SEATTLE CITY COUNCIL

Legislative Summary

CB 119113

Record No.: CB 119113 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 **Ord. no:** Ord 125467 **In Control:** City Clerk

File Created: 10/04/2017

Final Action: 11/28/2017

Title: AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.36 to the Seattle Municipal Code; and establishing a retirement-savings program for certain employees working in Seattle.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Herbold

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: adam.schaefer@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	10/10/2017	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk						
	Notes:						
1	City Clerk	10/18/2017	sent for review	Council President's Office			
1	Council President's Office	10/19/2017	sent for review	Select Budget Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Select Budget Committee						
	Notes:						
1	Full Council	10/23/2017	referred	Select Budget Committee			
1	Select Budget Committee	10/25/2017					
1	Select Budget Committee	11/14/2017					

1	Select Budget Committee	11/15/2017	pass		Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).

Notes:

In Favor: 8 Member Bagshaw, Member Harrell, Member Harris-Talley, Chair Herbold, Vice Chair Johnson, Member Juarez, Vice Chair O'Brien, Member Sawant

Opposed: 0

Absent(NV): 1 Member González

1	Full Council	11/20/2017	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:

Notes:

In Favor: 9 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Harris-Talley, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

1	City Clerk	11/22/2017	submitted for Mayor's signature	Mayor
1	Mayor	11/22/2017	Signed	
1	Mayor	11/28/2017	returned	City Clerk
1	City Clerk	11/28/2017	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 125467

COUNCIL BILL 119113

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.36 to the Seattle Municipal Code; and establishing a retirement-savings program for certain employees working in Seattle.

WHEREAS, an expanding population of workers in Seattle, as elsewhere in the United States, are failing to save adequately for their retirement; and

WHEREAS, although Social Security does provide some basic retirement income, it is insufficient to meet living costs during retirement and must be complemented by other sources of retirement savings, and a 2013 survey by AARP, titled "Not Making the Grade," found that 24 percent of Washingtonians aged 45 to 64 had less than $25,000 in savings and that 81 percent wished they had saved more for their retirement; and

WHEREAS, the growing issue of retirement security is partially due to diminishing access of many employees to workplace retirement savings plans, in addition to the challenges of wage stagnation and increased living costs facing low and middle-income workers; and

WHEREAS, a 2016 Pew Charitable Trusts study conducted for The City of Seattle found that 40 percent of employees in the Seattle metropolitan area do not have access to a workplace retirement savings plan; and

WHEREAS, the aforementioned 2016 Pew Charitable Trusts study found that people of color and employees of small businesses in the Seattle metropolitan area are particularly disadvantaged in terms of access to retirement plans; and

WHEREAS, it is well established that individuals are far more likely to save for retirement if an option is made available to them in their workplace, especially if they are automatically enrolled into a retirement savings plan; and

WHEREAS, by providing an efficient and cost-effective way to save for retirement, the Seattle Retirement Savings Plan would provide workers the opportunity to improve their own retirement security and reduce inequities; and

WHEREAS, the Seattle Retirement Savings Plan is also expected to protect the City's financial well-being as the cost of insufficient retirement savings is borne in part by higher spending on social services; and

WHEREAS, the Mayor's 2018 Proposed Budget allocates $200,000 to begin an efficient implementation of the Seattle Retirement Savings Plan; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 14.36 is added to the Seattle Municipal Code as follows:

CHAPTER 14.36 SEATTLE RETIREMENT SAVINGS PLAN

14.36.010 Findings

The City Council makes the following findings of fact and declarations:

A. In 2016, Pew Charitable Trusts conducted a study for the City, reporting that 40 percent of employees in the Seattle metropolitan area do not have access to a workplace retirement savings plan. Applying this figure to Seattle, an estimated 200,000 Seattle workers and their families do not have access to a workplace retirement savings plan.

B. People of color in the Seattle metropolitan area are particularly disadvantaged in terms of access to retirement plans. In the 2016 Pew Charitable Trusts study cited in subsection 14.36.010.A, Pew also reported that 45 percent of black employees, 54 percent of Latino

employees, and 47 percent of Asian employees lacked access to a workplace retirement savings plan compared to 37 percent for white employees.

