FILED
SUPREME COURT
STATE OF WASHINGTON
6/4/2021 4:26 PM
BY SUSAN L. CARLSON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 99736-5

(Court of Appeal No. 80376-0-1)

SOLOMON ALEMU, an individual; GETACHEW TADESSE, an individual; TESFAYE AYELE, an individual,

Respondents/Plaintiffs,

v.

IMPERIAL PARKING (U.S.), LLC, a foreign limited liability company, dba Impark.

Petitioner/Defendant.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Daniel R. Whitmore, WSBA No.24012
LAW OFFICES OF DANIEL R. WHITMORE, PS
6840 Fort Dent Way, #210
Tukwila, WA 98188
Telephone: 206-329-8400
Facsimile: 206-329-8401
dan@whitmorelawfirm.com

Duncan C. Turner, WSBA #20597
Mark A. Trivett, WSBA #46375
Badgley Mullins Turner, PLLC
19929 Ballinger Way NE, #200
Seattle, WA 98155
Telephone: 206-621-6566
dturner@badgleymullins.com
mtrivett@badgleymullins.com

Attorneys for Respondents/Plaintiffs

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I. INTRODUCTION.

Imperial Parking, LLC's ("Impark") Petition for Review assigns error where none exists. In seeking review, Impark does not raise any issues of constitutional law or substantial public interest. RAP 13.4 (b)(3-4). Although this dispute arises from a municipal ordinance, and a business relationship which ended three years ago, Impark nonetheless claims that intangible "disagreements" between authority warrant extraordinary review. Contrary to Impark's assertion, the trial and appellate courts' interpretations of SeaTac Municipal Code, §7.45 (the "Ordinance") are consistent with controlling authority and reflect the statute's purpose to provide good to local hospitality and transportation workers.

The Ordinance's definition of "Hospitality Employer" includes "any person who employs others providing services for customers on [Hotel] premises, such as a…subcontractor." SMC §7.45.010(D) (portion omitted). It is undisputed that the DoubleTree Hotel (the "Hotel") is a qualified "Hospitality Employer." It is also undisputed that Impark subcontracted with the Hotel to provide on-site valet services to the

Hotel's guests.[1] Thus, Impark satisfies the explicit criteria for hospitality subcontractors, and was subject to the Ordinance.

Impark's asserted judicial disagreements rely on the same statutory interpretation rejected by the trial and appellate courts. Appendix A & B. That interpretation requires selective and arbitrary incorporation of threshold criteria, and a mutually exclusive reading of the transportation and hospitality employer definitions. The proposed interpretation is unsupported by the Ordinance's text and stated purpose, and would lead to strained results. No disagreement exists and Impark has failed to satisfy the requirements set forth in RAP 13.4(b). Therefore, review should be denied.

II. STATUTORY BACKGROUND.

In 2013, the voters of SeaTac passed Proposition 1, which mandated a $15.00 minimum hourly wage, and provided an escalator provision for subsequent years. App. C. The initiative was subsequently enacted as the Ordinance and went into effect January 1, 2014. *Id*. The purpose of the Ordinance was to "ensure that, to the extent reasonably practicable, all people employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe

[1] Respondents have adopted the terms and labels used by the Court of Appeals in the *Alemu* decision. App. A.

time." *Id*. The Ordinance applied to "Transportation Employers" and "Hospitality Employers" as defined within. SMC §7.45.010(D) & (M).

III. FACTUAL BACKGROUND.

A. Impark's Subcontracted To Provide Hospitality Services to Hotel Guests.

In 2011, Impark and the Hotel entered into a Parking Services Agreement ("PSA"). CP 92. The PSA authorized Impark to use the Hotel's parking facility for the "sole purpose of providing valet and self-parking" services to the Hotel's guests, invitees, and employees. CP 93, ¶2. The Hotel has 958 parking spaces, of which approximately 450 were reserved for valet-parked vehicles. CP 93, 114. To provide these services, Impark agreed to employ fourteen onsite employees, thirteen of whom were valets or valet leads. CP 97.

The Hotel closely controlled Impark's valet services. CP 93. Impark valets were required to follow the Hotel's uniform and appearance standards, and to use Hotel-approved verbal greetings. *Id*. The Hotel also had the right to require Impark to re-assign any employee it found objectionable. *Id*. In all aspects of its services and operations, Impark was subordinate to the Hotel. *Id*. Impark was only responsible for maintaining the covered driveway near the Hotel's lobby, where it provided valet parking services. *Id*.

Self-park customers had very limited interactions with Impark and its employees. These individuals would pay parking fees at the Hotel's front desk or into automated payment machines. CP 114. Those machines were installed and owned by the Hotel. CP 95. In respect to park-and-fly travelers, Impark's role was largely passive. Travelers would pay at the Hotel's automated payment machines and would be transported to the airport by the Hotel's shuttles. CP 52. In this regard, Impark services consisted of collecting cash deposited into the parking payment machines, and restocking tickets and receipts. CP 114.

Impark employed fourteen non-managerial workers at the Hotel site. CP 62-64. Thirteen of those employees were valets or valet leads. *Id*. In these roles, employees' primary duty was to park and retrieve vehicles for Hotel guests and customers. CP 114. Impark's valets also assisted Hotel guests with loading and unloading luggage from vehicles. *Id*. Impark's site manager also attended Hotel staff meetings to coordinate manpower needs with Hotel staff. CP 93, 136. In all relevant respects, Impark's onsite employees performed duties customarily performed by Hotel personnel.

Between January 1, 2014 and August 27, 2018, Impark employed forty-nine (49) individuals as valets and valet leads. These individuals

comprise the putative class. In these roles, workers were paid hourly wages of approximately $10.50 and $13.00, respectively.

B. Procedural History.

In January 2019, the parties filed cross motions for summary judgment on the issue of whether Impark was a qualified employer under the Ordinance. In July 2019, the trial court granted partial summary judgment for the Plaintiffs and putative Class, concluding that Impark qualified as a "hotel subcontractor" for purposes of the Ordinance, and therefore, was required to pay the mandated minimum wage. CP 170-171, 173-174. In September 2019, Impark appealed the trial court's ruling.

In April 2021, Division One of the Washington State Court of Appeals unanimously upheld that ruling. *See* App. A. Impark now petitions this Court to grant discretionary review.

IV. DISCUSSION.

Discretionary review is only granted when an appellate decision: (1) conflicts with Supreme Court authority, (2) conflicts with published Court of Appeals authority, (3) involves significant constitutional questions, or (4) involves substantial issues of public interest. RAP 13.4(b)(1-4). Impark expressly seeks review under the first and fourth factors, and implicitly seeks review on the second factor. Petition, pg. 20.

Impark asserts that the Court of Appeals' *Alemu* decision conflicts with Supreme Court authority applying the "general-specific rule" and with the recent Court of Appeals decision in *Hassan v. GCA*. *Id*., pg. 8. Both assertions lack merit.

A. The Ordinance's Definitions Are Harmonious, Therefore the General-Specific Rule Does Not Apply.

Impark relies heavily on the maxim articulated in *Knowles v. Holly*: "where there is a **conflict** between one statutory provision which deals with a subject in a general way and another which deals with the same subject in a specific manner, the latter will prevail." 82 Wn.2d 694, 702 (1973) (emphasis added); *see* Petition, pg. 9.[2] This principal only applies when statutes actually conflict. *O.S.T. v. Regence BlueShield*, 181 Wn.2d 691, 701, 335 P.3d 416 (2014). In promoting this doctrine, Impark ignores the prerequisite statutory analysis:

> In interpreting a statute, we are obliged to construe the enactment as a whole, and to give effect to *all* language used. Every provision must be viewed in relation to other provisions and harmonized if at all possible. Preference is

[2] Impark cites *Waste Mgmt. of Seattle, Inc. v. Utilities and Transp. Com'n*, 123 Wn2d 621, 630 869 P.2d 1034, 1039 (1994) to support the argument that a specific statute will supersede a more general one. Petition, pg. 9. In that case, the Court noted that statutes "'are to be read together as constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes.'" *Waste Mgmt. of Seattle, Inc. v. Utilities and Transp. Com'n*, 123 Wn2d 621, 630 (1994).

