



SEATTLE CITY COUNCIL

Public Safety and Human Services Committee

Agenda

Tuesday, July 11, 2023

9:30 AM

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

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

Chair Info: 206-684-8801; Lisa.Herbold@seattle.gov

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SEATTLE CITY COUNCIL
Public Safety and Human Services Committee
Agenda
July 11, 2023 - 9:30 AM

Meeting Location:

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

Committee Website:

<http://www.seattle.gov/council/committees/public-safety-and-human-services>

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

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

Remote Public Comment - Register online to speak during the Public Comment period at the meeting at

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

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

Submit written comments to Councilmember Herbold at Lisa.Herbold@seattle.gov

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

(20 minutes)

D. Items of Business

1. 2023 Mid-Year Police Accountability Report

Supporting
Documents: [Presentation](#)

Briefing and Discussion (45 minutes)

Presenters: Bessie Scott and Miriam Sierra, Office of the Inspector General; Joel Merkel, Co-Chair, and Cali Ellis, Interim Director, Community Police Commission; Gino Betts, Director, and Justin Piccorelli, Office of Police Accountability; Brian Maxey, Seattle Police Department

2. [CB 120608](#) **AN ORDINANCE relating to civilian and community oversight of the police; clarifying the role, governance and operating procedures of the Community Police Commission, reducing its size and geographic appointment requirements, giving it authority to remove members and Executive Director for cause, and amending its stipend provisions; establishing qualifications and procedures for the Commission’s Executive Director and creating a Deputy Director; referring to the Commission’s role in collective bargaining hearings; amending Sections 3.29.010, 3.29.320, 3.29.330, 3.29.340, 3.29.350, 3.29.360, 3.29.400, and 4.04.120 of the Seattle Municipal Code; and repealing Ordinance 124543.**

Supporting Documents:

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

Briefing, Discussion and Possible Vote (20 minutes)

Presenters: Joel Merkel, Co-Chair, Cali Ellis, Interim Executive Director, Community Police Commission; Greg Doss, Council Central Staff

3. [CB 120580](#) **AN ORDINANCE relating to app-based worker labor standards; establishing labor standards on deactivation protections for app-based workers working in Seattle; amending Section 3.02.125 of the Seattle Municipal Code; and adding a new Chapter 8.40 to the Seattle Municipal Code.**

Supporting Documents:

[Summary and Fiscal Note](#)
[Proposed Substitute \(7/11\)](#)
[Proposed Amendments \(7/11\)](#)

Briefing, Discussion, and Possible Vote (30 minutes)

Presenters: Jasmine Marwaha and Karina Bull, Council Central Staff

E. Adjournment



Legislation Text

File #: Inf 2288, **Version:** 1

2023 Mid-Year Police Accountability Report

2023 Mid-Year Accountability Report

July 11, 2023

Public Safety & Human Services Committee





Seattle Office of
Police Accountability

2022 Recap & 2023 Mid-year Report

JULY 11, 2022

GINO BETTS JR., DIRECTOR

DR. JUSTIN PICCORELLI, POLICY MANAGER

Outline

OPA 2022 Recap & 2023 Mid-year Report

1. Cases by Classification Type
2. Source of Complaints
3. Allegations by Type and Location
4. Case Dispositions
5. Management Action Recommendations
6. Community Outreach and Engagement
7. Q3 Accountability Projects

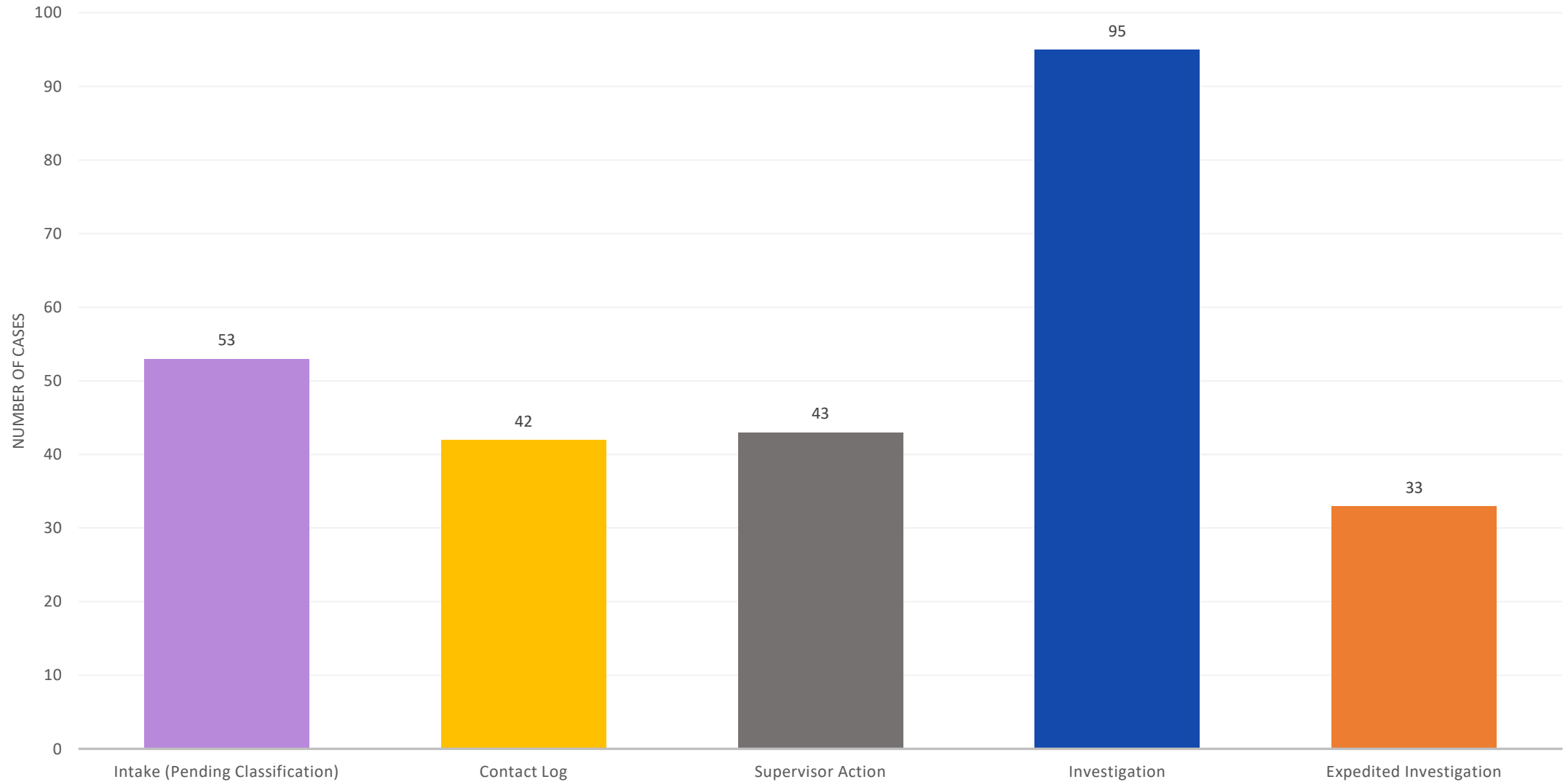


Seattle Office of
Police Accountability

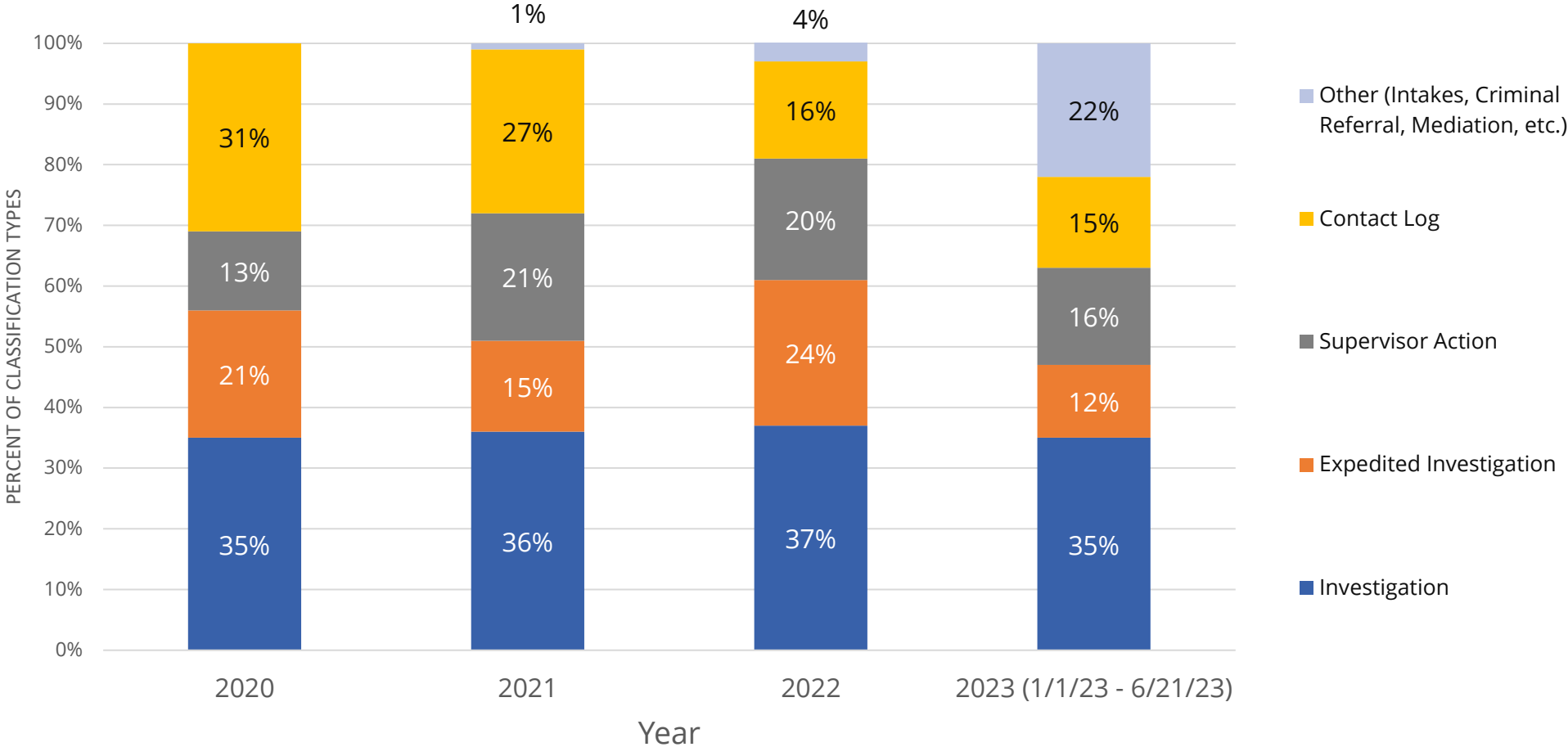
Cases by Classification Type



Total Number of Cases by Classification Type (January 1, 2023 – June 21, 2023)



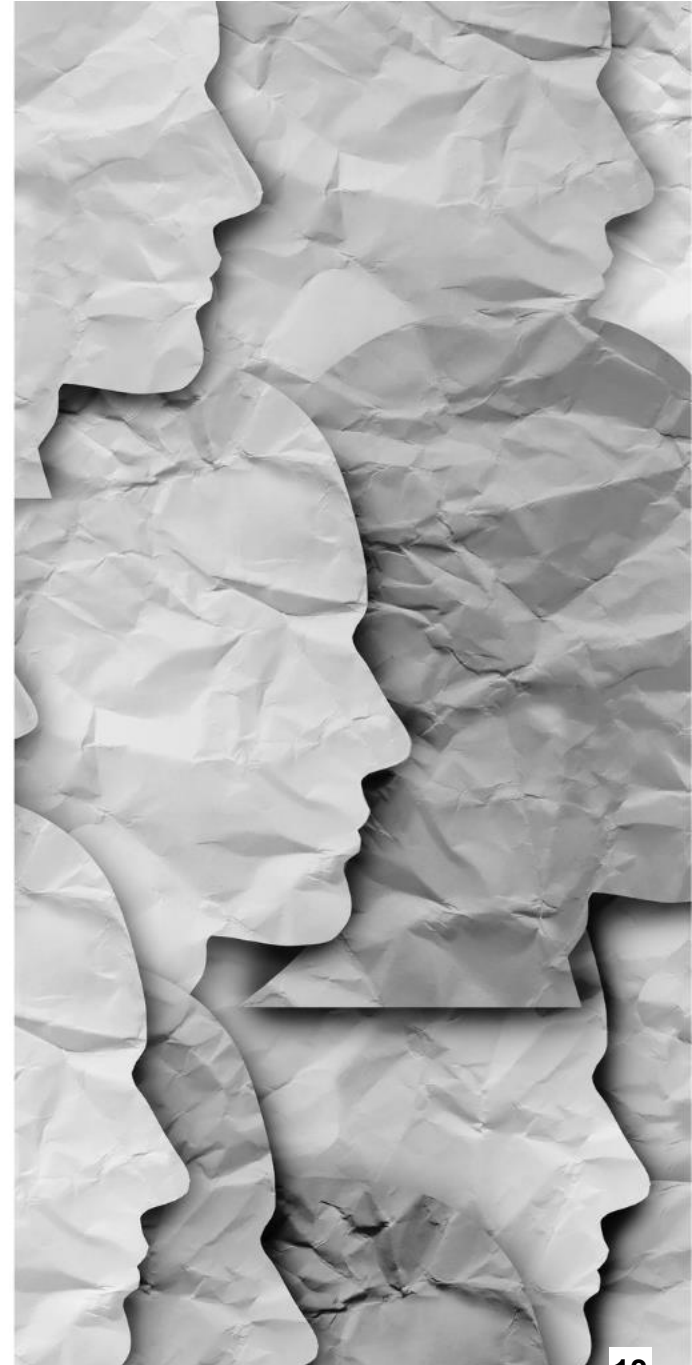
Classification Type as a Percent of Total Complaints (2020 - June 21, 2023)



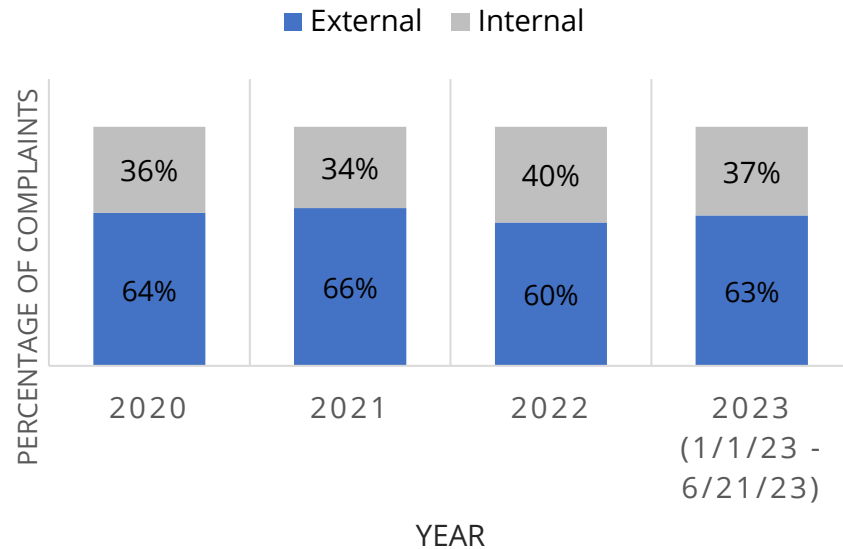


Seattle Office of
Police Accountability

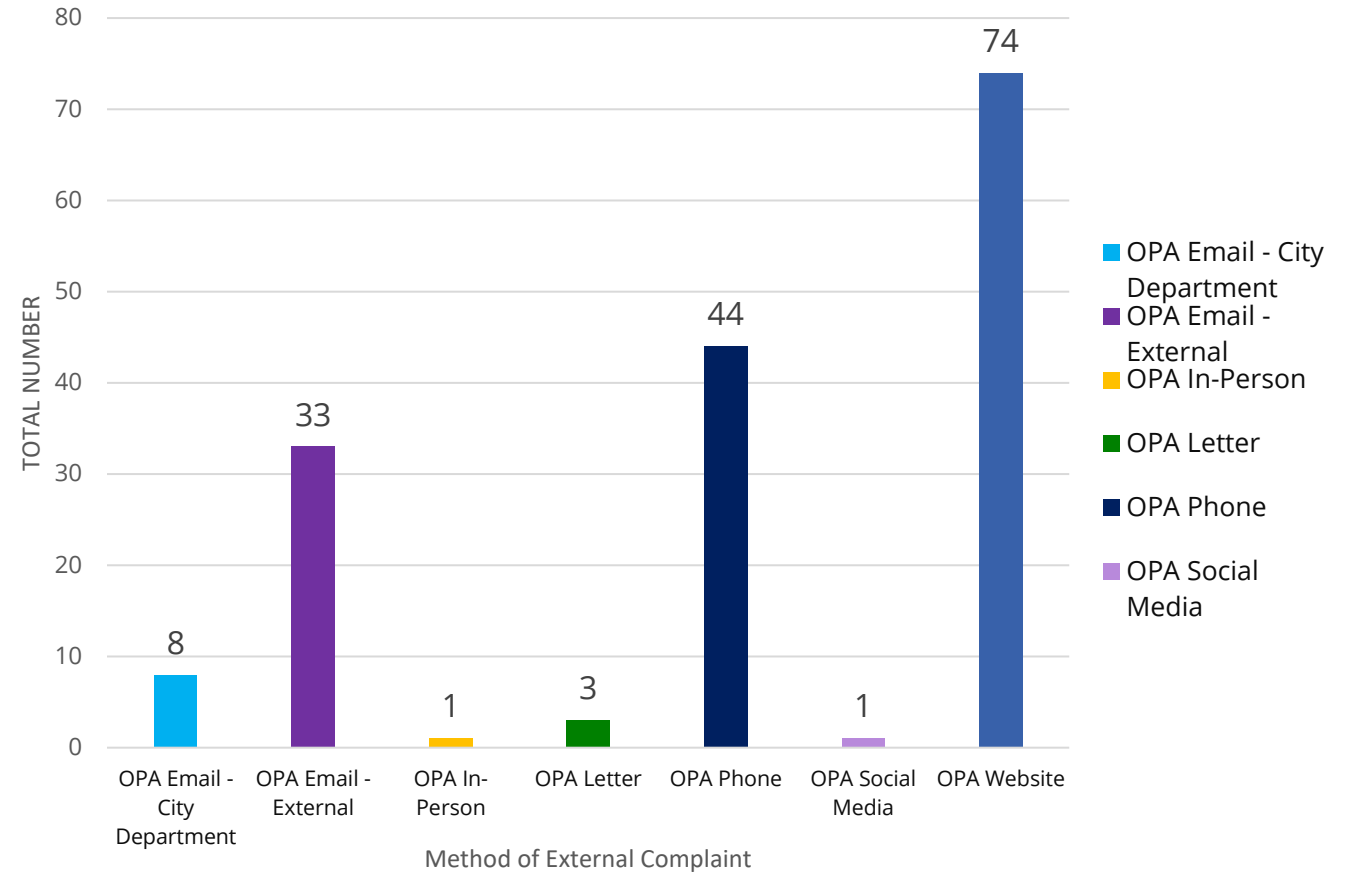
Source of Complaints



Source of Complaints January 2020 – June 21, 2023



Filing Method of External Complaints January 2023 – June 21, 2023



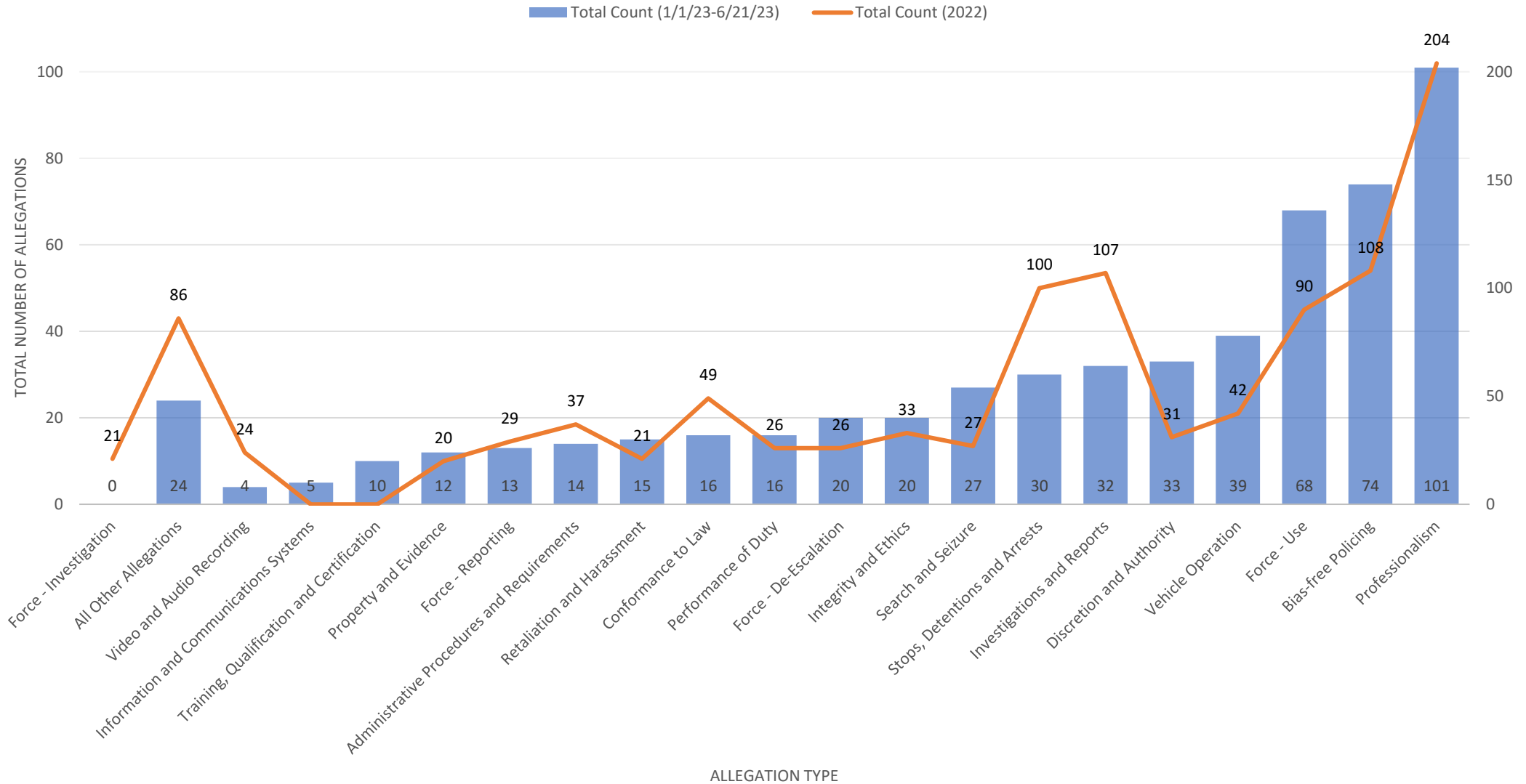


Seattle Office of
Police Accountability

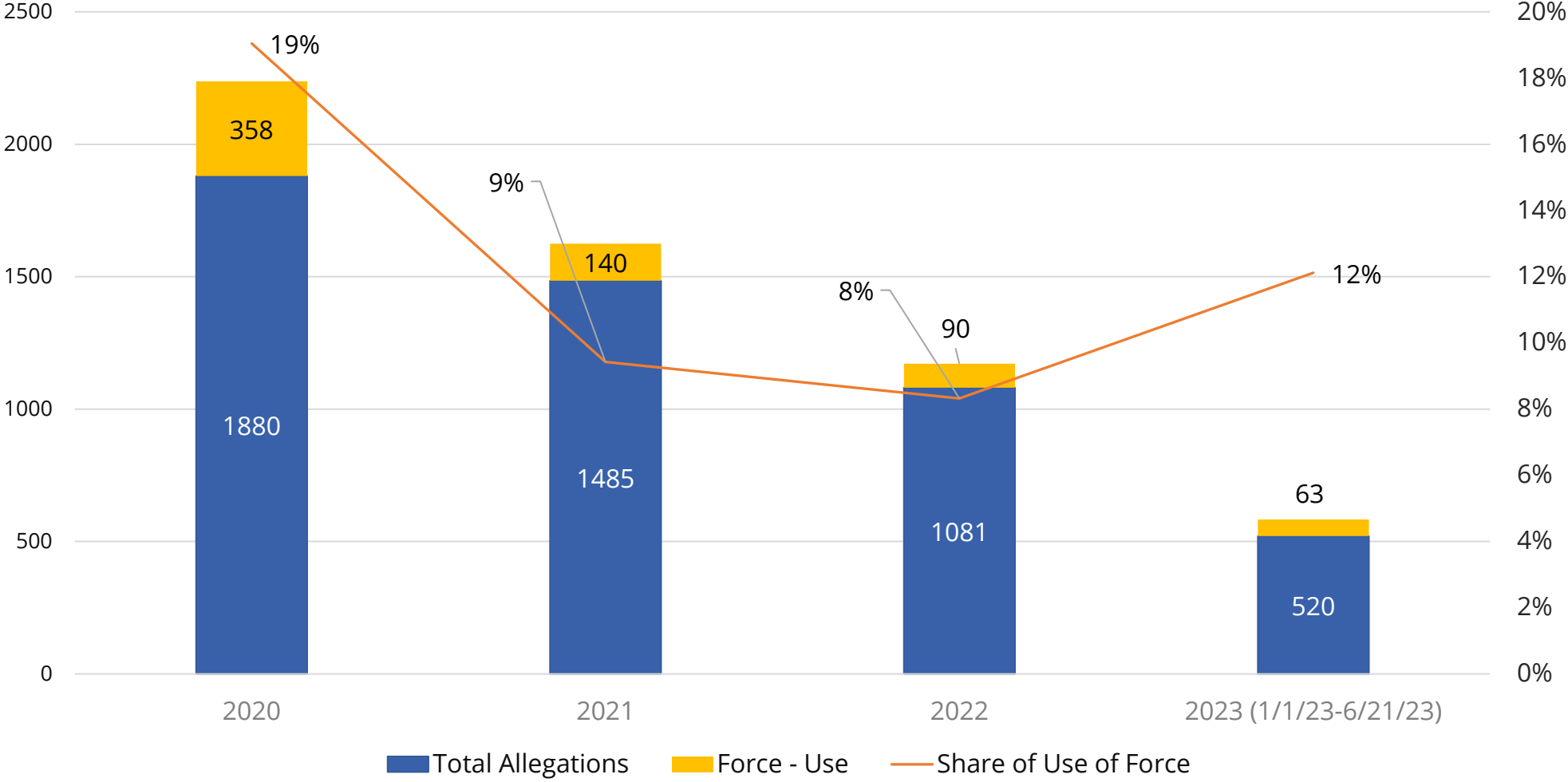
Allegations by Type and Location of Complaints



