponsors:</b>	Mike O'Brien				
<b>Indexes:</b>					
<b>Attachments:</b>	1. Summary and Fiscal Note, 2. Presentation 08/07/18, 3. Presentation 09/05/18, 4. Presentation 09/18/18, 5. Proposed Amendment (added; 9/18/18), 6. Signed Ordinance 125684, 7. Affidavit of Publication				

Date	Ver.	Action By	Action	Result
10/10/2018	2	City Clerk	attested by City Clerk	
10/10/2018	2	Mayor	returned	
10/8/2018	2	Mayor	Signed	
10/3/2018	2	City Clerk	submitted for Mayor's signature	
10/1/2018	2	City Council	passed	Pass
9/18/2018	1	Sustainability and Transportation Committee	pass as amended	Pass
9/7/2018	1	Sustainability and Transportation Committee	discussed	
8/7/2018	1	Sustainability and Transportation Committee	discussed	
8/6/2018	1	City Council	referred	
8/3/2018	1	Council President's Office	sent for review	
8/2/2018	1	City Clerk	sent for review	

## CITY OF SEATTLE

## ORDINANCE \_\_\_\_\_

## COUNCIL BILL \_\_\_\_\_

AN ORDINANCE relating to employment in Seattle; requiring certain employers to offer employees the opportunity to use pre-tax earnings to purchase commuter benefits, other than parking, in accordance with federal law; adding a new Chapter 14.30 to the Seattle Municipal Code (SMC); and amending Sections 3.15.000 and 6.208.020 of the SMC.

WHEREAS, Internal Revenue Code (IRC) Section 132(f) authorizes qualified transportation benefits to be

excluded from gross income subject to federal taxes for both the employer and employee; and

WHEREAS, under IRC 132(F), an employer can offer pre-tax payroll deductions for their employees, allowing employees to allocate up to \$255 per month from their paycheck for buses, light rail, ferry, water taxi, and vanpool commuting; and

WHEREAS, requirements for businesses to offer qualified transportation benefits under IRC 132(f), also known as Commuter Benefit Ordinances, have been implemented in at least six jurisdictions around the country, including San Francisco, New York, and Washington, DC; and

WHEREAS, these payroll deductions allow employees to save between 20 percent and 40 percent of their transit commuting expenses; and

WHEREAS, an employee earning in the 22 percent tax bracket (\$38,700-\$82,500) and opting for a \$100 per month ORCA pass would save \$356 a year in federal income tax and payroll tax, and a minimum wage earner would save \$236/year; and

WHEREAS, transportation is currently the second highest household cost after housing, disproportionately affecting cost-burdened households in Seattle; and

WHEREAS, employers save nine percent of the amount of payroll deducted from their employees' gross pay, generally making pre-tax transit benefits a cost-neutral way for businesses to reduce the burden of commuting for their employees; and

WHEREAS, the Berkeley Chamber of Commerce has praised its jurisdiction's commuter benefits ordinance as "a rare opportunity to reduce taxes for both businesses and employees, encourages our employers to take advantage of transit, reduces air pollution, and shrinks our carbon footprint which we know is a major goal for the city and for its citizens..."; and

WHEREAS, in a 2016 survey from Commute Seattle of employers, when asked why they did not already offer a pre-tax transit benefit to their employees, some businesses expressed concern that it would be too administratively burdensome; and

WHEREAS, the Seattle Department of Transportation through Commute Seattle already provides outreach and assistance for the initial start-up administration of these benefits; and

WHEREAS, the City Council intends to continue to allocate resources for this assistance, to help employers realize the cost savings of offering a pre-tax transit benefit to their employers; NOW, THEREFORE,

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

Section 1. A new Chapter 14.30 is added to the Seattle Municipal Code as follows:

**Chapter 14.30 COMMUTER BENEFIT**

**14.30.010 Short title**

This Chapter 14.30 shall constitute the “Commuter Benefit Ordinance” and may be cited as such.

**14.30.020 Definitions**

For the purposes of this Chapter 14.30:

“Adverse action” means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of employment, 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 Section 14.30.080. "Adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

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

“Aggrieved party” means the employee or other person who suffers tangible or intangible harm due to the employer or other person's violation of this Chapter 14.30.

“City” means The City of Seattle.

“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 the employer, including but not limited to full-time

employees, part-time employees, and temporary workers. An alleged employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself (i.e. independent contractor) 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 the other employer.