> given a more specific statute *only* if the two statutes deal with the same subject matter and conflict to such an extent that they cannot be harmonized.

In re Estate of Kerr, 134 Wn.2d 328, 335, 949 P.2d 810, 814 (1998). Statutes are to be read as complimentary, rather than conflicting. *See Cossel v. Skagit Cy*., 119 Wn.2d 434, 437, 834 P.2d 609 (1992).

The Ordinance does not support Impark's assertion that the hospitality and transportation employer definitions are mutually exclusive and conflict. SMC §7.45.010(D) & M. Rather, Impark's interpretation requires additional language which is not present within the Ordinance. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155, 158 (2006) *quoting Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) (“"Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute."). If the Ordinance's definitions were truly intended to be mutually exclusive, as Impark asserts, the required change to SMC §7.45.010(D) would have been modest:

> This shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor, ***[except for persons providing services describe in Section M below.]***

SMC §7.45.010(D), modifications in brackets. But the Ordinance's drafters did not include such an exclusion, nor was it approved by SeaTac

voters. Thus, it is improper to add such language through statutory interpretation.

Impark's application of the general-specific rule is premised on the misconception that it **cannot provide both** transportation and hospitality services. Petition, pg. 12. That fallacy is reflected in Impark's repetitive self-identification as a "parking lot management" company. *Id*., pg. 10.[3] The uncontested evidence demonstrates that the Impark subcontracted with the Hotel to provide on-site valets, a fundamental hospitality role.

According to Impark, the roles and duties of its 24 on-site employees is **totally irrelevant**, as long as it also "manages" a 100-space parking lot. Even if Impark employed maids, housekeepers, and waiters at the Hotel, it would assert they were "transportation workers" for purposes of the Ordinance. In advocating this tortured interpretation, Impark desperately seeks to avoid paying the lawful wage.

The Ordinance's transportation and hospitality employer definitions offer complimentary and independent bases for

[3] As in prior briefing, Impark fails to even acknowledge the valet duties performed by its employees at the Hotel, only admitting they provided "certain services." Petition, pg. 3-5, 17.

qualification, preventing employers from subcontracting hospitality services to avoid liability. The definitions' harmonious interaction reflects the Ordinance's explicit purpose of ensuring "…all people employed in the hospitality and transportation industries in SeaTac have good wages…" SMC §7.45, Section 1 (portions omitted).

The Ordinance is distinguishable from statutes to which the general-specific rule applied. In *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, cited by Impark, the court considered regulations governing self-distributing alcohol distillers, and licensed spirit distributors. 182 Wash. 2d 342, 357, 340 P.3d 849, 856 (2015). Under RCW 66.24.055(3)(c), licensed "spirit distributors" were required to contribute to shortfalls in license revenue. *Id*. The distributors asserted that RCW 66.24.240 and RCW 66.28.330(4), statutes authorizing distillers to self-distribute, required distillers also contribute to the shortfall. *Id*. After considering these statutes, the court determined that RCW 66.24.055(3)(c) specifically allocated shortfall liability to spirit distribution licensees, and that RCW 66.24.240's general requirement that distillers "…comply with applicable laws and

rules relating to distributors/or retailers" did not require they contribute. *Id*. at 356.

In *Ass'n of Wash. Spirits & Wine Distribs*, the court was asked to reconcile three separate and clearly conflicting statutes, two of which broadly required self-distributing distillers to comply with distribution regulations, and another, which specifically assigned liability for revenue shortfalls to licensed "spirit distributors." RCW 66.24.640, RCW 66.28.339, RCW 66.24.055. A harmonious interpretation of those statutes would lead to absurd results, namely requiring self-distributing distillers to meet all the same requirements as licensed spirit distributors. *Ass'n of Wash. Spirits & Wine Distribs.*, 182 Wash. 2d 342, 357 (2015).[4] Similarly, in *Brown v. City of Seattle*, the court interpreted two distinct code provisions, one of which provided a specific and detailed exemption. 117 Wash. App. 781, 791, 72 P.3d 764, 769 (2003). Unlike the statutes in those cases, the Ordinance is a single

[4] Similar absurdity would result from Impark's assertion that the hospitality subcontractor definition implicitly incorporates the same employee threshold as for hospitality employers despite no linguistic bases for that interpretation. Impark Petition, pg. 16. The logical extension of this interpretation, as the *Alemu* Court recognized, is that hospitality subcontractors must also "own a hotel with 100 guestrooms." App. A, pg. 7.

statute, passed by SeaTac voters as a comprehensive framework. As such, to the extent possible, the definitions for transportation and hospitality employers should be read as complimentary criteria for employer qualification.

Impark incorrectly asserts the Ordinance contains "a blanket exclusion shielding small employers from coverage." Petition, pg. 11. The Ordinance is a remedial statute, and thus, exemptions will only be applied to "situations which are plainly and unmistakably consistent with the terms and spirit of the legislation." *Becerra v. Expert Janitorial, LLC*, 176 Wash. App 694, 694, 309 P.3d 711 (2013), aff'd 181 Wash. 2d 186, 332 P.3d 415 (2014). Remedial legislation is construed in favor of employees. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 42 P.3d 1265, 1267 (2002). But, according to Impark, the exclusion arises from the Ordinance's employee thresholds, although those thresholds are conspicuously absent from the hospitality subcontractor criteria. SMC §7.45.010(D).

Impark relies on the asserted presence of a "blanket exclusion" to distinguish this case from *Saucedo v. John Hancock Life & Health Insurance Co*., 185 Wn.2d 171, 369 P.3d 150 (2016). As the Court of Appeals recognized, *Saucedo* offers an instructive exemplar for interpretation of harmonious and non-

exclusive statutes. App. A, pg. 10, discussing *Saucedo* in detail. In that case, interpreting the Farm Labor Contractor Act ("FLCA"), the defendant argued that because its primary services were enumerated under "agricultural employer," it could not also qualify as a "farm labor contractor." *Saucedo*, 185 Wn.2d 171, 180. The court dismissed that argument, noting "the fact that [defendant] also meets the statutory definition of 'agricultural employer' is **irrelevant**, if it was paid by a third party to recruit, employ, and supply farm laborers, [then it qualified as a farm labor contractor]." *Id*. (emphasis added). Here, it is uncontested that Impark employed workers on Hotel property to provide services to Hotel guests. SMC §7.45.010(D). The fact that it employed less than the threshold necessary to **also** qualify as a transportation employer is irrelevant.

The hospitality and transportation employer definitions should be interpreted harmoniously to maintain the integrity of the Ordinance. *See Schumacher v. Williams*, 107 Wn. App. 793, 801 n.15, 28 P.3d 792 (2001) (citing *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282, 288 (2000)). As the provisions do not conflict, the general-specific rule has no application and Impark has failed to satisfy RAP 13.4(b)(1). Therefore, its Petition must be denied.

