

**CITY OF SEATTLE**

**ORDINANCE** 126665

**COUNCIL BILL** 120393

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

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

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

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

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

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

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

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

2 **Chapter 8.38 CANNABIS EMPLOYEE JOB RETENTION**

3 **8.38.010 Short title**

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

6 **8.38.020 Definitions**

7 For purposes of this Chapter 8.38:

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

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

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

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

20 "Change in control" means any sale, assignment, transfer, contribution, or other  
21 disposition of all or substantially all of the assets used in the operation of a cannabis business or  
22 a discrete portion of the cannabis business that continues in operation as a cannabis business of  
23 the same business type, or a controlling interest (including by consolidation, merger, or

1 reorganization) of the outgoing cannabis employer or any person who controls the outgoing  
2 cannabis employer.

3 "City" means The City of Seattle.

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

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

13 "Employ" means to suffer or permit to work.

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

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

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

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

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

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

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

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

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

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

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

### 5 **8.38.030 Employee coverage**

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

### 9 **8.38.040 Employer coverage**

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

13 B. Separate entities that form an integrated enterprise shall be considered a single  
14 employer under this Chapter 8.38. Separate entities will be considered an integrated enterprise  
15 and a single employer under this Chapter 8.38 where a separate entity controls the operation of  
16 another entity. The factors to consider include but are 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.

### 22 **8.38.050 Outgoing cannabis employer obligations**

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

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

10 **8.38.060 Incoming cannabis employer obligations**

11           A. The incoming cannabis employer shall keep the notice required by subsection  
12 8.38.050.B posted during any closure of the cannabis business and for 180 calendar days after  
13 the cannabis business is open to the public under its control.

14           B. The incoming cannabis employer shall:

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

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

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

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

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

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

12                   2. Only discharge an employee for just cause.

13           F. At the end of the 90-day transition employment period established by subsection  
14 8.38.060.D, the incoming cannabis employer shall provide a written performance evaluation to  
15 each employee. If the employee's performance during the 90-day transition employment period is  
16 satisfactory, the incoming cannabis employer shall consider offering the employee continued  
17 employment under the terms and conditions established by the incoming cannabis employer, or  
18 as required by law.

19 **8.38.100 Notice and posting**

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

23                   1. The right to notice that the cannabis business is changing ownership;

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

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

18           C. Employers shall give written notice to employees of the name and any trade ("doing  
19 business as") names used by any associated integrated enterprise. Such information shall be  
20 included in the written notice of employment information required by subsection 14.20.025.D.

21 **8.38.110 Employer records**

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



1                   1. A written copy of the preferential hiring list required by subsection 8.38.050.A;

2                   2. Written verification of offers of employment extended to each employee as  
3 required by subsection 8.38.060.B. The verification shall include the name, address, date of hire,  
4 and employment occupation classification of each employee;

5                   3. Written records of the performance evaluations required by subsection  
6 8.38.060.F; and

7                   4. Pursuant to rules issued by the Director, other records that are material and  
8 necessary to effectuate the terms of this Chapter 8.38.

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

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

15 **8.38.120 Retaliation prohibited**

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

18                  B. No employer or any other person shall take any adverse action against any person  
19 because the person has exercised in good faith the rights protected under this Chapter 8.38. Such  
20 rights include but are not limited to the right to make inquiries about the rights protected under  
21 this Chapter 8.38; the right to inform others about their rights under this Chapter 8.38; the right  
22 to inform the person's employer, the person's legal counsel, a union or similar organization, or  
23 any other person about an alleged violation of this Chapter 8.38; the right to file an oral or

1 written complaint with the Agency or bring a civil action for an alleged violation of this Chapter  
2 8.38; the right to cooperate with the Agency in its investigations of this Chapter 8.38; the right to  
3 testify in a proceeding under or related to this Chapter 8.38; the right to refuse to participate in an  
4 activity that would result in a violation of city, state, or federal law; and the right to oppose any  
5 policy, practice or act that is unlawful under this Chapter 8.38.

6 C. No employer or any other person shall communicate to a person exercising rights  
7 protected in this Section 8.38.120, directly or indirectly, the willingness to inform a government  
8 employee or contracted organization that the person is not lawfully in the United States, or to  
9 report, or to make an implied or express assertion of a willingness to report, suspected  
10 citizenship or immigration status of an employee or a family member of the employee to a  
11 federal, state, or local agency because the employee has exercised a right under this Chapter  
12 8.38.