“Front pay” means the compensation the employee would earn or would have earned if reinstated to the employee's former position.

“Hearing Examiner” means the official appointed by the City Council and designated as the Hearing Examiner, under Chapter 3.02 or that person's designee (e.g., Deputy Hearing Examiner or Hearing Examiner Pro Tem).

“Rate of inflation” means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bremerton 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.

“Successor” means any person to whom the 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 an 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.

“Written” or “writing” means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message or a computer system, or is

otherwise sent and maintained electronically.

"Respondent" means the employer or any person who is alleged or found to have committed a violation of this Chapter 14.30.

#### **14.30.030 Employee coverage**

For the purposes of this Chapter 14.30, covered employees under this Chapter 14.30 are limited to those who work an average of ten hours or more per week in Seattle in the previous calendar month.

#### **14.30.040 Employer coverage**

A. For the purposes of this Chapter 14.30, covered employers are limited to employers who employ 20 or more employees.

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

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

2. All employees who worked for compensation shall be counted, including but not limited to:
  - a. Employees who are not covered by this Chapter 14.30;
  - b. Employees who worked inside the City;
  - c. Employees who worked outside the City; and
  - d. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

C. Governmental entities and tax-exempt organizations are exempted from the provisions of this Chapter 14.30.

#### **14.30.050 Pre-tax election commuter benefit**

A. No later than January 1, 2020, all covered employers shall provide a pre-tax election commuter benefit to covered employees.

B. Covered employers shall make the offer of pre-tax election commuter benefits, to covered employees within 60 calendar days of commencing employment.

C. The pre-tax election commuter benefit shall allow employees to elect to exclude qualified transportation fringe benefits (except for parking) incurred for transit expenses or vanpool expenses from the employee's taxable wages and compensation up to the maximum level allowed by federal tax law, consistent with federal Internal Revenue Code section 132(f) as of June 1, 2018.

D. Covered employers shall provide the payroll deduction within 30 calendar days of the covered employee selecting the benefit.

E. Fully or partially subsidized, employer-provided, transit passes qualify as pre-tax election commuter benefits for this Section 14.30.050.

#### **14.30.060 Notice and posting**

A. The Agency shall create and distribute a poster giving notice of the rights afforded by this Chapter 14.30. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.30.060.B. The poster shall give notice of the right under this Chapter 14.30 to exclude commuting costs (except for parking) incurred for transit expenses or vanpool expenses from the employee's taxable wages and compensation up to the maximum level allowed by federal tax law, consistent with federal Internal Revenue Code section 132(f).

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

(s) of the employee(s) at the 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.

#### **14.30.070 Employer records**

A. Each employer shall retain records that document compliance with this Chapter 14.30 including:

1. Written documentation of the employer's offer of pre-tax election commuter benefits.

B. Records required by this Section 14.30.070 shall be retained for a period of three years.

C. If the employer fails to retain adequate records required under subsection 14.30.070.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.30 for the periods for which records were not retained and for each employee for whom records were not retained.

#### **14.30.080 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 14.30.

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 14.30. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.30; the right to inform others about their rights under this Chapter 14.30; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this Chapter 14.30; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.30; the right to cooperate with the Agency in its investigations of this Chapter 14.30; the right to testify in a proceeding under or related to this Chapter 14.30; 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 14.30.

C. No employer or any other person shall communicate to a person exercising rights protected under this Section 14.30.080, directly or indirectly the willingness to inform a government employee 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 14.30.

D. Standard of proof. Proof of retaliation under this Section 14.30.080 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 Section 14.30.080 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.

E. The protections afforded under this Section 14.30.080 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.30.

F. A complaint or other communication by any person triggers the protections of this Section 14.30.080 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.30.

#### **14.30.090 Outreach**

The Agency shall coordinate with the Seattle Department of Transportation to provide outreach and education to businesses on the implementation of a pre-tax commuter benefit program.

#### **14.30.100 Enforcement power and duties**

A. On or after January 1, 2021, the Agency shall have the power to investigate violations of this Chapter 14.30, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.30 and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency shall be authorized to coordinate implementation and enforcement of this Chapter 14.30 and shall promulgate appropriate guidelines or rules for such purposes.