Count of Allegation Type (1/1/23-6/1/23 in Comparison to 2022)

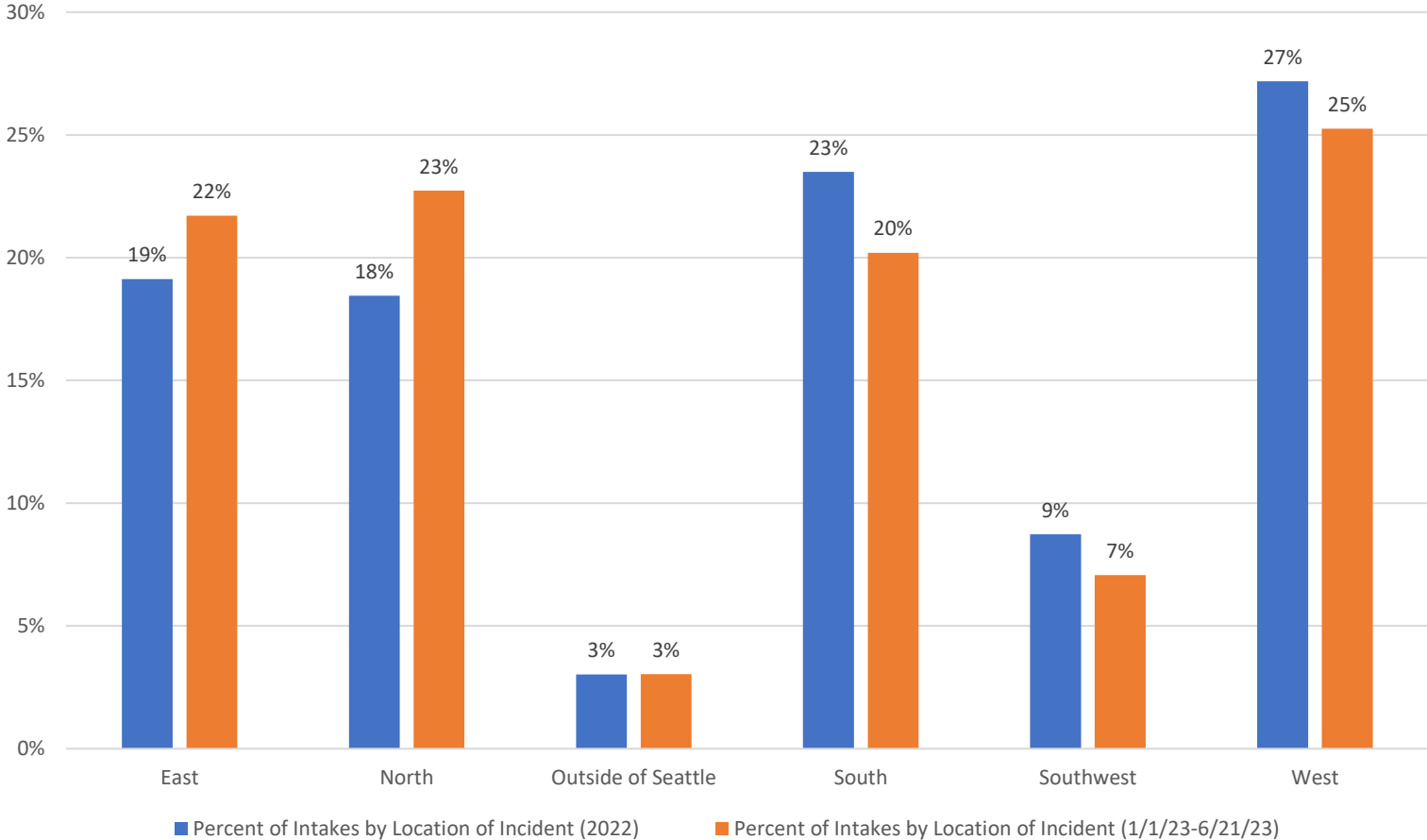
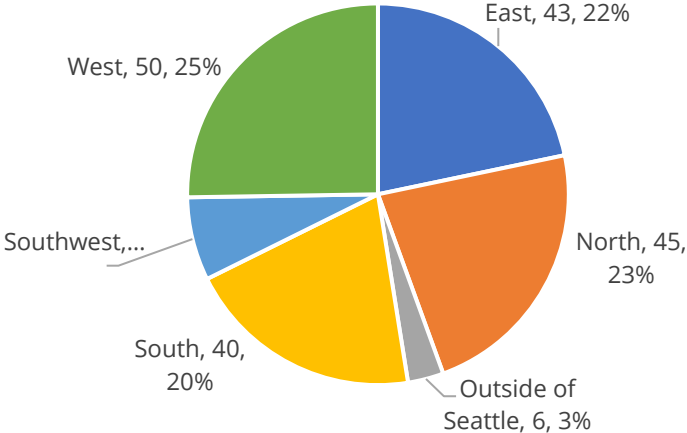


Number of Use of Force Allegations Compared to Total Allegations by Year (January 1, 2020 – June 21, 2023)



Percent of Intakes by Location of Incident (2022 v. 1/1/23-6/21/23)

Count of Intakes by Location of Incident (1/1/23-6/21/23)



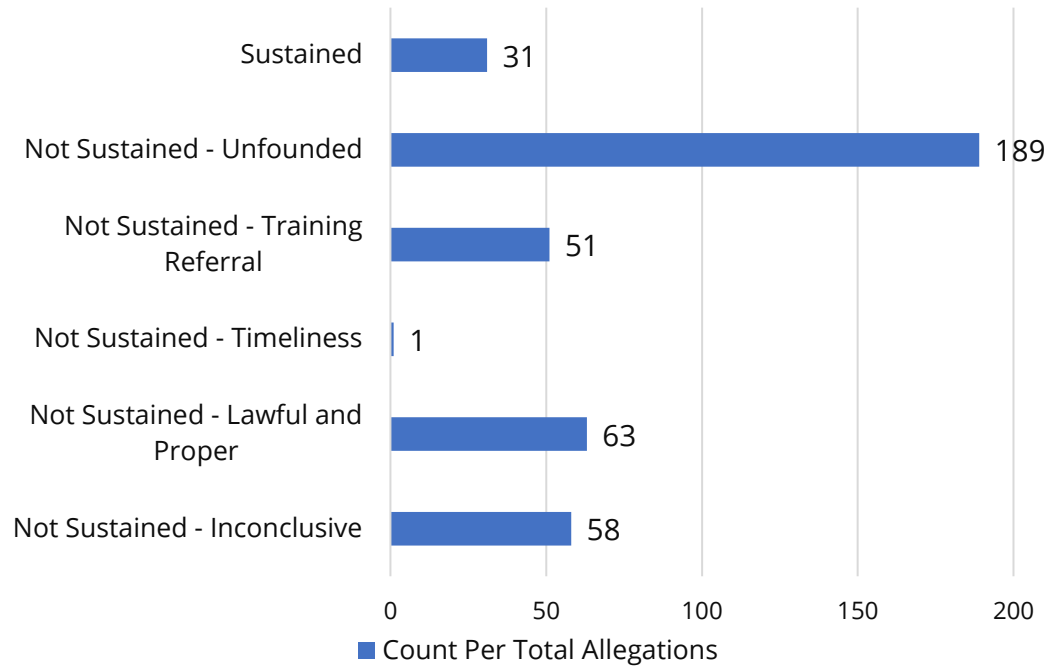


Seattle Office of
Police Accountability

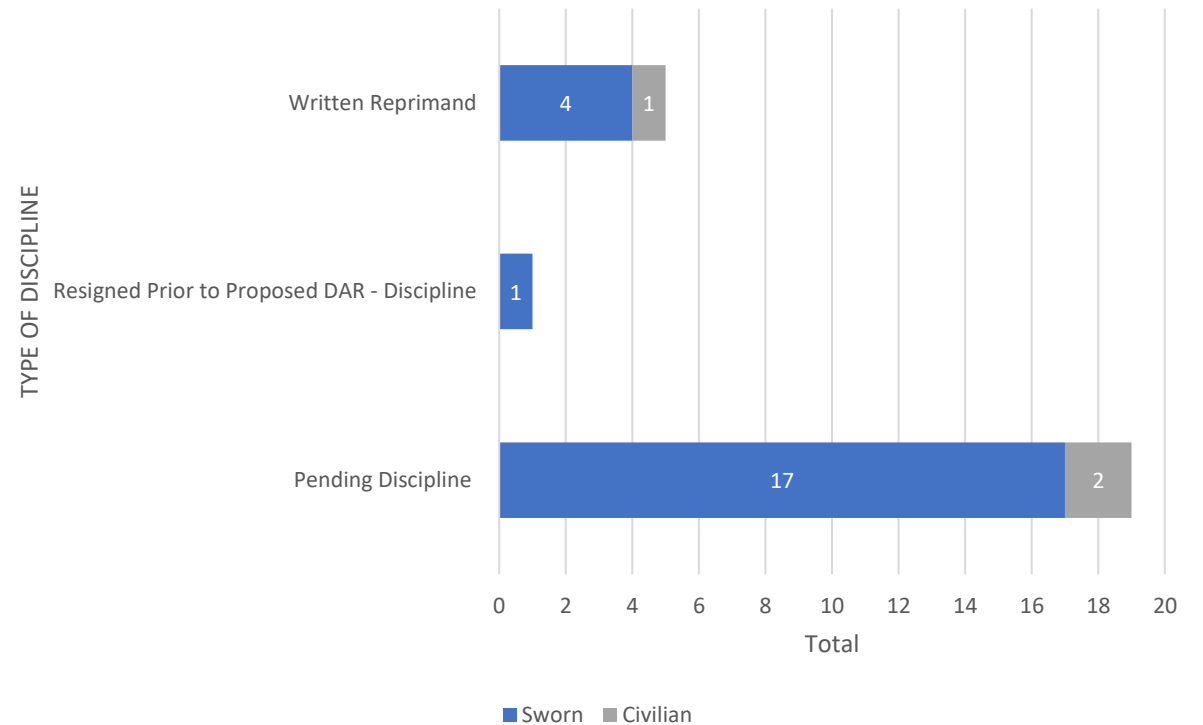
Disposition of Cases



Total Number of Findings (January 1, 2023 – June 21, 2023)

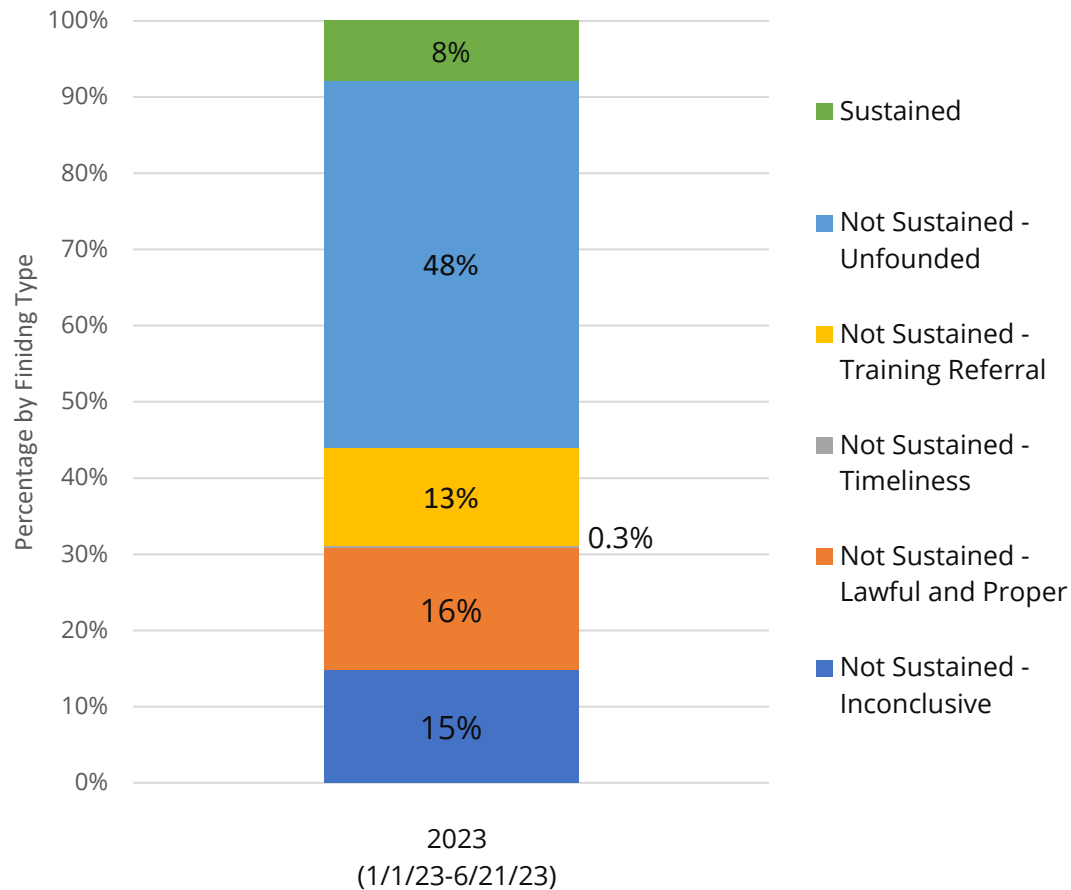


Discipline Imposed for Sustained Cases by Employee Type (January 1, 2023 – June 21, 2023)

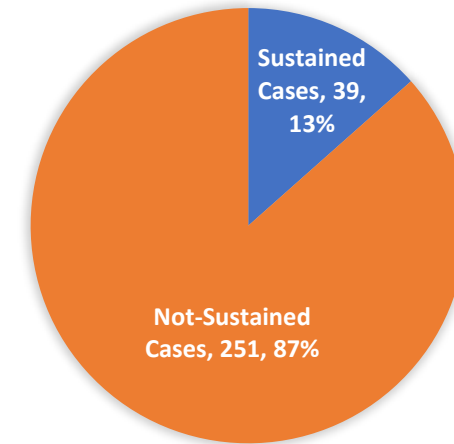


Findings Issued by Allegation Types, Relative Share (January 1, 2023 – June 21, 2023)

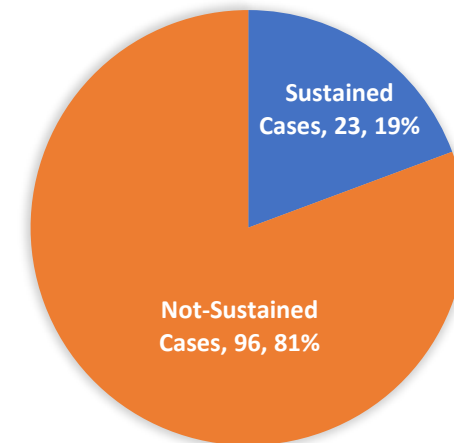
Percentage by Finding Type Per Total Allegations
(January 1, 2023 - June 21, 2023)



2022



January 1, 2023 - July 6, 2023





Management Action Recommendations

2023 (thru 7/10)	
Count*	Status
3	Active/Requested

2022		
Count	Status	Percent
4	Active/Requested	27%
3	Fully Implemented	20%
3	Partially Implemented	20%
3	In Progress	20%
2	Declined Action	13%

*Until recently OPA lacked a policy person so MARs were written into very few DCMs



Seattle Office of
Police Accountability

Community Outreach and Engagement





2023 Community Engagement



Seattle University School of Law



Black Coffee Northwest



Asian Pacific Islander Heritage Month

35 Events
to date

2,664 interactions
with community
members

9 more events
scheduled
through August



Q3 2023 Survey Projects: Understanding OPA's impact

Complainant Experience Survey

Gathering complainant's feedback on OPA experience.

Deliverables:

- Complainant Journey Map
- Gaps Analysis
- Final Report with Recommendations

Community Survey

Gathering community member feedback to measure Seattle's awareness, perceptions, and understanding of OPA.

Deliverables:

- Data Analysis
- Alignment with Community Expectations
- Final Report with Recommendations

Both surveys are scheduled to launch by July 30th and are expected to close by September 2023.



Q3 Accountability Projects: Enhancing Transparency and Earning Public Trust

Publishing Proposed Discipline v. Chief's Imposed Discipline

- OPA started including proposed discipline findings in case summaries this past month

Closed Case Summary Search Project

- Closed case summaries searchable for community members
- Partnered with a private IT firm to navigate technological and financial hurdles



Seattle Office of Inspector General

Presentation to City Council

6-Jul-23

Outline

- **Audits and Reviews**
 - Youth Miranda Audit
 - Leave Administration Audit
 - Biannual Audit of SMC 14.12
 - Annual Surveillance Usage Reviews
 - Recommendations Follow-Up
 - Mutual Aid
- **OPA Reviews**
 - Classification Review Statistics
 - Investigations Review
 - Bias Review
- **Policy Projects**
 - Monitoring Transition
 - Workflow Mapping
 - Traffic Stops
 - Sentinel Event Review
 - Deception in Public Safety

Audits Unit

Youth Miranda Audit

- Review of SPD compliance with local and state youth *Miranda* laws
- Process includes:
 - Stakeholder engagement
 - Body-worn video review – *nearly complete*
- OIG will craft preliminary findings report upon completion of BWV review
 - *Report anticipated Fall 2023*

Leave Administration Audit

- Initiated after hearing a broad range of concerns about SPD controls for extended periods of leave
- Focus on two areas of risk:
 1. SPD's administration of Covid leave
 - *Report anticipated Fall 2023*
 2. Perceived practice of SPD sworn personnel 'burning down' sick leave prior to retirement
 - *Report anticipated by EOY*

Biannual Audit of SCM 14.12

- Ordinance-required audit of SPD's collection of 'protected' information
 - Protected information generally includes sexual, religious, and political beliefs and activities
- Follow-up to OIG's 2019 audit
- Preliminary findings have been shared with SPD
 - *Report anticipated Q3 2023*

Annual Surveillance Usage Reviews

- Required by SMC 14.18.060
- OIG is responsible for reporting on ten SPD technologies in 2023
- Five technology reviews issued thus far
 - *Remaining reports anticipated September 2023*

Reviews include:

- Usage patterns
- Data sharing and security
- Analysis of potential disproportionality or impacts on civil liberties

Recommendation Follow up

- Implementation status of prior audit recommendations to SPD
- Objectives:
 - Inform public on status of recommendations; and
 - Inform any future follow-up work.
- OIG expects to report on these efforts by the end of 2023

Mutual Aid Review

- Project initiated in Summer 2019
- Included in 2023 Workplan
- Currently evaluating how to modify project scope to better address current risks
 - Task Force operations
 - Mutual aid in law enforcement operations

OPA Review Investigations Unit

Classification Review Statistics

Classification Type	Total Reviewed
Contact Log	502
Supervisor Action	57
Mediation	1
Rapid Adjudication	1

*All statistics presented reflect data as of 6/16/23

Investigation Review

- OIG has issued certifications in 154 cases in 2023
- 93% of certifications issued are full certifications
- 11 partial certifications

Bias Reviews

- 62 Bias Reviews evaluated by OIG
- 100% concurrence with OPA's determinations
- OIG will begin collecting additional data during our reviews in Q3
 - Recording type of bias alleged based on "discernable personal characteristics" as outlined in SPD's Bias-Free Policing policy

Policy Unit

Monitoring Transition

- Use of Force Assessment
 - SPD use of performance, 2021-2022
- Force Review Board Assessment
- New Standards and Compliance Team
 - Team lead; Policy analyst; Statistical analyst

Traffic Stops

In 2021, OIG worked with SPD and stakeholders to identify low-level violations to recategorize as secondary offenses, resulting in an interim SPD policy with five deprioritized violations.

In 2023, OIG aims to continue this work through:

Analysis of legislation and policy development in other jurisdictions

Roundtable discussion with stakeholders to identify policies for reducing inequities and improving safety

Development of public dashboard for continued analysis of trends and data

Sentinel Event Review: Officer-Involved Shootings of Persons in Crisis

- Transitioning SER to analyze officer-involved shooting incidents with mental health/crisis intersection
- Collaborative analysis

Mental health
experts

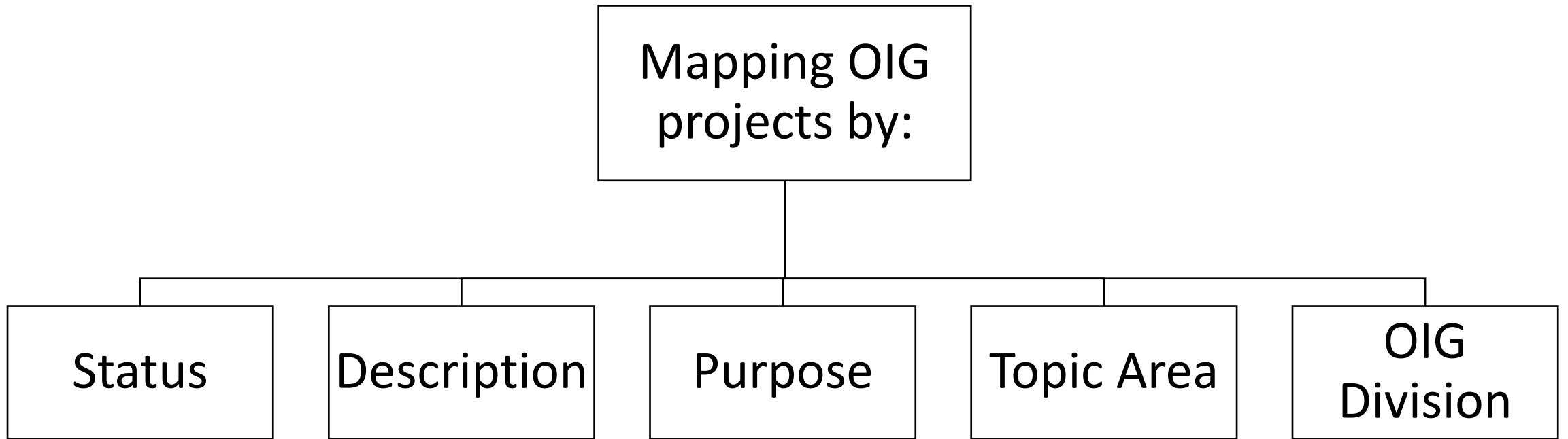
Community
members

SPD

Use of Deception in Public Safety

- Continued review of use of deception by SPD officers
 - 2022: deception in patrol
 - Policy paper and recommendations issues in Fall 2022
 - 2023: deception in interviews and interrogations
 - Restart interview and interrogation training and policy project with Dr. Andy Griffith

Workflow Mapping



[Workflow Map](#)



Mid-Year Report 2023

Community Police Commission

Cali Ellis, PhD | Interim Executive Director



2023: New Beginnings For The CPC

01

Staffing

02

Community Engagement

03

Leadership



Accountability Partner Collaboration



OPA Presentation to
CPC Meeting in June

OPA and OIG Staff Collaboration on
CPC Workgroups



CPC invited to collaborate
in providing feedback for
policy in OPA and SPD

Standing staff
meetings CPC-OIG
and CPC-OPA

Quarterly Partners
Meetings

Recommendations tracker

As part of [Seattle's Police Accountability System](#), all oversight agencies - including the [Community Police Commission \(CPC\)](#), [Office of Police Accountability \(OPA\)](#), and [Office of Inspector General \(OIG\)](#) - issue recommendations to the [Seattle Police Department \(SPD\)](#), one another, and other City departments.

Fulfilling CPC's mandate in the [2017 Accountability Ordinance](#), this page tracks recommendations, responses, and implementation statuses from 2018 onward. Explanations and definitions are below.

This dashboard has not yet been adapted for smart phones or tablets. For best results, please access it on a computer.

POLICE ACCOUNTABILITY RECOMMENDATIONS TRACKER

This dashboard tracks 336 recommendations currently. The graphs summarize overall characteristics and the table lists them individually. You can use filters to select specific recommendations:

Seattle
CPC

- Use dropdown filters to select by agency issuing or receiving them, implementation status, type, or date.
 - Click on graph elements to filter by whether the recipient concurred, status, and topic.
 - Click on a individual recommendation in the table.
 - Unselect all filters by clicking 'Reset' (arrow pointing left to a line) at the bottom-right corner of the dashboard.
- More information is below.

TO (All) FROM (All) STATUS (All) TYPE (All) YEAR (All) SEARCH

NUMBER OF RECOMMENDATIONS CURRENTLY SELECTED: 336

DID THE RECIPIENT CONCUR?



WHAT ARE RECOMMENDATIONS ABOUT?



WHAT IS THE IMPLEMENTATION STATUS?



Recommendations Status

17 recommendations published in 2022

- 1 Completed (~6%)
- 4 Fully Implemented (~24%)
- 2 Partially Implemented (~12%)
- 4 In Progress (~24%)
- 4 Active (~24%)
- 2 Declined (~12%)



New Commissioners



5 New Commissioners, Including Representatives For
Public Defense, Civil Liberties, and SPMA



In-person New Commissioner Orientation With
Presentations From OIG, OPA, CAO, SPD



CPC Workgroups

Working with SPD CIT to provide a community presentation on SPD's response to community members in crisis.



Per **Res. 31753**, working with key stakeholders and engaging with community to develop recommendations for a complainant appeals process.

Reviewing Policies And Practices:
Emergency Vehicle Operation | BolaWrap | P.O.E.T.