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

20 E. Proof of retaliation under this Section 8.38.120 shall be sufficient upon a showing that  
21 the employer or any other person has taken an adverse action against a person and the person's  
22 exercise of rights protected in this Section 8.38.120 was a motivating factor in the adverse action,

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

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

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

### 8 **8.38.125 Rulemaking authority**

9 The Director is authorized to administer and enforce this Chapter 8.38. The Director is  
10 authorized to promulgate, revise, or rescind rules and regulations deemed necessary,  
11 appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter  
12 8.38 pursuant to Chapter 3.02, providing affected entities with due process of law and in  
13 conformity with the intent and purpose of this Chapter 8.38. Any rules promulgated by the  
14 Director shall have the force and effect of law and may be relied on by employers, employees,  
15 and other parties to determine their rights and responsibilities under this Chapter 8.38.

### 16 **8.38.130 Enforcement power and duties**

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

### 20 **8.38.140 Violation**

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

### 23 **8.38.150 Investigation**

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

10           B. An employee or other person may report to the Agency any suspected violation of this  
11 Chapter 8.38. The Agency shall encourage reporting pursuant to this Section 8.38.150 by taking  
12 the following measures:

13                   1. The Agency shall keep confidential, to the maximum extent permitted by  
14 applicable laws, the name and other identifying information of the employee or person reporting  
15 the violation. However, with the authorization of such person, the Agency may disclose the  
16 employee's or person's name and identifying information as necessary to enforce this Chapter  
17 8.38 or for other appropriate purposes.

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

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

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

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

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

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

16                   E. The Director may apply by affidavit or declaration in the form allowed under RCW  
17 5.50.050 to the Hearing Examiner for the issuance of subpoenas requiring an employer to  
18 produce the records required by Section 8.38.110, or the attendance and testimony of witnesses,  
19 or for the production of documents required to be retained under Section 8.38.110, or any other  
20 document relevant to the issue of whether any employee or group of employees received the  
21 information or other benefits required by this Chapter 8.38 and/or to whether the employer has  
22 violated any provision of this Chapter 8.38. The Hearing Examiner shall conduct the review  
23 without hearing as soon as practicable and shall issue subpoenas upon a showing that there is

1 reason to believe that: a violation has occurred; a complaint has been filed with the Agency; or  
2 circumstances show that violations are likely to occur within a class of businesses because the  
3 workforce contains significant numbers of app-based workers who are vulnerable to violations of  
4 this Chapter 8.38, the workforce is unlikely to volunteer information regarding such violations,  
5 or the Agency has gathered preliminary information indicating that a violation may have  
6 occurred.

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

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

14 H. Where the Director has reason to believe that a violation has occurred, the Director  
15 may order any appropriate temporary or interim relief to mitigate the violation or maintain the  
16 status quo pending completion of a full investigation or hearing, including but not limited to a  
17 deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest,  
18 damages, and penalties due. A respondent may appeal any such order in accordance with Section  
19 8.38.180.

### 20 **8.38.160 Findings of fact and determination**

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

1 violation of this Chapter 8.38 has or has not occurred based on a preponderance of the evidence  
2 before the Director.

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

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

9 1. The Director's Order shall state with specificity the amounts due under this  
10 Chapter 8.38 for each violation, including payment of unpaid compensation, liquidated damages,  
11 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section  
12 8.38.170.

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

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

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

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

23 **8.38.170 Remedies**

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

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

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

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

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

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

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



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

4 5. When determining the amount of liquidated damages, civil penalties, penalties  
5 payable to aggrieved parties, and fines due under this Section 8.38.170, for a settlement  
6 agreement or Director's Order, including but not limited to the mitigation of civil penalties and  
7 fines due to the Agency for timely payment of remedy due to an aggrieved party under  
8 subsection 8.38.170.A.4, the Director may consider:

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

11 b. The nature and persistence of the violations;

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

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

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

15 f. The circumstances of each situation;

16 g. The amount of penalties in similar situations; and

17 h. Pursuant to rules that the Director may issue, other factors that are  
18 material and necessary to effectuate the terms of this Chapter 8.38.

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

22 1. If the precise amount of unpaid compensation cannot be determined due to a  
23 respondent's failure to produce records, or if a respondent produces records in a manner or form

1 which makes timely determination of the amount of unpaid compensation impracticable, the  
2 Director may:

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

7 b. Assess a daily amount for unpaid compensation in a minimum amount  
8 of \$150 for each day that each violation occurred or continued. This amount shall be increased  
9 annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each  
10 year thereafter. The Agency shall determine the amounts and file a schedule of such amounts  
11 with the City Clerk.

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

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

16 4. For purposes of establishing a first and subsequent violation for this Section  
17 8.38.170, the violation must have occurred within ten years of the settlement agreement or  
18 Director's Order.

19 C. A respondent found to be in violation of this Chapter 8.38 for retaliation under Section  
20 8.38.120 shall be subject to any appropriate relief at law or equity including, but not limited to,  
21 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of  
22 unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter  
23 8.38, and liquidated damages in an additional amount of up to twice the unpaid compensation.