B. Impark Misconstrues Authority to Conjure Conflict.

Impark's heavy reliance on *Hassan v. GCA Prod. Servs., Inc.* to satisfy RAP 13.4(b)(2) is misplaced. No. 80542-8-I, 2021 Wash. App. LEXIS 770, at *1 (Ct. App. Apr. 5, 2021). In that case, GCA subcontracted with Avis-Budget Car Rental to shuttle rental vehicles between SeaTac International Airport and other Puget Sound locations. *Id.* at 3. GCA employees brought suit, claiming the entity "provided rental car services," thereby qualifying as a "Transportation Employer" under the Ordinance. *Id.*, at 4. That interpretation was rejected on summary judgment, and the trial court ruled that GCA was exempt from the Ordinance. [5] The appellate court agreed, finding that the Ordinance did not extend coverage to subcontractors of transportation employers, like GCA.[6] The outcome in *Hassan*, contrary to Impark's assertion, is in harmony with the outcome here.

[5] The conclusions of the trial and appellate courts in *Hassan* mirrored that in *Jama v. GCA Servs. Grp.*, No. C16-0331RSL, 2016 U.S. Dist. LEXIS 153622, at *4 (W.D. Wash. Nov. 3, 2016), a preceding class action brought on behalf of the same putative class.

[6] "…when the ordinance intends to include subcontractors, like GCA, it does so expressly. That is, the definition of "hospitality employer" states that a hospitality employer "shall include subcontractor[s]." *Hassan,* No. 80542-8-I, 2021 Wash. App. LEXIS 770, at *7 (Ct. App. Apr. 5, 2021).

Despite Impark's muddling, the actions are easily distinguishable. In *Hassan*, GCA subcontracted with Avis-Budget, a qualified transportation employer. *Id*. at 9. The Ordinance's definition of transportation employers omits subcontractors. *Id*. If Impark had itself subcontracted with a transportation employer, like GCA, it would also be exempt from the Ordinance. But that is not what occurred here.

Impark subcontracted with the Hotel, an undisputed **hospitality employer**, to provide services to Hotel guests on Hotel property. CP 109-110, 135-37. The Ordinance's definition of hospitality employer, unlike that for transportation employers, specifically includes subcontractors that provide onsite services to guests. SMC §7.45.010(D); *Hassan*, No. 80542-8-I, 2021 Wash. App. LEXIS 770, at *10 (Ct. App. Apr. 5, 2021) ("…the definition of 'hospitality employer' states that a hospitality employer shall include...subcontractor[s].") The *Alemu* and *Hassan* opinions offer a harmonious interpretation of the Ordinance that require inclusion of subcontractors, like Impark, within the definition of hospitality employer.

Because this action arises from a local ordinance, there is no possibility for disagreement between various appellate divisions. Future disputes requiring interpretation of the Ordinance will be resolved by Division One. As to RAP 13.4(b)(4), Impark has failed to articulate any

discernible public interest in this dispute. Impark cannot satisfy RAP 13.4(b)(2) and (b)(4), and its Petition should be denied.

C. The Subcontractor Clause Does Not Incorporate The Thirty-Employee Threshold.

In its Petition, Impark claims the Court of Appeals errored by rejecting its proposed criteria for hospitality subcontractors. Petition, pg. 17-19.[7] Impark asserts that only the employee-threshold criterion is incorporated into the subcontractor clause. *Id*. This interpretation is unsupported by authority and would lead to strained results.

When legislative drafters include particular language in one sentence, but omit it in another, the exclusion is presumed intentional. *State v. Lynch*, 178 Wn.2d 487, 505, 309 P.3d 482, 491 (2013); *BFP v. Resolution Trust Corp*., 511 U.S. 531, 537, 114 S. Ct. 1757, 128 L. Ed. 2d

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[7] The Ordinance defines "hospitality employer" as a person who

> operates within the City any hotel that has one hundred (100) or more guest rooms and thirty (30) or more workers or who operates any institutional foodservice or retail operation employing ten (10) or more nonmanagerial, nonsupervisory employees. This shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor.

SMC §7.45.010(D).

556 (1994). Here, Ordinance includes employee-threshold requirements for three categories of employers: hotels, institutional foodservice and retail, and qualified transportation employers. SMC §7.45. The Ordinance **does not** include any employee threshold for hospitality subcontractors. Despite the presumed intent of that omission, Impark nevertheless seeks its insertion.

Impark's interpretation is unreasonable. In the Hotel context, there are two applicable criteria for hospitality employers: (1) an entity must operate a hotel with at least one hundred guest rooms and (2) employ thirty workers. SMC §7.45.010(D). Impark expressly asserts that the subcontractor clause only incorporates **one** of these: the employee-threshold. Petition, pg. 17. Impark justifies this selective, and self-serving, interpretation by claiming it is the "most reasonable" explanation. *Id*. As the Court of Appeals recognized, the logical extension of Impark's interpretation is to incorporate both criteria, but that this would lead to strained results. App. A, pg. 7.

Impark's interpretation effectively re-writes the subcontractor clause to state: "[t]his shall include any person who employs **[thirty or more]** others…" SMC §7.45.010(D), addition in brackets. That revision is improper, and contrary to the presumed intentional omission. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn. 2d 516, 526, 243 P.3d 1283,

1288 (2010) (courts will not add words when drafters chose not to include them); *Kucana v. Holder*, 558 U.S. 233, 249, 130 S. Ct. 827, 838 (2010) (when language is used in one section of a statute but not in another, it is generally presumed intentional and purposeful.)

Impark also contends the Court of Appeals errored by failing to harmonize the Ordinance's desire to protect small businesses with the absence of an employee-threshold for hospitality subcontractors. Contrary to Impark's assertion, there is no disharmony. Rather, the Ordinance's purpose is reflected in the guest room and employee thresholds for prime hospitality contractors, like the Hotel. SMC §7.45.010(D). Those criteria exempt smaller motels and hotels, and their subcontractors. But here, the Hotel satisfies the criteria as a larger hospitality employer, therefore its on-site subcontractors are subject to the Ordinance.

Impark repeatedly argues that under the Court of Appeals' interpretation, vendors with "just one employee" are subject to the Ordinance. Petition, pg. 18. Impark asserts that this interpretation contradicts the subcontractor clause's use of "others." *Id*. This assertion is striking, given that it has no basis within the *Alemu* decision. Exhibit A. The relevant portion of that decision states "…the Ordinance's purpose is best served by the inclusion of subcontractors like Impark, notwithstanding the employer's number of hired staff." App. A, pg. 8. By

using the term "staff", the Court of Appeals acknowledged the subcontractor clause's express requirement that at least two workers be employed. Impark's characterization of the Court of Appeals' decision is incorrect.

Finally, Impark's argument that the Court of Appeals's interpretation wrongfully extends liability to one-time vendors, like wedding hairstylists and photographers, is without merit. For those individuals to qualify as hotel subcontractors, they must directly contract with the Hotel, indicating they have an ongoing and repetitive relationship. Under the Court of Appeals's interpretation, vendors hired directly by wedding parties or Hotel guests would not qualify. Second, the Ordinance is only applied to the extent "…reasonably practicable…" SMC §7.45, Section 1, Findings.

Although it may be impractical for a one-time vendor to qualify, that is not the situation in this case. Rather, Impark employed approximately forty-nine employees as Hotel valets, twenty-four hours a day, seven days a week, for more than four years. This is clearly the arrangement anticipated by the subcontractor clause.

V. CONCLUSION.

Impark has failed to articulate a credible justification for discretionary review. This dispute arises from an acute question of

statutory interpretation, which Division One resolved in an even-handed and well-reasoned opinion. That opinion reflects controlling authority, as well as the Ordinance's intended purpose of providing a living wage for individuals in the hospitality industry, like Impark's employees at the Hotel. Therefore, this Court should deny the Petition, and allow this action to proceed.