2023 Legislative Update

CPC Statement of Legislative Values: Support For Key Bills



01

Qualified Immunity Reform

02

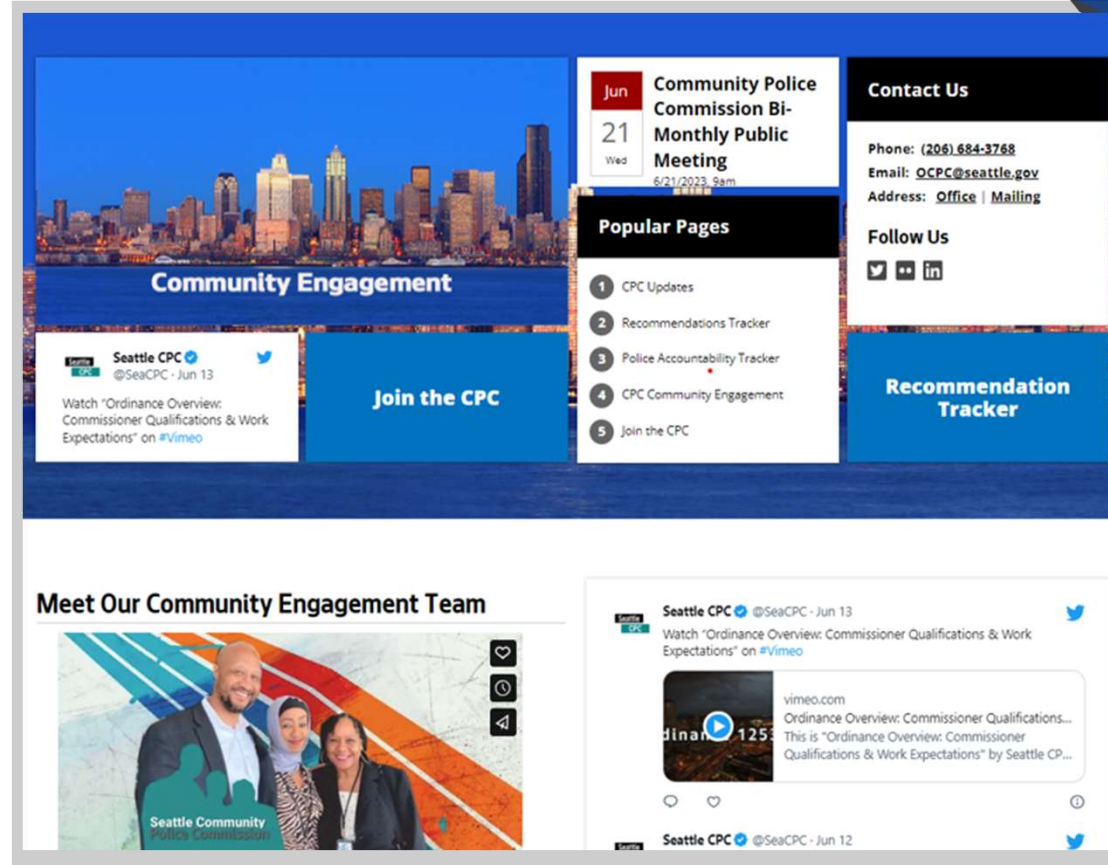
Traffic Safety Reform

03

Independent Prosecutor For
Police Misconduct in WA ATG

Communications & Media

- Multimedia Content
- Real Time News
- Ordinance Education Series
- Social Media
- Website Rebuild



Community Engagement Highlights

43 Events Attended in 2023 so far

Interaction with ~1,500 Community Members

Seattle
Community
Police Commission



Community Engagement: Key Partnerships

- Community Passageways
- Office of Civil Rights
- Department of Neighborhoods
- Bellevue Police Department
- Bellevue African American Advisory Council
- Let's Connect
- South Precinct Interagency Meetings
- Police2Peace
- LEAD
- Community Involvement Commission

- Seattle Police Department
- Commercial Sexual Exploitation of Children (CSEC)
- Northwest African American Museum
- Rainier Beach Action Coalition
- CIT Quarterly Partners Meeting
- Peace Circle – Park 95 with community & SPD
- Umoja Feast
- Festival Sundiata
- Homicide Healing Group
- Office of Independent Investigations (OII)



Demographic & Precinct Advisory Councils



Community Engagement at the Table



Felicia Cross, Community Engagement Director of the Seattle Community Police Commission



**PERF Trending:
People, Ideas, and Events**



Community Engagement in the Community



CPC at Juneteenth 2023



International Community Engagement

- International Visitor Leadership Program (US Department of State)
 - Law Enforcement Leaders from Quebec and RCMP
- Guest Keynote Speaker Felicia Cross at The Community Police Dialogue Session Conference in Dubai



Award-Winning Staff



SEATTLE **P.E.A.C.E Coalition**

WE WILL HAVE PRIZES, A GIFT CARD RAFFLE, AWARDS, SWAG.

BUILDING STRONGER TOGETHER: CONVERSATIONS FOR CHANGE

Thursday, June 1, 2023
New Holly Gathering Hall
7054 32nd Ave S
Seattle, WA 98118

EVENT IS FROM 5:30-7:30PM
Dinner starts at 5:30 pm

Congratulations to Mergitu Argo
Winner of the 2023 206 Ricin Award

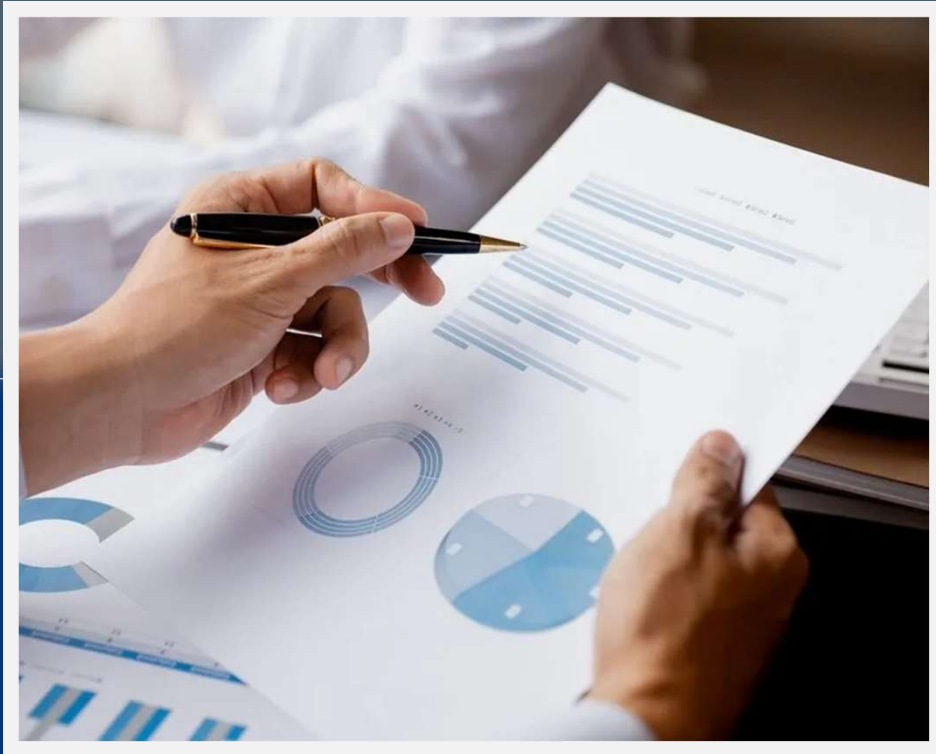


CONGRATULATIONS

FELICIA CROSS
CPC COMMUNITY ENGAGEMENT DIRECTOR

Selected to be a member of the National Association for Civilian Oversight of Law Enforcement (NACOLE) 2023 Annual Conference Committee November 12-16, Chicago





THANK YOU





Legislation Text

File #: CB 120608, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to civilian and community oversight of the police; clarifying the role, governance and operating procedures of the Community Police Commission, reducing its size and geographic appointment requirements, giving it authority to remove members and Executive Director for cause, and amending its stipend provisions; establishing qualifications and procedures for the Commission's Executive Director and creating a Deputy Director; referring to the Commission's role in collective bargaining hearings; amending Sections 3.29.010, 3.29.320, 3.29.330, 3.29.340, 3.29.350, 3.29.360, 3.29.400, and 4.04.120 of the Seattle Municipal Code; and repealing Ordinance 124543.

WHEREAS, the Community Police Commission (CPC) was created by federal consent decree in 2012 and charged with a significant oversight function that is intended to serve as a community voice for the entire City; and

WHEREAS, the CPC should include diverse voices that best represent Seattleites, and allows them to share responsibility for their governance, and such representation may not be realized if Commissioners must be appointed by District; and

WHEREAS, organizational performance is dependent on effective leadership and the CPC must ensure that it has in its Executive Director a proven leader with a background in development, community engagement, criminal legal system and police reform issues; and

WHEREAS, the CPC has entrusted its Co-Chairs with providing strategic direction and guidance to its Executive Director, who will perform best under the singular direction, authority and supervision of the CPC Co-Chairs; and

WHEREAS, the number of CPC Commissioners has increased from 15 members as authorized in 2012 in Ordinance 124021 to 21 Commissioners as authorized in 2017 in the Accountability Ordinance

(Ordinance 125315), and in the years since, the increased size has not resulted in better representation of community viewpoints or increased ability to meet the obligations of the Accountability Ordinance.

Rather, the increased size has led to increased challenges in providing effective oversight; and

WHEREAS, the CPC has in 2023 undergone a comprehensive and transparent process to strengthen its organizational structure, to ensure uninterrupted operation of the CPC, improve accountability of Commissioners to the Co-Chairs, Mayor and Council; and

WHEREAS, the CPC on May 17, 2023 adopted amendments to its bylaws to reflect changes that will allow it to better fulfill its obligations under its authorizing legislation and the Accountability Ordinance, Ordinance 125315;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3.29.010 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.010 Purpose - Enhancing and sustaining effective police oversight

* * *

B. Oversight of SPD shall be comprised of an Office of Police Accountability (OPA) to help ensure the actions of SPD employees are constitutional and in compliance with federal, state, local laws, and with City and SPD policies, and to promote respectful and effective policing, by initiating, receiving, classifying, investigating, and making findings related to complaints of misconduct; an Office of Inspector General for Public Safety (OIG) to help ensure the fairness and integrity of the police system as a whole in its delivery of law enforcement services by providing civilian auditing of the management, practices, and policies of SPD and OPA and oversee ongoing fidelity to organizational reforms implemented pursuant to the goals of the 2012 federal Consent Decree in *United States of America v. City of Seattle*, 12 Civ. 1282 (JLR); and a Community Police Commission (CPC) to help ensure public confidence in the ~~((effectiveness and professionalism of SPD~~

and the)) responsiveness of the police accountability system to public concerns by engaging the community to develop recommendations on the police accountability system and provide a community-based perspective on law enforcement-related policies, practices, and services affecting public trust; all for the purpose of ensuring constitutional, accountable, effective, and respectful policing.

* * *

Section 2. Section 3.29.320 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.320 Office of the Community Police Commission - Executive Director

A. ~~((The term of the current CPC Executive Director (Executive Director) appointed pursuant to Subchapter IX of Chapter 3.14 shall expire on December 31, 2018. The current Executive Director may be reappointed to subsequent terms consistent with the requirements of this Chapter 3.29.))~~ There shall be a CPC Executive Director responsible for carrying out the duties set forth in this Subchapter III. There shall be a CPC Deputy Director with powers and duties as the CPC Executive Director may delegate.

B. Executive Director - Qualifications

1. The CPC Executive Director shall be a civilian with a background in development, community engagement, criminal legal system and police reform issues. The CPC Executive Director shall demonstrate the ability to lead and manage staff to fulfill CPC’s purpose and recommend policies and practices to support constitutional policing, ongoing system effectiveness, and community responsiveness. The CPC Executive Director shall not have been formerly employed by SPD. The CPC Executive Director should also have the following additional qualifications and characteristics:

a. A reputation for integrity and professionalism, and the ability to maintain a high standard of integrity and professionalism;

b. A commitment to the need for and responsibilities of law enforcement, community

caretaking, and the need to protect the constitutional rights of all people;

c. A commitment to the statements of purpose and policies in this Chapter 3.29;

d. A history of effective leadership;

e. The ability to relate, communicate, and engage effectively with all who have a stake in policing, including but not limited to, the general public, complainants, disenfranchised communities, SPD employees, and relevant City and other officials including the Mayor, Council, City Attorney, Inspector General, and OPA Director;

f. An understanding of the City's ethnic and socioeconomic diversity and proven experience working with and valuing the perspectives of diverse groups and individuals; and

g. The ability to carry out the duties of the CPC Executive Director in a manner that reflects sound judgment, independence, fairness, and objectivity in an environment where controversy and conflict is common.

((B-)) C. Executive Director - Appointment

1. There shall be an Executive Director, appointed by CPC using merit-based criteria. The position of Executive Director shall be exempt from the classified civil service. ((The Executive Director shall not have been formerly employed by SPD.)) The term of the Executive Director position is six years.

2. Each Executive Director's initial appointment is subject to confirmation by the Council. The reappointment of an Executive Director to successive terms by CPC is not subject to Council confirmation. If an individual who previously served as Executive Director is again appointed after a different individual was confirmed as the Executive Director by the Council that new appointment is subject to Council confirmation as an initial appointment.

3. If an individual is reappointed to a successive term as Executive Director within 60 days before or 60 days after the expiration of that individual's term, the ensuing term begins on the date the prior

term expired. If an individual is reappointed to a successive term as Executive Director more than 60 days before or 60 days after the expiration of the individual's term, the new term begins on the date of reappointment unless CPC chooses, at the time of reappointment, to make the new term begin on the date the prior term expires or expired.

4. Each appointment shall be made whenever possible sufficiently prior to expiration of the latest incumbent's term of office, permitting Council action to approve or disapprove an appointment at least 60 days before the expiration of the present term, so as to have seamless transition without a gap in leadership.

5. In the event of a vacancy, CPC shall designate an interim Executive Director within ten days of the first day of the vacancy.

~~((C.))~~ D. The CPC Co-Chairs may remove the Executive Director only for cause ((upon a majority vote of its membership.)) after consultation with the Seattle Department of Human Resources, and with the CPC during an executive session of a CPC meeting. If the Executive Director objects to removal, the Executive Director may request the opportunity to be heard before the CPC during a subsequent executive session. After the executive session in which the Executive Director objects to removal, any commissioner may request a vote during open session to retain the Executive Director; a majority vote of the currently appointed commissioners is required to retain the Executive Director.

~~((D.))~~ E. The Executive Director, in consultation with and under supervision of the Co-Chairs, shall have the authority and responsibility to:

1. Oversee and manage the functions of the Office of the CPC to advance the mission of the Office and perform other duties as the CPC may prescribe;
2. Hire, supervise, and discharge employees of the Office of the CPC. Employees of the Office of the CPC shall collectively have the requisite credentials, skills, and abilities to fulfill the duties and obligations of the CPC set forth in this Chapter 3.29. No employee of the Office of the CPC shall have been

formerly employed by SPD as a commissioned officer;

3. Manage the preparation of CPC's proposed budget, authorize necessary expenditures, and enter into contracts for professional and other services in accordance with the adopted budget, develop and manage programs, and undertake authorized activities;

4. Execute, administer, modify, and enforce such agreements and instruments as the Executive Director shall deem necessary to implement programs and carry out the responsibilities, functions, and activities of the Office; apply for grants and donations for Commission programs; and solicit and use volunteer services;

5. Represent, together with Commissioners, CPC in providing testimony and expertise to City departments and offices, commissions, and other organizations (~~((pertaining to))~~) about issues of constitutional policing; and

6. Exercise such other and further powers and duties as prescribed by this Chapter 3.29.

Section 3. Section 3.29.330 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.330 Community Police Commission - Independence

A. CPC is self-governing and functionally independent. CPC may adopt bylaws to govern its own activities.

~~((B. The CPC Executive Director shall have authority for the hiring, supervision, and discharge of all employees of the Office of the CPC. No employee of the Office of the CPC shall have been formerly employed by SPD as a sworn officer.~~

~~€.)~~ B. The City shall provide staff and resources that it deems sufficient to enable CPC to perform all of its responsibilities specified in this Chapter 3.29. The CPC Executive Director shall submit an annual budget request to the Mayor. The Office of the CPC budget shall be appropriated in a Budget Control Level that is

independent of any other City department. CPC Commissioners and the CPC Executive Director may advocate for resources directly to Councilmembers or the Council during the budget process and throughout the year.

~~((D.))~~ C. Without the necessity of making a public disclosure request, CPC may request and shall timely receive from other City departments and offices, including SPD, information relevant to its duties under this Chapter 3.29 that would be disclosed if requested under the Public Records Act.

Section 4. Section 3.29.340 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.340 Community Police Commission - Qualifications

A. Commissioners shall be respected members of Seattle's many diverse communities. All Commissioners shall reside or work in Seattle at the time of appointment or reappointment ~~((and shall be geographically representative of the city of Seattle in a distribution that allows CPC to assign Council district representatives in accordance with the requirements of subsection 3.29.360.B))~~.

* * *

Section 5. Section 3.29.350 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.350 Community Police Commission - Appointment, removal, and compensation

A. CPC shall consist of ~~((21))~~ 15 Commissioners, appointed and reappointed as set forth in this Chapter 3.29. The Mayor shall select ~~((seven))~~ five Commissioners, including the SPMA representative, the Council shall select ~~((seven))~~ five Commissioners, and CPC shall select ~~((seven))~~ five Commissioners, including the public defense representative, the civil liberties law representative, and the SPOG ~~((and SPMA representatives))~~ representative.

B. Each appointing authority shall provide a process that allows individuals to apply and be considered for appointment, and shall ensure appointees meet the qualifications outlined in Section 3.29.340 ~~((and ensure~~

~~the collective membership of CPC meets the requirements of subsection 3.29.360.B)).~~ The appointing authorities shall consult with one another prior to making their respective appointments and reappointments. All Commissioners appointed or reappointed by the Mayor or CPC shall be confirmed by a majority vote of the full Council and shall assume office upon receiving Council confirmation; Commissioners appointed or reappointed by the Council shall assume office upon appointment or reappointment.

~~C. ((Commissioners in position numbers 1, 4, 7, 10, 13, 16, and 19 shall be appointed, and where applicable, reappointed by the Mayor. Commissioners in position numbers 2, 5, 8, 11, 14, 17, and 20 shall be appointed, and where applicable, reappointed by the Council. Commissioners in position numbers 3, 6, 9, 12, 15, 18, and 21 shall be appointed, and where applicable, reappointed by CPC. Position number 3 shall be designated for the public defense representative; position number 6 shall be designated for the civil liberties law representative; position number 15 shall be designated for the SPOG representative; and position number 18 shall be designated for the SPMA representative.~~

~~D.))~~ All CPC Commissioners shall be eligible to serve a maximum of three three-year terms, with each term commencing on January 1, except for the first term under this Section 3.29.350 which will begin at the time of their confirmation following enactment of ~~((Council Bill 118969))~~ Ordinance 125315. All terms shall be staggered so that no more than ~~((seven))~~ five Commissioners' terms expire in any given year. If a Commissioner assumes office prior to the expiration of the term of the Commissioner's predecessor, the Commissioner may complete that term and then be reappointed for up to three three-year subsequent terms.

~~((E.))~~ D. Each appointment and reappointment shall be made whenever possible sufficiently prior to the expiration of the incumbent's term of office or the effective date of an incumbent's resignation, to permit Council action to approve or disapprove the appointment or reappointment, at least 45 days before the vacancy, so as to avoid undue vacancy. All appointments to fill positions due to resignations without notice shall be made as soon as reasonably possible, but should be made no later than 90 days after the effective date of the

resignation of the incumbent. A Commissioner whose term is ending may continue on an interim basis until a successor has been confirmed by the Council.

~~((F-))~~ E. To strengthen the independence of CPC, Commissioners may be removed from office by their appointing authority only for cause. By a ~~((three-quarters))~~ two-thirds vote of its membership, CPC may ~~((approve removal of Commissioners appointed by CPC))~~ remove a CPC-appointed Commissioner for cause or recommend removal of a Mayor- or Council-appointed Commissioner for cause. For a Mayor-appointed Commissioner whose removal is recommended by CPC, the Mayor must agree in writing with the recommendation for removal before the City Council may vote to confirm the removal. ~~((A))~~ For a Mayor- or Council-appointed Commissioner, majority vote of the ~~((full))~~ City Council is required to confirm the removal ~~((of any Commissioner)).~~

~~((G. Commissioners shall be compensated, if at all, as provided by ordinance.))~~ F. In 2023, a non-Co-Chair Commissioner fully performing the duties of a Commissioner may request a stipend of \$550 per month. Beginning in 2024, a Co-Chair fully performing the duties of a Co-Chair and the duties of a Commissioner may request a stipend of \$1,200 per month, and any other Commissioner may request a stipend of \$700 per month. The purpose of the stipend is to compensate for the financial burden of performing the duties of a Commissioner. Any request shall be made to the Executive Director. Any stipend shall be provided only for months of service occurring after the month in which the request is granted.

Section 6. This section transitions the Community Police Commission from 21 members to 15.

A. As of the effective date of this ordinance, all vacant positions are eliminated.

B. As amended by this ordinance, Seattle Municipal Code subsection 3.29.350.A creates a Commission with four members who have specialized qualifications under Seattle Municipal Code subsection 3.29.340.D and 11 general members. If a position becomes vacant because a member is not reappointed, and filling it would cause the Commission to have more than 11 general members, instead that position is eliminated.

C. Appointment packets do not need to use position numbers except as necessary to specify whether the appointment is to replace a member whose term has ended.

D. Once the Commission is reduced to no more than 11 general members:

1. If an appointing authority is responsible for appointing more than five Commissioners overall and another appointing authority is responsible for appointing fewer than five, the next general member position appointment or reappointment under the former's responsibility will transfer to the latter's responsibility. This process shall be repeated as necessary until each appointing authority has five active members, pursuant to Seattle Municipal Code subsection 3.29.350.A as amended by this ordinance.

2. Appointing authorities may create short or long terms as necessary until terms are staggered pursuant to Seattle Municipal Code subsection 3.29.350.C as amended by this ordinance.

Section 7. Section 3.29.360 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.360 Community Police Commission - Authority and responsibility

CPC shall have the following authority and ~~((responsibility to))~~ responsibilities:

* * *

B. ~~((Assign at least one Commissioner to represent each Council district.))~~ Each Commissioner ~~((representing a Council district))~~ shall: ~~((live, work, or))~~ have significant professional or civic ties in ~~((that district))~~ Seattle; demonstrate a deep understanding of neighborhood-level issues; actively engage ~~((the people within the Council district))~~ with the community on a regular basis; and regularly report back to CPC on community ~~((issues on))~~ and law enforcement ~~((in the Council district))~~ issues in Seattle.

* * *

Section 8. Section 3.29.400 of the Seattle Municipal Code, enacted by Ordinance 125315, is amended as follows:

3.29.400 Reporting of potential misconduct and police accountability issues

* * *

B. The Inspector General and CPC (~~(Co-Chairs)~~) Executive Director, or their designees, shall present a mid-year report to the City Council's public safety committee on the status of recommendations issued by OPA, OIG, and CPC, including those which involve the City's budget, state legislative agenda, and collective bargaining agenda. The report shall include whether follow-through was timely and effectively addressed needed improvements. The Chief and OPA Director, or their designees, shall participate in the presentation, as well as a Mayor's Office representative as appropriate.

* * *

Section 9. Section 4.04.120 of the Seattle Municipal Code, last amended by Ordinance 124567, is amended as follows:

4.04.120 Collective bargaining

* * *

F. The City Council and the (~~(Office of Professional Accountability Review Board (OPARB))~~) Community Police Commission should jointly host a public hearing. The public hearing will be a joint meeting of the Council's Labor Policy and Public Safety(~~(;)~~) and Human Services (~~(and Education)~~) committees or the successor Council committees with oversight of the City's labor policy and the City's public safety departments. The public hearing will be on the effectiveness of the City's police accountability system and should be held at least 90 days before the City begins collective bargaining agreement negotiations with the Seattle Police Officer's Guild (SPOG) or the Seattle Police Management Association (SPMA) or any successor labor organization. The City's Director of Labor Relations shall inform the Labor Policy Committee and Public Safety, Human Services and Education Committee at least 180 days before negotiations begin of the projected date for the start of the negotiations to enable the Council to timely schedule the hearing.

Section 10. Ordinance 124543, relating to Community Police Commission stipends, is repealed.

Section 11. 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 _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact:	CBO Contact:
LEG	Greg Doss 206-681-5911	Linda Taylor-Manning 206-684-8376

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

1. BILL SUMMARY

Legislation Title: An ordinance relating to civilian and community oversight of the police; clarifying the role, governance and operating procedures of the Community Police Commission, reducing its size and geographic appointment requirements, giving it authority to remove members and Executive Director for cause, and amending its stipend provisions; establishing qualifications and procedures for the Commission’s Executive Director and creating a Deputy Director; referring to the Commission’s role in collective bargaining hearings; amending Sections 3.29.010, 3.29.320, 3.29.330, 3.29.340, 3.29.350, 3.29.360, 3.29.400, and 4.04.120 of the Seattle Municipal Code; and repealing Ordinance 124543.

Summary and Background of the Legislation:

The bill would amend the SMC in the following ways:

- Removes language that defines the CPC’s role as one that ensures “public confidence in the effectiveness and professionalism of SPD;”
- Adds a new section that establishes qualifications for the CPC Executive Director;
- Adds a Deputy Director position;
- Amends a process by which the CPC may remove its Executive Director for cause;
- Adds language that clarifies that the Executive Director shall discharge their authorities and responsibilities in consultation with and under the supervision of the Co-Chairs;
- Reduces the Commission from 21 members to 15 members and transfers the Seattle Police Management Association representative from a CPC made appointment to a Mayor’s Office made appointment;
- Clarifies that the CPC may remove a CPC appointed Commissioner for cause by a two-thirds vote of its membership without a subsequent confirmation vote from City Council;
- Eliminates a requirement that at least one Commissioner must represent each City Council district and regularly engage the people of that Council district and report back to the CPC on community issues on law enforcement;
- Eliminates references to Ordinance 124543 (Stipend Reimbursements) and establishes that (1) the purpose of a stipend is to compensate for the financial burden of performing the duties of a Co-Chair and Commissioner; and (2) beginning in 2024, stipends are set at a monthly reimbursable rate of \$1,200 for a Co-Chair and \$700 for a Commissioner; and

- Makes technical updates to the collective bargaining provisions for the required hearing that precedes the Seattle Police Management Association negotiations.

2. CAPITAL IMPROVEMENT PROGRAM

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

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

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

Yes. The increased costs of Commissioner stipends (\$5k) and the cost of a new Deputy Director (\$191k) must be absorbed within the CPC's existing budget authority by reducing other spending, or through offsetting reductions in General Fund (GF) spending in other areas of the city's budget in order to be included in the 2024 Mid-biennial Budget Adjustments.

As has been discussed in the Council's Finance and Housing Committee and the Select Budget Committee, the City is currently facing a long-term structural budget issue, where GF expenditures are outpacing GF revenues. The 2024 Endorsed Budget, approved by the Council in November 2022, does not include funding for this ongoing GF expenditure.

The CPC has submitted to the Mayor's Office a request for funding for this position as part of the Mayor's 2024 Proposed Mid-biennial Budget Adjustments. Should the position not be included in those adjustments, the Council may choose to identify funding for the position by identifying offsetting GF cuts elsewhere in the city budget. Or, request that the CPC absorb the cost of the position within its existing budget authority.

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

The CPC would not benefit from the governance or operational changes made in the legislation. This would potentially diminish the ability of the Commission to fulfill its mission.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department? No

- b. Is a public hearing required for this legislation? No**
- c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation? No**
- d. Does this legislation affect a piece of property? No**
- e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**

The legislation may create a Community Police Commission that better represents diverse voices, allows Commissioners to share responsibility for their governance and increases the Commission's effectiveness at achieving its mission of listening to, amplifying, and building common ground among communities affected by policing in Seattle; as it champions policing practices centered in justice and equity.

f. Climate Change Implications

- 1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way? No**
 - 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects. No**
- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)? No**

Summary Attachments (if any):

July 11, 2023

MEMORANDUM

To: Public Safety and Human Services Committee
From: Greg Doss, Central Staff Analyst
Subject: Council Bill 120608 - Community Police Commission (CPC) Reorganization

On July 11, the Public Safety and Human Services (PSHS) Committee will discuss and possibly vote on Council Bill [\(CB\) 120608](#), which would amend Seattle Municipal Code (SMC) Chapter 3.29¹, last amended by the City's Accountability Ordinance ([ORD 125315](#)), to make changes to the Community Police Commission (CPC) membership, its leadership staff, governance policies, and operating procedures.