1 The Director also shall order the imposition of a penalty payable to the aggrieved party of up to  
2 \$5,755.31.

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

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

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

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

13 4. For purposes of this Section 8.38.170, a violation is a second, third, or  
14 subsequent violation if the respondent has been a party to one, two, or more than two settlement  
15 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than  
16 two Director's Orders, respectively, have issued against the respondent in the ten years preceding  
17 the date of the violation; otherwise, it is a first violation.

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

| <b>Violation</b>  | <b>Fine</b>                  |
|---|------------------------------|
| Failure to post notice of the change in control of cannabis business as required by subsections 8.38.050.B and 8.38.060.A | \$575.31 per aggrieved party |

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

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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 \$5,755.31 per aggrieved party. If a fine for retaliation is issued, the maximum amount that may be imposed is \$23,020 per aggrieved party.

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

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 8.38, including but not limited to reasonable attorney's fees.

H. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the

1 subject of a final order two times or more within a five-year period, the respondent shall not be  
2 allowed to bid on any City contract for two years. This subsection 8.38.170.H shall be construed  
3 to provide grounds for debarment separate from, and in addition to, those contained in Chapter  
4 20.70 and shall not be governed by that chapter, provided that nothing in this subsection  
5 8.38.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify  
6 the Director of Finance and Administrative Services of all employers subject to debarment under  
7 this subsection 8.38.170.H.

8 **8.38.180 Appeal period and failure to respond**

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

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

17 **8.38.190 Appeal procedure and failure to appear**

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

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

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

6 **8.38.200 Appeal from Hearing Examiner order**

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

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

13 **8.38.210 Failure to comply with final order**

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

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

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

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

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

12                B. No respondent that is the subject of a settlement agreement or final order issued under  
13 this Chapter 8.38 shall quit business, sell out, exchange, convey, or otherwise dispose of the  
14 respondent's business or stock of goods without first notifying the Agency and without first  
15 notifying the respondent's successor of the amounts owed under the settlement agreement or final  
16 order at least three business days prior to such transaction. At the time the respondent quits  
17 business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of  
18 goods, the full amount of the remedy, as defined in the settlement agreement or the final order  
19 issued by the Director or the Hearing Examiner, shall become immediately due and payable. If  
20 the amount due under the settlement agreement or final order is not paid by respondent within  
21 ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall  
22 become liable for the payment of the amount due, provided that the successor has actual  
23 knowledge of the order and the amounts due or has prompt, reasonable, and effective means of

1 accessing and verifying the fact and amount of the order and the amounts due. The successor  
2 shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy.  
3 When the successor makes such payment, that payment shall be deemed a payment upon the  
4 purchase price in the amount paid, and if such payment is greater in amount than the purchase  
5 price the amount of the difference shall become a debt due such successor from the employer.

6 **8.38.220 Debt owed The City of Seattle**

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

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



1 subsection 8.38.180.B and therefore has failed to exhaust the respondent's administrative  
2 remedies, shall also be admissible without further evidentiary foundation.

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

14 D. In considering matters brought under subsections 8.38.220.B and 8.38.220.C, the  
15 Seattle Municipal Court may include within its judgment all terms, conditions, and remedies  
16 contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable,  
17 that are consistent with the provisions of this Chapter 8.38.

18 **8.38.230 Private right of action**

19 A. Any person or class of persons that suffers an injury as a result of a violation of this  
20 Chapter 8.38 or is the subject of prohibited retaliation under Section 8.38.120 may bring a civil  
21 action in a court of competent jurisdiction against the employer or other person violating this  
22 Chapter 8.38 and, upon prevailing, may be awarded reasonable attorney fees and costs and such  
23 legal or equitable relief as may be appropriate to remedy the violation including, without

1 limitation: the payment of any unpaid compensation plus interest due to the person and  
2 liquidated damages in an additional amount of up to twice the unpaid compensation; and a  
3 penalty payable to any aggrieved party of up to \$5,755.31 if the aggrieved party was subject to  
4 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due  
5 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

6 B. For purposes of this Section 8.38.230, "person" includes any entity a member of which  
7 has suffered an injury or retaliation, or any other individual or entity acting on behalf of an  
8 aggrieved party that has suffered injury or retaliation.

9 C. For purposes of determining membership within a class of persons entitled to bring an  
10 action under this Section 8.38.230, two or more employees are similarly situated if they:

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

15 D. For purposes of subsection 8.38.230.C, employees shall not be considered dissimilar  
16 solely because:

- 17 1. The employees' claims seek damages that differ in amount, or  
18 2. The job titles or other means of classifying employees differ in ways that are  
19 unrelated to their claims.

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

22 **8.38.233 Waiver**

1 Any waiver by an individual of any provisions of this Chapter 8.38 shall be deemed  
2 contrary to public policy and shall be void and unenforceable.

