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Title: AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

Sponsors: Lisa Herbold, Andrew Lewis

Indexes:

Attachments: 1. Summary and Fiscal Note, 2. Central Staff Memo, 3. Proposed Substitute, 4. Central Staff Memo (6/15/20), 5. Proposed Substitute, 6. Proposed Amendment 1, 7. Signed Ordinance 126094, 8. Affidavit of Publication

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are broad, but food delivery network companies rely on business models that hire gig workers as “independent contractors,” thereby creating barriers for gig workers to access employee protections; and

WHEREAS, gig workers working for food delivery network companies during the COVID-19 emergency face magnified risks of catching or spreading disease because the nature of their work can involve close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease; and

WHEREAS, The City of Seattle (City) intends to make it clear that gig workers working for food delivery network companies have a right to receive premium pay for work performed during the COVID-19 emergency; and

WHEREAS, the City intends to make it clear that provision of premium pay should not result in food delivery network companies reducing or otherwise modifying the areas in the City served by the companies, reducing a gig worker’s compensation, limiting a gig worker’s earning capacity, or adding charges to customers; and

WHEREAS, establishing premium pay standards for gig workers working during the COVID-19 emergency will increase retention of these gig workers and compensate them for the hazards of working on the frontlines of a global pandemic; and

WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’ lives, support economic security, and contribute to a fair, healthy, and vibrant economy; and

WHEREAS, establishing a labor standard that requires premium pay for gig workers working for food delivery network companies is a subject of vital and imminent concern to the people of this City and requires appropriate action by the City Council to establish this labor standard for gig workers; NOW,

THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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

A. 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.

B. This ordinance protects and promotes public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring food delivery network companies to provide premium pay for gig workers performing work in Seattle, thereby increasing retention of gig workers who provide essential services on the frontlines of a global pandemic and who should be paid additional compensation for the hazards of working with significant exposure to an infectious disease.

C. The World Health Organization (WHO) has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease.

D. On February 29, 2020, Washington Governor Jay Inslee proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 3, Mayor Jenny Durkan proclaimed a civil emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering.

F. On March 16, 2020, Washington Governor Jay Inslee and the Public Health - Seattle & King County Local Health Officer issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, except for take-out food.

G. On March 23, 2020, Washington Governor Jay Inslee issued a “Stay Home - Stay Healthy” proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes through April 6, 2020. In addition to healthcare, public health and emergency services, the “Stay Home - Stay Healthy” proclamation identified delivery network companies and establishments selling groceries and prepared food and beverages as essential business sectors critical to protecting the health and well-being of all Washingtonians and designated their workers as essential critical infrastructure workers.

H. On April 2, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 4, 2020.

I. On May 1, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 31, 2020 in recognition that the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace.

J. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan that reopens Washington’s economy in phases and has restrictions on the seating capacity of restaurants during three of the four phases and physical distancing for high-risk populations and worksites during all four phases.

K. As of May 20, 2020, the World Health Organization Situation Report reported a global total of 4,801,202 cases of COVID-19, including 318,935 deaths; the Washington State Department of Health and Johns Hopkins University reported 18,811 cases of COVID-19, including 1,031 deaths in Washington State; and Public Health - Seattle & King County reported 7,617 cases of COVID-19, including 530 deaths, in King County.

L. Food delivery network companies are essential businesses operating in Seattle during the COVID-19 emergency and rely on business models that hire gig workers as independent contractors, thereby creating barriers for gig workers to access employee protections established by local, state, and federal law, and making

gig workers highly vulnerable to economic insecurity and health or safety risks.

M. Gig workers working for food delivery network companies are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They can work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited or no ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease.

N. In the pursuit of economic opportunity, many gig workers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles or other equipment to work for food delivery network companies.

O. Gig workers making deliveries for food delivery network companies are supporting community efforts to engage in physical distancing and mitigate the spread of COVID-19 while simultaneously exposing themselves to a higher risk of infection

P. Gig workers working for food delivery network companies bear the brunt of the time and expenses necessary for cleaning and disinfecting equipment and engaging in other efforts to protect themselves, customers, and the public from illness.

Q. Premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

R. Gig workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus. Gig workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

S. The availability of food delivery services is fundamental to the health of the community and is made possible during the COVID-19 emergency because gig workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by making deliveries while working in hazardous situations.

T. Establishing an immediate requirement for food delivery network companies to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

U. This ordinance is necessary in response to the COVID-19 public health emergency because requiring food delivery network companies to provide premium pay to gig workers compensates gig workers for the risks of working during a pandemic and the safety measures they are undertaking to protect themselves, customers, and the public from catching or spreading illness. The provision of premium pay also better ensures the retention of these essential workers who are on the frontlines of this pandemic to provide essential services, who are needed throughout the duration of the COVID-19 emergency, and who deserve fair and equitable compensation for their work.