Background

The CPC was established in 2012 by Executive Order 02-2012 and Ordinance 124021 with responsibilities under the Consent Decree between the City and the U.S. Department of Justice.

In 2017, the Council passed the Accountability Ordinance to institute comprehensive and lasting police oversight by creating a three-part civilian oversight system consisting of: (1) the Office of Police Accountability (OPA); (2) the Office of Inspector General for Public Safety (OIG); and (3) the CPC. While elements of this system existed before 2017, the Accountability Ordinance reestablished and reshaped the City's oversight efforts to ensure that all parts of the system work in harmony to create and maintain constitutional policing in the City of Seattle.

SMC Section 3.29.300, as amended by the Accountability Ordinance, establishes the CPC and defines its role, authority, and responsibility within the City's accountability system. Subsequent sections outline the appointment and removal process for the 21-member Commission as well as the organization's Executive Director. While the statutory authority for the CPC pre-dates the Accountability Ordinance, the Accountability Ordinance made a number of first-time governance changes including the expansion of the Commission from 15 to 21 members.

Proposed Changes

CB120608 would amend the SMC in the following ways:

- Removes language that defines the CPC's role as one that ensures "public confidence in the effectiveness and professionalism of SPD." The CPC Co-Chairs have indicated that the Commission's role is to engage with the community in a holistic way to understand

¹ Chapter 3.29 as amended by the Accountability Ordinance, while legally in effect, has yet to be added to the online version of the Seattle Municipal Code.

concerns and to recommend changes to SPD policies and practices, but that it is not within the Commission’s ability to “affect public confidence in SPD.”

- Adds a new section that establishes qualifications for the CPC Executive Director. The language in this section mirrors language in the Accountability Ordinance that establishes qualifications for Executive Directors of the OPA and the OIG.
- Adds a Deputy Director position. The Co-Chairs have indicated that the addition of this position creates parity with the OIG and OPA, and it will ensure the uninterrupted operation of the CPC when the Executive Director is not available.
- Amends the process by which the CPC may remove its Executive Director for cause. The bill would allow the CPC Co-Chairs to remove the CPC Executive Director for cause after consultation with the Seattle Human Resources Department. The Executive Director could contest the decision through a vote of Commissioners in open session (see below for additional information).
- Adds language that clarifies that the Executive Director shall discharge their authorities and responsibilities in consultation with and under the supervision of the Co-Chairs. This provision codifies current practice as articulated by the Co-Chairs.
- Reduces the Commission from 21 members to 15 members and transfers the Seattle Police Management Association representative from a CPC appointment to a Mayor’s Office appointment (see below for additional information).
- Clarifies that the CPC may remove a CPC-appointed Commissioner for cause by a two-thirds vote of its membership without a subsequent confirmation vote from the City Council.
- Eliminates a requirement that at least one Commissioner must represent each City Council district and regularly engage the people of that Council district and report back to the CPC on community issues on law enforcement.
- Eliminates references to Ordinance 124543 (CPC Stipend Reimbursements adopted in 2014) and establishes that (1) the purpose of a stipend is to compensate for the financial burden of performing the duties of a Commissioner; and (2) beginning in 2024, stipends are set at a monthly reimbursable rate of \$1,200 for a Co-Chair and \$700 for a Commissioner (see below for additional information).
- Makes technical updates to the collective bargaining provisions for the required hearing that precedes the Seattle Police Management Association negotiations.

Transitioning the Commission from 21 to 15 Members

CB120608 is designed to allow the Commission the flexibility to manage its transition from 21 to 15 members. An uncodified section (Section 6) reduces the CPC from 21 members to 15

members as vacancies occur among the Commission’s non-specialized positions.² Positions only become vacant when there is not a re-appointment of an existing member.

When the Commission reaches a total of 15 members, the provisions outlined in Section 6.D.1 establish a method by which appointing authorities shall potentially forgo making appointments until each authority has an equal number of members. From that point, authorities will take turns making future appointments and the Commission may stagger the terms of the appointments to ensure that future vacancies do not occur at the same time.³

Commissioner Stipends

Ordinance 124543, adopted in 2014, authorizes members of the CPC to request a monthly stipend of \$550. The title and recitals of Ordinance 124543 note that the stipends are to address financial hardship for some members who devote significant time to the Commission without compensation.

The CPC staff and Co-Chairs have indicated that the operative sections of the SMC should reflect the intent of the original ordinance. CB120608 accomplishes this by striking the Accountability Ordinance’s references to Ordinance 124543 and adding the financial hardship⁴ language directly to 3.29.350.F. Beginning in 2024, stipends are increased to \$700 for Commissioners and \$1,200 for Co-Chairs.

Some of Seattle’s boards and commissions provide their members with annual compensation, stipends that serve as reimbursement for financial hardship or an hourly rate of pay for meetings and travel time. These include:

- Seattle Public Utilities Customer Review Panel;
- Seattle Design Commission;
- Equitable Development Initiative Advisory Board (OPCD);
- Green New Deal Oversight Board;
- Indigenous Advisory Council;
- Seattle Film Commission; and
- Transportation Equity Workgroup.

Where applicable, annual member stipend amounts range between \$1,300 and \$5,000. Hourly rates for some of the other commissions can range between \$25 and \$60 per hour.

Executive Director Reporting Structure

² The CPC has four specialized positions that are dedicated to representation for the Seattle Police Management Association, Seattle Police Officer’s Guild, Civil Liberties, and Public Defense.

³ Current appointing authorities are the Mayor’s Office, CPC, and City Council.

⁴ Language in CB 120608 says “financial burden.”

The City Attorney's Office (CAO) has advised that the City Charter would not invalidate the amendments/changes that would be made in 3.29.320.D, which would allow the Executive Director to be hired and fired by the CPC Co-Chairs. The CAO has indicated that the Charter restrictions that require the Mayor to direct and control all subordinate officers of the City apply only to the subordinate officers that are listed in the Charter, not to subordinate officers that are created by ordinance outside of the Charter.⁵

cc: Esther Handy, Director
Aly Pennucci, Deputy Director

⁵ See City Charter Article V, Section II



Legislation Text

File #: CB 120580, **Version:** 2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to app-based worker labor standards; establishing labor standards on deactivation protections for app-based workers working in Seattle; amending Section 3.02.125 of the Seattle Municipal Code; and adding a new Chapter 8.40 to the Seattle Municipal Code.

WHEREAS, the Washington Constitution provides in Article XI, Section 11 that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council (“Council”) finds and declares that:

A. App-based work is a growing source of income for workers in Seattle and across the country.

B. In the exercise of The City of Seattle’s police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare.

C. This ordinance protects and promotes public health, safety, and welfare by establishing protections against unwarranted deactivations for app-based workers.

D. Many Seattle workers, including app-based workers, cannot fully participate in the community’s dynamic civic life or pursue its myriad educational, cultural, and recreational opportunities because they struggle to meet their households’ most basic needs, suffering job insecurity and economic instability.

E. Minimum labor standards benefit employers and hiring entities by improving worker performance, reducing worker turnover, and thereby improving productivity and the quality of the services provided by workers, including app-based workers.

F. Network companies typically manage large pools of app-based workers by relying on algorithmic management systems, which allow app-based workers to be “assigned, optimized, and evaluated through algorithms and tracked data.”

G. While algorithmic management may bring certain benefits to network companies, these innovations also generate significant challenges for app-based workers, including information asymmetries and extreme power imbalances between workers and network companies.

H. App-based workers often do not have the information they need to know about how they will be evaluated. Algorithms that dictate core aspects of app-based workers’ relationship with a network company can change unexpectedly, leading to arbitrary evaluations and unwarranted deactivations.

I. App-based workers are subject to network company policies that unilaterally deactivate workers for a variety of reasons without consistent access to a fair process for such deactivations, nor do the workers have access to responsive network company personnel with the power to correct unwarranted deactivations by in-person meetings or telephone.

J. App-based workers face potential deactivation for reasons including but not limited to: rejecting too many orders; being unavailable on certain days or times; cancelling orders with cause; being delayed in fulfilling orders; receiving low ratings from consumers; or algorithmic errors.

K. Network companies do not consistently apply clear performance expectations or policies for deactivations, and often deactivate app-based workers without explanation or warning.

L. App-based workers report being deactivated for low customer ratings, despite the fact that extensive social science research finds that consumer-sourced rating systems are highly likely to be influenced by bias on the basis of factors such as race or ethnicity. App-based workers also report deactivation based on customer harassment and false reports from customers.

M. Many network companies do not have processes to substantively reconsider a deactivation based on a case-by-case human review, and have little incentive to put those processes in place.

N. A review of network company hiring policies shows that most network companies perform recurring background checks on app-based workers as a condition of continued service. Network companies do not provide clear guidance on background check criteria, methods for evaluating the relationship of criminal history record information to the performance of app-based service, procedures for correcting background check information, or procedures for appealing deactivations based on background check information.

O. Unclear and/or inconsistently applied background check policies exacerbate the difficulties app-based workers with criminal history records face when trying to secure or maintain work opportunities.

P. The high prevalence of background checks with errors, mismatched identities, and incomplete information, due to scant oversight of background check information provided to the private market, compounds these difficulties.

Q. Studies estimate that 50 to 80 percent of FBI criminal records are inaccurate. A common problem is that law enforcement agencies fail to update arrest or charge records with information about the outcome of a case. About a third of felony arrests never lead to a conviction, another third lead to conviction of a different (usually lesser) offense, and other convictions are overturned on appeal, expunged, or sealed.

R. The flexibility to determine hours of availability and which offers to accept, reject, or cancel with cause allows workers to make informed decisions on how and when to earn their income without fear of deactivation.

S. App-based workers who perform services in Seattle are not typically limited to work in the geographic boundaries of Seattle, and often accept offers to perform services in other jurisdictions.

T. Access to the records substantiating a network company's decision to deactivate an app-based worker, and access to records of the services performed in Seattle by that app-based worker, are critical for an app-based worker to meaningfully challenge their deactivation and attempt to get reinstated as soon as possible.

U. Establishing a reasonable standard for the deactivations of app-based workers as well as the ability to

challenge unwarranted deactivations will help ensure that thousands of app-based workers who provide vital services in Seattle will be able to enjoy a measure of job security.

V. App-based workers who have protection against unwarranted deactivation will be more likely to remain in their positions over time. Such experienced app-based workers will improve the safety and reliability of the app-based services provided to Seattle customers.

W. Minimum labor and compensation standards, including the right to challenge unwarranted deactivations, promote the general welfare, health, and prosperity of Seattle by ensuring that app-based workers have stable incomes and can better support and care for their families and fully participate in Seattle’s civic, cultural, and economic life.

X. The regulation of app-based workers better ensures that such workers can perform their services in a safe and reliable manner and thereby promotes the welfare of the people and is thus a fundamental governmental function.

Section 2. A new Chapter 8.40 is added to the Seattle Municipal Code as follows:

Chapter 8.40 APP-BASED WORKER DEACTIVATION RIGHTS

8.40.010 Short title

This Chapter 8.40 shall constitute the “App-Based Worker Deactivation Rights Ordinance” and may be cited as such.

8.40.020 Definitions

For purposes of this Chapter 8.40:

“Accept” means an initial communication from an app-based worker to a network company that the app-based worker intends to perform services in furtherance of an offer, including but not limited to indicating acceptance through the worker platform.

“Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work;

terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; filing a false report with a government agency; or discriminating against any person for any reason prohibited by Section 8.40.120. “Adverse action” for an app-based worker may involve any aspect of the app-based worker’s work, including compensation, work hours, volume, and frequency of offers made available, desirability and compensation rates of offers made available, responsibilities, or other material change in the terms and conditions of work or in the ability of an app-based worker to perform work. “Adverse action” also includes any action by the network company or a person acting on the network company’s behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 8.40.

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

“Aggrieved party” means an app-based worker or other person who suffers tangible or intangible harm due to a network company’s or other person’s violation of this Chapter 8.40.

“App-based service” means any service in an offer facilitated or presented to an app-based worker by a network company or participation by an app-based worker in any training program required by a network company.

“App-based worker” means a person who has entered into an agreement with a network company governing the terms and conditions of use of the network company’s worker platform or a person affiliated with and accepting offers to perform services for compensation via a network company’s worker platform. For purposes of this Chapter 8.40, at any time, but not limited to, when an app-based worker is logged into the network company’s worker platform, the worker is considered an app-based worker.

“Application dispatch” means technology that allows customers to directly request dispatch of app-based workers for provision of services and/or allows app-based workers or network companies to accept offers to perform services for compensation and payments for services via the internet using interfaces, including but not limited to website, smartphone, and tablet applications.

“Background check” means a request or attempt to obtain, directly or through an agent, a person’s

conviction record or criminal history record information from the Washington State Patrol or any other source that compiles and maintains such records or information.

“Cancellation with cause” has the same meaning as defined in Section 8.37.020.

“City” means The City of Seattle.

“Compensation” means the total amount of payment owed to an app-based worker by reason of performing work facilitated or presented by the network company, including but not limited to network company payments, bonuses, incentives, and tips earned from customers.

“Consumer report” has the same meaning as defined in RCW 19.182.010 as amended.

“Conviction record” and “criminal history record information” are meant to be consistent with chapter 10.97 RCW as amended, and mean information regarding a final criminal adjudication or other criminal disposition adverse to the subject, including a verdict of guilty, a finding of guilty, or a plea of guilty or nolo contendere. A criminal conviction record does not include any prior conviction that has been the subject of an expungement, vacation of conviction, sealing of the court file, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a prior conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the adverse disposition has been vacated or expunged.

“Criminal history record information” is meant to be consistent with chapter 10.97 RCW as amended.

“Customer” means a paying customer and/or recipient of an online order.

“Deactivation” means the blocking of an app-based worker’s access to the worker platform, changing an app-based worker’s status from eligible to accept offers to perform services to ineligible, or other material restriction in access to the worker platform that is effected by a network company. Deactivation” does not include temporary suspensions lasting less than 48 hours when the worker platform is unavailable to an app-based worker due to reasons unrelated to the action or behavior of the app-based worker and that are clearly

communicated to the app-based worker at the time of the temporary suspension. Such reasons include but are not limited to: technology, software, or network outages; account access or security issues; routine maintenance; and inclement weather endangering the safety of app-based workers in performing services in Seattle.

“Director” means the Director of the Office of Labor Standards or the Director’s designee.

“Discrimination,” “discriminate,” and/or “discriminatory act” have the same meaning as defined in Section 14.04.030.

“Driver record” means an abstract of a person’s driving record as described in RCW 46.52.130 as amended.

“Egregious misconduct” means an action or behavior by an individual app-based worker that: (1) endangers the physical safety of the customer, or a third person, the network company, or an animal; or (2) intentionally causes economic harm to the customer, a third person, or the network company; or (3) is threatening, harassing, or abusive to the customer, a third party, or the network company. “Egregious misconduct” includes but is not limited to conduct that occurs outside of an app-based worker’s provision of app-based services or use of the network company’s worker platform if the network company can prove by a preponderance of the evidence that the conduct directly relates to the app-based worker’s fitness to provide app-based services or to use the network company’s worker platform.

1. “Egregious misconduct” includes but is not limited to the following conduct in connection with an app-based worker’s provision of app-based services or use of the network company’s worker platform: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as defined in RCW 7.105.010 as amended, unlawful harassment as defined in RCW 7.105.010 as amended, hate crimes, racial slurs, unlawful imprisonment as defined in RCW 9A.40.040 as amended, kidnapping, unlawful possession of a firearm, solicitation of any sexual act, registration as a sex offender, stalking, theft, fraud, robbery, burglary, money laundering, animal cruelty, cybercrimes as defined in chapter 9A.90 RCW as

amended, prostitution, driving-related crimes pursuant to RCW 46.61.500 through 46.61.540 as amended, failing to maintain a valid state driver's license, and other conduct that would constitute a Class A felony offense under Title 9 or 9A RCW as amended.

2. Egregious misconduct shall not include conduct related to non-criminal moving violations as defined by WAC 308-104-160, as amended, or traffic collisions unless the app-based worker has accumulated more than three non-criminal moving violations or at-fault collisions in the previous three years.

3. The Director may issue rules further defining what constitutes economic harm or egregious misconduct.

“Extraordinary circumstances” means circumstances beyond the network company’s control that will materially influence the determination of whether a deactivation was warranted. Extraordinary circumstances may include, but are not limited to, a pending criminal investigation.

“Franchise” has the same meaning as defined in RCW 19.100.010 as amended.

“Front pay” means the compensation an app-based worker would earn or would have earned if reinstated to their 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).

“Incentive” means a sum of money paid to an app-based worker in addition to the guaranteed minimum network company payment for an offer, upon completion of specific tasks presented by the network companies, including but not limited to completing performance of a certain number of offers, completing performance of a certain number of consecutive offers, completing performance of an offer subject to a price multiplier or variable pricing policy, making oneself available to accept offers in a particular geographic location during a specified period of time, or recruiting new app-based workers.

“Network company” means an organization, whether a corporation, partnership, sole proprietor, or other

form, operating in Seattle, that uses an online-enabled application or platform, such as an application dispatch system, to connect customers with app-based workers, present offers to app-based workers through a worker platform, and/or facilitate the provision of services for compensation by app-based workers.

1. The term “network company” includes any such entity or person acting directly or indirectly in the interest of a network company in relation to the app-based worker.

2. The term “network company” excludes:

a. An entity offering services that enable individuals to schedule appointments with and/or process payments to users, when the entity neither engages in additional intermediation of the relationships between parties to such transactions nor engages in any oversight of service provision;

b. An entity operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties to resulting transactions nor engages in any oversight of service provision;

c. An entity that meets the definition of “transportation network company” as defined by RCW 46.04.652 as amended; or

d. An entity that meets the definition of “for-hire vehicle company” or “taxicab association” as defined in Section 6.310.110.

A company that meets the definition of network company in this Section 8.40.020 and does not fall within any of the exclusions contained in this Section 8.40.020 is subject to this Chapter 8.40. Network companies include marketplace network companies, as defined by Section 8.37.020.

“Offer” means one or more online orders presented to an app-based worker as one opportunity to perform services for compensation that the app-based worker may accept or reject.

1. An opportunity to perform services for compensation includes but is not limited to an opportunity described via a worker platform as a shift, a period of time to be spent engaged in service provision, a continuous period of time in which the app-based worker must make themselves available to perform

services, or any other continuous period of time when the worker is not completely relieved of the duty to perform the service(s), and such a period of time shall be considered as one offer.

2. The term “offer” includes pre-scheduled offers and on-demand offers, as defined in Section 8.37.020.

“Online order” means an order for services that is placed through an online-enabled application or platform, such as an application dispatch system, and that is facilitated by a network company or presented by a network company for its own benefit. The Director may issue rules further defining the definition of “online order” and the types of transactions excluded from this definition. The term “online order” does not include the following transactions:

1. Sale or rental of products or real estate;
2. Payment in exchange for a service subject to professional licensure that has been listed by the Director pursuant to Section 8.37.020;
3. Payment in exchange for services wholly provided digitally;
4. Payment in exchange for creative services or works;
5. Transportation network company (TNC) dispatched trips. For purposes of this Section 8.40.020, “TNC dispatched trips” means the provision of transportation by a driver for a passenger through the use of a transportation network company’s application dispatch system; and
6. Transportation provided by taxicabs or for-hire vehicles, as defined in Chapter 6.310.

“Operating in Seattle” means, with respect to a network company, facilitating or presenting offers to provide services for compensation using an online-enabled application or platform, such as an application dispatch system, to any app-based worker, where such services are performed in Seattle.

“Paying customer” means a person or entity placing an online order via a network company’s online-enabled application or platform.

“Perform services in Seattle” means activities, conducted by an app-based worker in furtherance of an

offer, that occur in whole or in part within Seattle.

1. The term “perform services in Seattle” includes any time spent on a commercial stop in Seattle that is related to the provision of delivery or other services associated with an offer.

2. The term “perform services in Seattle” does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.

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

“Respondent” means the network company or any person who is alleged or found to have committed a violation of this Chapter 8.40.

“Successor” means any person to whom a network company quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the network company’s business, a major part of the property, whether real or personal, tangible or intangible, of the network company’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.

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the app-based worker receiving the tip.

“Traffic infraction” means a violation of state law or administrative regulation, or local law, ordinance, regulation, or resolution, relating to traffic including parking, standing, stopping, and pedestrian offenses, which is not classified as a criminal offense, consistent with RCW 46.63.020 as amended. A “traffic infraction” includes any offense committed in another jurisdiction that includes the elements of any offense designated as a

traffic infraction consistent with RCW 46.63.020 as amended.

“Unwarranted deactivation” means a deactivation that does not comply with Section 8.40.050.

“Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by an app-based worker, that enables the arrangement of services for compensation.

“Written” or “in 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 or maintained electronically, including via the worker platform.

8.40.030 App-based worker coverage

A. For the purpose of this Chapter 8.40, except for Section 8.40.100, covered app-based workers are limited to those for whom, during the previous 180 days, at least ten percent of their completed offers, or offers cancelled with cause, involved performing services in Seattle for a covered network company.

B. For the purpose of Section 8.40.100, an app-based worker is covered by Section 8.40.100 if the app-based worker performs services in Seattle facilitated or presented by a network company covered by this Chapter 8.40.

C. An app-based worker who is a covered employee under Chapter 14.20 for a covered network company, or a covered employee under Chapter 14.20 for a customer of an online order, is not a covered app-based worker under this Chapter 8.40.

8.40.040 Network company coverage

A. For the purposes of this Chapter 8.40, covered network companies are limited to those that facilitate work performed by 250 or more app-based workers worldwide regardless of where those workers perform work, including but not limited to chains, integrated enterprises, or franchises associated with a franchise or network of franchises that facilitate work performed by 250 or more app-based workers worldwide in aggregate.

B. To determine the number of app-based workers performing work for the current calendar year:

1. The calculation is based upon the average number per calendar week of app-based workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one app-based worker worked for compensation.

2. For network companies that did not have any app-based workers during the preceding calendar year, the number of app-based workers counted for the current calendar year is calculated based upon the average number per calendar week of app-based workers who worked for compensation during the first 90 calendar days of the current year in which the network company engaged in business.

3. If a network company quits, sells out, exchanges, or disposes the network company's business, or the network company's business is otherwise acquired by a successor, the number of app-based workers hired for the current calendar year for the successor network company is calculated based upon the average number per calendar week of app-based workers who worked for compensation during the first 90 calendar days of the current year in which the successor network company engaged in business.

4. All app-based workers who worked for compensation shall be counted, including but not limited to:

- a. App-based workers who are not covered by this Chapter 8.40;
- b. App-based workers who worked in Seattle; and
- c. App-based workers who worked outside Seattle.

C. Separate entities that form an integrated enterprise shall be considered a single network company under this Chapter 8.40. Separate entities will be considered an integrated enterprise and a single network company under this Chapter 8.40 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include but are not limited to:

1. Degree of interrelation between the operations of multiple entities;
2. Degree to which the entities share common management;

3. Centralized control of labor relations;
4. Degree of common ownership or financial control over the entities; and
5. Use of a common brand, trade, business, or operating name.

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

1. Fair notice of deactivation policy. A network company must inform the app-based worker in writing of the network company's deactivation policy, defining what constitutes a violation that may result in deactivation. The network company's written deactivation policy must be specific enough for an app-based worker to understand what constitutes a violation and how to avoid violating the policy. The deactivation policy must be available to the app-based worker in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The deactivation policy must be accessible to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and description of the deactivation policy, the manner of its distribution, and required languages for its translation.

2. Reasonable policy. The policy that may lead to a deactivation must be reasonably related to the network company's safe and efficient operations. Examples of policies that are not reasonably related to the network company's safe and efficient operations include, but are not limited to:

- a. Any rule or policy that would result in a deactivation based on an app-based worker's availability to work or number of hours worked, consistent with subsection 8.37.080.A.1;
- b. Any policy that would result in a deactivation based on an app-based worker's acceptance or rejection of any individual offer, any types of offers, or any number or proportion of offers, consistent with subsection 8.37.080.A.2;
- c. Any policy that would result in a deactivation based on an app-based worker's

cancellation of an offer with cause, consistent with subsection 8.37.080.C;

d. Any policy that would result in a deactivation based on an app-based worker contacting the network company;

e. Any policy that would result in a deactivation based solely on a quantitative metric derived from aggregate customer ratings of an app-based worker's performance;

f. Any policy that would result in a deactivation based on statements by an app-based worker regarding compensation and/or working conditions made to customers, other app-based workers, network companies, the media, public officials, and/or the public;

g. Any policy that would result in a deactivation based on an app-based worker asserting their legal rights, whether in court or via procedures provided by any local, state, or federal agency; and

h. Any policy that would deactivate a worker based on the results of a background check, consumer report, driver record, or record of traffic infractions, except in cases of egregious misconduct or where required by other applicable law.

3. Investigation. A network company must conduct a fair and objective investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation and demonstrate an unbiased and neutral view of facts collected.

4. Confirmation of violation. The network company must demonstrate by a preponderance of the evidence that the alleged violation of the network company's policy or rule occurred.

5. Consistent application. The network company must apply the rule or policy, and penalty for violations, in a consistent manner.

6. Proportionate penalty. The penalty of deactivation must be reasonably related to the offense, and account for mitigating circumstances, such as the app-based worker's past work history with the network company.

B. Deactivation of an app-based worker will be considered unwarranted if the action is intended to or

results in discrimination or a discriminatory act.

C. Subject to the provisions of this Section 8.40.050 and rules issued by the Director, a network company may immediately deactivate an app-based worker if such action is required to comply with any applicable court order or local, state, or federal laws or regulations, or where an app-based worker has engaged in egregious misconduct.

1. In the case of allegations of egregious misconduct, the network company may deactivate the app-based worker before completing an investigation. The investigation shall not take longer than ten days except in the case of extraordinary circumstances. If the investigation is delayed due to extraordinary circumstances, the network company must provide the app-based worker with written notice that the investigation is delayed, the reason(s) for the delay, and the date on which the completion of the investigation is anticipated.

8.40.060 Right to challenge deactivation

A. A network company shall not subject an app-based worker to unwarranted deactivation.

B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker.

The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

C. In addition to pursuing an internal challenge to deactivation pursuant to subsection 8.40.060.B, an app-based worker shall have a right to file a complaint with the Agency or bring a civil action for violations of the requirements of this Chapter 8.40 upon receiving the network company's initial response to the internal challenge, or 14 days after initiating a challenge, whichever comes earlier. An app-based worker may pursue all avenues of relief available thereafter within three years of the alleged violation, or as tolled pursuant to subsection 8.40.150.C.

D. An app-based worker shall have a right to challenge their deactivation and pursue all avenues of relief available to them regardless of the geographic location of the incidents leading to the network company's decision to deactivate the app-based worker.