Respectfully submitted this 4th day of June, 2021.

By: */s/ Mark A. Trivett*
Mark A. Trivett, WSBA #46375
Duncan C. Turner, WSBA #20597
Badgley Mullins Turner, PLLC
19929 Ballinger Way NE, #200
Seattle, WA 98155
Telephone: 206-621-6566
mtrivett@badgleymullins.com
dturner@badgleymullins.com

/s/ Daniel R. Whitmore
Daniel R. Whitmore, WSBA No.24012
LAW OFFICES OF DANIEL R. WHITMORE, PS
6840 Fort Dent Way, #210
Tukwila, WA 98188
Telephone: 206-329-8400
Facsimile: 206-329-8401
dan@whitmorelawfirm.com

Attorneys for Respondents/Plaintiffs

CERTIFICATE OF SERVICE

I, Yonten Dorjee, paralegal for BADGLEY MULLINS TURNER PLLC, attorneys for Respondents in the above-entitled action, hereby certify under penalty of perjury that I am over the age of eighteen (18) and am competent to testify to the facts contained herein. On the 4th day of June, 2021, I served by sending a true and correct copy in the manner indicated below of the following documents:

1. **Respondents' Answer to Petition for Review**

upon the attorneys of record herein, as follows, to wit:

Harry J. F. Korrell, WSBA # 23173 Jeffrey B. Youmans, WSBA # 26604 Devin Smith, WSBA # 42219 Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610 (206) 622-3150 Phone (206) 757-7700 Fax Email: harrykorrell@dwt.com jeffreyyoumans@dwt.com devinsmith@dwt.com *Attorneys for Petitioner/Defendant*	***via Electronic Mail and WA State Appeal Courts' Portal Electronic Delivery System***

/s/ Yonten Dorjee
Yonten Dorjee, Paralegal
BADGLEY MULLINS TURNER PLLC

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6/4/2021 4:26 PM
BY SUSAN L. CARLSON
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Tukwila, WA 98188
Telephone: 206-329-8400
Facsimile: 206-329-8401
dan@whitmorelawfirm.com

Duncan C. Turner, WSBA #20597
Mark A. Trivett, WSBA #46375
Badgley Mullins Turner, PLLC
19929 Ballinger Way NE, #200
Seattle, WA 98155
Telephone: 206-621-6566
dturner@badgleymullins.com
mtrivett@badgleymullins.com

Attorneys for Respondents/Plaintiffs

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Dated this 4th day of June, 2021

By: */s/ Mark A. Trivett*
Mark A. Trivett, WSBA #46375
Duncan C. Turner, WSBA #20597
Badgley Mullins Turner, PLLC
19929 Ballinger Way NE, #200
Seattle, WA 98155
Telephone: 206-621-6566
mtrivett@badgleymullins.com
dturner@badgleymullins.com

/s/ Daniel R. Whitmore
Daniel R. Whitmore, WSBA No.24012
LAW OFFICES OF DANIEL R. WHITMORE, PS
6840 Fort Dent Way, #210
Tukwila, WA 98188
Telephone: 206-329-8400
Facsimile: 206-329-8401
dan@whitmorelawfirm.com

Attorneys for Respondents/Plaintiffs

CERTIFICATE OF SERVICE

I declare that on June 4, 2021, I caused a true copy of the foregoing **Appendix to Respondents' Answer to Petition for Review,** to be served on the following via the Appellate Court's Portal:

Harry J. F. Korrell, WSBA # 23173
Jeffrey B. Youmans, WSBA # 26604
Devin Smith, WSBA # 42219
Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
(206) 622-3150 Phone
(206) 757-7700 Fax

Attorneys for Petitioner/Defendant

*s/Yonten Dorjee*_____
Yonten Dorjee, Paralegal
BADGLEY MULLINS TURNER

APPENDIX A

FILED
4/5/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SOLOMON ALEMU, an individual; GETACHEW TADESSE, an individual; TESFAYE AYELE, an individual, Respondents, v. IMPERIAL PARKING (U.S.), LLC, a foreign limited liability company, dba Impark, Appellant.	No. 80376-0-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Chapter 7.45 SeaTac Municipal Code (SMC) promotes a living wage for employees working in SeaTac, Washington. Specifically, SMC 7.45.050 requires defined hospitality and transportation employers who employ a certain number of employees to pay those employees $15 per hour. Imperial Parking (U.S.) LLC (Impark) managed the SeaTac DoubleTree Hotel's (Hotel) parking lot by providing, among other services, valet for the Hotel's guests. This case involves a narrow issue of statutory interpretation as to whether Impark is a hotel subcontractor subject to SMC 7.45.010(D)'s $15 per hour minimum wage requirement.

Impark employees brought a putative class action against Impark for failure to pay $15 per hour. Impark appeals the trial court's orders granting in part the plaintiffs' motion for summary judgment and denying Impark's motion for

Citations and pin cites are based on the Westlaw online version of the cited material.

summary judgment on the issue of the ordinance's application to Impark. Because valet parking is a service that Impark provided to the Hotel's guests and Impark was a subcontractor of the Hotel, we conclude that Impark is subject to the ordinance. We affirm the trial court's orders. Therefore, we remand this matter to the trial court to proceed.

BACKGROUND

In 2013, SeaTac voters passed Proposition 1, which required a $15 minimum hourly wage, including an escalator provision for wages thereafter. Proposition 1 stated: "This Ordinance requires certain hospitality and transportation employers to pay specified employees a $15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked."[1] The proposition's explanatory statement provided:

> This measure, proposed by initiative petition by the people, adds a new chapter to the SeaTac Municipal Code requiring certain hotels, restaurants, rental car businesses, shuttle transportation businesses, parking businesses, and various airport related businesses, including temporary agencies or subcontractors operating within the City, to:
>
> - Pay covered employees an hourly minimum wage of $15.00, excluding tips, adjusted annually for inflation.
>
> . . . .
>
> Covered employees are non-managerial, non-supervisory employees of these certain businesses who work within the City.[2]

The statement in favor of Proposition 1 declared:

> Since the start of the recession, millions of dollars have been cut

[1] King County Official Local Voters' Pamphlet, General and Special Election 94 (Nov. 5, 2013), https://www.kingcounty.gov/~/media/depts/elections/how-to-vote/voters-pamphlet/2013/201311-voters-pamphlet-ed1.ashx?la=en [https://perma.cc/V2YJ-WEJ3].

[2] King County Official Local Voters' Pamphlet at 94.

> from our vital community services and local families are struggling. Meanwhile, big overseas and multinational corporations doing business at the airport racked up hundreds of millions in profits last year -- yet continue to use the recession as an excuse to cut wages, hours, and benefits. This hurts all of SeaTac.
>
> Proposition 1 requires airport-related employers do the right thing and give our community an opportunity to succeed. By putting the public good ahead of corporate greed, it will create middle class jobs, enabling families to buy more in local stores and restaurants—boosting SeaTac's economy. That's why Proposition 1 is endorsed by small business owners, teachers, nurses, firefighters, and faith leaders across SeaTac.[3]

(Emphasis omitted.) Subsequently, SeaTac enacted the proposition as SMC chapter 7.45 (ordinance), which took effect on January 1, 2014.

FACTS

Impark is a parking lot management company, and in 2002, it entered into a parking services agreement (PSA) with the Hotel. Pursuant to the PSA, Impark—labeled as "Contractor" in the PSA—agreed to operate, maintain, and manage the Hotel's parking facility, which included 958 parking spaces, around 450 of which were reserved for valet parked vehicles. Under the PSA, the Hotel granted Impark a license to utilize and manage the parking facility "for the sole purpose of providing valet and self parking allowing employees, guests and invitees of the Hotel to park their vehicles." Throughout its contract with the Hotel, Impark employed between 7 and 23 employees, including 5 supervisory employees.

