IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 99736-5

(Court of Appeals No. 80376-0-I)

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.

PETITION FOR REVIEW OF IMPERIAL PARKING (U.S.), LLC

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION AND IDENTITY OF PETITIONER

Petitioner Imperial Parking (U.S.), LLC ("Impark") seeks review of the Court of Appeals decision designated in Part II of this petition.

This appeal presents a novel question of statutory interpretation. Under SeaTac Municipal Code Chapter 7.45 ("the Ordinance"), only covered "Transportation Employers" and "Hospitality Employers" must pay employees an enhanced minimum wage and other benefits.[1] The Ordinance defines both types of employers to exclude businesses that do not employ certain threshold numbers of employees. The Court of Appeals held that Impark was a covered employer because it was a subcontractor to a Hospitality Employer, even though it did not employ the required number of employees to qualify as either a Transportation Employer or a Hospitality Employer.

This ruling was error. ***First,*** the Court of Appeals' decision is contrary to the Ordinance's language, structure, and clear intent to exclude employers with small SeaTac workforces from the Ordinance's requirements. ***Second,*** it conflicts with this Court's decisions holding that "[a] general statutory provision must yield to a more specific statutory provision," *Association of Washington Spirits and Wine Distributors v.*

[1] A copy of the Ordinance is included in the Appendix. *See* App. B.

Washington State Liquor Control Bd., 182 Wn.2d 342, 356 (2015); and that statutes must be read "as a whole, and to determine intent from more than a single sentence," *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560 (2000). ***Third,*** it conflicts with the Court of Appeals' holding in another case—issued the same day as its decision in this case—that the Ordinance deliberately chose to exclude subcontractors providing transportation services from coverage, *Hassan v. GCA Production Services, Inc.*, __ Wn. App. __, 2021 WL 1247949 (No. 80542-8-I, April 5, 2021) (published opinion).

For these reasons, this Court should grant review under RAP 13.4(b)(1), (2), and (4).

II. COURT OF APPEALS DECISION

Impark seeks review of the decision filed by Division One on April 5, 2021 (the "Decision"), affirming the trial court's orders granting summary judgment to Plaintiffs and denying summary judgment to Impark. A copy of the Decision is included in the Appendix. *See* App. A.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by holding that a Transportation Employer that is exempt from the Ordinance because it has fewer than 25 employees can nevertheless be subject to the Ordinance as a subcontractor to a Hospitality Employer?

2. Did the Court of Appeals err by holding that subcontractors of Hospitality Employers are subject to the Ordinance even if they do not meet the minimum employer size requirements that apply to Hospitality Employers?

IV. STATEMENT OF THE CASE

A. Statement of Facts.

Impark is a parking lot management company. CP 51. In 2002, Impark entered into an Agreement with the Doubletree Seattle Airport Hotel ("Doubletree") to operate, maintain, and manage the hotel's parking facility. CP 51-52, 55-60. The Agreement ended in August 2018. CP 52. Under the Agreement, Doubletree granted Impark a license to provide parking lot management services in exchange for a percentage of gross parking revenue. *Id.* The hotel's parking facility had approximately 950 parking spaces and was located within the geographic boundaries of the City of SeaTac. *Id.*

Until 2008, Impark managed the parking lot with attendants who collected fees at parking booths. CP 52. In 2008, Impark continued managing the parking lot as a self-park operation and was responsible for monitoring and maintaining the equipment that collected the fees. *Id.* Starting in 2008, Impark also offered a "park and ride" service available to anyone, including hotel guests, traveling through SeaTac International

Airport and provided off-airport parking for their vehicles. *Id.*

In 2013, the voters of the City of SeaTac approved a local minimum wage initiative that covers "Transportation Employers" and "Hospitality Employers" that meet certain criteria. *See* App. B (SMC Ch. 7.45). The Ordinance requires covered employers to pay their employees a minimum wage of at least $15 per hour and to provide them with a host of other benefits and protections. *Id*. §§ 7.45.020-.090.

The Ordinance defines a covered "Transportation Employer" in relevant part as follows:

> 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***.

Id. § 7.45.010(M) (emphasis and underlining added).

The Ordinance defines a covered "Hospitality Employer" as follows:

> *"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.

Id. § 7.45.010(D) (emphasis and underlining added).