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C, a network company shall provide an app-based worker with notice of deactivation 14 days in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company’s policy that was violated, pursuant to Section 8.40.050, and the specific incident or pattern of incidents that violated the deactivation policy;

2. The effective date of deactivation;

3. Any and all records relied upon to substantiate deactivation, pursuant to Section 8.40.080;

4. The length of the deactivation;

5. A description of the steps an app-based worker can take to remedy the deactivation;

6. The app-based worker’s right to challenge such deactivation under this Chapter 8.40;

7. The network company’s process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; and

8. Any other items pursuant to Director’s Rules.

B. The network company shall provide notice of deactivation in a form and manner designated by the Agency. The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation no later than the effective date of deactivation.

8.40.080 Access to records substantiating deactivation

A. Upon notice of deactivation, a network company shall provide an app-based worker with the records relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and

a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.

B. If further records substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, such records shall be provided to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, all records of that challenge and any responses must be provided to the worker within 14 days of each submittal or response.

D. If the records substantiating deactivation involve information related to a customer or a third party and the network company reasonably believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the records required by this Section 8.40.080 for a period of three years.

G. If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner. This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.

8.40.090 Affirmative production of records

A. A network company shall affirmatively transmit to the Agency such records as required by rules issued by the Director, on at least a quarterly basis or as documents are updated by the network company. The Director shall have the authority to require such aggregated or disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.40. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand network companies, as defined in Section 8.37.020.

1. Records for production may include:

- a. Records regarding the number of deactivations initiated by a network company;
- b. Records regarding the reasons for deactivation most commonly referred to, such as the rule or policy violated by the app-based worker;
- c. The number of app-based workers challenging their deactivation and the forum in which they are pursuing a challenge;
- d. The number of app-based workers reinstated after deactivation, length of deactivation prior to reinstatement, and length of service prior to deactivation;
- e. The network company's deactivation policy;
- f. The network company's internal deactivation challenge procedure, pursuant to Section 8.40.060, including the available methods of contact for an app-based worker to initiate a challenge; and
- g. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.40.

2. The Director shall issue rules governing the submission format, security, and privacy protocols relating to the submission of network company records, to the extent permitted by law.

8.40.100 Notice of rights

A. Network companies shall affirmatively provide each app-based worker with a written notice of rights established by this Chapter 8.40. The Agency may create and distribute a model notice of rights in English and other languages. If the Agency creates a model notice of rights, network companies shall affirmatively provide such notice according to the schedule outlined in subsection 8.40.100.A.1. However, network companies are responsible for providing app-based workers with the notice of rights required by this Section 8.40.100, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.40, regardless of whether the Agency has created and distributed a model notice of rights.

1. Network companies shall affirmatively provide each app-based worker with the written notice of rights within one month of the effective date of this Chapter 8.40. For each app-based worker hired by the network company after this date, network companies shall provide the notice of rights within 24 hours of the first completed offer that involved performing services in Seattle, facilitated or presented by the network company.

2. For each app-based worker, network companies shall provide the notice of rights no less than annually.

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access any and all records relied upon by the network company to substantiate deactivation;

5. The right to be protected from retaliation for exercising in good faith the rights protected by

this Chapter 8.40; and

6. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

C. Network companies shall provide the notice of rights required by subsection 8.40.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, or online web portal, in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.

D. Network companies shall establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This system shall be available to an app-based worker, at least three years after deactivation. The Director may issue rules defining reasonable criteria or requirements for this system to ensure that app-based workers have sufficient information to understand when they are covered by the entirety of Chapter 8.40, including but not limited to notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the previous 180 days, the number of completed offers or cancellations that involved performing services in Seattle in the previous 180 days, the overall percentage of completed offers that involved performing services in Seattle in the previous 180 days, and the app-based worker's receipts and/or payment disclosures for each offer performed or cancelled in the previous 180 days, pursuant to subsection 8.37.070.B and Section 14.34.060.

8.40.110 Network company records

A. Network companies shall retain records that document compliance with this Chapter 8.40 for each app-based worker, including, at a minimum, a compliance file for each deactivation. The Director may issue rules governing the format of the records needed to constitute compliance of this Section 8.40.110. The

Director may also issue rules governing the form, format, and content of the compliance file for each deactivation. This compliance file may include:

1. The deactivation notice provided to the app-based worker, pursuant to Section 8.40.070;
2. Date of completion of investigation;
3. Whether the deactivation involved egregious misconduct and, if so, the egregious misconduct at issue;
4. Whether the deactivation investigation includes extraordinary circumstances, pursuant to subsection 8.40.050.B and, if so, the extraordinary circumstances at issue;
5. Number of offers completed in the 180 days prior to deactivation notice;
6. Number of completed offers that involved performing services in Seattle in the 180 days prior to deactivation notice;
7. Date of deactivation challenge according to the network company's internal deactivation challenge procedure;
8. All responses to an app-based worker regarding a deactivation challenge, pursuant to subsections 8.40.060.B and 8.40.080.C; and
9. Any other records pursuant to Director's Rules.

B. Network companies shall retain the records required by subsection 8.40.110.A for a period of three years.

C. If a network company fails to retain adequate records required under subsection 8.40.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not retained. This presumption is substantive and necessary to effectuate the rights provided in this Chapter 8.40.

8.40.120 Retaliation prohibited

A. No network company or any other person acting on behalf of the network company shall interfere

with, restrain, deny, or attempt to deny the exercise of any right protected under this Chapter 8.40.

B. No network company or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 8.40. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this Chapter 8.40; the right to inform others about their rights under this Chapter 8.40; the right to inform the person's network company, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.40; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.40; the right to cooperate with the Agency in its investigations of this Chapter 8.40; the right to testify in a proceeding under or related to this Chapter 8.40; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.40.

C. No network company or any other person shall communicate to a person exercising rights protected in this Section 8.40.120, directly or indirectly, the willingness to inform a government worker 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 app-based worker or family member of an app-based worker to a federal, state, or local agency because the app-based worker has exercised a right under this Chapter 8.40.

D. It shall be a rebuttable presumption of retaliation if a network company or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.40.120. The network company may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 8.40.120 shall be sufficient upon a showing that a network company or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.40.120 was a motivating factor in the adverse action, unless the network company

can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 8.40.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.40.

G. A complaint or other communication by any person triggers the protections of this Section 8.40.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.40.

8.40.125 Rulemaking authority

Except as provided in subsection 8.40.130.B, the Director is authorized to administer and enforce this Chapter 8.40. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.40 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.40. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by network companies, app-based workers, and other parties to determine their rights and responsibilities under this Chapter 8.40.

8.40.130 Enforcement power and duties

A. Except as provided in subsection 8.40.130.B, on or after January 1, 2025, the Agency shall have the power to administer and enforce this Chapter 8.40 and shall have such powers and duties in the performance of these functions as are defined in this Chapter 8.40 and otherwise necessary and proper in the performance of the same and provided for by law.

B. Starting June 1, 2027, the Agency may have the power to enforce subsections 8.40.050.A.3, 8.40.050.A.4, 8.40.050.A.5, 8.40.050.A.6, and 8.40.050.B. This subsection 8.40.130.B does not limit the ability of an app-based worker to seek other avenues of relief for violations of those subsections.

8.40.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter

8.40 is a violation.

8.40.150 Investigation

A. Except as provided in subsection 8.40.130.B, the Agency shall have the power to investigate any violations of this Chapter 8.40 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 8.40. The Agency may initiate an investigation pursuant to Director’s Rules, including but not limited to situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of network companies or businesses because either the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.40, 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 app-based worker, or any other person.

B. An app-based worker or other person may report to the Agency any suspected violation of this Chapter 8.40. The Agency shall encourage reporting pursuant to this Section 8.40.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the app-based worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the name of the app-based worker or other person and identifying information as necessary to enforce this Chapter 8.40 or for other appropriate purposes.

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

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

regulations, and Director's Rules.

C. The Agency's investigation shall commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 8.40 and any administrative enforcement proceeding under this Chapter 8.40 based upon the same facts. For purposes of this Chapter 8.40:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 8.40, or when the Agency provides notice to the respondent that an investigation has commenced under this Chapter 8.40.

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

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

E. The Director may apply by affidavit or declaration in the form allowed under RCW 5.50.050 as amended to the Hearing Examiner for the issuance of subpoenas requiring a network company to produce the records required by Section 8.40.080 or 8.40.110, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 8.40.080 or 8.40.110, or any other document relevant to the issue of whether any app-based worker or group of app-based workers received the information or other benefits required by this Chapter 8.40, and/or to whether a network company has violated any provision of this Chapter 8.40. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has occurred; a complaint has been filed with the Agency; or circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.40, the workforce is unlikely to volunteer information regarding such violations, or the Agency has gathered preliminary information indicating that a violation may have occurred.

F. A network company that fails to comply with the terms of any subpoena issued under subsection 8.40.150.E in an investigation by the Agency under this Chapter 8.40 before the issuance of a Director’s Order issued pursuant to subsection 8.40.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 8.40.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 8.40.180.

8.40.160 Findings of fact and determination

A. Except when there is an agreed-upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this Chapter 8.40 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 8.40, the Director shall issue a “Determination of No Violation” with notice of an app-based worker’s or other person’s right to appeal the decision, pursuant to Director’s Rules.

C. If the Director determines that a violation of this Chapter 8.40 has occurred, the Director shall issue a “Director’s Order” that shall include a notice of violation identifying the violation or violations.

1. The Director’s Order shall state with specificity the amounts due under this Chapter 8.40 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 8.40.170.

2. The Director’s Order may specify that civil penalties and fines due to the Agency can be

mitigated for respondent's timely payment of remedy due to an aggrieved party pursuant to subsection 8.40.170.A.4.

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

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.40, including but not limited to monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision pursuant to Section 8.40.180.

8.40.167 Navigation program

A. The Agency may establish a navigation program that provides intake, information, outreach, and/or education relating to the provisions and procedures of this Chapter 8.40. The range of information provided by the navigation program may include, but is not limited to:

1. General court information, such as:

a. Information on court procedures for filing civil actions in a court of competent jurisdiction; and

b. Information on obtaining translation and interpretation services;

2. General arbitration information, such as:

a. Information on arbitration procedures for filing arbitration claims; and

b. Information on obtaining translation and interpretation services;

3. A list of organizations that can be used to identify attorneys;

4. Organizations providing outreach and education, and/or legal assistance, to app-based workers;

5. Information about classifying workers as employees or independent contractors; and

6. As determined by the Director, additional information related to the provisions of this Chapter 8.40, other workplace protections, or other resources for resolving workplace issues.

B. The navigation program shall not include legal advice from the Agency. However, if the Agency provides information to an app-based worker about a community organization through the navigation program, the community organization is not precluded from providing legal advice.

8.40.170 Remedies

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 8.40 is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 8.40.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

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

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

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

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

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

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

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 8.40.170 for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 8.40.170.A.4, the Director may consider:

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

b. The nature and persistence of the violations;

c. The extent of the respondent's culpability;

d. The substantive or technical nature of the violations;

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

f. The circumstances of each situation;

g. The amount of penalties in similar situations; and

h. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 8.40.

B. A respondent found to be in violation of this Chapter 8.40 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party for the period of deactivation under the terms of this Chapter 8.40, and other equitable relief.

1. If the precise amount of unpaid compensation cannot be determined due to a respondent's

failure to produce records or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may:

a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or

b. Assess a daily amount for unpaid compensation plus interest in favor of the aggrieved party in a minimum amount of at least the equivalent of payment for eight hours of work at the “hourly minimum wage” rate for Schedule 1 employers under Chapter 14.19.

2. For a first violation of this Chapter 8.40, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

3. For subsequent violations of this Chapter 8.40, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

4. For purposes of establishing a first and subsequent violation for this Section 8.40.170, the violation must have occurred within ten years of the settlement agreement or Director’s Order.

C. A respondent found to be in violation of this Chapter 8.40 for retaliation under Section 8.40.120 shall be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 8.40, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$6,230.88.

D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.40 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 8.40, the Director may assess a civil penalty of up to \$622.85 per aggrieved party.

2. For a second violation of this Chapter 8.40, the Director shall assess a civil penalty of up to \$1,245.71 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 8.40, the Director shall assess a civil penalty of up to \$6,230.88 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this subsection 8.40.170.D, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director’s Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines for a violation of this Chapter 8.40 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to comply with deactivation requirements under Section 8.40.050	\$622.85 per aggrieved party
Failure to provide app-based worker with an internal deactivation challenge procedure under Section 8.40.060	\$622.85 per aggrieved party
Failure to provide app-based worker with a notice of deactivation under Section 8.40.070	\$622.85 per aggrieved party
Failure to provide app-based worker with records relied upon by the network company to substantiate the deactivation under Section 8.40.080	\$622.85 per aggrieved party
Failure to provide certified statement attesting to records provided to substantiate deactivation under Section 8.40.080	\$622.85 per aggrieved party
Failure to provide written notice of rights under Section 8.40.100	\$622.85 per aggrieved party
Failure to retain network company records for three years under subsections 8.40.110.B	\$622.85 per missing record
Failure to provide notice of investigation to app-based workers under subsection 8.40.150.B.2	\$622.85 per aggrieved party

Failure to post or distribute public notice of failure to comply with final order under subsection 8.40.210.A.1	\$622.85 per aggrieved party
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The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$6,230.88 per aggrieved party.

F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 8.40 shall be subject to a civil penalty of not less than \$1,245.71 and not more than \$6,230.88.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 8.40, including but not limited to reasonable investigation costs and attorneys' fees. The Director may issue rules on the amounts and contributing factors for assessing reasonable investigation costs and is strongly encouraged to assess such costs in favor of the City to support the Agency's implementation of this Chapter 8.40.

H. A respondent that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the subject of a final order two times or more within a five-year period, the network company shall not be allowed to bid on any City contract for two years. This subsection 8.40.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter; provided, that nothing in this subsection 8.40.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all respondents subject to debarment under this subsection 8.40.170.H.

8.40.180 Appeal period and failure to respond

A. An app-based worker or other person who claims an injury as a result of an alleged violation of this

Chapter 8.40 may appeal the Determination of No Violation, pursuant to Director's Rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 8.40.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

8.40.190 Appeal procedure and failure to appear

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

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

8.40.200 Appeal from Hearing Examiner order

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

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 8.40.200.

8.40.210 Failure to comply with final order

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

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

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

3. The Director may refer the matter to the City Attorney for the filing of a civil action in a 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 8.40.190.

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 network company or person until such time as the network company complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 8.40.210.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 8.40 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 before 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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 network company.

8.40.220 Debt owed The City of Seattle

A. All monetary amounts due under the Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies; provided, that amounts collected by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 8.40.180.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 as amended containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 8.40.180.B,

and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 8.40.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 as amended containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 8.40.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 8.40.220.B and 8.40.220.C, the Seattle Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 8.40.

8.40.230 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.40 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person; liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with Section 8.40.170. 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 as amended.

B. For purposes of this Section 8.40.230, “person” includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered an injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.40.230, two or more app-based workers are similarly situated if they:

1. Performed services in Seattle for the same network company or network companies, whether concurrently or otherwise, at some point during the applicable statute of limitations period;
2. Allege one or more violations that raise similar questions as to liability; and
3. Seek similar forms of relief.

D. For purposes of subsection 8.40.230.C, app-based workers shall not be considered dissimilar solely because:

1. The app-based workers’ claims seek damages that differ in amount; or
2. The job titles of or other means of classifying the app-based workers differ in ways that are unrelated to their claims.

E. An order issued by a court may include a requirement for a network company to submit a compliance report to the court and/or to the Agency.

8.40.233 Waiver

Any waiver by an individual of any provisions of this Chapter 8.40 shall be deemed contrary to public policy and shall be void and unenforceable.

8.40.235 Encouragement of more generous policies

A. Nothing in this Chapter 8.40 shall be construed to discourage or prohibit a network company from the adoption or retention of minimum standards for deactivation policies for app-based workers that are more

generous than the minimum standards required by this Chapter 8.40.

B. Nothing in this Chapter 8.40 shall be construed as diminishing the obligation of the network company to comply with any contract or other agreement providing more generous minimum standards for deactivation policies for app-based workers than required by this Chapter 8.40.

8.40.240 Other legal requirements-Effect on other laws

A. The provisions of this Chapter 8.40:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;
2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum deactivation requirements, or other protections to app-based workers; and
3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.40 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.40 affecting such person. Nothing in this Section 8.40.240 shall be construed as restricting the right of an app-based worker or other person to pursue any other remedies at law or equity for violation of the app-based worker's rights.

C. A network company's failure to comply with the provisions of this Chapter 8.40 shall not render any contract between the network company and an app-based worker void or voidable.

D. No provision of this Chapter 8.40 shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.

8.40.250 Severability

The provisions of this Chapter 8.40 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.40, or the application thereof to any

network company, app-based worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 8.40, or the validity of its application to other persons or circumstances.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126788, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

Basis for Case	Fee in dollars
* * *	
All-Gender Restroom Notice of Violation (Section 14.07.040)	No fee
App-Based Worker Deactivation Rights Ordinance (Chapter 8.40)	No fee
App-Based Worker Minimum Payment Ordinance (Chapter 8.37)	No fee
* * *	

* * *

Section 4. The City Council requests that the Office of Labor Standards provide a report back to Council on the implementation of this ordinance by no later than September 1, 2026.

Section 5. Section 2 of this ordinance shall take effect on January 1, 2025.

Section 6. 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 _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

Anne Frantilla, Interim City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact:	CBO Contact:
LEG	Jasmine Marwaha/635-8941	N/A

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

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to app-based worker labor standards; establishing labor standards on deactivation protections for app-based workers working in Seattle; amending Section 3.02.125 of the Seattle Municipal Code; and adding a new Chapter 8.40 to the Seattle Municipal Code.

Summary and Background of the Legislation: App-based workers perform offers facilitated or presented by network companies to provide a variety of valued services for the community (e.g., on-demand food delivery, pre-scheduled tasks). Network companies typically use algorithms to manage worker access to their platform, designed to maximize efficiency and customer satisfaction. There has been extensive documentation in social science literature and media reports about the negative impacts of algorithmic management on app-based workers, and what the Federal Trade Commission recently called “an invisible, inscrutable boss” that dictates core aspects of work.

Workers report being deactivated from the app-based platform, and thereby cut off from their income source, for reasons such as: rejecting too many orders, delays outside of their control, changing and unpredictable performance expectations, and many times for unknown reasons. Many workers report a lack of substantive response from companies when they try to challenge their deactivation. Workers further report that they are unable to meaningfully challenge their deactivation because the network company has control of the records and information related to the deactivation.

This ordinance would aim to create more stability and job security for app-based workers by requiring network companies to base deactivations on reasonable policies and provide app-based workers notice, records and human review of all deactivations. These requirements would be implemented by the Office of Labor Standards (OLS).

This ordinance would require network companies to give fair notice of their deactivation policy – the reasons that could get a worker deactivated. Those reasons must be reasonably related to the network company’s safe and efficient operations.

This ordinance would also require deactivations to be based on an investigation, that demonstrates by a preponderance of evidence that the app-based worker violated the company’s deactivation policy. The deactivation must also represent consistent application of the policy; it must be proportionate to the offense; and it cannot intend to or result in discrimination.

The ordinance would require all deactivated app-based workers to receive a notice of deactivation (NOD), which includes the records relied upon to substantiate the deactivation, and a description of the network company’s internal process for a worker to challenge the deactivation, among other requirements. This NOD must be provided to the worker 14 days in advance of a deactivation, unless the network company alleges that the worker has engaged in egregious misconduct.

If there is an allegation of egregious misconduct, the worker is entitled to receive the NOD on the date of deactivation, and the network company would have up to 10 days after the NOD is issued to complete its investigation. This timeline for investigation may be extended if there are extraordinary circumstances beyond the network company’s control delaying the investigation.

Under the proposed ordinance, workers would have a right to challenge their deactivation through an internal procedure, and can do so at any point up to 90 days after receiving the NOD. The network company would have 14 days to respond to the worker’s challenge, with a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The worker would then be able to file a complaint with OLS or pursue their private right of action after that initial response, or after 14 days, whichever is earlier.

The network company would be required to provide app-based workers with the records relied upon to substantiate a deactivation. Those records must be certified from an individual at the network company that they are true and accurate records. If new evidence comes to the network company’s possession after the NOD, they must provide those records to the worker.

The ordinance also restricts the role of the Office of Labor Standards (OLS) to enforcing the facial policies and procedural requirements, and does not require OLS to review individual deactivations to determine whether they were substantiated. These procedural provisions are meant to address the information asymmetry and power imbalance that would otherwise exist if a worker were to challenge their deactivation in arbitration proceedings.

All network companies with 250 or more app-based workers would be covered under the ordinance. App-based worker coverage would be limited to workers who have had at least 10 percent of their offers in the past 180 days involve performing services in Seattle. After an app-based worker performs one offer in Seattle, they would have the right to receive a notice of rights from the company that includes a system for workers to understand their eligibility to challenge a deactivation under this ordinance, namely when they meet that 10 percent threshold in the previous 180 days.

2. CAPITAL IMPROVEMENT PROGRAM

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

If yes, please fill out the table below and attach a new (if creating a project) or marked-up (if amending) CIP Page to the Council Bill. Please include the spending plan as part of the attached CIP Page. If no, please delete the table.

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget?

Yes No

If there are no changes to appropriations, revenues, or positions, please delete the table below.

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

Yes. There would be financial implications for OLS (e.g., cost of rulemaking, outreach, and enforcement), and to a lesser extent for the City Attorney Office (e.g., cost of supporting OLS enforcement), and Hearing Examiner (e.g., cost of conducting hearings on appeals from respondents and aggrieved parties).

OLS estimates that it would require \$1,000,000 per year for ongoing implementation costs, including staffing, outreach and communication, community partnerships, and translations. In addition, OLS estimates it would need \$200,000 in one-time funds to support initial implementation. Central Staff will continue to gather and analyze information from OLS to better understand financial implications.

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

No.

4. OTHER IMPLICATIONS

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

Yes. OLS would implement and enforce this legislation. There would be an undetermined number of legal referrals to the City Attorney. The Hearing Examiner would conduct hearings on appeals from respondents and aggrieved parties.

b. Is a public hearing required for this legislation?

No.

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

No.

d. Does this legislation affect a piece of property?

No.

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

The Race and Social Justice Initiative works toward eliminating racial disparities and achieving racial equity in Seattle. Black, Indigenous, and other People of Color face unique barriers to economic insecurity and disproportionately work in low-wage jobs with insecure

working conditions. Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force.

To reach workers with limited English proficiency, network companies would provide a notice of rights in English and in the worker’s primary language. OLS may create and distribute model notices of rights in English and other languages.

f. Climate Change Implications

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

N/A

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

N/A

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

OLS posts information on outreach and enforcement efforts on their [on-line, interactive dashboard](#). The same metrics publicized for other labor standards could apply for this legislation (e.g., number of inquiries, number of investigations, amounts of remedies). OLS contracts with community and business organizations to conduct measurable outreach efforts on worker rights and hiring entity/employer responsibilities.

Summary Attachments (if any):

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to app-based worker labor standards; establishing labor standards on deactivation protections for app-based workers working in Seattle; amending Section 3.02.125 of the Seattle Municipal Code; and adding a new Chapter 8.40 to the Seattle Municipal Code.

..body

WHEREAS, the Washington Constitution provides in Article XI, Section 11 that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council (“Council”) finds and declares that:

A. App-based work is a growing source of income for workers in Seattle and across the country.

B. In the exercise of The City of Seattle’s police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare.

C. This ordinance protects and promotes public health, safety, and welfare by establishing protections against unwarranted deactivations for app-based workers.

D. Many Seattle workers, including app-based workers, cannot fully participate in the community’s dynamic civic life or pursue its myriad educational, cultural, and recreational opportunities because they struggle to meet their households’ most basic needs, suffering job insecurity and economic instability.

1 E. Minimum labor standards benefit employers and hiring entities by improving worker
2 performance, reducing worker turnover, and thereby improving productivity and the quality of
3 the services provided by workers, including app-based workers.

4 F. Network companies typically manage large pools of app-based workers by relying on
5 algorithmic management systems, which allow app-based workers to be “assigned, optimized,
6 and evaluated through algorithms and tracked data.”¹

7 G. While algorithmic management may bring certain benefits to network companies,
8 these innovations also generate significant challenges for app-based workers, including
9 information asymmetries and extreme power imbalances between workers and network
10 companies.²

11 H. App-based workers often do not have the information they need to know about how
12 they will be evaluated. Algorithms that dictate core aspects of app-based workers’ relationship
13 with a network company can change unexpectedly, leading to arbitrary evaluations and
14 unwarranted deactivations.³

15 I. App-based workers are subject to network company policies that unilaterally deactivate
16 workers for a variety of reasons without consistent access to a fair process for such deactivations,
17 nor do the workers have access to responsive network company personnel with the power to
18 correct unwarranted deactivations by in-person meetings or telephone.

¹ Lee, Min Kyung, Kusbit, Daniel; Metsky, Evan; and Dabbish, Laura. “Working with Machines: The Impact of Algorithmic and Data-Driven Management on Human Workers.” *Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems*, April 18, 2015, pp. 1603-1612, <https://doi.org/10.1145/2702123.2702548>.

² Mateescu, Alexandra, and Nguyen, Aiha. “Explainer: Algorithmic Management in the Workplace.” *Data & Society*, February 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf.

³ FTC Policy Statement on Enforcement Related to Gig Work, September 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf.

1 J. App-based workers face potential deactivation for reasons including but not limited to:
2 rejecting too many orders; being unavailable on certain days or times; cancelling offers with
3 cause; being delayed in fulfilling orders; receiving low ratings from consumers; or algorithmic
4 errors.

5 K. Network companies do not consistently apply clear performance expectations or
6 policies for deactivations, and often deactivate app-based workers without explanation or
7 warning.⁴

8 L. App-based workers report being deactivated for low customer ratings, despite the fact
9 that extensive social science research finds that consumer-sourced rating systems are highly
10 likely to be influenced by bias on the basis of factors such as race or ethnicity. App-based
11 workers also report deactivation based on customer harassment and false reports from
12 customers.⁵

13 M. Many network companies do not have processes to substantively reconsider a
14 deactivation based on a case-by-case human review, and have little incentive to put those
15 processes in place.⁶

16 N. A review of network company hiring policies shows that most network companies
17 perform recurring background checks on app-based workers as a condition of continued service.

⁴ Figueroa, Maria, Gualpa, Ligia; Wolf, Andrew; Tsitouras, Glendy; and Hernández; Hildalyn Colón. *Essential but Unprotected: App-based Food Couriers in New York City*, 2021, pp. 31-32, available at: <https://search.issueab.org/resource/essential-but-unprotected-app-basedfood-couriers-in-new-york-city.html>.

⁵ National Employment Law Project, *App-Based Workers Speak: Studies Reveal Anxiety, Frustration, and a Desire for Good Jobs*, October 2021, p. 12, and footnote 23 on p. 18, <https://s27147.pcdn.co/wp-content/uploads/App-Based-Workers-Speak-Oct-2021-1.pdf>. See also Figueroa et al., *Essential but Unprotected: App-based Food Couriers in New York City*, pp. 31-32.