Between January 1, 2014, and August 27, 2018, Impark paid the plaintiff employees between $11 and $13 an hour for their work. In April 2018, these

[3] King County Official Local Voters' Pamphlet at 94.

former Impark employees, including Solomon Alemu, brought a putative class action alleging that Impark was subject to and violated SMC 7.45.050, which set the $15 per hour minimum wage for hospitality employees within SeaTac.

In January 2019, the parties filed cross motions for summary judgment on the issue of whether Impark was a covered employer. The trial court granted partial summary judgment for the employees, concluding that Impark was subject to the ordinance. Specifically, the trial court concluded that Impark qualified as a hospitality employer under SMC 7.45.010(D)[4] and was required to pay a minimum wage of at least $15 per hour.

Impark sought discretionary review, which we granted.

ANALYSIS

Standard of Review

The parties agree that the dispositive issue in this appeal is whether the trial court erred by concluding that SMC 7.45.010(D) applied to Impark and granting partial summary judgment in favor of the employees.

"Summary judgment is appropriate where there is no genuine issue as to any material fact, so the moving party is entitled to judgment as a matter of law." Meyers v. Ferndale Sch. Dist., No. 98280-5, slip op. at 6 (Wash. Mar. 4, 2021), http://www.courts.wa.gov/opinions/pdf/982805.pdf. "We view the facts and reasonable inferences in the light most favorable to the nonmoving party." Meyers, slip op. at 6. "We review rulings on summary judgment and issues of

[4] SMC 7.45.010(D) states that a "Hospitality Employer" "shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor."

statutory interpretation de novo." Am. Legion Post No. 149 v. Dep't of Health, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).

Hospitality Employer Subcontractor

Impark contends that, in order to be subject to the ordinance as a hospitality employer's subcontractor, it must employ 30 or more employees. We disagree.

"We . . . construe a municipal ordinance according to the rules of statutory interpretation." City of Seattle v. Swanson, 193 Wn. App. 795, 810, 373 P.3d 342 (2016). And "[i]nitiatives will be interpreted from their plain language, if possible. However, when an initiative is susceptible to multiple interpretations, we employ the standard tools of statutory construction to aid our interpretation." Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660, 670, 72 P.3d 151 (2003). In statutory interpretation, our main "'objective is to ascertain and carry out the Legislature's intent.'" Seattle Hous. Auth. v. City of Seattle, 3 Wn. App. 2d 532, 538, 416 P.3d 1280 (2018) (quoting Citizens All. for Prop. Rights Legal Fund v. San Juan County, 184 Wn.2d 428, 435, 359 P.3d 753 (2015)). "We derive legislative intent solely from the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, amendments, and the statutory scheme as a whole." PeaceHealth St. Joseph Med. Ctr. v. Dep't of Revenue, 196 Wn.2d 1, 7-8, 468 P.3d 1056 (2020). And "[t]he words of an initiative will be read 'as the average informed lay voter would read [them].'" Parents Involved in Cmty. Sch., 149 Wn.2d at 671 (second alteration in original) (quoting W. Petrol. Imps., Inc. v. Friedt, 127 Wn.2d 420,

424, 899 P.2d 792 (1995)).

Under SMC 7.45.010(D), a hospitality employer is a hotel, a foodservice or retail operation, or a temporary agency or subcontractor who provides services for these business. The ordinance defines a hospitality employer as a person

> who operates within the City any hotel that has one hundred (100) or more guest rooms and thirty (30) or more workers [(hotel employer clause)] or who operates any institutional foodservice or retail operation employing ten (10) or more nonmanagerial, nonsupervisory employees [(foodservice employer clause)]. *This shall include any person who employs others providing services for customers on the aforementioned premises*, such as a temporary agency or subcontractor [(subcontractor clause)].

SCM 7.45.010(D) (emphasis added).

The parties do not dispute that Impark is a subcontractor for the Hotel. We agree that Impark is a subcontractor.[5] In addition, Impark agrees that certain hotel subcontractors are subject to the ordinance "if it meets the requirements set out in the first sentence," i.e., employing 30 workers. Accordingly, we must determine the proper construction and application of the subcontractor clause to the preceding clauses.

Here, the ordinance includes two preceding clauses beginning with "who operates." The straightforward reading of the ordinance applies the subcontractor clause to these two preceding clauses. That is, a subcontractor to

[5] The evidence supports this conclusion. Specifically, the Hotel provides parking services to and for its guests, including valet, and the Hotel granted Impark a license to perform those parking services for the Hotel's guests. To this end, the hotel controlled the parking facility's uses; Impark's employees' uniforms, greetings, and personal appearance; and the parking rates that Impark could charge. Thus, because Impark provided the Hotel's valet services to the Hotel's customers, Impark fits within the definition of subcontractor.

both a hospitality employer *and* an institutional foodservice employer may be subject to the ordinance. And if the subcontractor clause did not apply to the hotel clause, a hotel would be allowed to subcontract for all of the work on its premises, including maid services, receptionists, and valets, and evade the ordinance entirely. We are not persuaded that this is how the average lay voter would have understood the initiative.

In particular, the context of the subcontractor clause supports the ordinance's application to Impark.[6] One reasonable reading of the statute would be that the employee limitations in the hotel employer and foodservice employer clauses also apply to the subcontractor clauses and that would conform to certain statutory construction rules. However, here, it would lead to a strained result, namely that a hotel subcontractor must not only employ 30 or more workers but also must own a hotel with 100 guestrooms.[7] And the court should

[6] During oral argument, counsel for Alemu asserted that the employees were not trying to include "one shoe shine boy who shows up on one day" in the meaning of hospitality employer. Wash. Court of Appeals oral argument, Alemu v. Imperial Parking (U.S.), LLC, No. 80376-0-I (Jan. 15, 2021), at 8 min., 16 sec. to 8 min., 18 sec., *video recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org. We assume that counsel was somehow unaware or did not recall the racist history of the use of the term "shoe shine boy" as a derogatory term to describe Black men operating shoe shine stands in America. But the racist history exists: "The American white relegates the black to the rank of shoeshine boy; and he concludes from this that the black is good for nothing but shining shoes." — George Bernard Shaw

It is long past time to discontinue the use of terms with racist origins. They should not be tolerated anywhere and, in particular, have no place in a court of law.

[7] Impark contends that the "[p]laintiffs spend much of their brief attacking an argument they falsely attribute to Impark: That a Hotel subcontractor must *itself* operate 100 or more guest rooms to be a covered Hospitality Employer." While Impark does not make this argument, it is the logical extension of Impark's interpretation of the ordinance to exclude a hotel's employee requirement.

"avoid an interpretation that results in unlikely or strained consequences." Swanson, 193 Wn. App. at 811. Similarly, to read the ordinance in this way would require us to add language to the ordinance: where the ordinance requires only that the subcontractor "employs *others*," Impark asks us to read it as meaning that the ordinance applies to a subcontractor who "employs *30* others." But we will not add words to a statute. See Swanson, 193 Wn. App. at 810 (We "'must not add words where the legislature has chosen not to include them.'" (internal quotation marks omitted) (quoting Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010))).