C. The 2016 Pew Charitable Trusts study cited in subsections 14.36.010.A and 14.36.010.B also found that employees of small businesses are especially unlikely to have access to a workplace retirement program, and that 68 percent of employees in the Seattle metropolitan area at firms with under 50 employees lack access to a workplace retirement savings plan.

D. Individuals are far more likely to save for retirement if an option is made available to them in their workplace, especially if they are automatically enrolled into a retirement savings plan.

E. Providing an efficient and cost-effective way to save for retirement will help smaller employers and people of color close the inequitable gap in retirement savings, and improve their retirement security.

F. A retirement savings plan for Seattle workers would help protect the finances of the City by lessening the higher spending on social services that results from insufficient retirement savings.

14.36.020 Definitions

As used in this Chapter 14.36:

"Board" means the Seattle Retirement Savings Plan Board of Administration established pursuant to Section 14.36.030.

"City" means The City of Seattle.

"Covered employer" means any employer of one or more eligible employees which:

1. Has been in business for longer than 24 months;

2. Is not a federal, state, or local government entity;

3. Meets any other requirements the Board may establish pursuant to Section 14.36.060; and

4. Does not offer a qualified retirement plan or participate in a multiple-employer or multiemployer qualified retirement plan, including but not limited to a plan qualified under Section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code for employees working in the Seattle city limits.

"Eligible employee" means an employee of at least 18 years of age customarily employed for compensation by a covered employer in the Seattle city limits.

"Investment adviser" means (i) an investment adviser registered as such under the U.S. Investment Advisers Act of 1940 ("Advisers Act"), or (ii) a bank or other institution exempt from registration under the Advisers Act.

"Investment fund" means each investment fund option established by the Board within the trust for investment purposes.

"IRA" means either an individual retirement account or individual retirement annuity established under Section 408 (traditional) or 408A (Roth) of the Internal Revenue Code.

"Seattle Retirement Savings Plan" (SRSP) means the plan established pursuant to this Chapter 14.36.

"Trust" means the IRA retirement trust (or annuity contract) established under Section 14.36.090.

"Trustee" means the trustee of the trust (including an insurance company issuing an annuity contract) selected by the Board under Section 14.36.090.

14.36.030 Seattle Retirement Savings Plan Board of Administration

A. There is created and established a Board that shall govern the SRSP established pursuant to this Chapter 14.36. The Board shall consist of seven members as follows:

1. The Chair of the City Council's Finance Committee or its successor;

2. The City Director of Finance;

3. The Seattle City Employees' Retirement System (SCERS) Executive Director;

4. A City representative with experience in investments, who is designated by the SCERS Executive Director;

5. A public representative of eligible employees or an association representing eligible employees;

6. A public representative of participating employers; and

7. A public representative with experience in investments or retirement plan oversight and management.

B. Appointments of the representatives in subsections 14.36.030.A.5, 14.36.030.A.6, and 14.36.030.A.7 shall be made by the Mayor and confirmed by the City Council.

C. Before the effective date of the ordinance introduced as Council Bill 119113, the Mayor shall designate which Board member shall serve as the ex officio Chair of the Board. In the absence of such a designation, the Chair of the City Council's Finance Committee, or the successor to that Committee, shall serve as Chair of the Board.

D. Members designated by the SCERS Executive Director or appointed by the Mayor shall serve for three-year terms starting July 1 and ending June 30 three years later, with initial terms ending June 30, 2020. If a member's term has expired but a successor has not been designated or appointed, the member shall continue to hold office until a replacement has been designated or appointed.

E. Any vacancy in an appointed member position shall be filled by appointment for the unexpired term by the appointing authority for that member position.

14.36.035 Powers and duties of the Board

A. The Board shall, subject to Section 14.36.100, establish the SRSP for participating employees.

B. In implementing this Chapter 14.36, the Board shall have the following powers, which may be effectuated directly by the Board or through the assistance of City employees duly assigned to support the Board or to provide support for the SRSP:

1. To establish, implement, and maintain the SRSP developed pursuant to this Chapter 14.36;

2. To make the required determinations under Section 14.36.100;

3. To adopt rules for the administration of the SRSP as provided in Section 14.36.060;

4. To direct the investment of the funds contributed to accounts in the SRSP consistent with the investment policies established by the Board;