⁶ See, e.g., Soper, Spencer. “Fired by Bot at Amazon: ‘It’s You Against the Machine’.” *Bloomberg*, June 28, 2021. <https://www.bloomberg.com/news/features/2021-06-28/fired-by-bot-amazon-turns-to-machine-managers-and-workers-are-losing-out>. See also O’Brien, Sara Ashley. “Instacart shoppers demand answers over alleged wrongfully deactivated accounts.” *CNN Business*, April 30, 2021. <https://www.cnn.com/2021/04/30/tech/instacart-deactivations/index.html>.

1 Network companies do not provide clear guidance on background check criteria, methods for
2 evaluating the relationship of criminal history record information to the performance of app-
3 based service, procedures for correcting background check information, or procedures for
4 appealing deactivations based on background check information.

5 O. Unclear and/or inconsistently applied background check policies exacerbate the
6 difficulties app-based workers with criminal history records face when trying to secure or
7 maintain work opportunities.

8 P. The high prevalence of background checks with errors, mismatched identities, and
9 incomplete information, due to scant oversight of background check information provided to the
10 private market, compounds these difficulties.⁷

11 Q. Studies estimate that 50 to 80 percent of FBI criminal records are inaccurate. A
12 common problem is that law enforcement agencies fail to update arrest or charge records with
13 information about the outcome of a case. About a third of felony arrests never lead to a
14 conviction, another third lead to conviction of a different (usually lesser) offense, and other
15 convictions are overturned on appeal, expunged, or sealed.⁸

16 R. The flexibility to determine hours of availability and which offers to accept, reject, or
17 cancel with cause allows workers to make informed decisions on how and when to earn their
18 income without fear of deactivation.

⁷ Lageson, Sarah Esther. “How Criminal Background Checks Lead to Discrimination Against Millions of Americans.” *The Washington Post*, July 10, 2020, <https://www.washingtonpost.com/opinions/2020/07/10/personal-data-industry-is-complicit-bad-policing-it-must-be-held-accountable>.

⁸ Wells, Martin; Cornwell, Erin York; Barrington, Linda; Bigler, Esta; Enayati, Hassan; and Vilhuber, Lars. “Criminal Record Inaccuracies and the Impact of a Record Education Intervention on Employment-Related Outcomes.” *U.S. Department of Labor*, January 2, 2020, https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/LRE_WellsFinalProjectReport_December2020.pdf.

1 S. App-based workers who perform services in Seattle are not typically limited to work in
2 the geographic boundaries of Seattle, and often accept offers to perform services in other
3 jurisdictions.

4 T. Access to the records substantiating a network company’s decision to deactivate an
5 app-based worker, and access to records of the services performed in Seattle by that app-based
6 worker, are critical for an app-based worker to meaningfully challenge their deactivation and
7 attempt to get reinstated as soon as possible.

8 U. Establishing a reasonable standard for the deactivations of app-based workers as well
9 as the ability to challenge unwarranted deactivations will help ensure that thousands of app-
10 based workers who provide vital services in Seattle will be able to enjoy a measure of job
11 security.

12 V. App-based workers who have protection against unwarranted deactivation will be
13 more likely to remain in their positions over time. Such experienced app-based workers will
14 improve the safety and reliability of the app-based services provided to Seattle customers.

15 W. Minimum labor and compensation standards, including the right to challenge
16 unwarranted deactivations, promote the general welfare, health, and prosperity of Seattle by
17 ensuring that app-based workers have stable incomes and can better support and care for their
18 families and fully participate in Seattle’s civic, cultural, and economic life.

19 X. The regulation of app-based workers better ensures that such workers can perform
20 their services in a safe and reliable manner and thereby promotes the welfare of the people and is
21 thus a fundamental governmental function.

1 Section 2. A new Chapter 8.40 is added to the Seattle Municipal Code as follows:

2 **Chapter 8.40 APP-BASED WORKER DEACTIVATION RIGHTS**

3 **8.40.010 Short title**

4 This Chapter 8.40 shall constitute the “App-Based Worker Deactivation Rights Ordinance” and
5 may be cited as such.

6 **8.40.020 Definitions**

7 For purposes of this Chapter 8.40:

8 “Accept” means an initial communication from an app-based worker to a network
9 company that the app-based worker intends to perform services in furtherance of an offer,
10 including but not limited to indicating acceptance through the worker platform.

11 “Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily
12 or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable
13 work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair
14 immigration-related practices; filing a false report with a government agency; or discriminating
15 against any person for any reason prohibited by Section 8.40.120. “Adverse action” for an app-
16 based worker may involve any aspect of the app-based worker’s work, including compensation,
17 work hours, volume, and frequency of offers made available, desirability and compensation rates
18 of offers made available, responsibilities, or other material change in the terms and conditions of
19 work or in the ability of an app-based worker to perform work. “Adverse action” also includes
20 any action by the network company or a person acting on the network company’s behalf that
21 would dissuade a reasonable person from exercising any right afforded by this Chapter 8.40.

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

1 “Aggrieved party” means an app-based worker or other person who suffers tangible or
2 intangible harm due to a network company’s or other person’s violation of this Chapter 8.40.

3 “App-based service” means any service in an offer facilitated or presented to an app-
4 based worker by a network company or participation by an app-based worker in any training
5 program required by a network company.

6 “App-based worker” means a person who has entered into an agreement with a network
7 company governing the terms and conditions of use of the network company’s worker platform
8 or a person affiliated with and accepting offers to perform services for compensation via a
9 network company’s worker platform. For purposes of this Chapter 8.40, at any time, but not
10 limited to, when an app-based worker is logged into the network company’s worker platform, the
11 worker is considered an app-based worker.

12 “Application dispatch” means technology that allows customers to directly request
13 dispatch of app-based workers for provision of services and/or allows app-based workers or
14 network companies to accept offers to perform services for compensation and payments for
15 services via the internet using interfaces, including but not limited to website, smartphone, and
16 tablet applications.

17 “Background check” means a request or attempt to obtain, directly or through an agent,
18 a person’s conviction record or criminal history record information from the Washington State
19 Patrol or any other source that compiles and maintains such records or information.

20 “Cancellation with cause” has the same meaning as defined in Section 8.37.020.

21 “City” means The City of Seattle.

1 “Compensation” means the total amount of payment owed to an app-based worker by
2 reason of performing work facilitated or presented by the network company, including but not
3 limited to network company payments, bonuses, incentives, and tips earned from customers.

4 “Consumer report” has the same meaning as defined in RCW 19.182.010 as amended.

5 “Conviction record” and “criminal history record information” are meant to be
6 consistent with chapter 10.97 RCW as amended, and mean information regarding a final
7 criminal adjudication or other criminal disposition adverse to the subject, including a verdict of
8 guilty, a finding of guilty, or a plea of guilty or nolo contendere. A criminal conviction record
9 does not include any prior conviction that has been the subject of an expungement, vacation of
10 conviction, sealing of the court file, pardon, annulment, certificate of rehabilitation, or other
11 equivalent procedure based on a finding of the rehabilitation of the person convicted, or a prior
12 conviction that has been the subject of a pardon, annulment, or other equivalent procedure
13 based on a finding of innocence. It does include convictions for offenses for which the
14 defendant received a deferred or suspended sentence, unless the adverse disposition has been
15 vacated or expunged.

16 “Criminal history record information” is meant to be consistent with chapter 10.97 RCW
17 as amended.

18 “Customer” means a paying customer and/or recipient of an online order.

19 “Deactivation” means the blocking of an app-based worker’s access to the worker
20 platform, changing an app-based worker’s status from eligible to accept offers to perform
21 services to ineligible, or other material restriction in access to the worker platform that is effected
22 by a network company. [Deactivation” does not include temporary suspensions lasting less than](#)
23 [48 hours when the worker platform is unavailable to an app-based worker due to reasons](#)

1 [unrelated to the action or behavior of the app-based worker and that are clearly communicated to](#)
2 [the app-based worker at the time of the temporary suspension. Such reasons include but are not](#)
3 [limited to: technology, software, or network outages; account access or security issues; routine](#)
4 [maintenance; and inclement weather endangering the safety of app-based workers in performing](#)
5 [services in Seattle.](#)

6 “Director” means the Director of the Office of Labor Standards or the Director’s
7 designee.

8 “Discrimination,” “discriminate,” and/or “discriminatory act” have the same meaning as
9 defined in Section 14.04.030.

10 “Driver record” means an abstract of a person’s driving record as described in RCW
11 46.52.130 as amended.

12 “Egregious misconduct” means an action or behavior by an individual app-based worker
13 that: (1) endangers the physical safety of the customer, [or a third person, the network company,](#)
14 [or an animal;](#) or (2) intentionally causes economic harm to the customer, a third person, or the
15 network company; [or \(3\) is threatening, harassing, or abusive to the customer, a third party, or](#)
16 [the network company.](#) “Egregious misconduct” includes [but is not limited to](#) conduct that occurs
17 outside of an app-based worker’s provision of app-based services [or use of the network](#)
18 [company’s worker platform](#) if the network company can prove [by a preponderance of the](#)
19 [evidence](#) ~~by clear and convincing evidence~~ that the conduct directly relates to the app-based
20 worker’s fitness to provide app-based services [or to use the network company’s worker platform.](#)

21 [1.](#) “Egregious misconduct” includes but is not limited to the following conduct in
22 connection with an app-based worker’s provision of app-based services [or use of the network](#)
23 [company’s worker platform](#): assault, sexual assault, sexual harassment, communicating with a

1 minor for immoral purposes, sexual conduct as defined in RCW 7.105.010 as amended, unlawful
2 harassment as defined in RCW 7.105.010 as amended, [hate crimes, racial slurs](#), unlawful
3 imprisonment as defined in RCW 9A.40.040 as amended, [kidnapping, unlawful possession of a](#)
4 [firearm](#), solicitation of any sexual act, [registration as a sex offender, stalking](#), theft, fraud,
5 robbery, burglary, [money laundering, animal cruelty, cybercrimes as defined in chapter 9A.90](#)
6 [RCW as amended](#), prostitution, [driving-related crimes pursuant to RCW 46.61.500 through](#)
7 [46.61.540 as amended, reckless driving, \(\(or\)\) driving under the influence of alcohol or](#)
8 [drugs,\(\(;\)\) and](#) failing to maintain a valid state driver’s license, [and other conduct that would](#)
9 [constitute a Class A felony offense under Title 9 or 9A RCW as amended](#).

10 2. Egregious misconduct shall not include conduct related to non-criminal moving
11 violations as defined by WAC 308-104-160, as amended, or traffic collisions unless the app-
12 based worker has accumulated more than three non-criminal moving violations or at-fault
13 collisions in the previous three years.

14 3. The Director may issue rules further defining what constitutes economic harm
15 or egregious misconduct.

16 “Extraordinary circumstances” means circumstances beyond the network company’s
17 control that will materially influence the determination of whether a deactivation was warranted.
18 Extraordinary circumstances may include, but are not limited to, a pending criminal
19 investigation.

20 “Franchise” has the same meaning as defined in RCW 19.100.010 as amended.

21 “Front pay” means the compensation an app-based worker would earn or would have
22 earned if reinstated to their former position.

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

4 “Incentive” means a sum of money paid to an app-based worker in addition to the
5 guaranteed minimum network company payment for an offer, upon completion of specific tasks
6 presented by the network companies, including but not limited to completing performance of a
7 certain number of offers, completing performance of a certain number of consecutive offers,
8 completing performance of an offer subject to a price multiplier or variable pricing policy,
9 making oneself available to accept offers in a particular geographic location during a specified
10 period of time, or recruiting new app-based workers.

11 “Network company” means an organization, whether a corporation, partnership, sole
12 proprietor, or other form, operating in Seattle, that uses an online-enabled application or
13 platform, such as an application dispatch system, to connect customers with app-based workers,
14 present offers to app-based workers through a worker platform, and/or facilitate the provision of
15 services for compensation by app-based workers.

16 1. The term “network company” includes any such entity or person acting directly
17 or indirectly in the interest of a network company in relation to the app-based worker.

18 2. The term “network company” excludes:

19 a. An entity offering services that enable individuals to schedule
20 appointments with and/or process payments to users, when the entity neither engages in
21 additional intermediation of the relationships between parties to such transactions nor engages in
22 any oversight of service provision;

1 b. An entity operating digital advertising and/or messaging platforms,
2 when the entity neither engages in intermediation of the payments or relationships between
3 parties to resulting transactions nor engages in any oversight of service provision;

4 c. An entity that meets the definition of “transportation network company”
5 as defined by RCW 46.04.652 as amended; or

6 d. An entity that meets the definition of “for-hire vehicle company” or
7 “taxicab association” as defined in Section 6.310.110.

8 A company that meets the definition of network company in this Section 8.40.020 and
9 does not fall within any of the exclusions contained in this Section 8.40.020 is subject to this
10 Chapter 8.40. Network companies include marketplace network companies, as defined by
11 Section 8.37.020.

12 “Offer” means one or more online orders presented to an app-based worker as one
13 opportunity to perform services for compensation that the app-based worker may accept or
14 reject.

15 1. An opportunity to perform services for compensation includes but is not limited
16 to an opportunity described via a worker platform as a shift, a period of time to be spent engaged
17 in service provision, a continuous period of time in which the app-based worker must make
18 themselves available to perform services, or any other continuous period of time when the worker
19 is not completely relieved of the duty to perform the service(s), and such a period of time shall
20 be considered as one offer.

21 2. The term “offer” includes pre-scheduled offers and on-demand offers, as
22 defined in Section 8.37.020.

1 “Online order” means an order for services that is placed through an online-enabled
2 application or platform, such as an application dispatch system, and that is facilitated by a
3 network company or presented by a network company for its own benefit. The Director may
4 issue rules further defining the definition of “online order” and the types of transactions excluded
5 from this definition. The term “online order” does not include the following transactions:

- 6 1. Sale or rental of products or real estate;
- 7 2. Payment in exchange for a service subject to professional licensure that has been listed
8 by the Director pursuant to Section 8.37.020;
- 9 3. Payment in exchange for services wholly provided digitally;
- 10 4. Payment in exchange for creative services or works;
- 11 5. Transportation network company (TNC) dispatched trips. For purposes of this Section
12 8.40.020, “TNC dispatched trips” means the provision of transportation by a driver for a
13 passenger through the use of a transportation network company’s application dispatch system;
- 14 and
- 15 6. Transportation provided by taxicabs or for-hire vehicles, as defined in Chapter 6.310.

16 “Operating in Seattle” means, with respect to a network company, facilitating or
17 presenting offers to provide services for compensation using an online-enabled application or
18 platform, such as an application dispatch system, to any app-based worker, where such services
19 are performed in Seattle.

20 “Paying customer” means a person or entity placing an online order via a network
21 company’s online-enabled application or platform.

22 “Perform services in Seattle” means activities, conducted by an app-based worker in
23 furtherance of an offer, that occur in whole or in part within Seattle.

1 1. The term “perform services in Seattle” includes any time spent on a
2 commercial stop in Seattle that is related to the provision of delivery or other services associated
3 with an offer.

4 2. The term “perform services in Seattle” does not include stopping for refueling,
5 stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of
6 travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle
7 with no commercial stops in Seattle.

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

12 “Respondent” means the network company or any person who is alleged or found to have
13 committed a violation of this Chapter 8.40.

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

1 “Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in
2 recognition of some service performed for the customer by the app-based worker receiving the
3 tip.

4 “Traffic infraction” means a violation of state law or administrative regulation, or local
5 law, ordinance, regulation, or resolution, relating to traffic including parking, standing, stopping,
6 and pedestrian offenses, which is not classified as a criminal offense, consistent with RCW
7 46.63.020 as amended. A “traffic infraction” includes any offense committed in another
8 jurisdiction that includes the elements of any offense designated as a traffic infraction consistent
9 with RCW 46.63.020 as amended.

10 “Unwarranted deactivation” means a deactivation that does not comply with Section
11 8.40.050.

12 “Worker platform” means the worker-facing application dispatch system software or any
13 online-enabled application service, website, or system, used by an app-based worker, that
14 enables the arrangement of services for compensation.

15 “Written” or “in writing” means a printed or printable communication in physical or
16 electronic format including a communication that is transmitted through email, text message, or a
17 computer system, or is otherwise sent or maintained electronically, including via the worker
18 platform.

19 **8.40.030 App-based worker coverage**

20 A. For the purpose of this Chapter 8.40, except for Section 8.40.100, covered app-based
21 workers are limited to those for whom, during the previous 180 days, at least ten percent of their
22 completed offers, or offers cancelled with cause, involved performing services in Seattle for a
23 covered network company.

1 B. For the purpose of Section 8.40.100, an app-based worker is covered by Section
2 8.40.100 if the app-based worker performs services in Seattle facilitated or presented by a
3 network company covered by this Chapter 8.40.

4 C. An app-based worker who is a covered employee under Chapter 14.20 for a covered
5 network company, or a covered employee under Chapter 14.20 for a customer of an online order,
6 is not a covered app-based worker under this Chapter 8.40.

7 **8.40.040 Network company coverage**

8 A. For the purposes of this Chapter 8.40, covered network companies are limited to those
9 that facilitate work performed by 250 or more app-based workers worldwide regardless of where
10 those workers perform work, including but not limited to chains, integrated enterprises, or
11 franchises associated with a franchise or network of franchises that facilitate work performed by
12 250 or more app-based workers worldwide in aggregate.

13 B. To determine the number of app-based workers performing work for the current
14 calendar year:

15 1. The calculation is based upon the average number per calendar week of app-
16 based workers who worked for compensation during the preceding calendar year for any and all
17 weeks during which at least one app-based worker worked for compensation.

18 2. For network companies that did not have any app-based workers during the
19 preceding calendar year, the number of app-based workers counted for the current calendar year
20 is calculated based upon the average number per calendar week of app-based workers who
21 worked for compensation during the first 90 calendar days of the current year in which the
22 network company engaged in business.

1 3. If a network company quits, sells out, exchanges, or disposes the network
2 company's business, or the network company's business is otherwise acquired by a successor,
3 the number of app-based workers hired for the current calendar year for the successor network
4 company is calculated based upon the average number per calendar week of app-based workers
5 who worked for compensation during the first 90 calendar days of the current year in which the
6 successor network company engaged in business.

7 4. All app-based workers who worked for compensation shall be counted,
8 including but not limited to:

- 9 a. App-based workers who are not covered by this Chapter 8.40;
- 10 b. App-based workers who worked in Seattle; and
- 11 c. App-based workers who worked outside Seattle.

12 C. Separate entities that form an integrated enterprise shall be considered a single
13 network company under this Chapter 8.40. Separate entities will be considered an integrated
14 enterprise and a single network company under this Chapter 8.40 where a separate entity controls
15 the operation of another entity. The factors to consider in making this assessment include but are
16 not limited to:

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

1 **8.40.050 Deactivation requirements**

2 A. A network company shall adopt the following measures prior to deactivating an app-
3 based worker, except as provided in subsection 8.40.050.C:

4 1. Fair notice of deactivation policy. A network company must inform the app-
5 based worker in writing of the network company's deactivation policy, defining what constitutes
6 a violation that may result in deactivation. The network company's written deactivation policy
7 must be specific enough for an app-based worker to understand what constitutes a violation and
8 how to avoid violating the policy. The deactivation policy must be available to the app-based
9 worker in English and any language that the network company knows or has reason to know is
10 the primary language of the app-based worker. The deactivation policy must be accessible to the
11 app-based worker at least three years after deactivation. The Director may issue rules governing
12 the form and description of the deactivation policy, the manner of its distribution, and required
13 languages for its translation.

14 2. Reasonable policy. The policy that may lead to a deactivation must be
15 reasonably related to the network company's safe and efficient operations. Examples of policies
16 that are not reasonably related to the network company's safe and efficient operations include,
17 but are not limited to:

18 a. Any rule or policy that would result in a deactivation based on an app-
19 based worker's availability to work or number of hours worked, consistent with subsection
20 8.37.080.A.1;

21 b. Any policy that would result in a deactivation based on an app-based
22 worker's acceptance or rejection of any individual offer, any types of offers, or any number or
23 proportion of offers, consistent with subsection 8.37.080.A.2;

1 c. Any policy that would result in a deactivation based on an app-based
2 worker's cancellation of an offer with cause, consistent with subsection 8.37.080.C;

3 d. Any policy that would result in a deactivation based on an app-based
4 worker contacting the network company;

5 e. Any policy that would result in a deactivation based solely on a
6 quantitative metric derived from aggregate customer ratings of an app-based worker's
7 performance;

8 f. Any policy that would result in a deactivation based on statements by an
9 app-based worker regarding compensation and/or working conditions made to customers, other
10 app-based workers, network companies, the media, public officials, and/or the public;

11 g. Any policy that would result in a deactivation based on an app-based
12 worker asserting their legal rights, whether in court or via procedures provided by any local,
13 state, or federal agency; and

14 h. Any policy that would deactivate a worker based on the results of a
15 background check, consumer report, driver record, or record of traffic infractions, except in cases
16 of egregious misconduct or where required by other applicable law.

17 3. Investigation. A network company must conduct a fair and objective
18 investigation prior to deactivating an app-based worker. The investigation must be sufficiently
19 thorough to justify the deactivation and demonstrate an unbiased and neutral view of facts
20 collected.

21 4. Confirmation of violation. The network company must demonstrate by a
22 preponderance of the evidence that the alleged violation of the network company's policy or rule
23 occurred.

1 5. Consistent application. The network company must apply the rule or policy,
2 and penalty for violations, in a consistent manner.

3 6. Proportionate penalty. The penalty of deactivation must be reasonably related
4 to the offense, and account for mitigating circumstances, such as the app-based worker’s past
5 work history with the network company.

6 B. Deactivation of an app-based worker will be considered unwarranted if the action is
7 intended to or results in discrimination or a discriminatory act.

8 C. Subject to the provisions of this Section 8.40.050 and rules issued by the Director, a
9 network company may immediately deactivate an app-based worker if such action is required to
10 comply with any applicable court order or local, state, or federal laws or regulations, or where an
11 app-based worker has engaged in egregious misconduct.

12 1. In the case of allegations of egregious misconduct, the network company may
13 deactivate the app-based worker before completing an investigation. The investigation shall not
14 take longer than ten days except in the case of extraordinary circumstances. If the investigation is
15 delayed due to extraordinary circumstances, the network company must provide the app-based
16 worker with written notice that the investigation is delayed, the reason(s) for the delay, and the
17 date on which the completion of the investigation is anticipated.

18 **8.40.060 Right to challenge deactivation**

19 A. A network company shall not subject an app-based worker to unwarranted
20 deactivation.

21 B. An app-based worker shall have a right to challenge the worker’s deactivation through
22 an internal deactivation challenge procedure established by the network company.

1 1. A network company shall create an internal deactivation challenge procedure
2 that shall be available to the app-based worker immediately upon notice of their deactivation and
3 up to 90 days after the app-based worker’s receipt of notice.

4 2. The internal deactivation challenge procedure must be available to the app-
5 based worker in writing, in a format that is readily accessible to the app-based worker, and in
6 English and any language that the network company knows or has reason to know is the primary
7 language of the app-based worker. The written policy describing the deactivation challenge
8 procedure shall be available to the app-based worker at least three years after deactivation. The
9 Director may issue rules governing the form and content of the policy describing the deactivation
10 challenge procedure, the manner of its distribution, and required languages for its translation.

11 3. A network company shall review and respond to an app-based worker’s
12 challenge to deactivation within 14 days of receiving a challenge.

13 4. A network company’s response to a worker’s challenge to deactivation must
14 include a written statement certified by an individual at the network company with authority to
15 reinstate the app-based worker. The written statement must include one of the following:

16 a. Evidentiary substantiation of the deactivation and substantive responses
17 to questions or claims made by the app-based worker in challenging the deactivation;

18 b. Any extraordinary circumstances necessitating a delayed timeline for
19 response, and an anticipated date for a response either substantiating the deactivation or
20 reinstating the app-based worker; or

21 c. A determination that the worker did not violate the network company’s
22 deactivation policy and therefore must be reinstated on the platform.

1 C. In addition to pursuing an internal challenge to deactivation pursuant to subsection
2 8.40.060.B, an app-based worker shall have a right to file a complaint with the Agency or bring a
3 civil action for violations of the requirements of this Chapter 8.40 upon receiving the network
4 company's initial response to the internal challenge, or 14 days after initiating a challenge,
5 whichever comes earlier. An app-based worker may pursue all avenues of relief available
6 thereafter within three years of the alleged violation, or as tolled pursuant to subsection
7 8.40.150.C.

8 D. An app-based worker shall have a right to challenge their deactivation and pursue all
9 avenues of relief available to them regardless of the geographic location of the incidents leading
10 to the network company's decision to deactivate the app-based worker.

11 **8.40.070 Notice of deactivation**

12 A. Except as provided under subsection 8.40.070.C, a network company shall provide an
13 app-based worker with notice of deactivation 14 days in advance of the deactivation, as well as
14 upon the effective date of deactivation. The notice of deactivation shall include a written
15 statement of the following:

- 16 1. The reasons for deactivation; including the network company's policy that was
17 violated, pursuant to Section 8.40.050, and the specific incident or pattern of incidents that
18 violated the deactivation policy;
- 19 2. The effective date of deactivation;
- 20 3. Any and all records relied upon to substantiate deactivation, pursuant to Section
21 8.40.080;
- 22 4. The length of the deactivation;

1 5. A description of the steps an app-based worker can take to remedy the
2 deactivation;

3 6. The app-based worker’s right to challenge such deactivation under this Chapter
4 8.40;

5 7. The network company’s process for challenging a deactivation, pursuant to
6 subsection 8.40.060.B, including the available methods of contact for an app-based worker to
7 initiate a challenge; and

8 8. Any other items pursuant to Director’s Rules.

9 B. The network company shall provide notice of deactivation in a form and manner
10 designated by the Agency. The Agency may create and distribute a model notice of deactivation
11 in English and other languages as provided by rules issued by the Director. However, network
12 companies are responsible for providing app-based workers with the notice of deactivation
13 required by this subsection 8.40.070, regardless of whether the Agency has created and
14 distributed a model notice of deactivation.

15 C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C,
16 the network company shall provide an app-based worker with the notice of deactivation no later
17 than the effective date of deactivation.

18 **8.40.080 Access to records substantiating deactivation**

19 A. Upon notice of deactivation, a network company shall provide an app-based worker
20 with the records relied upon by the network company to substantiate deactivation, unless
21 contrary to local, state, or federal law. These records shall include but not be limited to the date,
22 time, and location of all incidents supporting the deactivation decision, a copy of the evidence
23 the network company considered in the deactivation decision, and a certified statement from an

1 individual at the network company with authority to reinstate the app-based worker, attesting that
2 these are true and accurate records to the individual's knowledge.