The next question is whether the hotel employer clause's employee threshold[8] applies to a subcontractor for a hotel employer. To this end, the ordinance's purpose is best served by the inclusion of subcontractors like Impark, notwithstanding the employer's number of hired staff. The ordinance's intent is clear from the ordinance itself: to protect small businesses while at the same time ensuring a living wage for SeaTac workers. It is not inconsistent with the ordinance's intent that a small subcontractor be subject to the ordinance. To the contrary, to provide a living wage for employees in SeaTac's hospitality industry, the ordinance explicitly included subcontractors. That is, the ordinance's inclusion of subcontractors signifies that its drafters foresaw the possibility that large employers might subcontract work, denying otherwise qualified workers the

[8] For the sake of brevity, we refer to the ordinance's required number of employees for a hotel employer and for a foodservice employer as the "employee threshold." A hotel's employee threshold is 30 or more workers, and a foodservice business's employee threshold is 10 or more nonmanagerial, nonsupervisory employees. SMC 7.45.010(D).

increased minimum wage.

For these reasons, including the ordinance's plain language and purpose, and the context of the subcontractor clause, we conclude that a hotel employer's subcontractor does not need to employ 30 employees. Therefore, the trial court did not err when it granted partial summary judgment in favor of the employees and denied Impark's motion for summary judgment.[9]

Transportation Employer

Impark asserts that because it performs transportation employer functions, it cannot be considered a hospitality employer. We disagree.

Impark is a transportation employer under the plain meaning of SMC 7.45.010(M)(2)(a)-(b). A transportation employer is "any person who: a. Operates or provides . . . *parking lot management* controlling more than one hundred (100) parking spaces; and b. Employs twenty-five (25) or more nonmanagerial, nonsupervisory employees in the performance of that operation." SMC 7.45.010(M)(2)(a)-(b) (emphasis added). Impark managed a parking lot of more than one hundred parking spaces, falling under the definition of transportation employer. However, it did not meet the employee threshold

[9] Impark disagrees, contending that the employees "previously conceded that the second sentence of the definition of Hospitality Employer incorporates the employer size requirements in the first sentence." In a June 2018 letter to Impark, the employees asserted that Impark was subject to the ordinance because it employed 10 or more nonmanagerial, nonsupervisory employees. Thus, the assertion seems to contend that a subcontractor is subject to the retail and food services employee threshold. However, it does not necessarily follow that the employees conceded that subcontractors are subject to the employee requirements of hotel employers. Therefore, we are not persuaded that this vague statement constitutes a concession.

because it employed less than 25 workers. Thus, Impark is not subject to the ordinance as a transportation employer. However, this does not exempt Impark from the other provisions of the ordinance.

Saucedo v. John Hancock Life & Health Insurance Co. is instructive. 185 Wn.2d 171, 369 P.3d 150 (2016). There, farmworkers brought a class action lawsuit against four corporations, and the United States Court of Appeals for the Ninth Circuit certified two questions regarding Washington's farm labor contractor act (FLCA), chapter 19.30 RCW, to our state Supreme Court. Saucedo, 185 Wn.2d at 174-75. The FLCA contained specific licensing requirements for farm labor contractors, but it also defined agricultural employee and agricultural employer. Saucedo, 185 Wn.2d at 176, 180. In answering the question of whether one defendant corporation was subject to the FLCA licensing requirements as a farm labor contractor, the court declined to adopt that defendant's argument. Saucedo, 185 Wn.2d at 180. Specifically, the defendant argued that, because it fell under the definition of agricultural employee and agricultural employer, it could not be a farm labor contractor. Saucedo, 185 Wn.2d at 180. The court concluded that "the legislature did not make the three categories of 'person' defined in [the FLCA] mutually exclusive," noting that "'[t]he fact that [the defendant] . . . also meets the statutory definition of agricultural employer is irrelevant.'" Saucedo, 185 Wn.2d at 180 (third alteration in original) (internal quotation marks omitted). The court therefore held that the defendant was subject to the farm labor contractor licensing requirements. Saucedo, 185 Wn.2d at 180.

Like in Saucedo, there is nothing in the ordinance that says that employers, which perform transportation employer functions but do not meet the employee threshold, are exempt from the ordinance as a hotel's subcontractor. In short, like the FLCA in Saucedo, the ordinance does not make these definitions mutually exclusive. Therefore, Impark can be both a transportation employer, not subject to the ordinance, and a hospitality employer's subcontractor, subject to the ordinance.

Impark disagrees and relies on Brown v. City of Seattle to support its interpretation that the two types of employers are mutually exclusive.[10] 117 Wn. App. 781, 72 P.3d 764 (2003). There, Frederick Brown operated a bed and breakfast on his tugboat. Brown, 117 Wn. App. at 783. After Brown received a notice of violation for failing to obtain a development permit while mooring the boat at the Yale Street Marina, he filed a lawsuit against the city of Seattle. Brown, 117 Wn. App. at 783. Brown asserted that the tugboat fell under Seattle Municipal Code 26.60.018, which exempted "'the operation of boats, ships and other vessels designed and used for navigation'" from development permit

[10] The other cases cited by Impark for this proposition are readily distinguishable. See Knowles v. Holly, 82 Wn.2d 694, 700-02, 513 P.2d 18 (1973) (refusing to invalidate write-in candidate's votes that failed to mark an X by the write-in candidate and where the voting statute required voters to mark an X after their desired candidate *except* when the voter wrote in the name of the candidate); W. Plaza LLC v. Tison, 184 Wn.2d 702, 712-13, 364 P.3d 76 (2015) (declining to apply the general tenancies statute of frauds to mobile home lot tenancies because, among other issues, the mobile home statute "explicitly distinguishe[d] between the rules governing the rental of mobile home lots from the rules governing other tenancies"); Jama v. Golden Gate Am. LLC, No. C16-0611RSL, 2017 WL 44538, at *2-3 (W.D. Wash. Jan. 4, 2017) (court order) (holding that the defendant company, which transported and cleaned rental cars in SeaTac, did not fall within the definition of transportation employer).

requirements. Brown, 117 Wn. App. at 784-85. Because the boat was designed and used for navigation, we held that the exemption applied and that Brown was not required to obtain a development permit. Brown, 117 Wn. App. at 793.

Brown is distinguishable. There, the ordinance provided an explicit and specific exemption for vessels used for navigation. Here, the ordinance does not provide such an exemption, i.e., it does not state that a transportation employer, who employs less than 25 workers is exempt from the ordinance. Rather, it merely regulates a transportation employer that employs 25 workers or a hospitality employer or its subcontractor. For these reasons, Impark's contention is without merit.

We affirm the trial court's orders in favor of the employees. Therefore, we remand to the trial court for the matter to proceed.

WE CONCUR:

APPENDIX B

The Honorable Dean Lum
Trial Date: 11-4-19
Hearing Date: 7-19-19 at 9:30am
WITH ORAL ARGUMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

SOLOMON ALEMU, an individual; GETACHEW TADESSE, an individual; TESFAYE AYELE, an individual,

Plaintiffs,

v.

IMPERIAL PARKING (U.S.), LLC, a foreign limited liability company, dba Impark,

Defendant.

No. 18-2-09393-7 SEA

AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

(PROPOSED)

THIS MATTER, having come before the Court upon Plaintiffs' Motion for Partial Summary Judgement, and the Court having considered the following:

1. Plaintiffs' Motion for Partial Summary Judgment;
2. Declaration of Mark A. Trivett and exhibits attached thereto;
3. Declaration of Nathan Read;
4. Declaration of Getachew Tadesse;
5. Declaration of Eyoda Ereda;
6. Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment, if any;
7. Plaintiffs' Reply, if any;
8. All pleadings and records on file herein.

BADGLEY MULLINS TURNER PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
TEL 206.621.6566
FAX 206.621.9686

UPON CONSIDERATION, the Court GRANTS Plaintiffs' Motion for Partial Summary Judgment and makes the following findings and conclusions: .