The Ordinance defines a covered "Hotel" as follows:

> *"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.

Id. § 7.45.010(F).

It is undisputed that Impark did not employ 25 or more employees within the City of SeaTac, and therefore did not meet the employer size requirements for "Transportation Employers" or "Hotel" employers. CP 52-53, 61-64.

B. Procedural History.

Plaintiffs are former Impark employees who worked for Impark during Impark's Agreement with Doubletree. CP 2. In April 2018, Plaintiffs filed this putative class action alleging that Impark failed to pay

them the minimum wage required by the Ordinance. CP 1-9. Impark responded that it was not covered by the Ordinance because (among other reasons) it did not meet the Ordinance's employer size requirements. CP 12-25.

In January 2019, the parties filed cross-motions for summary judgment on the issue of whether Impark was a covered employer. CP 26-41, 65-73. Impark contended it was entitled to summary judgment dismissal of the case because it was a "parking lot management" company, governed by the definition of Transportation Employer, but did not meet that definition's employer size requirements. CP 30-32. Impark further contended that the more specific language in that definition (which expressly addresses parking lot management companies) controls over the more general language in the definition of Hospitality Employer (which does not). CP 32-34. Finally, Impark argued that even if the latter definition applied, Impark did not meet the employer size requirements to be a Hospitality Employer. CP 152-54.

Plaintiffs did not dispute that Impark's workforce was too small to make Impark a covered Transportation Employer. CP 69. Instead, they argued on summary judgment that Impark was a Hospitality Employer based solely on the second sentence of that definition, which states: "This shall include any person who employs others providing services for

customers on the aforementioned premises, such as a temporary agency or subcontractor." App. B, SMC § 7.45.010(D). Plaintiffs claimed that this sentence is not subject to the employer size requirements set forth in the first sentence, and extends coverage of the Ordinance to employers with just a single employee. CP 142.

On July 19, 2019, the trial court adopted Plaintiffs' interpretation of the Ordinance, denied Impark's motion for summary judgment, and granted Plaintiffs' motion for partial summary judgment on the issue of liability. CP 170-74.

The Court of Appeals granted discretionary review under the "obvious error" standard, RAP 2.3(b)(1), finding that "Impark makes a cogent argument that plaintiff's interpretation of the ordinance is inconsistent with its plain language, ignores the structure of the ordinance, and is contrary to well established rules of statutory construction, and particularly the general/specific rule." App. C at 4. Ultimately, however, the Court of Appeals affirmed the trial court.

In its Decision, the Court of Appeals agreed with Impark that Impark was a Transportation Employer under the plain meaning of the Ordinance, and did not meet the employer size requirement because it had fewer than 25 employees. App. A at 9-10. It also held, however, that Impark "can be both a transportation employer, not subject to the ordinance, and a

hospitality employer's subcontractor, subject to the ordinance." *Id.* at 11. This was possible, the Court of Appeals reasoned, because the two definitions were not "mutually exclusive," and the definition of Transportation Employer did not explicitly say that Transportation Employers with small workforces were "exempt" from the Ordinance. *Id.* at 12.

The Court of Appeals acknowledged that Impark's interpretation of the definition of Hospitality Employer—that the subcontractor coverage in the second sentence incorporates the employer size requirements in the first sentence—was a "reasonable reading" of the Ordinance. *Id*. at 7. The court concluded, however, that Impark's interpretation would lead to strained and unlikely results; that it was "not inconsistent with the ordinance's intent that a small subcontractor be subject to the ordinance"; and that "the ordinance's purpose is best served by the inclusion of subcontractors like Impark, notwithstanding the employer's number of hired staff." *Id*. at 7-8.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals' Holding That a Transportation Employer With Even a Single Employee Can Be Subject to the Ordinance as a Hotel Subcontractor Is Contrary to This Court's Decisions Regarding the General-Specific Rule and the Nature of Small Employer Exemptions.

The Ordinance specifically addresses "parking lot management"

companies in its definition of Transportation Employer. App. B, SMC § 7.45.010(M)(2)(a). That definition states that such companies are covered by the Ordinance only if they employ 25 or more employees. *Id*. § 7.45.010(M)(2)(b). It thus intentionally excludes from coverage all parking lot management companies that do ***not*** employ at least 25 employees. It is undisputed that Impark is a parking lot management company that employed fewer than 25 employees in SeaTac. App. A at 9-10. The Court of Appeals therefore correctly held that Impark is a Transportation Employer "under the plain meaning" of the Ordinance, but "did not meet the employee threshold because it employed less than 25 workers." *Id*. at 9. The Court of Appeals should have directed entry of summary judgment for Impark on this basis.