Section 2. As the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

PREMIUM PAY FOR GIG WORKERS

100.005 Short title

This ordinance shall constitute the “Premium Pay for Gig Workers Ordinance” and may be cited as such.

100.010 Definitions

For purposes of this ordinance:

“Adverse action” means reducing the compensation to a gig worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a gig worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Section 100.050. “Adverse action” for a gig worker may involve any aspect of work, including compensation, work hours, responsibilities, or other material change in the terms and conditions of work.

“Adverse action” also encompasses any action by the hiring entity or a person acting on the hiring entity’s behalf that would dissuade a reasonable person from exercising any right afforded by this ordinance.

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

“Aggrieved party” means a gig worker or other person who suffers tangible or intangible harm due to a hiring entity or other person's violation of this ordinance.

“Application dispatch” means technology that allows customers to directly request dispatch of gig workers for provision of delivery services and/or allows gig workers or hiring entities to accept requests for services and payments for services via the internet using mobile interfaces such as, but not limited to, smartphone and tablet applications.

“City” means The City of Seattle.

“Compensation” means the total payment owed to a gig worker by reason of working for the hiring entity, including but not limited to hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“Deactivation” means the blocking of a gig worker’s access to the hiring entity’s platform, changing a gig worker’s status from eligible to provide delivery services to ineligible, or other material restriction in access to the hiring entity’s platform that is effected by a hiring entity.

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

“Director rules” means: (1) rules the Director or Agency may promulgate pursuant to subsection 100.060.B or 100.060.C; or (2) other rules that the Director identifies, by means of an Agency Q&A, previously promulgated pursuant to authority in Seattle Municipal Code Title 14. Rules the Director identifies by means of an Agency Q&A shall have the force and effect of law and may be relied on by hiring entities, gig workers, and other parties to determine their rights and responsibilities under this ordinance.

“Drop-off point” means the location of any delivery resulting from the online order.

“Eating and drinking establishment” means “eating and drinking establishment” as defined in Seattle Municipal Code Section 23.84A.010.

“Food delivery network company” means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order. “Food delivery network company” includes any such entity or person acting directly or indirectly in the interest of a food delivery network company in relation to the food delivery network company worker.

“Food delivery network company worker” means a person affiliated with and accepting an offer of prearranged delivery services for compensation from a food delivery network company. For purposes of this ordinance, at any time that a food delivery network company worker is logged into the worker platform, the worker is considered a food delivery network company worker.

“Food processing” means “food processing” as defined in Seattle Municipal Code Section 23.84A.012.

“Front pay” means the compensation the gig worker would earn or would have earned if reinstated by the hiring entity.

“Gig worker” means a food delivery network company worker.

“Grocery store” means “grocery store” as defined in Seattle Municipal Code Section 23.84A.014.

“Hiring entity” means a food delivery network company.

“Hiring entity payment” means the amount owed to a gig worker by reason of working for the hiring entity, including but not limited to payment for providing services, bonuses, and commissions.

“Online order” means an order placed through an online-enabled application or platform, such as an application dispatch system, provided by a hiring entity for delivery services in Seattle.

“Operating in Seattle” means, with respect to a hiring entity, offering prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to any affiliated gig worker, where such services take place in whole or part in Seattle.

“Pick-up point” means the location of any establishment accessed by the gig worker to fulfill an online order, including but not limited to (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order.

“Premium pay” means additional compensation owed to a gig worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“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 a hiring entity or any person who is alleged or found to have committed a violation of this ordinance.

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

“Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by a food delivery network worker, that enables the prearrangement of delivery services for compensation.

“Work-related stop in Seattle” means time spent by a gig worker on a commercial stop in Seattle that is related to the provision of delivery services associated with an online order, and 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.

“Written” or “writing” means a printed or printable communication in physical or electronic format, including but not limited to a communication that is transmitted through email, text message, or a computer or mobile system, or that is otherwise sent and maintained electronically.

100.015 Gig worker coverage

For the purposes of this ordinance:

A. Covered gig workers are limited to those who perform work for a covered hiring entity, where the work is performed in whole or part in Seattle.

B. Work performed “in Seattle” means work that includes a work-related stop in Seattle.

100.020 Hiring entity coverage

A. For the purposes of this ordinance, covered hiring entities are limited to those who hire 250 or more gig workers worldwide.