1). For purposes of SeaTac Municipal Code Ch. 7.45 (the "Ordinance"), the Defendant qualified as a "Hospitality Employer" and was required to pay a minimum hourly wage of at least $15.00 per hour, as adjusted by the City of SeaTac City Manager;

DATED this 19 day of July, 2019.

HONORABLE DEAN LUM

BADGLEY MULLINS TURNER PLLC

/s/ Duncan C. Turner
Duncan C. Turner, WSBA #20597
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
Telephone: (206) 621-6566
Facsimile: (206) 621-9686
Email: dturner@badgleymullins.com
Attorneys for Plaintiffs and Class

LAW OFFICES OF DANIEL R. WHITMORE, PS

/s/ Daniel R. Whitmore
Daniel R. Whitmore, WSBA #24012
2626 15th Avenue West, Suite 200
Seattle, WA 98119
Telephone: (206) 329-8400
Facsimile: (206) 329-8401
Email: dan@whitmorelawfirm.com
Attorneys for Plaintiffs and Class

APPENDIX C

ORDINANCE SETTING MINIMUM EMPLOYMENT STANDARDS FOR HOSPITALITY AND TRANSPORTATION INDUSTRY EMPLOYERS

Section 1. Findings. The following measures are necessary in order to ensure that, to the extent reasonably practicable, all people employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe time.

Section 2. That a new Chapter, 7.45, be added to the SeaTac Municipal Code to read as follows:

7.45 MINIMUM EMPLOYMENT STANDARDS FOR HOSPITALITY AND TRANSPORTATION INDUSTRY EMPLOYERS

7.45.010 Definitions

As used in this Chapter, the following terms shall have the following meaning:

A. "*City*" means the City of SeaTac.

B. "*Compensation*" includes any wages, tips, bonuses, and other payments reported as taxable income from the employment by or for a Covered Worker.

C. "*Covered Worker*" means any individual who is either a Hospitality Worker or a Transportation Worker.

D. "*Hospitality Employer*" means a person who operates within the City any Hotel that has one hundred (100) or more guest rooms and thirty (30) or more workers or who operates any institutional foodservice or retail operation employing ten (10) or more nonmanagerial, nonsupervisory employees. This shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor.

E. "*Hospitality Worker*" means any nonmanagerial, nonsupervisory individual employed by a Hospitality Employer.

F. "*Hotel*" means a building that is used for temporary lodging and other related services for the public, and also includes any contracted, leased, or sublet premises connected to or operated in conjunction with such building's purpose (such as a restaurant, bar or spa) or providing services at such building.

G. "*Institutional foodservice or retail*" is defined as foodservice or retail provided in public facilities, corporate cafeterias, conference centers and meeting facilities, but does not include preparation of food or beverage to be served in-flight by an airline. Restaurants or retail

operations that are not located within a hotel, public facility, corporate cafeteria, conference facility or meeting facility are not considered a hospitality employer for the purpose of this Chapter.

H. "*Person*" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, or any other legal or commercial entity, whether domestic or foreign, other than a government agency.

I. "*Predecessor Employer*" means the Hospitality or Transportation Employer that provided substantially similar services within the City prior to the Successor Employer.

J. "*Retention Employee*" means any Covered Worker who:

1) was employed by a Predecessor Employer for at least 30 workdays; and

2) was either:

a) laid off or discharged for lack of work due to the closure or reduction of a Hospitality or Transportation Employer's operation during the preceding two years; or

b) is reasonably identifiable as a worker who is going to lose his/her job due to the closure or reduction of the Hospitality or Transportation Employer's operation within the next 6 months.

K. "*Service charge*" is defined as set forth in RCW 49.46.160(2)(c).

L. "*Successor Employer*" means the new Hospitality or Transportation Employer that succeeds the Predecessor Employer in the provision of substantially similar services within the City.

M. "*Transportation Employer*" means:

1) A person, excluding a certificated air carrier performing services for itself, who:

a) operates or provides within the City any of the following: any curbside passenger check-in services; baggage check services; wheelchair escort services; baggage handling; cargo handling; rental luggage cart services; aircraft interior cleaning; aircraft carpet cleaning; aircraft washing and cleaning; aviation ground support equipment washing and cleaning; aircraft water or lavatory services; aircraft fueling; ground transportation management; or any janitorial and custodial services, facility maintenance services, security services, or customer service

performed in any facility where any of the services listed in this paragraph are also performed; and

b) employs twenty-five (25) or more nonmanagerial, nonsupervisory employees in the performance of that service.

2) A transportation employer also includes any person who:

a) operates or provides rental car services utilizing or operating a fleet of more than one hundred (100) cars; shuttle transportation utilizing or operating a fleet of more than ten (10) vans or buses; or parking lot management controlling more than one hundred (100) parking spaces; and

b) employs twenty-five (25) or more nonmanagerial, nonsupervisory employees in the performance of that operation.

N. "*Transportation Worker*" means any nonmanagerial, nonsupervisory individual employed by a Transportation Employer.

O. "*Tips*" mean any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Covered Worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

7.45.020 Paid Leave For Sick and Safe Time

Each Hospitality or Transportation Employer shall pay every Covered Worker paid leave for sick and safe time out of the employer's general assets as follows:

A. A Covered Worker shall accrue at least one hour of paid sick and safe time for every 40 hours worked as an employee of a Hospitality Employer or Transportation Employer. The Covered Worker is entitled to use any accrued hours of compensated time as soon as those hours have accrued.

B. The Covered Worker need not present certification of illness to claim compensated sick and safe time, provided that such Covered Worker has accrued the requested hours of compensated time at the time of the request. A Covered Worker shall be paid his or her normal hourly compensation for each compensated hour off.

C. The Covered Worker shall not be disciplined or retaliated against for use of accrued paid sick and safe time. This includes a prohibition on any absence control policy that counts earned sick and safe time as an absence that may lead to or result in discipline against the Covered Worker.

D. If any Covered Worker has not utilized all of his or her accrued compensated time by the end of any calendar year, the Hospitality Employer or Transportation Employer shall pay this worker a lump sum payment at the end of the calendar year equivalent to the compensation due for any unused compensated time.

E. Accrued paid sick time shall be provided to a Covered Worker by a Hospitality Employer or Transportation Employer for the following reasons:

1) An absence resulting from a Covered Worker's mental or physical illness, injury or health condition; to accommodate the Covered Worker's need for medical diagnosis care, or treatment of a mental or physical illness, injury or health condition; or a Covered Worker's need for preventive medical care;

2) To allow the Covered Worker to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

F. Accrued paid safe time shall be provided to a Covered Worker by a Hospitality Employer or Transportation Employer for the following reasons:

1) When the Covered Worker's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material;

2) To accommodate the Covered Worker's need to care for a child whose school or place of care has been closed by order of a public official for such a reason;

3) For any of the following reasons related to domestic violence, sexual assault, or stalking, as set forth in RCW 49.76.030:

a) To enable the Covered Worker to seek legal or law enforcement assistance or remedies to ensure the health and safety of the Covered Worker or the Covered Worker's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

b) To enable the Covered Worker to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the Covered Worker's family member;

c) To enable the Covered Worker to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

d) To enable the Covered Worker to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the Covered Worker or the Covered Worker's family member was a victim of domestic violence, sexual assault, or stalking; or

e) To enable the Covered Worker to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the Covered Worker or Covered Worker's family members from future domestic violence, sexual assault, or stalking.

7.45.030 Promoting Full-Time Employment

If a Hospitality or Transportation Employer has additional hours of work to provide in job positions held by Covered Workers, then it shall offer those hours of work first to existing qualified part-time employees before hiring additional part-time employees or subcontractors.