The Court of Appeals also held, however, that "Impark can be both a transportation employer, not subject to the ordinance, and a hospitality employer's subcontractor, subject to the ordinance." *Id*. at 11. This interpretation of the Ordinance ignores the basic rule of statutory construction, oft-repeated by this Court, that "[a] general statutory provision must yield to a more specific statutory provision." *Association of Washington Spirits and Wine Distributors v. Washington State Liquor Control Bd.*, 182 Wn.2d 342, 356 (2015); *see also Waste Mgmt. of Seattle, Inc. v. Utilities and Transp. Com'n*, 123 Wn.2d 621, 630 (1994) ("A specific

statute will supersede a general one when both apply"); *Brown v. City of Seattle,* 117 Wn. App. 781, 791-92 (2003) ("Where there are both general and specific [statutory] provisions that arguably apply, the specific governs over the general").

The definition of Transportation Employer specifically addresses parking lot management companies, whereas the definition of Hospitality Employer does not. Moreover, the definition of Transportation Employer expresses a clear and unmistakable intent to exclude parking lot management companies with small workforces from coverage. The question, therefore, is whether there is anything in the more general definition of Hospitality Employer sufficient to overcome this clear intent. There is not.

As the Court of Appeals acknowledged, voter initiatives such as the Ordinance must be read "as the average informed lay voter would read [them]." App. A at 5 (quoting *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 149 Wn.2d 660, 671 (2003)). Based on the Ordinance's plain language, the average informed lay voter would read it as exempting Transportation Employers with small workforces from coverage. It is doubtful it would even occur to such a voter that a Transportation Employer might provide guest services to a covered Hotel as a subcontractor. It is even less likely that such a voter would read the general

language regarding Hotel subcontractors as superseding the specific language excluding Transportation Employers with small workforces from coverage. The Court of Appeals' conclusion to the contrary was error.

The Court of Appeals' reliance on this Court's decision in *Saucedo v. John Hancock Life & Health Ins. Co.,* 185 Wn.2d 171 (2016), is misplaced. That case holds that under Washington's Farm Labor Contractor Act ("FLCA"), the definitions of "agricultural employer" and "farm labor contractor" are not "mutually exclusive," and that an agricultural employer can also be a farm labor contractor if it satisfies both definitions. *Id.* at 180. Both of those definitions, however, broadly encompass "any person" engaged in those respective activities, which are themselves broadly defined. *See* RCW 19.10.030(2) ("'Agricultural employer' means any person engaged in agricultural activity"); RCW 19.10.030(5) ("'Farm labor contractor' means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity"). Unlike the Ordinance in this case, neither of the FLCA's definitions contains a blanket exclusion shielding small employers from coverage.[2]

[2] The definition of farm labor contractor contains a narrow exclusion that applies to "a person performing farm labor contracting activity solely for a small forestland owner as defined in RCW 76.09.450 who receives services of no more than two agricultural employees at any given time." RCW 19.10.030(5). But that exclusion was not applicable to the defendants in *Saucedo,* so was not at issue in that case.

In addition, the definitions in the FLCA impose different legal obligations that complement rather than conflict with each other: farm labor contractors are required to be licensed, and agricultural employers are prohibited from using unlicensed farm labor contractors. RCW 19.10.110; RCW 19.10.200. As a result, both definitions can be applied to a single company without subjecting it to contradictory mandates and immunities. In this case, by contrast, the Court of Appeals' interpretation of Hospitality Employer conflicts with the Ordinance's definition of Transportation Employer, because it would require parking lot management companies with small workforces to pay SeaTac's minimum wage, even though the definition of Transportation Employer expressly excuses them from this payment obligation.