C. The Director of the Agency is authorized and directed to promulgate rules consistent with this Chapter 14.30 and Chapter 3.02. Any guidelines or 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 14.30.

#### **14.30.110 Violation**

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.30 is a violation.

#### **14.30.120 Investigation**

A. The Agency shall have the power to investigate any violations of this Chapter 14.30 by any respondent.

1. The Agency may provide a respondent with an opportunity to achieve compliance, and provide proof of such compliance, within 90 days of the initiation of an investigation, without determining whether a violation has occurred. The Agency shall determine by rule the procedures and requirements to demonstrate proof of compliance.

2. The Agency may initiate an investigation pursuant to rules issued by the Director 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 the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.30 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 14.30. The Agency shall encourage reporting pursuant to this Section 14.30.120 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 14.30 or for other appropriate purposes.

2. The Agency may require the employer to post or otherwise notify employees that the Agency is conducting an investigation, using a form provided by the Agency and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language(s) spoken by the employee(s) at the particular workplace. If display of the form is not feasible, including situations when the employee works remotely or does not have a regular workplace, the employer may provide the form on an individual basis in physical or electronic format that is reasonably conspicuous and accessible.

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). The certification is subject to applicable federal law and regulations, and rules issued by the Director.

C. The Agency's investigation must commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations is tolled during any investigation under this Chapter 14.30 and any administrative enforcement proceeding under this Chapter 14.30 based upon the same facts. For purposes of this Chapter 14.30:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.30, or the Agency opens an investigation under this Chapter 14.30.

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 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the employer to produce the records identified in

subsection 14.30.070.A, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under subsection 14.30.070.A, or any other document relevant to the issue of whether any employee or group of employees has been or is afforded proper amounts of compensation under this Chapter 14.30 and/or to whether the employer has violated any provision of this Chapter 14.30. 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 if a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.30 or the workforce is unlikely to volunteer information regarding such violations.

F. The employer that fails to comply with the terms of any subpoena issued under subsection 14.30.120.E in an investigation by the Agency under this Chapter 14.30 prior to the issuance of a Director's Order issued pursuant to subsection 14.30.130.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of damages owed or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 14.30.120.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 of this Chapter 14.30 for retaliation under Section 14.30.080 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 14.30.150.

#### **14.30.130 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 14.30 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 14.30, the Director shall issue a "Determination of No Violation" with notice of an employee or other person's right to appeal the decision, subject to the rules of the Director.

C. If the Director determines that a violation of this Chapter 14.30 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 14.30 for each violation, including payment of civil penalties and penalties payable to the aggrieved party pursuant to subsection 14.30.140.B and 14.30.140.D; and unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, and interest pursuant to subsection 14.30.140.C for retaliation.

2. The Director's Order may specify that civil penalties due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party or provision of proof of compliance under subsection 14.30.140.A.2.

3. The Director's Order may specify that civil penalties 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 14.30, 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 14.30.150.

### **14.30.140 Remedies**

A. The payment of civil penalties and penalties payable to the aggrieved party pursuant to subsection 14.30.140.B and 14.30.140.D; and unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, and interest pursuant to subsection 14.30.140.C for retaliation, are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. The amounts of all civil penalties and penalties payable to aggrieved parties contained in this Section 14.30.140 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. Pursuant to rules issued by the Director, the Director may waive part or all of the amount of civil penalties due to the Agency based on timely payment of the full remedy due to the aggrieved party or provision of proof of compliance.

a. The Director may waive the total amount of civil penalties due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party or provided proof of compliance within 60 days of service of the Director's Order.

b. The Director may waive half the amount of civil penalties due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party or provided proof of compliance within 90 days of service of the Director's Order.

c. The Director shall not waive any amount of civil penalties due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party or provided proof of compliance with the after 90 days of service of the Director's Order.

3. When determining the amount of civil penalties and penalties payable to the aggrieved party under subsection 14.30.140.B and 14.30.140.D; liquidated damages, civil penalties and penalties payable to aggrieved parties due under this Section 14.30.140.C for retaliation; and the mitigation of civil penalties due to the Agency under subsection 14.30.140.A.2, the Director shall consider the following:

a. The total amount of unpaid compensation, liquidated damages, penalties and interest due; and the nature and persistence of the violations;

b. The extent of the respondent's culpability, and the substantive or technical nature of the violations;

- c. The size, revenue, and human resources capacity of the respondent;
- d. The circumstances of each situation;
- e. The amounts of penalties in similar situations; and
- f. Other factors pursuant to rules issued by the Director.