B. To determine the number of gig workers hired for the current calendar year:

1. The calculation is based upon the average number per calendar week of gig workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one gig worker worked for compensation. For hiring entities that did not have any gig workers during the preceding calendar year, the number of gig workers hired for the current calendar year is calculated based upon the average number per calendar week of gig workers who worked for compensation during the first 90 calendar days of the current year in which the hiring entity engaged in business.

2. All gig workers who worked for compensation shall be counted, including but not limited to:

- a. Gig workers who are not covered by this ordinance;
- b. Gig workers who worked in Seattle; and
- c. Gig workers who worked outside Seattle.

C. Separate entities that form an integrated enterprise shall be considered a single hiring entity under this ordinance. Separate entities will be considered an integrated enterprise and a single hiring entity under this ordinance 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; and
4. Degree of common ownership or financial control over the entities.

100.025 Premium pay requirement

A. Hiring entities shall provide each gig worker with premium pay for each online order that results in the gig worker making a work-related stop in Seattle. For each online order, hiring entities shall provide the gig worker with premium pay in the following amounts:

1. \$2.50 for one pick-up point or one drop-off point in Seattle;
2. \$1.25 for each additional pick-up point in Seattle; and

3. \$1.25 for each additional drop-off point in Seattle.

B. Hiring entities shall provide premium pay at the same time compensation is provided for the associated online order(s).

C. When providing premium pay, hiring entities shall include notification of online orders that qualified for premium pay and itemize the premium pay separately from other compensation.

D. Hiring entities shall provide the premium pay required by subsection 100.025.A for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

E. If the City establishes a minimum compensation standard for gig workers, the Council intends to consider eliminating the premium pay requirement for gig workers before the termination of the civil emergency proclaimed by the Mayor on March 3, 2020.

100.027 Gig worker and consumer protections

A. No hiring entity shall, as a result of this ordinance going into effect, take any of the following actions:

1. Reduce or otherwise modify the areas of the City that are served by the hiring entity;
2. Reduce a gig worker's compensation; or
3. Limit a gig worker's earning capacity, including but not limited to restricting access to online orders.

4. Add customer charges to online orders for delivery of groceries.

B. It shall be a violation of this Section 100.027 if this ordinance going into effect is a motivating factor in a hiring entity's decision to take any of the actions in subsection 100.027.A unless the hiring entity can prove that its decision to take the action(s) would have happened in the absence of this ordinance going into effect.

100.030 Notice of rights

A. Hiring entities shall provide each gig worker with a written notice of rights established by this ordinance. The Agency may create and distribute a model notice of rights in English and other languages.

However, hiring entities are responsible for providing gig workers with the notice of rights required by this subsection 100.030.A, in a form and manner sufficient to inform gig workers of their rights under this ordinance, regardless of whether the Agency has created and distributed a model notice of rights. The notice of rights shall provide information on:

1. The right to premium pay guaranteed by this ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this ordinance; and
3. The right to file a complaint with the Agency or bring a civil action for a violation of the requirements of this ordinance, including a hiring entity's denial of premium pay as required by this ordinance and a hiring entity or other person's retaliation against a gig worker or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this ordinance.

B. Hiring entities shall provide the notice of rights required by subsection 100.030.A in an electronic format that is readily accessible to the gig worker. The notice of rights shall be made available to the gig worker via smartphone application or online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the gig worker(s).

100.040 Hiring entity records

- A. Hiring entities shall retain records that document compliance with this ordinance for each gig worker.
- B. Hiring entities shall retain the records required by subsection 100.040.A for a period of three years.
- C. If a hiring entity fails to retain adequate records required under subsection 100.040.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this ordinance for the periods and for each gig worker for whom records were not retained.

100.050 Retaliation prohibited

- A. No hiring entity or any other person shall interfere with, restrain, or deny the exercise of, or the

attempt to exercise, any right protected under this ordinance.

B. No hiring entity 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 ordinance. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this ordinance; the right to inform others about their rights under this ordinance; the right to inform the person's hiring entity, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this ordinance; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this ordinance; the right to cooperate with the Agency in its investigations of this ordinance; the right to testify in a proceeding under or related to this ordinance; 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 ordinance.

C. No hiring entity or any other person shall communicate to a person exercising rights protected in this Section 100.050, 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 a gig worker or family member of the gig worker to a federal, state, or local agency because the gig worker has exercised a right under this ordinance.

D. It shall be a rebuttable presumption of retaliation if a hiring entity 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 100.050. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the hiring entity fails to rehire a former gig worker at the next opportunity for work in the same position. The hiring entity 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 100.050 shall be sufficient upon a showing that a hiring entity or any other person has taken an adverse action against a person and the person's exercise of rights protected in

this Section 100.050 was a motivating factor in the adverse action, unless the hiring entity can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 100.050 shall apply to any person who mistakenly but in good faith alleges violations of this ordinance.