To avoid such a conflict, and to harmonize the two parts of the Ordinance, the more general definition of Hospitality Employer must be interpreted in a manner consistent with the more specific definition of Transportation Employer, which excludes Impark from the Ordinance's coverage. *See, e.g., Association of Washington Spirits and Wine Distributors,* 182 Wn.2d at 356 (holding that "the general statutory provisions of RCW 66.24.640 and RCW 66.28.330(4) [regulating distributors of spirits] do not supersede the specific provisions of subsection (c)(3)"); *Waste Mgmt.,* 123 Wn.2d at 629-30 ("This general provision [in

the solid waste collection statute] would govern the disposal fees involved here, except that there is another, more specific provision which applies, RCW 81.77.160"); *Brown,* 117 Wn. App. at 791-92 (general provisions in city code did not override code's specific provision exempting vessels from regulation).

The Court of Appeals failed to interpret the Ordinance in accordance with this basic rule of construction. It also held that the definition of Transportation Employer does not explicitly and specifically state that Transportation Employers with fewer than 25 employees are "exempt" from the Ordinance. App. A at 11. To the extent the Decision suggests that specific "exemption" language is required, this is also error. As this Court has held, minimum employer size requirements—which are common in employment statutes—are the equivalent of an exemption, and reflect an intent to exempt employers with small workforces from a statute's coverage. *See Griffin v. Eller,* 130 Wn.2d 58, 61-64 (1996) (holding that under the Washington Law Against Discrimination, which defines "employer" as any person "who employs eight or more persons," employers of fewer than eight employees are "exempt" from the statute's coverage, and referring to this minimum size requirement as a "small employer exemption").

The Decision thus conflicts with this Court's decisions applying the

general-specific rule; misconstrues this Court's decision in *Saucedo* to create what would amount to a large and unwarranted exception to that rule; and ignores this Court's holding that employer size requirements are the equivalent of statutory exemptions. The Court should grant review under RAP 13.4(b)(1) and (4) to correct these errors.

B. The Court of Appeals' Holding That a Transportation Employer With Even a Single Employee Can Be Subject to the Ordinance as a Hotel Subcontractor Is Contrary to a Separate Court of Appeals Holding—Issued the Same Day in Another Case—That the Ordinance Deliberately Excludes Subcontractors Providing Transportation Services.

The Decision also conflicts with another opinion the Court of Appeals issued the same day in another case. In *Hassan v. GCA Production Services, Inc.*, ___ Wn. App. ___, 2021 WL 1247949 (No. 80542-8-I, April 5, 2021) (published opinion), the defendant GCA contracted with Avis rental car company to shuttle Avis's rental cars to and from SeaTac Airport. The Court of Appeals held that GCA was not a Transportation Employer covered by the Ordinance, because it did not provide or operate "rental car services" under the ordinary meaning of those terms. *Id.* at *3-4. The court further held that GCA was not subject to the Ordinance as a ***subcontractor*** to Avis, because unlike the definition of Hospitality Employer, the definition of Transportation Employer does not include any language covering subcontractors. *Id.* at *4. The court reasoned that "when the

ordinance intends to include subcontractors, like GCA, it does so expressly," and that the omission of subcontractors from the definition of Transportation Employer reflected a deliberate intent to exclude them from coverage. *Id.*

Thus, not only does the Ordinance exempt Transportation Employers with small workforces from coverage, ***it deliberately chose to exclude subcontractors providing transportation services from coverage.*** The Court of Appeals does not even mention this choice in its Decision in this case, much less try to reconcile it with the court's expansive reading of the subcontractor provision in the definition of Hospitality Employer. This Court should grant review under RAP 13.4(b)(2) to reconcile the Court of Appeals' conflicting decisions.

C. The Court of Appeals' Holding That the Definition of Hospitality Employer Covers Subcontractors With Even a Single Employee Is Contrary to This Court's Rules of Statutory Construction and the Ordinance's Clear Intent to Exclude Employers With Small Workforces From Coverage.

Even if a parking lot management company could be a covered Hospitality Employer, Impark did not meet that definition's employer size requirements, which are established in the definition's first sentence and incorporated in its second sentence.

As this Court has instructed, statutes must be read "as a whole, and

to determine intent from more than a single sentence." *Central Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d at 560. "Effect should be given to all of the language used, and the provisions must be considered in relation to each other, and harmonized to ensure proper construction." *Id.* The Ordinance must therefore be considered as a whole to determine the meaning of its specific provisions, and the two sentences comprising the definition of Hospitality Employer must be read together.