3 B. If further records substantiating a deactivation come into the network company's
4 possession after the app-based worker is deactivated, such records shall be provided to the app-
5 based worker as soon as practicable and no later than 14 days from the date of the network
6 company's receipt.

7 C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B,
8 all records of that challenge and any responses must be provided to the worker within 14 days of
9 each submittal or response.

10 D. If the records substantiating deactivation involve information related to a customer or
11 a third party and the network company reasonably believes that information could compromise
12 the customer or third party's safety, the network company may take measures to anonymize
13 information related to that customer or third party. The Director may issue rules regarding the
14 measures taken to anonymize information related to a customer or third party.

15 E. Network companies shall establish an accessible system for app-based workers to
16 access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant
17 to subsection 8.37.070.B and Section 14.34.060. Network companies shall make this system
18 available to the app-based worker via smartphone application or online web portal. This
19 accessible system shall be available to an app-based worker at least three years after
20 deactivation.

21 F. Network companies shall retain the records required by this Section 8.40.080 for a
22 period of three years.

1 G. If a network company fails to disclose adequate records to the app-based worker as
2 required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and
3 convincing evidence, that the network company violated this Chapter 8.40 for the relevant
4 periods and for each app-based worker for whom records were not disclosed in a timely manner.
5 This presumption is substantive and necessary to effectuate the other rights provided in this
6 Chapter 8.40.

7 **8.40.090 Affirmative production of records**

8 A. A network company shall affirmatively transmit to the Agency such records as
9 required by rules issued by the Director, on at least a quarterly basis or as documents are updated
10 by the network company. The Director shall have the authority to require such aggregated or
11 disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and
12 enforce the provisions of this Chapter 8.40. The Director may issue rules requiring that
13 aggregated records be produced as a distribution at defined percentiles. The Director may issue
14 data production rules of general applicability as well as rules specific to on-demand network
15 companies, as defined in Section 8.37.020.

16 1. Records for production may include:

- 17 a. Records regarding the number of deactivations initiated by a network
18 company;
- 19 b. Records regarding the reasons for deactivation most commonly referred
20 to, such as the rule or policy violated by the app-based worker;
- 21 c. The number of app-based workers challenging their deactivation and the
22 forum in which they are pursuing a challenge;

1 d. The number of app-based workers reinstated after deactivation, length
2 of deactivation prior to reinstatement, and length of service prior to deactivation;

3 e. The network company’s deactivation policy;

4 f. The network company’s internal deactivation challenge procedure,
5 pursuant to Section 8.40.060, including the available methods of contact for an app-based worker
6 to initiate a challenge; and

7 g. Any other records that the Director determines are material and
8 necessary to effectuate the purposes of this Chapter 8.40.

9 2. The Director shall issue rules governing the submission format, security, and
10 privacy protocols relating to the submission of network company records, to the extent permitted
11 by law.

12 **8.40.100 Notice of rights**

13 A. Network companies shall affirmatively provide each app-based worker with a written
14 notice of rights established by this Chapter 8.40. The Agency may create and distribute a model
15 notice of rights in English and other languages. If the Agency creates a model notice of rights,
16 network companies shall affirmatively provide such notice according to the schedule outlined in
17 subsection 8.40.100.A.1. However, network companies are responsible for providing app-based
18 workers with the notice of rights required by this Section 8.40.100, in a form and manner
19 sufficient to inform app-based workers of their rights under this Chapter 8.40, regardless of
20 whether the Agency has created and distributed a model notice of rights.

21 1. Network companies shall affirmatively provide each app-based worker with the
22 written notice of rights within one month of the effective date of this Chapter 8.40. For each app-
23 based worker hired by the network company after this date, network companies shall provide the

1 notice of rights within 24 hours of the first completed offer that involved performing services in
2 Seattle, facilitated or presented by the network company.

3 2. For each app-based worker, network companies shall provide the notice of
4 rights no less than annually.

5 B. The notice of rights shall provide information on:

6 1. The right to challenge an unwarranted deactivation through a network
7 company's internal deactivation challenge procedure and/or through other avenues pursuant to
8 Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

9 2. The policy describing the deactivation challenge procedure pursuant to
10 subsection 8.40.060.B;

11 3. The right to 14 days' notice of an impending deactivation, except in the case of
12 egregious misconduct;

13 4. The right to access any and all records relied upon by the network company to
14 substantiate deactivation;

15 5. The right to be protected from retaliation for exercising in good faith the rights
16 protected by this Chapter 8.40; and

17 6. The right to file a complaint with the Agency consistent with Section 8.40.130
18 or bring a civil action for violation of the requirements of this Chapter 8.40.

19 C. Network companies shall provide the notice of rights required by subsection
20 8.40.100.B in an electronic format that is readily accessible to the app-based worker. The notice
21 of rights shall be made available to the app-based worker via smartphone application, email, or
22 online web portal, in English and any language that the network company knows or has reason to
23 know is the primary language of the app-based worker. The Director may issue rules governing

1 the form and content of the notice of rights, the manner of its distribution, and required
2 languages for its translation.

3 D. Network companies shall establish an accessible system for app-based workers to
4 understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A.
5 Network companies shall make this system available to the app-based worker via smartphone
6 application or online web portal. This system shall be available to an app-based worker, at least
7 three years after deactivation. The Director may issue rules defining reasonable criteria or
8 requirements for this system to ensure that app-based workers have sufficient information to
9 understand when they are covered by the entirety of Chapter 8.40, including but not limited to
10 notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the
11 previous 180 days, the number of completed offers or cancellations that involved performing
12 services in Seattle in the previous 180 days, the overall percentage of completed offers that
13 involved performing services in Seattle in the previous 180 days, and the app-based worker's
14 receipts and/or payment disclosures for each offer performed or cancelled in the previous 180
15 days, pursuant to subsection 8.37.070.B and Section 14.34.060.

16 **8.40.110 Network company records**

17 A. Network companies shall retain records that document compliance with this Chapter
18 8.40 for each app-based worker, including, at a minimum, a compliance file for each
19 deactivation. The Director may issue rules governing the format of the records needed to
20 constitute compliance of this Section 8.40.110. The Director may also issue rules governing the
21 form, format, and content of the compliance file for each deactivation. This compliance file may
22 include:

1 1. The deactivation notice provided to the app-based worker, pursuant to Section
2 8.40.070;

3 2. Date of completion of investigation;

4 3. Whether the deactivation involved egregious misconduct and, if so, the
5 egregious misconduct at issue;

6 4. Whether the deactivation investigation includes extraordinary circumstances,
7 pursuant to subsection 8.40.050.B and, if so, the extraordinary circumstances at issue;

8 5. Number of offers completed in the 180 days prior to deactivation notice;

9 6. Number of completed offers that involved performing services in Seattle in the
10 180 days prior to deactivation notice;

11 7. Date of deactivation challenge according to the network company's internal
12 deactivation challenge procedure;

13 8. All responses to an app-based worker regarding a deactivation challenge,
14 pursuant to subsections 8.40.060.B and 8.40.080.C; and

15 9. Any other records pursuant to Director's Rules.

16 B. Network companies shall retain the records required by subsection 8.40.110.A for a
17 period of three years.

18 C. If a network company fails to retain adequate records required under subsection
19 8.40.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the
20 network company violated this Chapter 8.40 for the relevant periods and for each app-based
21 worker for whom records were not retained. This presumption is substantive and necessary to
22 effectuate the rights provided in this Chapter 8.40.

1 **8.40.120 Retaliation prohibited**

2 A. No network company or any other person acting on behalf of the network company
3 shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under
4 this Chapter 8.40.

5 B. No network company or any other person shall take any adverse action against any
6 person because the person has exercised in good faith the rights protected under this Chapter
7 8.40. Such rights include, but are not limited to, the right to make inquiries about the rights
8 protected under this Chapter 8.40; the right to inform others about their rights under this Chapter
9 8.40; the right to inform the person's network company, the person's legal counsel, a union or
10 similar organization, or any other person about an alleged violation of this Chapter 8.40; the right
11 to file an oral or written complaint with the Agency or bring a civil action for an alleged
12 violation of this Chapter 8.40; the right to cooperate with the Agency in its investigations of this
13 Chapter 8.40; the right to testify in a proceeding under or related to this Chapter 8.40; the right to
14 refuse to participate in an activity that would result in a violation of city, state, or federal law;
15 and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.40.

16 C. No network company or any other person shall communicate to a person exercising
17 rights protected in this Section 8.40.120, directly or indirectly, the willingness to inform a
18 government worker that the person is not lawfully in the United States, or to report, or to make
19 an implied or express assertion of a willingness to report, suspected citizenship or immigration
20 status of an app-based worker or family member of an app-based worker to a federal, state, or
21 local agency because the app-based worker has exercised a right under this Chapter 8.40.

22 D. It shall be a rebuttable presumption of retaliation if a network company or any other
23 person takes an adverse action against a person within 90 days of the person's exercise of rights

1 protected in this Section 8.40.120. The network company may rebut the presumption with clear
2 and convincing evidence that the adverse action was taken for a permissible purpose.

3 E. Proof of retaliation under this Section 8.40.120 shall be sufficient upon a showing that
4 a network company or any other person has taken an adverse action against a person and the
5 person's exercise of rights protected in this Section 8.40.120 was a motivating factor in the
6 adverse action, unless the network company can prove that the action would have been taken in
7 the absence of such protected activity.

8 F. The protections afforded under this Section 8.40.120 shall apply to any person who
9 mistakenly but in good faith alleges violations of this Chapter 8.40.

10 G. A complaint or other communication by any person triggers the protections of this
11 Section 8.40.120 regardless of whether the complaint or communication is in writing or makes
12 explicit reference to this Chapter 8.40.

13 **8.40.125 Rulemaking authority**

14 Except as provided in subsection 8.40.130.B, the Director is authorized to administer and
15 enforce this Chapter 8.40. The Director is authorized to promulgate, revise, or rescind rules
16 and regulations deemed necessary, appropriate, or convenient to administer, evaluate, and
17 enforce the provisions of this Chapter 8.40 pursuant to Chapter 3.02, providing affected
18 entities with due process of law and in conformity with the intent and purpose of this Chapter
19 8.40. Any rules promulgated by the Director shall have the force and effect of law and may be
20 relied on by network companies, app-based workers, and other parties to determine their rights
21 and responsibilities under this Chapter 8.40.

1 **8.40.130 Enforcement power and duties**

2 A. Except as provided in subsection 8.40.130.B, on or after January 1, 2025, the Agency
3 shall have the power to administer and enforce this Chapter 8.40 and shall have such powers and
4 duties in the performance of these functions as are defined in this Chapter 8.40 and otherwise
5 necessary and proper in the performance of the same and provided for by law.

6 B. Starting [June 1, 2027](#), ~~the Agency may~~~~shall not~~ have the power to enforce
7 subsections 8.40.050.A.3, 8.40.050.A.4, 8.40.050.A.5, 8.40.050.A.6, ~~and~~ ~~8.40.050.B,~~ ~~or~~
8 [Section 8.40.120](#). This subsection 8.40.130.B does not limit the ability of an app-based worker to
9 seek other avenues of relief for violations of those subsections.

10 **8.40.140 Violation**

11 The failure of any respondent to comply with any requirement imposed on the respondent under
12 this Chapter 8.40 is a violation.

13 **8.40.150 Investigation**

14 A. Except as provided in subsection 8.40.130.B, the Agency shall have the power to
15 investigate any violations of this Chapter 8.40 by any respondent. The Agency may prioritize
16 investigations of workforces that are vulnerable to violations of this Chapter 8.40. The Agency
17 may initiate an investigation pursuant to Director’s Rules, including but not limited to situations
18 when the Director has reason to believe that a violation has occurred or will occur, or when
19 circumstances show that violations are likely to occur within a class of network companies or
20 businesses because either the workforce contains significant numbers of app-based workers who
21 are vulnerable to violations of this Chapter 8.40, or the workforce is unlikely to volunteer
22 information regarding such violations. An investigation may also be initiated through the receipt
23 by the Agency of a report or complaint filed by an app-based worker, or any other person.

1 B. An app-based worker or other person may report to the Agency any suspected
2 violation of this Chapter 8.40. The Agency shall encourage reporting pursuant to this Section
3 8.40.150 by taking the following measures:

4 1. The Agency shall keep confidential, to the maximum extent permitted by
5 applicable laws, the name and other identifying information of the app-based worker or person
6 reporting the violation. However, with the authorization of such person, the Agency may disclose
7 the name of the app-based worker or other person and identifying information as necessary to
8 enforce this Chapter 8.40 or for other appropriate purposes.

9 2. The Agency may require the network company to post or otherwise notify other
10 app-based workers working for the network company that the Agency is conducting an
11 investigation. The network company shall provide the notice of investigation in a form, place,
12 and manner designated by the Agency. The Agency shall create the notice of investigation in
13 English and other languages.

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

17 C. The Agency’s investigation shall commence within three years of the alleged
18 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is
19 tolled during any investigation under this Chapter 8.40 and any administrative enforcement
20 proceeding under this Chapter 8.40 based upon the same facts. For purposes of this Chapter 8.40:

21 1. The Agency’s investigation begins on the earlier date of when the Agency
22 receives a complaint from a person under this Chapter 8.40, or when the Agency provides notice
23 to the respondent that an investigation has commenced under this Chapter 8.40.

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

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

6 E. The Director may apply by affidavit or declaration in the form allowed under RCW
7 5.50.050 as amended to the Hearing Examiner for the issuance of subpoenas requiring a network
8 company to produce the records required by Section 8.40.080 or 8.40.110, or for the attendance
9 and testimony of witnesses, or for the production of documents required to be retained under
10 Section 8.40.080 or 8.40.110, or any other document relevant to the issue of whether any app-
11 based worker or group of app-based workers received the information or other benefits required
12 by this Chapter 8.40, and/or to whether a network company has violated any provision of this
13 Chapter 8.40. The Hearing Examiner shall conduct the review without hearing as soon as
14 practicable and shall issue subpoenas upon a showing that there is reason to believe that: a
15 violation has occurred; a complaint has been filed with the Agency; or circumstances show that
16 violations are likely to occur within a class of businesses because the workforce contains
17 significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.40,
18 the workforce is unlikely to volunteer information regarding such violations, or the Agency has
19 gathered preliminary information indicating that a violation may have occurred.

20 F. A network company that fails to comply with the terms of any subpoena issued under
21 subsection 8.40.150.E in an investigation by the Agency under this Chapter 8.40 before the
22 issuance of a Director’s Order issued pursuant to subsection 8.40.160.C may not use such

1 records in any appeal to challenge the correctness of any determination by the Agency of
2 liability, damages owed, or penalties assessed.

3 G. In addition to other remedies, the Director may refer any subpoena issued under
4 subsection 8.40.150.E to the City Attorney to seek a court order to enforce any subpoena.

5 H. Where the Director has reason to believe that a violation has occurred, the Director
6 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
7 status quo pending completion of a full investigation or hearing, including but not limited to a
8 deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest,
9 damages, and penalties due. A respondent may appeal any such order in accordance with Section
10 8.40.180.

11 **8.40.160 Findings of fact and determination**

12 A. Except when there is an agreed-upon settlement, the Director shall issue a written
13 determination with findings of fact resulting from the investigation and statement of whether a
14 violation of this Chapter 8.40 has or has not occurred based on a preponderance of the evidence
15 before the Director.

16 B. If the Director determines that there is no violation of this Chapter 8.40, the Director
17 shall issue a “Determination of No Violation” with notice of an app-based worker’s or other
18 person’s right to appeal the decision, pursuant to Director’s Rules.

19 C. If the Director determines that a violation of this Chapter 8.40 has occurred, the
20 Director shall issue a “Director’s Order” that shall include a notice of violation identifying the
21 violation or violations.

22 1. The Director’s Order shall state with specificity the amounts due under this
23 Chapter 8.40 for each violation, including payment of unpaid compensation, liquidated damages,

1 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section
2 8.40.170.

3 2. The Director’s Order may specify that civil penalties and fines due to the
4 Agency can be mitigated for respondent’s timely payment of remedy due to an aggrieved party
5 pursuant to subsection 8.40.170.A.4.

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

8 4. The Director’s Order may direct the respondent to take such corrective action
9 as is necessary to comply with the requirements of this Chapter 8.40, including but not limited to
10 monitored compliance for a reasonable time period.

11 5. The Director’s Order shall include notice of the respondent’s right to appeal the
12 decision pursuant to Section 8.40.180.

13 **8.40.167 Navigation program**

14 A. The Agency may establish a navigation program that provides intake, information,
15 outreach, and/or education relating to the provisions and procedures of this Chapter 8.40. The
16 range of information provided by the navigation program may include, but is not limited to:

17 1. General court information, such as:

18 a. Information on court procedures for filing civil actions in a court of
19 competent jurisdiction; and

20 b. Information on obtaining translation and interpretation services;

21 2. General arbitration information, such as:

22 a. Information on arbitration procedures for filing arbitration claims; and

23 b. Information on obtaining translation and interpretation services;

1 3. A list of organizations that can be used to identify attorneys;

2 4. Organizations providing outreach and education, and/or legal assistance, to
3 app-based workers;

4 5. Information about classifying workers as employees or independent
5 contractors; and

6 6. As determined by the Director, additional information related to the provisions
7 of this Chapter 8.40, other workplace protections, or other resources for resolving workplace
8 issues.

9 B. The navigation program shall not include legal advice from the Agency. However, if
10 the Agency provides information to an app-based worker about a community organization
11 through the navigation program, the community organization is not precluded from providing
12 legal advice.

13 **8.40.170 Remedies**

14 A. The payment of unpaid compensation, liquidated damages of up to twice the amount
15 of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest
16 provided under this Chapter 8.40 is cumulative and is not intended to be exclusive of any other
17 available remedies, penalties, fines, and procedures.

18 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
19 fines contained in this Section 8.40.170 shall be increased annually to reflect the rate of inflation
20 and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall
21 determine the amounts and file a schedule of such amounts with the City Clerk.

22 2. If a violation is ongoing when the Agency receives a complaint or opens an
23 investigation, the Director may order payment of unpaid compensation plus interest that accrues

1 after receipt of the complaint or after the investigation opens and before the date of the Director's
2 Order.

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

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

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

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

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

17 5. When determining the amount of liquidated damages, civil penalties, penalties
18 payable to aggrieved parties, and fines due under this Section 8.40.170 for a settlement
19 agreement or Director's Order, including but not limited to the mitigation of civil penalties and
20 fines due to the Agency for timely payment of remedy due to an aggrieved party under
21 subsection 8.40.170.A.4, the Director may consider:

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

- b. The nature and persistence of the violations;
- c. The extent of the respondent's culpability;
- d. The substantive or technical nature of the violations;
- e. The size, revenue, and human resources capacity of the respondent;
- f. The circumstances of each situation;
- g. The amount of penalties in similar situations; and
- h. Pursuant to rules that the Director may issue, other factors that are

material and necessary to effectuate the terms of this Chapter 8.40.

B. A respondent found to be in violation of this Chapter 8.40 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party for the period of deactivation under the terms of this Chapter 8.40, and other equitable relief.

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

- a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or
- b. Assess a daily amount for unpaid compensation plus interest in favor of the aggrieved party in a minimum amount of at least the equivalent of payment for eight hours of work at the "hourly minimum wage" rate for Schedule 1 employers under Chapter 14.19.

1 2. For a first violation of this Chapter 8.40, the Director may assess liquidated
2 damages in an additional amount of up to twice the unpaid compensation.

3 3. For subsequent violations of this Chapter 8.40, the Director shall assess an
4 amount of liquidated damages in an additional amount of twice the unpaid compensation.

5 4. For purposes of establishing a first and subsequent violation for this Section
6 8.40.170, 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 8.40 for retaliation under Section
9 8.40.120 shall be subject to any appropriate relief at law or equity including, but not limited to,
10 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of
11 unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter
12 8.40, and liquidated damages in an additional amount of up to twice the unpaid compensation.
13 The Director also shall order the imposition of a penalty payable to the aggrieved party of up to
14 \$6,230.88.

15 D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.40
16 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

17 1. For a first violation of this Chapter 8.40, the Director may assess a civil penalty
18 of up to \$622.85 per aggrieved party.

19 2. For a second violation of this Chapter 8.40, the Director shall assess a civil
20 penalty of up to \$1,245.71 per aggrieved party, or an amount equal to ten percent of the total
21 amount of unpaid compensation, whichever is greater.

1 3. For a third or any subsequent violation of this Chapter 8.40, the Director shall
2 assess a civil penalty of up to \$6,230.88 per aggrieved party, or an amount equal to ten percent of
3 the total amount of unpaid compensation, whichever is greater.

4 4. For purposes of this subsection 8.40.170.D, a violation is a second, third, or
5 subsequent violation if the respondent has been a party to one, two, or more than two settlement
6 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
7 two Director’s Orders, respectively, have issued against the respondent in the ten years preceding
8 the date of the violation; otherwise, it is a first violation.

9 E. The Director is authorized to assess fines for a violation of this Chapter 8.40 and may
10 specify that fines are due to the aggrieved party rather than due to the Agency. The Director is
11 authorized to assess fines as follows:

Violation	Fine
Failure to comply with deactivation requirements under Section 8.40.050	\$622.85 per aggrieved party
Failure to provide app-based worker with an internal deactivation challenge procedure under Section 8.40.060	\$622.85 per aggrieved party
Failure to provide app-based worker with a notice of deactivation under Section 8.40.070	\$622.85 per aggrieved party
Failure to provide app-based worker with records relied upon by the network company to substantiate the deactivation under Section 8.40.080	\$622.85 per aggrieved party
Failure to provide certified statement attesting to records provided to substantiate deactivation under Section 8.40.080	\$622.85 per aggrieved party
Failure to provide written notice of rights under Section 8.40.100	\$622.85 per aggrieved party
Failure to retain network company records for three years under subsections 8.40.110.B	\$622.85 per missing record
Failure to provide notice of investigation to app-based workers under subsection 8.40.150.B.2	\$622.85 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 8.40.210.A.1	\$622.85 per aggrieved party

1 The maximum amount that may be imposed in fines in a one-year period for each type of
2 violation listed above is \$6,230.88 per aggrieved party.

3 F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director
4 or Hearing Examiner in the performance of their duties under this Chapter 8.40 shall be subject
5 to a civil penalty of not less than \$1,245.71 and not more than \$6,230.88.

6 G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and
7 interest, the Agency may assess against the respondent in favor of the City the reasonable costs
8 incurred in enforcing this Chapter 8.40, including but not limited to reasonable investigation
9 costs and attorneys' fees. The Director may issue rules on the amounts and contributing factors
10 for assessing reasonable investigation costs and is strongly encouraged to assess such costs in
11 favor of the City to support the Agency's implementation of this Chapter 8.40.

12 H. A respondent that is the subject of a settlement agreement stipulating that a violation
13 shall count for debarment, or a 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 respondent is the subject of a
16 final order two times or more within a five-year period, the network company shall not be
17 allowed to bid on any City contract for two years. This subsection 8.40.170.H shall be construed
18 to provide grounds for debarment separate from, and in addition to, those contained in Chapter
19 20.70 and shall not be governed by that chapter; provided, that nothing in this subsection
20 8.40.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify
21 the Director of Finance and Administrative Services of all respondents subject to debarment
22 under this subsection 8.40.170.H.

1 **8.40.180 Appeal period and failure to respond**

2 A. An app-based worker or other person who claims an injury as a result of an alleged
3 violation of this Chapter 8.40 may appeal the Determination of No Violation, pursuant to
4 Director's Rules.

5 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
6 to Section 8.40.170, by requesting a contested hearing before the Hearing Examiner in writing
7 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
8 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
9 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
10 until 5 p.m. on the next business day.

11 **8.40.190 Appeal procedure and failure to appear**

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

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

1 **8.40.200 Appeal from Hearing Examiner order**

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

6 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
7 sought in compliance with this Section 8.40.200.

8 **8.40.210 Failure to comply with final order**

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

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

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

18 3. The Director may refer the matter to the City Attorney for the filing of a civil
19 action in a court of competent jurisdiction to enforce such order or to collect amounts due. In the
20 alternative, the Director may seek to enforce a settlement agreement, Director's Order, or a final
21 order of the Hearing Examiner under Section 8.40.190.

22 4. The Director may request that the City's Department of Finance and
23 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or

1 requested by the network company or person until such time as the network company complies
2 with the remedy as defined in the settlement agreement or final order. The City's Department of
3 Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke
4 any business license in accordance with this subsection 8.40.210.A.4.

5 B. No respondent that is the subject of a final order issued under this Chapter 8.40 shall
6 quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or
7 stock of goods without first notifying the Agency and without first notifying the respondent's
8 successor of the amounts owed under the final order at least three business days before such
9 transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise
10 disposes of the respondent's business or stock of goods, the full amount of the remedy, as
11 defined in a final order issued by the Director or the Hearing Examiner, shall become
12 immediately due and payable. If the amount due under the final order is not paid by respondent
13 within 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 network
21 company.

1 **8.40.220 Debt owed The City of Seattle**

2 A. All monetary amounts due under the Director’s Order shall be a debt owed to the City
3 and may be collected in the same manner as any other debt in like amount, which remedy shall
4 be in addition to all other existing remedies; provided, that amounts collected by the City for
5 unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay
6 shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be
7 paid by the City to the aggrieved party.

8 B. If a respondent fails to appeal a Director’s Order to the Hearing Examiner within the
9 time period set forth in subsection 8.40.180.B, the Director’s Order shall be final, and the
10 Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to
11 enforce the Director’s Order by entering judgment in favor of the City finding that the
12 respondent has failed to exhaust its administrative remedies and that all amounts and relief
13 contained in the order are due. The Director’s Order shall constitute prima facie evidence that a
14 violation occurred and shall be admissible without further evidentiary foundation. Any
15 certifications or declarations authorized under RCW 5.50.050 as amended containing evidence
16 that the respondent has failed to comply with the order or any parts thereof, and is therefore in
17 default, or that the respondent has failed to appeal the Director’s Order to the Hearing Examiner
18 within the time period set forth in subsection 8.40.180.B, and therefore has failed to exhaust the
19 respondent’s administrative remedies, shall also be admissible without further evidentiary
20 foundation.

21 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
22 within the time period set forth in subsection 8.40.200.A, the order of the Hearing Examiner
23 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director’s

1 Order by entering judgment in favor of the City for all amounts and relief due under the order of
2 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
3 that the violations contained therein occurred and shall be admissible without further evidentiary
4 foundation. Any certifications or declarations authorized under RCW 5.50.050 as amended
5 containing evidence that the respondent has failed to comply with the order or any parts thereof,
6 and is therefore in default, or that the respondent has failed to avail itself of judicial review in
7 accordance with subsection 8.40.200.A, shall also be admissible without further evidentiary
8 foundation.

9 D. In considering matters brought under subsections 8.40.220.B and 8.40.220.C, the
10 Seattle Municipal Court may include within its judgment all terms, conditions, and remedies
11 contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable,
12 that are consistent with the provisions of this Chapter 8.40.