G. A complaint or other communication by any person triggers the protections of this Section 100.050 regardless of whether the complaint or communication is in writing or makes explicit reference to this ordinance.

100.060 Enforcement power and duties

A. The Agency shall have the power to investigate violations of this ordinance and shall have such powers and duties in the performance of these functions as are defined in this ordinance and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency is authorized to coordinate implementation and enforcement of this ordinance and may promulgate appropriate guidelines or rules for such purposes.

C. The Director is authorized to promulgate rules consistent with this ordinance and Chapter 3.02 of the Seattle Municipal Code. Any guidelines or rules promulgated by the Director shall have the force and effect of law and may be relied on by hiring entities, gig workers, and other parties to determine their rights and responsibilities under this ordinance.

100.070 Violation

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

100.080 Investigation

A. The Agency shall have the power to investigate any violations of this ordinance by any respondent. The Agency may initiate an investigation pursuant to Director 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 hiring entities or businesses because the workforce contains significant numbers of gig workers who are vulnerable to violations of this ordinance 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 a gig worker or other person.

B. A gig worker or other person may report to the Agency any suspected violation of this ordinance. The Agency shall encourage reporting pursuant to this Section 100.080 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 gig worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the gig worker's or person's name and identifying information as necessary to enforce this ordinance or for other appropriate purposes.

2. Hiring entities shall provide gig workers with written notice of an investigation. Hiring entities shall provide the notice in a format that is readily accessible to gig workers. The Agency shall create the notice 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 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 ordinance and any administrative enforcement proceeding under this ordinance based upon the same facts. For purposes of this ordinance:

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

2. The Agency's investigation ends when the Agency issues a final order concluding the matter

and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

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

E. The Director may apply by affidavit or declaration in the form allowed under RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a hiring entity to produce the records required by Section 100.040, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 100.040, or any other document relevant to the issue of whether any gig worker or group of gig workers has been or is afforded the proper amount of premium pay required by this ordinance and/or to whether a hiring entity has violated any provision of this ordinance. 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 that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of gig workers who are vulnerable to violations of this ordinance or the workforce is unlikely to volunteer information regarding such violations.

F. A hiring entity that fails to comply with the terms of any subpoena issued under subsection 100.080.E in an investigation by the Agency under this ordinance before the issuance of a Director's Order issued pursuant to subsection 100.090.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 100.080.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 100.210.

100.090 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 ordinance 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 ordinance, the Director shall issue a “Determination of No Violation” with notice of a gig worker or other person's right to appeal the decision, pursuant to Director rules.

C. If the Director determines that a violation of this ordinance 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 ordinance for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 100.200.

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 100.200.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 pursuant to subsection 100.200.E or 100.200.F.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this ordinance, 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 100.210.

100.200 Remedies

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this ordinance 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 100.200 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

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

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

4. If there is a remedy due to an aggrieved party, the Director may waive part or all of the amount of 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 100.200 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 100.200.A.4, the Director shall 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. Other factors pursuant to Director rules.

B. A respondent found to be in violation of this ordinance shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this ordinance and other equitable relief. 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 designate a daily amount for unpaid compensation due to aggrieved party. For any violation of this ordinance, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

C. A respondent found to be in violation of this ordinance for retaliation under Section 100.050 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 ordinance, and liquidated damages in an additional amount of up to

twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,462.70.

D. A respondent found to be in violation of gig worker and consumer protections under subsection 100.027.A.1 or 100.027.A.4 shall be subject to the penalties and fines established by this Section 100.200; such penalties and fines shall be payable only to the Agency. The Director is not authorized to assess unpaid compensation due under subsection 100.200.B or 100.200.C. for violations of subsection 100.027.A.1 or 100.027.A.4. All remedies are available for violations of subsection 100.027.A.2 or 100.027.A.3.

E. The Director is authorized to assess penalties and shall specify that at least 50 percent of any penalty assessed pursuant to this subsection 100.200.E is payable to the aggrieved party and the remaining penalty is payable to the Agency as a civil penalty. The Director may also specify that the entire penalty is payable to the aggrieved party.