The first sentence defines Hospitality Employer to include anyone operating a Hotel that has 100 or more guest rooms and "thirty (30) or more workers[.]" App. B, SMC § 7.45.010(D). The second sentence states: "This shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor." *Id.* The second sentence plainly refers back to the first, which contains the employer size requirements. Moreover, the language used to begin the second sentence—***"This shall include…"***—indicates an intent to describe a subset of Hospitality Employer that falls ***within*** the definitional parameters established in the first sentence (including the employer size requirements). It simply makes clear that a subcontractor, temporary agency, or other business providing services at a covered Hotel will itself be covered if it meets the employer size requirements set out in the first sentence, even though its employees are not directly employed by

the Hotel operator. While Impark provided certain services at the Doubletree, it did not meet the employer size requirements in the first sentence, so it was not covered under the second sentence either.

The Court of Appeals acknowledged that this is "[o]ne reasonable interpretation" of the Ordinance, and that Impark's interpretation would conform to "certain statutory construction rules." App. A at 7. The court rejected Impark's interpretation, however, because it found that it would lead to strained or unlikely results, and because "the ordinance's purpose is best served by the inclusion of subcontractors like Impark, notwithstanding the employer's number of hired staff." *Id*. at 8. This was error.

First, the Court of Appeals reasoned that "the logical extension" of Impark's interpretation would mean that "a hotel subcontractor must not only employ 30 or more workers but also must own a hotel with 100 guestrooms." *Id*. at 7 n.7. But the second sentence mentions only the requirement to "employ others," not the requirement to operate a certain number of guest rooms. The most reasonable explanation for this is that the second sentence refers back to and incorporates the first sentence's employer size requirements (which makes sense, given the Ordinance's repeatedly expressed intent to exclude employers with small workforces from coverage), not the requirement to operate 100 or more guest rooms (which would not make any sense).

Second, the Court of Appeals held that Impark's interpretation would impermissibly add words to the Ordinance, changing the requirement that a subcontractor "employs ***others***" to a requirement that it "employs ***30*** others." *Id*. at 8 (emphases in original). On the contrary, Impark contends that the second sentence's use of the word "others," plural, can most reasonably be understood as incorporating the (plural) employer size requirements in the first sentence. App. B, SMC § 7.45.010(D). It is the Court of Appeals' interpretation that effectively rewrites the Ordinance by changing a requirement to employ "others," plural, into a requirement that can be met by employing a single employee.

Third, the Court of Appeals acknowledged that the Ordinance has two purposes: "to protect small businesses while at the same time ensuring a living wage for SeaTac workers." App. A at 8. But the court then made no attempt to balance or harmonize those purposes, in the end offering only the conclusory statement that "[i]t is not inconsistent with the ordinance's intent that a small subcontractor be subject to the ordinance." *Id*.

Under the Court of Appeals' interpretation, even very small vendors who commonly perform work at Hotels for hotel guests—such as beauty artists, massage therapists, and photographers—would be subject to the Ordinance if they had just one employee. Moreover, it is important to remember that in addition to mandating what at the time was the highest

minimum wage in the nation, the Ordinance also imposes a host of other obligations on covered employers, including requiring them to provide employees with paid "sick and safe time" leave out of the employer's "general assets"; to offer additional available hours to existing workers before hiring additional employees; to pay all service charges and tips to the employees performing the service; to offer employment to predecessor employers' employees; and to retain such employees for an "initial ninety-day period" unless there is "just cause" to discharge them earlier. App. B, SMC §§ 7.45.020-.040, .060-.070. It is unlikely that the average informed lay voter understood the Ordinance to impose all of these burdens on small subcontractors with as few as a single employee.

The definition's second sentence simply recognizes that covered Hotels often have subcontractors performing services on site, and reflects a reasonable policy choice that such subcontractors should also be covered if they meet the employer size requirements in the first sentence. This interpretation balances the Ordinance's dual purposes of providing Hospitality Workers with a higher minimum wage and other benefits while excluding employers with small workforces from coverage.

The Court of Appeals' Decision conflicts with this Court's rules of statutory construction by failing to read the Ordinance as a whole in a way that harmonizes its provisions and best serves its underlying intent. This

Court should grant review under RAP 13.4(b)(1) and (4) to correct this error.

VI. CONCLUSION

For the foregoing reasons, Impark respectfully asks this Court to grant review of the Court of Appeals' Decision, and to direct the entry of summary judgment in favor of Impark.