5. To collect application, account, or administrative fees to defray the costs of administering the SRSP;

6. Independently or in coordination with any similar programs of a state or other governmental unit, to make and enter into contracts, agreements, or arrangements, and to retain, employ, and contract for any of the following considered necessary or desirable, for carrying out the purposes set forth in this Chapter 14.36:

a. Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators, and third-party plan administrators;

b. Research, technical, and other services; and

c. Services of other City departments and agencies to assist the Board in its duties;

7. To evaluate the need for, and procure as needed, pooled private insurance of the SRSP;

8. To develop and implement an outreach plan to gain input and disseminate information regarding the SRSP and retirement savings in general;

9. To provide for contributions to the SRSP to be deposited directly with the investment administrator for the SRSP; and

10. To pool accounts established under the SRSP for investment.

14.36.040 Consumer protection; fiduciary duties

A. The Board and any other person who has control of the assets of the SRSP shall be a fiduciary with respect to the SRSP.

B. Each covered employer shall be required to provide eligible employees with such information as the Board directs. No covered employer acting as such shall be considered a fiduciary with respect to the SRSP or an IRA or have fiduciary responsibilities under this Chapter 14.36.

C. Each fiduciary shall discharge its duties with respect to the SRSP solely in the interests of participating employees and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of like character and aims.

14.36.050 Requirements for SRSP

A. The SRSP must:

1. Require each covered employer to offer its eligible employees the opportunity to contribute to the SRSP through payroll deductions;

2. Prohibit employers from making contributions to employee accounts and endorsing or otherwise promoting the SRSP;

3. Require a penalty or penalties, as recommended by the Board and approved by the City Council by ordinance, for a covered employer that fails to:

a. Offer an eligible employee the opportunity to contribute;

b. Withhold an eligible employee's contributions;

c. Send an eligible employee's contributions to the investment administrator for the SRSP; or

d. Provide an eligible employee with the disclosures required by this Chapter 14.36;

4. Allow eligible employees to contribute to an account established in their name under the SRSP through payroll deductions;

5. Provide for automatic enrollment of eligible employees and allow them to opt out of the SRSP;

6. Have a default contribution rate set by the Board by rule;

7. Offer default escalation of contribution rates that can be increased or decreased by the Board within the limits allowed by law;

8. Require the maintenance of separate records and accounting for each SRSP account;

9. Provide for reports on the status of SRSP accounts to be provided to SRSP participants at least annually;

10. Allow for account owners to maintain an account regardless of place of employment and to roll over funds into other retirement accounts;

11. Be administered by an independent financial services company selected by the Board through a competitive process;

12. Provide that the City and employers that participate in the SRSP have no proprietary interest in the contributions to or earnings on amounts contributed to accounts established under the SRSP;

13. Keep administration fees in the SRSP low but sufficient to ensure that the SRSP is sustainable;

14. Allow the use of private sector firms to administer and invest the contributions to the SRSP under the supervision and guidance of the Board;

15. Not impose any duties on employers under the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and

16. Be designed and operated in a manner that will not cause it to be an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974.

17. Offer at least one investment fund option that is guided by social responsibility.

B. The SRSP, the Board, each Board member, and the City may not guarantee any rate of return or any interest rate on any contribution. The SRSP, the Board, each Board member, and the City may not be liable for any loss incurred by any person as a result of participating in the SRSP except as otherwise required by applicable law.

14.36.060 Rules for SRSP

The Board shall adopt processes and rules consistent with Section 14.36.040 that:

A. Establish the process for enrollment in the SRSP, including procedures for automatic enrollment of eligible employees and for them to opt out of the SRSP;

B. Establish the process for participants to make the default contributions to SRSP accounts and to adjust the contribution levels;

C. Establish the process for employers to withhold employee contributions to SRSP accounts from employees' wages and send the contributions to the investment administrator for the SRSP;

D. Establish the process for participants to make nonpayroll contributions to SRSP accounts;

E. Set minimum, maximum, and default contribution levels in accordance with limits established by the Internal Revenue Code;

F. Establish the process for withdrawals from SRSP accounts;

G. Establish whether the definition of "covered employer" should be limited to employers with at least a certain number of eligible employees, considering the number of employees that would be affected, the approximate costs of participation in SRSP for smaller employers, the objectives of the SRSP, and the approach taken to defining covered employers in other City regulations related to private employment;