13 **8.40.230 Private right of action**

14 A. Any person or class of persons that suffers an injury as a result of a violation of this
15 Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil
16 action in a court of competent jurisdiction against the network company or other person violating
17 this Chapter 8.40 and, upon prevailing, may be awarded reasonable attorney fees and costs and
18 such legal or equitable relief as may be appropriate to remedy the violation including, without
19 limitation: the payment of any unpaid compensation plus interest due to the person; liquidated
20 damages in an additional amount of up to twice the unpaid compensation; a penalty payable to
21 the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited
22 retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with

1 Section 8.40.170. Interest shall accrue from the date the unpaid compensation was first due at 12
2 percent per annum, or the maximum rate permitted under RCW 19.52.020 as amended.

3 B. For purposes of this Section 8.40.230, “person” includes any entity a member of which
4 has suffered an injury or retaliation, or any other individual or entity acting on behalf of an
5 aggrieved party that has suffered an injury or retaliation.

6 C. For purposes of determining membership within a class of persons entitled to bring an
7 action under this Section 8.40.230, two or more app-based workers are similarly situated if they:

8 1. Performed services in Seattle for the same network company or network
9 companies, whether concurrently or otherwise, at some point during the applicable statute of
10 limitations period;

11 2. Allege one or more violations that raise similar questions as to liability; and

12 3. Seek similar forms of relief.

13 D. For purposes of subsection 8.40.230.C, app-based workers shall not be considered
14 dissimilar solely because:

15 1. The app-based workers’ claims seek damages that differ in amount; or

16 2. The job titles of or other means of classifying the app-based workers differ in
17 ways that are unrelated to their claims.

18 E. An order issued by a court may include a requirement for a network company to
19 submit a compliance report to the court and/or to the Agency.

20 **8.40.233 Waiver**

21 Any waiver by an individual of any provisions of this Chapter 8.40 shall be deemed contrary to
22 public policy and shall be void and unenforceable.

1 **8.40.235 Encouragement of more generous policies**

2 A. Nothing in this Chapter 8.40 shall be construed to discourage or prohibit a network
3 company from the adoption or retention of minimum standards for deactivation policies for app-
4 based workers that are more generous than the minimum standards required by this Chapter 8.40.

5 B. Nothing in this Chapter 8.40 shall be construed as diminishing the obligation of the
6 network company to comply with any contract or other agreement providing more generous
7 minimum standards for deactivation policies for app-based workers than required by this
8 Chapter 8.40.

9 **8.40.240 Other legal requirements—Effect on other laws**

10 A. The provisions of this Chapter 8.40:

11 1. Supplement and do not diminish or replace any other basis of liability or
12 requirement established by statute or common law;

13 2. Shall not be construed to preempt, limit, or otherwise affect the applicability of
14 any other law, regulation, requirement, policy, or standard for minimum deactivation
15 requirements, or other protections to app-based workers; and

16 3. Shall not be interpreted or applied so as to create any power or duty in conflict
17 with federal or state law.

18 B. This Chapter 8.40 shall not be construed to preclude any person aggrieved from
19 seeking judicial review of any final administrative decision or order made under this Chapter
20 8.40 affecting such person. Nothing in this Section 8.40.240 shall be construed as restricting the
21 right of an app-based worker or other person to pursue any other remedies at law or equity for
22 violation of the app-based worker's rights.

1 C. A network company’s failure to comply with the provisions of this Chapter 8.40 shall
2 not render any contract between the network company and an app-based worker void or
3 voidable.

4 D. No provision of this Chapter 8.40 shall be construed as providing a determination
5 about the legal classification of any individual as an employee or independent contractor.

6 **8.40.250 Severability**

7 The provisions of this Chapter 8.40 are declared to be separate and severable. If any clause,
8 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.40, or the
9 application thereof to any network company, app-based worker, person, or circumstance, is held
10 to be invalid, it shall not affect the validity of the remainder of this Chapter 8.40, or the validity
11 of its application to other persons or circumstances.

12 Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance
13 126788, is amended as follows:

14 **3.02.125 Hearing Examiner filing fees**

15 A. The filing fee for a case before the City Hearing Examiner is \$85, with the following
16 exceptions:

Basis for Case	Fee in dollars
* * *	
All-Gender Restroom Notice of Violation (Section 14.07.040)	No fee
<u>App-Based Worker Deactivation Rights Ordinance (Chapter 8.40)</u>	<u>No fee</u>
App-Based Worker Minimum Payment Ordinance (Chapter 8.37)	No fee
* * *	

17 * * *

1 ~~Section 4. If Seattle Municipal Code Chapter 8.40 is amended to authorize enforcement~~
2 ~~of additional provisions beyond what is provided in this ordinance, the City Council intends to~~
3 ~~provide an accompanying appropriation to enable the Office of Labor Standards to enforce and~~
4 ~~implement the additional provisions.~~

5 Section 4. The City Council requests that the Office of Labor Standards provide a report
6 back to Council on the implementation of this ordinance by no later than September 1, 2026.

7 Section 5. Section 2 of this ordinance shall take effect on ~~June~~January 1, 20254.

1 Section 6. 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 _____, 2023,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2023.

7 _____
8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this ____ day of _____, 2023.

10 _____
11 Bruce A. Harrell, Mayor

12 Filed by me this _____ day of _____, 2023.

13 _____
14 Anne Frantilla, Interim City Clerk

15 (Seal)

CB 120580 – App-Based Worker Deactivation Rights Ordinance Proposed Amendment Packet
Public Safety & Human Services Committee – Tuesday, July 11, 2023

No.	Short title	Sponsor(s)	Pg.
6c	Revise pre-deactivation investigation requirement	Nelson	1
6e	Revise egregious misconduct investigation requirement	Nelson	2
7a	Revise notice of deactivation requirements	Nelson	3
7b	Revise notice of deactivation requirements	Pedersen	5
8a	Revise requirements for records substantiating deactivation when deactivation based on a complaint	Herbold & Lewis	7
8b	Revise records substantiating deactivation requirements	Nelson	12
10	Revise Affirmative Production of Records	Nelson	18
11	Revise Notice of Rights Requirement	Nelson	20
12	Revise Network Company Records Requirement	Nelson	23
13	Revise Private Right of Action	Pedersen	25
14	Remove certain instances of subjective language	Nelson	27

Note: Highlighted amendments are mutually exclusive/conflicting.

Discussed on June 27

No.	Short title	Sponsor(s)	Pg.
1	Allow for temporary deactivations unrelated to the worker's actions	Herbold & Lewis	--
2a	Broaden definition of egregious misconduct	Herbold and Lewis	--
2b	Broaden definition of egregious misconduct	Nelson	--
2c	Broaden definition of egregious misconduct	Pedersen	--
3	Clarify when moving violations can constitute egregious misconduct	Herbold & Lewis	--
4	Narrow threshold for app-based worker coverage	Nelson	--
5a	Exclude marketplace network companies and certain other companies from coverage	Nelson	--
5b	Exclude pet care service companies from coverage	Pedersen	--

Withdrawn

No.	Short title	Sponsor(s)	Pg.
6a	Revise fair notice deactivation requirement	Nelson	--
6b	Revise reasonable policy requirement	Nelson	--
6d	Remove proportionate penalty requirement	Nelson	--
9	Revise Internal Deactivation Challenge Procedure	Nelson	--

Amendment #6c Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise pre-deactivation requirements - investigation

Effect: This amendment would revise network company pre-deactivation requirements by permitting the network company to complete the investigation on reasonably available sources of information if the app-based worker does not participate or provide relevant information.

Amend Section 2 of CB 120580 as follows:

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

* * *

3. Investigation. A network company must conduct a fair and objective investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation (~~((and demonstrate an unbiased and neutral view of facts collected))~~). If the app-based worker does not participate in the investigation or provide relevant information, the network company may complete the investigation based on available sources of information.

* * *

Amendment #6e Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise pre-deactivation requirements.

Effect: This amendment would revise network company pre-deactivation requirements to allow for an investigation of egregious misconduct to take the later of 14 days or seven days after the network company receives all necessary information from the app-based worker, the customer, or third persons.

Amend Section 2 of CB 120580 as follows:

8.40.050 Deactivation requirements

C. Subject to the provisions of this Section 8.40.050 and rules issued by the Director, a network company may immediately deactivate an app-based worker if such action is required to comply with any applicable court order or local, state, or federal laws or regulations, or where an app-based worker has engaged in egregious misconduct.

1. In the case of allegations of egregious misconduct, the network company may deactivate the app-based worker before completing an investigation. Except in extraordinary circumstances, the ((The)) investigation shall not take longer than the later of ((ten)) 14 days or seven days after the network company receives all necessary information from the app-based worker, the customer, or third persons ((except in the case of extraordinary circumstances)). If the investigation is delayed due to extraordinary circumstances, the network company must provide the app-based worker with written notice that the investigation is delayed, the reason(s) for the delay, and the date on which the completion of the investigation is anticipated.

* * *

Amendment 7a Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for notice of deactivation.

Effect: This amendment would revise network company requirements for notice of deactivation.

Amend Section 2 of CB 120580 as follows:

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C or 8.40.070.D, a network company shall provide an app-based worker with notice of deactivation ~~((14 days))~~ in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company's policy that was violated, pursuant to Section 8.40.050~~((, and the specific incident or pattern of incidents that violated the deactivation policy))~~;
2. The effective date of deactivation;
3. ~~((Any and all records relied upon to substantiate))~~ A summary description of the records substantiating deactivation, pursuant to Section 8.40.080, unless the network company reasonably believes that such information could compromise the safety of persons or animals or could interfere with pending law enforcement investigation or court proceeding;
4. The length of the deactivation;
5. A description of the steps an app-based worker can take, if any, to remedy the deactivation;

6. The app-based worker's right to challenge such deactivation under this Chapter 8.40; and

7. The network company's process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; (~~and~~

~~8. Any other items pursuant to Director's Rules.))~~

B. (~~The network company shall provide notice of deactivation in a form and manner designated by the Agency.))~~ The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation as soon as practicable and no later than two days after the effective date of deactivation.

D. If a network company notifies an app-based worker upon the occurrence of a violation of a company's deactivation policy, provides notice that future violations of the deactivation policy may result in deactivation, and provides a means for the worker to review information regarding past violations of the deactivation policy via smartphone application or online web portal were a subsequent violation of the deactivation policy to occur, the network company may provide the notice of deactivation no later than the effective date of the deactivation.

Amendment 7b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Revise notice of deactivation.

Effect: This amendment would add subsection 8.40.070.D to revise network company requirements for providing the notice of deactivation.

The proposed addition would allow the network company to provide the notice no later than the effective date of the deactivation if the network company previously provided the app-based worker with a warning based on a past violation, as detailed in the proposed 8.40.070.D below.

Amend Section 2 of CB 120580 as follows:

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C or 8.40.070.D, a network company shall provide an app-based worker with notice of deactivation 14 days in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company's policy that was violated, pursuant to Section 8.40.050, and the specific incident or pattern of incidents that violated the deactivation policy;
2. The effective date of deactivation;
3. Any and all records relied upon to substantiate deactivation, pursuant to Section 8.40.080;
4. The length of the deactivation;
5. A description of the steps an app-based worker can take to remedy the deactivation;

6. The app-based worker's right to challenge such deactivation under this Chapter 8.40;

7. The network company's process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; and

8. Any other items pursuant to Director's Rules.

B. The network company shall provide notice of deactivation in a form and manner designated by the Agency. The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation no later than the effective date of deactivation.

D. If a network company notifies an app-based worker upon the occurrence of a violation of a company's deactivation policy, provides notice that future violations of the deactivation policy may result in deactivation, and provides a means for the worker to review information regarding past violations of the deactivation policy via smartphone application or online web portal, were a subsequent violation of the deactivation policy to occur, the network company may provide the notice of deactivation no later than the effective date of the deactivation.

Amendment #8a Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsors: Councilmembers Herbold and Lewis

Revise requirements for records substantiating deactivation when deactivation based on a complaint

Effect: This amendment would allow for summary information to be provided to the worker upon a notice of deactivation, if the reason for deactivation is based solely on complaints from a customer or third party.

Amend Section 2 of CB 120580 as follows:

8.40.080 Access to records substantiating deactivation

A. Pursuant to subsection 8.40.080.D, ((F)) upon notice of deactivation, a network company shall provide an app-based worker with the records relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.

B. If further records substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, such records shall be provided to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, all records of that challenge and any responses must be provided to the worker within 14 days of each submittal or response.

D. If the records substantiating deactivation involve information related to a customer or a third party and the network company reasonably believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. If a complaint from a customer or third party is the sole basis for a deactivation, the network company may provide a summary description of the records substantiating the deactivation. The Director may issue rules regarding the measures taken to summarize the records substantiating the deactivation or anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the records required by this Section 8.40.080 for a period of three years.

G. If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner.

This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.

* * *

8.40.060 Right to challenge deactivation

* * *

B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to Section 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

* * *

8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access any and all records relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

Jasmine Marwaha
Public Safety and Human Services Committee
June 27, 2023
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6. The right to file a complaint with the Agency consistent with Section 8.40.130
or bring a civil action for violation of the requirements of this Chapter 8.40.

Amendment 8b Version 2 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for substantiating deactivation and related fines.

Effect: This amendment would revise network company requirements for substantiating deactivations including but not limited to the following:

1. Require a summary description of evidence only if an app-based worker challenges a deactivation according to the network company's internal deactivation challenge procedure.
2. This amendment would also remove the requirement that an individual at the network company with authority to reinstate the app-based worker provide a certified statement attesting that these are true and accurate records.
3. Exclude marketplace network companies from this section's requirements.

Amend Section 2 of CB 120580 as follows:

8.40.080 ~~((Access to records))~~ Substantiating deactivation

A. ~~((Upon notice of deactivation,))~~ If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, a network company shall provide ~~((an))~~ that app-based worker with ~~((the records))~~ a description of the basis relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. ~~((These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.))~~

B. If further ~~((records))~~ evidence substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, ~~((such records shall be~~

~~provided~~) the network company must provide an updated summary description reflecting the new evidence to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, ~~((all records of that challenge and))~~ any responses must be provided to the worker within 14 days of each submittal or response.

D. If the ~~((records substantiating))~~ evidence supporting deactivation ~~((involve))~~ includes information related to a customer or a third party and the network company ~~((reasonably))~~ believes that information could compromise the customer or third party's safety or privacy rights, the network company may take measures to anonymize the summary description of the evidence or exclude information related to that customer or third party, including by omitting potentially identifying information from its summary description or to otherwise protect the safety or privacy rights of the customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060, provided that this requirement does not apply to marketplace network companies. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the ~~((records))~~ summary descriptions required by this Section 8.40.080 for a period of three years.

~~G. ((If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner. This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.))~~ This Section 8.40.080 does not apply to marketplace network companies.

* * *

8.40.060 Right to challenge deactivation

* * *

B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

* * *

8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access ~~((any and all records))~~ a summary description of the evidence relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

6. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

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8.40.170 Remedies

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E. The Director is authorized to assess fines for a violation of this Chapter 8.40 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to comply with deactivation requirements under Section 8.40.050	\$622.85 per aggrieved party
Failure to provide app-based worker with an internal deactivation challenge procedure under Section 8.40.060	\$622.85 per aggrieved party
Failure to provide app-based worker with a notice of deactivation under Section 8.40.070	\$622.85 per aggrieved party
Failure to provide app-based worker with ((records)) <u>a summary description of the evidence</u> relied upon by the network company to substantiate the deactivation under Section 8.40.080	\$622.85 per aggrieved party
((Failure to provide certified statement attesting to records provided to substantiate deactivation under Section 8.40.080	\$622.85 per aggrieved party))

Karina Bull
Public Safety Human Services Committee
June 27, 2023
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Amendment 10 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for affirmative production of records.

Effect: This amendment would revise network company requirements for affirmative production of records as follows:

1. Change the affirmative transmittal of records from a quarterly basis to yearly;
2. Remove the requirement for network companies to provide documents as they are updated; and
3. Remove from the list of records production the reference to any other records that the Director deems material and necessary to effectuate the purposes of this Chapter.

Amend Section 2 of CB 120580 as follows:

8.40.090 Affirmative production of records

A. A network company shall affirmatively transmit to the Agency such records as required by rules issued by the Director, on at least a ~~((quarterly))~~ yearly basis ~~((or as documents are updated by the network company))~~. The Director shall have the authority to require such aggregated or disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.40. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand network companies, as defined in Section 8.37.020.

1. Records for production may include:

a. Records regarding the number of deactivations initiated by a network company;

b. Records regarding the reasons for deactivation most commonly referred to, such as the rule or policy violated by the app-based worker;

c. The number of app-based workers challenging their deactivation and the forum in which they are pursuing a challenge;

d. The number of app-based workers reinstated after deactivation, length of deactivation prior to reinstatement, and length of service prior to deactivation;

e. The network company's deactivation policy; and

f. The network company's internal deactivation challenge procedure, pursuant to Section 8.40.060, including the available methods of contact for an app-based worker to initiate a challenge; (~~and~~

~~g. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.40.))~~

* * *

Amendment 11 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for notice of rights.

Effect: This amendment would revise network company requirements for notice of rights as follows:

1. Remove the requirement for network companies to use the Agency’s model notice of rights and allow the network companies to use their own notice;
2. Revise the notice of rights components by referring to the “right to notice of deactivation” by citation and removing the “right to access records substantiating deactivation”;
3. Remove reference to the Director’s authority to issue rules governing the notice of rights requirements; and
4. Remove the requirement for network companies to establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation.

Amend Section 2 of CB 120580 as follows:

8.40.100 Notice of rights

A. Network companies shall affirmatively provide each app-based worker with a written notice of rights established by this Chapter 8.40. The Agency may create and distribute a model notice of rights in English and other languages. ~~((If the Agency creates a model notice of rights, network companies shall affirmatively provide such notice according to the schedule outlined in subsection 8.40.100.A.1.))~~ However, network companies are responsible for providing app-based workers with the notice of rights required by this Section 8.40.100, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.40, regardless of whether the Agency has created and distributed a model notice of rights.

1. Network companies shall affirmatively provide each app-based worker with the written notice of rights within one month of the effective date of this Chapter 8.40. For each app-

based worker hired by the network company after this date, network companies shall provide the notice of rights within 24 hours of the first completed offer that involved performing services in Seattle, facilitated or presented by the network company.

2. For each app-based worker, network companies shall provide the notice of rights no less than annually.

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to a notice of deactivation, pursuant to Section 8.40.070.~~((The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct));~~

~~((4. The right to access any and all records relied upon by the network company to substantiate deactivation))~~

~~((5.))~~ 4. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

~~((6.))~~ 5. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

C. Network companies shall provide the notice of rights required by subsection 8.40.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, or online web portal, in English and any language that the network company knows or has reason to

know is the primary language of the app-based worker. ~~((The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.~~

~~D. Network companies shall establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This system shall be available to an app-based worker, at least three years after deactivation. The Director may issue rules defining reasonable criteria or requirements for this system to ensure that app-based workers have sufficient information to understand when they are covered by the entirety of Chapter 8.40, including but not limited to notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the previous 180 days, the number of completed offers or cancellations that involved performing services in Seattle in the previous 180 days, the overall percentage of completed offers that involved performing services in Seattle in the previous 180 days, and the app-based worker's receipts and/or payment disclosures for each offer performed or cancelled in the previous 180 days, pursuant to subsection 8.37.070.B and Section 14.34.060.))~~

Amendment 12 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise network company recordkeeping requirements.

Effect: This amendment would revise recordkeeping requirements as follows:

1. Remove the requirement to retain a compliance file; and
2. Remove the rebuttable presumption that failure to retain records constitutes a violation.

Amend Section 2 of CB 120580 as follows:

8.40.110 Network company records

A. Network companies shall retain records that document compliance with this Chapter 8.40 for each deactivation of an app-based worker. ~~((, including, at a minimum, a compliance file for each deactivation. The Director may issue rules governing the format of the records needed to constitute compliance of this Section 8.40.110. The Director may also issue rules governing the form, format, and content of the compliance file for each deactivation. This compliance file may include:~~

- ~~1. The deactivation notice provided to the app-based worker, pursuant to Section 8.40.070;~~
- ~~2. Date of completion of investigation;~~
- ~~3. Whether the deactivation involved egregious misconduct and, if so, the egregious misconduct at issue;~~
- ~~4. Whether the deactivation investigation includes extraordinary circumstances, pursuant to subsection 8.40.050.B and, if so, the extraordinary circumstances at issue;~~
- ~~5. Number of offers completed in the 180 days prior to deactivation notice;~~

~~6. Number of completed offers that involved performing services in Seattle in the 180 days prior to deactivation notice;~~

~~7. Date of deactivation challenge according to the network company's internal deactivation challenge procedure;~~

~~8. All responses to an app-based worker regarding a deactivation challenge, pursuant to subsections 8.40.060.B and 8.40.080.C; and~~

~~9. Any other records pursuant to Director's Rules.))~~

B. Network companies shall retain the records required by subsection 8.40.110.A for a period of three years.

~~((C. If a network company fails to retain adequate records required under subsection 8.40.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not retained. This presumption is substantive and necessary to effectuate the rights provided in this Chapter 8.40.))~~

Amendment 13 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Revise private right of action.

Effect: This amendment would revise the private right of action section to remove the ability of “any person or class of persons” to bring a civil action for violation of this Chapter 8.40, and instead limit it to “any app-based worker or class of app-based workers.”

This amendment would prevent an entity from bringing an action if a member has suffered an injury or retaliation due to a violation of this Chapter, or from bringing an action on behalf of aggrieved workers.

Amend Section 2 of CB 120580 as follows:

8.40.230 Private right of action

A. Any (~~person or class of persons~~) app-based worker or class of app-based workers that suffers an injury as a result of a violation of this Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.40 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person; liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with Section 8.40.170. 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 as amended.

~~((B. For purposes of this Section 8.40.230, “person” includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered an injury or retaliation.~~

~~€))~~ B. For purposes of determining membership within a class of ~~((persons))~~ app-based workers entitled to bring an action under this Section 8.40.230, two or more app-based workers are similarly situated if they:

1. Performed similar services in Seattle for the same network company or network companies, whether concurrently or otherwise, at some point during the applicable statute of limitations period;
2. Allege one or more violations that raise similar questions as to liability; and
3. Seek similar forms of relief.

~~((D.))~~ C. For purposes of subsection 8.40.230.~~((€))~~B., app-based workers shall not be considered dissimilar solely because:

1. The app-based workers’ claims seek damages that differ in amount; or
2. The job titles of or other means of classifying the app-based workers differ in ways that are unrelated to their claims.

~~((E.))~~ D. An order issued by a court may include a requirement for a network company to submit a compliance report to the court and/or to the Agency.

Amendment 14 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Remove certain references to fair, reasonable, reasonably, and objective in legislation.

Effect: This amendment would remove certain references to the following words throughout the legislation: fair, reasonable, reasonably, and objective.

Amend Section 1 of CB 120580 as follows:

* * *

I. App-based workers are subject to network company policies that unilaterally deactivate workers for a variety of reasons without consistent access to a ~~((fair))~~ process for such deactivations, nor do the workers have access to responsive network company personnel with the power to correct unwarranted deactivations by in-person meetings or telephone.

* * *

U. Establishing a ~~((reasonable))~~ standard for the deactivations of app-based workers as well as the ability to challenge unwarranted deactivations will help ensure that thousands of app-based workers who provide vital services in Seattle will be able to enjoy a measure of job security.

* * *

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

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“Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable

work; terminating; deactivating; threatening; penalizing; retaliating; engaging in retaliatory ~~((unfair))~~ immigration-related practices; filing a false report with a government agency; or discriminating against any person for any reason prohibited by Section 8.40.120. “Adverse action” for an app-based worker may involve any aspect of the app-based worker’s work, including compensation, work hours, volume, and frequency of offers made available, desirability and compensation rates of offers made available, responsibilities, or other material change in the terms and conditions of work or in the ability of an app-based worker to perform work. “Adverse action” also includes any action by the network company or a person acting on the network company’s behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 8.40.

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

1. ~~((Fair))~~ Notice of deactivation policy. A network company must inform the app-based worker in writing of the network company’s deactivation policy, defining what constitutes a violation that may result in deactivation. The network company’s written deactivation policy must be specific enough for an app-based worker to understand what constitutes a violation and how to avoid violating the policy. The deactivation policy must be available to the app-based worker in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The deactivation policy must be accessible to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and description of the deactivation policy, the manner of its distribution, and required languages for its translation.

2. ~~((Reasonable p))~~ Deactivation Policy. The policy that may lead to a deactivation must be ~~((reasonably))~~ related to the network company's safe and efficient operations. Examples of policies that are not ~~((reasonably))~~ related to the network company's safe and efficient operations include, but are not limited to:

* * *

3. Investigation. A network company must conduct ~~((a fair and objective))~~ an investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation and demonstrate an unbiased and neutral view of facts collected.

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6. Proportionate penalty. The penalty of deactivation must be ~~((reasonably))~~ related to the offense, and account for mitigating circumstances, such as the app-based worker's past work history with the network company.

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8.40.080 Access to records substantiating deactivation

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D. If the records substantiating deactivation involve information related to a customer or a third party and the network company ~~((reasonably))~~ believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

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8.40.100 Notice of rights

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D. Network companies shall establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This system shall be available to an app-based worker, at least three years after deactivation. The Director may issue rules defining ((reasonable)) criteria or requirements for this system to ensure that app-based workers have sufficient information to understand when they are covered by the entirety of Chapter 8.40, including but not limited to notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the previous 180 days, the number of completed offers or cancellations that involved performing services in Seattle in the previous 180 days, the overall percentage of completed offers that involved performing services in Seattle in the previous 180 days, and the app-based worker's receipts and/or payment disclosures for each offer performed or cancelled in the previous 180 days, pursuant to subsection 8.37.070.B and Section 14.34.060.

8.40.160 Findings of fact and determination

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4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.40, including but not limited to monitored compliance for a ((reasonable)) time period.

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8.40.170 Remedies

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B. A respondent found to be in violation of this Chapter 8.40 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party for the period of deactivation under the terms of this Chapter 8.40, and other equitable relief.

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

a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or

b. Assess a daily amount for unpaid compensation plus interest in favor of the aggrieved party in a minimum amount of at least the equivalent of payment for eight hours of work at the "hourly minimum wage" rate for Schedule 1 employers under Chapter 14.19.

* * *

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the ~~((reasonable))~~ costs incurred in enforcing this Chapter 8.40, including but not limited to ~~((reasonable))~~ investigation costs and attorneys' fees. The Director may issue rules on the amounts and contributing factors for assessing ~~((reasonable))~~ investigation costs and is strongly encouraged to

assess such costs in favor of the City to support the Agency's implementation of this Chapter 8.40.

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8.40.210 Failure to comply with final order

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B. No respondent that is the subject of a final order issued under this Chapter 8.40 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 before 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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 network company.

8.40.230 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.40 and, upon prevailing, may be awarded ~~((reasonable))~~ attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person; liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with Section 8.40.170. 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 as amended.