RESPECTFULLY SUBMITTED this 5th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing *Petition for Review of Imperial Parking (U.S.), LLC* using the Washington State Appellate Court's Portal which serves counsel of record via e-mail as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Redmond, Washington this 5th day of May, 2021.

Susan Bright

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PAGES	TITLE
A #1-12	Court of Appeals (Div. I) Decision Affirming Trial Court's Order (Unpublished Opinion)
B #1-10	SeaTac Municipal Code, Chapter 7.45
C #1-4	Court of Appeals Ruling Granting Discretionary Review Pursuant to RAP 2.3(b)(1), Dated November 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing *Appendix to Imperial Parking's Petition for Review* using the Washington State Appellate Court's Portal which serves counsel of record via e-mail as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Redmond, Washington this 5th day of May, 2021.

Susan Bright

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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

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:

Chapter 7.45
MINIMUM EMPLOYMENT STANDARDS FOR HOSPITALITY AND TRANSPORTATION INDUSTRY EMPLOYERS*

Sections:

* Code reviser's note: Ord. 13-1020 was passed by voter initiative and cannot be amended or repealed without a vote of the people (see RCW 35.17.340).

7.45.010 Definitions.

As used in this chapter, the following terms shall have the following meanings:

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 thirty (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 six (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 subsection 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. (Ord. 13-1020 § 2 (part))

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 (1) hour of paid sick and safe time for every forty (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. (Ord. 13-1020 § 2 (part))

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. (Ord. 13-1020 § 2 (part))

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. (Ord. 13-1020 § 2 (part))

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 1st, 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 (12) 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 30th regarding the rate by which Washington State's minimum wage rate is to be increased effective the following January 1st, 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 15th 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 1st 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. (Ord. 13-1020 § 2 (part))

7.45.060 Setting additional labor standards for City hospitality workers and transportation workers.

A. Notice to Employees. No less than sixty (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 (90) 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 (90) 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. (Ord. 13-1020 § 2 (part))

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 (2) 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 do 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 have 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. (Ord. 13-1020 § 2 (part))

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. (Ord. 13-1020 § 2 (part))

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 of this section shall apply to any person who mistakenly but in good faith alleges violations of this chapter. (Ord. 13-1020 § 2 (part))

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. (Ord. 13-1020 § 2 (part))

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. (Ord. 13-1020 § 2 (part))

The SeaTac Municipal Code is current through Ordinance 21-1012, passed April 13, 2021.

Disclaimer: The City Clerk's office has the official version of the SeaTac Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: https://www.seatacwa.gov/
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November 26, 2019

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CASE #: 80376-0-I
Solomon Alemu, et al, Respondent v. Imperial Parking (U.S.), LLC, Petitioner

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on November 26, 2019:

Defendant/petitioner Imperial Parking (U.S.), LLC (Impark) seeks discretionary review of the trial court order denying Impark's motion for summary judgment dismissal and granting partial summary judgment for plaintiffs/respondents Solomon Alemu and others that for purposes of Sea Tac Municipal Code chapter 7.45, Impark is a "hospitality employer" and required to pay a minimum hourly wage of at least $15.00, as adjusted. For the reasons stated below, review is granted.

In 2013, voters in the City of Sea Tac approved a local minimum wage initiative that requires employers of a certain size to pay covered hospitality and transportation workers at least $15.00 per hour, as adjusted for inflation and to guarantee certain other benefits. A "covered worker" is an individual who is either a "hospitality worker" or a "transportation worker" as defined in the ordinance. STMC 7.45.010(C). A "hospitality worker" is a nonmanagerial, nonsupervisory individual employed by a "hospitality employer," and a "transportation worker" is a nonmanagerial, nonsupervisory individual employed by a "transportation employer." STMC 7.45.010(E), (N). The definitions of "hospitality" and "transportation" employers are such that the wage requirements do not apply to businesses that employ fewer than a threshold number of employees. STMC 7.45.010(D), (M).