1. For a first violation of this ordinance, the Director may assess a penalty of up to \$546.07 per aggrieved party.

2. For a second violation of this ordinance, the Director shall assess a penalty of up to \$1,092.13 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 ordinance, the Director shall assess a penalty of up to \$5,462.70 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. The maximum penalty for a violation of this ordinance shall be \$21,849.79 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

5. For purposes of this Section 100.200, 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.

F. The Director is authorized to assess fines and may specify that the 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 provide a gig worker with written notice of rights under subsection 100.030.A | \$546.07 per aggrieved party |
| Failure to retain hiring entity records for three years under subsections 100.040.A and 100.040.B | \$546.07 per missing record |
| Failure to comply with prohibitions against retaliation for exercising rights protected under Section 100.050 | \$1,092.13 per aggrieved party |
| Failure to provide notice of investigation to gig workers under subsection 100.080.B.2 | \$546.07 |
| Failure to post or distribute public notice of failure to comply with final order under subsection 100.240.A.1 | \$546.07 |

The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$5,462.70 unless a fine for retaliation is issued, in which case the maximum amount is \$21,849.79.

G. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this ordinance shall be subject to a civil penalty of not less than \$1,092.13 and not more than \$5,462.70.

H. 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 ordinance, including but not limited to reasonable attorneys' fees.

I. A hiring entity that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the hiring entity is the subject of a final order two times or more within a five-year period, the hiring entity shall not be allowed to bid on any City contract for two years. This subsection 100.200.I shall be construed to provide grounds for debarment separate from, and in addition to,

those contained in Seattle Municipal Code Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 100.200.I shall be construed to limit the application of Seattle Municipal Code Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all hiring entities subject to debarment under this subsection 100.080.I.

100.210 Appeal period and failure to respond

A. A gig worker or other person who claims an injury as a result of an alleged violation of this ordinance may appeal the Determination of No Violation, pursuant to Director rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 100.200, 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.

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

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

100.230 Appeal from Hearing Examiner order

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

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 100.230.

100.240 Failure to comply with final order

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

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

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

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under Section 100.250.

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 hiring entity or person until such time as the hiring entity 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 100.240.A.4.

B. No respondent that is the subject of a final order issued under this ordinance 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 hiring entity.

100.250 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 100.210.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 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 100.210.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 100.230.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 100.230.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 100.250.B and 100.250.C, the Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this ordinance.

100.260 Private right of action

A. Any person or class of persons that suffers financial injury as a result of a violation of this ordinance, or is the subject of prohibited retaliation under Section 100.050, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to

remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$55,462.70 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 100.260, “person” includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 100.260, two or more gig workers are similarly situated if they:

1. Are or were hired for the same hiring entity or hiring entities, 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 100.260.C, gig workers shall not be considered dissimilar solely because the gig workers’

1. Claims seek damages that differ in amount, or
2. Job titles or other means of classifying gig workers differ in ways that are unrelated to their claims.

100.270 Encouragement of more generous policies

A. Nothing in this ordinance shall be construed to discourage or prohibit a hiring entity from the adoption or retention of premium pay policies more generous than the one required herein.

B. Nothing in this ordinance shall be construed as diminishing the obligation of a hiring entity to comply with any contract or other agreement providing more generous protections to a gig worker than

required by this ordinance.

100.280 Other legal requirements

This ordinance provides minimum requirements for premium pay while working for a hiring entity during the COVID-19 emergency and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for higher premium pay, or that extends other protections to gig workers; and nothing in this ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this ordinance be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this ordinance affecting such person. Nothing in this Section 100.280 shall be construed as restricting a gig worker’s right to pursue any other remedies at law or equity for violation of their rights.

100.290 Severability

The provisions of this ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to any hiring entity, gig worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this ordinance, 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 125948, 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 |
|---|----------------|
| * * * | |
| Paid Sick/Safe Leave Ordinance (Chapter 14.16) | No fee |
| Premium Pay for Gig Workers Ordinance (Introduced as Council Bill 119799) | No fee |
| Public Accommodations Ordinance (Chapter 14.06) | No fee |
| * * * | |

* * *

Section 4. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125930, is amended as follows:

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

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

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.
6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.
7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:
 - a. The expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or
 - b. If a timely appeal is made, the date of the final resolution of that appeal and any

subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

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

9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4, and 14.30.180.A.4, and subsection 100.240.A.4 of this ordinance, the applicant or licensee has failed to comply, within 30 days of service of any settlement agreement, with any final order issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, and 14.30, and this ordinance, for which all appeal rights have been exhausted, and the Director of the Office of Labor Standards has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, and 14.30, and this ordinance are remedied.

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

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

* * *

Section 5. This ordinance shall be automatically repealed without subsequent Council action three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020.

Section 6. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and

declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of the public health, safety, and welfare.

Section 7. By reason of the findings set forth in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of the Charter of the City.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)