H. Establish whether the definition of "eligible employee" should be limited to employees customarily working a certain number of hours per month in the Seattle city limits, considering the approximate costs of participation in SRSP, the objectives of the SRSP, and the approach taken to defining eligible employees in other City regulations related to private employment;

I. Establish the process and requirements for an employer to obtain an exemption from offering the SRSP by showing the employer is not a covered employer;

J. Establish rules regarding participation in the SRSP, if any, for self-employed individuals or employees who are not eligible to participate in an employer's qualified retirement plan; and

K. Mandate the contents and frequency of required disclosures to employees, employers, and other SRSP participants. These disclosures must include, but need not be limited to:

1. The benefits and risks associated with making contributions to the SRSP;

2. Instructions for making contributions to the SRSP;

3. How to opt out of the SRSP;

4. How to participate in the SRSP with a level of contributions other than the default rate;

5. The process for withdrawal of retirement savings;

6. How to obtain additional information about the SRSP;

7. That employees seeking financial advice should contact financial advisers, that participating employers are not in a position to provide financial advice and that the City, participating employers, and others are not liable for decisions employees make pursuant to this Chapter 14.36;

8. That the SRSP is not an employer-sponsored retirement plan;

9. Any contribution limits and salary requirements under the Internal Revenue Code applicable to an employee's account; and

10. That the SRSP accounts and rate of return are not guaranteed by the City, participating employers, or any other parties.

14.36.070 Confidentiality of account information

Individual account information for accounts under the SRSP is confidential to the extent allowed by law. A person who either provides or is the subject of the individual account information may agree expressly in writing that the information may be disclosed.

14.36.080 Seattle Retirement Savings Plan Administrative Fund

A. The Seattle Retirement Savings Plan Administrative Fund is established in the City budget, separate and distinct from the General Fund. Interest earned by the Seattle Retirement Savings Plan Administrative Fund shall be credited to the fund.

B. The Board may use the moneys in the fund to pay the administrative costs and expenses of the Board and the SRSP and for any other purpose described in this Chapter 14.36.

14.36.090 Seattle Retirement Savings Plan Trust

There is hereby created as an instrumentality of the City a trust to be known as the Seattle Retirement Savings Plan Trust.

A. The Board shall appoint an institution qualified to act as trustee of IRA trusts or insurance company issuing annuity contracts under Section 408 of the Internal Revenue Code and licensed to do business in the City to act as trustee.

B. The assets of IRAs established for participating employees shall be allocated to the trust and combined for investment purposes. Trust assets shall be managed and administered for the exclusive purposes of providing benefits to participating employees of the SRSP and defraying reasonable expenses of administering and maintaining, and managing investments, of the IRAs and the Trust, including the expenses of the Board under Section 14.36.035.

C. The Board shall establish within the trust several investment funds, each pursuing an investment strategy and policy established by the Board. The Board shall establish at least three

"core" investment funds, which shall be diversified so as to minimize the risk of large losses under the circumstances, and may establish one or more "non-core" investment funds that participating employees may select. The Board may, at any time and from time to time, add, replace, or remove any investment fund.

D. The Board may allow participating employees to allocate assets of their IRAs among such investment funds and in such case, the Board also may designate an investment fund as a default investment for the IRAs of participating employees who do not make an investment choice.

E. Subject to subsection 14.36.090.F, the Board, in consultation with such third-party professional investment advisers, managers, or consultants as it may retain, shall establish each investment fund. Such investment funds may include mutual funds, index funds, collective funds, separately managed accounts, exchange-traded funds, or other pooled investment vehicles that are generally available in the market place. The Board shall not direct that any investment fund or any other entity make any investment in any bond, debt instrument, or other security issued by the City.

F. The Board may, in its discretion, retain an investment adviser to select and manage the investments of an investment fund on a discretionary basis, subject to the Board's ongoing review and oversight.

G. The trustee shall be subject to directions of the Board under subsection 14.36.090.E or an investment adviser under subsection 14.36.090.F and shall otherwise have no responsibility for the selection, retention, or disposition of trust investments or assets.

H. The assets of the trust shall at all times be preserved, invested, and expended solely for the purposes of the trust and no property rights therein shall exist in favor of the City or any

covered employer. Trust assets shall not be transferred or used by the City for any purposes other than the purposes of the trust or funding the expenses of operating the SRSP. Amounts deposited with the trustee shall not constitute property of the City and shall not be commingled with City funds and the City shall have no claim to or against, or interest in, the trust assets.