Impark is a parking management company that provides services in commercial and residential settings. In 2002, Impark entered into an agreement with the Doubletree Airport Hotel, which is within the geographic boundaries of the City of Sea Tac, to provide parking lot operation, maintenance, and management services. Doubletree granted Impark a license to provide these services in exchange for a percentage of gross revenue. The garage and parking lot has approximately 958 spaces. Between 2002 and 2008, Impark managed the parking lot with attendants at booths who collected fees. Beginning in 2008, Impark managed the parking lot and collected fees through a self-service operation; it also offered a park and ride service (not shuttles) for hotel guests and others traveling through Sea Tac Airport, providing off-airport parking for their vehicles.

In April 2018, plaintiffs Solomon Alemu, Getachew Tadesse, and Tesfaye Ayele filed a putative class action complaint alleging that between about 2013 to 2017, they worked for Impark with job duties that included providing valet parking services, i.e. parking and retrieving vehicles for customers. They alleged that they are covered employees under the ordinance but were paid less than $15.00 an hour.

Impark responded that the minimum wage ordinance was inapplicable because it did not meet the employer size requirements. The parties filed cross motions for summary judgment on the issue of whether Impark is a covered employer.

The relevant definitions provide:

> 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.*

(Italics added). STMC 7.45.010(D).

M. "Transportation employer" means:

. . .

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*.

(Italics added). STMC 7.45.010(M).

Impark argued that it is a "transportation employer," i.e. a employer who operates or provides parking lot management and has more than 100 spaces, but it does not have the requisite 25 or more employees and is therefore not covered by the ordinance.

Plaintiffs did not dispute that Impark does not have the requisite number of employees to be a covered transportation employer. Instead, plaintiffs argued that Impark is a covered "hospitality employer" under the last sentence of STMC 7.45.010(D). Plaintiffs' argument is this: The plain language clearly contemplates two categories of hospitality employers. The first category, which plaintiffs call a "Type One Hospitality Employer," covers hotel, institutional foodservice, and retail employers with the prescribed number of employees (30 or 10). The Doubletree is a hotel with 100 or more guest rooms and 30 or more employees. The second category, which plaintiffs call a "Type Two Hospitality Employer," covers any person who employs others providing on-site services to customers and guests of a Type One Hospitality Employer. ADR at 8.

The trial court agreed with plaintiffs' argument that Impark is a covered "hospitality employer, reasoning in part that the last sentence of the definition is designed to prevent large hospitality employers from subcontracting some work to small operators to avoid the requirements of the ordinance and that Impark is a subscontractor of Doubletree. ADR at 5. Appen. at 31, 40-44. The court granted partial summary judgment for plaintiffs. Issues left for trial include class certification, whether class members were managerial employees, and a determination of remedies.

Impark asked the trial court to certify the case for discretionary review under RAP 2.3(b)(4), which provides for review where "the superior court has certified . . . that the order involves a controlling question of law as to which there is a substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." Plaintiffs opposed it, and the trial court denied certification.

Impark seeks discretionary review under RAP 2.3(b)(1) or (2). The applicable rule is (b)(1), obvious error that renders further proceedings useless. The effect prong is established; if Impark is correct that the ordinance does not apply to the plaintiff employees, then its motion for summary judgment dismissal should have been granted, ending the case, and review is warranted to prevent a useless trial. Douchette v. Bethel School Dist. No. 403, 117 Wn.2d 805, 818 P.2d 1362 (1991); Hartley v. State, 103 Wn.2d 768, 698 P.2d 77 (1985).

Impark makes a cogent argument that plaintiffs' interpretation of the ordinance is inconsistent with its plain language, ignores the structure of the ordinance, and is contrary to well established rules of statutory construction, and particularly the general/specific rule. See MDR at 12-16, Reply at 2-8. Allowing the case to go forward at this point will result in the time and expense of protracted class action litigation. Immediate review will also provide guidance to other hospitality and transportation employers and employees in the City of Sea Tac. Review is warranted. (I note that this is the type of case for which certification under RAP 2.3(b)(4) is appropriately applied: the issue of statutory construction is a controlling question of law, there is a substantial ground for a difference of opinion, and immediate review may materially advance the ultimate termination of the litigation.

Therefore, it is

ORDERED that discretionary review is granted, and the clerk will set a perfection schedule.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

LAW

DAVIS WRIGHT TREMAINE BELLEVUE

May 05, 2021 - 2:44 PM

Transmittal Information

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Appellate Court Case Title:	Solomon Alemu, et al, Respondent v. Imperial Parking (U.S.), LLC, Petitioner

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