7.45.040 Require That Service Charges and Tips Go To Those Performing The Service

A. Any service charge imposed on customers of, or tips received by employees of, a Hospitality Employer shall be retained by or paid to the nonmanagerial, nonsupervisory Hospitality or Transportation Workers who perform services for the customers from whom the tips are received or the service charges are collected.

B. The amounts received from tips or service charges shall be allocated among the workers who performed these services equitably; and specifically:

1) Amounts collected for banquets or catered meetings shall be paid to the worker(s) who actually work with the guests at the banquet or catered meeting; and

2) Amounts collected for room service shall be paid to the worker(s) who actually deliver food and beverage associated with the charge; and

3) Amounts collected for porterage service shall be paid to the worker(s) who actually carry the baggage associated with the charge.

7.45.050 Establishing A Living Wage For Hospitality Workers and Transportation Workers

A. Each Hospitality Employer and Transportation Employer shall pay Covered Workers a living wage of not less than the hourly rates set forth in this section. The rate upon enactment shall be fifteen dollars ($15.00) per hour worked.

B. On January 1, 2015, and on each following January 1, this living wage shall be adjusted to maintain employee purchasing power by increasing the current year's wage rate by the rate of inflation. The increase in the living wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. The declaration of the Washington State Department of Labor and Industries each September 30 regarding the rate by which Washington State's minimum wage rate is to be increased effective the following January 1, pursuant to RCW 49.46.020(4)(b), shall be the authoritative determination of the rate of increase to be applied for purposes of this provision.

C. The City Manager shall publish a bulletin by October 15 of each year announcing the adjusted rates. Such bulletin will be made available to all Hospitality Employers and Transportation Employers and to any other person who has filed with the City Manager a request to receive such notice but lack of notice shall not excuse noncompliance with this section.

D. Each Hospitality Employer and Transportation Employer shall provide written notification of the rate adjustments to each of its workers and make the necessary payroll adjustments by January 1 following the publication of the bulletin. Tips, gratuities, service charges and commissions shall not be credited as being any part of or be offset against the wage rates required by this Chapter.

7.45.060 Setting Additional Labor Standards for City Hospitality Workers and Transportation Workers

A. Notice to Employees. No less than 60 days prior to the termination of a Predecessor Employer's contract, the Predecessor Employer shall notify all Retention Employees in writing that they have been placed on a qualified displaced worker list and that the Successor Employer may be required to offer him/her continued employment. The notice shall include, if known, the name, address, and contact information of the Successor Employer. A copy of this notice, along with a copy of the qualified displaced worker list, shall also be sent to the City Manager.

B. Retention Offer. Except as otherwise provided herein, the Successor Employer shall offer employment to all qualified Retention Employees. A Successor Employer who is a Hospitality Employer shall, before hiring off the street or transferring workers from elsewhere, offer employment to all qualified retention employees of any predecessor employer that has

provided similar services at the same facility. If the Successor Employer does not have enough positions available for all qualified Retention Employees, the Successor Employer shall hire the Retention Employees by seniority within each job classification. For any additional positions which become available during the initial ninety-day period of the new contract, the Successor Employer will hire qualified Retention Employees by seniority within each job classification.

C. Retention Period. A Successor Employer shall not discharge a Retention Employee without just cause during the initial ninety-day period of his/her employment.

D. An employee is "qualified" within the meaning of this Section if he/she has performed similar work in the past (and was not discharged for incompetence) or can reasonably be trained for the duties of a position through an amount of training not in excess of the training that has been provided by the employer to workers hired off the street.

E. The requirements of this Chapter shall not be construed to require any Hospitality Employer or Transportation Employer to offer overtime work paid at a premium rate nor to constrain any Hospitality Employer or Transportation Employer from offering such work.

7.45.070 Employee Work Environment Reporting Requirement

A. Hospitality Employers and Transportation Employers shall retain records documenting hours worked, paid sick and safe time taken by Covered Workers, and wages and benefits provided to each such employee, for a period of two years, and shall allow the City Manager or designee access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this Chapter.

B. Hospitality Employers and Transportation Employers shall not be required to modify their recordkeeping policies to comply with this Chapter, as long as records reasonably indicate the hours worked by Covered Workers, accrued paid sick and safe time, paid sick and safe time taken, and the wages and benefits provided to each such Covered Worker. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to a Covered Worker under this chapter, if the Hospitality Employers and Transportation Employers does not maintain or retain adequate records documenting hours worked by the Covered Worker and paid sick and safe time taken by the Covered Worker, it shall be presumed that the Hospitality Employers and Transportation Employers has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of Covered Worker or Covered Workers' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) and/or the Washington Law Against Discrimination (WLAD) apply, then these records must comply with the ADA and WLAD confidentiality requirements.

7.45.080 Waivers

The provisions of this Chapter may not be waived by agreement between an individual Covered Worker and a Hospitality or Transportation Employer. All of the provisions of this Chapter, or any part hereof, including the employee work environment reporting requirement set forth herein, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this chapter.

7.45.090 Prohibiting Retaliation Against Covered Workers For Exercising Their Lawful Rights

A. It shall be a violation for a Hospitality Employer or Transportation Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

B. It shall be a violation for a Hospitality Employer or Transportation Employer to take adverse action or to discriminate against a Covered Worker because the Covered Worker has exercised in good faith the rights protected under this Chapter. Such rights include but are not limited to the right to file a complaint with any entity or agency about any Hospitality Employer's or Transportation Employer's alleged violation of this chapter; the right to inform his or her employer, union or other organization and/or legal counsel about a Hospitality Employer's or Transportation Employer's alleged violation of this section; the right to cooperate in any investigation of alleged violations of this chapter; the right to oppose any policy, practice, or act that is unlawful under this section; and the right to inform other Covered Workers of their rights under this section. No Covered Worker's compensation or benefits may be reduced in response to this Chapter or the pendency thereof.

C. The protections afforded under subsection B shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

7.45.100 Enforcement of Chapter

A. Any person claiming violation of this chapter may bring an action against the employer in King County Superior Court to enforce the provisions of this Chapter and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including but not limited to lost compensation for all Covered Workers impacted by the violation(s), damages, reinstatement and injunctive relief. A plaintiff who prevails in any action to enforce this Chapter shall be awarded his or her reasonable attorney's fees and expenses.

B. The City shall adopt auditing procedures sufficient to monitor and ensure compliance by Hospitality Employers and Transportation Employers with the requirements of this Chapter. Complaints that any provision of this Chapter has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if it deems appropriate, initiate legal or other action to remedy any violation of this chapter; however, the City Attorney is not obligated to expend any funds or resources in the pursuit of such a remedy.

C. Nothing herein shall be construed to preclude existing remedies for enforcement of Municipal Code Chapters.

7.45.110 Exceptions

The requirements of this Chapter shall not apply where and to the extent that state or federal law or regulations preclude their applicability. To the extent that state or federal law or regulations require the consent of another legal entity, such as a municipality, port district, or county, prior to becoming effective, the City Manager is directed to formally and publicly request that such consent be given.

Section 3. That the effective date of this Ordinance shall be January 1, 2014.

Section 4. The Code Reviser is authorized to change the numbering and formatting this Ordinance to conform with the SeaTac Municipal Code codification in a manner that is consistent with the intent and language of this Ordinance.

Section 5. Severability. If any provision of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, or as applied to any particular Hospitality or Transportation Employer and/or in any particular circumstance, by the final decision of any court of competent jurisdiction, then all portions and applications of this Ordinance not declared illegal, invalid or inoperative, shall remain in full force or effect to the maximum extent permissible under law.

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