I. The assets of the trust shall at all times be held separate and apart from the assets of the City. None of the City, the SRSP, the Board, any Board member, or any covered employer shall guarantee any investment, rate of return, or interest on amounts held in the trust, an investment fund, or any IRA. None of the City, the SRSP, the Board, any Board member, or any covered employer shall be liable for any losses incurred by trust investments or otherwise by any participating employee or other person as a result of participating in the SRSP, including but not limited to any and all claims of damage or loss alleged to arise from a participating employee's investment elections, any failure to make such investment elections, or the selection of the investment funds offered in the SRSP.

14.36.100 Prerequisites to establishing the SRSP

A. Before establishing the SRSP and providing for enrollment, the Board shall:

1. Conduct a market analysis to determine the feasibility and projected impacts of the SRSP, as described in this Chapter 14.36; and

2. Obtain legal advice to determine whether the SRSP conflicts with or is preempted by state or federal law, including the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.) and the Internal Revenue Code.

B. If, following the market and legal analyses described in subsection 14.36.100.A, the Board determines that the SRSP described in this Chapter 14.36 is unfeasible, then the Board shall propose any reasonable changes necessary to make the SRSP feasible. If the Board finds

that the SRSP cannot be made feasible, the Board shall recommend to the City Council that the SRSP not be opened for enrollment.

C. The Board may coordinate with the efforts of states and other local governments as they pursue legal and administrative guidance for similar retirement savings programs.

14.36.110 Annual reports

The Board shall report in each calendar year to the Mayor and to an appropriate committee of the City Council detailing the Board's activities with respect to the SRSP.

14.36.120 Assistance with outreach, technical assistance, and compliance services

The Board shall enlist City departments and/or the third-party plan administrator to:

A. Provide employer outreach, technical assistance, or compliance services for the Board; and

B. Develop a plan for providing such employer outreach, technical assistance, or compliance services for the Board.

Section 2. Initial report of the Board

The Seattle Retirement Savings Plan Board of Administration (Board) shall report to the Mayor and to an appropriate committee or interim committee of the City Council on or before December 31, 2018. The report must include:

A. The results of the market analysis sought by the Board under Section 14.36.100 of the Seattle Municipal Code;

B. The findings from legal advice obtained by the Board under Section 14.36.100 of the Seattle Municipal Code;

C. Recommendations regarding how best to approach enforcement of employers' required participation and appropriate penalties for failure to participate;

D. Any changes to the Seattle Retirement Savings Plan (SRSP) by the Board, or its recommendation that the SRSP not be opened for enrollment, under subsection 14.36.100.B of the Seattle Municipal Code;

E. An analysis of potential costs to employers, including administrative costs, associated with providing automatic payroll deductions for participation in the SRSP, and recommendations on how to eliminate or reduce those costs through incentives, tax credits or other means;

F. A draft of the request for proposals to solicit bids from plan administrators;

G. A timeline for implementation of the SRSP;

H. If the Board has determined pursuant to Section 14.36.100 of the Seattle Municipal Code that the SRSP is feasible and permissible to establish and implement, the Board shall determine the amount of additional funding needed for establishing, administering, and enforcing employer requirements in the SRSP. The Board shall coordinate with the City Council or, to the extent feasible, seek other funding to satisfy such additional expenses as needed for the establishment of the SRSP; and

I. An overview of any contracts entered into by the Board in the performance of its duties; and

J. Recommendations to the City Council regarding ways to increase financial literacy among Seattle residents and workers.

Section 3. Except as provided in Section 14.36.100 of the Seattle Municipal Code, the Board shall establish the SRSP so that contributions may begin to be made to the SRSP no earlier than January 1, 2019 and no later than January 1, 2021.

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

Passed by the City Council the 20th day of NOVEMBER, 2017, and signed by me in open session in authentication of its passage this 20th day of NOVEMBER, 2017.

President _____ of the City Council

Approved by me this 22ND day of November, 2017.

Tim Burgess, Mayor

Filed by me this 28th day of NOVEMBER, 2017.

Monica Martinez Simmons, City Clerk

(Seal)