B. A respondent found to be in violation of this Chapter 14.30 shall be subject to civil penalties.

Pursuant to subsection 14.30.130.C.3, the Director 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 14.30, the Director may assess a civil penalty of up to \$500.

2. For subsequent violations of this Chapter 14.30, the Director shall assess a civil penalty payable to the aggrieved party of up to \$500 per aggrieved party.

3. For purposes of establishing a first and subsequent violation for this Section 14.30.140, 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 14.30 for retaliation under Section 14.30.080 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 14.30, and liquidated damages in an additional amount of up to twice the unpaid compensation. 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. 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. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,000.

D. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing

Examiner in the performance of their duties under this Chapter 14.30 shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000.

E. In addition to the civil penalties and penalties payable to the aggrieved party under subsection 14.30.140.B and 14.30.140.D; and unpaid compensation, liquidated damages, civil penalties and penalties payable to aggrieved parties and interest due under subsection 14.30.140.C for retaliation, the Agency may assess against the respondent in favor of the City reasonable costs incurred in enforcing this Chapter 14.30, including but not limited to reasonable attorneys' fees.

F. The employer that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or 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 employer is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. This subsection 14.30.140.F 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 14.30.140.F 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 14.30.140.F.

#### **14.30.150 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 14.30 may appeal the Determination of No Violation Shown, pursuant to the rules of the Director.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 14.30.140, 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.

#### **14.30.160 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 review shall be conducted de novo and the Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. 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 will result in an order being entered finding that the employer 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.

#### **14.30.170 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 14.30.170.

#### **14.30.180 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 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, Director's Order or a final order of the Hearing Examiner under Section 14.30.170.

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 14.30.180.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 14.30 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 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.

#### **14.30.190 Debt owed The City of Seattle**

A. All monetary amounts due under the 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 14.30.150.B the Director's Order 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 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 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 appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 14.30.150.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 14.30.170.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 14.30.170.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.30.190.B and 14.30.190.C, the 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 14.30.

#### **14.30.200 Other legal requirements**

This Chapter 14.30 defines requirements for commuter benefits and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in this Chapter 14.30 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.30 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.30 affecting such person.

#### **14.30.210 Severability**

The provisions of this Chapter 14.30 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.30, 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 14.30, or the validity of its application to other persons or circumstances.

Section 2. Section 3.15.000 of the Seattle Municipal Code, enacted by Ordinance 125203, is amended as follows:

#### **3.15.000 Office of Labor Standards created-Functions**

There is created within the Executive Department an Office of Labor Standards, under the direction of the

Mayor. The mission of the Office of Labor Standards is to advance labor standards through thoughtful community and business engagement, strategic enforcement and innovative policy development, with a commitment to race and social justice. The Office of Labor Standards seeks to promote greater economic opportunity and further the health, safety, and welfare of employees; support employers in their implementation of labor standards requirements; and end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.

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

- A. Promoting labor standards through outreach, education, technical assistance, and training for employees and employers;
- B. Collecting and analyzing data on labor standards enforcement;
- C. Partnering with community, businesses, and workers for stakeholder input and collaboration;
- D. Developing innovative labor standards policy;
- E. Administering and enforcing City of Seattle ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), wage and tip compensation requirements (Chapter 14.20), secure scheduling (Chapter 14.22), commuter benefits (Chapter 14.30), and other labor standards ordinances the City may enact in the future.

Section 3. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125203, is amended as follows:

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

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew the license and on what grounds

such a decision was based. The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.
6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.
7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:
  - a. ~~((the))~~ The expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or
  - b. ~~((if))~~ If a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.
8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington Department of Labor and Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.
9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, ~~((and))~~

14.22.115.A.4, and 14.30.180.A.4, the applicant or licensee has failed to comply, within 30 days of service of any settlement agreement, with any final order issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19, 14.20, ~~((and))~~ 14.22, and 14.30, for which all appeal rights have been exhausted, and the Director of the Office of Labor Standards has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, ~~((and))~~ 14.22, and 14.30 are remedied.

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

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

\* \* \*

Section 4. 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 \_\_\_\_\_, 2018, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_

Jenny A. Durkan, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Monica Martinez Simmons, City Clerk

(Seal)