3 **8.38.240 Other legal requirements—Effect on other laws**

4 A. The provisions of this Chapter 8.38:

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

7 2. Shall not be construed to preempt, limit, or otherwise affect the applicability of  
8 any other law, regulation, requirement, policy, or standard for minimum labor and compensation  
9 requirements, or which extends other protections to employees of a cannabis business; and

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

12 B. This Chapter 8.38 shall not be construed to preclude any person aggrieved from  
13 seeking judicial review of any final administrative decision or order made under this Chapter  
14 8.38 affecting such person. Nothing in this Section 8.38.240 shall be construed as restricting an  
15 employee’s right to pursue any other remedies at law or equity for violation of the employee’s  
16 rights.

17 **8.38.250 Severability**

18 The provisions of this Chapter 8.38 are declared to be separate and severable. If any clause,  
19 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.38, or the  
20 application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not  
21 affect the validity of the remainder of this Chapter 8.38 or the validity of its application to other  
22 persons or circumstances.

1 Section 2. Subsection 14.20.025.D of the Seattle Municipal Code, which section was last  
2 amended by Ordinance 125135, is amended as follows:

3 **14.20.025 Notice and posting**

4 \* \* \*

5 D. Employers shall give written notice of employment information to employees that  
6 contains items listed in subsections 14.20.025.D.4.a through 14.20.025.D.4.((i))j in English and  
7 in the primary language(s) of the employee(s) receiving the written information.

8 1. Employers shall give this written notice to employees at time of hire and to all  
9 employees who work for the employer as of that date and in the future.

10 2. Employers shall revise this written notice before any change to such  
11 employment information, or as soon as practicable for retroactive changes to such employment  
12 information, pursuant to rules issued by the Director. For the written good faith estimate of the  
13 employee's work schedule in subsection 14.20.025.D.4.h, the employer is required to revise the  
14 notice once every year and when there is a significant change to the work schedule due to  
15 changes in the employee's availability or to the employer's business needs, pursuant to Section  
16 14.22.025.

17 3. If an employer fails to give this written notice for the items listed in subsections  
18 14.20.025.D.4.a through 14.20.025.D.4.g, the failure shall constitute evidence weighing against  
19 the credibility of the employer's testimony regarding the agreed-upon rate of pay.

20 4. The written notice shall include the following items:

21 a. Name of employer and any trade ("doing business as") names used by  
22 the employer;

1                           b. Physical address of the employer's main office or principal place of  
2 business and, if different, a mailing address;

3                           c. Telephone number and, if applicable, email address of the employer;

4                           d. Employee's rate or rates of pay, and, if applicable, eligibility to earn an  
5 overtime rate or rates of pay;

6                           e. Employer's tip policy, with an explanation of any tip sharing, pooling,  
7 or allocation policies;

8                           f. Pay basis (e.g. hour, work shift, day, week, commission);

9                           g. Employee's established pay day for earned compensation due by reason  
10 of employment;

11                          h. For employees covered by Chapter 14.22, a written good faith estimate  
12 of the employee's work schedule including the median number of hours the employee can expect  
13 to work each work week, and whether the employee will be expected to work on-call shifts;

14 ~~((and))~~

15                          i. For employees covered by Chapter 8.38, the information required by  
16 subsection 8.38.100.C; and

17                          ~~((i.))~~j. Pursuant to rules issued by the Director, other information that is  
18 material and necessary to effectuate the terms of this Chapter 14.20.

19                          Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance  
20 126283, is amended as follows:

21 **3.02.125 Hearing Examiner filing fees**

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

| <b>Basis for Case</b>                            | <b>Fee in dollars</b> |
|--|-----------------------|
| * * *  |                       |
| Cable Communications (Chapter 21.60)             | No fee                |
| Cannabis Jobs Retention Ordinance (Chapter 8.38) | No fee                |
| * * *  |                       |

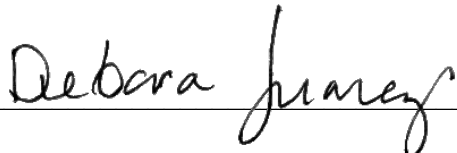
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\* \* \*

1 Section 4. Sections 1 and 2 of this ordinance shall take effect nine months after the  
2 effective date of this ordinance.

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


6 Passed by the City Council the 6th day of September, 2022,  
7 and signed by me in open session in authentication of its passage this 6th day of  
8 September, 2022.

9   
10 \_\_\_\_\_  
President \_\_\_\_\_ of the City Council

11  Approved /  returned unsigned /  vetoed this 19th day of September, 2022.

12   
13 \_\_\_\_\_  
Bruce A. Harrell, Mayor

14 Filed by me this 19th day of September, 2022.

15   
16 \_\_\_\_\_  
Elizabeth M. Adkisson, Interim City Clerk

17 (Seal)

18  
19  
20 Attachments: